

# **APPENDIX C**

## **SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE**

# RULES REGULATING THE FLORIDA BAR

## CHAPTER 1. GENERAL

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### SUBCHAPTER 1-3. MEMBERSHIP

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#### RULE 1-3.5 RETIREMENT

Any member of The Florida Bar may retire from The Florida Bar upon petition or other written request to, and approval of, the ~~board of governors~~executive director. A retired member shall not practice law in this state except upon petition for reinstatement to and approval of the ~~board of governors~~executive director; the payment of all membership fees, costs, or other amounts owed to The Florida Bar; and the completion of all outstanding continuing legal education or basic skills course requirements. A retired member shall be entitled to receive such other privileges as the board of governors may authorize.

A retired member shall remain subject to disciplinary action for acts committed before the effective date of retirement. Acts committed after retirement may be considered in evaluating the member's fitness to resume the practice of law in Florida as elsewhere stated in these Rules Regulating The Florida Bar.

If the executive director is in doubt as to disposition of a petition the executive director may refer the petition to the board of governors for its action. Action of the executive director or board of governors denying a petition for retirement or reinstatement hereunder may be reviewed upon petition to the Supreme Court of Florida.

Reduces use of board resources for ministerial activity. Deletes requirement of board review and approval of petitions for retirement and for reinstatement; authorizes executive director to individually act on most of such matters instead.

Retains board authority in exceptional instances. Allows for board action in cases of doubt by the executive director. Clarifies that denial of a petition for retirement or reinstatement by the executive director or board of governors may be reviewed by petition to the Supreme Court of Florida.

**RULE 1-3.6 DELINQUENT MEMBERS**

Any person now or hereafter licensed to practice law in Florida ~~who shall be deemed a delinquent member if the member:~~

(a) fails to pay membership fees;

(b) fails to comply with continuing legal education or basic skills course requirements;

(c) is delinquent in the payment of fails to pay the costs assessed in diversion or disciplinary cases within 30 days after the disciplinary decision or diversion recommendation becomes final, unless such time is extended by the board of governors for good cause shown;

(d) fails to make restitution imposed in diversion cases or disciplinary proceedings brought under these Rules Regulating The Florida Bar within the time specified in the order in such cases or proceedings, unless the time is extended by the board of governors for good cause shown;

(e) fails to pay fees imposed as part of diversion for more than 90 days after the diversion recommendation became final, unless such time is extended by the board of governors for good cause shown; or

(f) fails to pay an award entered in fee arbitration proceedings conducted under the authority stated elsewhere in these rules and 90 days or more have elapsed since the date on which the award could became final, unless such time is extended by the board of governors for good cause shown.

~~shall be deemed a delinquent member. While occupying the status of a delinquent member, no person shall not engage in the practice of law in Florida nor be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.~~

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Reorganizes and rewrites rule to consolidate and more clearly specify those instances in which a member shall be deemed delinquent.

Adds selected language regarding delinquency, moved from rule 1-7.3(a)

Adds failure to pay fees associated with a fee arbitration award as a specific basis for delinquency.

**RULE 1-3.8 RIGHT TO INVENTORY**

(a) **Appointment; Grounds; Authority.** [no change]

(b) **Maintenance of Attorney-Client Confidences.** [no change]

(c) **Status and Purpose of Inventory Attorney.** [no change]

(d) **Rules of Procedure.** [no change]

(e) **Designation of Inventory Attorney.** Each member of the bar who practices law in Florida shall designate another member of The Florida Bar who has agreed to serve as inventory attorney under this rule. When the services of an inventory attorney become necessary an authorized representative of The Florida Bar shall contact the designated member and determine the member's current willingness to serve. The designated member shall not be under any obligation to serve as inventory attorney.

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New subdivision, to foster the advance designation of inventory attorneys to better allow for timely client protection. Requires each member of the bar who practices law in Florida to designate another member who is willing to serve as inventory attorney in the event of any need for such. Clarifies that the designated member is under no obligation to serve as an inventory attorney, and that the designated member will be contacted at the time of need to determine that member's current willingness and ability to serve.

SUBCHAPTER 1-7 MEMBERSHIP FEES AND FISCAL CONTROL

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**RULE 1-7.3 MEMBERSHIP FEES**

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

~~Membership fees tendered to The Florida Bar shall not be accepted from any member who has not paid costs imposed against the member in a diversion case or disciplinary proceeding within 30 days after the disciplinary decision becomes final unless such time is extended by the board of governors for good cause shown; or has not made restitution in the manner and by the date provided in the disciplinary order or agreement. A member who has not paid diversion or disciplinary costs or made restitution as required by this subdivision shall be deemed a delinquent member as defined elsewhere in these rules.~~

**(b) Prorated Membership Fees.** [no change]

**(c) Installment Payment of Membership Fees.** [no change]

**(d) Election of Inactive Membership.** [no change]

**(e) Late Payment of Membership Fees.** [no change]

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Editorial and clarifying amendments. Consistent with proposed changes in rule 1-3.6, deletes language relating to membership delinquencies, to be relocated in rule 1-3.6; deletes other verbiage, to effectively allow the bar to accept membership fees from delinquent members.

## **CHAPTER 3. RULES OF DISCIPLINE**

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### **SUBCHAPTER 3-2. DEFINITIONS**

#### **RULE 3-2.1 GENERALLY**

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

- (a) **Bar Counsel.** [no change]
- (b) **The Board or the Board of Governors.** [no change]
- (c) **Complainant or Complaining Witness.** [no change]
- (d) **This Court or the Court.** [no change]
- (e) **Court of this State.** [no change]
- (f) **Diversion to Practice and Professionalism Enhancement Programs.** [no change]
- (g) **Executive Committee.** [no change]
- (h) **Executive Director.** [no change]
- (i) **Practice and Professionalism Enhancement Programs.** [no change]
- (j) **Probable Cause.** [no change]
- (k) **Referral to Practice and Professionalism Enhancement Programs.** [no change]

<p>(l) <b>Referee.</b> [no change]</p> <p>(m) <b>Respondent.</b> [no change]</p> <p>(n) <b>Staff Counsel.</b> <del>The director of the legal division and an</del> <u>A lawyer</u> employee of The Florida Bar <u>designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty pleas for consent judgments, diversion recommendations, and to make appointment of bar counsel.</u></p> <p>(o) <b>Chief Branch Discipline Counsel.</b> [no change]</p> <p>(p) <b>Designated Reviewer.</b> [no change]</p>	<p>Allows more executive flexibility in staff decisions involving bar disciplinary matters. Revises definition of “staff counsel,” to specify a lawyer employee of The Florida Bar designated by the executive director and authorized by the rules to approve formal complaints, conditional guilty pleas for consent judgments, diversion recommendations, and to make appointment of bar counsel.</p>
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SUBCHAPTER 3-3. JURISDICTION TO ENFORCE RULES

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**RULE 3-3.4 GRIEVANCE COMMITTEES**

There shall be such grievance committees as are herein provided, each of which shall have the authority and jurisdiction required to perform the functions hereinafter assigned to it and which shall be constituted and appointed as follows:

(a) **Circuit Grievance Committees.** [no change]

(b) **Special Grievance Committees.** [no change]

(c) **Membership, Appointment, and Eligibility.** [no change]

(d) **Terms.** The terms of the members shall be for 1 year from the date of administration of the oath of service on the grievance committee or until such time as their successors are appointed and qualified. Continuous service of a member shall not exceed 3 years. A member shall not be reappointed for a period of 3 years after the end of the member's term; provided, however, the expiration of the term of any member shall not disqualify such member from concluding any investigation or participating in disposition of cases ~~that~~ that were pending before the committee when the member's term expired. A member who continues to serve on the grievance committee under the authority of this subdivision shall not be counted as a member of the committee when calculating the minimum number of public members required by this rule.

(e) **Officers.** [no change]

(f) **Oath.** [no change]

(g) **Removal.** [no change]

Clarifies bar preferences and makes responsible use of seasoned volunteer resources. States that a committee member whose term has expired may nevertheless participate in the disposition of cases pending at the time that member's term expired, but shall not be counted as a committee member for purposes of calculating the minimum required number of public members on the committee.

<b>(h) Grievance Committee Meetings.</b> [no change]	
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SUBCHAPTER 3-5. TYPES OF DISCIPLINE  
**RULE 3-5.1 GENERALLY**

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

(a) **Admonishments.** [no change]

(b) **Minor Misconduct.** [no change]

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

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

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

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

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

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

(6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have

been violated or the legal representation in which the misconduct occurred was obtained by advertising.

The respondent will also reimburse the bar for the costs of supervision. Upon failure of a respondent to observe comply with the conditions of the probation or a finding of probable cause as to conduct of the respondent committed during the period of probation shall terminate the probation. In such event, even though such finding of probable cause shall be made after the expiration of the period of probation, the judgment shall be reconsidered and an appropriate judgment shall be entered. On termination of probation for failure to observe the conditions of probation or on a finding of probable cause for misconduct committed during the period of probation, the attorneyrespondent may be punished for contempt or suspended from the practice of law on petition by The Florida Bar, and any such suspension shall continue until the respondent may be reinstated to the practice of law as provided elsewhere in these rulesas provided elsewhere in these Rules Regulating The Florida Bar. An order of the court imposing sanctions for contempt under this rule may also terminate the probation previously imposed.

