

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO THE RULES      CASE NO. SC06-  
REGULATING THE FLORIDA BAR – 4-  
7.12, 4-7.13, 4-7.16, 4-7.17, 4-7.22 and 4-  
7.23 (LAWYER REFERRAL SERVICES)

**PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR  
4-7.12, 4-7.13, 4-7.16, 4-7.17, 4-7.22 AND 4-7.23 - LAWYER REFERRAL  
SERVICES**

The Florida Bar (the bar) petitions this Court for an order amending the Rules Regulating the Florida Bar and states:

**Jurisdictional Statement**

This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors) under R. Reg. Fla. Bar 1-12.1.

**Organization of Petition and Amendments**

The petition begins with a discussion of this Court's order directing the bar to file amendments to the bar's rule regarding for-profit lawyer referral services. After the general discussion, this section provides information regarding development of the amendments as required by Part III of this Court's June 14, 2006 administrative order number AOSC 06-14 in *In Re: Guidelines for Rules Submissions*. The proposed amendments are to existing rules 4-7.12, 4-7.13, 4-7.16, 4-7.17, 4-7.22 and 4-7.23, all relating to the treatment of lawyer referral services. Information in this petition about the rules proposals is presented out of rule order, with proposed amendments to rule 4-7.22 presented first. Amendments to Rule 4-7.22 are extensive and substantive, while amendments to rules 4-7.12, 4-7.13, 4-7.16 and 4-7.17 are for consistency with the proposed amendments to rule 4-7.22. As noted below, the bar proposes to delete rule 4-7.23 in its entirety, as it will be subsumed within the proposed amendments to rule 4-7.22. The rules are presented in numeric rule order in Appendices A and B.

## Discussion

Amendments to Rule 4-7.22 were filed with this Court in *In Re: Amendments to Rules Regulating the Florida Bar - 4-7.22 Lawyer Referral Services*, Case No. SC14-2126. On September 24, 2015 this Court rejected the bar's petition, directed the bar to propose amendments to Rule 4-7.22 that required for-profit lawyer referral services to be owned or operated by a Florida Bar member, directed the bar to consider any other requirements necessary to protect the public, and directed the bar to file any new amendments no later than May 24, 2016. By letter dated March 21, 2016, this Court granted the bar's request to extend the time in which to file proposed amendments to August 15, 2016, so that the bar could seek Florida Bar member comment regarding the amendments. This Court's letter is found in Appendix D. For the reasons discussed below, the Board of Governors is not proposing an amendment requiring that for-profit lawyer referral services be owned or operated by a member of The Florida Bar, but instead is proposing other requirements necessary to protect the public and, as discussed in the "reasons" section below, believes that these proposed amendments to rule 4-7.22 meet this goal.

After receiving this Court's September 24, 2016 order, the Board of Governors assigned the task of reviewing the rules and promulgating any amendments to the Board Review Committee on Professional Ethics and the Board Technology Committee. The committees were tasked with reviewing the for-profit lawyer referral service rules in light of this Court's order, the rapid developments and changes in technology, and the proliferation of on-line matching services in recent years. The committees began by discussing this Court's directive that lawyer referral services be owned or operated by a Florida Bar member. This was discussed at length and at multiple meetings. Numerous concerns led the committees to conclude that adding this requirement would not protect the public and may put regulation of these entities in jeopardy. The committees' chairs discussed these concerns extensively with the Board of Governors, and the bar posted information about this Court's directive and the proposed amendments on a dedicated page of the bar's website (<http://www.floridabar.org/proposedlrsamend>). The committees unanimously recommended to the Board of Governors to propose an alternative proposal to protect the public, by broadening the scope of the entities that are covered by the requirements of this rule and by addressing the potential conflicts that arise when cross referrals are required. The Board of Governors agreed.

This Court's directive seems based on the premise that lawyer ownership or operation will give this Court greater regulatory control over for-profit lawyer referral services because the lawyers who are owners or operators will be subject to discipline for failure to comply. Lawyers who participate in a lawyer referral service are already subject to discipline for the service's failure to comply with the Rules Regulating the Florida Bar, so this Court already is able to regulate lawyers' participation with these services. Requiring that a lawyer own or operate the service does not give this Court more regulatory powers than it already has and does not provide greater protection to the public. In fact, holding out that the service is owned or operated by a member of The Florida Bar could actually harm the public by providing a false sense that these services are more regulated based on their ownership.

