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# 2006 Changes to the Florida Rules of Professional Conduct

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# 2006 CHANGES TO THE FLORIDA RULES OF PROFESSIONAL CONDUCT

HEATHER PERRY BAXTER\*

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## I. INTRODUCTION

2006 marks a big year for changes to the *Florida Rules of Professional Conduct* (RPC). This article will set forth the changes and explain the process of how they evolved. Part II gives a brief history of the *Florida Rules of Professional Conduct*. Part III explains the procedure for how these changes were implemented. Part IV explains the general changes throughout the rules, as well as the changes to the preamble, scope, and

terminology section. Part V explains the relevant changes in detail. Part VI concludes the article.

## II. A BRIEF HISTORY

In 1987, the Florida Bar adopted the *Rules of Professional Conduct*, which are found in Chapter 4 of the *Rules Regulating the Florida Bar*.<sup>1</sup> These rules were patterned after the American Bar Association *Model Rules of Professional Conduct (Model Rules)*.<sup>2</sup> Prior to 1987, Florida lawyers were governed by the *Code of Professional Responsibility*, but the *Code* lacked guidance in many matters and was unclear in many instances.<sup>3</sup> The rules have been amended over the years, but the changes that went into effect in May of 2006 mark a large overhaul. The amendments reflect several years of research and collaboration of many of Florida's top experts on ethics and are based on major changes that were made to the *Model Rules* in 2002.<sup>4</sup>

## III. PROCEDURE

In 1997, the American Bar Association (ABA) formed the Ethics Commission 2000.<sup>5</sup> The purpose of this organization was to review the *Model Rules* and to recommend changes.<sup>6</sup> The proposed changes were made final at the end of the ABA February 2002 Midyear Meeting.<sup>7</sup> The

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1. Florida Bar, Board Information Paper: Lawyer Solicitation (2004), <http://www.floridabar.org> (follow "Media Resources" hyperlink; then follow "Issue Papers" hyperlink; then follow "Rules of Professional Conduct" hyperlink).

2. *Id.*

3. *Id.*

4. Florida Bar, Special Committee to Review the ABA Model Rules, <http://www.floridabar.org> (follow "Publications" hyperlink; then follow "Bar Reports" hyperlink; then follow "Special Committee to Review the ABA Model Rules" hyperlink) (last visited Jan. 28, 2007).

5. American Bar Association, Ethics 2000 Commission, <http://www.abanet.org/cpr/e2k/> (last visited Jan. 28, 2007).

6. *Id.*

7. *Id.* In 2002, the rules were further amended to encompass changes recommended by the Multi-jurisdictional Practice Commission and the Standing Committee on Ethics and Professional Responsibility. *Id.* They were also amended in 2003 based on the House of Delegates debate regarding the Task Force on Corporate Responsibility. *Id.* This article does not address those changes.

Florida Bar then created the Special Committee to Review the ABA *Model Rules* 2002 (“Committee”).<sup>8</sup> It was charged with analyzing “the changes to the ABA Model Rules of Professional Conduct, compar[ing] them with the existing Rules Regulating The Florida Bar, and consider[ing] whether the Florida Bar should adopt the recommended changes.”<sup>9</sup> The Committee not only considered the changes adopted by the ABA, but also reviewed the existing *Model Rules* to determine how they differed from Florida’s rules.<sup>10</sup> After an exhaustive review, the Committee submitted its proposals for amendment of the *Rules of Professional Conduct* (“RPC”) to the Florida Bar Board of Governors.<sup>11</sup> The Board approved the proposals, with the exception of minimal changes to rules 4-1.8 and 5-1.1.<sup>12</sup> The changes were then published in the October 15, 2004 edition of *The Florida Bar News*.<sup>13</sup> On December 1, 2004, after hearing comments, the Florida Bar submitted its *Petition to Amend the Rules Regulating the Florida Bar*<sup>14</sup> to the Supreme Court of Florida.<sup>15</sup> The Court heard oral arguments on the petition in June 2005.<sup>16</sup> On March 23, 2006, the Supreme Court of Florida issued *In re Amendments to the Rules Regulating the Florida Bar*,<sup>17</sup> incorporating most of the Bar’s amendment suggestions.<sup>18</sup> The new rules became effective on May 22, 2006.<sup>19</sup>

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8. Special Committee to Review the ABA Model Rules, *supra* note 4. This Committee was chaired by Adele I. Stone. Petition app. D at 2, *In re Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d 417 (Fla. 2006) (No. SC04-2246), <http://www.floridabar.org> (follow “Publications” hyperlink; then follow “Bar Reports” hyperlink; then follow “Special Committee to Review the ABA Model Rules” hyperlink) [hereinafter Appendix D]. Other members were Andrew S. Berman, Randolph Braccialarghe, Timothy P. Chinaris, Mark K. Delegal, Timothy W. Gaskill, Charles P. Pillans, III, The Honorable Ronald J. Rothschild, and D. Culver Smith, III. *Id.* Elizabeth Clark Tarbert served as counsel to the committee. *Id.*

9. Special Committee to Review the ABA Model Rules, *supra* note 4.

10. Appendix D, *supra* note 8, at 2.

11. *In re Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d 417 (Fla. 2006).

12. *Id.* at 418.

13. *Id.*

14. Petition, *In re Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d 417 (Fla. 2006) (No. SC04-2246), <http://www.floridabar.org> (follow “Publications” hyperlink; then follow “Bar Reports” hyperlink; then follow “Special Committee to Review the ABA Model Rules” hyperlink; then follow “Download the Petition” hyperlink) [hereinafter Petition].

15. Special Committee to Review the ABA Model Rules, *supra* note 4.

16. Supreme Court of Florida, Oral Argument Schedule, [http://www.floridasupremecourt.org/clerk/oral\\_argument\\_cal/2005/OAJune2005.pdf](http://www.floridasupremecourt.org/clerk/oral_argument_cal/2005/OAJune2005.pdf).

17. 933 So. 2d 417 (Fla. 2006).

18. *Id.* at 417–18. The court issued a revised opinion on June 29, 2006, changing only scrivener’s errors and denying a rehearing. *Id.* at 417.

