

# THE FLORIDA BAR



# VISION 2016

FINAL REPORT

The Vision 2016 Commission of The Florida Bar was appointed in 2013 to perform an in-depth review of four general areas that will impact the future practice of law in Florida:

Legal Education

Technology

Bar Admissions

Access to Legal Services

The charge of the Commission is to look at the current impact, as well as the long-term challenges that the legal profession will face. This comprehensive study provides the foundation to “prepare today’s lawyer for tomorrow’s practice.”

The four subgroups have completed their work and all recommendations have been acted on by the Board of Governors of The Florida Bar. What follows is a brief overview of the areas of study of each subgroup and the action taken by the Board.

December 9, 2016

# LEGAL EDUCATION SUBGROUP

## Areas of Study

1. Breaking the existing formula for becoming a lawyer (e.g. how law schools teach; how Bar Exam is given).
2. Restructuring the curriculum (e.g. substantive, practical, experiential, innovative, business of law, professionalism and character formation).
3. Shaping education to meet market needs and needs of consumers of legal services.
4. Interconnection of external forces on legal education (e.g. Bar Exam, technology).
5. Competencies needed for the providing of legal services.

## Recommendation 1

### Subjects Tested on The Florida Bar Exam

Reduce the number of subjects tested on The Florida Bar Exam to a number that could be covered entirely in two of the three years of full time legal education or less in order to provide more curricular space for law schools to innovate models of change with the goal of producing new lawyers with a full range of competencies, skills, and attributes including but not limited to experiential learning, technology education, and professional identity education.

### *Board Action*

The Florida Board of Bar Examiners has formed a committee to conduct a review of subjects tested on the Florida Bar Examination, as well as the Uniform Bar Examination. The FBBE Testing Commission last reviewed the subjects tested in 2009. The purpose of the review of the examination is to continue to ensure that all who are admitted to The Florida Bar have demonstrated minimum technical competence. The Board of Governors previously supported the Florida Board of Bar Examiners' study. Support of this will continue. In addition, the Bar will provide all materials reviewed by the Vision Subgroup to the Florida Board of Bar Examiners.

## Recommendation 2

### Permanent Body to Advise and Cooperate with Law Schools

The Board of Governors should either create a new committee or completely reimagine the current Student Education and Admissions to the Bar Committee to be a permanent body that will advise and cooperate with law schools, and to act as a liaison on the following issues:

- A. Technology training for law students geared toward the practice of law for new lawyers.
- B. Supporting and/or setting up incubator programs at law schools for new practicing attorneys.
- C. Further defining and cooperating with law schools to ensure all new graduates have the full range of legal, non-legal and professional identity skills necessary for new lawyers building on the list of competencies approved by the committee after our first year of study and discussion.
- D. Exploring partnerships with the Bar, law firms and individual lawyers to reduce the cost of law school.
- E. Working with schools individually to pursue alternative methods of structuring curricula best suited to each law school environment as discussed throughout the report.
- F. Monitoring all sources of legal education reform, including the Section of Legal Education and Admissions, The Florida Supreme Court, ABA House of Delegates, Board of Bar Examiners, American Association of Law Schools, ABA Section of Legal Education and Admission to the Bar, and others. The committee should be charged with specifically maintaining the institutional knowledge of all legal education reforms for the Board of Governors to prevent any disconnect between the Bar and legal education in the future.

*Such membership should not be limited to academics, but rather contain an assortment of young lawyers, including student representatives, established lawyers, academics, judges, and non-lawyers.*

#### **Board Action**

Referred to the Program Evaluation Committee to study whether to create a new committee or completely reimagine the current Student Education and Admissions to the Bar Committee to be a permanent body that will advise and cooperate with law schools and act as a liaison on the above issues.

### **Recommendation 3**

#### **Opportunities for Students to Engage in Live Client or Simulation Experiences**

Work with law schools specifically and immediately to enhance opportunities for students to engage in live client experiences to meet the ABA six-credit experiential learning graduation requirements, or enhance simulation experiences through Bar programs designed for each law school.

##### ***Board Action***

The Bar is currently working with law schools on this recommendation.

### **Recommendation 4**

#### **Number of Students Engaging in Live Client Experiences**

**A.** Support the Young Lawyers Division proposal to change the requirements for a student to appear as a certified legal intern, in accordance with the April 8, 2016, proposal to the Board of Governors requiring Level 2 background checks and other requirements in lieu of a full Florida Bar Board of Examiners character and fitness study.

##### ***Board Action***

A rule amendment addressing the requirements to be certified as a legal intern was filed with the Supreme Court of Florida on October 26, 2016 in case number SC16-1963.

