



RULES REGULATING THE FLORIDA BAR
SUBCHAPTER 4-6: PUBLIC SERVICE

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RULES REGULATING THE FLORIDA BAR

CHAPTER: 4 RULES OF PROFESSIONAL CONDUCT

SECTION: 6 PUBLIC SERVICE

RULES: 4-6.1 through 4-6.6



4-6.1 | PRO BONO PUBLIC SERVICE

(a) Professional Responsibility. Each member of The Florida Bar in good standing, as part of that member's professional responsibility, should (1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor. This professional responsibility does not apply to members of the judiciary or their staffs or to government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions. Neither does this professional responsibility apply to those members of the bar who are retired, inactive, or suspended, or who have been placed on the inactive list for incapacity not related to discipline.

(b) Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. The professional responsibility to provide pro bono legal services as established under this rule is aspirational rather than mandatory in nature. The failure to fulfill one's professional responsibility under this rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal service to the poor may be discharged by:

- (1) annually providing at least 20 hours of pro bono legal service to the poor; or
- (2) making an annual contribution of at least \$350 to a legal aid organization.

(c) Collective Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. Each member of the bar should strive to individually satisfy the member's professional responsibility to provide pro bono legal service to the poor. Collective satisfaction of this professional responsibility is permitted by law firms only under a collective satisfaction plan that has been filed previously with the circuit pro bono committee and only when providing pro bono legal service to the poor:

- (1) in a major case or matter involving a substantial expenditure of time and resources; or
- (2) through a full-time community or public service staff; or



(3) in any other manner that has been approved by the circuit pro bono committee in the circuit in which the firm practices.

(d) Reporting Requirement. Each member of the bar shall annually report whether the member has satisfied the member's professional responsibility to provide pro bono legal services to the poor. Each member shall report this information through a simplified reporting form that is made a part of the member's annual membership fees statement. The form will contain the following categories from which each member will be allowed to choose in reporting whether the member has provided pro bono legal services to the poor:

(1) I have personally provided _____ hours of pro bono legal services;

(2) I have provided pro bono legal services collectively by: (indicate type of case and manner in which service was provided);

(3) I have contributed \$_____ to: (indicate organization to which funds were provided);

(4) I have provided legal services to the poor in the following special manner: (indicate manner in which services were provided); or

(5) I have been unable to provide pro bono legal services to the poor this year; or

(6) I am deferred from the provision of pro bono legal services to the poor because I am: (indicate whether lawyer is: a member of the judiciary or judicial staff; a government lawyer prohibited by statute, rule, or regulation from providing services; retired, or inactive).

The failure to report this information shall constitute a disciplinary offense under these rules.



(e) Credit Toward Professional Responsibility in Future Years. In the event that more than 20 hours of pro bono legal service to the poor are provided and reported in any 1 year, the hours in excess of 20 hours may be carried forward and reported as such for up to 2 succeeding years for the purpose of determining whether a lawyer has fulfilled the professional responsibility to provide pro bono legal service to the poor in those succeeding years.

(f) Out-of-State Members of the Bar. Out-of-state members of the bar may fulfill their professional responsibility in the states in which they practice or reside.

(Former Rule 4-6.1 deleted June 23, 1993, effective Oct. 1, 1993. New Rule 4- 6.1 adopted June 23, 1993, effective October 1, 1993 (630 So.2d 501); amended Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).)

Comments

Pro bono legal service to the poor is an integral and particular part of a lawyer's pro bono public service responsibility. As our society has become one in which rights and responsibilities are increasingly defined in legal terms, access to legal services has become of critical importance. This is true for all people, be they rich, poor, or of moderate means. However, because the legal problems of the poor often involve areas of basic need, their inability to obtain legal services can have dire consequences. The vast unmet legal needs of the poor in Florida have been recognized by the Supreme Court of Florida and by several studies undertaken in Florida over the past two decades. The Supreme Court of Florida has further recognized the necessity of finding a solution to the problem of providing the poor greater access to legal service and the unique role of lawyers in our adversarial system of representing and defending persons against the actions and conduct of governmental entities, individuals, and nongovernmental entities. As an officer of the court, each member of The Florida Bar in good standing has a professional responsibility to provide pro bono legal service to the poor. Certain lawyers, however, are prohibited from performing legal services by constitutional, statutory, rule, or other regulatory prohibitions. Consequently, members of the judiciary and their staffs, government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions, members of the bar who are retired, inactive, or suspended, or who have been placed on the inactive list for incapacity not related to discipline are deferred from participation in this program.

