Rule 4–8.4(b) prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Rule 4–8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Rule 4–8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Rule 4–1.6(b) requires a lawyer to reveal information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime.

This rule, 4–3.3(a)(2), requires a lawyer to reveal a material fact to the tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, and 4–3.3(a)(4) prohibits a lawyer from offering false evidence and requires the lawyer to take reasonable remedial measures when false material evidence has been offered.

Rule 4–1.16 prohibits a lawyer from representing a client if the representation will result in a violation of the Rules of Professional Conduct or law and permits the lawyer to withdraw from representation if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent or repugnant or imprudent. Rule 4–1.16(c) recognizes that notwithstanding good cause for terminating representation of a client, a lawyer is obliged to continue representation if so ordered by a tribunal.

To permit or assist a client or other witness to testify falsely is prohibited by section 837.02, Florida Statutes (1991), which makes perjury in an official proceeding a felony, and by section 777.011, Florida Statutes (1991), which proscribes aiding, abetting, or counseling commission of a felony.

Florida caselaw prohibits lawyers from presenting false testimony or evidence. *Kneale v. Williams*, 30 So. 2d 284 (Fla. 1947), states that perpetration of a fraud is outside the scope of the professional duty of an attorney and no privilege attaches to communication between an attorney and a client with respect to transactions constituting the making of a false claim or the perpetration of a fraud. *Dodd v. The Florida Bar*, 118 So. 2d 17 (Fla. 1960), reminds us that "the courts are ... dependent on members of the bar to ... present the true facts of each cause ... to enable the judge or the jury to [decide the facts] to which the law may be applied. When an attorney ... allows false testimony ... [the attorney] ... makes it impossible for the scales [of justice] to balance." See *The Fla. Bar v. Agar*, 394 So. 2d 405 (Fla. 1981), and *The Fla. Bar v. Simons*, 391 So. 2d 684 (Fla. 1980).

The United States Supreme Court in *Nix v. Whiteside*, 475 U.S. 157 (1986), answered in the negative the constitutional issue of whether it is ineffective assistance of counsel for an attorney to threaten disclosure of a client's (a criminal defendant's) intention to testify falsely.

Ex parte proceedings

Ordinarily, an advocate has the limited responsibility of presenting 1 side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary injunction, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Rule 4–3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act;

(b) fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for professional services of an expert witness; and reasonable compensation to reimburse a witness for the loss of compensation incurred by reason of preparing for, attending, or testifying at proceedings;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party;

(e) in trial, state a personal opinion about the credibility of a witness unless the statement is authorized by current rule or case law, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the culpability of a civil litigant, or the guilt or innocence of an accused;

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless the person is a relative or an employee or other agent of a client, and it is reasonable to believe that the person's interests will not be adversely affected by refraining from giving such information;

(g) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter; or

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Comment

This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation.

This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this rule.

This rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. See rule 4-8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make, provided that the client is not used to indirectly violate the Rules of Professional Conduct. Also, a lawyer having independent justification for communicating with the other party is permitted to do so. Permitted communications include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of a represented organization, this rule prohibits communications with a constituent of the organization who supervises, directs, or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by the agent's or employee's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. Compare rule 4-3.4(f). In communication with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See rule 4-4.4.

The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See terminology. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to rule 4-4.3.

Rule 4-4.3. Dealing with Unrepresented Persons

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating the Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Amended Nov. 13, 2003, effective Jan. 1, 2004 (860 So.2d 394); March 23, 2006, effective May 22, 2006 (933 So.2d 417).

Comment

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see rule 4-1.13(d).

This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

Rule 4–4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (933 So.2d 417).

Comment

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Subdivision (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document has been waived. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See rules 4–1.2 and 4–1.4.

4–5. LAW FIRMS AND ASSOCIATIONS

Rule 4–5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.

(b) Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2006, effective May 22, 2006 (933 So.2d 417).

Comment

Subdivision (a) applies to lawyers who have managerial authority over the professional work of a firm. See terminology. This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency, and lawyers who have intermediate managerial responsibilities in a firm. Subdivision (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

Subdivision (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in subdivision (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby jun-

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istrative agencies have a right to expect lawyers to deal with them as they deal with courts.

This rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by rules 4–4.1 through 4–4.4.

4–4. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4–4.1. Truthfulness in statements to others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4–1.6.

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

Comment

Misrepresentation

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see rule 4–8.4.

Statements of fact

This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or fraud by client

Under rule 4–1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Subdivision (b) states a specific application of the principle set forth in rule 4–1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under subdivision (b) the lawyer is required to do so, unless the disclosure is prohibited by rule 4–1.6.

Rule 4–4.2. Communication With Person Represented by Counsel

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client in order to meet the requirements of any court rule, statute or contract requiring notice or service of process directly on an adverse party, in which event the communication shall be strictly restricted to that required by the court rule, statute or contract, and a copy shall be provided to the adverse party's attorney.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating the Florida Bar 4–1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Nov. 13, 2003, effective Jan. 1, 2004 (860 So.2d 394); May 20, 2004 (875 So.2d 448).

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rors who served in concluded cases undermine the impartiality of future jurors who may fear to execute their duty if their decisions are ridiculed. Lawyers may not make false statements or any statement made with the intent to ridicule or harass jurors.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Rule 4–8.3. Reporting Professional Misconduct

(a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(b) Reporting Misconduct of Judges. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) Confidences Preserved. This rule does not require disclosure of information otherwise protected by rule 4–1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program. Provided further, however, that if a lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction this limitation shall not be applicable and a report about the lawyer who is participating as part of a disciplinary sanction shall be made to the appropriate disciplinary agency.

(d) Limited Exception for LOMAS Counsel. A lawyer employed by or acting on behalf of the Law Office Management Assistance Service (LOMAS) shall not have an obligation to disclose knowledge of the conduct of another member of The Florida Bar that raises a substantial question as to the other lawyer's fitness to practice, if the lawyer employed by or acting on behalf of LOMAS acquired the knowledge while engaged in a LOMAS review of the other lawyer's practice. Provided further, however, that if the LOMAS review is conducted as a part of a disciplinary sanction this limitation shall not be applicable and a report shall be made to the appropriate disciplinary agency.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); effective Feb. 8, 2001 (795 So.2d 1); March 23, 2006, effective May 22, 2006 (933 So.2d 417).

