

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.

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

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

I

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

2. The amendments and action proposed herein were specifically approved by the Board of Governors or the Executive Committee of The Florida Bar.

II

3. This petition presents proposed amendments to the Rules Regulating The Florida Bar, and seeks the adoption of various new provisions, summarized as follows:

CHAPTER 1 GENERAL

1-3. MEMBERSHIP

RULE 1-3.2 MEMBERSHIP CLASSIFICATIONS

Summary: Amends subdivision (b) to authorize proceedings to determine a member's compliance with conditions of admission, conducted in the same expedited manner as matters of contempt; authorizes the assignment of a judicial referee to take testimony, receive evidence, and make findings of fact in such cases; allows appeal of referee's findings.

CHAPTER 2 BYLAWS OF THE FLORIDA BAR

2-9. POLICIES AND RULES

RULE 2-9.3 LEGISLATIVE POLICIES

Summary: Amends subdivision (a) consistent with *Robert's Rules of Order* to clarify that a two-thirds vote of board members present "and voting" is necessary to formalize a legislative position of The Florida Bar.

CHAPTER 3 RULES OF DISCIPLINE

3-2. DEFINITIONS

RULE 3-2.1 GENERALLY

Summary: Within subdivision (a), deletes redundant language; within subdivisions (n), (o), & (p), revises references to selected Bar disciplinary personnel

consistent with current organizational staffing and official titles.

3-3. JURISDICTION TO ENFORCE RULES

RULE 3-3.3 COUNSEL FOR THE FLORIDA BAR

Summary: Within current subdivisions (a) & (b), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles; subdivision entries otherwise deleted as unnecessary.

RULE 3-3.4 GRIEVANCE COMMITTEES

Summary: Within subdivision (a), conforms punctuation to controlling editorial protocols; within subdivision (h), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

3-5. TYPES OF DISCIPLINE

RULE 3-5.2 EMERGENCY SUSPENSION AND PROBATION

Summary: Amends subdivision (e) to clarify that the filing of a motion to terminate or modify an emergency suspension does not stay the operation of an order imposing emergency suspension or probation.

3-5. TYPES OF DISCIPLINE

RULE 3-5.3 DIVERSION OF DISCIPLINARY CASES TO PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS

Summary: Within subdivisions (d) & (h), revises and reformats titles consistent

with controlling editorial protocols.

3-7. PROCEDURES

RULE 3-7.2 PROCEDURES UPON CRIMINAL OR PROFESSIONAL MISCONDUCT; DISCIPLINE UPON DETERMINATION OR JUDGMENT OF GUILT OF CRIMINAL MISCONDUCT

Summary: Within subdivision (a), (h), (i) & (j) conforms format to controlling editorial protocols; within subdivisions (e) & (g) revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles; further amends subdivision (h) to authorize Supreme Court expunction of a member's felony suspension when final disposition of the criminal cause results in acquittal, and allows any affected member to lawfully deny such former sanctions except when a candidate for judicial office.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

Summary: Within subdivisions (b), (c), (l), & (p) revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles; in subdivisions (g) & (j), conforms format to controlling editorial protocols.

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

Summary: Within subdivision (a), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

Summary: Within subdivisions (e), (g), (k), (l), (m), & (o) conforms format to controlling editorial protocols; within subdivision (f), (g), & (k) revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

Summary: In subdivision (c) simplifies the calculation of deadlines for appeals of referee reports, to 60 days from the date of service of the report; revises deadline for cross-appeals, from 10 to 20 days from the main appeal; conforms format to controlling editorial protocols.

RULE 3-7.9 CONSENT JUDGMENT

Summary: Within subdivisions (a) & (e), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

Summary: Within subdivisions (b), (f), (g), (l), (m), & (n) conforms format to controlling editorial protocols; within subdivisions (e), (h), & (l), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and

official titles; further within subdivision (h), deletes language that conflicts with rule 3-7.6(k) regarding the form of a referee's report.

