

Appendix B

RULES REGULATING THE FLORIDA BAR

CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

PREAMBLE: A LAWYER’S RESPONSIBILITIES

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client’s position with commitment and dedication to the interests of the client under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., rules 4-1.12 and 4-2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See rule 4-8.4.

In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a

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client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or by law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system, because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of the lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct and in substantive and procedural law. A lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. ~~Zealous~~ Commitment and dedication in advocacy ~~is~~ are not inconsistent with justice. Moreover, unless violations of law or injury to another or another's property is involved, preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and heed their legal obligations, when they know their communications will be private.

In the practice of law, conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct often prescribe terms for resolving these conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. These issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-

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government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

Scope:

[no change]

Terminology:

[no change]

Comment

Conduct

All prior references in this chapter to a lawyer's duty to act zealously, as a zealous advocate, or with zeal on the client's behalf have been removed. Zealous advocacy has been invoked in the legal profession as an excuse for unprofessional behavior. In *The Florida Bar v. Buckle*, the Supreme Court of Florida stated "[w]e must never permit a cloak of purported zealous advocacy to conceal unethical behavior." 771 So. 2d

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1131, 1133 (Fla. 2000). These rules are meant to illustrate the special responsibility and high standards of professionalism in this field and zealousness as it has been applied in practice does not align with these ideals. A lawyer’s conduct should strive to be respectful, considerate, and diligent in the practice of law.

Confirmed in writing

[no change]

Firm

[no change]

Fraud

[no change]

Informed consent

[no change]

Screened

[no change]

associated with negative extremist behavior and character and requested replacement of those terms with “commitment and dedication to the interests of the client.” The amendments are consistent with Rule Regulating Fla. Bar 4-1.3 below.

**4-1 CLIENT-LAWYER RELATIONSHIP
RULE 4-1.1 COMPETENCE**

[no change]

Comment

Legal knowledge and skill

[no change]

Thoroughness and preparation

[no change]

Maintaining competence

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, including an understanding of the benefits and risks associated with the use of technology, including generative artificial intelligence, and comply with all continuing legal education requirements to which the lawyer is subject.

Generative artificial intelligence is becoming more widespread. Lawyers have improperly used generative AI to their detriment. For example, a lawyer has been sanctioned in New York for filing a legal document generated by AI (ChatGPT) that included citations that were made up by the generative AI application. *Mata v. Avianca*, 2023 WL 4114965 (S.D.N.Y. June 22, 2023). A Colorado lawyer was recently suspended for 90 days for using ChatGPT in preparing a motion to set aside judgment without checking any of the citations, later determined that some citations were fictitious but did not alert the court, and blamed a legal intern when the court inquired about the fictitious citations. *People v. Crabill*, 2023 WL 8111898 (Colo. O.P.D.J. Nov.

	<p>22, 2023). The rules themselves are broad enough principles to address AI, but commentary will alert Florida lawyers to their responsibilities regarding AI. Similar amendments are proposed in Rules Regulating Fla. Bar 4-1.6, 4-5.1, and 4-5.3 below. The Special Committee on Artificial Intelligence Tools and Resources voted 6-5 to approve on August 21, 2023. The split vote was not over the concept of adding information about artificial intelligence to the commentary, but over the specific language to be included, including whether the term “artificial intelligence” versus “generative artificial intelligence” should be used. The special committee approved “artificial intelligence,” which was amended by the Rules Committee to “generative artificial intelligence” at its August 28, 2023 meeting.</p>
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RULE 4-1.3 DILIGENCE

A lawyer ~~shall~~must act with reasonable diligence and promptness in representing a client.

Comment

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client ~~and with zeal in advocacy upon the client’s behalf~~. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 4-1.2. The lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

A lawyer’s workload must be controlled so that each matter can be handled competently.

Perhaps no professional shortcoming is more widely resented than procrastination. A client’s interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client’s legal position may be destroyed. Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer. A lawyer’s duty to act with reasonable promptness, however, does not preclude

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the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in rule 4-1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See rule 4-1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See rule 4-1.2.