Comment

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of rule 4–1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subdivisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

Rule 4–8.4. Misconduct

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer

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employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made:

(1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors;

(2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;

(3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing);

(4) as provided in the Florida Rules of Civil Procedure or order of the referee in matters assigned to a referee; and

(5) as provided in the Florida Rules of Appellate Procedure or order of the Supreme Court of Florida for matters pending action by that court.

Except as stated otherwise herein or in the applicable rules, all times for response shall be calculated as provided elsewhere in these Rules Regulating The Florida Bar and may be extended or shortened by bar counsel or the disciplinary agency making the official inquiry upon good cause shown.

Failure to respond to an official inquiry with no good cause shown may be a matter of contempt and processed in accordance with rule 3–7.11(f) of these Rules Regulating The Florida Bar.

(h) willfully refuse, as determined by a court of competent jurisdiction, to timely pay a child support obligation; or

(i) engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship.

If the sexual conduct commenced after the lawyer-client relationship was formed it shall be presumed that the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. A lawyer may rebut this presumption by proving by a preponderance of the evidence that the sexual conduct did not exploit or adversely affect the interests of the client or the lawyer-client relationship.

The prohibition and presumption stated in this rule do not apply to a lawyer in the same firm as another lawyer representing the client if the lawyer involved in the sexual conduct does not personally provide legal services to the client and is screened from access to the file concerning the legal representation.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); July 1, 1993, eff. Jan. 1, 1994 (624 So.2d 720); Feb. 9, 1995 (649 So.2d 868); July 20, 1995 (658 So.2d 930); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); May 20, 2004 (875 So.2d 448); Oct. 6, 2005, effective Jan. 1, 2006 (916 So.2d 655); March 23, 2006, effective May 22, 2006 (933 So.2d 417); Nov. 19, 2009, effective Feb. 1, 2010 (24 So.3d 63).

Comment

Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Subdivision (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take, provided that the client is not used to indirectly violate the Rules of Professional Conduct.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 4–1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

Subdivision (c) recognizes instances where lawyers in criminal law enforcement agencies or regulatory agencies advise others about or supervise others in undercover investigations, and provides an exception to allow the activity without the lawyer engaging in professional misconduct. The exception acknowledges current, acceptable practice of these agencies. Although the exception appears in this rule, it is also applicable to rules 4–4.1 and 4–4.3. However, nothing in the rule allows the lawyer to engage in such conduct if otherwise prohibited by law or rule.

Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute. Such conduct, when directed towards litigants, jurors, witnesses, court personnel, or other lawyers, whether based on race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, physical characteristic, or any other basis, subverts the administration of justice and undermines the public's confidence in our system of justice as well as notions of equality. This subdivision does not prohibit a lawyer from representing a client as may be permitted by applicable law, such as, by way of example, representing a client accused of committing discriminatory conduct.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, or agent and officer, director, or manager of a corporation or other organization.

A lawyer's obligation to respond to an inquiry by a disciplinary agency is stated in subdivision (g) of this rule and subdivision (h)(2) of rule 3–7.6. While response is mandatory, the lawyer may deny the charges or assert any available privilege or immunity or interpose any disability that prevents disclosure of a certain matter. A response containing a proper invocation thereof is sufficient under the Rules Regulating The Florida Bar. This obligation is necessary to ensure the proper and efficient operation of the disciplinary system.

Subdivision (h) of this rule was added to make consistent the treatment of attorneys who fail to pay child support with the treatment of other professionals who fail to pay child support, in accordance with the provisions of section 61.13015, Florida Statutes. That section provides for the suspension or denial of a professional license due to delinquent child support payments after all other available remedies for the collection of child support have been exhausted. Likewise, subdivision (h) of this rule should not be used as the primary means for collecting child support, but should be used only after all other available remedies for the collection of child support have been exhausted. Before a grievance may be filed or a grievance procedure initiated under this subdivision, the court that entered the child support order must first make a finding of willful refusal to pay. The child support obligation at issue under this rule includes both domestic (Florida) and out-of-state (URESA) child support obligations, as well as arrearages.

Subdivision (i) proscribes exploitation of the client or the lawyer-client relationship by means of commencement of sexual conduct. The lawyer-client relationship is grounded on mutual trust. A sexual relationship that exploits that trust compromises the lawyer-client relationship. Attorneys have a duty to exercise independent professional judgment on behalf of clients. Engaging in sexual relationships with clients has the capacity to impair the exercise of that judgment.

Sexual conduct between a lawyer and client violates this rule, regardless of when the sexual conduct began when compared to the commencement of the lawyer-client relationship, if the sexual conduct exploits the lawyer-client relationship, negatively affects the client's interest, creates a conflict of interest between the lawyer and client, or negatively affects the exercise of the lawyer's independent professional judgment in representing the client.

Subdivision (i) creates a presumption that sexual conduct between a lawyer and client exploits or adversely affects the interests of the client or the lawyer-client relationship if the sexual conduct is entered into after the lawyer-client relationship begins. A lawyer charged with a violation of this rule may rebut this presumption by a preponderance of the evidence that the sexual conduct did not exploit the lawyer-client relationship, negatively affect the client's interest, create a conflict of interest between the lawyer and client, or negatively affect the exercise of the lawyer's independent professional judgment in representing the client.

For purposes of this rule, a "representative of a client" is an agent of the client who supervises, directs, or regularly consults with the organization's lawyer concerning a client matter or has authority to obligate the organization with respect to the matter, or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

Rule 4–8.5. Jurisdiction

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment

In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute practice of law in that jurisdiction. See rule 4–5.5.

Comment

This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation.

This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this rule.

This rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. See rule 4–8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make, provided that the client is not used to indirectly violate the Rules of Professional Conduct. Also, a lawyer having independent justification for communicating with the other party is permitted to do so. Permitted communications include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of a represented organization, this rule prohibits communications with a constituent of the organization who supervises, directs, or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by the agent's or employee's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. Compare rule 4–3.4(f). In communication with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See rule 4–4.4.

The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See terminology. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to rule 4–4.3.