**B.** Consider the ABA proposal to allow students to earn income and credit for field placement experiences satisfying the experiential learning requirement.

##### ***Board Action***

The ABA has acted on this so no further action is required.

### **Recommendation 5**

#### **Law School Position Within the Board of Governors**

Create a nonvoting rotating law school position on the Board of Governors to advise on the law school perspective regarding prospective rule changes to the Bar and allow law schools quicker and more frequent access to information on Florida Bar changes.

##### ***Board Action***

Referred to the Program Evaluation Committee to study whether to create a nonvoting rotating law school position on the Board of Governors.

# TECHNOLOGY SUBGROUP

## Areas of Study

1. Technology that performs legal/lawyer work.
2. Integration of technology into law offices.
3. Integration of technology into the courts.
4. E-Discovery.
5. Areas of work/employment opportunities.
6. Target minimum technology competency requirements for lawyers.
7. Online legal service providers.

## Recommendation 6

### E-Etiquette Guidelines Handbook

The Florida Bar Standing Committee on Professionalism and the Board of Governors Communications Committee shall review the e-etiquette guide and compare it with all current professionalism guidelines, while incorporating electronic communications into the guide, as well as the Ideals and Goals of Professionalism.

#### *Board Action*

[E-etiquette guidelines](#) have been adopted and are posted on the Bar's website.

## Recommendation 7

### Florida Bar Standing Committee on Technology

Transition The Florida Bar Special Committee on Technology/Office Tools and Resources into a Standing Committee of The Florida Bar.

The purpose of the new Standing Committee on Technology will be to interact regularly with what is now the Practice Resource Institute to assure that technology tools for lawyers and educational assistance concerning technology and the law is readily available to Florida lawyers. The Committee will educate and involve the legal profession in, and about, the use of computer and information technology in law.

#### *Board Action*

The committee has been approved and implemented.

## Recommendation 8

### Florida Bar Board of Governors Committee on Technology

Create a Board of Governors Technology Committee to: (1) routinely report out to and advise the Board of Governors level on technology relating matters impacting the practice of law both anticipated to occur over the longer term and on those issues that arise and require immediate Board attention; (2) interact with the Florida Courts Technology Commission as necessary; and (3) institutionalize the Vision 2016 Commission's Technology Committee going forward.

#### *Board Action*

The committee has been approved and implemented.

## Recommendation 9

### Lawyer Competence with Technology

Add pertinent language to the comment to Rule 4-1.1 within Rules Regulating The Florida Bar on competence that in summary form states that a lawyer must understand the benefits and risks associated with technology in the lawyer's practice area and further elaborates that a lawyer can associate with both lawyers and non-lawyers to achieve that competence.

#### *Board Action*

On September 29, 2016, the Supreme Court approved an amendment to comment language regarding competency in technology. *See In re: Amendments to the Rules Regulating The Florida Bar*, 200 So. 3d 1225 (Fla. 2016).

## **Recommendation 10**

### **CLE Requirement**

Increase the overall CLE requirement from 30 to 36 hours per three-year reporting cycle with six of those hours being dedicated to technology based CLE. (The Board of Governors approved increasing the overall CLE requirement from 30 to 33 hours per three-year reporting cycle with three of those hours being dedicated to technology).

#### ***Board Action***

On September 29, 2016, the Supreme Court approved an amendment to the Bar's CLE requirement adding a new mandatory 3-hour technology requirement. *See In re: Amendments to the Rules Regulating The Florida Bar*, 200 So. 3d 1225 (Fla. 2016).

## **Recommendation 11**

### **Florida Bar Journal Technology Edition**

Create the first online, dynamic edition of The Florida Bar Journal dedicated solely to issues concerning legal technology, which will include the contribution of several nationally renowned guest authors on the subject.

#### ***Board Action***

The Florida Bar Journal dedicated to technology was published in January, 2016.

## **Recommendation 12**

### **The Florida Bar Lawyer Referral Service**

The Florida Bar should review and revamp, if necessary, its not-for-profit lawyer referral service.

#### ***Board Action***

The Bar's not-for-profit lawyer referral service is being reviewed and studied.

# BAR ADMISSIONS SUBGROUP

## Areas of Study

1. Licensing of nonlawyers to perform legal tasks (displacement of lawyers caused by technological advances).
2. Alternative Business Structures for law firms.
3. Multijurisdictional Practice/Reciprocity.
4. Multijurisdictional Practice/Reciprocity - International Focus.
5. Uniform Bar Examination.

