

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES REGULATING THE
FLORIDA BAR – CHAPTER 22

CASE NO. SC2025-1281

THE FLORIDA BAR’S COMMENTS

The Florida Bar (the bar) respectfully files the comments below in opposition to the petition and states:

The Florida Attorney General on behalf of 64 Florida Bar members filed its petition on August 21, 2025, requesting that this Court amend the Rules Regulating The Florida Bar to create Chapter 22, which would allow lawyers admitted in other states to become Florida Bar members for up to a 3-year period on employment by specified state government entities and certification by this Court without examination or character and fitness evaluation.

The Board of Governors of The Florida Bar voted to file comments in opposition to the petition by unanimous voice vote on July 18, 2025. The Board of Governors Executive Committee approved these comments.

While the bar shares a desire to ensure state agencies can effectively address attorney recruitment and retention challenges, and is sympathetic to these very real challenges, the structure and operation of proposed Chapter 22 run afoul of the text of the state constitution and should therefore be denied. The bar will focus its comment on 2 main concerns regarding the proposal:

- The proposal improperly delegates to the executive branch the admission of persons to the practice of law under Florida Constitution Article V, Section 15; and
- The proposal allows for admission to the bar without character and fitness evaluation by the Florida Board of Bar Examiners.

Separation of Powers

The petition proposes a rule where out of state lawyers not otherwise authorized to practice law in Florida are admitted to The Florida Bar as members and authorized to practice of law in Florida, in part based on the necessary condition that they receive and continue to enjoy the endorsement of the executive branch. Proposed R. Regulating Fla. Bar 22-2.1 (a), 22-2.1 (j)-(l), 22-6.1(a)(1)(A). This admission and authorization to practice terminates if the individual is no longer employed by a qualifying agency irrespective of the reason for the termination. Proposed R. Regulating Fla. Bar 22-6.1(a)(1)(A). This proposed rule by its own terms' pairs admission of the person to the practice of law in Florida with a hiring and continued employment decision of the executive agency.

Article V, Section 15, of the state constitution provides: "The supreme court shall have *exclusive jurisdiction to regulate the admission of persons to the practice of law* and the discipline of persons admitted." [Emphasis added.]

Article II, Section 3, provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. *No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.*" [Emphasis added.]

The proposed rule is not compatible with either provision of the constitution.

The proposed rule is inconsistent with the exclusive jurisdiction to regulate admissions given the judicial branch in Article V. It is axiomatic that each word in the constitution must be given significance and effect. In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Med. Conditions, 132 So.3d 786, 803 (Fla. 2014). Of particular interest here is the word “exclusive,” the 4th definition of which is: “single, sole.” “Exclusive.”¹ It is noteworthy that the exemplar included in the fourth definition is itself, “Single, sole” is “*exclusive* jurisdiction,” the very phrase used by the constitution. The definition of “sole” according to this same dictionary is “being the only one,” “having no sharer,” “functioning independently and without assistance or interference,” “belonging exclusively or otherwise limited to one usually specified individual, unit, or group.” “Sole.”² The use of the phrase “exclusive jurisdiction” would seem to defeat any argument that the branches could share jurisdiction in the manner contemplated by the proposed rules. In this instance the rule governing admission to the practice of law cannot function without the executive branch exercising discretionary decision-making powers; therefore, it is inconsistent with Article V’s exclusive jurisdiction requirement. Indeed, the arguments advanced by petitioners implicitly recognize this reality in stating that the proposed rule if adopted by the Court would express “trust and respect for a coordinate branch of government.” Petition at page 3. What they seek is deference by the judicial branch to the decisions of the executive branch.

¹ *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/exclusive>. Accessed 17 Jul. 2025.

² *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/sole>. Accessed 23 Jun. 2025.

The proposed rule is inconsistent with the constitution's prohibition on one branch of government not exercising the powers of another without authorization in the text of the constitution. The Florida constitution's strict separation of powers provision is more robust than its federal counterpart:

The prohibition contained in the second sentence of Article II, section 3 of the Florida Constitution could not be plainer, as our cases clearly have held. This Court has stated repeatedly and without exception that Florida's Constitution absolutely requires a 'strict' separation of powers.