Rule 4–4.3. Dealing with Unrepresented Persons

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating the Florida Bar 4–1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Amended Nov. 13, 2003, effective Jan. 1, 2004 (860 So.2d 394); March 23, 2006, effective May 22, 2006 (933 So.2d 417).

Comment

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see rule 4–1.13(d).

This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

(6)

BASIC PATERNITY AND FORMS

Elizabeth Tener, Esq.
JJ Dahl, Esq. B.C.S.

Inns of Court November 5, 2012

“PEOPLE ASK ME WHAT I'D MOST APPRECIATE GETTING FOR MY EIGHTY-SEVENTH BIRTHDAY.

I TELL THEM, A PATERNITY SUIT.”

George F. Burns

MORE THAN HALF OF BIRTHS TO AMERICAN WOMEN YOUNGER THAN 30 ARE OUTSIDE MARRIAGE, RESEARCH HAS FOUND.

- 1990's 1/3 of Americans were born out of wedlock, now 41 per cent of babies do not have married parents.

Racial Divides

- 73 per cent of black babies are born outside marriage
- 53 per cent of Latino babies are born outside marriage
- 29 per cent of white babies are born outside marriage

Educational divides:

- 92 per cent of college-educated women are married when they have a child
- 62 per cent of those with post-secondary schooling are married when they give birth
- 43 per cent of women with a high school diploma are married when they give birth
- *Data compiled by Child Trends* a Washington research group that analysed government data, and reported by the New York Times

ALL FORMS (AND DIRECTIONS TO GO WITH FORMS)

- http://www.doh.state.fl.us/planning_eval/vital_statistics/template3.htm

NATURAL GUARDIANS, 744.301, F.S.S.

- The mother of a child born out of wedlock is the natural guardian of the child and is entitled to **primary residential care and custody** of the child unless a **court** of competent jurisdiction **enters an order stating otherwise.**

BEFORE BIRTH - MEN

- Putative Father Registry
- Form DH 1965
- The purpose of the registry is to permit a man alleging to be the biological father of a child to assert his parentage and preserve his rights as a parent.
- If an unmarried biological father fails to register, his parental interest may be lost entirely or greatly diminished.
- Careful Legal Malpractice.
- Brochures for Office

BEFORE BIRTH - MOM

- To name the Dad or not name the Dad, that is the question.

Child's Last Name

- Mom's Last Name?
- Dad's Last Name?
- That is the question.

NAMING CHILD

- Once birth record, may be amended if both parents (or one if only one listed) agree and only within one year.
- If put both names (Father's name on), both parents must agree to change and sign form.
- Note, directions for hospital staff and, if handed out, states, traditional to give child Father’s last name.

BIRTH RECORD INTERVIEW

- Usually registrar at Hospital
- Hospital Review Sheet
- Paternity Acknowledgment
- Baby Name
- Opportunity to review and correct

CHAPTER 742, F.S.

Determination of Parentage

742.10

- Except for ch. 39, Dependency and TPR and ch. 63, Adoption,

- **this chapter** provides for the primary jurisdiction and procedures for the determination of **paternity** for children born out of wedlock.

REMINDER TIMESHARING AND PARENTING PLANS

Chapter 61

MARRIAGE OF PARENTS

- 742.091 - if the mother and reputed father marry after birth, the child shall be deemed and held to be the child of the husband and wife, as though born within wedlock.

- WHY IS THIS SO IMPORTANT?

AFFIDAVIT (DH 432 ACKNOWLEDGEMENT OF PATERNITY

- When **both parents** sign the Paternity Acknowledgement by Natural Parents, they attest they are the natural parents of this child.

- After signing, either parent has the **right to cancel** the effect of the acknowledgment **within 60 days unless** there has been a court hearing regarding that parent and the child.

- If there is no court hearing within 60 days, **paternity is legally established** under the laws of Florida.

- Once both parents sign the acknowledgment, the name of the father is placed on the child's birth record.

- Even if the acknowledgment is canceled within 60 days, the **birth record** can only be amended and the father's name removed by a court order.

IF ONLY ONE PARENT SIGNS

- Rebuttable presumption of paternity

PATERNITY ESTABLISHED IF

- Raised and determined within - adjudicatory hearing under inheritances; worker's comp;
- affidavit both parties
- DOR

RECISION AFFIDIAVIT

Even if the acknowledgment is canceled within 60 days, the **birth record** can only be amended and the father's name removed by a court order.

After paternity is legally established, paternity can only be challenged by proving in court that the parent(s) signature on the acknowledgment was obtained through fraud, under duress, or there was a material mistake in fact.

THERE IS A PATERNITY ACKNOWLEDGEMENT RESCISSION FORM SEE DOR WEBSITE OR FORM ON TABLE - BUT DESPITE FORM - LISTEN TO OUR GROUP - DISESTABLISHMENT

CAUTION - MAJORITY OF THE CASE LAW IS BEFORE NEW STATUTE - MAKE SURE CASES ON NEW DISESTABLISHMENT OF PATERNITY STATUTE. A LOT OF OLD DEFENSES HAVE BEEN ABOLISHED, CHANGED AND MODIFIIED.

PATERNITY JUDGMENTS WITHOUT PARENTING PLAN OR TIME SHARING SCHEDULE

- Notice – interesting language : 742.031 (2) If no plan or schedule, the obligee parent shall receive all of the times-sharing and sole parental responsibility without prejudice to the other parent. If a paternity judgment contains no such provisions, the mother shall be presumed to have all of the time-sharing and sole parental responsibility.

Think – Schools, Doctor Offices.

ATTORNEY FEES PROVIDED FOR

- 742.031, Hearing for the purposes of establishing or refuting paternity petition
- 742.045, same as above plus modification and enforcement
- Also costs, scientific testing; hospital and medical expenses and other incidental birth expenses

HOW TO OBTAIN LEGAL DNA PATERNITY TESTING

Presented by:

Pupilage Group on November 5, 2012

Central Florida Family Law American Inn of Court

F.S. 742.12 Scientific Testing To Determine Paternity

Proceedings to establish paternity:

1. In any proceeding to establish paternity, the court on its own motion may require the child, mother, and alleged fathers to submit to scientific tests that are generally acceptable within the scientific community to show a probability of paternity. The court shall direct that the test be conducted by a qualified technical laboratory.