19. *Id.* at 420.

#### IV. CHANGES TO THE PREAMBLE, SCOPE, AND TERMINOLOGY SECTIONS

##### A. *General Changes Throughout the Rules*

Two changes were made that pervade throughout the RPC, both of which deal with consent. First, the rules change the term “consent after consultation” to “informed consent.”<sup>20</sup> The ABA Ethics 2000 Commission suggested this change because it believed it “clarified and strengthened the requirement of communication with clients regarding consent.”<sup>21</sup> The amended rules defined “informed consent” as “agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”<sup>22</sup> In its Petition, the Florida Bar stated that it agreed with the ABA that “the lawyer’s duty of communication to the client is more clearly delineated by this definition.”<sup>23</sup>

Based on the recommendation of the ABA, the Florida Bar also suggested that consent be “confirmed in writing,” in certain rules.<sup>24</sup> This consent need not be signed by a client, but if oral consent is obtained, the attorney must send a written statement to the client confirming he or she gave consent.<sup>25</sup> The Florida Bar did not adopt this change with regard to as many rules as suggested by the ABA.<sup>26</sup> Rather, it confined the change to RPC 4-1.7, 4-1.11, and 4-1.12.<sup>27</sup>

After reviewing relevant comments and holding oral argument, the Supreme Court of Florida declined to adopt the change to RPC 4-1.7 as set out by the Florida Bar.<sup>28</sup> Instead, the Court modified the new rule to allow consent to be given, alternatively, “by clear statements . . . on the record at a hearing,” rather than the more restrictive requirement that the consent be in writing.<sup>29</sup> This change was prompted by the dissent voiced from public de-

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20. Appendix D, *supra* note 8, at 4.

21. *Id.* at 4.

22. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 424.

23. Appendix D, *supra* note 8, at 4.

24. *Id.* at 5.

25. *Id.*

26. *Id.*

27. *Id.* RPC 4-1.7 was formerly titled “Conflict of Interest: General Rule” and is now called “Conflict of Interest; Current Clients.” Appendix D, *supra* note 8, at 5. RPC 4-1.11 was formerly titled “Successive Government and Private Employment,” and is now titled “Special Conflicts of Interest for Former and Current Government Officers and Employees.” *Id.* RPC 4-1.12 was called “Former Judge or Arbitrator” and is now titled “Former Judge or Arbitrator, Mediator or Other Third-Party Neutral.” *Id.*

28. *In re Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d 417, 418 (Fla. 2006).

29. *Id.*

fenders across the state who claimed it would be an onerous request to obtain written consent from all of the clients whose cases may pose a conflict of interest.<sup>30</sup> Furthermore, the Supreme Court of Florida declined to adopt the Florida Bar's suggestions for RPC 4-3.3—Candor Toward the Tribunal, RPC 4-3.6—Trial Publicity, RPC 4-3.8—Special Responsibilities of a Prosecutor, and RPC 4-4.1—Truthfulness in Statements to Others.<sup>31</sup>

### B. *Changes to the Preamble*

Many of the changes in the preamble to the *Rules of Professional Conduct* are made to conform to the changes in the *Model Rules*, while others reflect the amendments in the substantive rules.<sup>32</sup> References to a lawyer as an intermediary are deleted, conforming to the deletion of RPC 4-2.2, discussed *infra*.<sup>33</sup> In its place are references to lawyers as third-party neutrals, consistent with the references found in RPC 4-1.12 and a new rule added this year, RPC 4-2.4, which is discussed *infra*.<sup>34</sup> The preamble also instructs lawyers to seek improvement in accessing and furthering public knowledge of the legal system.<sup>35</sup> Finally, the preamble adds further instructions to lawyers on resolving conflicts.<sup>36</sup>

### C. *Changes to the Scope of Rules*

The scope section adds language notifying lawyers that the comments to the rules may be used to alert them to responsibilities they may have under other laws.<sup>37</sup> It also makes references to new rule 4-1.18, which deals with a lawyer's duties to prospective clients.<sup>38</sup> Further, this section clarifies the relationship between the RPC and causes of actions against lawyers, specifically stating that a violation of a rule does not mean a lawyer should automatically be disqualified from a case.<sup>39</sup> Language is also deleted that appears elsewhere in the rules.<sup>40</sup> The paragraph stating that it is a lawyer's

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30. Petition, *supra* note 14, at 15–16.

31. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 418. These rules are discussed *infra* in more detail.

32. Appendix D, *supra* note 8, at 11.

33. *See infra* Part V.B.2.

34. *See infra* Part V.B.4.

35. Appendix D, *supra* note 8, at 13.

36. *Id.* at 14.

37. *Id.* at 15.

38. *Id.*

39. *Id.*

40. Appendix D, *supra* note 8, at 15.



decision whether or not to disclose confidential information is not subject to reexamination was also deleted.<sup>41</sup> This deletion was objected to by Florida Bar member Henry P. Trawick,<sup>42</sup> but the Supreme Court adopted the deletion as recommended by the Florida Bar.<sup>43</sup>

#### D. *Changes to the Terminology Section*

There were several additional terms added to this section that were consistent with changes made throughout the rules.<sup>44</sup> Specifically, definitions for “confirmed in writing,” “informed consent,” “screened,” “tribunal,” and “writing” were added.<sup>45</sup> Moreover, the terms “law firm” and “partner” saw some modifications to their definitions.<sup>46</sup>

### V. CHANGES TO THE RULES

#### A. *Client-Lawyer Relationship*

##### 1. RPC 4-1.1 Competence

No substantive changes are made to this rule, but commentary is added that a lawyer shall “keep abreast of changes in the law and its practice . . . and comply with all continuing legal education requirements to which the lawyer is subject.”<sup>47</sup>

##### 2. RPC 4-1.2 Objectives and Scope of Representation

The changes to this rule were made so that they would conform to the *Model Rules*.<sup>48</sup> One change deals with the power given to a lawyer to take action on behalf of a client if the lawyer has impliedly been given authorization to do so.<sup>49</sup> The new rule seems to give an attorney the power to accept or reject a settlement without consulting the client, as long as the client has given the attorney authorization at the outset to do so.<sup>50</sup> Differing from the

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41. *In re* Amends. to the Rules Regulating the Fla. Bar, 933 So. 2d 417, 423 (Fla. 2006).