In discharging the professional responsibility to provide pro bono legal service to the poor, each lawyer should furnish a minimum of twenty hours of pro bono legal service to the poor annually or contribute \$350 to a legal aid organization. "Pro bono legal service" means legal service rendered without charge or expectation of a fee for the lawyer at the time the service commences. Legal services written off as bad debts do not qualify as pro bono service. Most pro



bono service should involve civil proceedings given that government must provide indigent representation in most criminal matters. Pro bono legal service to the poor is to be provided not only to those persons whose household incomes are below the federal poverty standard but also to those persons frequently referred to as the “working poor.” Lawyers providing pro bono legal service on their own need not undertake an investigation to determine client eligibility. Rather, a good faith determination by the lawyer of client eligibility is sufficient. Pro bono legal service to the poor need not be provided only through legal services to individuals; it can also be provided through legal services to charitable, religious, or educational organizations whose overall mission and activities are designed predominately to address the needs of the poor. For example, legal service to organizations such as a church, civic, or community service organizations relating to a project seeking to address the problems of the poor would qualify.

While the personal involvement of each lawyer in the provision of pro bono legal service to the poor is generally preferable, such personal involvement may not always be possible or produce the ultimate desired result, that is, a significant maximum increase in the quantity and quality of legal service provided to the poor. The annual contribution alternative recognizes a lawyer’s professional responsibility to provide financial assistance to increase and improve the delivery of legal service to the poor when a lawyer cannot or decides not to provide legal service to the poor through the contribution of time. Also, there is no prohibition against a lawyer contributing a combination of hours and financial support. The limited provision allowing for collective satisfaction of the 20-hour standard recognizes the importance of encouraging law firms to undertake the pro bono legal representation of the poor in substantial, complex matters requiring significant expenditures of law firm resources and time and costs, such as class actions and post-conviction death penalty appeal cases, and through the establishment of full-time community or public service staffs. When a law firm uses collective satisfaction, the total hours of legal services provided in such substantial, complex matters or through a full-time community or public service staff should be credited among the firm’s lawyers in a fair and reasonable manner as determined by the firm.

The reporting requirement is designed to provide a sound basis for evaluating the results achieved by this rule, reveal the strengths and weaknesses of the pro bono plan, and to remind lawyers of their professional responsibility under this rule. The fourth alternative of the reporting requirements allows members to indicate that they have fulfilled their service in some manner not specifically envisioned by the plan.

The 20-hour standard for the provision of pro bono legal service to the poor is a minimum. Additional hours of service are to be encouraged. Many lawyers will, as they have before the adoption of this rule, contribute many more hours than the minimum. To ensure that a lawyer receives credit for the time required to handle a particularly involved matter, this rule provides that the lawyer may carry forward, over the next 2 successive years, any time expended in excess of 20 hours in any 1 year.

4-6.2 | ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as when:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or of the law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

(Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252); amended June 23, 1993, effective October 1, 1993 (630 So.2d 501).)

Comments

A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono public service as provided in these rules. See rule 4-6.1. In the course of fulfilling a lawyer's obligation to provide legal services to the poor, a lawyer should not avoid or decline representation of a client simply because a client is unpopular or involved in unpopular matters. Although these rules do not contemplate court appointment as a primary means of achieving pro bono service, a lawyer may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see rule 4-1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the rules.



4-6.3 | MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to the client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations to a client under rule 4-1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

(Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252).)

Comments

Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.



4-6.4 | LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

(Amended July 17, 1986, effective January 1, 1987 (494 So. 2d 977))

Comments

Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also rule 4-1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules, particularly rule 4-1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially affected.



4-6.5 | VOLUNTARY PRO BONO PLAN

(a) Purpose. The purpose of the voluntary pro bono lawyer plan is to increase the availability of legal service to the poor and expand pro bono legal service programs.

(b) Standing Committee on Pro Bono Legal Service. The president-elect of The Florida Bar appoints the standing committee on pro bono legal service to the poor.

(1) Composition of the Standing Committee. The standing committee consists of no more than 25 members and includes, but is not limited to:

(A) 5 past or current members of the board of governors The Florida Bar, 1 of whom is the chair or a member of the access to the legal system committee of the board of governors;

(B) 5 past or current directors of The Florida Bar Foundation;

(C) 1 trial judge and 1 appellate judge;

(D) 2 representatives of civil legal assistance providers;

(E) 2 representatives from local and statewide voluntary bar associations;

(F) 2 public members, 1 of whom is a representative of the poor;

(G) the president or designee of the Board of Directors of Florida Legal Services, Inc.;

(H) 1 representative of the Out-of-State Division of The Florida Bar; and

(I) the president or designee of the Young Lawyers Division of The Florida Bar.

(2) Responsibilities of the Standing Committee. The standing committee will:

(A) identify, encourage, support, and assist statewide and local pro bono projects and activities;

(B) receive reports from circuit committees submitted on standardized forms developed by the standing committee;

(C) review and evaluate circuit court pro bono plans;

(D) submit an annual report on the activities and results of the pro bono plan to the board of governors of The Florida Bar, the Florida Bar Foundation, and the Supreme Court of Florida;

(E) present to the board of governors of The Florida Bar and to the Supreme Court of Florida any suggested changes or modifications to the pro bono rules.