F.S. 742.12 Scientific Testing To Determine Paternity

2. In any proceeding to establish paternity, the court may, upon request of a party providing a sworn statement or written declaration as provided by s.92.525(2) alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties, require the child, mother, and alleged fathers to submit to scientific tests that are generally acceptable within the scientific community to show a probability of paternity. The court shall direct that the tests be conducted by a qualified technical laboratory.

F.S. 742.12 Scientific Testing To Determine Paternity

3. The test results, together with opinions and conclusions of test laboratory, shall be filed with the court. Any objection to the test results must be made in writing and must be filed with the court at least then (10) days prior to the hearing.

If no objection is filed with the court, the test results shall be admitted into evidence without need for predicate to be laid, or third-party foundation testimony to be presented.

F.S. 742.12 Scientific Testing To Determine Paternity

Nothing in this paragraph prohibits a party from calling an outside expert witness to refute or support the testing procedure or results, or the mathematical theory in which it is based.

Upon entry of an order for scientific testing, the Court must inform each person to be tested of the procedure and requirements for objecting to the test results and the consequences of failure to object.

F.S. 742.12 Scientific Testing To Determine Paternity

4. Test results are admissible into evidence and should be weighed along with other evidence of paternity of the alleged father unless the statistical probability or paternity equals or exceeds 95%. **A statistical probability of paternity of 95% or more creates a rebuttable presumption, as defined by F.S. 90.304**, that the alleged father is the biological father of child.

F.S. 742.12 Scientific Testing To Determine Paternity

If a party fails to rebut the presumption of paternity which arose from the statistical probability of paternity of 95% or more, the Court may enter a summary judgment of paternity.

If the test results show the alleged father cannot be the biological father, the case shall be dismissed with prejudice.

F.S. 742.12 Scientific Testing To Determine Paternity

5. Subject to limitations in subsection (3), if the test results or the expert analysis of the inherited characteristics is disputed, the court, upon reasonable request of the party, shall order that an additional test be made by the same laboratory or an independent laboratory at the expense of the party requesting the additional testing.

F.S. 742.12 Scientific Testing To Determine Paternity

6. Verified documentation of the chain of custody of the blood or other specimens is competent evidence to establish the chain of custody.

7. The fees and costs for scientific testing shall be paid by the parties in proportions and at times determined by the court unless the parties reach a stipulated agreement which is adopted by the court.

Scientific Testing: Questions Clients May Ask You

Question 1:

Why can't I do it at home? (it is cheaper that way.)

Answer 1:

You need the legal DNA paternity test not the personal DNA paternity test. You need this because of the way samples are collected. For court admissible testing, the lab arranges DNA sample collection, parties have appointments where each person being tested provides a copy of their ID (a driver's license, state ID, passport), the collector makes sure each person's samples are attached to the correct ID, and then sends the sample directly to the lab. This is necessary for the chain of custody and admissibility into evidence.

Scientific Testing: Questions Clients May Ask You

Question 2:

MAKE SURE aaBB LAB – Why? Chain of custody.

Answer 2:

aaBB Accredited Relationship (DNA) Testing Facilities. Relationship Testing Accreditation Program is based on standards for the performance of tests for relationship and provides for the assessment and accreditation of laboratories performing relationship testing. The list of aaBB Accredited Relationship Testing Laboratories specifies those laboratories in the US that have attained aaBB accreditation in relationship testing. There are over 40 aaBB accredited relationship testing laboratories. This accreditation helps laboratories achieve quality performance.

Scientific Testing: Questions Clients May Ask You

Question 3:

How is testing done?

Answer 3:

State of the art DNA technology using polymerase chain reaction (PCR) requires very little sample, allowing the use of such non invasive paternity specimen collection methods such as the Buccal swabs.

How does that work? This non-invasive DNA specimen collection procedure uses four cotton swabs that are similar to ordinary Q-tips to collect epithelial cells by stroking the lining of the inner cheek. These cells contain the DNA required to perform

Scientific Testing: Questions Clients May Ask You

parentage testing. PCR is an extremely powerful technique for analyzing DNA on very small amounts of biological samples, from almost every part of the body. All cells in the body have the same DNA, so the results are the same regardless of the type of biological sample taken. PCR produces billions of copies of select portions of DNA from a small sample, such as a swab rubbed against a patients inner cheek. The resulting DNA is analyzed on a Genetic Analyzer and statistically evaluated. This technique has a power of exclusion of 99.99% or greater. PCR has been extensively used for DNA testing, and large databases have been accumulated for accurate DNA analysis. This large database enables paternity testing via PCR to have the highest power of exclusion.

Scientific Testing: Questions Clients May Ask You

Question 5:

Where do I go?

Answer 5:

A mobile company will come to you for an additional fee, or you can go to a lab collection facility. Don’t worry if parties are in different places of the country. Testing still can be done in different cities of the country.

Scientific Testing: Questions Clients May Ask You

Question 6:

What does it cost?

Answer 6:

Prices range from $359.00 to $475.00 for testing of Mother, Alleged Father, and Child. For mobile collection, fees range from $479.00 to $525.00.

Company	Price for Legal DNA Paternity Testing	Mobile or No Mobile Collection	Website	Phone No.	Identification for Legal DNA Testing	Whether aaBB accredited	Can participants be in different cities?
DNA Paternity Testing Center	$425 for Father, 1 Child and Mother	Yes, Mobile Collection Starts at $525 for Father, 1 Child and Mother	www.dnapaternitytestingcenters.com	866-944-9546	Driver's License or Passport For Child: Birth Certificate, SS Card, or Hospital Discharge Papers. A picture is taken of child for chain of custody.	yes	yes
IDENTIGENE	$359 for Father, 1 Child and Mother	Yes, if Collector does Mobile Collection. They contract out the collection. It depends on the collector.	www.identigene.com	888-404-4363	Driver's License or Passport For Child: Birth Certificate and bring recent photograph	yes	yes
	For Mobile Collection, there is an additional fee of $30-$40 per participant. For zip codes: 32801- 9 collectors do mobile collection; 32806-9 collectors do mobile collection; 32751- 6 collectors do mobile collection; 32771-6 collectors do mobile collections. You need to check zip code when you call to set test to see if mobile collection within zip code.						
JIM BENTLEY-HELPFUL, if you call Chromosomal Labs-Bode Technology	$430 for Father, 1 Child and Mother;	NO. They have 2000 collectors around the country.	chromosoal-labs.com	877-434-0292	Driver's License or Passport Birth Certificate or SS Card for Child. Their collectors are required to take a photo of Child. They try to have alleged Father holding child as to avoid fraud, i.e., Alleged Father sending a neighbor or friend to collection.	yes	yes
Genelex	$475 Father, Mother and Child	Yes. They use mobile and in-house collectors around the country. Price is up to collector.	www.paternitytestinglab.com	800-523-6487 or 800-523-3080	Driver's License or Passport For Child: Military ID, Birth Certificate or Social Security Card. They photograph all participants.	yes	yes