42. Appendix D, *supra* note 8, at 252.

43. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d. at 418.

44. *See id.* at 423–24.

45. *Id.*

46. *Id.*

47. *Id.* at 426–27.

48. Petition, *supra* note 14, at 12.

49. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 427.

50. *See id.*

*Model Rules*, the Florida rules only require that a lawyer “reasonably” consult with a client before pursuing an action.<sup>51</sup> The commentary also gives further instructions on the allocation of authority between the client and a lawyer and advises a lawyer that he or she may withdraw if a disagreement develops with his or her client.<sup>52</sup>

The new RPC 4-1.2 completely eliminates subsection (e), which dealt with a lawyer’s duties when a client asks for assistance that is not allowed under the RPC.<sup>53</sup> Commentary to RPC 4-1.2 is added informing the reader to refer to RPC 4-1.4(a)(5) when faced with this situation, as the substance of subsection (e) has been moved to that rule.<sup>54</sup> The commentary also expounds on advice regarding how to avoid assisting a client in committing a crime<sup>55</sup> and agreements limiting the scope of representation.<sup>56</sup>

Additionally, RPC 4-1.2 is one of the rules dealing with informed consent, and the language “consents in writing after consultation” is changed to “gives informed consent in writing” in subsection (c).<sup>57</sup>

### 3. RPC 4-1.3 Diligence

There is no change to the substance of this rule whatsoever.<sup>58</sup> However, language in the comment section is clarified to explain that diligently representing a client does not mean a lawyer has to forego courtesy and respect.<sup>59</sup> For example, a duty to act with promptness does not mean a lawyer should not agree to a postponement if it will not prejudice his or her client.<sup>60</sup> In other words, do not object just for the sake of objecting.

The commentary also adds a discussion on the obligation of the lawyer to prosecute an appeal for a client, stating that such an obligation is dependent upon the scope of representation agreed to between the client and the lawyer.<sup>61</sup>

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51. *Id.*

52. *Id.* at 428.

53. *Id.* at 427.

54. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 430.

55. *Id.* at 429.

56. *Id.* at 428–429.

57. *Id.* at 427. *See also* discussion *supra* Part IV.A.

58. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 430.

59. *Id.*

60. *Id.*

61. *Id.* at 431.

#### 4. RPC 4-1.4 Communication

The changes to this rule place a stronger obligation on the attorney to communicate with his or her client.<sup>62</sup> The rule is now much more specific on how an attorney is to accomplish this.<sup>63</sup> For example, in subsection (a)(1), the rule now requires an attorney to “inform the client of any decision or circumstance” that would require informed consent by the client.<sup>64</sup> The comments to this subsection point specifically to a settlement offer, and explain that an attorney must inform the client of such an offer unless, pursuant to RPC 4-1.2(a), the attorney and client have come to a previous understanding as to what would be an acceptable settlement.<sup>65</sup> Subsection (a)(2) mandates that an attorney consult with his or her client about the means of accomplishing the goals of the representation.<sup>66</sup> The comments to this section explain that this duty may require an attorney to contact a client prior to the attorney taking actions on the case, but specifically point out that this communication may not be necessary in situations such as a trial.<sup>67</sup>

Subsection (a)(3) requires an attorney keep the client informed about the status of a matter, and the comments for this section do not expound on this concept, except to exemplify matters “such as significant developments affecting the timing or the substance of the representation.”<sup>68</sup> Subsection (a)(4) compels an attorney to promptly comply with requests for information from the client, but the comments explain that in the event a prompt response is not possible, the attorney or his or her staff should at least acknowledge receipt of the request and tell the client when a detailed response should be expected.<sup>69</sup> Subsection (a)(5) places an obligation on the attorney to consult with the client if the attorney believes the client wants him or her to engage in unethical or illegal conduct.<sup>70</sup>

#### 5. RPC 4-1.5 Fees and Costs for Legal Services

Rule 4-1.5 has consistently varied to a great degree among the Model Rule, the Florida Bar rule, and the Supreme Court rule, which each maintain

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62. Petition, *supra* note 14, at 13.

63. *See Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 431.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 431–32.

69. *Id.*

70. *Id.* at 431.

differences.<sup>71</sup> As such, no substantive changes were made to this rule.<sup>72</sup> The amended comments to the rule clarify that although an attorney is prohibited from charging a contingency fee in a domestic relations case generally, contingent fees are acceptable when the attorney is asked to recover post-judgment balances, such as back child support, alimony, etc.<sup>73</sup>

#### 6. RPC 4-1.6 Confidentiality of Information

The beginning of Rule 4-1.6 substitutes “informed consent” for the older “consents after disclosure.”<sup>74</sup> With this exception, not many changes were made to Rule 4-1.6 because, like RPC 4-1.5, this rule differs substantially from the Model Rule.<sup>75</sup> As such, the changes made by the ABA were not applicable to the Florida rule.<sup>76</sup> The commentary adds a paragraph referencing the different rules governing confidentiality of information from prospective clients, former clients, and other conflicts.<sup>77</sup> Additionally, the comments explain that a lawyer may disclose confidential information so he or she can seek advice on ethical violations.<sup>78</sup>

Dissent to this rule was filed by the Sixth Circuit Public Defender, who claimed the language requiring mandatory disclosure of confidential information which prevents “death or substantial bodily harm,” should be deleted as redundant.<sup>79</sup> The Florida Bar disagreed with the dissent, stating the claim was not redundant, and that the comment was not properly brought before the Court because the requirement was already in the rule and was not a change recommended by the Bar.<sup>80</sup>

#### 7. RPC 4-1.7 Conflict of Interest; General Rule

Though it appears the changes to Rule 4-1.7 are momentous, in effect the changes are merely made to conform to and better organize the existing changes of the *Model Rules*.<sup>81</sup> To begin, the title has been changed to *Con-*

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71. Petition, *supra* note 14, at 13.

