

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 of The Florida Bar.

II

3. This petition presents a proposed amendment to the Rules Regulating The

Florida Bar summarized as follows:

CHAPTER 1. GENERAL

1-7. MEMBERSHIP FEES AND FISCAL CONTROL

RULE 1.7.3 MEMBERSHIP FEES

Summary: Within subdivision (a), increases the basic membership fee from \$190 to \$265 per annum; within subdivision (d), increases the inactive membership fee from \$140 to \$175 per annum.

III

4. In accordance with rule 1-12.1(d), Rules Regulating The Florida Bar, notice of proposed action was published prior to board approval of the revisions herein.

5. Advance notice of the filing of this petition was published in the January 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.

IV

6. In authorizing this filing, the Bar's governing board considered numerous factors. However, increases in the costs of administering necessary and beneficial programs for The Florida Bar's lawyer licensees and the public have prompted this requested action. A compilation of the documents considered by the Board of

Governors at its December 2000 meeting in connection with final action on these proposed changes is included herein at Composite Exhibit B.

a. The Bar faces a decline in its financial reserves. Budget officials consider it fiscally imprudent to let The Florida Bar's reserves fall below one-third of its annual operating budget. In Fiscal Year 1998-99 the Bar experienced a deficit of approximately \$50,000. During 1999-00 there was a deficit of over \$1 million. In the current 2000-01 budget there is a projected deficit of \$1.6 - \$2 million.

b. In contemplating a proposed increase in membership fees, the Bar's Budget Committee used historical data to project future revenue and expenses for the next five years. Utilizing varying income and cost presumptions, the committee decided upon the fee amounts proposed herein. The committee's calculations were additionally influenced by outside economic factors. The cost of living has risen 32 percent since the Bar's last fee increase in 1990 to its current \$190 level -- it would take \$252 today to buy what \$190 purchased 10 years ago. The proposed new fee rates are further premised on continued investment earnings by the Bar at an 8 percent annual average, which is conservatively optimistic in today's investment climate. Budget officials observe that the 1990 fee increase was only anticipated to provide sufficient Bar funding for three to five years, but under careful stewardship that rate has held much longer.

c. The 1990 fee level, indeed, has been in place longer than any previous Florida Bar membership fee. The two prior increases in the basic license fee occurred in 1982 (\$125 to \$140 = 12.0 percent) and in 1990 (from \$140 to \$190 = 35.71 percent). The current requested increase in the basic fee (from \$190 to \$265) would equal 39.47 percent. As to inactive membership fees, a 1990 hike (from \$120 to \$140) totaled 16.67 percent. The requested increase in inactive fees (from \$140 to \$175) would total 25.00 percent). A more complete history of fee increases within the Bar – which reflects increases as high as 67 percent but lasting only 3 years – appears within Composite Exhibit B.

d. Among the 34 other unified bars in the United States, The Florida Bar currently ranks 22nd in its annual fee rate. If the increases proposed herein were implemented, Florida would still only rank 17th -- along with Louisiana -- in unified bar membership fees. Florida Bar fees would even remain lower than several voluntary state bars, none of which fund lawyer disciplinary programs. The maximum fee to practice law among all state bars and the District of Columbia -- regardless of membership requirements -- is \$2,466 (Oregon - a unified bar). The average fee among those same 51 bars is \$288; among only the 34 unified bars, \$272. The least expensive membership charge among all state bars and the District of Columbia is \$85 (Indiana - a voluntary bar); the lowest among the 34 unified bars is \$100 (Arkansas).

e. The Florida Bar's primary expenses are within its regulatory activities and its various programs that enhance lawyer professionalism -- core functions of this unified organization. A fee increase appears essential to continuation of the present level of those and other services to members of the legal profession, and which further benefit the public. Without appropriate funding it may become necessary to reduce or eliminate programs that have been well developed and responsibly administered by the Board of Governors of The Florida Bar and this Court. Cited by the board as particularly timely and pertinent to this request are:

Lawyer Regulation

•*Practice and Professionalism Enhancement Programs* - Begun in 1991-92, "Ethics School" and other noted training programs have served as a worthwhile adjunct to the Bar's disciplinary function, allowing lawyers who face minor grievances to have those charges dismissed in exchange for their participation in remedial instruction aimed at helping them avoid future problems of a similar nature.