Chain of Custody

In order to admit DNA evidence in paternity proceedings, the proponent of the evidence must lay proper predicate by producing an affidavit or testimony of the technician who actually performed the tests or the affidavit or testimony of the custodian of the record for the facility that performed the test.

Stevens v. DOR, 790 So.2d 1182 (2nd DCA, 2001).

FLORIDA DEPARTMENT OF HEALTH

What You as a Parent must know before Signing the Paternity Acknowledgement by Natural Parents

RIGHTS, RESPONSIBILITIES AND DUTIES: When both parents sign the Paternity Acknowledgement by Natural Parents, they attest they are the natural parents of this child. After signing, either parent has the right to cancel the effect of the acknowledgment within 60 days unless there has been a court hearing regarding that parent and the child. If there is no court hearing within 60 days of when the acknowledgment is signed, paternity is legally established under the laws of Florida. Once both parents sign the acknowledgment, the name of the father is placed on the child's birth record. Even if the acknowledgment is canceled within 60 days, the birth record can only be amended and the father's name removed by a court order.

After paternity is legally established, paternity can only be challenged by proving in court that the parent(s) signature on the acknowledgment was obtained through fraud, under duress, or there was a material mistake in fact. The court will decide whether the name can be removed.

WHAT ARE YOU AGREEING TO DO? If you are the mother, you are agreeing that the person signing as the child's father is, in fact, the biological father of your child. If you are the father, you are agreeing that you are the biological father of the child and you and the mother will be responsible for the child's financial and medical support until he or she is an adult. This usually means until the child is eighteen years of age. *Do not sign the acknowledgment if you are not certain you are the child's father.*

CAN I SIGN IF I AM LESS THAN EIGHTEEN YEARS OF AGE? Minors are encouraged to obtain the consent of their legal guardian before signing the acknowledgment. However, under Florida law, a minor can sign the acknowledgment provided the Notary Public feels the minor understands the acknowledgment is a sworn document that must be truthful, and the minor has had his or her rights and responsibilities regarding establishing paternity clearly explained.

CONSEQUENCES: By signing this acknowledgment, you declare that the mother was unwed at the time of her child's birth and that you are the child's parents and both of you are undertaking the responsibility for this child as provided by law. The designated birthing facility or child support staff are required to explain and clarify the acknowledgment and paternity establishment to both mother and father and to inform each of you of your rights and give each of you the opportunity to voluntarily acknowledge paternity. Original signatures are required. After both of you sign the acknowledgment and it is notarized or witnessed, a birth record listing both parents will be placed on file.

If you have any questions, now is the time to ask. If you do not understand the acknowledgment, *do not sign it.*

ALTERNATIVES TO SIGNING: Under Florida law, if the natural, biological father does not sign this consent acknowledgment, paternity may be established by other legal processes. The mother, the natural father, the child and/or the state, on behalf of the child, may file a paternity action if the child is a recipient of public assistance. All costs, including genetic tests, will be billed to the man found to be the legal father. These costs are in addition to court ordered child support that the legal father may be required to pay. If the father or mother in this case wishes to establish paternity without the cooperation of the other party, he or she should contact the local Child Support Enforcement Office or a private attorney.

Section 742.10(1), Florida Statutes states in part that: "If no adjudicatory proceeding was held, a voluntary acknowledgement of paternity shall create a rebuttable presumption, as defined by s. 90.304, F.S. of paternity and is subject to the right of any signatory to rescind the acknowledgement within 60 days of the date of the acknowledgment was signed or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party, whichever is earlier. Both parents are required to provide their social security numbers on any acknowledgement of paternity, consent affidavit, or stipulation of paternity. Section 742.10(4), Florida Statutes states: After the 60-day period referred to in paragraph (1), a signed voluntary acknowledgment of paternity shall constitute an establishment of paternity and may be challenged in court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities, including child support obligations of any signatory arising from the acknowledgment may not be suspended during the challenge, except upon a finding of good cause by the court."

Upon receipt of this properly notarized or witnessed form, the Office of Vital Statistics shall prepare and file a new birth record reflecting the information as shown under section entitled "INFORMATION FOR NEW BIRTH CERTIFICATE". The original birth record and this "ACKNOWLEDGMENT OF PATERNITY" will be placed under seal only to be opened and released pursuant to an order from a court of competent jurisdiction. Since documentation supporting the amendment may be required by the Social Security Administration, or other agencies, we suggest you make a copy of this form for your records prior to submission. **NOTE:** ***If signatures of mother and father have been witnessed, please provide picture identification for each parent as picture identification must be provided for us to issue certification of the amended record to either of the parents. Acceptable forms are a driver's license, passport, state identification card or military identification card.***

RIGHTS, RESPONSIBILITIES AND DUTIES: When both parents sign this ACKNOWLEDGMENT OF PATERNITY they swear they are the natural parents of this child. After signing, either parent has the right to cancel the effect of the acknowledgment within 60 days unless there has been a court hearing regarding that parent and the child. If there is no court hearing within 60 days of when the acknowledgment is signed, paternity is legally established under the laws of Florida. Once the ACKNOWLEDGMENT OF PATERNITY is signed by both parents, the name of the father is placed on the child's birth certificate. Even if the ACKNOWLEDGMENT OF PATERNITY is cancelled within 60 days, the birth certificate can only be changed and the father's name removed by a court order. Contact this office if you wish to file a rescission.