72. *Id.*

73. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 433.

74. *Id.* at 435.

75. Petition, *supra* note 14, at 14.

76. *See Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 435.

77. *Id.*

78. *Id.* at 437.

79. Petition, *supra* note 14, at 14.

80. *Id.*

81. *Id.* at 15.

*flict of Interest; Current Clients* to reflect the specific purpose of the rule.<sup>82</sup> As already noted, *supra*, the rule now requires a client to give informed consent, which must be “confirmed in writing or clearly stated on the record.”<sup>83</sup> In its petition, the Florida Bar required consent to be in writing, but after commentary, the Supreme Court of Florida eased the requirement so that informed consent could also be stated merely on the record.<sup>84</sup>

#### 8. RPC 4-1.8 Conflict of Interest; Prohibited and Other Transactions

Changes are instituted in this rule to strengthen the protection of clients and also to conform to changes in the *Model Rules*.<sup>85</sup> If a client and attorney enter into a business transaction with each other, subdivision (a)(2) now requires the attorney to inform the client, in writing, of the benefits of seeking independent legal counsel.<sup>86</sup> Furthermore, subdivision (a)(3) mandates that the written consent from the client must spell out the terms of the transaction and the attorney’s role in the transaction.<sup>87</sup> Subdivision (c) prevents the attorney from soliciting a substantial gift from a client, which adds to the current rule that an attorney is prohibited from preparing an instrument for a client that would give the lawyer a substantial gift.<sup>88</sup> Subsection (f) continues to put limits on a lawyer’s ability to accept compensation from a third party,<sup>89</sup> and subsection (1) now requires a client to give “informed consent.”<sup>90</sup> In addition, subdivision (g) requires consent to an aggregate settlement to be in writing.<sup>91</sup> Finally, a new subdivision (k) has been created that attributes all conflicts listed in the rule to all lawyers in the same firm.<sup>92</sup> This differs from the previous rule in which subdivision (c) was exempted from this imputation.<sup>93</sup>

Extensive commentary is added to this rule in an effort to provide more guidance to lawyers.<sup>94</sup> It clarifies that subsection (a) “does not apply to ordi-

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82. *Id.*

83. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 440; *see also* discussion *supra* Section IV.A.

84. *Id.*; Petition, *supra* note 14, at 7.

85. Petition, *supra* note 14, at 16.

86. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 440.

87. *Id.* at 441; Petition, *supra* note 14, at 16.

88. Petition, *supra* note 14, at 16.

89. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 441.

90. *Id.*

91. Petition, *supra* note 14, at 16.

92. *Id.*

93. *Id.*

94. *Id.*

nary fee agreements.”<sup>95</sup> Further, the commentary explains that subdivision (a)(2) does not apply if a client has obtained independent counsel.<sup>96</sup> It also explains that this rule does not prohibit a lawyer from being appointed as the personal representative of a client’s estate, or another comparable fiduciary position, as long as the appointment meets the requirements of RPC 4-1.7.<sup>97</sup> Lawyers are further cautioned that they “may not subsidize lawsuits or administrative proceedings . . . , including making or guaranteeing loans to their clients.”<sup>98</sup> A great deal of guidance is also added regarding third-party compensation and aggregate settlements.<sup>99</sup> Finally, the commentary explains that the new subdivision (k) applies to all lawyers in the same firm.<sup>100</sup>

### 9. RPC 4-1.9 Conflict of Interest; Former Client

The ABA adopted substantial amendments to this rule, most of which the Florida Bar failed to recommend.<sup>101</sup> Agreeing with the Florida Bar’s recommendations, the Supreme Court of Florida instituted minimal changes to this rule.<sup>102</sup> As noted *supra*, RPC 4-1.9 is one of the rules that changed the terminology “consent after consultation” to “gives informed consent.”<sup>103</sup> The ABA amendments require this consent to be in writing.<sup>104</sup> The Florida Bar did not recommend this change, because it believes conflicts involving former clients are minimized by the mere fact that they are former clients.<sup>105</sup>

The new rules delete the definition of “generally known”<sup>106</sup> from the rule and add it to the commentary,<sup>107</sup> for consistency purposes.<sup>108</sup> The amendment to the commentary clarifies that the term “generally known” is subject to a “but for” test.<sup>109</sup> Essentially, the information is not generally known if the attorney would not have known the information “but for” the

95. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 442.

96. *Id.*

97. *Id.* at 443.

98. *Id.*

99. *See id.* at 444.

100. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 444–45.

101. Petition, *supra* note 14, at 18.

102. *See Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 445–46.

103. Petition, *supra* note 14, at 18. *See also* discussion *supra* Part IV.A.

104. *Id.*

105. *Id.*

106. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 445. This terminology refers to information being used to the disadvantage of a client unless it has become “generally known.” *Id.*

107. Petition, *supra* note 14, at 18.

108. *Id.*

109. *Id.*; *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 446.

attorney-client relationship.<sup>110</sup> The new rules also decline to adopt the ABA's attempt to clarify the term "substantially related,"<sup>111</sup> and instead give their own definition in the commentary.<sup>112</sup>

#### 10. RPC 4-1.10 Imputed Disqualification; General Rule

The changes to this rule are some of the most substantial throughout the RPC.<sup>113</sup> To begin, the name has been changed to *Imputation of Conflicts of Interest; General Rule*.<sup>114</sup> Under the new rule, the conflict of one attorney is no longer imputed to the entire firm if that conflict is based on a "personal interest" of that attorney and the representation of the client would not be affected.<sup>115</sup> Added commentary to the rule exemplifies a situation where an attorney's strong political beliefs are in conflict with the representation of the client.<sup>116</sup> The rationale behind this change is that loyalty and the protection of confidential information is not a concern when the conflict arises from the personal conflict of one lawyer.<sup>117</sup> Therefore, as long as the other lawyers in the firm are not affected by the personal conflict of the individual attorney, they should be able to represent the client.<sup>118</sup>

The new rule also adds subdivision (e), which directs that imputation of conflicts for government lawyers is addressed by RPC 4-1.11.<sup>119</sup> Also added to the commentary is language addressing the conflicts of nonlawyer employees.<sup>120</sup> The commentary explains that the conflict of a nonlawyer employee is not imputed to the entire firm, though such employees should be screened from participation in the matter.<sup>121</sup> Last, the definition of a law firm is deleted from the commentary since that definition is now found in the terminology section.<sup>122</sup>

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110. Petition, *supra* note 14, at 18; *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 446.

