

**APPENDIX D**

**BACKGROUND DOCUMENTS**



# The Florida Bar



**Kelly Overstreet Johnson**  
President

**John F. Harkness, Jr.**  
Executive Director

**Alan B. Bookman**  
President-elect

February 11, 2004

## MEMORANDUM

TO: Budget Committee

FROM: Elizabeth Clark Tarbert, Ethics Counsel

CC: Allen Martin, John Anthony Boggs, Mary Ellen Bateman

RE: Rule 4-7.7, Advertising Filing Fee

At the January 2004 Budget Review, members of the board reviewing the advertising program requested that the board consider raising the advertising filing fee. Most lawyer advertisements are required to be filed for review under Rule 4-7.7, Rules Regulating The Florida Bar. The filing fee defrays the costs of reviewing attorney advertisements. The majority of expenses are staff time, but include direct costs for supporting the Standing Committee on Advertising as well.

The original filing fee was set at \$25 per advertisement. *The Florida Bar: Petition to Amend the Rules Regulating the Florida Bar--Advertising Issues*, 571 So.2d 451 (Fla. 1990). The filing fee was raised to \$50 in 1993. *The Florida Bar Re: Amendment to Rules Regulating The Florida Bar*, 605 So.2d 252 (Fla. 1993). In 1997, the filing fee was raised to \$100, where it remains currently. *Amendments to Rules Regulating the Florida Bar Rules 4-7.2 & 4-7.5*, 690 So.2d 1256 (Fla. 1997).

The filing fee was last raised over seven years ago. The revenue generated by the filing fee has never covered the costs of administering the advertising program. A chart showing the history of filing fees versus expenses of the advertising review program is attached. Even if raised by \$50, the revenue from filing fees will not cover the entire costs of administering the program, based on filing projections. Based on past history, approximately 150 late filings (\$250 per advertisement) and 2030 timely filings will occur next fiscal year, for a total of \$342,000 in filing fees (if the \$150 filing fee is approved) to offset the \$447,421 budgeted costs in fiscal year 2004-05.

Therefore, the committee should consider raising the filing fee by \$50 to \$150 for timely filings. A copy of Rule 4-7.7 in legislative format is attached.

E.C.T.