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT

4-1. CLIENT-LAWYER RELATIONSHIP

RULE 4-1.5 FEES FOR LEGAL SERVICES

Summary: Relocates provisions dealing with the calculation of fees in structured settlements, from subdivision (f)(4)(B)(iii) to new (f)(6), and updates citation within commentary accordingly; amends subdivision (f)(4)(D)(iii) to allow, when new counsel is engaged, for the filing of an application for court authorization to split contingent fees at a proportion other than the standard 75% - 25% ratio to be made within 10 days of execution of the contract to divide such fees between the referring and referred lawyer; adds language within commentary, to explain current case law which holds that bonus fees in domestic relations cases are impermissible contingency fees.

RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED

TRANSACTIONS

Summary: Adds subdivision (j) to require that lawyers who defend, at the expense of an insurance company, an insured other than a governmental entity with regard to personal injury or property damages, or for death or loss of services from

personal injury based on tort or products liability, provide the client with a "Statement of Insured Client's Rights" at the commencement of representation; codifies a new 10-point "Statement of Client's Rights," which addresses such issues as fees and costs, directing the lawyer, litigation guidelines, confidentiality, conflicts of interest, settlement, and other topics; revises rule commentary to address representation of insureds consistent with new subdivision (j); amends rule title accordingly, to reflect "prohibited 'other' transactions."

RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT

Summary: Adds a definition of the term "generally known" within subdivision (b), to mean information that a reasonably prudent lawyer would obtain from public records or through authorized processes for discovery of evidence; adds appropriate citation to such revision within rule commentary.

RULE 4-1.15 SAFEKEEPING PROPERTY

Summary: Deletes subdivisions (a) - (c) and commentary, which would be relocated and updated within newly arranged rules 5-1.1 and 5-1.2 regarding trust accounts; subdivision (d) entry otherwise deleted, consistent with controlling editorial protocols.

4-5. LAW FIRMS AND ASSOCIATIONS

RULE 4-5.3 RESPONSIBILITIES REGARDING

NONLAWYER ASSISTANTS

Summary: Within amendments to rule and commentary, clarifies the term “paralegal,” “legal assistant,” or other similar title, and further defines the role of such individuals within a law firm or other authorized business entity.

RULE 4-5.7 RESPONSIBILITIES REGARDING NONLEGAL SERVICES

Summary: New rule and commentary, which provide guidance for attorneys on application of the Rules of Professional Conduct when a lawyer provides nonlegal services.

4-7. INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.2 COMMUNICATIONS CONCERNING A LAWYER’S SERVICES

Summary: Adds new subdivision (b)(6) -- similar to current rule 4-7.4(b)(2)(E) -- prohibiting advertisements that contain language stating or implying that such advertisement has received approval in any form from The Florida Bar; further adds new subdivision (c)(8) -- similar to current rule 4-7.4(b)(2)(J) -- requiring in cases where a matter will be referred to another lawyer or firm that applicable communications advise the prospective client of such referral; within current subdivision (c)(10), expands the "safe harbor" from the filing requirements of

subdivision (c), to allow lawyer advertisements to include selected information regarding attorneys' positions and memberships within Florida Bar sections and committees, and to allow additional illustrations of the scales of justice, a gavel, or lady justice, or a selected photograph of the lawyer or lawyers who are members of or employed by the advertising firm; renumbers subdivisions (c)(9) through (11) and revises commentary cross-references accordingly; otherwise conforms format to controlling editorial protocols.

RULE 4-7.4 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Summary: Deletes subdivision (b)(2)(E), relocated as proposed new rule 4-7.2(b)(6); deletes portions of subdivision (b)(2)(J), relocated as proposed new rule 4-7.2(c)(8); revises all affected subdivision entries accordingly.

RULE 4-7.6 COMPUTER ACCESSED COMMUNICATIONS

Summary: Adds an additional rule reference within subdivision (c) that effectively requires a statement of qualifications to be included in any direct mail communication; conforms other references to rule 4-7.4 to proposed changes therein.

RULE 4-7.7 EVALUATION OF ADVERTISEMENTS

Summary: Adds an additional rule reference within subdivision (a) that effectively requires lawyer advertising in the form of unsolicited electronic mail to be filed for evaluation of its compliance with applicable rules.