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(a) Consent Required to Reveal Information. [no change]

(b) When Lawyer Must Reveal Information. [no change]

(1) [no change]

(2) [no change]

(c) When Lawyer May Reveal Information. [no change]

(1) [no change]

(2) [no change]

(3) [no change]

(4) [no change]

(5) [no change]

(6) [no change]

(7) [no change]

(d) Exhaustion of Appellate Remedies. [no change]

(e) Inadvertent Disclosure of Information. [no change]

(f) Limitation on Amount of Disclosure. [no change]

Comment	
<p>[no change]</p>	
<p>Authorized disclosure</p> <p>[no change]</p>	
<p>Disclosure adverse to client</p> <p>[no change]</p>	
<p>Withdrawal</p> <p>[no change]</p>	
<p>Dispute concerning lawyer's conduct</p> <p>[no change]</p>	
<p>Disclosures otherwise required or authorized</p> <p>[no change]</p>	
<p>Detection of Conflicts of Interest</p> <p>[no change]</p>	
<p>Acting Competently to Preserve Confidentiality</p> <p>Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or</p>	

unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See rules 4-1.1, 4-5.1 and 4-5.3. For example, a lawyer should be aware that generative artificial intelligence may create risks to the lawyer's duty of confidentiality. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to forgo security measures that would otherwise be required by this rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, for example state and federal laws that govern data privacy or that impose notification requirements on the loss of, or unauthorized access to, electronic information, is beyond the scope of these rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see the comment to rule 4-5.3.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special

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circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule. Whether a lawyer may be required to take additional steps in order to comply with other law, for example state and federal laws that govern data privacy, is beyond the scope of these rules.

Former client

[no change]

4-5 LAW FIRMS AND ASSOCIATIONS
RULE 4-5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND
SUPERVISORY LAWYERS

(a) Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, ~~shall~~must make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.

(b) Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer ~~shall~~must make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) Responsibility for Rules Violations. A lawyer ~~shall be~~is responsible for another lawyer's violation of the Rules of Professional Conduct if:

- (1) [no change]
- (2) [no change]

Comment

Subdivision (a) applies to lawyers who have managerial authority over the professional work of a firm. See terminology. This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency, and lawyers who have intermediate

managerial responsibilities in a firm. Subdivision (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

Subdivision (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, consider safeguards for the firm's use of technologies such as generative artificial intelligence, and ensure that inexperienced lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in subdivision (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated supervising lawyer or special committee. See rule 4-5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the rules.

Subdivision (c) expresses a general principle of personal responsibility for acts of another. See also rule 4-8.4(a).

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Subdivision (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer having supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Professional misconduct by a lawyer under supervision could reveal a violation of subdivision (b) on the part of the supervisory lawyer even though it does not entail a violation of subdivision (c) because there was no direction, ratification, or knowledge of the violation.

Apart from this rule and rule 4-8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, shareholder, member of a limited liability company, officer, director, manager, associate, or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

in Rules Regulating Fla. Bar 4-1.1 and 4-1.6 above and 4-5.3 below

The duties imposed by this rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See rule 4-5.2(a).

RULE 4-5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

(a) Use of Titles by Nonlawyer Assistants. [no change]

(b) Supervisory Responsibility. [no change]

(1) [no change]

(2) [no change]

(3) [no change]

(A) [no change]

(B) [no change]

(c) Ultimate Responsibility of Lawyer. [no change]

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals such as paralegals and legal assistants. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client. A lawyer should also consider safeguards when assistants use technologies such as generative artificial intelligence. The measures employed in supervising nonlawyers should take account of the level of their legal training and the fact that they are not subject to professional discipline. If an activity requires the independent

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judgment and participation of the lawyer, it cannot be properly delegated to a nonlawyer employee.