# The Florida Bar

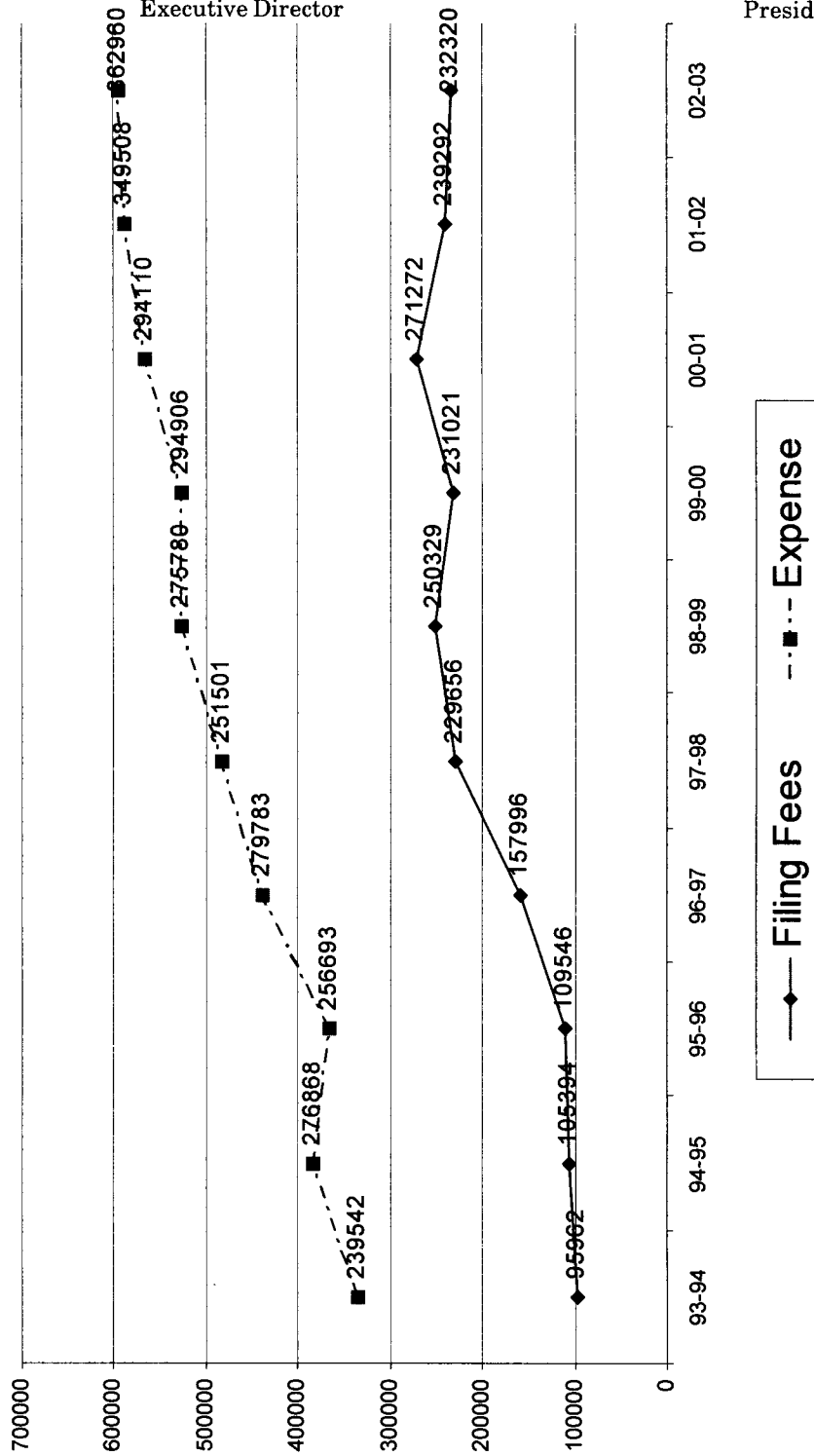


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## Advertising Filing Fees Versus Expense



# THE FLORIDA BAR

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## Memorandum

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**To:** Board of Governors  
**From:** Lori Holcomb, UPL Counsel  
**cc:** Paul Hill, Mary Ellen Bateman  
**Date:** October 8, 2003  
**Re:** Proposed Rule Change -- Rule 4-8.4

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On June 27, 2003, the Standing Committee on the Unlicensed Practice of Law approved, by a vote of 17-0, a proposed amendment to Rule 4-8.4 of the Rules Regulating The Florida Bar. The amendment is attached. What follows is a summary and explanation of the change:

### SUMMARY

Rule 4-8.4 describes activity which constitutes misconduct. Within subdivision (c), the proposed amendment codifies current practice regarding lawyers in a criminal law enforcement or regulatory agency supervising others in undercover investigations without engaging in unethical conduct. The proposed amendment also adds clarifying comment language.

### EXPLANATION

In 2000, the Supreme Court of Oregon decided a case that brought into question the ethical propriety of criminal law enforcement agencies and regulatory agencies conducting undercover investigations. *In re: Gatti*, 8 P.3d 966 (Or. 2000). The *Gatti* court held that a lawyer who directed an undercover investigation violated their counterpart to rule 4-8.4(c) by directing another to misrepresent their status. Law enforcement intervened in the case and argued that an exception existed for them. While the court recognized that it was common practice for attorneys for law enforcement agencies to direct undercover investigations, the court held that it could not create an exception for such activity in case law. The Oregon rules were later amended to allow lawyers under certain circumstances to provide advice on and participate in undercover investigations.

