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Video: Board Certification: Reaching the Pinnacle of Practice

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Law Center Plus: Continuing Your Legal Education

Board Certification: Reaching the Pinnacle of Practice

**Friday, May 15, 2015
7:30 am – 9:30 am
3305 College Avenue
Ft. Lauderdale, FL 33314**

Law Center Plus
Board Certification: Reaching the Pinnacle of Practice

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Speaker Biographies

Donna Carol Litman

Professor Donna Carol Litman has been Board Certified in Tax Law by The Florida Bar since 1983. She joined the full-time faculty at the Shepard Broad Law Center in 1983 and has been a tenured full professor since 1988. She teaches in the areas of business planning, comparative law, estate planning, and tax law. Professor Litman serves as faculty advisor for the [Jewish Law Students Association](#) and the [Transactional Law Practice Group](#) and as co-advisor to [The Real Property, Probate, and Trust Law Society](#) at the Law Center. She also coaches student teams for transactional competitions, including the [National Health Law Moot Court Competition](#) and the [National Transactional Law Meet](#). Professor Litman has presented at international and national conferences and authored and co-authored books, chapters, portfolios, articles, and newspaper columns. She earned her A.B. from the University of Miami and J.D. from the University of Florida.

Sheryl A. Moore, Esq. has been Board Certified by The Florida Bar in Marital & Family Law since 2009. Ms. Moore is a Shareholder at Fowler White Burnett in Fort Lauderdale, FL, and she practices exclusively in the area of marital and family law for clients in Palm Beach, Broward, Miami-Dade, and Monroe Counties. Ms. Moore has written several articles for practitioners and has appeared on Broward Law TV to educate listeners about family law topics. Ms. Moore is active in the Family Law Section of The Florida Bar and served on the Grievance Committee of The Florida Bar. She has been named a *Super Lawyer* “Rising Star” from 2010-2012 and listed among “100 Outstanding Women of Broward County” for 2009 and 2012. Ms. Moore also serves on the Board of several charitable organizations involved with helping children. She earned her B.A. from the University of Vermont and her J.D. from Nova Southeastern University Shepard Broad Law Center.

Steven S. Farbman, Esq. has been Board Certified by The Florida Bar in Civil Trial law since 1994. Mr. Farbman owns The Law Offices of Steven Spencer Farbman, PA in Hollywood, FL. He has served the people throughout the State of Florida for more than 30 years, fighting for their rights to seek compensation after suffering serious injuries caused by the negligence and carelessness of others. He has attained an AV Preeminent Attorney Rating from Martindale-Hubbel’s peer review rating system, the highest rating. As a result of his million dollar settlements and trial verdicts he was invited to become a member of the Multi Million Dollar Advocates Forum. Due to accolades he has received from clients and fellow attorneys, he has received the highest rating from AVVO (10-superb). He is active in his community, a former chair of Leadership Hollywood, and is currently the President-Elect for the Law Alumni Association for Nova Southeastern University Shepard Broad Law Center. Mr. Farbman received his B.A. from Muhlenberg College in Allentown, PA, and his J.D. from Nova Southeastern University Shepard Broad Law Center.

Todd A. Weicholz, Esq. has been Board Certified by The Florida Bar in Criminal Trial Law since 2008. He is a Partner at Laing and Weicholz, PL in Boca Raton, FL. Mr. Weicholz brings extensive litigation experience to Laing and Weicholz. His legal career began as a prosecutor with the Palm Beach County State Attorney's Office where he prosecuted a variety of criminal cases from misdemeanors to homicides, including a focus on Domestic Violence and Traffic Homicide cases. From there, he joined the Florida Attorney General's Office where he served as the West Palm Beach Bureau Chief, investigating and prosecuting complex criminal cases including Organized Fraud, Racketeering, Drug Trafficking, Gangs, and Burglary Rings. He has an extensive background in law enforcement and the military, including service with the Riviera Beach Police, Florida Highway Patrol, and the United States Marine Corps. Mr. Weicholz is also a Florida Supreme Court Certified Family and County Mediator, and a Licensed Real Estate Agent. His practice is focused on Family Law and Criminal Defense. Mr. Weicholz earned his B.S. from Florida State University, and his J.D. from Nova Southeastern University Shepard Broad Law Center.

William A. Snyder, LL.M., Esq. has been Board Certified by The Florida Bar in Wills, Trusts, & Estates since 1989. Mr. Snyder is a Partner at Snyder & Snyder, PA, in Davie, FL, a firm which he founded in 1973. His firm focus is exclusively on estate planning and estate administration cases. Snyder & Snyder is a boutique estate planning and estate administration firm with attorneys and a complete support staff that provide excellent estate planning and estate administration services with big firm capabilities. Mr. Snyder was recognized by Robb Report's Worth Magazine as one of the nation's "Top 100 Attorneys". For three years, beginning in 2006, he was named a *Super Lawyer* by Superlawyers.com as featured in The Miami Herald. Additionally, the firm is listed by Martindale-Hubbell Legal Directories as an "AV" rated firm which signifies that it is rated in the top 10% of firms by its peers. Mr. Snyder is past Chairman of the Board Certification Committee of The Florida Bar for Wills, Trusts and Estates. He was recognized in *Florida Trend's Florida Legal Elite™* in 2011 and 2012 as among the best in the state. Mr. Snyder is also a Fellow in the American College of Trust and Estate Counsel (ACTEC), and an Adjunct Professor of Law at the University of Miami Law School Graduate Program in Estate Planning. Mr. Snyder is a graduate of Culver Military Academy, he earned his B.A. from Hobart and William Smith College, in Geneva, NY, his J.D. from the University of Florida Law School (J.D.), and his LL.M. in Estate Planning from the University of Miami Law School.

Course Title:

Board Certification: Reaching the Pinnacle of Practice

Friday, May 15, 2015

Nova Southeastern University, Shepard Broad Law Center, 3305 College Avenue, Fort Lauderdale, FL 33314

Course Outline & Timeline

Registration & Continental Breakfast:

7:30 to 7:55 am

Atrium & Lecture Room

Welcome & Introduction:

7:55 to 8:00 am

Elena Rose Minicucci, J.D., Director of Alumni Relations, NSU Shepard Broad Law Center

- Welcome
- Introduce Professor **Donna Carol Litman**, and attorneys **Sheryl Moore, Steven Farbman, Todd Weicholz, and William Snyder, LL.M.**

Seminar Presentation

8:00 am to 9:15 am

Professor Donna Carol Litman - Moderator

Nova Southeastern University Shepard Broad Law Center

Fort Lauderdale, FL

Florida Bar Board Certified in Tax Law

Professor Litman will lead the discussion among the other Board Certified attorneys listed above. The Discussion will cover the following:

- Overview of Board Certification – Requirements
 - Rules Regulating Board Certification – in general
 - Handout: Rule 6-3.5 “Standards for Certification” (general)
 - Handout: Rule 6-3.6 “Recertification” (general)
 - Revocation of Certification – Once Certified, lawyer may lose Certification for certain reasons such as:
 - if the area of practice ceases to be certified;
 - if disciplinary action is taken against the lawyer pursuant to Rules Regulating The Florida Bar;
 - if the lawyer commits a crime;
 - misrepresentation by the lawyer;
 - failure to abide by the rules and regulations governing the program;
 - other lawyer misconduct.
 - Handout: Rule 6-3.8 “Revocation of Certification”

- Ethics – Rules Regulating The Florida Bar Rule 6-3.9 “Manner of Certification” attorney and law firm must comply with this rule for all advertising, website, business cards, office sign; limitation on use of terms: “Specialist” or “Board Certified” or “Expert” or “B.C.S.”
 - Handout: Rule 6-3.9 “Manner of Certification” & 4-7.14(a)(4) “Potentially Misleading Advertisements”
- Practice Areas – Board Certification in Florida offers twenty-four practice areas in which to become Board Certified
 - Handout: “Florida’s 24 Legal Specialty Areas” from The Florida Bar
 - Five Specific Board Certification Practice areas discussed below by speakers who are Board Certified in their practice areas:
- Tax Law Certification: **Donna Carol Litman, Esq.**
 - Requirements as set forth in Rule 6-5 “Standards for Certification of a Board Certified Tax Lawyer”
 - Handout: Rule 6-5 (including 6-5.1 through 6-5.4)
 - Discussion of Article: *Board Certification: The View From the Bench...and Beyond*” by George W. Maxwell, III, 77 APR Fla. B.J. 34 (April 2003) – how Judges view Board Certified attorneys
- Marital & Family Law Certification: **Sheryl Moore, Esq.**
 - Requirements as set forth in Rule 6-6 “Standards for Board Certification in Marital & Family Law”
 - Handout: Rule 6-6 (including 6-6.1 through 6-6.5) – lawyers and judicial officers included
 - Case Law and/or Ethical Considerations – *The Florida Bar v. Morse* 784 So. 2d 414 (Fla. 2001) dealing with revocation of Board Certification in Marital & Family Law for failure to provide diligent and competent representation to client
- Civil Trial Certification: **Steven S. Farbman, Esq.**
 - Requirements as set forth in Rule 6-4 “Standards for Certification of a Board Certified Civil Trial Lawyer”
 - Handout: Rule 6-4 (including 6-4.1 through 6-4.4)
 - Case Law and/or Ethical Considerations – Rules Regulating The Florida Bar, Chapter 4 – 1.5 Fees and Costs for Legal Services (including Contingency Fee Agreements) and Art. 1 Sec. 26 The Florida Constitution, “Claimant’s Right to Fair Compensation”
- Criminal Trial Certification: **Todd Weicholz, Esq.**
 - Requirements as set forth in Rule 6-8 “Standards for Certification of a Board Certified Criminal Lawyer”
 - Handout: Rule 6-8 (including 6-8.1 through 6-8.4)
 - Case Law and/or Ethical Considerations – 4-7.18 “Direct Contact with Prospective Clients” especially relevant to criminal defense matters
- Wills, Trusts & Estates Certification: **William Snyder, LL.M, Esq.**
 - Requirements as set forth in Rule 6-7 “Standards For Certification of a Board Certified Wills, Trusts, and Estates Lawyer”

- Handout: Rule 6-7 (including 6-7.1 through 6-7.4)
- Case Law & Ethical Considerations - Rules Regulating the Florida Bar – Chapter 4 – 7.13 “Deceptive and Inherently Misleading Advertisements” especially regarding experience and special expertise

Professor Donna Carol Litman, Esq.

9:15 to 9:30 am

General Question & Answer Session with Seminar Attendees & Board Certified Speakers:

Sheryl Moore, Esq., Steven S. Farbman, Esq., Todd Weicholz, Esq., and William Snyder, LL.M., Esq.

Seminar ends at 9:30 am

Overview of Board of Certification – Professor Donna Carol Litman

RULE 6-3.5 STANDARDS FOR CERTIFICATION

(a) **Standards for Certification.** The minimum standards for certification are prescribed below. Each area of certification established under this chapter may contain higher or additional standards if approved by the Supreme Court of Florida.