The committees were also concerned that requiring that for-profit lawyer referral services be owned or operated by a lawyer creates the opportunity for an unscrupulous lawyer referral service to hide behind the lawyer owner or operator. Rather than the lawyer acting as the true owner or operator, the nonlawyers could continue to operate the service, give the lawyer no true authority, and put the lawyer's license at risk. The nonlawyer would be shielded from any responsibility by pointing to the lawyer owner or operator. The bar saw this happen in the area of loan modification and mortgage foreclosure mills after the financial crisis, resulting in a great deal of public harm.

The committees also discussed the general principle that the rules should be no more restrictive than is required to ensure that participating lawyers comply with the Rules Regulating the Florida Bar and that the public is protected. The committees and the Board of Governors believe that requiring lawyer ownership or operation of lawyer referral services is not the least restrictive means to accomplish these goals. Instead, the proposed amendments accomplish these goals by expanding the scope of entities covered by these rules through regulation of the lawyer's conduct.

The above concerns are compounded by the difficulty in defining the terms "owned or operated." Is it sufficient for a Florida Bar member to be a supervisor or manager? What level of supervision or management by a Florida Bar member is required? Does ownership mean partially owned or wholly owned by a Florida Bar member or members? How would these requirements impact existing businesses? Would existing businesses be required to change their ownership and/or operation? If so, would this raise constitutional concerns? If not, would this unlevelled playing field lead to more public harm than public protection? For

all of these reasons, the committees recommended, and the Board of Governors agreed, that while rule 4-7.22 needed to be amended, alternative means of protecting the public should be proposed.

## **Amendments**

### CHAPTER 4 RULES OF PROFESSIONAL CONDUCT SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES

#### **Rule 4-7.22 LAWYER REFERRAL SERVICES**

*Explanation:* The rule is re-organized. Throughout the rule, the term "lawyer referral service" generally is changed to "qualifying provider." Within proposed subdivision (a), states that a lawyer may not participate with any qualifying provider that does not meet the requirements of the rule or other bar rules. Within proposed subdivision (b), defines qualifying provider. Within proposed subdivision (c), provides that pro bono referral programs and listings of local and voluntary bar association members are not qualifying providers. Within proposed subdivision (d), provides requirements for lawyer to participate, including adding a prohibition against requiring a participating lawyer to make referrals to other entities in proposed subdivision (d)(4), requiring the provider to give participating lawyers documentation of compliance within proposed subdivision (d)(6), requiring the provider to affirmatively disclose to consumers the bona fide office location of the participating lawyer to whom a consumer is referred or with whom a consumer is matched in proposed subdivision (d)(10), and adding a prohibition against use of a name or other communication that would lead prospective clients to believe that the qualifying provider is a law firm or can provide legal services directly in proposed subdivision (d)(11). Changes the requirement for reporting the names of participating lawyers from a quarterly to an annual basis and adds an exemption for the bar's lawyer referral service and lawyer referral services approved by the bar under chapter 8, R. Reg. Fla. Bar, in proposed subdivision (d)(5). Within proposed subdivision (e)(1), requires that participating lawyers notify the bar within 15 days of beginning or ceasing participating with a qualifying provider unless the provider is the bar's lawyer referral service or a service approved by the bar under chapter 8, R. Reg. Fla. Bar. Within proposed subdivisions (e)(1) and (e)(2), provides that a participating lawyer is responsible for the conduct of the qualifying provider if the lawyer fails to engage in due diligence before agreeing to participate or if the lawyer continues to participate after notice by the bar that the qualifying provider is not in compliance. Deletes

the prior definition of "lawyer referral service." Clarifies that exemptions from some requirements for qualifying providers applies to the bar's lawyer referral service as well as services approved by the bar under chapter 8, R. Reg. Fla. Bar, in renumbered subdivisions (d)(2) and (d)(8). Deletes the requirement that the provider or participating lawyer carry professional liability insurance in current subdivision (a)(4). Deletes the requirement that the provider quarterly give the bar the names of all persons authorized to act for the provider in current subdivision (a)(6). Deletes the requirement that all advertisements state that the provider is a lawyer referral service in current subdivision (a)(6). Deletes the requirement that all advertisements state that lawyers pay to participate in current subdivision (a)(11). Adds commentary regarding the role of qualifying providers in enhancing access to the justice system, regarding the term "publication" as used in the rule, regarding what constitutes an improper division of fees, regarding a lawyer's responsibility when a qualifying provider has more than one program, regarding what constitutes due diligence in agreeing to participate with a qualifying provider, and regarding the lawyer's responsibilities under other rules as they relate to qualifying providers.