**(d) Public Reprimand.** [no change]

**(e) Suspension.** [no change]

**(f) Disbarment.** [no change]

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

- (1) all of the respondent's clients with matters pending in the respondent's practice;
- (2) all opposing counsel or co-counsel in the matters listed in (1), above; and

Clarifies that a failure to comply with terms of probation or a finding of probable cause for misconduct during probation may be prosecuted as contempt and processed as other contempts under rule 3-7.11(f); additionally confirms that any order of sanctions for contempt may also terminate probation previously imposed.

Clarifying amendments. Consistent with proposed changes in rules 3-6.1, 3-7.2, 3-7.10, and 3-7.12 which formalize the concept of “disbarment on consent,” revises the term “disciplinary resignation,” to read “disbarment on consent.”

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

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

**(h) Forfeiture of Fees.** [no change]

**(i) Restitution.** [no change]

**(j) ~~Disciplinary Resignation~~ Disbarment on Consent.** A respondent may be allowed to ~~resign~~ surrender membership in The Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. Disbarment on consent shall have the same effect as and shall be governed by the same rules as provided for disbarment elsewhere in these Rules Regulating The Florida Bar. ~~If accepted by the Supreme Court of Florida, a disciplinary resignation terminates the respondent's status as a member of the bar. A former member whose disciplinary resignation has been accepted may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Disciplinary resignation is the functional equivalent of disbarment in that both sanctions terminate the license and privilege to practice law and both require readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. Except as otherwise provided in these rules, no application for admission may be tendered within 3 years after the date of the order of the Supreme Court of Florida that accepted the disciplinary resignation or such additional time as the respondent may have stated in the petition for disciplinary resignation. A petition that states that disciplinary resignation is without leave to apply for readmission shall preclude readmission to the bar.~~

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

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Corrects scrivener's error in (g)(1).

Clarifying amendments. Consistent with proposed changes in rules 3-6.1, 3-7.2, 3-7.10, and 3-7.12 which formalize the concept of “disbarment on consent,” revises the term “disciplinary resignation,” to read “disbarment on consent”; streamlines verbiage to reflect that disbarment by consent shall have the same effect as and shall be governed by the same rules regarding disbarment, and that matters involving disbarment by consent shall be processed in the same manner as conditional guilty pleas for consent judgment under rule 3-7.9.

**SUBCHAPTER 3-6 EMPLOYMENT OF CERTAIN ATTORNEYS OR FORMER ATTORNEYS  
RULE 3-6.1 GENERALLY**

An authorized business entity (as defined elsewhere in these rules) may employ individuals subject to this rule to perform such services only as may ethically be performed by other lay persons employed by authorized business entities.

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

**(b) Definition of Employment.** [no change]

**(c) Employment by Former Subordinates.** [no change]

**(d) Notice of Employment.** [no change]

**(e) Client Contact.** [no change]

**(f) Reports by Employee and Employer.** [no change]

Corrects scrivener's error.

Clarifying amendments.  
Consistent with proposed changes in rule 3-5.1, 3-7.2, 3-7.10, and 3-7.12 which formalize the concept of "disbarment on consent," adds attorneys who have been "disbarred on consent" within subdivision (a) as individuals subject to this rule.

**SUBCHAPTER 3-7. PROCEDURES  
RULE 3-7.1 CONFIDENTIALITY**

(a) **Scope of Confidentiality.** [no change]

(b) **Public Record.** [no change]

(c) **Circuit Court Proceedings.** [no change]

(d) **Limitations on Disclosure.** [no change]

(e) **Response to Inquiry.** [no change]

(f) **Notice to Law Firms.** When a disciplinary file is opened the respondent shall disclose to the respondent's current law firm and, if different, the respondent's law firm at the time of the act or acts giving rise to the complaint, the fact that a disciplinary file has been opened. Disclosure shall be in writing and in the following form:

A complaint of unethical conduct against me has been filed with The Florida Bar. The nature of the allegations are \_\_\_\_\_ . This notice is provided pursuant to rule 3-7.1(gf) of the Rules Regulating The Florida Bar.

The notice shall be provided within 15 days of notice that a disciplinary file has been opened and a copy of the above notice shall be served on The Florida Bar.

(g) **Production of Disciplinary Records Pursuant to Subpoena.** [no change]

(h) **Notice to Judges.** [no change]

(i) **Evidence of Crime.** [no change]

Corrects scrivener's error.

<p>(j) <b>Chemical Dependency and Psychological Treatment.</b> [no change]</p> <p>(k) <b>Response to False or Misleading Statements.</b> [no change]</p> <p>(l) <b>Disclosure by Waiver of Respondent.</b> [no change]</p>	
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**RULE 3-7.2 PROCEDURES UPON CRIMINAL OR PROFESSIONAL MISCONDUCT; DISCIPLINE UPON DETERMINATION OR JUDGMENT OF GUILT OF CRIMINAL MISCONDUCT**

(a) **Definitions.** [no change]

(b) **Determination or Judgment of Guilt.** [no change]

(c) **Notice of Determination or Judgment of Guilt.** [no change]

(d) **Notice of Determination or Judgment of Guilt by Courts of the State of Florida.** [no change]

(e) **Suspension by Judgment of Guilt (Felonies).** [no change]

(f) **Petition to Modify or Terminate Suspension.**

(1) At any time after the filing of a notice of determination or judgment of guilt, the respondent may file a petition with the Supreme Court of Florida to modify or terminate such suspension and shall serve a copy thereof upon the executive director. The petition to modify or terminate the suspension may only challenge the jurisdiction of the court or the validity of the criminal court proceedings due to a denial or lack of due process.

(2) If such petition is filed on or before the tenth day following the filing of the notice, the suspension will be deferred until entry of an order on the petition.

(3) If such petition is filed after the tenth day following the filing of the notice of judgment of guilt, the suspension shall remain in effect pending disposition of the petition. Modification or termination of the suspension shall be granted only upon a showing of good ~~ease~~cause.

Limits collateral attacks of criminal matters during this stage of bar disciplinary processes. Adds language stating that a petition to modify or terminate a suspension due to criminal conviction may only challenge the jurisdiction of the court or the validity of the criminal proceedings due to a denial or lack of due process. Corrects scrivener's error.

(g) **Response to Petition to Modify or Terminate Automatic Suspension.** [no change]

(h) **Term of Suspension** [no change]

(i) **Separate Disciplinary Action** [no change]

(j) **Professional Misconduct in Foreign Jurisdiction**

(1) *Notice of Discipline by a Foreign Jurisdiction.* A member of The Florida Bar who has ~~submitted a disciplinary resignation or otherwise~~ surrendered a license to practice law in lieu of disciplinary sanction, or has been disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state or by a federal court shall within 30 days after the effective date of disbarment or suspension file with the Supreme Court of Florida a copy of the order or judgment effecting such surrender, disbarment, or suspension.

(2) *Adjudication or Discipline by a Foreign Jurisdiction.* In cases of a final adjudication by a court or other authorized disciplinary agency of another jurisdiction, such adjudication of misconduct shall be sufficient basis for the filing of a complaint by The Florida Bar and assignment for hearing before a referee without a finding of probable cause under these rules.

(3) *Interim Suspension.*

(A) Filing of Notice. Upon receiving notice that a member of the bar has submitted a disciplinary resignation or otherwise surrendered a license to practice law in lieu of disciplinary sanction, or has been disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state or by a federal court, bar counsel will file a notice of discipline in foreign jurisdiction in the Supreme Court of Florida. A copy of the foreign disciplinary action shall be attached to the notice. Upon the filing with the Supreme Court of Florida by The Florida Bar and service upon the respondent of the notice, the respondent shall stand suspended as a member of The Florida Bar on the 11th day after filing of the notice unless the respondent shall, on or before the 10th day after filing of such notice,

Clarifying amendments. Consistent with proposed changes in rules 3-5.1, 3-6.1, 3-7.10, and 3-7.12 which formalize the concept of “disbarment on consent,” revises verbiage to reflect discontinuation of the term “disciplinary resignation.”

Provides expedient disciplinary process for further protection of the public where none now exists. Creates new subdivision, to provide a process for interim suspension when a member has submitted a disciplinary resignation or otherwise

file a petition to terminate or modify such suspension.

(B) Petition to Modify or Terminate Suspension. At any time after the filing of a notice of discipline in foreign jurisdiction, the respondent may file a petition with the Supreme Court of Florida to modify or terminate such suspension and shall serve a copy thereof upon bar counsel. If such petition is filed on or before the 10th day following the filing of the notice, the suspension may be deferred until entry of an order on the petition. If such petition is filed after the 10th day following the filing of the notice, the suspension shall remain in effect pending disposition of the petition. Modification or termination of the suspension shall be granted only upon a showing of good cause.

(C) Response to Petition to Modify or Terminate Automatic Suspension. The Florida Bar shall be allowed 20 days from the filing of a petition to modify or terminate interim suspension to respond to same. Bar counsel will oppose all petitions to modify or withhold an interim suspension unless the designated reviewer recommends and the executive committee or board of governors concurs in not opposing such petition.

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surrendered a license to practice law in lieu of disciplinary sanction, or has been disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state, or by a federal court.

**RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES**

- (a) **Notice of Hearing.** [no change]
- (b) **Complaint Filed With Grievance Committee.** [no change]
- (c) **Investigation.** [no change]
- (d) **Conduct of Proceedings.** [no change]
- (e) **No Delay for Civil or Criminal Proceedings.** [no change]
- (f) **Counsel and Investigators.** [no change]
- (g) **Quorum, Panels, and Vote.** [no change]
- (h) **Rights and Responsibilities of the Respondent.** [no change]
- (i) **Rights of the Complaining Witness.** [no change]
- (j) **Finding of No Probable Cause.** [no change]
- (k) **Letter Reports in No Probable Cause Cases.** [no change]

**(l) Preparation, Forwarding, and Review of Grievance Committee Complaints.** If a grievance committee finds probable cause, the bar counsel assigned to the committee shall promptly prepare a record of its investigation and a formal complaint. The record before the committee shall consist of all reports, correspondence, papers, and/or recordings furnished to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to

debate the issues involved and to reach a decision as to the action to be taken. The formal complaint shall be ~~signed~~approved by the member of the committee who presided in the proceeding. The formal complaint shall be in such form as shall be prescribed by the board. If the presiding member of the grievance committee disagrees with the form of the complaint, the presiding member may direct bar counsel to make changes accordingly. If bar counsel does not agree with the changes, the matter shall be referred to the designated reviewer of the committee for appropriate action. When a formal complaint by a grievance committee is not referred to the designated reviewer, or returned to the grievance committee for further action, the formal complaint shall be promptly forwarded to and reviewed by staff counsel who shall file the formal complaint, and furnish a copy of the formal complaint to the respondent. A copy of the record shall be made available to the respondent at the respondent's expense.

**(m) Recommendation of Admonishment for Minor Misconduct.** [no change]

**(n) Rejection of Admonishment.** [no change]

**(o) Recommendation of Diversion to Remedial Programs.** [no change]

**(p) Preparation, Review, and Filing of Complaint.** [no change]

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Streamlines current processes. Alters the requirement that the presiding officer of a grievance committee sign a formal complaint, to only require that the document be "approved" by such officer.

**RULE 3-7.6 PROCEDURES BEFORE A REFEREE**

- (a) **Referees.** [no change]
- (b) **Trial by Referee.** [no change]
- (c) **Pretrial Conference.** [no change]
- (d) **Venue.** [no change]
- (e) **Style of Proceedings.** [no change]
- (f) **Nature of Proceedings.** [no change]
- (g) **Bar Counsel.** [no change]
- (h) **Pleadings.** [no change]
- (i) **Notice of Final Hearing.** [no change]
- (j) **The Respondent.** [no change]
- (k) **Complaining Witness.** [no change]
- (l) **Parol Evidence.** [no change]
- (m) **Referee's Report.**
  - (1) *Contents of Report.* [no change]

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

(n) **The Record.** [no change]

(o) **Plea of Guilty by Respondent.** [no change]

(p) **Cost of Review or Reproduction.** [no change]

(q) **Costs.** [no change]

**Court Comment**

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

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Streamlines current processes. Deletes the requirements that the referee serve a copy of the record on bar counsel with the report, and that bar counsel make such copy available to other parties on request upon payment of the cost of reproduction.

### **RULE 3-7.9 CONSENT JUDGMENT**

**(a) Before Formal Complaint is Filed.** If before a formal complaint is filed a respondent states a desire to plead guilty, ~~staff~~bar counsel shall consult established board guidelines for discipline and confer with the designated reviewer. If ~~staff~~bar counsel or the designated reviewer rejects the proposed consent judgment, the matter shall not be referred to the board of governors. If ~~staff~~bar counsel and the designated reviewer approve the proposed consent judgment, the respondent shall be advised that ~~staff~~bar counsel and the designated reviewer will recommend approval of the respondent's written plea, and the matter shall be placed on the agenda of the board of governors for its review. If the board of governors concurs in the consent judgment, bar counsel shall notify the respondent and file all necessary pleadings to secure approval of the plea. If a proposed consent judgment is rejected, bar counsel shall prepare and file a complaint as provided elsewhere in these rules.

**(b) After Filing of Formal Complaint.** [no change]

**(c) Approval of Consent Judgments.** [no change]

**(d) Content of Conditional Pleas.** [no change]

**(e) ~~Authority of Staff Counsel~~Effect of Pleas on Certification.** ~~Staff counsel has no authority to commit the bar on any consent judgment not previously approved as provided in this rule. In negotiating consent judgments with a respondent or in recommending acceptance, rejection, or offer of a tendered consent judgment, staff counsel and designated reviewer shall consider and express a recommendation on whether the consent judgment shall include revocation of certification if held by the attorney and restrictions to be placed on recertification in such areas. When certification revocation is agreed to in a consent judgment, the revocation and any conditions on recertification will be reported to the legal specialization and education director for recording purposes.~~

Clarifying amendments. Conforms the authority of disciplinary staff regarding consent judgments before a formal complaint is filed, to their authority after a complaint is filed – as reflected in subdivision (b) – by changing references to "staff" counsel, to read "bar" counsel.

Editorial and clarifying amendments. Deletes redundant references to staff counsel authority and retitles subdivision to more clearly reflect its content.

**RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES**

**(a) Reinstatement; Applicability.** [no change]

**(b) Petitions; Form and Contents.**

(1) *Filing.* [no change]

(2) *Form and Exhibits.* The petition shall be in such form and shall be accompanied by such exhibits as provided for elsewhere in this rule. The information required concerning the petitioner may include any or all of the following matters in addition to such other matters as may be reasonably required to determine the fitness of the petitioner to resume the practice of law: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during suspension and information in connection therewith; financial statements; and statement of restitution of funds that were the subject matter of disciplinary proceedings. In cases seeking reinstatement from incapacity, the petition shall also include copies of all pleadings in the matter leading to placement on the inactive list and all such other matters as may be reasonably required to demonstrate the character and fitness of the petitioner to resume the practice of law.

**(c) Deposit for Cost.** [no change]

**(d) Reference of Petition For Hearing.** [no change]

**(e) Bar Counsel.** [no change]

**(f) Determination of Fitness by Referee Hearing.** [no change]

**(g) Hearing; Notice; Evidence.**

Corrects scrivener's errors.

(1) *Notice.* [no change]

(2) *Appearance.* [no change]

(3) *Failure of Petitioner to be Examined.* [no change]

(4) *Summary Procedure.* [no change]

(5) *Evidence of Treatment or Counseling for Dependency or Other Medical Reasons.* If the petitioner has sought or received treatment or counseling for chemical or alcohol dependency or for other medical reasons that relate to the petitioner's fitness to practice law, the petitioner shall waive confidentiality of such treatment or counseling for purposes of evaluation of the petitioner's fitness. The provisions of rule 3-7.1(d) are applicable to information or records disclosed under this subdivision.

**(h) Prompt Hearing; Report.** The referee to whom a petition for reinstatement has been referred by the chief justice shall proceed to a prompt hearing, at the conclusion of which the referee shall make and file with the Supreme Court of Florida a report that shall include the findings of fact and a recommendation as to whether the petitioner is qualified to resume the practice of law. The referee shall file the report and record in the Supreme Court of Florida ~~and shall serve a copy of the report and record on bar counsel and a copy of the report only on all other parties. Bar counsel shall make a copy of the record, as furnished, available to other parties upon request and payment of actual costs of reproduction.~~

(i) **Review.** [no change]

(j) **Recommendation of Referee and Judgment of the Court.** [no change]

(k) **Successive Petitions.** [no change]

(l) **Petitions for Reinstatement to Membership in Good Standing.**

Allows bar inquiry, with adequate safeguards, into pertinent area of interest regarding fitness to practice. Adds new subdivision, to require that a petitioner allow inquiry into the petitioner's history of treatment or counseling of chemical or alcohol dependency or a medical condition that adversely affects the petitioner's fitness to practice but provides that, if such information is confidential, its confidentiality may be preserved pursuant to rule 3-7.1(d).