After paternity is legally established, paternity can only be challenged by proving in court that your signature on the ACKNOWLEDGMENT OF PATERNITY was obtained through fraud, under duress, or that there was a material mistake in fact. The court will decide whether your name can be removed. Do not sign the ACKNOWLEDGMENT OF PATERNITY if you are not certain you are the child's father.

WHAT ARE YOU AGREEING TO? If you are the mother, you are agreeing that the person signing as the child's father is, in fact, the biological father of your child. If you are the father, you are agreeing that you are the biological father of the child and you and the mother will be responsible for the child's financial and medical support until he or she is an adult. This usually means until the child is eighteen years old.

CAN I SIGN IF I AM LESS THAN 18 YEARS OLD? According to the law, a minor can sign the acknowledgment. Howeve minors are encouraged to obtain the consent of their legal guardian before signing the acknowledgment. An understanding of th rights and responsibilities associated with establishing paternity by acknowledgment is important before completing the form.

CONSEQUENCES: By signing this ACKNOWLEDGMENT OF PATERNITY you declare that the mother was unwed at the time of her child's birth and that you are the child's parents, and that you are undertaking responsibility for this child as provided by law. Designated health or Child Support staff are required to explain and clarify the ACKNOWLEDGMENT OF PATERNITY and paternity establishment to both mother and father, to inform you of your rights and give you the opportunity to voluntarily acknowledge paternity. Original signatures are required. If you have any questions, now is the time to ask. If you do not understand it, do not sign it. After you both sign and submit the ACKNOWLEDGMENT OF PATERNITY a birth certificate listing both parents will be placed on file.

ALTERNATIVE TO SIGNING: Under Florida law, if both parents do not sign this ACKNOWLEDGMENT OF PATERNITY, paternity may be established by the court. A paternity action may be filed by the mother, the natural father, the child and/or the state on behalf of the mother, the father, or the child. If a court action is filed, either parent may be ordered to pay costs, including the cost of genetic testing. All costs, including genetic tests, will be billed to the man found to be the legal father. If you want to file a court action to establish paternity and you need help, contact the local Department of Revenue Child Support Enforcement Office or a private attorney.

INFORMATION FOR NEW CERTIFICATE: If the child is under the age of one, a change to the child's given name may be requested by entering the name as you wish it shown on the new birth certificate. If the child is more than one year, a change other than a misspelling, omission, or a correction that is accompanied by supporting documentary evidence, can only be made upon receipt of an order from a court of competent jurisdiction. A change to a child's surname to the mother's maiden name, father's surname or a combination of both can be made regardless of the child's age by entering the name as you wish it to appear on the new birth certificate. The new birth record will show child's name as well as father's name and personal identifying information regarding him as reflected on this form. Therefore, be sure to list the information as you wish it reflected on the new record. I only an initial is shown for a given name, a name omitted, wrong surname, etc. the new record can only be amended in regard to the child's name by a court of competent jurisdiction. Evidence of the father's true facts of birth in the form of a birth certificate or other documentation may be required to correct any information provided to us in error.

FEE/CERTIFICATION OF NEW RECORD: An amendment-processing fee of $20.00 is required which includes the issuanc of one certification of the new birth record. ***Picture identification must be provided for us to issue certification of the amende record. Acceptable forms are a driver's license, passport, state identification card or military identification card.***

DH Form 429, Application for Amendment to Florida Birth Record is available for remittance. If you need assistance, please e-mail our office at vitalstats@doh.state.fl.us

MAIL TO: STATE OFFICE OF VITAL STATISTICS, ATTN: PATERNITY UNIT, P. O. BOX 210, JACKSONVILLE, FL 32231-0042.

I HAVE READ [OR HAVE HAD READ TO ME] AND UNDERSTAND THIS DOCUMENT:

INFORMATION TAKEN FROM ORIGINAL BIRTH CERTIFICATE

Child's SSN: _____ State File/Birth Number: _____ (If Known)

Full Name of Child: _____ Sex: _____
(First) (Middle) (Last)

Child's Date of Birth: _____ Child's Place of Birth: _____
(Month/Day/Year) (City) (County) (State) (Zip)

Mother's Full Maiden Name: _____ Mother's Place of Birth _____
(First) (Middle) (Last) (State or Country)

Mother's Social Security Number: _____ Mother's Date of Birth: _____
(Month/Day/Year)

INFORMATION FOR NEW BIRTH CERTIFICATE

Full Name of Child for New Birth Certificate: _____
(See Reverse Side of form) (First) (Middle) (Last) (Suffix)

Natural Father's Full Name: _____
(First) (Middle) (Last)

Date of Birth of Father: _____ Father's Social Security Number: _____
(Month/Day/Year)

Place of Birth of Father: _____ Father's Race: _____
(City) (County) (State)

Residence Address Of Father: _____ Mailing Address of Father if Different: _____
(Street/Box No./Route) (Street/Box No./Route)

_____ _____
(City) (County) (State) (Zip) (City) (County) (State) (Zip)

Current Mailing Address of Mother

_____
(Street/Box No./Route) (City) (State) (Zip)

NOTE: *If married after child's birth and now request amendment of marital status on birth record, send certified copy of marriage record with this* form. If married in Florida and you require a certified copy, fill-in data below and send $5.00. A certified copy will be sent to you upon completion, if married in Florida: Date: _____ County issuing license: _____

ACKNOWLEDGMENT BY NATURAL PARENTS

Under penalties of perjury, **WE HEREBY DECLARE** that we have read the foregoing Acknowledgement of Paternity and that the facts stated in it are true, that is, that the mother was unwed at the time of birth, that no other man is listed on the birth record as father, that we are the natural parents of the child named above and that we fully understand our responsibilities and rights printed on the reverse side of this form, DH 432, (11/04). **WE FURTHER DECLARE** that no court action establishing paternity has occurred or is in process. We understand that a person who knowingly makes a false declaration pursuant to s. 92.525(2) or 382.026(1), Florida Statutes is guilty of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

IF NOTARIZED

Sworn to and subscribed before me this ____Day of _____, 20___, by

_____
(Signature of Natural Father)

_____
(Printed Name of Natural Father)

_____
(Notary Signature)

_____
(Printed Name/Notary Stamp)

Personally known _____ OR Produced Identification _____
Type of Identification Produced: _____