B.H. v. State, 645 So.2d 987, 991 (Fla. 1994). Even if a voluntary delegation of authority could be understood as consistent with the "exclusive jurisdiction" conferred by Article V, it would still be inconsistent with the prohibition on any delegation not textually provided for in the constitution as articulated in Article II. The powers textually assigned to one branch cannot be exercised by another even with their permission; such delegation "...strikes at the very core of the separation of powers doctrine...." Chiles v. Children A, B, C, D, E, & F, 589 So.2d 260, 266 (Fla. 1991). This proposal operates as an effective delegation of the constitutional authority to regulate admission to practice law from the judicial branch to the executive branch. The proposed rule authorizes the executive to make an individualized determination of whether a specific person should be admitted to practice law with full membership in The Florida Bar as a function of executive branch hiring and firing decisions. Proposed R. Regulating Fla. Bar 22-2.1 (a), 22-2.1 (j)-(l), 22-6.1(a)(1)(A).

While it is true that the individual would need to petition the court for admission under the proposed rule, viewed in context, this appears to be purely ministerial. Additionally, as discussed above, the petition is contingent on an offer of employment from specified offices of the executive branch. The authorization to practice if the petition is granted is terminated, and the individual's status as a

member of The Florida Bar ends, if their employment with an authorized executive branch entity is terminated. Proposed R. Regulating Fla. Bar 22-2.1 (a), 22-2.1 (j)-(l), 22-6.1(a)(1)(A). This is not regulation in a meaningful sense— it is delegation in a real sense. There is simply no meaningful labor for the judicial branch to perform when it comes to these persons who would be authorized to practice in Florida, even though the judicial branch is vested with exclusive jurisdiction to regulate the admission of persons to practice law. This is contrasted with the significant and outcome determinative labor required of the executive branch as identified above. The proposed rule asks the executive branch to exercise the judicial power and asks the judicial branch to respect the manner in which it is exercised. This is inconsistent with Article II’s prescriptions.

This proposed rule is fundamentally different from the Military Spouse Rule on which it was modeled: that rule authorizes a *class* of persons to petition the supreme court for authorization to practice law with the approval of the Court without resorting to another branch of government of this state. *Compare* Proposed R. Regulating Fla. Bar Chapter 22 and R. Regulating Fla. Bar Chapter 21. Because the executive branch plays no role in the military spouse rule, the separation of powers problem is avoided in its entirety. Additionally, the presence of a military spouse in Florida is involuntary, while an out of state lawyer who wishes to be employed by the Florida executive branch is in Florida voluntarily.

Character and Fitness

Fla. Bar Admiss. R. 1-14.1 states the purpose of the character and fitness evaluation by the Florida Board of Bar Examiners: “The primary purposes of the character and fitness investigation before admission to The Florida Bar are to protect the public and safeguard the judicial system.” The bar is concerned that under the proposed rules, out of state lawyers will become full members of The Florida Bar, albeit for a period of no more than 3 years, without

the rigorous character and fitness evaluation required for all Florida Bar members. *See Fla. Bar Admiss. R. 2-12 and 3.*

This Court has demonstrated its commitment to protecting the public and the judicial system by the rigorous review of applicants to bar admission:

The Florida Board of Bar Examiners, as the administrative arm of this Court charged with the task of establishing and maintaining responsible admissions requirements, *see Fla. Bar Admiss. R. 1-14.2*, has been delegated the important responsibility of safeguarding the interests of all Floridians. This serious responsibility stems from the recognized principle that an attorney licensed to practice law in ***247** this state is capable of both rendering tremendous good, but is also in a position to inflict harm if care and caution are not implemented. The members of The Florida Bar, by their very nature as attorneys, are licensed to become intimately involved in the lives and matters of clients, and anything less than exacting standards of admission exposes Floridians to unacceptable risks. Thus, before the Board can recommend to this Court that an applicant be admitted to the Bar, it must be confident that the person is qualified with regard to both character and fitness, and also possesses a certain minimum technical and educational competence. *See Fla. Bar Admiss. R. 1-16.*

Amends. to Rules of the Supreme Ct. Relating to Admissions to the Bar, 843 So. 2d 245, 246–47 (Fla. 2003).