•*Grievance Mediation Program* - This unique feature of Florida Bar lawyer regulation, initiated in 1997-98, resolves many communication-related disputes between attorney and client that have typically been the source of numerous consumer complaints but which have been low-level issues, or matters not generally subject to disciplinary sanction.

- Attorney Client Assistance Program* - Operated as a pilot program from November 1997 through October 1999, this activity screens client inquiries and initial consumer complaints to determine those that can be settled cooperatively between clients and attorneys without further resort to the Bar's more formal disciplinary processes.

- Ethics Advisory Services* - The Bar's helpful toll-free hotline has been expanded to ensure greater accessibility to professional ethics advice for inquiring attorneys. Proposed attorney advertisements are reviewed and advisory opinions are regularly provided with respect to lawyer ads and other communications.

Professionalism

- Professional Commission & Center* - With active support from this Court, a Professionalism Commission and Professionalism Center were created during 1995-96 and 1996-97. These programs have since produced formalized methods to improve the professional behavior of lawyers and enhanced the trust among attorneys through more accessible ethics training in the form of seminars, a resource library, Internet website, and practical handbook. In 1999 the Center received the coveted Gambrell Award from the American Bar Association in recognition of its activities.

Unlicensed Practice of Law

- The significant increase in the unlicensed practice of law (UPL) in recent

years has had a corresponding impact on the Bar's investigation and prosecution of such matter as an arm of this Court. In 1990 only two staff lawyers at Bar headquarters handled this official function; now there are 6.5 full-time equivalent attorneys. After efforts to enlist state attorneys to pursue these instances of consumer harm as criminal offenses, the Bar resolved to aggressively prosecute UPL cases through enhanced rules of this Court. During 1994-95 the Bar's UPL function was bolstered through the placement of additional staff within existing branch disciplinary offices who work closely with circuit UPL committees involved in this important activity.

Clients' Security Fund

- The heralded Clients' Security Fund continues to be one of the more visible signs of personal and professional integrity from within The Florida Bar. The Fund underscores the legal profession's independent desire to compensate all injured clients of errant lawyers who misappropriate their funds. Since 1990 the Board of Governors has doubled that portion of membership fees contributed to the Fund, coupled with increases in the maximum allowable monetary awards paid. It is contemplated that an additional \$5 in per capita member contributions (from \$15 to \$20) will be instituted in the event that this proposed fee increase is approved.

Law Office Management Advisory Service

•Begun in 1980, LOMAS -- the Bar's unique advisory and consulting service for lawyers and law firms -- continues to address growing interest in matters of law practice management, such as trust accounting compliance, docket control, prevention of client conflict of interest issues, malpractice avoidance principles, cost-effective marketing, and the integration of high-tech equipment into the law practice. LOMAS staff have fielded more than 10,000 telephonic inquires from attorneys each year since it began operations. The Service has now been asked to take a more active role in the Bar's grievance process by assisting in the rehabilitation of attorneys who have experienced law office management-related problems that have resulted in ethical transgressions.

The Florida Bar Website

•Among several other technological improvements affecting Bar programs, this Internet-based service allows members to sign up and take online CLE courses, contains helpful links to legal research and other law-related sites, and provides daily news media advisories of interest to the profession along with regular updates on Bar activities and programs. Recent enhancements allow lawyers to update personal membership information by linked computer, and the website is ready for future upgrades to accommodate other member transactions and services online.

7. This proposal has been well chronicled in the Bar's membership publications as reflected in the various Florida Bar *News* stories within Composite Exhibit C.

VI

8. Member commentary in reaction to this filing is noted. Those communications received by the Bar since preliminary and official notification of this matter are included within this petition and appear at Composite Exhibit D. Most of the concerns raised among those various observations mirror the reports of the Bar's own elected representatives, and were conscientiously considered by the Board of Governors of The Florida Bar in the development and final endorsement of this proposal.

9. In many respects, such member observations are not unlike those associated with prior fee increases considered by this Court over the last two decades of Bar growth. *The Florida Bar re: Amendment to the Rules Regulating The Florida Bar - Rule 1-7.3*, 562 So.2d 343 (Fla. 1990); *The Florida Bar. In re Amendment to Integration Rule, Article VIII, Subsection 1 (Dues)*, 416 So.2d 1124 (Fla. 1982). Tiered rates and other special financial accommodations were reconsidered; institutional and professional priorities were revisited. In the ultimate, the unified bar of this state remains unique, and should continue to be cherished. One of the hallmarks of The Florida Bar is the support "by which each member is obliged to bear

his [or her] portion of the responsibility” in the maintenance of this special franchise. *Petition of Florida State Bar Association*, 40 So.2d 902, 904 (Fla. 1949). This Court has further acknowledged that the Board of Governors is the representative governing body that establishes official policy of The Florida Bar and speaks for its membership on such matters. *In re Florida Bar Board of Governors’ Action*, 217 So.2d 323, 325 (concurring opinion); *In re The Florida Bar*, 184 So2d 649, 651 (Fla. 1966) (concurring opinion).