(h) Streamlines current processes. Deletes language that requires a referee to copy The Florida Bar with the

<p>(1) <i>Availability</i>. [no change]</p> <p>(2) <i>Style of Petition</i>. [no change]</p> <p>(3) <i>Contents of Petition</i>. [no change]</p> <p>(4) <i>Comments on Petition</i>. Upon the appointment of a referee and bar counsel, copies of the petition shall be furnished by the bar counsel to local board members, local grievance committees, and to such other persons as are mentioned in this rule. <del>Persons will be asked to</del> <u>groups that wish to respond shall</u> direct their comments to bar counsel. The proceedings and finding of the referee shall relate to those matters described in this rule and also to those matters tending to show the petitioner's rehabilitation, present fitness to resume the practice of law, and the effect of such proposed reinstatement upon the administration of justice and purity of the courts and confidence of the public in the profession.</p> <p>(5) <i>Costs Deposit</i>. [no change]</p> <p><b>(m) Costs</b>. [no change]</p> <p><b>(n) Readmission; Applicability</b>. A former member who has been <u>disbarred, disbarred on consent</u>, or whose petition for disciplinary resignation has been accepted may be admitted again only upon full compliance with the rules and regulations governing admission to the bar. No application for readmission following <u>disbarment, disbarment on consent</u>, or disciplinary resignation may be tendered until such time as all restitution and disciplinary costs as may have been ordered or assessed have been paid together with any interest accrued.</p> <p>(1) <i>Readmission After Disbarment</i>. [no change]</p> <p>(2) <i>Readmission After Disciplinary Resignation</i>. [no change]</p>	<p>referee's report regarding reinstatement.</p> <p>Clarifies that "groups" as well as "persons" may respond to a petition for reinstatement and direct comments to bar counsel.</p> <p>Clarifying amendments. Consistent with proposed changes in rules 3-5.1, 3-6.1, 3-7.2, and 3-7.12 which formalize the concept of "disbarment on consent," adds verbiage to make this rule applicable to an attorney who has been "disbarred on consent."</p>
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**RULE 3-7.11 GENERAL RULE OF PROCEDURE**

(a) **Time is Directory.** [no change]

(b) **Process.** [no change]

(c) **Notice in Lieu of Process.** [no change]

(d) **Subpoenas.** [no change]

(e) **Oath of Witness.** [no change]

(f) **Contempt.** ~~If an~~When a disciplinary agency other than a circuit court, as defined elsewhere in these rules, shall finds that a person is in contempt under these rules, such person ~~shall~~may be cited for contempt in the following manner, ~~except that a respondent in a disciplinary proceeding may be cited for contempt by petition for an order to show cause filed and heard in the Supreme Court of Florida or in the circuit court:~~

(1) *Petition for Contempt and Order to Show Cause.* ~~The agency shall direct bar counsel, or chair of the agency if there is no bar counsel, serving in the matter in which the contempt occurs, to present to the circuit court having jurisdiction, a petition for the issuance of an order to show cause why the person so accused should not be held in contempt of this court. When a person is found in contempt by a disciplinary agency, bar counsel shall file a petition for contempt and order to show cause with the Supreme Court of Florida.~~

(2) *Appellate Review.* ~~A judgment in such contempt proceedings may be appealed by either party in the manner provided in the rule on appellate review, except that a copy of the petition for review shall not be filed with the clerk of the circuit court, and the record shall be forwarded by the judge or the agency possessing the same. Order to Show Cause. On review of a petition for contempt and order to show cause the supreme court may issue an order directing the person to~~

Clarifying amendments.  
Revises and restates procedure for processing contempt actions to provide one procedure in all contempt matters; also provides procedure to institute proceedings, requires responses within court-established timelines, allows bar reply; permits assignment of a referee to develop factual record and clarifies that any proceedings before a referee are processed under the Rules Regulating The Florida Bar.

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

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

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

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

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

~~(g) Testimony of Witnesses; Contempt. Unless the respondent claims a privilege or right properly available under applicable law, the respondent or any other person who is subpoenaed to appear and give testimony or produce books, papers, or documents and who refuses to appear or produce such books, papers, or documents or who, having been duly sworn to testify, refuses to answer any proper question may be cited for contempt of this court.~~

~~(hg) Court Reporters. Court reporters who are employees of The Florida Bar may be appointed~~

Editorial - Contents would be incorporated into revised subdivision (f).

Editorial; Places the burden

<p>to report any disciplinary proceeding. If the respondent <del>attorney</del> objects at least 48 hours in advance of the matter to be recorded, an independent contract reporter may be retained. Reasonable costs for <u>independent</u> court reporter service <del>may</del><u>shall</u> be taxed to a respondent for payment to The Florida Bar.</p> <p><b>(ih) Disqualification as Trier and Attorney for Respondent Due to Conflict.</b> [no further change]</p>	<p>for court reporter costs on the party responsible for having incurred them.</p> <p>Editorial.</p>
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**~~RULE 3-7.12 DISCIPLINARY RESIGNATION FROM THE FLORIDA BAR~~**

~~If a disciplinary agency is investigating the conduct of an attorney, or if such an agency has recommended probable cause, then disciplinary proceedings shall be deemed to be pending and a petition for disciplinary resignation may be filed pursuant to this rule. Disciplinary resignation is the functional equivalent of disbarment in that both sanctions terminate the license and privilege to practice law and both require readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. An attorney may seek disciplinary resignation from The Florida Bar during the progress of disciplinary proceedings in the following manner:~~

~~(a) **Petition for Disciplinary Resignation**— The petition for disciplinary resignation shall be styled "The Florida Bar v. (respondent's name)," titled "Petition for Disciplinary Resignation," filed with the Supreme Court of Florida and contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. Such statement shall describe the charges made or those under investigation for professional misconduct, results of past proceedings, and the status of pending investigations and proceedings. The petition shall state whether it is with or without leave to reapply for readmission to the bar. A copy of the petition shall be served upon the executive director of The Florida Bar.~~

~~(b) **Judgment**— Within 60 days after filing and service of the petition, The Florida Bar may file with the Supreme Court of Florida its response to the petition either supporting or opposing the petition for disciplinary resignation. A copy of the response shall be served upon the petitioner. The Supreme Court of Florida shall consider the petition, any response thereto, and the charges against the petitioner. If it has been shown by the petitioner in a proper and competent manner that the public interest will not be adversely affected by the granting of the petition and that such will neither adversely affect the integrity of the courts nor hinder the administration of justice nor the confidence of the public in the legal profession, the Supreme Court of Florida shall enter an appropriate judgment granting disciplinary resignation; otherwise, the petition shall be denied. If the judgment grants the disciplinary resignation, the judgment may require that the disciplinary resignation be subject to appropriate conditions. Such conditions may include, but not be limited to, requiring the~~

Editorial – Proposed amendments to rules 3-5.1, 3-6.1, 3-7.2 & 3-7.10 which would supersede and moot current provisions, and otherwise create unnecessary redundancy.

~~petitioner to submit to a full audit of all client trust accounts, executing a financial affidavit attesting to current personal and professional financial circumstances, and maintaining a current mailing address for a stated period of time.~~

~~(c) **Delay of Disciplinary Proceedings.** The filing of a petition for disciplinary resignation shall not stay the progress of the disciplinary proceedings without the approval of the board or, if a referee has been appointed and evidence has been taken, then without the approval of the referee.~~

~~(d) **Dismissal of Pending Disciplinary Cases.** If disciplinary resignation is accepted under this rule, such disciplinary resignation shall serve to dismiss all pending disciplinary cases.~~

~~(e) **Costs of Pending Disciplinary Cases.** The judgment of the court granting disciplinary resignation may impose a judgment for the costs expended by The Florida Bar in all pending disciplinary cases against the respondent. Such costs shall be of the types and amounts as authorized elsewhere in these Rules Regulating The Florida Bar.~~

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**CHAPTER 4. RULES OF PROFESSIONAL CONDUCT**

**SUBCHAPTER 4-1. CLIENT-LAWYER RELATIONSHIP**

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**RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES**

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

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

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

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

(1) [no change]

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

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

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

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

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

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

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

All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging costs, the costs charged thereunder shall be presumed reasonable.

**(c) Consideration of All Factors.** [no change]

**(d) Enforceability of Fee Contracts.** [no change]

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

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

**(f) Contingent Fees.** As to contingent fees:

(1) [no change]

(2) [no change]

Provides new ethical guidance. Adds as an additional factor in determining reasonable costs the relationship and past course of conduct between the lawyer and the client.

Provides new ethical guidance. Adds language stating that the fact that a fee contract may not be in accord with the Rules Regulating The Florida Bar is an issue between lawyer and client, and a matter of professional ethics – not a basis for any action or defense by an

(3) [no change]

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

(A) [no change]

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

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

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

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

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

opposing party when fee-shifting litigation is involved.

1. 40% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

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

1. 33 1/3% of any recovery up to \$1 million; plus
2. 20% of any portion of the recovery between \$1 million and \$2 million; plus
3. 15% of any portion of the recovery exceeding \$2 million.

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

(ii) If any client is unable to obtain an attorney of the client's choice because of the limitations set forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for approval of any fee contract between the client and an attorney of the client's choosing.

Such authorization shall be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings thereon may occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision shall contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition shall be

served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b).

(C) [no change]

(D) [no change]

(5) [no change]

(6) [no change]

**(g) Division of Fees Between Lawyers in Different Firms.** [no change]

**(h) Credit Plans.** [no change]

**STATEMENT OF CLIENT'S RIGHTS  
FOR CONTINGENCY FEES**

[no change]

**Comment**

**Basis or rate of fee and costs**

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. The conduct of the lawyer and client in prior relationships is relevant when analyzing the requirements of this rule. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee but only those that are directly involved in its computation. It is sufficient, for example, to state the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. Although hourly billing or a fixed fee may be the most common bases for

Provides new ethical guidance. Adds as an additional factor in determining reasonable costs the relationship and past course of conduct between the lawyer and the client. Adds commentary further

<p><u>computing fees in an area of practice, these may not be the only bases for computing fees. A lawyer should, where appropriate, discuss alternative billing methods with the client.</u> When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer’s customary fee schedule is sufficient if the basis or rate of the fee is set forth.</p> <p>General overhead should be accounted for in a lawyer’s fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. <u>Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule.</u></p> <p>Rule 4-1.8(e) should be consulted regarding a lawyer’s providing financial assistance to a client in connection with litigation.</p> <p><b>Terms of payment</b></p> <p>[no change]</p> <p><b>Contingent fee regulation</b></p> <p><u>Subdivision (e) is intended to clarify that whether the lawyer’s fee contract complies with these rules is a matter between the lawyer and client and an issue for professional disciplinary enforcement. The rules and subdivision (e) are not intended to be used as procedural weapons or defenses by others. Allowing opposing parties to assert noncompliance with these rules as a defense, including</u></p>	<p>clarifying that lawyers should discuss with the client, where appropriate, other alternate billing methods beyond an hourly or fixed fee rate.</p> <p>Provides new ethical guidance. Adds commentary further clarifying that costs appearing in sufficient detail on closing statements and approved by the parties to a transaction should meet the requirements of this rule.</p> <p>Provides new ethical guidance. Adds commentary further clarifying that a fee contract may not be in accord</p>
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whether the fee is fixed or contingent, allows for potential inequity if the opposing party is allowed to escape responsibility for their actions solely through application of these rules.