111. Petition, *supra* note 14, at 18.

112. *Id.* at 18–19; *see Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 445.

113. *See generally Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d 417 (Fla. 2006).

114. *Id.* at 446.

115. *Id.*; Petition, *supra* note 14, at 19.

116. Petition, *supra* note 14, at 19.

117. *See id.*

118. *Id.*

119. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 446.

120. *Id.* at 448.

121. *Id.*; Petition, *supra* note 14, at 19.

122. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 446–47.

### 11. RPC 4-1.11 Successive Government and Private Employment

This rule is now titled, *Special Conflicts of Interest for Former and Current Government Officers and Employees*.<sup>123</sup> The change of title was intended to reflect the content of the rule more accurately.<sup>124</sup> Subdivision (a) now hosts a new proviso that a former government employee, or public officer, is subject to RPC 4-1.9(b)—the rule dictating that an attorney cannot use information learned from a former client to his or her disadvantage, unless that information has become generally known.<sup>125</sup> “Consents after consultation” is changed to “gives its informed consent, confirmed in writing, to the representation.”<sup>126</sup> Also, the language in subdivision (b) is clarified with regard to the screening of disqualified lawyers.<sup>127</sup>

The definition of “confidential government information” has been moved to new subdivision (c) from former subdivision (e).<sup>128</sup> The old subdivision (c) has been renumbered as subdivision (d), and now includes a mandate that government employees are subject to RPC 4-1.7—*Conflict of Interest; Current Clients*—and RPC 4-1.9—*Conflict of Interest; Former Client*.<sup>129</sup> Subdivision (d) also changes the exception to conflicts regarding government employees.<sup>130</sup> The prior rules allowed a current government employee to participate in a matter in which he or she was involved in private practice if there was no one else authorized to act in his or her stead.<sup>131</sup> The new rules require “informed consent” from the proper agency.<sup>132</sup> The comments to this rule have changed, clarifying the changes made.<sup>133</sup> Specifically, the comments explain the relationship between RPC 4-1.9—*Conflict of Interest; Former Clients*—and this rule.<sup>134</sup> They also explain why government lawyers should be treated differently than private lawyers, explain what screening is, and define “‘matter’ as used in the rule.”<sup>135</sup>

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123. *Id.* at 448.

124. Petition, *supra* note 14, at 20.

125. *Id.*; R. REGULATING THE FLA. BAR R. 4-1.9 (2006).

126. Petition, *supra* note 14, at 20.

127. *Id.*

128. *See id.*; *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 449.

129. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 449.

130. Petition, *supra* note 14, at 20.

131. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 449.

132. *Id.*

133. Petition, *supra* note 14, at 20.

134. *Id.*

135. *Id.*



## 12. RPC 4-1.12 Former Judge or Arbitrator

The title to this rule has been changed to encompass other third-party neutrals, such as former mediators.<sup>136</sup> The title now reads, *Former Judge or Arbitrator, Mediator or Other Third-Party Neutral*.<sup>137</sup> Because more lawyers are serving in the capacity of third-party neutrals, the Florida Bar and the Supreme Court of Florida found it necessary to make it clear that this rule applies to all lawyers who have served in this capacity.<sup>138</sup> The rule also adds the caveat that all parties must give informed consent, which is confirmed in writing, to waive the conflict of interest.<sup>139</sup> The Florida rule also adds commentary that a Bar member who happens to also be a certified mediator must adhere to other rules relating to certified mediators.<sup>140</sup>

## 13. RPC 4-1.13 Organization as Client

The only change to this rule requires that a lawyer explain the identity of the client if “the lawyer knows or reasonably should know that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing.”<sup>141</sup> This is compared to the prior language, which only required an explanation if it was “apparent” to the attorney.<sup>142</sup> The commentary regarding the identity of a government client is amended for clarity purposes, specifically addressing a government entity as a client.<sup>143</sup>

## 14. RPC 4-1.16 Declining or Terminating Representation

Most of the changes to this rule were made to conform to the *Model Rules*.<sup>144</sup> One change which is not consistent with the *Model Rules*, however, is the new requirement for the mandatory withdrawal of an attorney from a case if the client has used the attorney’s services to commit a crime.<sup>145</sup> Prior to this change, an attorney was permitted to withdraw under such circumstances, but the rules did not require it.<sup>146</sup> An attorney is also

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136. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 452.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.* at 453.

141. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 453.

142. *Id.*

143. *Id.* at 454; *see also* Petition, *supra* note 14, at 23.

144. Petition, *supra* note 14, at 24.

145. *Id.*

146. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 455.

permitted, but not required, to withdraw if a client insists on taking action "with which [a] lawyer has a fundamental disagreement," pursuant to subdivision (b)(2).<sup>147</sup> Subdivision (c) now requires a lawyer to obtain court permission for withdrawal when applicable.<sup>148</sup> The comments exemplify situations, such as pending litigation, where counsel may be required to obtain leave of court before withdrawal.<sup>149</sup> Subdivision (d) now adds mention of refunding unused cost advances, similar to unused fees.<sup>150</sup>

#### 15. RPC 4-1.17 Sale of Law Practice

Based on changes to the *Model Rules*, Florida has modified this rule to allow the sale of part of a law practice, rather than the former requirement that the entire practice be sold.<sup>151</sup> The Florida Rule differs still from the Model Rule, however, in that the ABA requires an attorney to discontinue practicing law in the area of the practice that is sold, while Florida does not.<sup>152</sup>

#### 16. RPC 4-1.18 Duties to Prospective Client

This is an entirely new rule, based on the new Model Rule 1.18, which essentially addresses an attorney's duty to maintain the confidences of a prospective client.<sup>153</sup> Subdivision (a) defines a prospective client, while subdivision (b) explains that the confidences of a prospective client must be kept, regardless of whether the client retains the attorney.<sup>154</sup> Subdivision (c) prevents an attorney from representing a client whose interests may be adverse to another prospective client, if information gained from the prospective client "could be used to the disadvantage of" the prospective client.<sup>155</sup> The Model Rule boasts the language "could be significantly harmful to," rather than "could be used to the disadvantage of."<sup>156</sup> The Florida Bar recommended the change in language because it thought the suggested verbiage

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147. *Id.*

148. *Id.* at 456.

