

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULES CASE NO. SC2024-
REGULATING THE FLORIDA BAR –
CHAPTER 4

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

The Florida Bar (the bar) petitions this Court for an order amending the Rules Regulating the Florida Bar and states:

Jurisdictional Statement

This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors) under R. Regulating Fla. Bar 1-12.1.

Discussion of Proposed Amendments

The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. The bar is filing 4 petitions simultaneously that include rules amendments approved by the Board of Governors after submission of the last rules package. This section provides information regarding development of these rules proposals as required by *In re: Guidelines for Rules Submissions*, AOSC22-78 (Fla. 2022).

Each entry provides the following information regarding each proposal: an explanation of each amendment; the reasons for each recommended change; the source of each proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; voting records of pertinent committees and the Board of Governors; and dissenting views within the Board of Governors, if any.

Amendments

RULES REGULATING THE FLORIDA BAR

Chapter 4 Rules of Professional Conduct

Preamble

Explanation: Proposed amendments replace zealous with commitment and dedication. Adds commentary addressing removal of zealous.

Reasons: The Florida Bar Real Property, Probate and Trust Law Section Professionalism & Ethics Committee researched the term "zeal" and its forms and determined that the contemporary, plain language use of and reference to zeal are often 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 proposed amendments to Rule Regulating Fla. Bar 4-1.3 below. The Florida Bar Real Property, Probate and Trust Law Section request is attached in Appendix D.

Source: The Florida Bar Real Property, Probate and Trust Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 6-0 on a substantive and procedural basis on July 27, 2023.
- Program Evaluation Committee approved on a strategic basis 14-0 on September 7, 2023.
- The bar's chief financial officer agreed with de minimis fiscal impact on November 16, 2023.

Board Action: Board of Governors approved 24-9 on December 1, 2023.

RULE 4-1.1 COMPETENCE

Explanation: Within the last paragraph of the commentary, amendments add that a lawyer's understanding of the benefits and risks associated with the use of technology, includes generative artificial intelligence.

Reasons: 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. 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.

Source: Special Committee on Artificial Intelligence Tools and Resources

Background Information – Member Commentary / Committee Action:

- Special Committee on Artificial Intelligence Tools and Resources voted 6-5 to approve on August 21, 2023.
- Rules Committee approved 6-0 on a substantive and procedural basis on August 28, 2023.
- Program Evaluation Committee approved on a strategic basis 14-0 on September 7, 2023.
- The bar's chief financial officer agreed with de minimis fiscal impact on November 16, 2023.

Board Action: Board of Governors approved on voice vote without objection on December 1, 2023.

RULE 4-1.3 DILIGENCE

Explanation: Within the first paragraph of the comment, deletes references to zeal.

Reasons: The Florida Bar Real Property, Probate and Trust Law Section Professionalism & Ethics Committee researched the term "zeal" and its forms and determined that the contemporary, plain language use of and reference to zeal are often 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 proposed amendments to Rule Regulating Fla. Bar Chapter 4 Preamble above. The Florida Bar Real Property, Probate and Trust Law Section request is attached in Appendix D.

Source: The Florida Bar Real Property, Probate and Trust Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 6-0 on a substantive and procedural basis on July 27, 2023.
- Program Evaluation Committee approved on a strategic basis 14-0 on September 7, 2023.
- The bar's chief financial officer agreed with de minimis fiscal impact on November 16, 2023.

Board Action: Board of Governors approved 24-9 on December 1, 2023.

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

Explanation: Within the commentary under "Acting Competently to Preserve Confidentiality," adds that a lawyer should be aware of the responsibility to maintain confidentiality when using artificial intelligence.

Reasons: 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. 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 above and 4-5.1 and 4-5.3 below.

Source: Special Committee on Artificial Intelligence Tools and Resources

Background Information – Member Commentary / Committee Action:

- Special Committee on Artificial Intelligence Tools and Resources voted 11-0 to approve on August 21, 2023.
- Rules Committee approved 6-0 on a substantive and procedural basis on August 28, 2023.
- Program Evaluation Committee approved on a strategic basis 14-0 on September 7, 2023.
- The bar's chief financial officer agreed with de minimis fiscal impact on November 16, 2023.

Board Action: Board of Governors approved on voice vote without objection on December 1, 2023.

Board Action: Board of Governors approved on voice vote without objection on December 1, 2023.

RULE 4-5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

Explanation: Within the second paragraph of the comment, adds "consider safeguards for the firm's use of technologies such as artificial intelligence."

Reasons: 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. 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 and 4-1.6 above and 4-5.3 below.

Source: Special Committee on Artificial Intelligence Tools and Resources

Background Information – Member Commentary / Committee Action:

- Special Committee on Artificial Intelligence Tools and Resources voted 11-0 to approve on August 21, 2023.
- Rules Committee approved 6-0 on a substantive and procedural basis on August 28, 2023.
- Program Evaluation Committee approved on a strategic basis 14-0 on September 7, 2023.
- The bar's chief financial officer agreed with de minimis fiscal impact on November 16, 2023.

Board Action: Board of Governors approved on voice vote without objection on December 1, 2023.