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

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

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

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

with the Rules Regulating The Florida Bar is an issue between lawyer and client, and a matter of professional ethics – not a basis for any action or defense by an opposing party when fee-shifting litigation is involved.

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

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

Rule 4-1.5(f)(6) prohibits a lawyer from charging the contingent fee percentage on the total, future value of a recovery being paid on a structured or periodic basis. This prohibition does not apply if the lawyer's fee is being paid over the same length of time as the schedule of payments to the client.

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

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

**Division of fee**

[no change]

**Referral fees and practices**

[no change]

**Credit Plans**

[no change]

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SUBCHAPTER 4-3. ADVOCATE

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**RULE 4-3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act;

(b) fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for professional services of an expert witness; and reasonable compensation to reimburse a witness for the loss of compensation incurred by reason of preparing for, attending, or testifying at proceedings;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party;

(e) in trial, state a personal opinion about the credibility of a witness unless the statement is authorized by current rule or case law, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, ~~the credibility of a witness~~, the culpability of a civil litigant, or the guilt or innocence of an accused;

Corrects scrivener's error.

Corrects scrivener's error.

Corrects scrivener's error.

Corrects scrivener's error.

(e) Clarifying amendments that provide new ethical guidance. Conforms rule to existing case law, to provide that a lawyer may state a personal opinion about the credibility of a witness when

<p>(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless: <del>(1)</del> the person is a relative or an employee or other agent of a client, and <del>(2)</del> it is reasonable to believe that the person's interests will not be adversely affected by refraining from giving such information;</p> <p>(g) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter; <u>or</u></p> <p>(h) present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.</p> <p style="text-align: center;"><b>Comment</b></p> <p>The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.</p> <p>Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Subdivision (a) applies to evidentiary material generally, including computerized information.</p> <p>With regard to subdivision (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.</p>	<p>the statement is authorized by current law or rule and/or is supported by the record. Corrects scrivener's error.</p> <p>(f) Conformed to court editorial protocols.</p> <p>(g) Corrects scrivener's error.</p>
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Previously, subdivision(e) also proscribed statements about the credibility of witnesses. However, the Supreme Court of Florida in 2000 entered an opinion in *Murphy v. International Robotic Systems, Inc.*, 766 So.2d 1010 (Fla. 2000), wherein the court allowed counsel in closing argument to call a witness a “liar” or to state that the witness “lied.”

There the court stated: “First, it is not improper for counsel to state during closing argument that a witness ‘lied’ or is a ‘liar,’ provided such characterizations are supported by the record.” *Murphy, id.*, at 1028. Members of the bar are advised to check the status of the law in this area.

Subdivision (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also rule 4-4.2.

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Provides new ethical guidance. Adds commentary further clarifying that a lawyer may state a personal opinion about the credibility of a witness when the statement is authorized by current law or rule and/or is supported by the record.

SUBCHAPTER 4-5. LAW FIRMS AND ASSOCIATIONS

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**RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER**

**(a) Sharing Fees with Nonlawyers.** A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) [no change]

(2) [no change]

(3) [no change]

(4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period, provided that the Bonus payments shall not be based on the generation of cases or clients or business brought to the lawyer or law firm by the actions of the nonlawyer. ~~and A lawyer shall not provide a bonus payment that is not~~ calculated as a percentage of legal fees received by the lawyer or law firm.

**(b) Qualified Pension Plans.** [no change]

**(c) Partnership with Nonlawyer.** [no change]

**(d) Exercise of Independent Professional Judgment.** [no change]

**(e) Nonlawyer Ownership of Authorized Business Entity.** [no change]

**Comment**

[no change]

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Clarifying amendment.  
Revises language to further clarify existing provisions prohibiting bonus payments to nonlawyer employees based on the generation of clients or business, or calculated upon a percentage of legal fees received by the lawyer or firm.

**Rule 4-5.8 Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms**

**(a) Contractual Relationship Between Law Firm and Clients.** The contract for legal services creates the legal relationships between the client and law firm and between the client and individual members of the law firm, including the ownership of the files maintained by the lawyer or law firm. Nothing in these rules creates or defines those relationships.

**(b) Client's Right to Counsel of Choice.** Clients have the right to expect that they may choose counsel when legal services are required and, with few exceptions, nothing that lawyers and law firms do shall have any effect on the exercise of that right.

**(c) Contact With Clients.**

(1) *Lawyers Leaving Law Firms.* Absent a specific agreement otherwise, a lawyer who is leaving a law firm shall not unilaterally contact those clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer has approached an authorized representative of the law firm and attempted to negotiate a joint communication to the clients concerning the lawyer leaving the law firm and bona fide negotiations have been unsuccessful.

(2) *Dissolution of Law Firm.* Absent a specific agreement otherwise, a lawyer involved in the dissolution of a law firm shall not unilaterally contact clients of the law firm unless, after bona fide negotiations, authorized members of the law firm have been unable to agree on a method to provide notice to clients.

**(d) Form for Contact With Clients.**

(1) *Lawyers Leaving Law Firms.* When a joint response has not been successfully negotiated, unilateral contact by individual members or the law firm shall give notice to clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law

Provides new ethical guidance. New rule and comment, to set forth guidance regarding allowable client contact by lawyers and law firms when a lawyer is leaving a law firm or when a law firm is being dissolved.

firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms.

(2) *Dissolution of Law Firms.* When a law firm is being dissolved and no procedure for contacting clients has been agreed upon, unilateral contact by members of the law firm shall give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(3) *Liability for Fees and Costs.* In all instances notice to the client required under this rule shall provide information concerning potential liability for fees for legal services previously rendered, costs expended, and how any deposits for fees or costs will be handled. In addition, if appropriate, notice shall be given that reasonable charges may be imposed to provide a copy of any file to a successor lawyer.

**(e) Nonresponsive Clients.**

(1) *Lawyers Leaving Law Firms.* In the event a client fails to advise the lawyers and law firm of the client's intention in regard to who is to provide future legal services when a lawyer is leaving the firm, the client shall be considered as remaining a client of the firm until the client advises otherwise.

(2) *Dissolution of Law Firms.* In the event a client fails to advise the lawyers of the client's intention in regard to who is to provide future legal services when a law firm is dissolving, the client shall be considered as remaining a client of the lawyer who primarily provided the prior legal services on behalf of the firm until the client advises otherwise.

**Comment**

The current rule of law regarding ownership of client files is discussed in *Donahue v. Vaughn*, 721 So.2d 356 (Fla. 5th DCA 1998) and *Dowda and Fields, P.A. v. Cobb*, 452 So.2d 1140 (Fla. 5th DCA

1984). A lawyer leaving a law firm, when the law firm remains available to continue legal representation, has no right nor expectation to take client files without an agreement with the law firm to do so.

While clients have the right to choose counsel, such choice may implicate obligations. Those obligations may include a requirement to pay for legal services previously rendered and costs expended in connection with the representation as well as a reasonable fee for copying the client's file.

Whether individual members have any individual legal obligations to a client is a matter of contract law, tort law, or court rules that is outside the scope of rules governing lawyer conduct. Generally, individual lawyers have such obligations only if provided for in the contract for representation. Nothing in this rule or in the contract for representation may alter the ethical obligations that individual lawyers have to clients as provided elsewhere in these rules.

It is anticipated that in most instances a lawyer leaving a law firm and the law firm will engage in bona fide, good faith negotiations and craft a joint communication providing adequate information to the client so that the client may make a fully informed decision concerning future representation. In those instances in which bona fide negotiations are unsuccessful, unilateral communication may be made by the departing lawyer or the law firm. In such circumstances, great care should be taken to meet the obligation of adequate communication and for this reason the specific requirements of subdivisions (d)(1) & (3) are provided.

Most law firms have some written instrument creating the law firm and specifying procedures to be employed upon dissolution of the firm. However, when such an instrument does not exist or does not adequately provide for procedures in the event of dissolution, the provisions of this rule are provided so that dissolution of the law firm does not disproportionately affect client rights.

As in instances of a lawyer departing a law firm, lawyers involved in the dissolution of law firms have a continuing obligation to provide adequate information to a client so that the client may make informed decisions concerning future representation.