Subdivision (b)(1) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See comment to rule 1.1 (retaining lawyers outside the firm) and comment to rule 4-5.1 (responsibilities with respect to lawyers within a firm). Subdivision (b)(2) applies to lawyers who have supervisory authority over nonlawyers within or outside the firm. Subdivision (b)(3) specifies the circumstances in which a lawyer is responsible for conduct of nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nothing provided in this rule should be interpreted to mean that a nonlawyer may have any ownership or partnership interest in a law firm, which is prohibited by rule 4-5.4. Additionally, this rule does not permit a lawyer to accept employment by a nonlawyer or group of nonlawyers, the purpose of which is to provide the supervision required under this rule. This conduct is prohibited by rules 4-5.4 and 4-5.5.

Nonlawyers Outside the Firm

[no change]

Colorado lawyer was recently suspended for 90 days for using ChatGPT in preparing a motion to set aside judgment without checking any of the citations, later determined that some citations were fictitious but did not alert the court, and blamed a legal intern when the court inquired about the fictitious citations. *People v. Crabill*, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023). The rules themselves are broad enough principles to address AI, but commentary will alert Florida lawyers to their responsibilities regarding AI. Similar amendments are proposed in Rules Regulating Fla. Bar 4-1.1, 4-1.6, and 4-5.1 above.

**4-7 INFORMATION ABOUT LEGAL SERVICES
RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING
ADVERTISEMENTS**

[no change]

(a) Deceptive and Inherently Misleading Advertisements. [no change]

(1) [no change]

(2) [no change]

(3) [no change]

(b) Examples of Deceptive and Inherently Misleading Advertisements. [no change]

(1) [no change]

(2) [no change]

(3) [no change]

(4) [no change]

(5) [no change]

(6) [no change]

(7) [no change]

(8) [no change]

(9) [no change]

(A) [no change]

(B) [no change]

(C) [no change]

(D) [no change]

(E) [no change]

(F) [no change]

(10) [no change]

(11) [no change]

(12) [no change]

Comment

Material omissions

[no change]

Implied existence of nonexistent fact

[no change]

Predictions of success

[no change]

<p>Past results</p> <p>[no change]</p> <p>Comparisons</p> <p>[no change]</p> <p>Characterization of skills, experience, reputation or record</p> <p>[no change]</p> <p>Areas of practice</p> <p>[no change]</p> <p>Dramatizations</p> <p>[no change]</p> <p>Implying lawyer will violate rules of conduct or law</p> <p>[no change]</p> <p>Testimonials</p> <p>A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer’s firm regarding the quality of the lawyer’s services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are</p>	<p>This change updates the rule’s comment to reflect that a celebrity may offer a truthful testimonial if they are a current or former client</p>
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beneficial to prospective clients and are permissible. A current or former client who is a celebrity may offer a truthful testimonial if the testimonial complies with the requirements of this rule.

Florida bar approval of ad or lawyer

[no change]

Judicial, executive, and legislative titles

[no change]

Implication of association or affiliation with another lawyer or law firm

[no change]

and the testimonial complies with the existing requirements in Rule 4-7.13(b)(9). The prohibition against use of celebrities was intended to avoid the misleading implication that the celebrity was a client or had special knowledge about the lawyer and would therefore improperly influence prospective clients based solely or mainly on the person's celebrity status, which does not exist if the celebrity is an actual current or former client.

RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement is unduly manipulative if it:

(a) [no change]

(b) [no change]

(c) contains the voice or image of a celebrity, except that a lawyer may use the:

(1) voice or image of a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm, or

(2) testimonial of a celebrity who is a current or former client if the testimonial complies with the requirements of this subchapter; or

(d) [no change]

Comment

Unduly Manipulative Sounds and Iimages

[no change]

Use of Celebrities

A lawyer or law firm advertisement may not contain the voice or image of a celebrity with limited exceptions. A celebrity is an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on

The added language clarifies situations when a current or former client wants to give a testimonial but is also considered a celebrity. The prohibition against use of celebrities was intended to avoid the misleading implication that the celebrity was a client or had special knowledge about the lawyer and would therefore improperly influence prospective clients based solely or mainly on the person's celebrity status, which does not exist if the celebrity is an actual current or former client.

a regional or local level, not just a national level. Local announcers or disc jockeys and radio personalities are regularly used to record advertisements. Use of a local announcer or disc jockey or a radio personality to record an advertisement is permissible under this rule as long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm. Additionally, an advertisement may include the testimonial of a current or former client of the advertising lawyer or law firm if the testimonial complies with all other applicable requirements of this subchapter.