(b) **Eligibility for Application.** A member in good standing of The Florida Bar who is currently engaged in the practice of law and who meets the area's standards may apply for certification. From the date the application is filed to the date the certificate is issued, the applicant must continue to practice law and remain a member in good standing of The Florida Bar. The certificate issued by the board of legal specialization and education shall state that the lawyer is a "Board Certified (area of certification) Lawyer."

(c) **Minimum Requirements for Qualifying for Certification With Examination.** Minimum requirements for qualifying for certification by examination are as follows:

(1) A minimum of 5 years substantially engaged in the practice of law. The "practice of law" means legal work performed primarily for purposes of rendering legal advice or representation. Service as a judge of any court of record shall be deemed to constitute the practice of law. Employment by the government of the United States, any state (including subdivisions of the state such as counties or municipalities), or the District of Columbia, and employment by a public or private corporation or other business shall be deemed to constitute the practice of law if the individual was required as a condition of employment to be a member of the bar of any state or the District of Columbia. If otherwise permitted in the particular standards for the area in which certification is sought, the practice of law in a foreign nation state, U.S. territory, or U.S. protectorate, or employment in a position that requires as a condition of employment that the employee be licensed to practice law in such foreign nation state, U.S. territory, or U.S. protectorate, shall be counted as up to, but no more than, 3 of the 5 years required for certification.

(2) A satisfactory showing of substantial involvement in the particular area for which certification is sought during 3 of the last 5 years preceding the application for certification.

(3) A satisfactory showing of such continuing legal education in a particular field of law for which certification is sought as set by that area's standards but in no event less than 10 certification hours per year.

(4) Passing a written and/or oral examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills, and proficiency in the area for which certification is sought and in the various areas relating to such field. The examination shall include professional responsibility and ethics. The award of an LL.M. degree from an approved law school in the area

for which certification is sought within 8 years of application may substitute as the written examination required in this subdivision if the area's standards so provide.

(5) Current certification by an approved organization in the area for which certification is sought within 5 years of filing an application may, at the option of the certification committee, substitute as partial equivalent credit, including the written examination required in subdivision (c)(4). Approval will be by the board of legal specialization and education following a positive or negative recommendation from the certification committee.

(6) Peer review shall be used to solicit information to assess competence in the specialty field, and professionalism and ethics in the practice of law. To qualify for board certification, an applicant must be recognized as having achieved a level of competence indicating special knowledge, skills, and proficiency in handling the usual matters in the specialty field. The applicant shall also be evaluated as to character, ethics, and reputation for professionalism. An applicant otherwise qualified may be denied certification on the basis of peer review. Certification may also be withheld pending the outcome of any disciplinary complaint or malpractice action.

As part of the peer review process, the board of legal specialization and education and its area committees shall review an applicant's professionalism, ethics, and disciplinary record. Such review shall include both disciplinary complaints and malpractice actions. The process may also include solicitation of public input and independent inquiry apart from written references. Peer review is mandatory for all applicants and may not be eliminated by equivalents.

(d) Minimum Requirements for Qualification Without Examination. When certification without examination is available in an area, the minimum requirements for such certification are as follows:

(1) a minimum of 20 years in the practice on a full-time basis.

(2) a satisfactory showing of competence and substantial involvement in the particular area for which certification is sought during 5 of the last 10 years, including the year immediately preceding the application for certification. Substantial involvement in the particular area of law for the 1 year immediately preceding the application may be waived for good cause shown.

(3) a satisfactory showing of such continuing legal education in a particular field of law for which certification is sought as set by that area's standards but in no event less than 15 hours per year.

(4) satisfactory peer review and professional ethics record in accordance with subdivision (c)(6); and (5) payment of any fees required by the plan.

(e) Certification Without Examination. When certification without examination is available in an area, it may be granted only:

(1) to individuals who apply within 2 years after the date on which the particular area is approved by the Supreme Court of Florida; or

(2) as otherwise permitted in the particular standards for the area for which certification is sought.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 6-3.6 RECERTIFICATION

(a) Duration of Certification. No certificate shall last for a period longer than 5 years.

(b) Minimum Standards for Proficiency. Each area of certification established under this chapter shall contain requirements and safeguards for the continued proficiency of any certificate holder. The following minimum standards shall apply:

(1) A satisfactory showing of substantial involvement during the period of certification in the particular area for which certification was granted.

(2) A satisfactory showing of such continuing legal education in the area for which certification is granted but in no event less than 50 credit hours during the 5-year period of certification.

(3) Satisfactory peer review and professional ethics record in accordance with rule 6-3.5(c)(6).

(4) Any applicant for recertification who is not, at the time of application for recertification, a member in good standing of The Florida Bar or any other bar or jurisdiction in which the applicant is admitted, as a result of discipline, disbarment, suspension, or resignation in lieu thereof, shall be denied recertification. The fact of a pending disciplinary complaint or malpractice action against an applicant for recertification shall not be the sole basis to deny recertification.

(5) The payment of any fees prescribed by the plan.

(c) Failure to Meet Standards for Recertification; Lapse of Certificate. Any applicant for recertification who has either failed to meet the standards for recertification or has allowed the certificate to lapse must meet all the requirements for initial certification as set out in the area's standards.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

RULE 6-3.8 REVOCATION OF CERTIFICATION

A certificate may be revoked by the board of legal specialization and education without hearing or advance notice for the following reasons:

(a) Termination of Area. If the program for certification in an area is terminated;

(b) Discipline. Disciplinary action is taken against a member pursuant to the Rules Regulating The Florida Bar;

(c) Criminal Action. When a member is found guilty, regardless of whether adjudication is imposed or withheld, of any crime involving dishonesty or a felony; or

(d) Miscellaneous. When it is determined, after hearing on appropriate notice, that:

(1) the certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the certification committee or the board of legal specialization and education;

(2) the certificate holder failed to abide by all rules and regulations governing the program promulgated by the board of governors or the board of legal specialization and education as amended from time to time, including any requirement or safeguard for continued proficiency;

(3) the certificate holder failed to pay any fee established by the plan;

(4) the certificate holder no longer meets the qualifications established by the plan or the board of legal specialization and education; or

(5) the certificate holder engaged in misconduct that is inconsistent with the demonstration of special knowledge, skills, proficiency, or ethical conduct and professionalism.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206).

RULE 6-3.9 MANNER OF CERTIFICATION

(a) Listing Area of Certification. A member having received a certificate in an area may list the area on the member's letterhead, business cards, and office door, in the yellow pages of the telephone directory, in approved law lists, and by such other means permitted by the Rules of Professional Conduct. The listing may be made by stating one or more of the following: "Board Certified (area of certification) Lawyer;" "Specialist in (area of certification);" or use of initials "B.C.S.," to indicate Board Certified Specialist. If the initials "B.C.S." are used, the area(s) in which the member is board certified must be identified; if used in court documents or a non-advertising context, the initials may stand alone.

(b) Members of Law Firms. No law firm may list an area of certification for the firm, but membership in the firm does not impair an individual's eligibility to list areas of certification in accordance with this chapter. Except for the firm listing in the telephone directory, a law firm may show next to the names of any firm members their certification area(s).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L. Weekly S628a).

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in potentially misleading advertising.

(a) Potentially Misleading Advertisements. Potentially misleading advertisements include, but are not limited to:

(1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(3) references to a lawyer's membership in, or recognition by, an entity that purports to base such membership or recognition on a lawyer's ability or skill, unless the entity conferring such membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;

(4) a statement that a lawyer is board certified, a specialist, an expert, or other variations of those terms unless:

(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating the Florida Bar and the advertisement includes the area of certification and that The Florida Bar is the certifying organization;

(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization; or

(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization. In the absence of such certification, a lawyer may communicate the fact that the lawyer limits his or her practice to 1 or more fields of law; or

(5) information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a

particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.

(b) Clarifying Information. A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

Comment

Awards, Honors, and Ratings

Awards, honors and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of Board Certification, Specialization or Expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to indicate that. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as a "specialist," "specializing," "certified," "board certified," being an "expert," having "expertise," or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified, and cannot claim specialization or expertise in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified, has expertise in, or specializes in any area of practice.

A lawyer can only state or imply that the lawyer is "certified," a "specialist," or an "expert" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may so state that, but may not state that the lawyer is certified, an expert in, or specializes in personal injury.

Similarly, a lawyer who is board certified in marital and family law may not state that the lawyer specializes in divorce.

Fee and Cost Information

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are permissible: "No Fee if No Recovery, but Client is Responsible for Costs," "No Fee if No Recovery, Excludes Costs," "No Recovery, No Fee, but Client is Responsible for Costs" and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements "No Fees or Costs If No Recovery" and "No Recovery - No Fees or Costs" are permissible.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

Florida's 24 Legal Specialty Areas

Board certified lawyers: "Evaluated for Professionalism, Tested for Expertise."

Six percent of eligible Florida Bar members, approximately 4,600 lawyers, are board certified. A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed by the Florida Supreme Court may become board certified in one or more of the 24 certification fields. Minimum requirements are listed below; each area of certification may require higher or additional standards.

Practice law for a minimum of five years.

Demonstrate substantial involvement in the field of law for which certification is sought.

Pass satisfactory peer review of competence in the specialty field as well as character, ethics and professionalism in the practice of law.

Satisfy the certification area's continuing legal education requirements.

Receive a passing grade on the examination required of all applicants or meet strict criteria to exempt the exam.

(Detailed descriptions of each specialty area of practice are available at FloridaBar.org/certification.)

1. Adoption Law deals with the complexities and legalities of interstate and intrastate adoption placements, including civil controversies arising from termination of the biological parents' parental rights, the Indian Child Welfare Act, and interstate placements.

2. Admiralty and Maritime Law is the practice of law dealing with the rules, concepts, and legal practices governing vessels, the shipping industry, the carrying of goods and passengers by water and related maritime concepts.

3. Antitrust Law is the field of law that deals with anticompetitive conduct or structure that may restrain trade or commerce.

4. Appellate Practice deals with recognition and preservation of error committed by lower tribunals, and the presentation of argument concerning the presence or absence of such error to state or federal appellate courts.

5. Aviation Law addresses all facets of the law dealing with the ownership, operation, maintenance and use of aircraft, airports and airspace.

6. Business Litigation. Certified lawyers in business litigation help solve problems arising from business relationships, including resolving disputes.

7. City, County and Local Government Law deals with legal issues of county, municipal or other local governments such as special districts, agencies and authorities.

8. Civil Trial is the field of law that addresses litigation of civil controversies in all areas of substantive law before state and federal courts, administrative agencies and arbitrators.

9. Construction Law. Lawyers certified in construction law deal with matters and disputes relating to the design and construction of improvements on private and public projects.

10. Criminal Appellate certified lawyers meet the same requirements as lawyers certified in criminal trial law and in addition must have handled 25 criminal appeals.

11. Criminal Trial. Certified lawyers in criminal trial law are involved in investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury and nonjury cases.

12. Education Law certification is for lawyers who deal with the legal rights, responsibilities, procedures, and practices of educational institutions, students, personnel employed by or on behalf of educational institutions and the guardians and parents of students participating in education.