149. *Id.*

150. *Id.*

151. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 457.

152. *Petition*, *supra* note 14, at 25.

153. *Id.*

154. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 459.

155. *Id.* at 459-60.

156. *Petition*, *supra* note 14, at 26.

more closely conformed to the existing concepts in Florida,<sup>157</sup> and the Supreme Court of Florida agreed.<sup>158</sup>

The Florida Bar and the Supreme Court of Florida did not agree, however, on one aspect of the new ABA Rule.<sup>159</sup> The ABA adopted two exceptions to the ban on representation based on subdivision (c).<sup>160</sup> First, if both the affected client and prospective client give informed consent, which is confirmed in writing, the representation will be allowed.<sup>161</sup> Likewise, if the lawyer who received the information was screened from the process, the firm may continue to represent the client.<sup>162</sup> The Florida Bar found this unacceptable, as the Florida rules do not generally use screening to resolve conflicts, with the exception of government lawyers and judges.<sup>163</sup> The Supreme Court of Florida disagreed and adopted the rule as written by the ABA.<sup>164</sup>

## B. Counselor

### 1. RPC 4-2.1 Adviser

No substantive changes were made to this rule, but the commentary was amended to add a discussion about informing clients of reasonable alternative dispute resolution.<sup>165</sup>

### 2. RPC 4-2.2 Intermediary

The ABA deleted this rule in its entirety from the *Model Rules*.<sup>166</sup> Florida chose to follow suit and also deleted the rule.<sup>167</sup> The ABA originally adopted RPC 4-2.2 because the ABA considered the representation of multiple clients to be prohibited.<sup>168</sup> Today, however, it is much more acceptable to represent multiple clients, and the Florida Bar reasoned that RPC 4-1.7 handles issues regarding this type of representation.<sup>169</sup> In an effort to main-

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157. *See id.*

158. *See Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 459–60.

159. *Id.* at 419.

160. Petition, *supra* note 14, at 26.

161. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 460.

162. *Id.*

163. Petition, *supra* note 14, at 26.

164. *See Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 418–419.

165. *Id.* at 461; Petition, *supra* note 14, at 27.

166. Petition, *supra* note 14, at 27.

167. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 462–63.

168. Petition, *supra* note 14, at 27.

169. *Id.*

tain continuity, the Florida Bar and the Supreme Court of Florida decided to designate the number as "open," rather than renumber the entire section.<sup>170</sup>

### 3. RPC 4-2.3 Evaluation for Use by Third Persons

In subdivision (a), the term has been changed to "provide" evaluation, rather than "undertake" evaluation.<sup>171</sup> Further, "informed consent" is substituted for the prior "consents after consultation," as discussed in Section IV.A., above.<sup>172</sup> The additions to the commentary emphasize that a lawyer shall not make a knowingly false statement in performing an evaluation.<sup>173</sup> The commentary refers the reader to RPC 4-4.1, which deals with "Truthfulness in Statements to Others."<sup>174</sup>

### 4. RPC 4-2.4 Lawyer Serving as Third-Party Neutral

The ABA adopted an entirely new rule discussing lawyers serving as third-party neutrals, and the Florida Bar recommended the adoption of this rule in its entirety to the Supreme Court of Florida.<sup>175</sup> The Court agreed, and new RPC 4-2.4 was born.<sup>176</sup> The new rule defines a lawyer as a third-party neutral "when the lawyer assists [two] or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them."<sup>177</sup> The rule itself gives such examples as an arbitrator or mediator.<sup>178</sup> The rule requires a lawyer serving in this capacity to inform the parties that he or she does not represent them.<sup>179</sup> Furthermore, the lawyer has a duty to correct any misunderstanding regarding the lawyer's role.<sup>180</sup> Extensive commentary is added to explain these new requirements.<sup>181</sup>

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170. *Id.* at 27-28.

171. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 463.

172. *Id.* at 464; see also *supra* Section IV.A. (discussing the general changes involving consent).

173. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 464-65.

174. *Id.*

175. *Petition*, *supra* note 14, at 28.

176. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 418.

177. *Id.* at 465.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 465.

### C. *Advocate*

#### 1. RPC 4-3.1 Meritorious Claims and Contentions

This rule has always required an attorney to have a valid basis to bring an action, and the changes to this rule insert the terms “in law and fact” after the word “basis.”<sup>182</sup> The commentary explains a lawyer’s obligation to investigate a client’s case before arguing the client’s case.<sup>183</sup> The rule also points out that constitutional law may require an attorney defending a criminal client to present a claim that would otherwise be prohibited under this section, but such constitutional matters take precedence over the *Model Rules*.<sup>184</sup>

#### 2. RPC 4-3.2 Expediting Litigation

No substantive changes were made to this rule, but language was added that a lawyer shall not routinely delay a matter for his or her own convenience.<sup>185</sup>

#### 3. RPC 4-3.3 Candor Toward the Tribunal

The Florida Bar proposed several changes to this rule, which were rejected by the Supreme Court of Florida.<sup>186</sup> The Court cited concerns with possible contradictions within the proposed rule, and directed the Florida Bar to study the rule further.<sup>187</sup>

#### 4. RPC 4-3.6 Trial Publicity

The ABA Model Rule regarding trial publicity varies greatly from the Florida rule.<sup>188</sup> The Florida Bar recommended changes to the Florida rule to conform to ABA Model Rule 3.6, but the Supreme Court of Florida rejected these changes.<sup>189</sup>

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182. *Id.* at 466.