RULE 4-7.10 FIRM NAMES AND LETTERHEAD

Summary: Corrects incorrect rule citation -- from subdivision (d), to subdivision (f) -- in commentary, to rightly reference provision regarding partnerships and authorized business entities rather than law firms with offices in more than 1 jurisdiction.

CHAPTER 5 RULES REGULATING TRUST ACCOUNTS

5-1. GENERALLY

RULE 5-1.1 TRUST ACCOUNTS

Summary: Newly arranged rule, which would incorporate subdivisions (a) - (c) of current rule 4-1.15 with other non-substantive changes; deletes current subdivisions (b) - (d); deletes references to Florida-based financial institutions in provision regarding disbursement against uncollected funds; revises all affected subdivision entries accordingly, with selected editorial changes.

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

Summary: Revises subdivision (a) to reflect applicability of rule to all members regardless of whether they are within Florida; deletes references to Florida-based financial institutions in subdivision (b)'s provisions regarding minimum trust accounting records; codifies and updates the record retention provisions of current rule 4-1.15(a) within new subdivision (d); revises all affected subdivision entries accordingly; relocates commentary from current rule 4-1.15, with selected editorial

changes.

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

10-2. DEFINITIONS

RULE 10-2.1 GENERALLY

Summary: Within subdivision (a), clarifies that it shall constitute the unlicensed practice of law for a person who does not meet such definition to offer or provide legal services directly to the public, or for such person to use the title "paralegal", "legal assistant", or other similar term in providing legal services or legal forms preparation services directly to the public; also within subdivision (a), confirms that it shall constitute UPL 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; creates new subdivision (b) to provide a definition of "paralegal" or "legal assistant" consistent with proposed amendments to companion rule 4-5.3; further confirms that a nonlawyer or group of nonlawyers may not offer legal services directly to the public by employing a lawyer to provide the supervision required under applicable rules; revises all affected subdivision entries accordingly; within current subdivision (b) -- proposed new subdivision (c) -- adds to the definition of "nonlawyer" or "nonattorney" those lawyers who have resigned from The Florida Bar, and clarifies

that a suspended attorney is a member of The Florida Bar during the period of suspension but does not have the privilege of practicing law in this state; with current subdivisions (d) & (i) – proposed new subdivisions (e) & (j) -- revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles; conforms punctuation to controlling editorial protocols.

10-3. STANDING COMMITTEE

RULE 10-3.2 DUTIES OF THE STANDING COMMITTEE

Summary: Within subdivisions (b) & (c), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

RULE 10-3.3 APPOINTMENT OF STAFF COUNSEL AND BAR COUNSEL

Summary: Expands rule title to additionally reflect “employment” of counsel, and further revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

10-4. CIRCUIT COMMITTEES

RULE 10-4.1 GENERALLY

Summary: Within subdivisions (e) & (f), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

10-5. COMPLAINT PROCESSING AND INITIAL
INVESTIGATORY PROCEDURES

RULE 10-5.1 COMPLAINT PROCESSING

Summary: Within subdivisions (b), (c), (d), & (e), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

10-6. PROCEDURES FOR INVESTIGATION

RULE 10-6.1 HEARINGS

Summary: Within subdivision (b), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

RULE 10-6.2 SUBPOENAS

Summary: Within subdivision (a), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

**RULE 10-6.3 RECOMMENDATIONS AND DISPOSITION
OF COMPLAINTS**

Summary: Within subdivisions (a) & (b), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

10-7. PROCEEDINGS BEFORE A REFEREE

RULE 10-7.1 PROCEEDINGS FOR INJUNCTIVE RELIEF

Summary: Within subdivision (b), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

10-8. CONFIDENTIALITY

RULE 10-8.1 FILES

Summary: Within subdivision (e), revises references to selected Bar disciplinary personnel consistent with current organizational staffing and official titles.