13. Elder Law addresses legal issues involving health and personal care planning including advance directives; lifetime planning; capacity, guardianship; power of attorney; financial planning; resident rights in long-term care facilities and income, estate, and gift tax matters.

14. Health Law addresses legal issues involving federal, state, or local law, rules and regulations, health care provider issues and legal issues regarding the delivery of health care services.

15. Immigration and Nationality certified lawyers represent clients before federal and state agencies and U.S. district courts/courts of appeal on issues such as immigration benefits, discretionary relief, deportation, bond proceedings, visa and other applications and petitions.

16. Intellectual Property lawyers practice primarily in the areas of patent application prosecution, patent infringement litigation, trademark law and copyright law.

17. International Law focuses on issues, problems, or disputes arising from relations between or among states and international organizations as well as the relations between or among nationals of different countries, or between a state and a national of another state.

18. Labor and Employment Law certified lawyers advise and represent clients on matters concerning the application and interpretation of public and private sector labor and employment law principles, employment discrimination and employment-related civil rights law.

19. Marital and Family Law. Certified lawyers in marital and family law handle legal problems arising from the family relationship of husband and wife and parent and child, including litigation of civil controversies arising from those relationships.

20. Real Estate Law relates to real property transactions including but not limited to real estate conveyances, title searches, property transfers, leases, condominiums and cooperatives, interval ownership, mortgages, zoning and land use planning, real estate development and financing, real estate litigation, and determination of property rights.

21. State and Federal Government and Administrative Practice lawyers deal with rulemaking or adjudication associated with state or federal government entity actions such as contracts, licenses, orders, permits, policies or rules. The practice also includes appearing before or presiding as applicable legal entities for disputes involving administrative or government actions.

22. Tax Law. Certified tax law attorneys deal with legal issues pertaining to federal, state or local income, estate, gift, ad valorem, excise or other taxes.

23. Wills, Trusts and Estates lawyers handle all aspects of the analysis and planning for the conservation and disposition of estates, including tax related matters and probate litigation.

24. Workers' Compensation is the practice of law involving the analysis and litigation of problems or controversies arising out of the Florida Workers' Compensation Law.

For More Information, Contact:

Florida Bar Board Certification – Director
The Florida Bar Legal Specialization & Education Department
651 East Jefferson Street
Tallahassee, FL 32399-2300

Tel: (850) 561-5850

Web: FloridaBar.org/certification

6-5. STANDARDS FOR CERTIFICATION OF A BOARD CERTIFIED TAX LAWYER

RULE 6-5.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a "Board Certified Tax Lawyer." The purpose of the standards is to identify those lawyers who practice in the area of taxation and have the special knowledge, skills, and proficiency to be properly identified to the public as certified tax lawyers.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120).

RULE 6-5.2 DEFINITIONS

(a) Tax Law. "Tax law" means legal issues involving federal, state, or local income, estate, gift, ad valorem, excise, or other taxes.

(b) Practice of Law. The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for a purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 6-5.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

(1) The years of practice of law need not be consecutive.

(2) Notwithstanding the definition of "practice of law" in rule 6-3.5(c)(1), receipt of an LL.M. degree in taxation (or such other related fields approved by the board of legal specialization and education and the tax certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision. However, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement in the practice of tax law during the 3 years immediately preceding the date of application. Upon an applicant's request and the recommendation of the tax certification committee, the board of legal specialization and education may waive the requirement that the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Substantial involvement is defined as at least 500 hours per year in the practice of law in which an applicant has had substantial and direct participation in legal matters involving significant issues of tax law. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on tax law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the tax certification committee but written or oral supplementation may be required.

(c) Peer Review. Every applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for involvement in the field of tax law in accordance with rule 6-3.5(c)(6), as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education or the tax certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the tax certification committee may also make such additional inquiries as they deem appropriate.

(d) Education. Every applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in tax law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 90 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to tax law. The education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in "tax law" at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the tax certification committee; or

(6) such other methods as may be approved by the board of legal specialization and education and the tax certification committee.

The board of legal specialization and education or the tax certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed paragraphs. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(e) Examination. Every applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of tax law to justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Dec. 7-8, 1993, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar.

RULE 6-5.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement. A satisfactory showing, as determined by the board of legal specialization and education and the tax certification committee, of continuous and substantial involvement in the field of tax law throughout the period since the last date of certification. Demonstration of substantial involvement shall be in accordance with rule 6-5.3(b), except that the board of legal specialization and education and/or the tax certification committee may accept an affidavit from the applicant which attests to the applicant's proficiency in tax law consistent with the purpose of the substantial involvement requirement.

(b) Education. Demonstration that the applicant has completed at least 125 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified tax lawyers. If the applicant has not attained 125 hours of continuing legal education, but has attained more than 60 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

(c) Peer Review. Completion of the reference requirements set forth in rule 6-5.3(c).

(d) Examination. If, after reviewing the material submitted by an applicant for recertification, the board of legal specialization and education and the tax certification committee determine that the applicant may not meet the standards in tax law established under this chapter, the

board of legal specialization and education and the tax certification committee may require, as a condition of recertification, that the applicant pass the written examination given by the board of legal specialization and education to new applicants.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended effective June 29, 2000, by the Board of Governors of The Florida Bar.

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Board Certification: The View from the Bench . . . and Beyond

By Judge George W. Maxwell III*

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All rise, this circuit court in and for . . . is now in session.”

You’ve just settled down to begin a trial in a hotly contested domestic case. Although you’ve had several early morning “emergency” hearings, your spirits are good; it was a beautiful drive to work, and thus far, everything and everyone has been pleasant.

In short, it has been a good day. When, suddenly, counsel *A* begins with “Counsel *B* hasn’t done anything she was supposed to do under the rules, no discovery, no disclosure, no cooperation or coordination with any office, and she instructed her client not to answer any of the attorney’s ‘stupid’ questions in the deposition, Judge!” To which Counsel *B* responds, “You know that’s not true, you bigot, you’re just saying that because I destroyed you in our last case!” A sinking feeling hits your judicial stomach as the nails scratch across the chalkboard and you feel your legendary patience begin to slip. Didn’t these “professionals” remember that in law school we were taught never to argue with each other, but instead to address legal argument to the court? Before the gentle admonishment can leave your lips, Counsel *A*’s client glares at his former spouse and mutters, “Why did you hire that jerk? My lawyer says she rips everyone off, especially her clients!”

While this scenario may seem exaggerated to some, judges deal with similar encounters more often than one would think. A lack of professionalism can obstruct the administration of justice and erode the confidence of participants and observers. And it doesn’t happen just in the domestic arena. Assistant state attorneys, private counsel, public defenders, corporate counsel, plaintiff’s and defendant’s counsel of all stripes, even title researchers, have been guilty of lapses in professional conduct from time to time.

How does the bench view these behaviors? It varies from judge to judge; however, the consensus is that a better trained attorney is more professional. Minimum standards of mandatory CLE have been de rigueur for many years now, yet the anecdotal conventional wisdom is that civil behavior in the courtroom is on the decline.

Despite this view, there appears to be a bright spot. And that, colleagues agree, is the exemplary behavior exhibited throughout the profession by those who have made the effort to become board certified. Board certification leads to a higher level of professionalism.

The ideal of professionalism is composed of many elements. Among these are knowledge of the law, thorough preparation, civility without subservience, passion without rancor, commitment or dedication, and perhaps just as fundamental are the correlative attributes of humor, balance, and grace under fire. Florida Supreme Court Chief Justice Harry Lee Anstead has said that character, competence, and commitment is the essential formula for professionals. No matter how one defines professionalism, judges agree that increased professionalism promotes and assists the administration of justice. Because achieving competence in a specialty area and attaining a reputation for good character are vital to becoming board certified, an increase of board certified attorneys would have positive effects upon our profession.

When this writer first sought board certification as a civil trial attorney more than 10 years ago, it had become quite clear that the information age was transforming the legal landscape. The growing complexity and diverse nature of the law practice convinced me of the need to specialize. I also recognized that board certification would enhance my personal and professional development. After 14 years of practice, I was ready to demonstrate that I embraced the higher standards required of a board certified attorney. In short, I was ready to raise the bar. The attainment of board certification was a commitment I made to myself and my clients, and it was well worth the effort.

Do certification examinations, peer review, and a higher level of continuing legal education make for a better attorney? Most judges would agree that it does. As stated by Florida Supreme Court Justice Charles T. Wells, "I am extremely proud that I received the distinction of certified trial lawyer at the time that certification was first authorized by The Florida Bar. When I was in active trial practice, it was my belief that being certified was important to the Bar and to the public, and that belief has been reinforced since I have served on the Supreme Court. The Bar and the public can have confidence that certified lawyers have met strict standards of peer recognition of their competence and objective testing of their legal knowledge. When I see that a lawyer is certified, I know that he or she earned that upper level of respect. I urge each lawyer to do what is necessary to be certified in the lawyer's area of practice."

According to Fifth District Court of Appeal Judge Richard B. Orfinger, board certification is a key element of professional growth. Says Judge Orfinger: "Board certification demonstrates an

attorney's interest in enhancing his or her knowledge and skills and recognizes the importance of professionalism, all of which enhance the administration of justice and the public's confidence in the courts. Although there are many great lawyers in Florida, some board certified and some not, I, along with most other judges, enjoy working with board certified lawyers because of their demonstrated commitment to competence and professionalism."

Orange County Judge Jeffrey M. Fleming considers his board certification as a civil trial attorney to be among his greatest professional achievements. "Now that I am a trial judge," he explains, "it is my pleasure to have many fine lawyers appear before me. Those maintaining the highest standard are often board certified and I am committed to adding to their ranks." He actively encourages highly ethical and competent lawyers to seek board certification, even if they have been practicing for many years.

The consensus that trial board certification is good for our community is shared beyond the bench. Former Florida Bar Board of Governors member and highly respected trial lawyer Sammy Cacciatore shares the view that he finds a higher level of both professionalism and knowledge in certified lawyers. Mr. Cacciatore believes that the experience that is required for certification and the study required for the examination gives these individuals a definite edge. Mr. Cacciatore has found certification to be extremely valuable in his professional career, and urges all lawyers strive to become board certified in their area of expertise.

Peer review is an integral component of certification. Many judges mistakenly presume that participating in the review process is an abuse of office. This simply is not true. In fact, judges play an important role in the certification process—a role endorsed by the Florida Supreme Court. Canon 4 of the Florida Code of Judicial Conduct encourages judges to participate in activities designed to advance the legal system. By meeting and maintaining a more rigorous set of standards, board certified attorneys are contributing to a new culture of legal excellence and professional integrity. As judges, we have a duty to both the Bar and the public to support these efforts. We can do this by participating in the peer review process and being completely candid in our comments.