The Florida Bar's Law Office Management Advisory Service has sample forms for notice to clients and sample partnership and other contracts that are available to members. The forms may be accessed on the bar's website, [www.flabar.org](http://www.flabar.org), or by calling The Florida Bar headquarters in Tallahassee.

Lawyers involved in either a change in law firm composition or law firm dissolution may have duties to notify the court if the representation is in litigation. If the remaining law firm will continue the representation of the client, no notification of the change in firm composition to the court may be required, but such a notification may be advisable. If the departing lawyer will take over representation of the client, a motion for substitution of counsel or a motion by the firm to withdraw from the representation may be appropriate. If the departing lawyer and the law firm have made the appropriate request for the client to select either the departing lawyer or the law firm to continue the representation, but the client has not yet responded, the law firm should consider notifying the court of the change in firm composition, although under ordinary circumstances, absent an agreement to the contrary, the firm will continue the representation in the interim. If the departing lawyer and the law firm have agreed who will continue handling the client's matters then, absent disagreement by the client, the agreement normally will determine whether the departing lawyer or the law firm will continue the representation.

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SUBCHAPTER 4-7. INFORMATION ABOUT LEGAL SERVICES

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**RULE 4-7.7 EVALUATION OF ADVERTISEMENTS**

**(a) Filing and Advisory Opinion.** [no change]

**(b) Contents of Filing.** A filing with the committee as required or permitted by subdivision (a) shall consist of:

(1) [no change]

(2) [no change]

(3) [no change]

(4) [no change]

(5) a fee paid to The Florida Bar, in an amount of ~~\$100~~\$150 for submissions timely filed as provided in subdivision (a), or \$250 for submissions not timely filed. This fee shall be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules.

**(c) Evaluation of Advertisements.** [no change]

**(d) Substantiating Information.** [no change]

**(e) Notice of Noncompliance; Effect of Continued Use of Advertisement.** [no change]

**(f) Committee Determination Not Binding; Evidence.** [no change]

To help defray administrative costs. Increases the filing fee for the evaluation of lawyer advertisements, from \$100 to \$150.

<p>(g) <b>Change of Circumstances; Refiling Requirement.</b> [no change]</p> <p>(h) <b>Maintaining Copies of Advertisements.</b> [no change]</p> <p style="text-align: center;"><b>Comment</b></p> <p>[no change] ***</p>	
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**SUBCHAPTER 4-8. MAINTAINING THE INTEGRITY OF THE PROFESSION**  
**RULE 4-8.1 BAR ADMISSION AND DISCIPLINARY MATTERS**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) [no change]

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 4-1.6; or

(c) commit an act that adversely reflects on the applicant's fitness to practice law. An applicant who commits such an act before admission, but which is discovered after admission, shall be subject to discipline under these rules.

**Comment**

The duty imposed by this rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted and in any event may be relevant in a subsequent admission application. The duty imposed by this rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This rule is subject to the provisions of the fifth amendment of the United States Constitution and

Fills current regulatory void between the bar and bar examiners. New subdivision, specifying that an applicant for admission or a lawyer – in connection with an admission or disciplinary matter – shall not commit an act that adversely reflects on the applicant's fitness to practice law; further specifies that an applicant who commits such an act before admission, but which is discovered thereafter, is subject to discipline under the Rules Regulating The Florida Bar.

the corresponding provisions of the Florida Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

An applicant for admission may commit acts that adversely reflect on the applicant's fitness to practice law and which are discovered only after the applicant becomes a member of the bar. This rule provides a means to address such misconduct in the absence of such a provision in the Rules of the Supreme Court Relating to Admissions to the Bar.

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Clarifying amendment. Adds commentary further clarifying that an applicant for admission or a lawyer – in connection with an admission or disciplinary matter – shall not commit an act that adversely reflects on the applicant's fitness to practice law; further specifies that an applicant who commits such an act before admission, but which is discovered thereafter, is subject to discipline under the Rules Regulating The Florida Bar.

**RULE 4-8.4 MISCONDUCT**

A lawyer shall not:

(a) [no change]

(b) [no change]

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) [no change]

(e) [no change]

(f) [no change]

(g) [no change]

(h) [no change]

(i) [no change]

**Comment**

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds

Codifies current regulatory sentiment. Adds new verbiage to allow a lawyer for a criminal law enforcement or regulatory agency, unless prohibited by law or rule, to advise or supervise others – or to participate in a capacity other than as lawyer – in an undercover investigation.

of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 4-1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

Subdivision (c) recognizes instances where lawyers in criminal law enforcement agencies or regulatory agencies advise others about or supervise others in undercover investigations, and provides an exception to allow the activity without the lawyer engaging in professional misconduct. The exception acknowledges current, acceptable practice of these agencies. Although the exception appears in this rule, it is also applicable to rules 4-4.1 and 4-4.3. However, nothing in the rule allows the lawyer to engage in such conduct if otherwise prohibited by law or rule.

[no further change]

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Clarifying amendment. Adds commentary further clarifying that a lawyer for a criminal law enforcement or regulatory agency, unless prohibited by law or rule, may advise or supervise others – or participate in a capacity other than as lawyer – in an undercover investigation.

**RULE 4-8.6 AUTHORIZED BUSINESS ENTITIES**

**(a) Authorized Business Entities.** [no change]

**(b) Practice of Law Limited to Members of The Florida Bar.** [no change]

**(c) Qualifications of Managers, Directors and Officers.** No person shall serve as a partner, manager, director, or executive officer of an authorized business entity and engage in the practice of law in Florida unless such person is legally qualified to render legal services in this state. For purposes of this rule the term "executive officer" shall include the president, vice-president, or any other officer who performs a policy-making function.

**(d) Violation of Statute or Rule.** A lawyer who, while acting as a shareholder, member, officer, director, partner, proprietor, manager, agent, or employee of an authorized business entity and engaged in the practice of law in Florida, violates or sanctions the violation of the authorized business entity statutes or the Rules Regulating The Florida Bar shall be subject to disciplinary action.

**(e) Disqualification of Shareholder, Member, Proprietor, or Partner; Severance of Financial Interests.** Whenever a shareholder of a professional service corporation, a member of a professional limited liability company, proprietor, or partner in a limited liability partnership becomes legally disqualified to render legal services in this state, said shareholder, member, proprietor, or partner shall sever all employment with and financial interests in such authorized business entity immediately. For purposes of this rule the term "legally disqualified" shall not include suspension from the practice of law for a period of time less than 91 days. Severance of employment and financial interests required by this rule shall not preclude the shareholder, member, proprietor, or partner from receiving compensation based on legal fees generated for legal services performed during the time when the shareholder, member, proprietor, or partner was legally qualified to render legal services in this state. This provision shall not prohibit employment of a legally disqualified shareholder, member, proprietor, or partner in a position that does not render legal service nor

Corrects scrivener's error.

Corrective amendments. Throughout rule and comment, adds "proprietor" and "proprietor of a solo practice" to those business entities in which lawyers are authorized to practice law.

payment to an existing profit sharing or pension plan to the extent permitted in rules 3-6.1 and 4-5.4(a)(3), or as required by applicable law.

**(f) Cessation of Legal Services.** Whenever all shareholders of a professional service corporation, or all members of a professional limited liability company, the proprietor of a solo practice, or all partners in a limited liability partnership become legally disqualified to render legal services in this state, the authorized business entity shall cease the rendition of legal services in Florida.

**(g) Application of Statutory Provisions.** Unless otherwise provided in this rule, each shareholder, member, proprietor, or partner of an authorized business entity shall possess all rights and benefits and shall be subject to all duties applicable to such shareholder, member, proprietor, or partner provided by the statutes pursuant to which the authorized business entity was organized or qualified.

#### Comment

In 1961 this court recognized the authority of the legislature to enact statutory provisions creating corporations, particularly professional service corporations. But this court also noted that "[e]nabling action by this Court is therefore an essential condition precedent to authorize members of The Florida Bar to qualify under and engage in the practice of their profession pursuant to The 1961 Act." *In Re The Florida Bar*, 133 So. 2d 554, at 555 (Fla. 1961).

The same is true today, whatever the form of business entity created by legislative enactment. Hence, this rule is adopted to continue authorization for members of the bar to practice law in the form of a professional service corporation, a professional limited liability company, or a limited liability partnership. This rule also permits a member of the bar to practice law as a sole proprietor or as a member of a general partnership. These types of entities are collectively referred to as authorized business entities.

#### Limitation on rendering legal services

Corrective amendment.

Corrective amendment.

[no change]

**Employment by and financial interests in an authorized business entity**

This rule and the statute require termination of employment of a shareholder, member, proprietor, or partner when same is "legally disqualified" to render legal services. The purpose of this provision is to prohibit compensation based on fees for legal services rendered at a time when the shareholder, member, proprietor, or partner cannot render the same type of services. Continued engagement in capacities other than rendering legal services with the same or similar compensation would allow circumvention of prohibitions of sharing legal fees with one not qualified to render legal services. Other rules prohibit the sharing of legal fees with nonlawyers and this rule continues the application of that type of prohibition. However, nothing in this rule or the statute prohibits payment to the disqualified shareholder, member, proprietor, or partner for legal services rendered while the shareholder, member, proprietor, or partner was qualified to render same, even though payment for the legal services is not received until the shareholder, member, proprietor, or partner is legally disqualified.