## Recommendation 13 Reciprocity Study

The initial recommendation was that The Florida Bar consider a rule allowing for reciprocity. The final recommendation was that the possibility of having reciprocity needed additional study. The Florida Bar Board of Governors voted to reject reciprocity at this time.

### *Board Action*

Final action rejecting reciprocity taken October 15, 2015.

## Recommendation 14 Provision of Legal Services Following a Major Disaster (Katrina Rule)

The Standing Committee on the Unlicensed Practice of Law should consider the adoption of a rule regarding the provision of legal services following a major disaster. This rule change would allow lawyers from a state experiencing a major disaster to serve their clients on a temporary basis from an office in Florida and permit out-of-state lawyers, on a pro bono basis or through a non-profit legal service organization, to serve residents in Florida who have unmet needs as a result of a disaster in Florida that has disrupted the practices of Florida lawyers.

### *Board Action*

The Standing Committee on the Unlicensed Practice of Law voted to decline to recommend the adoption of a rule regarding the provision of legal services following a major disaster at this time as unneeded and unworkable. The board approved the recommendation that an amendment not be proposed at this time.

## **Recommendation 15**

### **Military Spouse Rule**

The Florida Bar's Military Affairs Committee should consider proposing a rule allowing spouses of military members who are licensed to practice law in a state other than Florida to be admitted to The Florida Bar without examination while the lawyer's spouse is stationed in Florida.

#### ***Board Action***

A new chapter to the Rules Regulating The Florida Bar was proposed by the Military Affairs Committee and approved by the Board on December 9, 2016. The rule allows spouses of military members who are licensed to practice law in a state other than Florida to be admitted to The Florida Bar without examination while the lawyer's spouse is stationed in Florida. The rule will be filed with the Supreme Court of Florida in February, 2017.

## **Recommendation 16**

### **Foreign Authorized House Counsel Rule**

The International Law Section should consider amendments to Florida's Authorized House Counsel rule which would allow an individual authorized to practice law in a foreign country to be certified by the Supreme Court of Florida to act as in-house counsel in Florida.

#### ***Board Action***

The International Law Section proposed amendments to the Authorized House Counsel Rule allowing for an individual authorized to practice law in a foreign country to be certified by the Supreme Court of Florida to act as in-house counsel in Florida. The amendments were approved by the Board and filed with the Supreme Court on October 26, 2016 and are pending in case number SC16-1961.

## **Recommendation 17**

### **Foreign Legal Consultancy**

The International Law Section should consider amendments to the Foreign Legal Consultancy rule in order to streamline the process and procedure.

#### ***Board Action***

The International Law Section proposed amendments to the Foreign Legal Consultancy rule. The amendments were approved by the Board and filed with the Supreme Court on October 26, 2016 and are pending in case number SC16-1961.

## Recommendation 18

### ***Pro Hac Vice* Admission for Foreign Lawyers**

The International Law Section should consider amendments to the rules which would allow a foreign lawyer to be admitted *pro hac vice* in a state court in Florida.

#### ***Board Action***

The International Law Section voted not to propose an amendment. The Board approved the recommendation that an amendment not be proposed at this time.

## Recommendation 19

### **Standing Committee on International Trade and Legal Affairs**

The International Law Section should recommend the establishment of a Standing Committee on International Trade and Legal Affairs to review various treaties and trade agreements and report on their impact to the legal profession.

#### ***Board Action***

The International Law Section is not proposing the establishment of a Standing Committee. The Section already monitors these activities and believes that a Standing Committee is not needed at this time. The Board approved the recommendation that the appointment of a Standing Committee not be proposed at this time.

## Recommendation 20

### **Safe Harbor for Florida Lawyers Who Associate with a Law Firm with Nonlawyer Owners for a Particular Matter**

The Committee referred the issue of whether The Florida Bar should have a rule or ethics opinion providing a safe harbor to Florida lawyers who associate with a lawyer who is part of a firm that has nonlawyer owners to the Professional Ethics Committee.

#### ***Board Action***

The Professional Ethics Committee voted to request that the Board of Governors direct the drafting of a formal ethics advisory opinion regarding a safe harbor for Florida lawyers associating with lawyers in firms that have nonlawyer owners. The Board directed the Professional Ethics Committee to draft an opinion addressing the issue without providing direction on what the opinion should say. Any opinion would specifically state that nonlawyer ownership is not being recommended.

## **Recommendation 21**

### **Practice Pending Admission**

A rule allowing for practice pending admission should not be adopted in Florida.

#### ***Board Action***

The Board approved the recommendation that an amendment not be proposed at this time.

## **Recommendation 22**

### **Nonlawyer Ownership of Law Firms**

A rule that would allow nonlawyer ownership of law firms should not be adopted in Florida without further study at a future time with input from interested groups.