Circuit Judge Ralph Artigliere of the 10th Judicial Circuit argues that peer review is the most important aspect of the certification process. He writes: "Peer evaluation is the best litmus test for candidates, because peer review shows whether an applicant continuously meets ethical and competency standards. Judges are important, essential peer evaluators because judges do not compete with applicants and have a unique perspective from the bench involving conduct during some of the most challenging events in law practice."¹

Some judges hesitate to complete peer evaluation forms for fear their comments might alienate or offend the applicant. However, this fear is groundless, as peer review is totally confidential. Judge Artigliere affirms this. "The applicant specifically waives access to the peer

review information, and The Florida Bar has confirmed that peer evaluations are not subject to disclosure by any means, including the Sunshine laws.”²

Looking at certification from the bench, judges have an objective measure of the qualifications, competency, and professionalism of those who appear before them. This knowledge can assist in the awarding of fees, appointing lawyers to cases, and assessing the credibility of those who appear in court. Judges should look upon certification as an ally and aid in the administration of justice. Raising the level of competency and professionalism in the courtroom makes the adversary process a more comfortable and secure environment, yet still a fully competitive one.

In conclusion, board certification is not offered as a panacea. Rather, it is posed that a significant increase in board certified attorneys would serve to obtain a more orderly and civil administration of the law and concomitantly an increase in justice both quantitatively and qualitatively. Moreover, the push toward certification by the judiciary is a no-lose proposition. Even the attorneys unable to qualify initially will receive a substantial benefit engendered by the commitment, and those who pass the mark will discover the benefits of board certification are worth the effort.

¹ 7 *The Specialist* (No. 1/June 2002). (*The Specialist* is a publication of the Board of Legal Specialization and Education of The Florida Bar.).

² *Id.*

Judge George W. Maxwell III has been a judge for the 18th Judicial Circuit since 1999. He received his B.S. from Stetson University and his J.D. from the University of Florida College of Law. He became board certified in civil trial in 1992.

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Martial & Family Law Certification – Sheryl A. Moore, Esq.

6-6. STANDARDS FOR BOARD CERTIFICATION IN MARITAL AND FAMILY LAW

RULE 6-6.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Marital and Family Law." The purpose of the standards is to identify those lawyers who practice marital and family law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified marital and family lawyers. The standards also contain provisions to allow judicial officers who regularly preside over marital and family law cases to achieve board certification in marital and family law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 11, 1999, by the Board of Governors of The Florida Bar.; Amended December 12, 2008 by the Board of Governors, effective December 12, 2008.

RULE 6-6.2 DEFINITIONS

(a) Marital and Family Law. "Marital and family law" is the practice of law dealing with legal problems arising from the family relationship of husband and wife and parent and child, including civil controversies arising from those relationships. In addition to actual pretrial and trial process, "marital and family law" includes evaluating, handling, and resolving such controversies prior to and during the institution of suit and postjudgment proceedings. The practice of marital and family law in the state of Florida is generally unique in that decisional, statutory, and procedural laws are specific to this state.

(b) Practice of Law. The "practice of law" for this area is defined as set out in rule 6- 3.5(c)(1).

(c) Judicial Officers. "Judicial officers" shall include judges, general magistrates, special magistrates, child support hearing officers, and private triers of fact appointed by court order.

(d) Trial. A "trial" is defined as a matter submitted to and decided by the trier of fact for ultimate resolution by the court's rendition of a judgment or order on at least 1 issue aside from the dissolution of the parties' marriage. Further, the applicant must have, incident thereto, presided over as a judicial officer, or conducted as an advocate, at least 1 direct and 1 cross examination of at least 2 different witnesses, with the introduction into evidence of at least 1 exhibit. The applicant must have been responsible for all, or a majority of, the presentation of evidence and/or representation of the client if the matter was handled as an advocate.

(e) Substantial Involvement. "Substantial involvement" is defined as active participation in client interviewing, counseling, investigating, preparation of pleadings, participation in discovery beyond mandatory disclosure, taking of testimony, presentation of evidence,

attendance at hearings, negotiations of settlement, attendance at mediation, drafting and preparation of marital settlement agreements, and argument and trial of marital and family law cases. Substantial involvement also includes active participation in the appeal of marital and family law cases.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

RULE 6-6.3 MINIMUM STANDARDS FOR LAWYER APPLICANTS

(a) Minimum Period of Practice. The applicant must have at least 5 years of the actual practice of law immediately preceding application, of which at least 50 percent has been spent in active participation in marital and family law.

(b) Minimum Number of Cases. The applicant must demonstrate in the application trial experience and substantial involvement as set forth in subdivisions (1) and (2) below, in a minimum of 25 contested marital and family law cases in circuit courts during the 5-year period immediately preceding the date of application. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage. In each of these 25 cases the applicant shall have been responsible for all or a majority of the presentation of evidence and representation of the client.

(1) At least 7 of the 25 cases must have been trials as defined in rule 6-6.2(d). An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as 1 of the 7 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 18 contested marital and family law cases sufficient to demonstrate special competence as a marital and family lawyer. Any trials in excess of the 7 trials meeting the criteria of subdivision (b)(1) of this rule shall automatically qualify as substantial involvement cases.

(3) The determination of whether the applicant has sufficiently demonstrated substantial involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

(c) Peer Review.

(1) The applicant shall submit names and addresses of 6 lawyers, who are neither current nor former associates or partners of the applicant within the 5-year period immediately preceding the date of application, as references to attest to the applicant's substantial competence and active involvement in the practice of marital and family law as well as the applicant's character, ethics, and reputation for professionalism. At least 3 of the lawyers shall

be members of The Florida Bar, with their principal office located in the state of Florida. Such lawyers need not be Florida Bar board certified in marital and family law, however, they should be substantially involved in marital and family law and familiar with the applicant's practice. In addition, all lawyer references must have participated with the applicant, during the 5-year period immediately preceding the date of application, as either opposing or co-counsel in a marital and family law or juvenile dependency proceeding, involving some combination of discovery beyond mandatory disclosure, settlement negotiations, evidentiary hearings in excess of 3 hours, trials, and/or alternative dispute resolution mechanism such as collaborative law, mediation or arbitration. This requirement is to ensure meaningful comment on the applicant's most recent special knowledge, skills, proficiency, character, and reputation for professionalism in the practice of marital and family law, including the consideration of the needs of children and the family unit affected by the applicant's representation.

(2) The applicant shall submit the names and addresses of 3 judicial officers who have presided in circuit courts in the state of Florida and before whom the applicant has appeared as an advocate in a trial or an evidentiary hearing of at least 3 hours in length for a marital and family law and/or juvenile dependency case during the 5-year period immediately preceding the date of application.

(3) The marital and family law certification committee may, at its option, send reference forms to other attorneys and judicial officers, and make such other investigation as necessary to ensure that the applicant's special knowledge, skills, proficiency, character, and reputation for professionalism in the practice of marital and family law, including the consideration of the needs of children and the family, are befitting board certification in marital and family law.

(d) Education. The applicant must demonstrate completion of at least 75 credit hours of approved continuing legal education in the field of marital and family law during the 5-year period immediately preceding the date of application. At least 5 of the 75 credit hours must be in ethics, dispute resolution, collaborative law and/or mental health continuing legal education. Accreditation of educational hours is subject to policies established by the marital and family law certification committee or the board of legal specialization and education and may include such activity as:

- (1) teaching a course in marital and family law;
- (2) completion of a course in marital and family law;
- (3) participation as a panelist or speaker in a symposium or similar program in marital and family law;
- (4) attendance at a lecture series or similar program concerning marital and family law, sponsored by a qualified educational institution or bar group;
- (5) authorship of a book or article on marital and family law, published in a professional publication or journal; and

(6) such other educational experience as the marital and family law certification committee or the board of legal specialization and education shall approve.

(e) Examination. The applicant must pass an examination applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, experience, and professionalism in marital and family law to justify the representation of special competence to the legal profession and the public.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

RULE 6-6.4 MINIMUM STANDARDS FOR JUDICIAL OFFICERS

An applicant who has served as a judicial officer within the 5-year period immediately preceding the date of application may be eligible for board certification if the applicant complies with each of the following standards:

(a) Minimum Period of Practice or Judicial Service. The applicant must have devoted at least 50 percent of the applicant's practice or judicial labor to marital and family law cases during the 5-year period immediately preceding the date of application.

(b) Minimum Number of Cases. The applicant must demonstrate in the application trial experience and substantial involvement, as set forth in subdivisions (1) and (2) below, as a judicial officer who presided over, or who handled as an advocate, a minimum of 25 contested marital and family law cases in circuit courts during the 5-year period immediately preceding the date of application. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage.

(1) At least 7 of the 25 cases must have been trials as defined in rule 6-6.2(d). The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the trial requirements for certification. At a minimum, in each of the 7 cases, the applicant must have presided over a contested evidentiary trial where at least 1 direct and 1 cross examination of at least 2 different witnesses was conducted and at least 1 piece of evidence was introduced as an exhibit. If the applicant handled the cases as an advocate, the applicant must have been responsible for all or a majority of the presentation of evidence and/or representation of the client. An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as 1 of the 7 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 18 contested marital and family law cases sufficient to demonstrate special competence in marital and family law. Any trials in excess of the 7 trials meeting the criteria of subdivision (b)(1) shall automatically qualify as substantial involvement cases.

(3) The determination of whether the applicant has sufficiently demonstrated substantial involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

(c) Peer Review. The applicant shall submit names and addresses of 6 lawyers, who are neither current nor former associates or partners of the applicant within the 5-year period immediately preceding the date of application, as references to attest to the applicant's substantial competence and active involvement in marital and family law, as well as the applicant's character, ethics, and reputation for professionalism. At least 5 of the lawyers shall be members of The Florida Bar, with their principal office located in the state of Florida. Such lawyers need not be Florida Bar board certified in marital and family law, however, they should be substantially involved in marital and family law and familiar with the applicant's judicial service. This requirement is to ensure meaningful comment on the applicant's special knowledge, skills, proficiency, character, and reputation for professionalism in marital and family law, including the consideration of the needs of children and the family unit affected by the applicant's judicial service. Judicial references shall not be required.

(d) Education. The applicant shall comply with rule 6-6.3(d).

(e) Examination. The applicant must pass the examination required by rule 6-6.3(e).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

RULE 6-6.5 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

(a) Minimum Period of Practice and/or Judicial Service. The applicant must have devoted at least 30 percent of the applicant's practice or judicial labor to marital and family law cases.

(b) Minimum Number of Cases. The applicant must demonstrate in the application trial experience and substantial involvement by handling as an advocate, or presiding over as a judicial officer, a minimum of 15 contested marital and family law cases in circuit courts. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage.

(1) At least 5 of the 15 cases must have been trials as defined in rule 6-6.2(d). The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family

law certification committee finds sufficient to meet the trial requirements for recertification. An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as one of the 5 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 10 contested marital and family law cases sufficient to demonstrate special competence as a marital and family lawyer or as a judicial officer presiding over marital and family law cases. Any trials in excess of the 5 trials meeting the criteria of subdivision (a)(1) shall automatically qualify as substantial involvement cases. The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the substantial involvement requirements for recertification.