Sworn to and subscribed before me this ____Day of _____, 20___, by

_____
(Signature of Natural Mother)

_____
(Printed Name of Natural Mother)

_____
(Notary Signature)

_____
(Printed Name/Notary Stamp)

Personally known _____ OR Produced Identification _____
Type of Identification Produced: _____

OR, IF NOT NOTARIZED ABOVE, WITNESSED BELOW

_____
Printed Name of Natural Father

_____
Signature of Natural Father/Date Signed

Witness: _____ _____

_____
Printed Name of the Natural Mother

_____
Signature of Natural Mother/Date Signed

Witness: _____ _____

FLORIDA DEPARTMENT OF HEALTH

PATERNITY ACKNOWLEDGEMENT RESCISSION AFFIDAVIT

(Please read instructions on reverse before filling out form)

This affidavit is made in accordance with section 742.10, Florida Statutes, for the purpose of rescinding the paternity acknowledgement made by me whereby I acknowledged the father of

_____ who was born on _____
Name of child (First, Middle, Last) Date of Birth (Month, Day, Year)

in _____ County, Florida to _____
County of Birth Mother's MAIDEN name (First, Middle, Last)

to be _____. I understand that this rescission in itself will not affect the birth record and that a court order is required to remove the name of the father.
Named Father's FULL Name

Check that which applies

☐ Mother

☐ Named Father

_____
Signature

NOTARY	State of Florida, County of _____ Sworn and subscribed before me on this _____ day of _____, _____, by *(NOTARY STAMP)* _____ (Notary Signature) _____ (Print Name of Notary) Personally Known_____ OR Produced Identification ____ Type of Identification Produced: _____

DH 2102 5/98

FLORIDA DEPARTMENT OF HEALTH

FLORIDA PUTATIVE FATHER REGISTRY
CLAIM OF PATERNITY

CAREFULLY READ the information provided on the reverse of this form. **PLEASE TYPE OR PRINT CLEARLY.**

Part 1 PUTATIVE FATHER'S (REGISTRANT) INFORMATION TO BE INCLUDED IN PUTATIVE FATHER REGISTRY

FULL NAME OF FATHER	FIRST	MIDDLE	LAST INCLUDING ANY SUFFIX	DATE OF BIRTH
RESIDENCE STREET ADDRESS (AND APT.)		CITY	STATE	ZIP CODE
ALTERNATE/PHYSICAL ADDRESS (AND APT.), IF APPLICABLE		CITY	STATE	ZIP CODE
DAYTIME TELEPHONE (INCLUDING AREA CODE)		CELL PHONE NUMBER	FAX NUMBER	
PHYSICAL DESCRIPTION OF FATHER				

Part 2 CONCEPTION INFORMATION

DATE OF CONCEPTION (MONTH, DAY, YEAR)	PLACE AND LOCATION OF CONCEPTION (Not limited to, but including city and state)

Part 3 AGENT/REPRESENTATIVE APPOINTMENT To receive notice of pending adoption, you MUST provide address information. This address cannot be a post office box. If you choose, you may designate another person as an agent or representative to receive notice of any termination of parental rights proceeding and /or adoption that is filed regarding the mother and child listed on this form. Said agent or representative MUST sign the acceptance of designation below in order to receive notice or service of process.

PRINTED FULL NAME OF AGENT OR REPRESENTATIVE	FIRST	MIDDLE	LAST	SUFFIX
RESIDENCE STREET ADDRESS (AND APT.)		CITY	STATE	ZIP CODE
SIGNATURE OF AGENT OR REPRESENTATIVE				
DAYTIME TELEPHONE (INCLUDING AREA CODE)		CELL NUMBER	FAX NUMBER	

Part 4 MOTHER'S INFORMATION (If date of birth unknown, provide approximate age of mother)

FULL NAME OF MOTHER	FIRST	MIDDLE	LAST, MAIDEN OR LEGAL	DATE OF BIRTH
RESIDENCE STREET ADDRESS (AND APT.)		CITY	STATE	ZIP CODE
PHYSICAL DESCRIPTION OF MOTHER				

Part 5 CHILD'S INFORMATION (If date of birth unknown, provide estimated date OR anticipated date of delivery in case where birth has not yet occurred).

FULL NAME OF CHILD	FIRST	MIDDLE	LAST INCLUDING SUFFIX	SEX
DATE OF BIRTH	CITY OF BIRTH	COUNTY OF BIRTH	STATE OF BIRTH	

FEE FOR FILING & INDEXING YOUR CLAIM OF PATERNITY IN THE FLORIDA PUTATIVE FATHER REGISTRY **Check or money order payable to Vital Statistics in U.S. Dollars** (*DO NOT SEND CASH*)	**$9.00**

PUTATIVE FATHER'S ACKNOWLEDGMENT

To provide false information for fraudulent purposes is a third-degree felony punishable by the terms and conditions as set forth in Florida Statutes

I hereby swear or affirm to the best of my knowledge and belief that I am the biological father of the child referenced above and submit to and will pay for DNA testing, if requested, as provided by law. I understand this information will be included in the Florida Putative Father Registry and by filing this claim of paternity I am confirming my willingness and intent to support the child referenced above in accordance with state law.

☐ **Personally Known** or ☐ **Provided ID**

_____
PRINTED NAME OF PUTATIVE FATHER

_____
SIGNATURE OF PUTATIVE FATHER

Type of Identification Produced

State of _____ County of _____

Subscribed and sworn before me this _____ day of _____, 20 _____

_____
PRINTED NAME OF NOTARIZING OFFICIAL

_____
SIGNATURE OF NOTARIZING OFFICIAL

(Place Notary Stamp Here)

DH 1965 (07/2012)
64V-1.016(1), Florida Administrative Code

IMPORTANT INFORMATION CONCERNING

FLORIDA PUTATIVE FATHER REGISTRY - CLAIM OF PATERNITY

BACKGROUND AND PURPOSE Section 63.054, Florida Statutes has provided for the establishment of a Putative Father Registry in the Office of Vital Statistics (OVS), Florida Department of Health (DOH). The purpose of the registry is to permit a man alleging to be the biological father of a child to assert his parentage, independent of the mother, and preserve his rights as a parent. This registry also may expedite adoptions of children whose biological fathers are unwilling to assume responsibility of their child. For purposes of this provision registrant means an "unmarried biological father". If an unmarried biological father fails to take the actions that are available to him to establish a relationship with his child, his parental interest may be lost entirely, or greatly diminished, by his failure to timely comply with the available legal steps to substantiate a parental interest. Chapter 63, Florida Statutes governs adoption proceedings in Florida. Visit: **http://www.leg.state.fl.us/statutes/index.cfm**