CHAPTER 15 REVIEW OF LAWYER

ADVERTISEMENTS AND SOLICITATIONS

15-1. GENERALLY

RULE 15-1.1 PURPOSE

Summary: Revises the cited provisions of the Rules Regulating The Florida Bar -- substituting subchapter 4-7 for rule 4-7.5 -- to more properly describe the entire portion of the rules that relates to the Bar's advertising evaluation program.

CHAPTER 17 AUTHORIZED HOUSE COUNSEL RULE

17-1. GENERALLY

RULE 17-1.3 ACTIVITIES

Summary: Within subdivision (b), clarifies that individuals certified as an authorized house counsel must disclose in appropriate communications that they are

not members of The Florida Bar.

III

4. This petition constitutes the Bar's annual filing of virtually all rules changes favorably recommended by the Board of Governors since February 2000 but held for this consolidated submission per standing board policy. Notice of proposed action was published prior to approval of each of the preceding revisions by the board in accordance with rule 1-12.1(d), Rules Regulating The Florida Bar.

5. Advance notice of the filing of this petition was published in the June 1, 2001 issue of The Florida Bar *News* to comply with the 30-day preview requirements of rule 1-12.1(g), Rules Regulating The Florida Bar. A photocopy of that official notice is attached to this petition and marked as Exhibit A.

6. No other separate filings to amend the Rules Regulating The Florida Bar are presently pending with this Court.

IV

7. During the final preparation of this petition, the Bar detected one technical error -- affecting rule 4-7.6 -- in its official notice of this petition. The pertinent portion of that item was published thusly:

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

(c) Electronic Mail Communications. A lawyer shall not send, or

knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(E), ~~(b)(2)(F)~~, (b)(2)(G), (b)(2)(H), (b)(2)(~~J~~I), and (b)(2)(~~K~~J) of rule 4-7.4 are met; ***

8. Instead, because of various other amendments within rule 4-7.4 and its subparts, the proper revision of subdivision 4-7.6(c)(1) should have additionally included the deletion of one more entry -- (b)(2)(H) -- to read as follows: “(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(E), ~~(b)(2)(F)~~, (b)(2)(G), ~~(b)(2)(H)~~, (b)(2)(~~J~~I), and (b)(2)(~~K~~J) of rule 4-7.4 are met;”

9. Discovery of this problem revealed similar error in the amendment as ultimately considered by the board of governors, although the intended substantive effect of this revision -- “Adds an additional rule reference within subdivision (c) that effectively requires a statement of qualifications to be included in any direct mail communication” -- was correctly summarized in all official notices published prior to final board action pursuant to rule 1-12.1(d).

10. In the interim since the official notice of this filing, the Executive Committee of The Florida Bar has endorsed a successive amendment to rule 4-7.6(c)(1) that corrects this situation, consistent with the intent of its proponents and the

understanding of the board. The revisions to rule 4-7.6(c)(1) as filed herein reflect that most recent corrective action.

11. The Bar submits that this variance from the requirements of rule 1-12 is minimal, and therefore requests appropriate waiver pursuant to rule 1-12.1(i) in order that this one revision may travel with those other amendments herein that were promulgated in full compliance with rule 1-12.1.

V

12. The full text of these proposed amendments is included within Appendix B to this petition, followed by a separate 2-column presentation within Appendix C that includes selected text of each rule as amended, and reasons for such changes.

VI

13. The Bar has received only one comment in response to its official notice of this filing and the amendments published therein. That sole inquirer merely sought an informational copy of this petition.

14. Absent any other comments or objections of significance that might necessitate further pleadings or appearances with respect to these proposed rules changes, the Bar does not presently seek oral argument of the matters within this petition.

15. However, to present a more fully developed record from which this Court

may better consider some of these proposals, the Bar has provided expanded discussion and supporting materials related to four selected rules changes of particular substance. Those presentations follow, within the next three subparts of this petition.

VII

16. The proposed amendments to rule 4-1.8 -- “Conflict of Interest; Prohibited Transactions” which would now read “Conflict of Interest; Prohibited and Other Transactions” -- are the result of a year-long study by a special Florida Bar committee (*see* “Report of the Insurance Practices Special Study Committee” within Composite Exhibit A, pp. 1-39).