(3) The determination of whether the applicant has sufficiently demonstrated involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

(4) On special application, for good cause shown, the marital and family law certification committee may waive compliance with rule 6-6.5(b)(1) and/or (2) for an applicant who has been continuously certified in marital and family law for a period of 14 years or more or who has demonstrated in the application an extraordinary contribution, as determined by the marital and family law certification committee after review, inquiry, and consideration thereof, to the field of marital and family law in Florida. The applicant shall be required to complete all sections of the application for recertification with the exception of schedule B-1.

(c) Education. The applicant must have completed at least 75 hours of approved continuing legal education in accordance with rule 6-6.3(d).

(d) Peer Review. The applicant must submit references and otherwise comply with rule 6- 6.3(c) or 6-6.4(c). Judicial peer review is not required for judicial officers seeking recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; Feb. 11, 1999, by the Board of Governors of The Florida Bar.

See Separate Handout: The Florida Bar v. John Stanley Morse, 784 So. 2d 414 (Fla. 2001)

Case involves disciplinary proceedings against an attorney who knowingly failed "...to properly file claim for life insurance proceeds on behalf of deceased client's estate for nearly one year after client's death and failure to finally close client's estate... [for] some six months thereafter via summary administration, warranted a ten-day suspension." The Supreme Court of Florida also and revoked the attorney's Board Certification in Martial and Family Law, without prejudice to re-apply in the future.

Civil Trial Certification: Steven S. Farbman, Esq.

6-4. STANDARDS FOR CERTIFICATION OF A BOARD CERTIFIED CIVIL TRIAL LAWYER RULE

6-4.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a "Board Certified Civil Trial Lawyer." The purpose of the standards is to identify lawyers who practice civil trial law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as certified civil trial lawyers.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120).

RULE 6-4.2 DEFINITIONS

(a) Civil Trial Law. "Civil trial law" is the practice of law dealing with litigation of civil controversies in all areas of substantive law before state courts, federal courts, administrative agencies, and arbitrators. In addition to actual pretrial and trial process, "civil trial law" includes evaluating, handling, and resolving civil controversies prior to the initiation of suit.

(b) Practice of Law. The "practice of law" for this area is defined as set out at rule 6- 3.5(c)(1).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 21-22, 1998, by the Board of Governors of The Florida Bar.

RULE 6-4.3 MINIMUM STANDARDS

(a) Substantial Involvement and Competence. To become certified as a civil trial lawyer, an applicant must demonstrate continuous substantial involvement and competence in civil trial law in accordance with the following standards.

(1) *Minimum Period of Practice.* The applicant must have actually practiced law for at least 5 years of which at least 50 percent has been spent actively participating in civil trial law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge of a court of general civil jurisdiction (circuit court, federal district court, or a court of similar jurisdiction in another state) adjudicating civil trial matters.

(2) *Minimum Number of Matters.* The applicant must have handled the trials of a minimum of 15 contested civil cases, each involving substantial legal or factual issues, in courts of general jurisdiction (circuit court, federal district court, or a court of similar jurisdiction in other states). Of these 15 cases, 5 shall have been jury cases, 5 shall have been conducted by the applicant as lead counsel, and 5 shall have been submitted to the trier of fact on some or all of the issues. At least 5 of the 15 cases, including 2 jury cases and 2 cases conducted by the applicant as lead counsel, shall have been tried during the 5 years immediately preceding application. Matters deemed to be unacceptable are those that involve: mortgage foreclosure matters tried in less than 1 day, bankruptcy, family law, criminal law, workers' compensation, summary judgments, mediations, evidentiary hearings, preliminary injunctions, and appellate proceedings. (For purposes of this rule, a day shall be defined as a minimum of 6 hours). If an applicant is unable to submit 15 trials in courts of general jurisdiction, 3 substitutions may be submitted.

For acceptance, such substitutions may include evidentiary hearings or preliminary injunctions lasting at least 1 day which must have involved substantial legal and factual issues, as determined by the civil trial certification committee. To be considered as a substitute for trial, the substituted matter must have been an adversarial proceeding which involved the taking of testimony and submission of evidence and must be binding on the parties. (For purposes of this rule, "binding" means that the parties are required to honor the court's decision unless and until the decision is overturned pursuant to law.) Completion of an advanced trial advocacy seminar, approved by the civil trial certification committee, either through teaching or attendance, that includes as part of its curriculum active participation by the applicant in simulated courtroom proceedings, may also substitute as 1 jury or non-jury trial.

(3) *Substantial Involvement and Competence.* The applicant must have substantial involvement in contested civil matters sufficient to demonstrate special competence as a civil trial lawyer within the 3 years immediately preceding application. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury or nonjury cases. For good cause shown, the civil trial certification committee may waive 2 of the 3 years' substantial involvement for individuals who have served as judges of courts of general jurisdiction (circuit court, federal district court, or a court of similar jurisdiction in other states) adjudicating civil trial matters. In no event may the year immediately preceding application be waived.

(b) Peer Review. The applicant shall select and submit names and addresses of 6 lawyers, not associates or partners, as references to attest to the applicant's special competence and substantial involvement in civil trial practice, as well as the applicant's character, ethics, and reputation for professionalism. Individuals submitted as references shall be substantially involved in civil trial law and familiar with the applicant's practice. No less than 1 shall be a judge of a court of general jurisdiction (circuit court or federal district court) in the state of Florida before whom the applicant has appeared as an advocate in the 2 years immediately preceding the application. In addition, the civil trial certification committee may, at its option, send reference forms to other attorneys and judges. Peer review received on behalf of the applicant must be sufficient to demonstrate the applicant's competence, ethics, and professionalism in civil trial law.

(c) Education. The applicant shall complete at least 50 hours of approved continuing legal education in the field of civil trial law within the 3 years immediately preceding application. Such education shall be approved by The Florida Bar and may include such activity as:

- (1) teaching a course in civil trial law;
- (2) completion of a course in civil trial law;
- (3) participation as a panelist or speaker in a symposium or similar program in civil trial law;
- (4) attendance at a lecture series or similar program concerning civil trial law, sponsored by a qualified educational institution or bar group;
- (5) authorship of a book or article on civil trial law, published in a professional publication or journal; or
- (6) such other educational experience as the civil trial certification committee shall approve.

(d) Examination. The applicant must pass an examination applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, and experience in civil trial law to justify the representation of special competence to the legal profession and the public.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; amended January 9-10, 1997, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended June 3, 2005 by the Board of Governors.

RULE 6-4.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement and Competence. The applicant must demonstrate continuous substantial involvement and competence in the practice of law, of which 50 percent has been spent in active participation in civil trial law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-4.3(a)(3).

(b) Minimum Number of Matters. The applicant must have handled the trial of:

(1) two contested civil cases in courts of general jurisdiction (circuit court, federal district court, or a court of similar jurisdiction in other states), of which at least 1 was a jury case conducted by the applicant as lead counsel. Matters deemed unacceptable are defined in rule 6- 4.3(a)(2), however, the non-jury matter may include an evidentiary hearing or preliminary injunction as defined in rule 6-4.3(a)(2); or

(2) one jury trial as lead counsel lasting a minimum of 10 days. (For purposes of this rule, a day shall be defined as a minimum of 6 hours.)

(c) Trial Substitution. If the applicant has not participated as lead counsel in a jury trial, the applicant may substitute completion of an advanced trial advocacy seminar, either through teaching or attendance. The advanced trial advocacy seminar must be approved by the civil trial certification committee and include as part of its curriculum active participation by the applicant in simulated courtroom proceedings.

(d) Peer Review. The applicant shall submit the names and addresses of 3 lawyers, 1 of whom is currently board certified in the area of civil trial law, and 1 judge of a court of general jurisdiction (circuit court, federal district court, or a court of similar jurisdiction in another state), before whom the applicant has appeared as an advocate within the 2 years preceding application. Individuals submitted as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in civil trial law, as well as the applicant's character, ethics, and reputation for professionalism, throughout the period since the last date of certification. The names of lawyers who currently practice in the applicant's law firm may not be submitted as references. The civil trial certification committee may, at its option, send reference forms to other attorneys and judges or authorize reference forms from other attorneys and judges. Peer review received on behalf of the applicant must be sufficient to demonstrate the applicant's competence, ethics, and professionalism in civil trial law.

(e) Education. The applicant must complete at least 50 hours of approved continuing legal education since the filing of the last application for certification. This requirement shall be satisfied by the applicant's participation in continuing legal education approved by The Florida Bar pursuant to rule 6-4.3(c)(1) through (6).

(f) Waiver of Compliance.

(1) On special application, for good cause shown, the civil trial certification committee may waive compliance with the substantial involvement criteria provided all other requirements of this rule have been complied with.

(2) On special application, for good cause shown, the civil trial certification committee may waive compliance with any portion of the trial and peer review criteria for an applicant who is an officer of any judicial system (as defined in the Code of Judicial Conduct), including an officer such as a bankruptcy judge, special master, court commissioner, or magistrate, performing judicial functions on a full-time basis during any portion of the period since the last date of certification.

(3) On special application, for good cause shown, the civil trial certification committee may waive compliance with the trial criteria for an applicant who has been continuously certified as a civil trial lawyer for a period of 14 years or more.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Sept. 30-Oct. 1, 1993, by the Board of Governors of The Florida Bar; amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; amended May 16-18, 1996, by the Board of Governors of The Florida Bar; amended Jan. 9-10, 1997, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended June 3, 2005 by the Board of Governors.

RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES (Including Contingency Fees)

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:

(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a non-client party, or any court, as to either entitlement to, or amount of, the fee.

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(2)

(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(2) Factors to be considered as guides in determining reasonable costs include:

(A) the nature and extent of the disclosure made to the client about the costs;

(B) whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;

(C) the actual amount charged by third party providers of services to the attorney;

(D) whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;

(E) the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and

(F) the relationship and past course of conduct between the lawyer and the client.

All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging costs, the costs charged thereunder shall be presumed reasonable.

(c) Consideration of All Factors. In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

(d) Enforceability of Fee Contracts. Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule.

(e) Duty to Communicate Basis or Rate of Fee or Costs to Client. When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. A fee for legal services that is nonrefundable in any part shall be confirmed in writing and shall explain the intent of the parties as to the nature and amount of the nonrefundable fee. The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties.

The fact that a contract may not be in accord with these rules is an issue between the attorney and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved.

(f) Contingent Fees. As to contingent fees:

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subdivision (f)(3) or by law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(2) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding whereby the lawyer's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule shall apply to such fee contracts.

(3) A lawyer shall not enter into an arrangement for, charge, or collect:

(A) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(B) a contingent fee for representing a defendant in a criminal case.

(4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements:

(A) The contract shall contain the following provisions:

(i) "The undersigned client has, before signing this contract, received and read the statement of client's rights and understands each of the rights set forth therein. The undersigned client has signed the statement and received a signed copy to refer to while being represented by the undersigned attorney(s)."

(ii) "This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorney for the work performed during that time. If the attorney has advanced funds to others in representation of the client, the attorney is entitled to be reimbursed for such amounts as the attorney has reasonably advanced on behalf of the client."