RULE 4-5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

Explanation: Within the first paragraph of the comment, adds "A lawyer should also consider safeguards when assistants use technologies such as artificial intelligence." Within the first paragraph under the header "Nonlawyers Outside the Firm," adds using artificial intelligence services.

Reasons: 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. 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.

Source: Special Committee on Artificial Intelligence Tools and Resources

Background Information – Member Commentary / Committee Action:

- Special Committee on Artificial Intelligence Tools and Resources voted 11-0 to approve on August 21, 2023.
- Rules Committee approved 6-0 on a substantive and procedural basis on August 28, 2023.
- Program Evaluation Committee approved on a strategic basis 14-0 on September 7, 2023.
- The bar's chief financial officer agreed with de minimis fiscal impact on November 16, 2023.

Board Action: Board of Governors approved on voice vote without objection on December 1, 2023.

RULE 4-7.13

Explanation: Adds that a current or former client who is a celebrity may offer a truthful testimonial if that testimonial complies with all other requirements for testimonials under the rule.

Reasons: Consistent with proposed amendments to Rule 4-7.15, this change updates the rule's comment to reflect that a celebrity may offer a truthful testimonial if the celebrity is a current or former client 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.

Source: Board Review Committee on Professional Ethics
Background Information – Member Commentary / Committee

Action:

- Board Review Committee on Professional Ethics approved 7-0 on October 17, 2022.
- The bar's chief financial officer agreed with de minimus fiscal impact on November 17, 2022.
- Rules Committee approved 5-0 on December 5, 2022.
- Program Evaluation Committee approved 16-0 on December 1, 2022.

Board Action: Board of Governors approved on voice vote without objection on January 27, 2023.

RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS

Explanation: In subdivision (c), adds that a lawyer may use a testimonial of a celebrity who is a current or former client if the testimonial complies with the requirements of subchapter 4-7.

Reasons: 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.

Source: Board Review Committee on Professional Ethics

Background Information – Member Commentary / Committee

Action:

- Board Review Committee on Professional Ethics approved 7-0 on October 17, 2022.
- The bar's chief financial officer agreed with de minimus fiscal impact on November 17, 2022.
- Board of Governors first reading on December 2, 2022.
- Rules Committee approved 5-0 on December 5, 2022.
- Program Evaluation Committee approved 16-0 on December 1, 2022.

Board Action: Board of Governors approved on voice vote without objection on January 27, 2023.

RULE 4-8.6 AUTHORIZED BUSINESS ENTITIES

Explanation: Within subdivision (e), adds emergency and other indefinite suspensions that last 91 days or longer.

Reasons: In an emergency suspension or other indefinite suspension, the lawyer can maintain the lawyer's financial interest in a law firm even though the suspension may last longer than 91 days under the current rule. 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 lawyers should not continue to have a financial interest in or ownership of 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.

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 6-0 on October 22, 2020.
- The bar's chief financial officer determined de minimis impact on November 11, 2020.
- Program Evaluation Committee approved 18-0 on strategic basis on December 3, 2020.
- Disciplinary Procedure committee approved additional changes 7-0 on January 28, 2021.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 22, 2021.
- Disciplinary Procedure Committee approved 6-0 after deferral on October 27, 2022.

Board Action: Board of Governors approved on voice vote with 1 objection on January 27, 2023.

Official Notice of Amendments

The bar's official notice of intent to file all the proposals in this petition was published in the December issue of the bar *News* in accordance with R. Regulating Fla. Bar 1-12.1(g). A copy of the notice including the full text in legislative format published on the bar's website is included with this petition in Appendix C. The online notice can also be found at:

<https://www.floridabar.org/the-florida-bar-news/florida-bar-rules-proposals-chapter-4/>

Other Pending Amendments

There are no pending amendments to these rules.

Contents of Appendices

The complete text of all proposals is included in Appendix A to this petition in legislative format (deleted language struck through, shown first, followed by new language underlined).

A separate two-column presentation follows in Appendix B, which includes extracted text of affected rules with proposed amendments in legislative format and an abbreviated recitation of the reasons for the changes.

Official notice of intent to file this petition, background information, and comments are provided in Appendix C.

Appendix D contains background information. It includes the report and position paper of the Real Property, Probate and Trust Law Section.

Oral Argument Not Requested

The bar does not seek oral argument regarding these amendments unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

Effective Date Request

The bar requests that any amendments in response to this petition be made effective at least 30 days from the date of this Court's order so that the bar can educate its members regarding any amendments.

The bar requests that this Court enter an order amending the Rules Regulating the Florida Bar as requested in this petition.

Respectfully submitted,

/s/ Joshua E. Doyle

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CERTIFICATE OF SERVICE

I certify that a copy was furnished by e-mail on January 5, 2024,
to:

Andrew Sasso
Professionalism and Ethics Committee Chair
abs@macfar.com

Linda Allan
Professionalism and Ethics Committee Oversight Member
lindaallanlaw@gmail.com

CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this petition is typed in 14-point Bookman Old Style type.

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

CERTIFICATE OF READ-AGAINST

I certify that the Rules Regulating the Florida Bar set forth within this petition have been read against the most recent copy of Thomson Reuter's *Florida Rules of Court*.

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902