#### ***Board Action***

The Board approved the recommendation that an amendment not be proposed at this time.

## **Recommendation 23**

### **Uniform Bar Examination**

No recommendation was made by the Vision Committee or Subgroup.

#### ***Board Action***

The issue is being reviewed by the Florida Board of Bar Examiners as part of the review of reducing the number of subjects being tested on the bar exam. The Bar will provide all materials reviewed by the Vision Subgroup and Committee to the Florida Board of Bar Examiners.

## **Recommendation 24**

### **Limited Licensing of Nonlawyers to Provide Legal Services**

No recommendation was made by the Vision Committee Subgroup.

#### ***Board Action***

The issue is being reviewed by the Florida Commission on Access to Civil Justice. All materials considered by the Vision Subgroup and Committee have been provided to the Access Commission.

## ACCESS TO LEGAL SERVICES SUBGROUP

*The Access to Legal Services Subgroup created several recommendations on Limited Scope Representation before yielding to The Florida Commission on Access to Civil Justice, which was created by the Supreme Court of Florida to further study access to civil justice issues.*

### Recommendation 25

#### Limited Appearance and Withdrawal in Limited Scope Representation; Service of Pleadings

A substantial portion of the language from Rule 12.040 of the Florida Family Law Rules of Procedure should be incorporated into a new rule within the Florida Rules of Civil Procedure, which will include limited appearances for both parties and non-parties, such as subpoenaed witnesses; that Rule 2.505 of the Florida Rules of Judicial Administration be revised to specifically provide for limited appearances in both civil and family matters; that Rule 2.515 of the Florida Rules of Judicial Administration be revised to clarify that for limited appearance representation (both family and civil) as to matters that are outside the scope of the attorney's representation, the attorney is not responsible for documents filed with the court by the client; and that Rule 2.516 of the Florida Rules of Judicial Administration be revised to incorporate the service requirements of both existing Rule 12.040(f) of the Florida Family Law Rules of Procedure and the service provision of the proposed new rule of the Florida Rules of Civil Procedure.

#### *Board Action*

Amendments were filed with the Supreme Court on June 16, 2016, and are pending in case number SC16-1062.

### Recommendation 26

#### Negotiation of Limited Scope Representation Engagements

Florida should not require judicial review of limited scope representation agreements if the proposed rule includes a form for notice to the court and other parties which the client is required to sign.

#### *Board Action*

Amendments were filed with the Supreme Court on June 16, 2016, and are pending in case number SC16-1062.

## **Recommendation 27**

### **Communicating with Adverse Parties with Limited Scope Counsel**

In conjunction with the review of issues relating to communication with self-represented parties in matters in which limited scope counsel is involved, because Rules 4-1.2(c) and 4-4.2(b) of the Rules Regulating The Florida Bar appear to be consistent with limited scope representation, same do not need additional revision.

#### ***Board Action***

The Board approved the recommendation that an amendment not be proposed at this time.

## **Recommendation 28**

### **Fees Associated with Limited Scope Representation**

No additions or alterations to the various Florida Rules to address attorney's fees in a limited scope representation. Rule 4-1.5 (a) through (e) of the Rules Regulating The Florida Bar, which addresses fees in legal representation, appears to apply in all contexts, including limited scope representation are necessary; the current provisions are sufficient.

#### ***Board Action***

The Board approved the recommendation that an amendment not be proposed at this time.

## **Recommendation 29**

### **Conflicts of Interest Arising from Limited Scope Representation Matters**

No changes are needed to Rules 4-1.7, 1.8, 1.9 and 1.10 of The Rules Regulating The Florida Bar as they appear to apply in all contexts, including limited scope representation.

#### ***Board Action***

The Board approved the recommendation that an amendment not be proposed at this time.

### **Recommendation 30**

#### **Training for Compliance with Limited Scope Representation Rules**

Adopting mandatory training in order for an attorney to engage in limited scope representation is not necessary.

#### ***Board Action***

The Board approved the recommendation that training not be required.

### **Recommendation 31**

#### **Ghostwriting of pleadings and documents**

Florida continues to require the disclosure of ghostwriting, but not require the disclosure of the identity of the attorney as this position appears to be an appropriate balance of the ethical issues raised by legal ghostwriting. In furtherance of this recommendation, Rule 2.515 of the Florida Rules of Judicial Administration should be revised to avoid any perceived inconsistency with Rule 4-1.2 of the Rules Regulating The Florida Bar.

#### ***Board Action***

Amendments were filed with the Supreme Court on June 16, 2016, and are pending in case number SC16-1062.