(B) The contract for representation of a client in a matter set forth in subdivision (f)(4) may provide for a contingent fee arrangement as agreed upon by the client and the lawyer, except as limited by the following provisions:

(i) Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:

a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:

1. 33 1/3% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment:

1. 40% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:

1. 33 1/3% of any recovery up to \$1 million; plus
2. 20% of any portion of the recovery between \$1 million and \$2 million; plus
3. 15% of any portion of the recovery exceeding \$2 million.

d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

(ii) If any client is unable to obtain an attorney of the client's choice because of the limitations set forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for approval of any fee contract between the client and an attorney of the client's choosing. Such authorization shall be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings thereon may occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision shall contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b).

(iii) Subject to the provisions of 4-1.5(f)(4)(B)(i) and (ii) a lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for medical liability whereby the compensation is dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall provide the language of article I, section 26 of the Florida Constitution to the client in writing and shall orally inform the client that:

- a. Unless waived, in any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000 of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in

excess of \$250,000, exclusive of reasonable and customary costs and regardless of the number of defendants.

b. If a lawyer chooses not to accept the representation of a client under the terms of article I, section 26 of the Florida Constitution, the lawyer shall advise the client, both orally and in writing of alternative terms, if any, under which the lawyer would accept the representation of the client, as well as the client's right to seek representation by another lawyer willing to accept the representation under the terms of article I, section 26 of the Florida Constitution, or a lawyer willing to accept the representation on a fee basis that is not contingent.

c. If any client desires to waive any rights under article I, section 26 of the Florida Constitution in order to obtain a lawyer of the client's choice, a client may do so by waiving such rights in writing, under oath, and in the form provided in this rule. The lawyer shall provide each client a copy of the written waiver and shall afford each client a full and complete opportunity to understand the rights being waived as set forth in the waiver. A copy of the waiver, signed by each client and lawyer, shall be given to each client to retain, and the lawyer shall keep a copy in the lawyer's file pertaining to the client. The waiver shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements provided in 4- 1.5(f)(5).

**WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE I,
SECTION 26 OF THE FLORIDA CONSTITUTION**

On November 2, 2004, voters in the State of Florida approved The Medical Liability Claimant's Compensation Amendment that was identified as Amendment 3 on the ballot. The amendment is set forth below:

The Florida Constitution

Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

The undersigned client understands and acknowledges that (initial each provision):

_____ I have been advised that signing this waiver releases an important constitutional right; and

_____ I have been advised that I may consult with separate counsel before signing this waiver; and that I may request a hearing before a judge to further explain this waiver; and

_____ By signing this waiver I agree to an increase in the attorney fee that might otherwise be owed if the constitutional provision listed above is not waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rule Regulating The Florida Bar 4-1.5(f)(4)(B)(i). Depending on the circumstances of my case, the maximum agreed upon fee may range from 33 1/3% to 40% of any recovery up to \$1 million; plus 20% to 30% of any portion of the recovery between \$1 million and \$2 million; plus 15% to 20% of any recovery exceeding \$2 million; and

_____ I have three (3) business days following execution of this waiver in which to cancel this waiver; and

_____ I wish to engage the legal services of the lawyers or law firms listed below in an action or claim for medical liability the fee for which is contingent in whole or in part upon the successful prosecution or settlement thereof, but I am unable to do so because of the provisions of the constitutional limitation set forth above. In consideration of the lawyers' or law firms' agreements to represent me and my desire to employ the lawyers or law firms listed below, I hereby knowingly, willingly, and voluntarily waive any and all rights and privileges that I may have under the constitutional provision set forth above, as apply to the contingency fee agreement only. Specifically, I waive the percentage restrictions that are the subject of the constitutional provision and confirm the fee percentages set forth in the contingency fee agreement; and

_____ I have selected the lawyers or law firms listed below as my counsel of choice in this matter and would not be able to engage their services without this waiver; and I expressly state that this waiver is made freely and voluntarily, with full knowledge of its terms, and that all questions have been answered to my satisfaction.

ACKNOWLEDGMENT BY CLIENT FOR PRESENTATION TO THE COURT

The undersigned client hereby acknowledges, under oath, the following:

I have read and understand this entire waiver of my rights under the constitutional provision set forth above.

I am not under the influence of any substance, drug, or condition (physical, mental, or emotional) that interferes with my understanding of this entire waiver in which I am entering and all the consequences thereof.

I have entered into and signed this waiver freely and voluntarily.

I authorize my lawyers or law firms listed below to present this waiver to the appropriate court, if required for purposes of approval of the contingency fee agreement. Unless the court requires my attendance at a hearing for that purpose, my lawyers or law firms are authorized to provide this waiver to the court for its consideration without my presence.

Dated this _____ day of _____, _____. By:
_____ CLIENT

Sworn to and subscribed before me this _____ day of _____, _____ by _____, who is personally known to me, or has produced the following

identification: _____ . _____
Notary Public

My Commission Expires:

Dated this _____ day of _____, ____.

By: _____ ATTORNEY

(C) Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of client's rights and shall afford the client a full and complete opportunity to understand each of the rights as set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5).

(D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis:

(i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

(ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive.

(iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply to the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel that shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this subdivision shall contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval.

(iv) The percentages required by this subdivision shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.

(5) In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy. Each participating lawyer shall retain a copy of the written fee contract and closing statement for 6 years

after execution of the closing statement. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

(6) In cases in which the client is to receive a recovery that will be paid to the client on a future structured or periodic basis, the contingent fee percentage shall be calculated only on the cost of the structured verdict or settlement or, if the cost is unknown, on the present money value of the structured verdict or settlement, whichever is less. If the damages and the fee are to be paid out over the long term future schedule, this limitation does not apply. No attorney may negotiate separately with the defendant for that attorney's fee in a structured verdict or settlement when separate negotiations would place the attorney in a position of conflict.

(g) Division of Fees Between Lawyers in Different Firms. Subject to the provisions of subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

(1) the division is in proportion to the services performed by each lawyer; or

(2) by written agreement with the client:

(A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and

(B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.

(h) Credit Plans. A lawyer or law firm may accept payment under a credit plan. No higher fee shall be charged and no additional charge shall be imposed by reason of a lawyer's or law firm's participation in a credit plan.

(i) Arbitration Clauses. A lawyer shall not make an agreement with a potential client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions. A lawyer shall not make an agreement containing such mandatory arbitration provisions unless the agreement contains the following language in bold print:

NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with 1 lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have 3 business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first 3 business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.
4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least 1 lawyer from each law firm must sign the contingent fee contract.
5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.
6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.
8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm working on your case sign this closing statement.
9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.
10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.
11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar, call 850/561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract.

Client Signature:

Attorney Signature:

Date _____

Date _____

Comment

Bases or rate of fees and costs

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. The conduct of the lawyer and client in prior relationships is relevant when analyzing the requirements of this rule. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee but only those that are directly involved in its computation. It is sufficient, for example, to state the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. Although hourly billing or a fixed fee may be the most common bases for computing fees in an area of practice, these may not be the only bases for computing fees. A lawyer should, where appropriate, discuss alternative billing methods with the client. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

General overhead should be accounted for in a lawyer's fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule. Rule 4-1.8(e) should be consulted regarding a lawyer's providing financial assistance to a client in connection with litigation.

Lawyers should also be mindful of any statutory, constitutional, or other requirements or restrictions on attorney's fees.

In order to avoid misunderstandings concerning the nature of legal fees, written documentation is required when any aspect of the fee is nonrefundable. A written contract provides a method to resolve misunderstandings and to protect the lawyer in the event of continued misunderstanding. Rule 4-1.5 (e) does not require the client to sign a written document memorializing the terms of the fee. A letter from the lawyer to the client setting forth the basis or rate of the fee and the intent of the parties in regard to the nonrefundable nature of the fee is sufficient to meet the requirements of this rule.

All legal fees and contracts for legal fees are subject to the requirements of the Rules Regulating The Florida Bar. In particular, the test for reasonableness of legal fees found in rule 4-1.5(b) applies to all types of legal fees and contracts related to them.

Terms of payment

A lawyer may require advance payment of a fee but is obliged to return any unearned portion. See rule 4-1.16(d). A lawyer is not, however, required to return retainers that, pursuant to an agreement with a client, are not refundable. A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 4-1.8(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Prohibited contingent fees

Subdivision (f)(3)(A) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee

for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Contingent fee regulation

Subdivision (e) is intended to clarify that whether the lawyer's fee contract complies with these rules is a matter between the lawyer and client and an issue for professional disciplinary enforcement. The rules and subdivision (e) are not intended to be used as procedural weapons or defenses by others. Allowing opposing parties to assert noncompliance with these rules as a defense, including whether the fee is fixed or contingent, allows for potential inequity if the opposing party is allowed to escape responsibility for their actions solely through application of these rules.

Rule 4-1.5(f)(4) should not be construed to apply to actions or claims seeking property or other damages arising in the commercial litigation context.

Rule 4-1.5(f)(4)(B) is intended to apply only to contingent aspects of fee agreements. In the situation where a lawyer and client enter a contract for part non-contingent and part contingent attorney's fees, rule 4-1.5(f)(4)(B) should not be construed to apply to and prohibit or limit the non-contingent portion of the fee agreement. An attorney could properly charge and retain the non-contingent portion of the fee even if the matter was not successfully prosecuted or if the non-contingent portion of the fee exceeded the schedule set forth in rule 4-1.5(f)(4)(B). Rule 4-1.5(f)(4)(B) should, however, be construed to apply to any additional contingent portion of such a contract when considered together with earned non-contingent fees. Thus, under such a contract a lawyer may demand or collect only such additional contingent fees as would not cause the total fees to exceed the schedule set forth in rule 4-1.5(f)(4)(B).

The limitations in rule 4-1.5(f)(4)(B)(i)c. are only to be applied in the case where all the defendants admit liability at the time they file their initial answer and the trial is only on the issue of the amount or extent of the loss or the extent of injury suffered by the client. If the trial involves not only the issue of damages but also such questions as proximate cause, affirmative defenses, seat belt defense, or other similar matters, the limitations are not to be applied because of the contingent nature of the case being left for resolution by the trier of fact.

Rule 4-1.5(f)(4)(B)(ii) provides the limitations set forth in subdivision (f)(4)(B)(i) may be waived by the client upon approval by the appropriate judge. This waiver provision may not be used to authorize a lawyer to charge a client a fee that would exceed rule 4-1.5(a) or (b). It is contemplated that this waiver provision will not be necessary except where the client wants to retain a particular lawyer to represent the client or the case involves complex, difficult, or novel questions of law or fact that would justify a contingent fee greater than the schedule but not a contingent fee that would exceed rule 4-1.5(b). Upon a petition by a client, the trial court reviewing the waiver request must grant that request if the trial court finds the client: (a) understands the right to have the limitations in rule 4-1.5(f)(4)(B) applied in the specific matter; and (b) understands and approves the terms of the proposed contract. The consideration by the trial court of the waiver petition is not to be used as an opportunity for the court to inquire into the merits or details of the particular action or claim that is the subject of the contract. The proceedings before the trial court and the trial court's decision on a waiver request are to be confidential and not subject to discovery by any of the parties to the action or by any other individual or entity except The Florida Bar. However, terms of the contract approved by the trial court may be subject to discovery if the contract (without court approval) was subject to discovery under applicable case law or rules of evidence.

