

# Supreme Court of Florida

*original*

CORRECTED OPINION

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No. 70,366

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The Florida Bar re Amendments to the  
Rules Regulating the Florida Bar.

[October 22, 1987]

PER CURIAM.

Pursuant to rule 1-12.1 of the Rules Regulating the Florida Bar, the bar's board of governors has petitioned the Court seeking adoption of numerous amendments to the bar rules. After hearing oral argument on the petition and after considering that argument as well as the numerous comments and suggestions received concerning these proposed amendments, we adopt, reject, and modify the proposals as discussed in this opinion.\*

The first proposal would amend rule 3-7.1 to require an attorney against whom a disciplinary complaint has been made to disclose the fact of the complaint and the nature of the charges to that attorney's law firm. The board notes that the rules currently require such notice only when a trust account violation is charged and submits that this amendment is needed so that law firms can protect the rights and interests of their clients and of the firms themselves from possible repetitious misconduct. We find this amendment acceptable and therefore amend paragraphs (c) through (g) of rule 3-7.1 as set out in the board's proposal.

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\* The amendments themselves are set out following the opinion.

The next proposed amendments are to rule 4-1.5 and deal with fees for legal services and the splitting of fees between lawyers not in the same firm. The proposals divide fees between primary and secondary lawyers on a seventy-five-percent to twenty-five-percent basis, apply this fee limitation only to contingent fee cases, and give further definition to the determination of reasonable fees. The basic proposals for amending rule 4-1.5 came from a special commission for the study of contingent fees and referral practices, created by the board of governors, which met and held hearings numerous times in 1986. The board argues that these proposed amendments are necessary to clarify standards by which reasonable legal fees are to be determined and to set limits on referral fees.

We have received comments from several bar members and a trial lawyers' group regarding these amendments. The concerns expressed include claims that referral fees are not being abused, that the proposals discriminate by placing restrictions on the right to employ attorneys, and that the proposed amendments will increase brokering rather than restrict it. We acknowledge these concerns, but we believe that there should be some regulation of the brokering of cases and that these proposed amendments are a start toward reaching that end. We therefore adopt the board's proposed amendments to rule 4-1.5, but, in rule 4-1.5(C), change "shall" to "need" so that hourly rate fees will not be deemed unreasonable per se. We agree with the board that the restrictions on rule 4-1.5 will not apply to nonresident bar members unless those nonresidents practice in matters of Florida law. This opinion does not necessarily apply to court-ordered fees.

Another proposed amendment would add a paragraph to rule 4-3.8, requiring a prosecutor to seek judicial approval prior to issuing a subpoena seeking production of a client's documents, records, or files from an attorney. The board argues that this amendment is needed to prevent abuses of prosecutorial authority. State and federal prosecutors, as well as the United

States Department of Justice, oppose this amendment. They argue that the proposed amendment is unnecessary and that its adoption and implementation would have a chilling effect on the grand jury system. After studying this matter, we refuse to adopt the proposed amendment to rule 4-3.8.

The next proposed amendment would add a new rule, rule 4-7.3, requiring lawyers who advertise seeking personal injury cases on a contingent-fee basis to have available for prospective clients written information on those lawyers' qualifications, education, and experience. As originally adopted by the special commission on contingent fees and referral practices, this new rule would have applied to all attorneys and would have required that attorney advertisements set forth the availability of the information. In adopting this proposed rule, however, the board of governors amended it to apply only to attorneys advertising for personal injury cases on a contingent-fee basis. The board of governors submits that this rule is needed so that prospective clients can make fully informed decisions concerning hiring an attorney.

We have received many comments regarding this proposed rule. A member of the special commission argues that the commission's proposed rule, rather than the board's, should be adopted because the board's rule does not further its aim of giving all prospective clients the information needed to make informed decisions about selecting an attorney. A trial lawyers' group echoes this sentiment and argues that this proposed rule should apply to all attorneys regardless of the type of case involved. Several dozen members of the bar have expressed their dismay at having a certain segment of the bar, i.e., personal injury attorneys, singled out for special and discriminatory treatment.

We agree with the board of governors that prospective clients should have available to them the information required by this proposed rule. We do not find, however, that limiting the rule to personal injury attorneys who work on a contingent-

fee basis will fulfill the board's aim. All consumers should share in the benefits of this rule. Therefore, we reject the board's proposal and adopt in its place the special commission's version of rule 4-7.3.

The last proposed amendment would add a new chapter to the bar rules. Under this chapter non-Florida Bar members who are members of the bar in other jurisdictions and who meet certain standards would be allowed to practice law with authorized legal aid organizations for one year while seeking admission to the Florida Bar. The board argues that this new chapter is necessary to help make legal services available to persons who cannot afford them but that this program is not a substitute for bar members' pro bono work. The bar's legal services committee agrees with the board, stating that this new program will help alleviate the understaffing and lack of resources which currently plague legal aid organizations in this state. The Florida Board of Bar Examiners, on the other hand, contends that no reasonable need for this program has been demonstrated. Moreover, the bar examiners argue that allowing unlicensed attorneys to practice may not be in the public interest because this proposed program would allow inexperienced attorneys and, possibly, attorneys with histories of serious personal antisocial conduct to practice law without demonstrating their fitness to do so.