17. This group was created by the board of governors in May 1999 to study several insurance-related issues of concern to lawyers and the public:

The mission of the committee is to protect the public and those insured by policies of insurance issued in the state of Florida from the business practices of certain insurance companies that may (1) constitute the unauthorized practice of law by nonlawyer employees of the insurers; (2) give rise to conflicts of interest or other violations of the Rules Regulating The Florida Bar by defense counsel; (3) compromise the quality of the defense provided to Florida insureds, or (4) fail to adequately inform Florida insureds of the limitations and restrictions imposed upon defense counsel by the insurers and the ethical concerns that arise from those limitations and restrictions.

18. The study group spent hundreds of hours from May 1999 to May 2000 investigating those issues within its scope. Eleven public meetings were held, which

included representatives from the insurance industry. Two public hearings were conducted, during which the committee heard comments from 27 separate individuals. The committee solicited and received written comments or submissions from approximately 70 individuals. Voluminous materials -- including case law from Florida and other states, ethics opinions and unlicensed practice of law guidance from Florida and other states, scholarly articles, newspaper articles, and other written materials -- were reviewed and considered by the group. The committee's work received substantial attention in *The Florida Bar News* and in other statewide and national publications. Photocopies of selected articles are included within Composite Exhibit A, pp. 40-76.

19. In June 2000 the committee recommended to the Board of Governors of The Florida Bar that it should petition this Court to amend rule 4-1.8 to include a statement of insured client's rights. That recommendation was immediately approved by the board. After further published accounts of these matters, the Bar received additional commentary regarding the extent to which provisions of the proposed statement of insured client's rights might be applicable to government entities that carry insurance policies or that are self-insured. Another concern was that the literal language of the proposed implementation rule would require that the statement of insured client's rights be provided to the client whenever a lawyer defends an insured,

even if the insurance company has refused to pay defense costs. After receiving such comments, the special committee proposed further refinements of the statement to alleviate those concerns -- approved by the board of governors at its December 2000 and February 2001 meetings.

20. The proposed amendments to rule 4-1.8 herein are a result of the study group's work and recommendations, and the subsequent approval by the board of governors of those suggested changes. Further support for the proposed changes to rule 4-1.8 and the Statement of Insured Client's Rights may be found in the committee's report.

VIII

21. Amendments to rule 4-5.3 -- "Responsibilities Regarding Nonlawyer Assistants" -- and 10-2.1(a)(2) and 10-2.1(b) -- "Definitions" within the Unlicensed Practice of Law chapter -- have been proposed by the Special Committee on the Enhancement of the Practice of Law. This group was appointed in July of 1997. One of the special committee's missions was to draft changes to the rules, to expand the ability of attorneys to use paralegals in their practice in an ethical manner. One member of the special committee was a paralegal and a member of the Standing Committee on the Unlicensed Practice of Law.

22. The special committee met several times from 1997 through 1998, and

examined various reports of predecessor committees of The Florida Bar, the American Bar Association, and other state bars. Numerous articles about the committee's activities were written in *The Florida Bar News* and in other publications. Photocopies of selected articles are attached as Composite Exhibit B, pp. 1-14.

23. The special committee drafted language designed to ensure that, although attorneys could delegate specific tasks to paralegals, attorneys would remain ultimately responsible for all tasks performed in legal representation. While the study group was in the process of preparing this rule, the committee became concerned about use of the terms “paralegal,” “legal assistant,” and the like by nonlawyers in holding themselves out to the public as providing services, but who were not directly supervised by an attorney.

24. In 1998 the special committee conducted a survey on the public’s perception of paralegals, legal assistants, and legal technicians. The survey, a copy of which is included within Composite Exhibit B (pp. 39-54), found that the public generally believes that a paralegal or legal assistant is someone who works for and under the supervision of an attorney.

25. While this may be the public’s perception and understanding, in reality many nonlawyers use the titles “paralegal” or “legal assistant” when providing services directly to the public without working for or under the supervision of an attorney. In

some cases, individuals who are using these titles are providing services that constitute the unlicensed practice of law. See *The Florida Bar v. Catarcio*, 709 So. 2d 96 (Fla. 1998).