Rule 4-1.5(f)(4)(B)(iii) is added to acknowledge the provisions of Article 1, Section 26 of the Florida Constitution, and to create an affirmative obligation on the part of an attorney contemplating a

contingency fee contract to notify a potential client with a medical liability claim of the limitations provided in that constitutional provision. This addition to the rule is adopted prior to any judicial interpretation of the meaning or scope of the constitutional provision and this rule is not intended to make any substantive interpretation of the meaning or scope of that provision. The rule also provides that a client who wishes to waive the rights of the constitutional provision, as those rights may relate to attorney's fees, must do so in the form contained in the rule.

Rule 4-1.5(f)(6) prohibits a lawyer from charging the contingent fee percentage on the total, future value of a recovery being paid on a structured or periodic basis. This prohibition does not apply if the lawyer's fee is being paid over the same length of time as the schedule of payments to the client.

Contingent fees are prohibited in criminal and certain domestic relations matters. In domestic relations cases, fees that include a bonus provision or additional fee to be determined at a later time and based on results obtained have been held to be impermissible contingency fees and therefore subject to restitution and disciplinary sanction as elsewhere stated in these Rules Regulating The Florida Bar. Fees that provide for a bonus or additional fees and that otherwise are not prohibited under the Rules Regulating The Florida Bar can be effective tools for structuring fees. For example, a fee contract calling for a flat fee and the payment of a bonus based on the amount of property retained or recovered in a general civil action is not prohibited by these rules. However, the bonus or additional fee must be stated clearly in amount or formula for calculation of the fee (basis or rate). Courts have held that unilateral bonus fees are unenforceable. The test of reasonableness and other requirements of this rule apply to permissible bonus fees.

Division of fee

A division of fee is a single billing to a client covering the fee of 2 or more lawyers who are not in the same firm. A division of fee facilitates association of more than 1 lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Subject to the provisions of subdivision (f)(4)(D), subdivision (g) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. It does require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in rule 4-5.1 for purposes of the matter involved.

Disputes over fees

Since the fee arbitration rule (chapter 14) has been established by the bar to provide a procedure for resolution of fee disputes, the lawyer should conscientiously consider submitting to it. Where law prescribes a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class, or a person entitled to a reasonable fee as part of the measure of damages, the lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Referral fees and practices

A secondary lawyer shall not be entitled to a fee greater than the limitation set forth in rule 4-1.5(f)(4)(D)(ii) merely because the lawyer agrees to do some or all of the following: (a) consults with the client; (b) answers interrogatories; (c) attends depositions; (d) reviews pleadings; (e) attends the trial; or (f) assumes joint legal responsibility to the client. However, the provisions do not contemplate that a secondary lawyer who does more than the above is necessarily entitled to a larger percentage of the fee than that allowed by the limitation.

The provisions of rule 4-1.5(f)(4)(D)(iii) only apply where the participating lawyers have for purposes of the specific case established a co-counsel relationship. The need for court approval of a referral fee arrangement under rule 4-1.5(f)(4)(D)(iii) should only occur in a small percentage of cases arising under rule 4-1.5(f)(4) and usually occurs prior to the commencement of litigation or at the onset of the representation. However, in those cases in which litigation has been commenced or the representation has already begun, approval of the fee division should be sought within a reasonable period of time after the need for court approval of the fee division arises.

In determining if a co-counsel relationship exists, the court should look to see if the lawyers have established a special partnership agreement for the purpose of the specific case or matter. If such an agreement does exist, it must provide for a sharing of services or responsibility and the fee division is based upon a division of the services to be rendered or the responsibility assumed. It is contemplated that a co-counsel situation would exist where a division of responsibility is based upon, but not limited to, the following: (a) based upon geographic considerations, the lawyers agree to divide the legal work, responsibility, and representation in a convenient fashion. Such a situation would occur when different aspects of a case must be handled in different locations; (b) where the lawyers agree to divide the legal work and representation based upon their particular expertise in the substantive areas of law involved in the litigation; or (c) where the lawyers agree to divide the legal work and representation along established lines of division, such as liability and damages, causation and damages, or other similar factors.

The trial court's responsibility when reviewing an application for authorization of a fee division under rule 4-1.5(f)(4)(D)(iii) is to determine if a co-counsel relationship exists in that particular case. If the court determines a co-counsel relationship exists and authorizes the fee division requested, the court does not have any responsibility to review or approve the specific amount of the fee division agreed upon by the lawyers and the client.

Rule 4-1.5(f)(4)(D)(iv) applies to the situation where appellate counsel is retained during the trial of the case to assist with the appeal of the case. The percentages set forth in subdivision (f)(4)(D) are to be applicable after appellate counsel's fee is established. However, the effect should not be to impose an unreasonable fee on the client.

Credit Plans

Credit plans include credit cards. If a lawyer accepts payment from a credit plan for an advance of fees and costs, the amount must be held in trust in accordance with chapter 5, Rules Regulating The Florida Bar, and the lawyer must add the lawyer's own money to the trust account in an amount equal to the amount charged by the credit plan for doing business with the credit plan.

Amended: Oct. 20, 1987, effective Jan. 1, 1988 (519 So.2d 971); Oct. 26, 1989 (550 So.2d 1120); Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); July 20, 1995 (658 So.2d 930); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d

1179); March 23, 2000 (763 So.2d 1002); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705); corrected opinion issued July 7, 2004, (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); September 28, 2006, effective September 28, 2006 (SC05-1150), (939 So.2d 1032); December 20, 2007, effective March 1, 2008 (SC06-736), (978 So.2d 91); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

Criminal Trial Certification: Todd A. Weicholz, Esq.

STANDARDS FOR CERTIFICATION OF A BOARD CERTIFIED CRIMINAL LAWYER

RULE 6-8.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as either a "Board Certified Criminal Trial Lawyer" or a "Board Certified Criminal Appellate Lawyer." An applicant may qualify for certification under both categories provided the applicant meets the standards for each category. The purpose of the standards is to identify those lawyers who practice criminal law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as certified criminal trial or appellate lawyers.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 11, 1999; August 17, 2007. by the Board of Governors of The Florida Bar.

RULE 6-8.2 DEFINITIONS AND COMMITTEE

(a) Criminal Law. "Criminal law" is the practice of law dealing with the defense and prosecution of misdemeanor and felony crimes in state and federal trial and appellate courts.

(b) Practice of Law. The "practice of law" for this area is defined as set out in rule 6- 3.5(c)(1).

(c) Criminal Law Certification Committee. At least 2 members of the "criminal law certification committee" shall be certified in criminal appellate law. At least 5 members shall be certified criminal trial law.

(d) Trial. A "trial" shall be defined as substantially preparing a case for court, offering testimony or evidence (or cross-examination of witness[es]) in an adversarial proceeding before a trier of fact, and submission of a case to the trier of fact for determination of the ultimate fact of guilt or innocence.

A trial conducted under the Jimmy Ryce Act, section 394.911, et seq., Florida Statutes, may count toward the trial requirement for initial certification or recertification. However, no more than 60 percent of the total trial requirement for criminal trial law certification or recertification may be based on Jimmy Ryce trials.

(e) Protracted Litigation. "Protracted litigation" shall be defined as litigation that proceeds on a long-term basis involving unusual and complicated legal or factual matters, extensive discovery, court hearings or trial, and by its very nature is so time consuming it precludes the applicant from meeting the numerical requirement.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

RULE 6-8.3 CRIMINAL TRIAL; MINIMUM STANDARDS

(a) Substantial Involvement and Competence. To become certified as a criminal trial lawyer, an applicant must demonstrate substantial involvement and competence in criminal trial law. Substantial involvement and competence shall include the following:

(1) At least 5 years of the actual practice of law of which at least 30 percent has been spent in active participation in criminal trial law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge of a court of general jurisdiction adjudicating criminal trial matters.

(2) The trial of a minimum of 25 criminal cases. Of these 25 cases, at least 20 shall have been jury trials, tried to verdict, and at least 15 shall have involved felony charges; and at least 10 shall have been conducted by the applicant as lead counsel. At least 5 of the 25 cases shall have been tried during the 5 years immediately preceding application. On good cause shown, for satisfaction in part of the 25 criminal trials, the criminal law certification committee may consider involvement in protracted litigation as defined in rule 6-8.2(e).

(3) Submission of a criminal trial court memorandum or brief prepared and filed by the applicant within the 3 year period immediately preceding application. Such document shall be substantial in nature, state facts and argue various aspects of criminal law. The quality of this memorandum or brief will be considered in determining whether an applicant is qualified for certification.

(4) Within the 3 years immediately preceding application, the applicant's substantial involvement must be sufficient to demonstrate special competence as a criminal trial lawyer. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury or non-jury cases. For good cause shown, the criminal law certification committee may waive 2 of the 3 years of substantial involvement for individuals who have served as judges. In no event may the year immediately preceding application be waived.

(b) Peer Review.

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal trial matters within the last 2 years, or before whom the applicant has tried a criminal trial to jury verdict, to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal trial law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

(c) Education. The applicant shall demonstrate that during the 3-year period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for criminal trial certification. The required number of hours shall be established by the board

of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours is subject to policies established by the criminal law certification committee or the board of legal specialization and education.

(d) Examination. Every applicant must pass an examination designed to demonstrate sufficient knowledge, skills, proficiency, and experience in criminal trial law, application of constitutional principles, and rules of criminal procedure to justify the representation of special competence to the legal profession and the public.

Amended June 18, 1987, effective July 1, 1987 (508 So.2d 1236); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); amended April 14-15, 1994, by the Board of Governors of The Florida Bar; Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

RULE 6-8.4 CRIMINAL TRIAL RECERTIFICATION

During the 5-year period immediately preceding application, an applicant shall satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant shall demonstrate substantial involvement in the practice of law, of which at least 30 percent must have been spent in active participation in criminal trial law. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury or non-jury cases.

(b) Criminal Trials. Either as an advocate or as a judge, an applicant shall have completed the trial of a minimum of 5 criminal cases. Of these 5 cases, at least 4 shall have been jury trials and at least 3 shall have involved felony charges. On good cause shown, for satisfaction in part of the 5 criminal trials, the criminal law certification committee may consider, in its discretion, involvement in protracted litigation as defined in rule 6-8.3(a)(2)(e) or other such criteria as the committee may deem appropriate.

The proceedings that may serve as a trial for recertification purposes include, but are not limited to cases where the:

(1) result is “dismissal of charges” by the court upon a motion for judgment of acquittal at the close of the prosecution’s case or thereafter;

(2) result is a “mistrial” or “plea.” The case may be counted as a trial at the discretion of the committee provided the applicant offers sufficient information demonstrating substantial courtroom activity;

(3) case is a “violation of probation” or a proceeding involving post-conviction relief. The case may be counted as the 1 non-jury trial of the 5 trials for recertification if the applicant offers sufficient information demonstrating substantial courtroom activity;

(4) case is a “court martial” before a judge; however, discharge boards shall be considered non-jury;

(c) Education. The applicant shall demonstrate completion of at least 50 credit hours of approved continuing legal education for criminal trial law certification, in accordance with rule 6-8.3(c).