The added language clarifies situations when a current or former client wants to give a testimonial but is also considered a celebrity. The prohibition against use of celebrities was intended to avoid the misleading implication that the celebrity was a client or had special knowledge about the lawyer and would therefore improperly influence prospective clients based solely or mainly on the person's celebrity status, which does not exist if the celebrity is an actual current or former client.

**4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION
RULE 4-8.6 AUTHORIZED BUSINESS ENTITIES**

(a) Authorized Business Entities. Lawyers may practice law in the form of professional service corporations, professional limited liability companies, sole proprietorships, general partnerships, or limited liability partnerships organized or qualified under applicable law. ~~Such~~These forms of practice are authorized business entities under these rules.

(b) Practice of Law Limited to Members of The Florida Bar. [no change]

(c) Qualifications of Managers, Directors and Officers. No person may serve as a partner, manager, director, or executive officer of an authorized business entity that is engaged in the practice of law in Florida unless ~~such~~that person is legally qualified to render legal services in this state. For purposes of this rule, the term “executive officer” includes the president, vice-president, or any other officer who performs a policy-making function.

(d) Violation of Statute or Rule. [no change]

(e) Disqualification of Shareholder, Member, Proprietor, or Partner; Severance of Financial Interests. Whenever a shareholder of a professional service corporation, a member of a professional limited liability company, proprietor, or partner in a limited liability partnership becomes legally disqualified to render legal services in this state, ~~said~~that shareholder, member, proprietor, or partner must sever all employment with and financial interests in ~~such~~the authorized business entity immediately. For purposes of this rule the term, “legally disqualified” ~~does not~~includes an emergency suspension, a suspension from the practice of law for a period of time less than of 91

Within subdivision (e), adds emergency and other indefinite suspensions that last 91 days or longer. In an emergency suspension or other indefinite suspension, the lawyer can maintain the lawyer's

days or longer, or an indefinite suspension lasting 91 days or longer, but only beginning on the 91st day of that indefinite suspension.

Severance of employment and financial interests required by this rule will not preclude the shareholder, member, proprietor, or partner from receiving compensation based on legal fees generated for legal services performed during the time when the shareholder, member, proprietor, or partner was legally qualified to render legal services in this state. This provision will not prohibit employment of a legally disqualified shareholder, member, proprietor, or partner in a position that does not render legal service nor payment to an existing profit sharing or pension plan to the extent permitted in rules 3-6.1 and 4-5.4(a)(3), or as required by applicable law.

(f) Cessation of Legal Services. Whenever all shareholders of a professional service corporation, or all members of a professional limited liability company, the proprietor of a solo practice, or all partners in a limited liability partnership become legally disqualified to render legal services in this state, the authorized business entity must cease ~~the rendition of~~ rendering legal services in Florida.

(g) Application of Statutory Provisions. Unless otherwise provided in this rule, each shareholder, member, proprietor, or partner of an authorized business entity will possess all rights and benefits and will be subject to all duties applicable to ~~such that~~ such that shareholder, member, proprietor, or partner provided by the statutes ~~pursuant to~~ under which the authorized business entity was organized or qualified.

Comment

In 1961, this court recognized the authority of the legislature to enact statutory provisions creating corporations, particularly professional service corporations. But this court also noted that

financial interest in a law firm even though the suspension may last longer than 91 days. Emergency suspensions only occur when the bar has shown the court that the lawyer is engaging in conduct resulting in great public harm and continued ability to practice is likely to result in additional public harm. Such a lawyer should not continue to have a financial interest in or employment with a law firm. The change to indefinite suspension after 91 days makes the rule internally consistent as those with rehabilitative suspensions of 91 days or longer are required to sever financial ties to their law firms.