The *Gatti* case prompted a discussion in the Legal Division of The Florida Bar regarding bar

counsel directing undercover investigations in unlicensed practice of law cases (Undercover investigations are not conducted in Lawyer Regulation cases.). The issue was taken to the Standing Committee on the Unlicensed Practice of Law for direction, as there appeared to be uncertainty regarding the ethical propriety of staff counsel directing undercover investigations.

In January 2003, the Standing Committee voted to seek a rule change to allow lawyers for criminal law enforcement agencies and regulatory agencies to direct undercover investigations. The Standing Committee unanimously approved a proposed amendment to Rule 4-8.4 in June 2003.

The rule amendment language was debated by the Board in executive session on August 22, 2003. A straw vote supported going forward with discussions on the amendment and directed that it go to the Disciplinary Procedure Committee. In September, the Chair of the Standing Committee on the Unlicensed Practice of Law addressed the DPC and explained the UPL committee's need for the rule and the recommendation of the Florida Prosecuting Attorney's Association approving the proposed amendment. On September 23, 2003, the DPC by a vote of 3-1 approved the rule amendment.

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## Memorandum

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**To:** Board of Governors  
**From:** Jeffrey T. Picker, Bar Counsel  
**cc:** Paul Hill, Mary Ellen Bateman, Lori Holcomb  
**Date:** July 8, 2003  
**Re:** Proposed Rule Change -- Rule 10-2.1

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On June 27, 2003, the Standing Committee on the Unlicensed Practice of Law approved, by a vote of 16-0, a proposed amendment to Rule 10-2.1(a)(1) of the Rules Regulating The Florida Bar. The amendment is attached. What follows is an explanation of the change:

### EXPLANATION

Rule 10-2.1(a)(1) contains the disclosure statement to be given to a customer when a nonlawyer assists in the completion of a Supreme Court approved form. The rule as currently worded requires the disclosure form only when using Supreme Court approved forms and requires that a copy of the disclosure form, and no other forms, be kept in the customer's file. The amendments would require a more detailed disclosure statement to be given to the customer with the preparation of any form and would require the nonlawyer to keep copies of all forms for a 6 year period.

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## Memorandum

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**To:** Board of Governors  
**From:** Jeffrey T. Picker, Bar Counsel  
**cc:** Paul Hill, Tony Boggs, Lori Holcomb  
**Date:** January 24, 2003  
**Re:** Proposed Rule Change -- Rule 10-6.2

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On January 17, 2003, the Standing Committee on the Unlicensed Practice of Law approved, by a vote of 17-0, a proposed amendment to Rule 10-6.2 of the Rules Regulating The Florida Bar. The amendment is attached. What follows is an explanation of the change:

### EXPLANATION

Rule 10-6.2 deals with the issuance of subpoenas in unlicensed practice of law investigations. The rule as currently written appears to require that subpoenas be issued for the attendance of a person and the production of documents. At times, the investigation may warrant only the attendance of a person or the production of documents, and not both. The proposed amendment clarifies that a subpoena may be issued for the attendance of a person, for the production of documents, or for both.

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## Memorandum

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**To:** Board of Governors  
**From:** Jeffrey T. Picker, Bar Counsel  
**cc:** Paul Hill, Tony Boggs, Lori Holcomb  
**Date:** January 24, 2003  
**Re:** Proposed Rule Change -- Rule 10-7.1

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On January 17, 2003, the Standing Committee on the Unlicensed Practice of Law approved, by a vote of 17-0, a proposed amendment to Rule 10-7.1 of the Rules Regulating The Florida Bar. The amendment is attached. What follows is an explanation of the change:

### EXPLANATION

Rule 10-7.1 describes the proceedings for injunctive relief in unlicensed practice of law prosecutions. The proposed amendment codifies current practice and requires that a pretrial case management conference be held within 60 days of appointment of a referee. The proposed amendment is similar to the Board's Disciplinary Procedures Committee recommended amendment to the rules of discipline requiring a pretrial conference in disciplinary cases, except that the term "case management" instead of "pretrial" conference was used, which is consistent with the language the Supreme Court of Florida uses in unlicensed practice of law cases when it requests the appointment of a referee.