183. *See id.*

184. *Id.*

185. *Id.* at 466–67.

186. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 419.

187. *Id.*

188. Compare MODEL RULES OF PROF’L CONDUCT R. 3.6 (2002), with R. REGULATING THE FLA. BAR R. 4-3.6 (2006).

189. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 419.

### 5. RPC 4-3.7 Lawyer as Witness

There were no substantive changes to this rule.<sup>190</sup> Some terminology is changed, in an effort to conform to the *Model Rules*, and commentary is added explaining the rationale for the rule.<sup>191</sup>

### 6. RPC 4-3.8 Special Responsibilities of a Prosecutor

The Florida Bar proposed some extensive changes to this rule, including the implementation of an obligation on the part of the prosecutor to ensure a person accused of a crime has been advised of the right to counsel.<sup>192</sup> The Supreme Court of Florida chose not to adopt any of the changes recommended by the Florida Bar.<sup>193</sup> The Court explained its reasoning for not adopting these changes in detail, and essentially found that the obligations being placed on prosecutors under this section would be more proper under the criminal procedure rules, rather than the RPC.<sup>194</sup>

### 7. RPC 4-3.9 Advocate in Nonadjudicative Proceedings

This rule deals with the representation of a client before a body such as the legislature or an administrative agency.<sup>195</sup> The rule is expanded here to require an attorney to deal honestly with the tribunal.<sup>196</sup> Diverging from the *Model Rules*, the Florida rule now allows ex parte contacts with the decision maker.<sup>197</sup> The Florida Bar found such a prohibition was “inconsistent with the legislative and administrative process in government” and “unduly burdensome to practicing attorneys.”<sup>198</sup>

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190. *See id.* at 467.

191. *Id.*

192. Petition, *supra* note 14, at 31.

193. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 419.

194. *Id.*

195. *Id.* at 468.

196. *Id.* The prior rule stated that an attorney “should” deal honestly, and the new rule dictates that an attorney “must” be honest. *Id.*

197. Petition, *supra* note 14, at 32.

198. *Id.*

#### D. Transactions with Persons Other than Clients

##### 1. RPC 4-4.1 Truthfulness in Statements to Others

There are no substantive changes to this rule, but commentary is added providing guidance on the meaning of misrepresentation.<sup>199</sup> The changes proposed by the Florida Bar conformed generally to the *Model Rules*, but deviated slightly.<sup>200</sup> Finding no explanation for the deviation, the Supreme Court of Florida chose to adopt the commentary as found in the Model Rule, as opposed to the proposal by the Florida Bar.<sup>201</sup>

##### 2. RPC 4-4.2 Communication with Person Represented by Counsel

The Florida Bar proposed adding a comma to subdivision (a), but the Supreme Court of Florida neither adopted that change nor commented on the matter.<sup>202</sup> The Court did, however, adopt the proposed additions to the commentary.<sup>203</sup> Several additions explain the rationale of the rule and its application.<sup>204</sup> Special considerations for a client that is an organization are also discussed.<sup>205</sup> Additionally, the comments make clear that a violation occurs only if the lawyer has actual knowledge that the person is represented by counsel, and also reference RPC 4-4.3—*Dealing with Unrepresented Persons*.<sup>206</sup>

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199. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 468–69.

200. The Florida Bar's proposal reads:

Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud, to disaffirm an opinion, document, affirmation, or the like.

Appendix D, *supra* note 8, at 181–82. Compare ABA Model Rule 4.1 with the rule as amended by the Supreme Court of Florida which reads:

Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud.

*Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 469–70.

201. *Id.* at 469.

202. Compare *Petition*, *supra* note 14, at 33, with *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 470.

203. Compare *Petition*, *supra* note 14, at 33, with *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 470–71.

204. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 470.

205. *Id.* at 470–71.

206. *Id.* at 471.

### 3. RPC 4-4.3 Dealing with Unrepresented Persons

In conformity with Model Rule 4.3, the Florida rule moves the “provision that a lawyer shall not give legal advice to an unrepresented person . . . from the commentary to the body of the rule.”<sup>207</sup> The Model Rule also adds a provision allowing a lawyer to give legal advice to an unrepresented person, as long as that person’s “interests are not in conflict with the [interests of the lawyer’s] client.”<sup>208</sup> The Florida Bar did not recommend adopting that addition, however, “because of the danger that an attorney-client relationship may be created with the unrepresented person pursuant to case law in Florida.”<sup>209</sup> The commentary is modified to conform to substantive changes in the rule and to add a reference to RPC 4-1.13—*Organization as Client*.<sup>210</sup>

### 4. RPC 4-4.4 Respect for Rights of Third Persons

Because of the proliferation of e-mail and other electronic forms of communication, the issue of misdelivered documents arises quite frequently.<sup>211</sup> The new Model Rule 4.4 added a provision obligating the recipient of such an inadvertent document to notify the sender promptly, and the new Florida rule reflects this requirement.<sup>212</sup> The commentary to the Florida rule also provides guidance on how to handle this situation.<sup>213</sup> The commentary does not, however, reach the issue of whether such a document is privileged, or whether the recipient must return the document.<sup>214</sup>

## E. *Law Firms and Associations*

### 1. RPC 4-5.1 Responsibilities of a Partner or Supervisory Lawyer

The title of this rule has been changed to, *Responsibilities of Partners, Managers, and Supervisory Lawyers*.<sup>215</sup> The changes to this rule extend the responsibilities of a partner to all lawyers in the firm who have managerial

207. Petition, *supra* note 14, at 34.

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.* at 34–35.