“[e]nabling action by this Court is therefore an essential condition precedent to authorize members of The Florida Bar to qualify under and engage in the practice of their profession pursuant to The 1961 Act.” In Re The Florida Bar, 133 So. 2d 554, at 555 (Fla. 1961).

The same is true today, whatever the form of business entity created by legislative enactment. Hence, this rule is adopted to continue ~~authorization for~~ authorizing members of the bar to practice law in the form of a professional service corporation, a professional limited liability company, or a limited liability partnership. This rule also permits a member of the bar to practice law as a sole proprietor or as a member of a general partnership. These types of entities are collectively referred to as authorized business entities.

Limitation on rendering legal services

[no change]

Employment by and financial interests in an authorized business entity

This rule and the statute require termination of employment of a shareholder, member, proprietor, or partner when ~~same~~ that person is “legally disqualified” to render legal services. The purpose of this provision is to prohibit compensation based on fees for legal services rendered at a time when the shareholder, member, proprietor, or partner cannot render the same type of services. Continued engagement in capacities other than rendering legal services with the same or similar compensation would allow circumvention of prohibitions of sharing legal fees with one not qualified to render legal services. Other rules prohibit the sharing of legal fees with nonlawyers, and this rule continues ~~the application of~~ to apply that type of prohibition. However, nothing in this rule or the statute

prohibits payment to the disqualified shareholder, member, proprietor, or partner for legal services rendered while the shareholder, member, proprietor, or partner was qualified to render ~~such~~ those legal services, even though payment for the legal services is not received until the shareholder, member, proprietor, or partner is legally disqualified.

Similarly, this rule and the statute require the severance of “financial interests” of a legally disqualified shareholder, member, proprietor, or partner. The same reasons apply to severance of financial interests as those that apply to severance of employment. Other provisions of these rules proscribe limits on employment and the types of duties that a legally disqualified shareholder, member, proprietor, or partner may be assigned.

Practical application of the statute and this rule to the requirements of the practice of law mandates exclusion of short term, temporary removal of qualifications to render legal services. Hence, any suspension of less than 91 days, including membership fees delinquency suspensions, is excluded from the definition of the term. These are temporary impediments to the practice of law ~~are such that resulting in automatic reinstatement to the practice of law with the passage of time or the completion of ministerial acts, the member of the bar is automatically qualified to render legal services.~~ Severe tax consequences would result from forced severance and subsequent reestablishment (upon reinstatement of qualifications) of all financial interests in these instances.

However, ~~the exclusion of such~~ excluding these suspensions from the definition of the term does not authorize the payment to the disqualified shareholder, member, proprietor, or partner of compensation based on fees for legal services rendered during the time when the shareholder, member, proprietor, or partner is not personally qualified to render ~~such~~ the services. Continuing the

employment of a legally disqualified shareholder, member, proprietor, or partner during the term of a suspension of less than 91 days requires the authorized business entity to take steps to avoid the practice of law by the legally disqualified shareholder, member, proprietor, or partner, the ability of the legally disqualified shareholder, member, proprietor, or partner to control the actions of members of the bar qualified to render legal services, and payment of compensation to the legally disqualified shareholder, member, proprietor, or partner based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner is not qualified to render them. Mere characterization of continued compensation, which is the same or similar to that the legally disqualified shareholder, member, proprietor, or partner received when qualified to render legal services, is not sufficient to satisfy the requirements of this rule.

Profit sharing or pension plans

To the extent that applicable law requires continued payment to existing profit sharing or pension plans, nothing in this rule or the statute may abridge ~~such~~those payments. However, if permitted under applicable law, the amount paid to the plan for a legally disqualified shareholder, member, proprietor, or partner will not include payments based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner was not qualified to render legal services.

Interstate practice

[no change]