(c) Circuit Pro Bono Committees. The chief judge of each circuit, or the chief judge's designee, appoints the circuit pro bono committee members, and the committee will appoint its chair.

(1) Composition of Circuit Court Pro Bono Committee. Each circuit pro bono committee is composed of:

(A) the chief judge of the circuit or the chief judge's designee;

(B) to the extent feasible, 1 or more representatives from each voluntary bar association, including each federal bar association, recognized by The Florida Bar and 1 representative from each pro bono and legal assistance provider in the circuit nominated by the association or provider; and

(C) at least 1 public member and at least 1 client-eligible member nominated by the other members of the circuit pro bono committee.

Each circuit pro bono committee determines its own governance and terms of service.

(2) *Responsibilities of Circuit Pro Bono Committee.* The circuit pro bono committee will:

(A) prepare in written form a circuit pro bono plan after evaluating the needs of the circuit and making a determination of present available pro bono services;

(B) implement the plan and monitor its results;

(C) submit an annual report to The Florida Bar standing committee;

(D) use current legal assistance and pro bono programs in each circuit, to the extent possible, to implement and operate circuit pro bono plans and provide the necessary coordination and administrative support for the circuit pro bono committee;

(E) encourage more lawyers to participate in pro bono activities by preparing a plan that provides for various support and educational services for participating pro bono attorneys, which, to the extent possible, should include:

(i) intake, screening, and referral of prospective clients;

(ii) matching cases with individual lawyer expertise, including the establishment of practice area panels;

(iii) resources for litigation and out-of-pocket expenses for pro bono cases;

(iv) legal education and training for pro bono attorneys in particular areas of law useful in providing pro bono legal service;

(v) consultation with lawyers who have expertise in areas of law with respect to which a volunteer lawyer is providing pro bono legal service;

(vi) malpractice insurance for volunteer pro bono lawyers with respect to their pro bono legal service;



(vii) procedures to ensure adequate monitoring and follow-up for assigned cases and to measure client satisfaction; and

(viii) recognition of pro bono legal service by lawyers.

(d) Pro Bono Service Opportunities. The following are suggested pro bono service opportunities that should be included in each circuit plan:

- (1) represent clients through case referral;
- (2) interview prospective clients;
- (3) participate in pro se clinics and other clinics in which lawyers provide advice and counsel;
- (4) act as co-counsel on cases or matters with legal assistance providers and other pro bono lawyers;
- (5) provide consultation services to legal assistance providers for case reviews and evaluations;
- (6) participate in policy advocacy;
- (7) provide training to the staff of legal assistance providers and other volunteer pro bono attorneys;
- (8) make presentations to groups of poor persons regarding their rights and obligations under the law;
- (9) provide legal research;
- (10) provide guardian ad litem services;
- (11) provide assistance in the formation and operation of legal entities for groups of poor persons; and
- (12) serve as a mediator or arbitrator at no fee to the client-eligible party.

(Added June 23, 1993, effective Oct. 1, 1993 (630 So.2d 501); amended December 20, 2007, effective March 1, 2008 (978 So.2d 91); amended May 29, 2014, effective June 1, 2014 (140 So.3d 63); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (164 So.3d 1217); amended January 4, 2019, effective March 5, 2019 (267 So.3d 891).)



4-6.6 | SHORT-TERM LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to rules 4-1.7 and 4-1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to rule 4-1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by rule 4-1.7 or 4-1.9(a) with respect to the matter.

(b) Except as provided in subdivision (a)(2), rule 4-1.10 is inapplicable to a representation governed by this rule.

(Added November 20, 2017 (228 So.3d 1117).)

Comments

Legal services organizations, courts, government agencies, local and voluntary bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services, such as advice or the completion of legal forms, that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. These programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., rules 4-1.7, 4-1.9 and 4-1.10.

A lawyer who provides short-term limited legal services under this rule must obtain the client's informed consent to the limited scope of the representation. See rule 4-1.2(c). However, a lawyer is not required to obtain the consent in writing. *Id.* If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Rules of Professional Conduct, including rules 4-1.6 and 4-1.9(b) and (c), are applicable to the limited representation.



Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, subdivision (a) requires compliance with rules 4-1.7 or 4-1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with rule 4-1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by rules 4-1.7 or 4-1.9(a) in the matter.

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, subdivision (b) provides that rule 4-1.10 is inapplicable to a representation governed by this rule except as provided by subdivision (a)(2). Subdivision (a)(2) requires the participating lawyer to comply with rule 4-1.10 when the lawyer knows that the lawyer's firm is disqualified by rules 4-1.7 or 4-1.9(a). Because of subdivision (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, rules 4-1.7, 4-1.9(a) and 4-1.10 become applicable.

APPENDIX



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