26. This Court has held that “the single most important concern in the Court’s defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation.” *The Florida Bar v. Moses*, 380 So. 2d 412, 417 (Fla. 1980). This Court has also held that a nonlawyer engages in the unlicensed practice of law when the nonlawyer uses a title or language in advertisements that misleads the public into believing that the nonlawyer has expertise in the field of law or may provide legal services. *The Florida Bar v. Davide*, 702 So. 2d 184 (Fla. 1997); *The Florida Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000).

27. In October 1998 the special committee recommended that the Board of Governors of The Florida Bar adopt changes to rule 4-5.3 that would expand attorneys’ ability to ethically use paralegals in their practice, and would limit use of the term “paralegal” and the like to nonlawyers working under the supervision of an attorney. A copy of the board’s related backup materials from its October 1998 meeting is included within Composite Exhibit B, pp. 15-54. These draft changes were reviewed and approved by the Professional Ethics Committee of The Florida Bar and the Standing Committee on the Unlicensed Practice of Law of The Florida Bar prior

to submission to the board of governors.

28. The amendments were further refined after discussion by board members concerning employment of paralegals by law firms, as opposed to individual lawyers. The commentary to the rule was amended after board members raised concerns that the rule amendments might be misread to indicate that a nonlawyer could have an ownership interest in a law firm, or that a nonlawyer might be able to fulfill the requirement of supervision by hiring a lawyer for the sole purpose of providing the supervision required under the rule. The amendments as further revised were approved by the board in April 1999.

29. The Florida Bar's governing board was further concerned that the use of terms such as “paralegal” or “legal assistant” by nonlawyers should be additionally reflected in chapter 10, which governs the unlicensed practice of law. In February 2000 the president of The Florida Bar appointed a Special Committee on Implementation of Companion UPL Rule, to draft a companion rule to the proposed amendments within rule 4-5.3. The result of that committee’s work is reflected in proposed amendments to subdivisions (a) and (b) of rule 10-2.1(a) filed herein.

30. The proposed amendments protect the public by declaring that it is the unlicensed practice of law for a nonlawyer to use the term “paralegal” or “legal assistant” unless the nonlawyer is working under the supervision of a member of The

Florida Bar. Adoption of these amendments should deter a nonlawyer from misleading anyone into believing the nonlawyer may provide legal services that the nonlawyer is not authorized to provide. The services that a nonlawyer may provide, and how those services may be provided, are otherwise unchanged.

31. Separate amendment of rule 10-2 -- creating a new subdivision (a)(3) -- further revises the definition of the unlicensed practice of law to conform with this Court's observations in *Amendments to Rules Regulating The Florida Bar - Advertising Rules*, 762 So.2d 392, 394 (Fla. 1999), that it shall constitute UPL 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.

32. Additional revision of rule 10-2 -- former subdivision (b), proposed new (c) -- clarify the definition of "nonlawyer or nonattorney," to include lawyers who have resigned from The Florida Bar. Other amendments therein, consistent with rule 3-5.1(e), more clearly note that suspended lawyers -- while still "members" of the Bar during suspension -- do not have the privilege of practicing law in Florida during their suspension.

IX

33. The addition of a wholly new rule 4-5.7 -- "Responsibilities Regarding Nonlegal Services" --- was proposed by the Special Committee on Multidisciplinary

Practice and Ancillary Business (formerly the Special Committee on Ancillary Businesses of Lawyers). This committee was initially appointed in July of 1997. It studied the issue of lawyers engaging in nonlegal and law-related business for over two years (1997-2000). The committee met numerous times and studied voluminous materials. Various articles were written in *The Florida Bar News* and *The Florida Bar Journal* about the committee's work. Photocopies of selected articles are attached and included within Composite Exhibit C, pp. 1-46.