212. Petition, *supra* note 14, at 34–35.

213. See *In re Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d 417, 472 (Fla. 2006).

214. Petition, *supra* note 14, at 35.

215. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 472.



authority.<sup>216</sup> Language listing the types of partners affected by this rule is deleted as redundant in subdivision (a) and (c)(2), as this list can be found in the commentary.<sup>217</sup> The commentary also clarifies the difference between a lawyer with managerial authority, such as a partner, and a lawyer with direct supervisory authority over another lawyer.<sup>218</sup> Finally, the commentary clarifies that although a partner may be held liable for a lawyer's conduct, the lawyer's personal duty to abide by the *Rules of Professional Conduct* is not altered.<sup>219</sup>

## 2. RPC 4-5.3 Responsibilities Regarding Nonlawyer Assistants

The term "authorized business entity" is changed to "law firm," in subdivision (a) of this rule because law firm is defined elsewhere in the rules.<sup>220</sup> The rule also expands the responsibility of assuring the compliance of nonlawyers with the *Rules of Professional Conduct* to all attorneys with managerial authority comparable to that of a partner.<sup>221</sup> The comments now read that a lawyer "must" give assistants appropriate instruction on ethical considerations, as opposed to the prior rule which only stated a lawyer "should" do so.<sup>222</sup>

## 3. RPC 4-5.4 Professional Independence of a Lawyer

Following the *Model Rules*, this rule now allows lawyers to share court-awarded fees with nonprofit, pro bono legal service organizations that either employ or recommend a lawyer in the matter.<sup>223</sup> The ABA Ethics 2000 Commission believed that such a division of fees provided "less of a 'threat to independent professional judgment'" than the other fee-sharing arrangements still prohibited by the rule.<sup>224</sup> Further, subdivision (e) broadens the prohibition against nonlawyer officers to include nonlawyers who hold posi-

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216. *Id.*

217. *See id.* at 472-73.

218. *Id.* at 473.

219. *Id.*

220. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 474; *Petition*, *supra* note 14, at 35.

221. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 474-75.

222. *Id.* at 475.

223. *Petition*, *supra* note 14, at 36.

224. *Id.*

tions similar to corporate officers.<sup>225</sup> Commentary was also added to reflect these changes.<sup>226</sup>

#### 4. RPC 4-5.6 Restrictions on Right to Practice

This rule is expanded to prohibit a lawyer from not only making a partnership or employment agreement that restricts the rights of lawyers to practice after termination of the relationship, but also a shareholder, operating, or other similar type of agreement that would do the same.<sup>227</sup> The commentary also replaces the term “partners or associates” with “lawyers” to reflect the fact that lawyers do not always work together in such a traditional way.<sup>228</sup>

#### F. *Maintaining the Integrity of the Profession*

##### 1. RPC 4-8.1 Bar Admission and Disciplinary Matters

No changes are made to the body of this rule, but the commentary reflects new language requiring the “correction of any prior misstatement” in a bar application or disciplinary proceeding.<sup>229</sup>

##### 2. RPC 4-8.3 Reporting Professional Misconduct

A change in the language of this rule now dictates that a lawyer “*who knows* that another lawyer has committed a violation of the *Model Rules of Professional Conduct*”<sup>230</sup> must report that lawyer to the Florida Bar, rather than the prior requirement that a lawyer “have knowledge” of the violation.<sup>231</sup> This change was made to conform to the *Model Rules*.<sup>232</sup> The rule also now creates an exception to this reporting requirement, which also conforms to the *Model Rules*, wherein disclosure is not required if the knowledge of the lawyer’s conduct is gained through a lawyer assistance program.<sup>233</sup> This exception is an effort to encourage lawyers to participate in such programs.<sup>234</sup>

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225. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 476.

226. *Id.*

227. *Id.*

228. Petition, *supra* note 14, at 37.

229. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 477.

230. *Id.* (emphasis added).

231. *Id.*

232. Petition, *supra* note 14, at 37.

233. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d at 478.

234. Petition, *supra* note 14, at 37.

### 3. 4-8.4 Misconduct

This rule adds a provision prohibiting a lawyer from achieving results by violating the *Rules of Professional Conduct*.<sup>235</sup> Commentary added to the rule provides guidance when one lawyer is responsible for the misconduct of another lawyer.<sup>236</sup>

#### G. 5-1.1 Rules Regulating Trust Accounts

This rule clarifies the lawyer's obligation when more than one person has an interest in a trust fund that the lawyer is holding.<sup>237</sup> A provision is also added that provides a "lawyer shall promptly distribute all" undisputed funds.<sup>238</sup> Commentary was further changed to make clear that some duties, such as keeping disputed funds in a trust account, are mandatory.<sup>239</sup>

## VI. CONCLUSION

Though many of these amendments were cosmetic in nature, there are some that may have a significant effect on practitioners. It is suggested that all attorneys practicing in Florida review the new rules as amended, and that all Florida practitioners take particular notice of RPC 4-1.4<sup>240</sup>—*Communication*; RPC 4-1.8<sup>241</sup>—*Conflict of Interest; Prohibited and Other Transactions*; RPC 4-1.10<sup>242</sup>—*Imputation of Conflicts of Interest; General Rule*; RPC 4-1.11<sup>243</sup>—*Special Conflicts of Interest for Former and Current Government Officers and Employees*; RPC 4-1.18<sup>244</sup>—*Duties to Prospective Client*; RPC 4-4.3<sup>245</sup>—*Dealing with Unrepresented Persons*; RPC 4-4.4<sup>246</sup>—*Respect for Rights of Third Persons*; RPC 4-5.1<sup>247</sup>—*Responsibilities of Partners, Managers, and Supervisory Lawyers*; and RPC 4-5.3<sup>248</sup>—*Responsibilities Regarding Nonlawyer Assistants*. As the practice of law

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235. *Amends. to the Rules Regulating the Fla. Bar*, 933 So. 2d. at 478–79.

236. *Id.* at 479.

237. *Id.* at 480.

238. *Id.*

239. *See id.* at 481.

240. R. REGULATING THE FLA. BAR R. 4-1.4 (2006).

241. *Id.* R. 4-1.8.

242. *Id.* R. 4-1.10.

243. *Id.* R. 4-1.11.

244. *Id.* R. 4-1.18.

245. R. REGULATING THE FLA. BAR R. 4-4.3.

246. *Id.* R. 4-4.4.

247. *Id.* R. 4-5.1.

248. *Id.* R. 4-5.3.

changes, so does the regulation of its practitioners. Only time will tell how these changes to the ethics rules will affect the practice of law in the State of Florida.