There is a serious need of legal aid practitioners in this state. How far this proposal will go toward filling that need is unknown, but we agree with the board that this program may help fill the gap. We therefore adopt the proposed amendment adding chapter 13 to the bar rules.

The amendments adopted in this opinion will be effective at 12:01 a.m., January 1, 1988.

It is so ordered.

MCDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

Original Proceeding - Amendments to the Rules Regulating the  
Florida Bar

John F. Harkness, Jr., Executive Director; Joseph J. Reiter, President; Ray Ferrero, Jr., President-elect; Sidney A. Stubbs, Jr., Chairman, Committee to Review; Ben L. Bryan, Jr., Chairman, Rules and Bylaws Committee; George A. Dietz, Chairman, Disciplinary Procedures Committee; John R. Beranek, Chairman, Contingent Fees and Referral Practices Commission; and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, Tallahassee, Florida,

for Petitioner

Thomas M. Ervin, Jr., Tallahassee, Florida; and Marcia K. Cypen, Legal Services of Greater Miami, Inc., Miami, Florida,

on behalf of the Florida Bar

Bill Wagner of Wagner, Cunningham, Vaughan and McLaughlin, P.A., Tampa, Florida; William C. Gentry of Gentry & Phillips, P.A., Jacksonville, Florida and C. Rufus Pennington, III of Margol, Fryefield & Pennington, Jacksonville, Florida, for The Academy of Florida Trial Lawyers; Larry D. Beltz and Steven C. Ruth of L. D. Beltz & Associates, St. Petersburg, Florida; Henry P. Trawick, Jr., Sarasota, Florida; K. M. Moore, United States Attorney, Northern District of Florida, Tallahassee, Florida; Robert W. Merkle, United States Attorney and Joseph D. Magri, First Assistant United States Attorney, Middle District of Florida, Jacksonville, Florida; Leon B. Kellner, United States Attorney and Lawrence H. Sharf, Special Counsel, Executive Division, Southern District of Florida, Miami, Florida; Eli H. Subin, Chairman and Thomas A. Pobjecky, for the Florida Board of Bar Examiners, Tallahassee, Florida; Arthur I. Jacobs, General Counsel for Florida Prosecuting Attorneys Association, Fernandina Beach, Florida; and Karen Bokart, Bureau of Competition, Federal Trade Commission, Washington, D.C.,

Responding to petition

Paragraphs (c) through (g) of rule 3-7.1 are amended to read as follows:

(c) Limited disclosure; access to confidential information. Upon request, and to the extent necessary to provide the information required therefor, any portion of the record, as defined in rule 3-7.5(1) and any reports, correspondence, papers, and/or transcripts of hearings furnished to or served upon the respondent and any response in the proceedings shall be provided to:

(1) The Florida Board of Bar Examiners and the comparable body having jurisdiction of an application for admission in another jurisdiction for the purpose of evaluating the applicant's competency to practice law.

(2) Judicial nominating commissions for the purpose of evaluating an applicant's qualification for judicial appointment.

(3) The Clients' Security Fund Committee to assist in preparing its recommendation on the validity of an application for relief.

(4) Any judge of a court of record having a judicial interest in the matter.

(5) A complainant for advice as to the pending status or final disposition of the complaint.

~~(6) In all cases where a complaint alleges a trust fund violation, the present partners, employed lawyers, professional association shareholders, employed associates, and "of counsel" of the respondent, as determined by the designated board reviewer, to prevent further trust fund violations by the respondent.~~

~~(7)~~ (6) Any individual or organization for whom a member of The Florida Bar has signed a waiver of confidentiality for the purposes expressed in such waiver.

(d) Limited disclosure of nature of charges to partners and shareholders. The respondent shall disclose to respondent's present law firm and, if different, respondent's law firm at the time of the act(s) giving rise to the complaint the fact that a complaint has been filed with The Florida Bar and the nature of

the charges against the respondent. The disclosure shall be in writing and shall be in the following form:

A complaint against the undersigned has been filed with The Florida Bar. The nature of the charges are to rule 3-7.1(d) of the Rules Regulating The Florida Bar.

The notice shall be provided within fifteen (15) days of notice that a complaint has been made and a copy of the above notice shall be served on The Florida Bar.

~~(d)~~ (e) Limitations on limited disclosure. Disclosures authorized in rule 3-7.1(c) above are subject, in all instances, to the limitations on public disclosures set forth in rules 3-7.1(b)(1) and 3-7.1(b)(2) and are further subject to the following:

(1) The attorney who is the subject of a request for limited disclosure, as described in rule 3-7.1(c), shall forthwith be advised of the content of all reports and information provided to the requesting party.

(2) All confidential information provided shall remain confidential and shall not be disclosed by the recipient thereof except as may be provided in these rules.

(3) A complainant will not be advised of an admonishment accompanying a finding of no probable cause.

~~(e)~~ (f) Information concerning proceeding. No information concerning the pendency or status of an investigation or other confidential matter shall be given unless authorized by the Supreme Court of Florida or these rules.

~~(f)~~ (g) Evidence of crime. The confidential nature of disciplinary proceedings and the oath given to witnesses therein shall not proscribe the filing of informations and the giving of testimony before grand juries or other prosecuting authorities by individuals having knowledge of facts indicating the commission of crime.

~~(g)~~ (h) Confidentiality regarding treatment for alcohol abuse.













