VII

10. Finally, the proposed fee increases are presented now for immediate consideration so that if they are not implemented as requested the governing board of the Bar may have adequate time to prepare its 2001-02 Fiscal Year budget using whatever rates this Court may otherwise deem appropriate. In the interim, however, the Budget Committee will be tendering to the Board of Governors on March 29-30, 2001 a proposed budget for the coming year premised on the fee increases now sought.

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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Herman J. Russomanno
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Terrence Russell
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February 22, 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.

EXHIBIT A

COMPOSITE EXHIBIT B

COMPOSITE EXHIBIT C

COMPOSITE EXHIBIT D

APPENDIX

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 ~~\$190~~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 is delinquent in the payment of costs or restitution imposed against the member in a disciplinary proceeding. Costs shall be deemed delinquent unless paid within 30 days after the disciplinary decision becomes final unless such time is extended by the board of governors for good cause shown. Restitution shall be deemed delinquent unless accomplished in the manner and by the date provided in the disciplinary order or agreement.

(b) **Prorated Membership Fees.** Persons admitted to The Florida Bar subsequent to July 1 of any fiscal year shall pay the annual membership fees for that fiscal year prorated on the basis of the number of full calendar months of the fiscal year remaining at the time of their admission.

Failure to pay prorated membership fees shall result in the amount of such prorated membership fees being added to the next annual membership fees billing to the member without penalty. The combined prorated and annual membership fees payment must thereafter be received by The Florida Bar on or before August 15, unless the member elects to pay by installment under this rule.

(c) **Installment Payment of Membership Fees.** Members of The Florida Bar may elect to pay annual membership fees in 3 equal installments as follows:

- (1) in the second and third year of their admission to The Florida Bar; or

(2) if the member is employed by a federal, state, or local government in a non-elected position that requires the individual to maintain membership in good standing within The Florida Bar.

A member's notice of election to pay membership fees in installments under this rule and the first installment payment thereunder must be postmarked no later than August 15. The second and third installment payments must be postmarked no later than November 1 and February 1, respectively.

Second and/or third installment payments postmarked after their respective due date(s) shall be subject to a one-time late charge of \$50 per fiscal year, which shall accompany the final payment unless adjusted by the executive director with concurrence of the executive committee for good cause shown.

The executive director shall send written notice by registered or certified mail to the last official bar address of each member whose membership fees and late fees have not been paid under this rule by February 1. Upon failure to pay membership fees and any late charges under this rule by March 15, unless adjusted by the executive director with concurrence of the executive committee for good cause shown, the member shall be a delinquent member.

Each member who elects to pay annual membership fees in installments under this rule may be charged an additional administrative fee to defray the costs of this activity as set by the Board of Governors.

(d) Election of Inactive Membership. A member in good standing may elect by August 15 of a fiscal year to be classified as an inactive member. Such election shall be made only by indication of such choice on the annual membership fees statement and payment of the prescribed annual membership fees. Failure to make the initial election by August 15 shall constitute a waiver of the member's right to the election until the next fiscal year. Once a member has properly elected to be classified as an inactive member, such classification shall continue from fiscal year to fiscal year until such time as the member is reinstated as a member in good standing as elsewhere provided in these rules. The election of inactive status shall be subject to the restrictions and limitations elsewhere provided.

Membership fees for inactive members shall be set by the board of governors in an amount not to exceed ~~\$140~~175 per annum.

(e) Late Payment of Membership Fees. Payment of annual membership fees must be postmarked no later than August 15. Membership fees payments postmarked after August 15 shall be accompanied by a late charge of \$50 unless adjusted by the executive director with concurrence of the executive committee for good cause shown. The executive director shall send written notice by registered or certified mail to the last official bar address of each member whose membership fees have not been paid by August 15. Upon failure to pay membership fees and any late charges by September 30, unless adjusted by the executive director with concurrence of the executive committee for good cause shown, the member shall be a delinquent member.