34. The committee found that the practice of lawyers engaging in unrelated businesses has existed for many years. Some of the most common forms of these activities are manifested in title insurance companies, investigative services, paralegal services, and trust services. However, The Florida Bar's Ethics Hotline has received additional attorney inquiries regarding the propriety of combining their law practices with: a used car lot; a coffee shop; a magnetic resonance imaging center; physicians' offices; accountants; financial planners; guardians; elder care helpers; stock brokers; patent research companies; dentists; mental health counselors; mediators; arbitrators; lease audit firms; and, sports agents (to name but a few).

35. In addition to gathering materials from the American Bar Association and other states -- including reports, studies, law review articles, ethics opinions, and cases -- the Special Committee on Multidisciplinary Practice and Ancillary Business invited

comment from all committees and sections of The Florida Bar, conducted a public hearing, and was the focus of an All Bar Conference wholly dedicated to the topic of ancillary business. The special committee concluded that, although there are currently many rules that apply to ancillary businesses of lawyers, there is no one rule in which Florida lawyers can find guidance on this issue. The results of the All Bar Conference support this conclusion: 68 percent of the delegates voted "Yes" in response to the question "Should The Florida Bar adopt a specific rule that deals directly with ancillary businesses of lawyers?" A copy of the results of the All Bar Conference voting is included within Composite Exhibit C, pp. 47-61.

36. The special committee reviewed several different rules from other states that have been promulgated on the topic of ancillary business. The ABA has passed two different rules: (1) the first prohibited ancillary services unless they were offered through the law firm and in conjunction with legal services-- this rule was repealed one year after its adoption; and (2) a second rule -- adopted by only a handful of states -- is more regulatory in tone, defining under what circumstances the Rules of Professional Conduct will apply.

37. The special committee also studied the rule passed by the Pennsylvania Supreme Court, which was written after Pennsylvania found that the ABA rule did not address the majority of inquiries received by the Pennsylvania Bar Association on the

subject of ancillary business. The group appointed a subcommittee to draft a rule addressing ancillary business. The subcommittee voted to adopt Pennsylvania's rule 5.7, because that rule provides the protections of the attorney-client relationship when the nonlegal services are provided with legal services, or if the attorney fails to disclose to the recipient of nonlegal services that there is no attorney-client relationship with respect to the nonlegal services. The Pennsylvania rule was preferred over either ABA rule because the Pennsylvania rule places the obligation on the attorney to disclose to the recipient of the nonlegal services that an attorney-client relationship is not being created, and that the Rules of Professional Conduct will not apply to the relationship. The subcommittee was persuaded by a memorandum by the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility which explained the rationale for adopting their current rule, including that the ABA's Model Rule 5.7 failed to address the majority of situations raised by inquiries to the Pennsylvania Bar Association's Ethics Hotline. A copy of Pennsylvania Rule 5.7, an explanatory memorandum of the Pennsylvania Bar Association, and the article, "Pennsylvania Adopts Ancillary Business Rule," 8 *The Professional Lawyer* 10 (1996) are included within Composite Exhibit C, pp. 62-76.

38. The special committee voted to adopt Pennsylvania's rule in August 1999, with the addition of "preferably in writing" to indicate the preferred method of

disclosure, and the deletion of a portion of the comment. Two members of the committee dissented on the basis that they felt it was more appropriate to present all recommendations of the committee as a single package, which would give the committee the chance to consider the possible effects that other recommendations might have on this proposed rule. An extract copy of the minutes of the special committee's August 19, 1999 meeting (Item 6) is included within Composite Exhibit C, pp. 77 & 78. The Florida Bar Board of Governors approved this rule at its meeting of June 2, 2000 -- an extract copy of the minutes of that meeting (Item 21c) is included within Composite Exhibit C, pp. 79-81.

39. The placement of this rule within the Rules Regulating The Florida Bar is consistent with the American Bar Association schematic -- the ABA rule regarding ancillary businesses of lawyers is also numbered 5.7.

X

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

Respectfully submitted,

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Chair, Rules Committee 2001-02
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July 13, 2001

CERTIFICATE OF TYPE SIZE AND STYLE

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail on this _____ day of July 2001, to: John A. Weiss, 2937 Kerry Forest Parkway, Suite B2, Tallahassee, Florida 32308-6825.

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