Similarly, this rule and the statute require the severance of "financial interests" of a legally disqualified shareholder, member, proprietor, or partner. The same reasons apply to severance of financial interests as those that apply to severance of employment. Other provisions of these rules proscribe limits on employment and the types of duties that a legally disqualified shareholder, member, proprietor, or partner may be assigned.

Practical application of the statute and this rule to the requirements of the practice of law mandates exclusion of short term, temporary removal of qualifications to render legal services. Hence, any suspension of less than 91 days, including membership fees delinquency suspensions, is excluded from the definition of the term. These temporary impediments to the practice of law are such that with the passage of time or the completion of ministerial acts, the member of the bar is automatically qualified to render legal services. Severe tax consequences would result from forced severance and subsequent reestablishment (upon reinstatement of qualifications) of all financial interests in these instances.

Corrective amendments.

Corrective amendments.

However, the exclusion of such suspensions from the definition of the term does not authorize the payment to the disqualified shareholder, member, proprietor, or partner of compensation based on fees for legal services rendered during the time when the shareholder, member, proprietor, or partner is not personally qualified to render such services. Continuing the employment of a legally disqualified shareholder, member, proprietor, or partner during the term of a suspension of less than 91 days requires the authorized business entity to take steps to avoid the practice of law by the legally disqualified shareholder, member, proprietor, or partner, the ability of the legally disqualified shareholder, member, proprietor, or partner to control the actions of members of the bar qualified to render legal services, and payment of compensation to the legally disqualified shareholder, member, proprietor, or partner based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner is not qualified to render them. Mere characterization of continued compensation, which is the same or similar to that the legally disqualified shareholder, member, proprietor, or partner received when qualified to render legal services, is not sufficient to satisfy the requirements of this rule.

#### **Profit sharing or pension plans**

To the extent that applicable law requires continued payment to existing profit sharing or pension plans, nothing in this rule or the statute may abridge such payments. However, if permitted under applicable law the amount paid to the plan for a legally disqualified shareholder, member, proprietor, or partner shall not include payments based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner was not qualified to render legal services.

#### **Interstate Practice**

[no change]

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Corrective amendments.

Corrective amendments.

**CHAPTER 6. LEGAL SPECIALIZATION AND EDUCATION PROGRAMS**

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**SUBCHAPTER 6-3. FLORIDA CERTIFICATION PLAN**

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**RULE 6-3.5 STANDARDS FOR CERTIFICATION**

(a) **Standards for Certification.** [no change]

(b) **Eligibility for Application.** [no change]

(c) **Minimum Requirements for Qualifying for Certification With Examination.** Minimum requirements for qualifying for certification by examination are as follows:

(1) A minimum of 5 years substantially engaged in the practice of law. The "practice of law" means legal work performed primarily for purposes of rendering legal advice or representation. Service as a judge of any court of record shall be deemed to constitute the practice of law. Employment by the government of the United States, any state (including subdivisions of the state such as counties or municipalities), or the District of Columbia, and employment by a public or private corporation or other business shall be deemed to constitute the practice of law if the individual was required as a condition of employment to be a member of the bar of any state or the District of Columbia. If otherwise permitted in the particular standards for the area in which certification is sought, the practice of law in a foreign nation state, U.S. territory, or U.S. protectorate, or employment in a position that requires as a condition of employment that the employee be licensed to practice law in such foreign nation state, U.S. territory, or U.S. protectorate, shall be counted as up to, but no more than, 3 of the 5 years required for certification.

(2) [no change]

(3) [no change]

Responsible accommodation of special practice situation. Adds new language to allow certain lawyers who have been practicing or working abroad and who are applying for law certification to count that practice or special employment toward the 5-year practice requirement within the state of Florida, if provided for elsewhere within rules regarding particular certification areas.

(4) [no change]

(5) [no change]

(6) [no change]

As part of the peer review process, the board of legal specialization and education and its area committees shall review an applicant's professionalism, ethics, and disciplinary record. Such review shall include both disciplinary complaints and malpractice actions. The process may also include solicitation of public input and independent inquiry apart from written references. Peer review is mandatory for all applicants and may not be eliminated by equivalents.

**(d) Minimum Requirements for Qualification Without Examination.** When certification without examination is available in an area, the minimum requirements for such certification are as follows:

(1) [no change]

(2) A satisfactory showing of competence and substantial involvement in the particular area for which certification is sought during 5 of the last 10 years, including the year immediately preceding the application for certification. Substantial involvement in the ~~practice~~particular area of law for the 1 year immediately preceding the application may be waived for good cause shown.

(3) [no change]

(4) [no change]

(5) Certification without examination may be granted only:

(A) to individuals who apply within 2 years after the date on which the particular area is approved by the Supreme Court of Florida; or

Clarifying amendments.  
Substitute language, to require substantial involvement in a "particular area" of law instead of the general term "practice" of law.

Editorial.

<p>(B) <u>as otherwise permitted in the particular standards for the area for which certification is sought.</u></p> <p>(6) Payment of any fees required by the plan.</p> <p>***</p>	<p>Responsible accommodation of special practice situation. New language, to allow certification without examination in limited circumstances as permitted by individual area standards.</p>
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**RULE 6-3.7 EMERITUS SPECIALIST STATUS**

(a) **Purpose.** [no change]

(b) **Applicability.** [no change]

(c) **Qualifications.** To qualify for emeritus specialist status, a member shall:

(1) not engage in the active practice of law;

~~(2) maintain the required level of continuing legal education in the area of certification as provided in the area standards;~~

~~(3)~~ demonstrate integrity and professionalism, and submit to peer review as required by the board of legal specialization and education;

~~(4)~~ promptly report to the board of legal specialization and education any disciplinary complaints or malpractice actions filed against the member;

~~(5)~~ file the annual audit and pay the annual fee; and

~~(6)~~ complete the required application and pay the specified fee.

(d) **Communication.** As an emeritus specialist, the member must:

(1) refrain from any written or oral communication that might be misconstrued as client solicitation for legal services; and,

(2) identify emeritus specialist status in all written or oral communication concerning board certification.

Responsible accommodation of special practice situation. Deletes the continuing legal education requirement in a particular certification area from qualifications requirements. Renumbered (2) through (5) Editorial.

**(e) Termination of Emeritus Specialist Status.** [no change]

**(f) Waiver.** On special application and for good cause shown, the board of legal specialization and education may waive any portion of this rule if it determines such a waiver to be in the best interest of the certification program and emeritus status.

**(fg) Revocation.** Existing rules relating to certification revocation shall also apply to emeritus specialist status.

**(gh) Exemption.** During the 26 years following the effective date of this rule, any member formerly certified by The Florida Bar, whose certificate lapsed or was otherwise not renewed, may apply for emeritus status and qualify for an exemption from the provision that requires current certification. The applicant must demonstrate compliance with all other requirements of this rule. An applicant formerly certified by The Florida Bar, but whose certificate was revoked, is ineligible for this exemption.

(f) Responsible accommodation of special practice situation. Adds waiver provision for good cause shown.  
Realphabetized (g) Editorial.

Realphabetized (h)  
Responsible accommodation of special practice situation. Extends, from 2 to 6 years, the grandfather period in which a formerly certified member may apply for emeritus status and be exempt from the certification requirement of this rule. [As further explained in section V of the bar's petition, this expansion of the grandfather provision was further adjusted beyond the original proposal due to the timing of the petition.]

**RULE 6-3.8 REVOCATION OF CERTIFICATION**

~~(a) **Grounds for Revocation.**—A certificate may be revoked by the board of legal specialization and education if the program for certification in that area is terminated or it is determined after without hearing on appropriate or advance notice that for the following reasons:~~

(a) **Termination of Area.** If the program for certification in an area is terminated;

(b) **Discipline.** Disciplinary action is taken against a member pursuant to the Rules Regulating The Florida Bar;

(c) **Criminal Action.** When a member is found guilty, regardless of whether adjudication is imposed or withheld, of any crime involving dishonesty or a felony; or

(d) **Miscellaneous.** When it is determined, after hearing on appropriate notice, that:

(1) the certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the certification committee or the board of legal specialization and education;

(2) the certificate holder failed to abide by all rules and regulations governing the program promulgated by the board of governors or the board of legal specialization and education as amended from time to time, including any requirement or safeguard for continued proficiency;

(3) the certificate holder failed to pay any fee established by the plan; ~~or~~

(4) the certificate holder no longer meets the qualifications established by the plan or the board of legal specialization and education; or

(5) the certificate holder engaged in misconduct that is inconsistent with the demonstration of

Editorial and clarifying amendments; allows for expedient bar action when warranted. Reorganizes rule and adds appropriate subdivisions and titles; eliminates notice and hearing requirement for the revocation of a member’s certification, either when a certification area is terminated or by reason of disciplinary action, and – by new provision – in cases of guilt of certain crimes.

Allows for appropriate bar

special knowledge, skills, proficiency, or ethical conduct and professionalism.

~~(b) **Revocation Due to Disciplinary Action.** A certificate may be revoked by the board of governors by reason of disciplinary action taken pursuant to the Rules Regulating The Florida Bar.~~  
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action, with adequate safeguards, when warranted. New provision for revocation of certification after hearing on appropriate notice if the certificate holder engaged in misconduct inconsistent with the demonstration of special knowledge, skills, proficiency, or ethical conduct and professionalism.