The bar could not agree more.

The proponents state that these concerns are ameliorated by the fact that lawyers admitted to The Florida Bar under this process will represent “sophisticated government clients, not the private

clients that the Bar’s practice regulations have historically existed to protect” as noted in the petition. However, the proposal has been revised from the initial notice to include lawyers employed by a Public Defender who, although employed by the state, represent individuals charged with crimes. Even if the proposal were limited to lawyers representing “the government,” lawyers admitted under this proposal would be held out as members of The Florida Bar and would practice in Florida’s judicial system. The character of a lawyer making decisions and taking actions on behalf of the citizens of the state of Florida as a whole are just as important as the lawyer advising individual Floridians.

Of note, of the 5 jurisdictions the petitioner lists in Footnote 1 as examples of states allowing for admission without examination, 4 require approval by a board of bar examiners with some form of character and fitness review.³ Of the 5, Nevada does not appear to

³ Rules of the Board of Bar Examiners of the State of Delaware 43 states that lawyers will only be permitted to practice “only upon recommendation of the Board and the filing of the following documents with the Board: (a) An application including such information as shall be required on forms therefor supplied by the Board...”; New Mexico Rule Governing Admission to the Bar 15-304(D) provides that “The board shall make a determination about the character and fitness of an applicant as set forth in Rule 15-205 NMRA for any applicant who has submitted an application for a license under this rule”; Rule of the Supreme Court of Kentucky 2.112(2)(c) requires applicants for limited admission provide “Such other affidavits or materials as shall be deemed necessary by the Character and Fitness Committee in order to satisfy the Committee of the applicant's moral character and fitness to practice before the Court of this Commonwealth”; Rule Governing Admission to the Bar In Missouri 8.105(b) states “Licensure pursuant to this Rule 8.105 is not a matter of right and shall be granted only in those cases where the public interest, considering the character, background and employment of the applicant, is furthered by issuing a license.”

have some form of character and fitness evaluation, and the rule states that “Persons certified to practice under this rule are not active members of the State Bar of Nevada.” Nevada Supreme Court Rule 49.1(6). Thus, although authorized to practice in Nevada to provide legal services as clinical law faculty members, these out of state lawyers are not Nevada bar members.

The bar also notes that R. Regulating Fla. Bar Chapter 21, after which the proposal was modeled, requires character and fitness investigation by the Florida Board of Bar Examiners. There currently are no circumstances under which a person can become a Florida Bar member without that review to establish the high moral character this Court demands of the lawyers it regulates.

During the course of the bar’s discussion of the proposal, the bar received 2 comments in opposition to the proposal which are attached as Appendix A.

Should the Court deny the petition, the bar invites the petitioners to collaborate with the bar on potential solutions to support their objectives within the bounds of the constitution and while protecting the citizens of the state of Florida.

The bar respectfully requests that this Court deny the petition.

Respectfully submitted,

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

Rosalyn Sia Baker-Barnes
President 2025-26
Florida Bar Number 327920

Michael Fox Orr
President-elect 2025-26
Florida Bar Number 14594

Elizabeth Clark Tarbert
Director, Lawyer Regulation Division
Florida Bar Number 861294

The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
Primary E-mail Address:
jdoyle@floridabar.org
Secondary E-mail Address:
rules@floridabar.org

CERTIFICATE OF TYPE SIZE AND STYLE

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

s/s Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been sent by e-mail to the following individuals on this 11th day of September, 2025:

James Uthmeier, jenna.hodges@myfloridalegal.com
David Arthmann, davidarthmann@flhsmv.gov
David Axelman, david.axelman@eog.myflorida.com
John James Bajger, john.bajger@myfloridalegal.com
Samantha-Josephine Baker, sammy-jo.baker@fdc.myflorida.com
Christopher John Baum, christopher.baum@myfloridalegal.com
C. Suzanne Bechard, carlasuzanne.bechard@myfloridalegal.com
Andrew Joseph Benard, andrew.benard@fdva.fl.gov
Judy Bone, judy.bone@fldoe.org
Alysson Hall Bradley, alysson.bradley@flhealth.gov
Lizabeth A. Brady, liz.brady@myfloridalegal.com
David William Bundy, david.bundy@myfloridalegal.com
William David Chappell, david.chappell@fldoe.org
Kristen Krueger Clemons, kristen.clemons@fdc.myflorida.com
David Costello, dcostello@bsflp.com
Rebekah Ann Davis, rebekah.davis@dot.state.fl.us
Jeffrey Paul Desousa, jeffrey.desousa@myfloridalegal.com
Timothy E. Dennis, timothy.dennis@myfloridalegal.com
George Espy Doty, III, gedoty@gmail.com
Dane Morris Dunson, dmd8e@virginia.edu
Samuel Francis Elliott, samuel.elliott@myfloridalegal.com
Brian Lee Fernandes, brian.fernandes@myfloridalegal.com
Andrew Rubin Fier, andrew.fier@myfloridalicense.com
Nathan Andrew Forrester, nateforrester@yahoo.com
Laura Lee Gallagher, laura.gallagher@ahca.myflorida.com
Sonia Garcia-Solis, sonia.garciasolis@myfloridalegal.com
Kevin Andrew Golembiewski,

kevin.golembiewski@myfloridalegal.com
Robert Gregg, robert.gregg@myfloridalegal.com
John Matthew Guard, johnmguard@hotmail.com
Mark Sean Hamilton, mark.hamilton@floridarevenue.com
Paula Harrigan, paula.harrigan@fldoe.org
Joseph E. Hart, joe.hart@floir.com
Joseph Monroe Helton, Jr., joseph.helton@ahca.myflorida.com
Sonya Roebuck Horbelt, sonya.horbelt@myfloridalegal.com
Allen Liang Huang, allen.huang@myfloridalegal.com
Nicole Hults, nicole.hults@dot.state.fl.us
Daniel Andrew Johnson, dan.johnson@fdc.myflorida.com
Christopher Gilman Krampert, christopher.krampert@fdva.fl.gov
Kristen Grace Larson, kristen.larson@dms.fl.gov
Zachary Loyed, zachary.loyed@eog.myflorida.com
Darya Daniela Massoudi, daryamassoudi@gmail.com
John Lewis Milla, john.milla@fldjj.gov
Brandi Lynne Miller, brandi.miller@myfloridalicense.com
Darrick William Monson, darrick.monson@myfloridalegal.com
Ryan Dean Newman, ryan.newman@eog.myflorida.com
Christine Pratt, christine.pratt@myfloridalegal.com
James Leigh Richmond, james.richmond@fldoe.org
Ivy Rollins, ivy.rollins@myfloridalegal.com
Tonja Vickers Rook, tonja.rook@myfloridalegal.com
Erik Sayler, saylere@elderaffairs.org
Robert Scott Schenck, schenckrs@gmail.com
Jeremy B. Scott, jeremy.scott@myfloridalegal.com
Andrew Taylor Sheeran, andrew.sheeran@ahca.myflorida.com
Gregory Scott Slemper, greg.slemper@myfloridalegal.com
Foster Swartz, foster.swartz@myfloridalegal.com
Elizabeth Teegen, elizabeth.teegen@myfloridalegal.com
Edward Alexander Tellechea, ed.tellechea@myfloridalegal.com
Matthew Aaron Toplak, matttoplak@gmail.com
Rajan Kumar Vasisht, rajankvasisht@gmail.com
Rana Marie Wallace, ranawallace@fcor.state.fl.us
Nicholas Weilhammer, nicholas.weilhammer@myfloridalegal.com
W. Joseph Werner, Jr., joewerner1978@gmail.com

Joseph Auger Whealdon, III, jwhealdon@jimersonfirm.com
Bonnie Wilmot, bonnie.wilmot@fldoe.org
Justin George Wolfe, justin.g.wolfe@dep.state.fl.us
William G. Pafford, pafford2@flcourts.org
Ryan D. Barack, rbarack@employeeerights.com

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902