A man is presumed to be the biological father if:

- The minor was conceived or born while the father was married to the mother;
- The minor is his child by adoption;
- The minor has been adjudicated by the court be his child, by the date a petition is filed for termination of parental rights.
- He has filed an affidavit of paternity by acknowledging paternity in conjunction with the child's mother at the hospital at the time of child's birth or by subsequently filing an acknowledgment of paternity in conjunction with the child's mother with the Bureau of Vital Statistics both of which constitutes the establishment of paternity as provided for in section 742.10, Florida Statutes, by the date a petition is filed for termination of parental rights.

The information provided herein is not designed to be legal advice. Questions concerning paternity, presumption of paternity, or rights and responsibilities of a parent should be directed to an attorney.

INFORMATION FOR COMPLETING CLAIM OF PATERNITY FORM - Type or print neatly. This form **MUST** be signed under oath.

- All information in Part 1 concerning the father is required. Do not leave any of these items blank.
- Complete Parts 2, 4 & 5 to the best of your ability. The child's name, date of birth, place of birth, and the mother's maiden name are critical to linking the Claim of Paternity with an actual child. The more complete the information you provide, the more effective the paternity registry can be. If mother's maiden name is unknown but her legal surname is known, please provide legal surname and indicate that name provided is legal surname. If you have named an agent/representative to act on your behalf, said agent or representative MUST file an acceptance of the designation, in writing, in order to receive notice or service of process.
- A Claim of Paternity may be filed any time prior to the birth BUT a claim of paternity may not be filed after the date a petition is filed for termination of parental rights.
- By filing this claim of paternity, the registrant expressly consents to submit and pay for DNA testing upon the request of any party, the registrant, or the adoption entity with respect to the child referenced in the claim of paternity.
- The registrant may, at any time prior to the birth of the child for whom paternity is claimed, execute a notarized written revocation of the claim of paternity previously filed and upon such revocation, the claim of paternity shall be deemed null and void. A Claim of Paternity - Update to Registration form is available for this purpose.
- If the court determines that a registrant is not the father of the minor, the court shall order the department to remove the registrant's name from the registry.
- It is the obligation of the registrant or, if designated an agent or representative, to notify and update the information contained in the registry in OVS of any change of address or change in the designation of an agent or representative. A Claim of Paternity - Update to Registration form is available for this purpose.
- OVS will notify the registrant, in writing, of their receipt of a Claim of Paternity OR a Revocation filed on a Claim of Paternity - Update to Registration.
- Pursuant to s. 63.541, Florida Statutes, information in the registry is confidential and may only be released to:
  a) an adoption entity, upon filing of a request for a diligent search of the Florida Putative Father Registry in connection with the planned adoption of a child,
  b) the registrant unmarried biological father upon receipt of a notarized request for a copy of his registry entry,
  c) the birth mother, upon receipt of a notarized request for a copy of any registry entry in which she is identified as the birth mother,
  d) the court, upon issuance of a court order concerning a petitioner acting pro se in an action under this chapter.

- Florida law requires a fee of $9.00 for filing an indexing a claim of paternity. Please make your check or money order payable to Vital Statistics. DO NOT SEND CASH. Florida Law imposes an additional service charge of $15 for dishonored checks.

Mail Claim of Paternity with payment to VITAL STATISTICS, P.O. BOX 210, Jacksonville, FL 32231-0042
Visit our website at: **http://www.doh.state.fl.us/planning_eval/vital_statistics/Putative.htm**

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OFFICE OF VITAL STATISTICS USE ONLY

ACTUAL NAME OF CHILD	FIRST	MIDDLE	LAST	SUFFIX
DATE OF BIRTH (MM/DD/YYYY)	STATE FILE NUMBER	☐ Registration acceptance notice sent to registrant and date sent: ☐ Revocation received date: ☐ Revocation acceptance notice sent to registrant and date sent: ☐ Notice of Termination of Parental Rights – Date received:		

Company	Price for Legal DNA Paternity Testing	Mobile or No Mobile Collection	Website	Phone No.	Identification for Legal DNA Testing	Whether aaBB accredited	Can participants be in different cities?
DNA Paternity Testing Center	$425 for Father, 1 Child and Mother	Yes, Mobile Collection Starts at $525 for Father, 1 Child and Mother	www.dnapaternitytestingcenters.com	866-944-9648	Driver's License or Passport For Child: Birth Certificate, SS Card, or Hospital Discharge Papers. A picture is taken of child for chain of custody.	yes	yes
IDENTIGENE	$359 for Father, 1 Child and Mother	Yes, if Collector does Mobile Collection. They contract out the collection. It depends on the collector.	www.identigene.com	888-404-4363	Driver's License or Passport For Child: Birth Certificate and bring recent photograph	yes	yes
	For Mobile Collection, there is an additional fee of $30-$40 per participant. For zip codes: 32801- 9 collectors do mobile collection; 32806-9 collectors do mobile collection; 32751- 6 collectors do mobile collection; 32771-6 collectors do mobile collections. You need to check zip code when you call to set test to see if mobile collection within zip code.						
JIM BENTLEY-HELPFUL, if you call Chromosomal Labs-Bode Technology	$430 for Father, 1 Child and Mother;	NO. They have 2000 collectors around the country.	chromosoal-labs.com	877-434-0292	Driver's License or Passport Birth Certificate or SS Card for Child. Their collectors are required to take a photo of Child. They try to have alleged Father holding child as to avoid fraud, i.e., Alleged Father sending a neighbor or friend to collection.	yes	yes
Genelex	$475 Father, Mother and Child	Yes. They use mobile and in-house collectors around the country. Price is up to collector.	www.paternitytestinglab.com	800-523-6487 or 800-523-3060	Driver's License or Passport For Child: Military ID, Birth Certificate or Social Security Card. They photograph all participants.	yes	yes