(b) Editorial.

**CHAPTER 10. RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW**

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**SUBCHAPTER 10-2. DEFINITIONS**

**RULE 10-2.1 GENERALLY**

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

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

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

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

This form was completed with the assistance of:

Clarifying amendment. Adds language stating that approved legal forms for the purposes of this rule are those approved by this court pursuant to rule 10-2.1(a), the Family Law Forms, and the Florida Supreme Court Approved Family Law Forms.

Provides further protections for the public. Revises and expands subdivision, to effectively require that a disclosure statement be given to a customer by a nonlawyer when the nonlawyer prepares

Name of Individual  
Name of Business  
Address  
Telephone Number

(B) Before a nonlawyer assists a person in the completion of a form in the manner set forth in this rule, the nonlawyer shall provide the person with a copy of a disclosure. A copy of the disclosure, signed by both the nonlawyer and the person, shall be given to the person to retain and the nonlawyer shall keep a copy in the person's file. The disclosure does not act as or constitute a waiver, disclaimer, or limitation of liability. The disclosure shall which contains the following provisions:

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

Rule 10-2.1(b) of the Rules Regulating The Florida Bar defines a paralegal as a person who works under the supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. Only someone who meets the definition may call themselves a paralegal. (Name) informed me that he/she is not a paralegal as defined by the rule and cannot call himself/herself a paralegal.

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

(Name) told me that he/she is not a lawyer and cannot tell me what my rights or remedies are or how to testify in court.

any form, rather than just Supreme Court-approved forms; adds new requirements to disclosure statement, to include provisions that recite rule 10-2.1(b)'s definition of a paralegal.

\_\_\_\_ I can read English

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

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

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

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

(b) **Paralegal or Legal Assistant.** [no change]

(c) **Nonlawyer or Nonattorney.** [no change]

(d) **This Court or the Court.** [no change]

(e) **Bar Counsel.** [no change]

(f) **Respondent.** [no change]

Provides further protections for the public. Adds requirement that a nonlawyer keep – for a six-year period – copies of all forms given to any person being assisted.

(g) **Referee.** [no change]

(h) **Standing Committee.** [no change]

(i) **Circuit Committee.** [no change]

(j) **UPL Counsel.** [no change]

(k) **UPL.** [no change]

(l) **The Board or Board of Governors.** [no change]

(m) **Designated Reviewer.** [no change]

(n) **Executive Committee.** [no change]

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<p>SUBCHAPTER 10-6. PROCEDURES FOR INVESTIGATION  <b>RULE 10-6.1 <del>HEARINGS</del> <u>TAKING OF TESTIMONY</u></b></p> <p>(a) <b>Conduct of Proceedings.</b> The proceedings of circuit committees and the standing committee when <del>hearings are held</del> <u>testimony is taken</u> may be informal in nature and the committees shall not be bound by the rules of evidence.</p> <p>(b) <b>Taking Testimony.</b> [no change]</p> <p>(c) <b>Rights and Responsibilities of Respondent.</b> [no change]</p> <p>(d) <b>Rights of Complaining Witness.</b> The complaining witness is not a party to the investigative proceeding although the complainant may be called as a witness should the matter come before a judge or a referee. The complainant may be granted the right to be present at any circuit committee <del>hearing</del> <u>proceeding</u> when the respondent is present before the committee <u>to give testimony</u>. The complaining witness shall have no right to appeal the finding of the circuit committee.</p>	<p>Clarifying amendment.</p> <p>Clarifying amendment.</p> <p>Clarifying amendment s.</p>
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**RULE 10-6.2 SUBPOENAS**

**(a) Issuance by Court.** Upon receiving a written application of the chair of the standing committee or of a circuit committee or bar counsel alleging facts indicating that a person or entity is or may be practicing law without a license and that the issuance of a subpoena is necessary for the investigation of such unlicensed practice, the clerk of the circuit court in which the committee is located or the clerk of the Supreme Court of Florida shall issue subpoenas in the name, respectively, of the chief judge of the circuit or the chief justice for the attendance of any person and/or production of books and records before counsel or the investigating circuit committee or any member thereof at the time and place designated in such application. Such subpoenas shall be returnable to the circuit court of the residence or place of business of the person subpoenaed. A like subpoena shall issue upon application by any person or entity under investigation.

**(b) Failure to Comply.** [no change]

Clarifying amendment.

**SUBCHAPTER 10-7. PROCEEDINGS BEFORE A REFEREE  
RULE 10-7.1 PROCEEDINGS FOR INJUNCTIVE RELIEF**

**(a) Filing Complaints.** [no change]

**(b) Petitions for Injunctive Relief.** [no change]

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

(1) The proceedings shall be held in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the court.

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

~~(3)~~ Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued in the name of the court by the referee upon request of a party. Failure or refusal to comply with any subpoena shall be contempt of court and may be punished by the court or by any circuit court where the action is pending or where the contemnor may be found, as if said refusal were a contempt of that court.

~~(3)~~ The Florida Rules of Civil Procedure, including those provisions pertaining to discovery, not inconsistent with these rules shall apply in injunctive proceedings before the referee. The powers and jurisdiction generally reposed in the court under those rules may in this action be exercised by the referee. The Florida Bar may in every case amend its petition 1 time as of right, within 60 days after the filing of the order referring the matter to a referee.

Conforms UPL procedures to bar disciplinary practices. New provisions, to require that a referee hold a pretrial case management conference within 60 days of the referee's appointment; sets forth the purpose of the conference and requires that a written order reflect the schedule for the proceedings as determined at such conference.

Renumbered (3) through (5)  
Editorial.

(45) Review of interlocutory rulings of the referee may be had by petition to the court filed within 30 days after entry of the ruling complained of. A supporting brief or memorandum of law and a transcript containing conformed copies of pertinent portions of the record in the form of an appendix shall be filed with the court by a party seeking such review. Any opposing party may file a responsive brief or memorandum of law and appendix containing any additional portions of the record deemed pertinent to the issues raised within 10 days thereafter. The petitioner may file a reply brief or memorandum of law within 5 days of the date of service of the opposing party's responsive brief or memorandum of law. Any party may request oral argument at the time that party's brief or memorandum of law is filed or due. Interlocutory review hereunder shall not stay the cause before the referee unless the referee or the court on its motion or on motion of any party shall so order.

**(d) Referee's Report.** [no change]

**(e) Review by the Supreme Court of Florida.** [no change]

**(f) Issuance of Preliminary or Temporary Injunction.** [no change]

**RULE 10-7.2 PROCEEDINGS FOR INDIRECT CRIMINAL CONTEMPT**

**(a) Petitions for Indirect Criminal Contempt.** [no change]

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

(1) *Affidavit.* A respondent asserting indigency shall file with the referee a completed affidavit containing the financial information required herein and stating that the affidavit is signed under oath and under penalty of perjury. The affidavit must contain the following financial information and calculations as to the respondent's income:

(A) Net income. [no change]

(B) Other income. [no change]

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

~~In addition to the financial information, the affidavit must contain the following statement: "I, (name of accused person), agree to report any change in my financial situation to the court or to the indigency examiner."~~

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

A respondent is indigent if:

Corrective and conforming amendments. Conforms indigency requirements and determination of indigent status to new statutory criteria in §27.52, FLA.STAT. (2004); replaces "accused" with "respondent" to make verbiage consistent with other language used throughout remainder of the rule.

(A) the income of the person is equal to or below ~~250~~200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the ~~accused~~respondent by the United States Department of Health and Human Services or if the person is receiving ~~Aid to Families with Dependent Children (AFDC)~~Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI); or

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

(3) *Presumption.* [no change]

(c) **Proceedings Before the Referee.** [no change]

(d) **Review by the Supreme Court of Florida.** [no change]

(e) **Fine or Punishment.** [no change]

(f) **Costs and Restitution.** [no change]

SUBCHAPTER 10-8. CONFIDENTIALITY  
RULE 10-8.1 FILES

(a) **Files Are Property of Bar.** [no change]

(b) **UPL Record.** The UPL record shall consist of the record before a circuit committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers, and recordings and transcripts of hearings and transcribed testimony furnished to, served on, or received from the respondent or the complainant. The record before the circuit committee shall consist of all reports, correspondence, papers, and recordings furnished to or received from the respondent and the transcript of circuit committee meetings or ~~hearings~~transcribed testimony, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The record before a referee and the record before the Supreme Court of Florida shall include all items properly filed in the cause including pleadings, transcripts of testimony, exhibits in evidence, and the report of the referee.

(c) **Limitations on Disclosure.** [no change]

(d) **Disclosure of Information.** [no change]

(e) **Response to Inquiry.** [no change]

(f) **Production of UPL Records Pursuant to Subpoena.** [no change]

(g) **Notice to Judges.** [no change]

(h) **Response to False or Misleading Statements.** [no change]

(i) **Providing Otherwise Confidential Material.** [no change] \*\*\*

Conforming amendment. Consistent with proposed editorial revisions to rule 10-6.1, adds "transcribed testimony" and deletes reference to circuit committee "hearings" within the definition of "the UPL record."