(d) Peer Review.

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references, to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal trial matters within the last 2 years, or before whom the applicant has tried a criminal trial to jury verdict, to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal appellate law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

(e) Waiver of Compliance. On special application, for good cause shown, the criminal law certification committee may waive compliance with the trial criteria for an applicant who has been continuously certified as a criminal trial lawyer for a period of 14 years or more, provided the applicant:

(1) satisfies the peer review and education required in subdivisions (c) and (d) of this rule; and,

(2) demonstrates substantial involvement in criminal trial law defined, for purposes of this subdivision, as active participation in the litigation process, including the investigation and evaluation of criminal charges, involvement in pretrial processes such as discovery and motion practice, and the review of strategy and tactics for trial. The applicant shall describe the extent of substantial involvement, including courtroom and trial experience, since the last date of recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit, or permit employees or agents of the lawyer to solicit on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes any written form of communication, including any electronic mail communication, directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each page of such communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet and on each panel of the inside of the brochure or pamphlet. If the

written communication is sent via electronic mail, the subject line must begin with the word "Advertisement." Brochures solicited by clients or prospective clients need not contain the "advertisement" mark.

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members.

Comment

Prior Professional Relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing

relationship with another professional where both are members of a trade organization related to both the lawyer's and the non-lawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing Where the Lawyer Obtained Information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Group or Prepaid Legal Services Plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

Wills, Trusts & Estates Certification: William A. Snyder, LL.M., Esq.

6-7 STANDARDS FOR CERTIFICATION OF

A BOARD CERTIFIED WILLS, TRUSTS, AND ESTATES LAWYER RULE

6-7.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a "Board Certified Wills, Trusts, and Estates Lawyer." The purpose of the standards is to identify those lawyers who practice in the area of wills, trusts, and estates and have demonstrated special knowledge, skills, and proficiency to be properly identified to the public as certified wills, trusts, and estates lawyers.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 1, 1993 (621 So.2d 1032).

RULE 6-7.2 DEFINITIONS

(a) **Wills, Trusts, and Estates.** "Wills, trusts, and estates" is the practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to the applicable tax consequences, both federal and state; the preparation of legal instruments to effectuate estate plans; administering estates, including tax related matters, both federal and state; and probate litigation.

(b) **Practice of Law.** The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for any purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law. Service as a judge of any court of record shall be deemed to constitute the practice of law. Practice of law that otherwise satisfies these requirements but that is on a part-time basis will satisfy the requirement if the balance of the applicant's activity is spent as a teacher of wills, trusts, and estates subjects in an accredited law school.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

RULE 6-7.3 MINIMUM STANDARDS

(a) **Minimum Period of Practice.** Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application. Notwithstanding the definition of "practice of law" in rule 6-3.5(c)(1), receipt of an LL.M. degree in taxation or estate planning and probate (or such other related fields approved by the board and wills, trusts, and estates certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision; provided, however, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being

engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement in the practice of law in estate planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, probate and trust law, estates and trust litigation, and homestead law during the 5 years immediately preceding the date of application, including devoting not less than 40 percent of practice to estate planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, probate and trust law, estates and trust litigation, and homestead law in this state during each of the 2 years immediately preceding application. Service as a judge in the probate division of the circuit court of this state during 6 months or more of a calendar year shall satisfy a year of substantial involvement. Except for the 2 years immediately preceding application, upon an applicant's request and the recommendation of the wills, trusts, and estates certification committee, the board of legal specialization and education may waive the requirement that the 5 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Except for the 2 years immediately preceding application, receipt of an LL.M. degree in estate planning and probate (or such other degree containing substantial estate planning and probate content as approved by the board of legal specialization and education) from an approved law school may substitute for 1 year of substantial involvement. An applicant must furnish information concerning the frequency of work and the nature of the issues involved. For the purposes of this section the "practice of law" shall be as defined in rule 6-3.5(c)(1) except that it shall also include time devoted to lecturing and/or authoring books or articles on wills, trusts, and estates if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the wills, trusts, and estates certification committee, but written or oral supplementation may be required.

(c) Peer Review. Every applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for professional competence and substantial involvement in the field of wills, trusts, and estates. The board of legal specialization and education and the wills, trusts, and estates certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the wills, trusts, and estates certification committee may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

(d) Education. Every applicant must demonstrate that, during the 3-year period immediately preceding the date of the application, the applicant has met the continuing legal education requirements in wills, trusts, and estates as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 90 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to wills, trusts, and estates. The education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in estates and trusts, fiduciary administration, fiduciary and transfer taxation, and homestead law at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education and the wills, trusts, and estates certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; and

(6) such other methods as may be approved by the board of legal specialization and education and the wills, trusts, and estates certification committee.

The board of legal specialization and education and the wills, trusts, and estates certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(e) Examination. The applicant must pass an examination that will be practical and comprehensive and designed to demonstrate special knowledge, skills, and proficiency in estate planning, postmortem planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, substantive and procedural aspects of probate and trust law, estates and trust litigation, homestead law, joint tenancies, tenancies by the entirety, conflicts of interest, and other ethical considerations. Such examination shall justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

RULE 6-7.4 RECERTIFICATION

(a) Eligibility. Recertification must be obtained every 5 years. To be eligible for recertification, an applicant must meet the following requirements:

(1) A satisfactory showing, as determined by the board of legal specialization and education and the wills, trusts, and estates certification committee, of continuous and substantial involvement in wills, trusts, and estates law throughout the period since the last date of certification. The demonstration of substantial involvement of more than 40 percent during each year after certification or prior recertification shall be made in accordance with the standards set forth in rule 6-7.3(b).

(2) Completion of at least 125 hours of approved continuing legal education since the filing of the last application for certification. This requirement shall be satisfied by the applicant's participation in continuing legal education approved by The Florida Bar pursuant to rule 6-7.3(d)(1) through (6).

(3) Submission of the names and addresses of 3 individuals who are active in wills, trusts, and estates, including but not limited to lawyers, trust officers, certified public accountants, and judges who are familiar with the applicant's practice, excluding persons who are currently employed by or practice in the applicant's law firm, who can attest to the applicant's reputation for professional competence and substantial involvement in the field of wills, trusts, and estates law during the period since the last date of certification. The board of legal specialization and education or the wills, trusts, and estates certification committee may solicit references from persons other than those whose names are submitted by the applicant in such cases as they deem appropriate. The board of legal specialization and education or the wills, trusts, and estates certification committee may also make such additional inquiries as it deems appropriate. (

(b) Denial of Recertification. The board of legal specialization and education may deny recertification based upon any information received from the peer review or from any individual referenced in subdivision (a)(3), above.

(c) Examination Requirement. If, after reviewing the material submitted by an applicant for recertification and the peer review, the wills, trusts, and estates certification committee determines the applicant may not meet the standards for wills, trusts, and estates certification established under this chapter, the wills, trusts, and estates certification committee may require, as a condition of recertification, that the applicant pass the examination given by the wills, trusts, and estates certification committee to new applicants.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032)

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising.

(a) Deceptive and Inherently Misleading Advertisements. An advertisement is deceptive or inherently misleading if it:

- (1) contains a material statement that is factually or legally inaccurate;
- (2) omits information that is necessary to prevent the information supplied from being misleading; or
- (3) implies the existence of a material nonexistent fact.

(b) Examples of Deceptive and Inherently Misleading Advertisements. Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain:

- (1) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;
- (2) references to past results unless such information is objectively verifiable, subject to rule 4-7.14;
- (3) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;
- (4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;
- (5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";
- (6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT." When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: "ACTOR. NOT ACTUAL [. . . .]";
- (7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;
- (8) a testimonial:
 - (A) regarding matters on which the person making the testimonial is unqualified to evaluate;
 - (B) that is not the actual experience of the person making the testimonial;

(C) that is not representative of what clients of that lawyer or law firm generally experience;

(D) that has been written or drafted by the lawyer;

(E) in exchange for which the person making the testimonial has been given something of value; or

(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;

(9) a statement or implication that The Florida Bar has approved an advertisement or a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating the Florida Bar; or

(10) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state "Judge Doe (retired)" or "Judge Doe, former circuit judge." She may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge...."

Comment

Material Omissions

An example of a material omission is stating "over 20 years' experience" when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states "over 20 years' experience" when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other non-lawyer position.

Implied Existence of Nonexistent Fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of Success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: "I will save your home," "I can save your home," "I will get you money for your injuries," and "Come to me to get acquitted of the charges pending against you."

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client's rights, protect the client's assets, or protect the client's family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "strive," "dedicated," "mission," and "philosophy." For example, the statement, "My goal is to achieve the best possible result in your case," is permissible. Similarly, the statement, "If you've been injured through no fault of your own, I am dedicated to recovering damages on your behalf," is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, "I will get you acquitted of the pending charges," would violate the rule as it promises a specific legal result. In contrast, the statement, "I will pursue an acquittal of your pending charges," does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: "When the government takes your property through its eminent domain power, the government must provide you with compensation for your property."

Past Results

The prohibitions in subdivisions (b)(1) and (b)(2) of this rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client's actual damages, is also misleading. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, "I have successfully represented clients," or "I have won numerous appellate cases," may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words "successful" or "won" in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word "successful" to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words "successful" or "won" to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must

have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

Comparisons

The prohibition against comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law. On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of Skills, Experience, Reputation or Record

The rule prohibits statements that characterize skills, experience, reputation, or record that are not objectively verifiable. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not characterize the lawyer's skills, experience, reputation, or record. Such statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as "the best," "second to none," or "the finest" will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy." For example, the statement, "I am dedicated to excellence in my representation of my clients," is permissible as a goal. Similarly, the statement, "My goal is to provide high quality legal services," is permissible.

Areas of Practice

This rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, "DRAMATIZATION. NOT AN ACTUAL EVENT." For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the re-construction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer under Rule 4-7.15.

Implying Lawyer Will Violate Rules of Conduct or Law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in "combative and vicious tactics" that would violate the Rules of Professional Conduct. Fla. Bar v. Pape, 918 So. 2d 240 (Fla.2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer's firm regarding the quality of the lawyer's services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

Florida Bar Approval of Ad or Lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, "This advertisement was approved by The Florida Bar." A lawyer referral service also may not state that it is a "Florida Bar approved lawyer referral service," unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar.

Judicial, Executive, and Legislative Titles

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer's name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one's judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer's name and is clearly modified by terms such as "former" or "retired." For example, a former judge may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge."

As another example, a former state representative may not include "Representative Smith (former)" or "Representative Smith, retired" in an advertisement, letterhead, or business card. However, a former representative may state, "John Smith, Florida Bar member, former state representative."

Further, an accurate representation of one's judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person's name. For example, the statement "John Jones was governor of the State of Florida from [. . . years of service . . .]" would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge shall not use the title in any form in a court pleading. If a former or retired judge uses her previous title in a pleading, she could be sanctioned.

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