

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 4 RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP

4-1.7 CONFLICT OF INTEREST; GENERAL RULE

Summary: Creates new subdivision (c) and commentary, to address the ethical duty of an attorney defending an insured at the expense of an insurer to establish, at the inception of undertaking the representation, a clear mutual understanding as to whether the lawyer will be representing both the insured and insurer as clients, or only the insured -- and to inform both as to the scope of the representation; confirms that other conflict rules within Rules Regulating The Florida Bar otherwise apply in such situations.

SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES

4-7.10 FIRM NAMES AND LETTERHEAD

Summary: Creates new subdivision (g) and commentary, imposing restrictions on insurance defense staff attorneys who practice under a firm name other than the name of the insurer to prevent a material misrepresentation; reiterates that attorneys who practice under firm names are additionally required to comply with other applicable requirements of the Rules Regulating The Florida Bar; corrects error within comment, to clarify that law firms using trade names that imply the firm is a public or government agency should use a disclaimer that they are not.

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 July 1, 2002 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 Appendix A.

IV

6. 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.

V

7. 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.

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

VI

9. The proposed amendments to rules 4-1.7 and 4-7.10 are recommendations of the Special Commission on Insurance Practices II. The commission was created in September, 2001 by Florida Bar President Terrence Russell to examine issues raised by members of the bar, bar committees, and the judiciary, with regard to insurance practices. Specifically, the commission's mission statement directed the commission to study the practices of the property and casualty underwriters of the insurance industry as they relate to using insurance company staff attorneys to represent liability insurance policyholders, and to identify areas, if any, in which lawyers who represent liability insurance policyholders need guidance as to their ethical responsibilities. The need for the bar to address the issues set forth in the mission statement became particularly important as a result of a series of court rulings concerning how insurance defense staff attorneys disclose their affiliations, and related matters.

10. The commission was comprised of attorneys whose practices reflect a diversity of backgrounds, including ones who primarily represent plaintiffs in actions against insured defendants, salaried insurance defense staff counsel, insurance defense practitioners with private firms, former salaried insurance defense staff counsel now engaged in practice with a private firm, an attorney whose insurance practice is limited to title insurance, and attorneys who do not practice in the personal injury or insurance

defense field. The group spent many hours from September, 2001-March, 2002 considering the issues outlined in the mission statement. The commission held eight meetings in the course of six months. The meetings were open to the public and a conscious effort was made to include members of the insurance industry in its deliberations. The commission solicited input by publishing a request for comment in *The Florida Bar News*. Comments or submissions were solicited from all interested parties, including the Academy of Florida Trial Lawyers, the insurance industry, and insurance defense counsel. Voluminous materials were reviewed by the commission, including case law from Florida and other states, unlicensed practice of law and ethics opinions from Florida and other states, scholarly articles, newspaper articles, legal memoranda and other written materials.

11. In March 2002, the commission issued its final report. (*see* “Report of the Special Commission on Insurance Practices II.” Exhibit A.) In its report, the commission recommended to the Board of Governors of The Florida Bar that it petition this Court to amend rules 4-1.7 and 4-7.10. That recommendation was approved by the Board of Governors in May 2002. Support for the proposed changes to rules 4-1.7 and 4-7.10 may be found in the committee’s report.

12. The commission’s recommendations were developed with the specific goal of adhering to the principles established by this Court in *In re Proposed Additional*

Rules Governing The Conduct of Attorneys in Florida, 220 So. 2d 6 (Fla. 1969), to wit: (1) the function of the Bar is to protect the public, not particular segments of the profession, and (2) there should not be a “double standard of ethics for salaried and non-salaried lawyers.” While the past 33 years of experience with salaried insurance defense counsel has not revealed instances of harm to members of the public, the commission concluded that the adoption of certain guidelines would benefit the public by preventing misunderstanding and safeguarding fundamental ethical standards. The commission was convinced that the burdens its proposals would place on salaried insurance defense counsel and their employers are justified by the public interest in protecting consumers of legal services. The Board of Governors concurred.

VII

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,

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

Tod Aronovitz
President
Florida Bar Number 186430

Miles A. McGrane III
President-elect
Florida Bar Number 201146

Paul F. Hill
General Counsel
Florida Bar Number 137430

Michael P. McMahon
Chair, Special Commission
on Insurance Practices II
Florida Bar Number 201189

Mary Ellen Bateman
Deputy Director, Legal Division
Florida Bar Number 324698

The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600

July 31, 2002

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, 2002, to : Timothy P. Chinaris, P.O. Box 847, Grundy, Virginia 24614.

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