*Reasons:*

As noted above, the task given to the bar by this Court was assigned to the Board Review Committee on Professional Ethics and Board Technology Committee. The committees were mindful in their review of this Court's serious concerns regarding the public's access to justice. This Court formed the Access to Justice Commission to analyze and propose recommendations to increase access to the court system for Florida citizens. Multiple articles in the bar *News* have been published outlining the gap between the need for legal services and their availability for low and middle income citizens. At the same time, The Florida Bar Young Lawyers Division has informed the bar that many of its members are struggling and seeking new ways to connect with prospective clients. The Board Review Committee on Professional Ethics and Board Technology Committee determined that the definition of lawyer referral service should be broadened to encompass the widest variety of service providers operating to match lawyers with prospective clients. This not only will aid in increasing access to justice, it will provide another avenue for Florida lawyers to connect with prospective clients in a way that requires adherence to the Rules of Professional Conduct.

Qualifying provider is defined in proposed subdivision (b). For-profit lawyer referral services are prohibited in many states, so being considered or referred to as a "lawyer referral service" creates issues for some entities that

operate nationwide. To avoid those issues, some entities refer to themselves as something other than a lawyer referral service, even though a purpose of the entity is to refer consumers to lawyers. Some entities offer to “match” consumers and lawyers or provide “leads” to lawyers that results in a “match.” To avoid confusion and to capture these entities, the Board Review Committee on Professional Ethics and Board Technology Committee determined a broad term “qualifying providers” should replace “lawyer referral service” in the rule.

Overall, the proposal would broaden application of the rule to include more entities or “qualifying providers” that must comply with the rule’s requirements in order for lawyers to participate. Proposed subdivision (b) would define “qualifying providers” to include any person or entity that receives any benefit for matching or connecting consumers with lawyers; group or pooled lawyer advertising programs; lawyer listings; lawyer directories; and tips and leads programs. The application of the rule to more entities would provide more protection to the public by prohibiting lawyers’ participation with these entities if the entities do not comply with the rule’s requirements. As specifically stated in proposed subdivision (a), a lawyer is prohibited from participating with any qualifying provider who does not meet the requirements of the rule or other applicable Rules Regulating the Florida Bar.

To offset the issues that may arise with the proposed broad definition of qualifying provider, it was necessary for the rule to address entities that are not considered qualifying providers. Proposed subdivision (c) specifically exempts a pro bono referral program and a listing by a local or voluntary bar from the definition of qualifying provider. It also was necessary to delete some of the current requirements for lawyer referral services, while continuing to protect the public and core values of the profession. The Board Review Committee on Professional Ethics and Board Technology Committee focused on deciding the minimum requirements necessary to ensure lawyers abide by their professional obligations and protect the public, while omitting restrictions that create problems for entities that do not consider themselves lawyer referral services and are not defined as lawyer referral services by other states in which they are permitted to operate.

In addressing the minimum requirements, proposed subdivisions (d)(1), (d)(2), (d)(8) (d)(9) and (e) keep existing rule provisions that require compliance with lawyer advertising rules (including the prohibition against direct solicitation), prohibit the lawyer from sharing legal fees with the entity, prohibit an entity from stating or implying Florida Bar endorsement or approval, require the entity to use

its actual legal name or a registered fictitious name and specify that the lawyer remains responsible for the conduct of the entity. Subdivision (a)(3), renumbered as (d)(3), keeps the requirement that a qualifying provider only refer to persons lawfully permitted to practice law in Florida and expands this requirement to qualifying providers who match or otherwise connect prospective clients with lawyers.

While those requirements are kept intact, the bar recommends deleting the existing requirement that either for-profit lawyer referral services or their participating lawyers carry professional liability insurance in existing subdivision (a)(4). Services find it difficult if not impossible to obtain malpractice insurance on behalf of the participating lawyers, who practice in different law firms. Most Florida Bar members are not required to carry malpractice insurance. Currently, the only Florida Bar members who are required to carry malpractice insurance are lawyers who participate in the following: for-profit lawyer referral services; not-for-profit lawyer referral services sponsored by The Florida Bar or a voluntary bar; and group or prepaid legal programs approved by the Board of Governors. *See*, R. Reg. Fla. Bar 4-7.22(a)(4), R. Reg. Fla. Bar 8-2.2(c)(1), and R. Reg. Fla. Bar 9-2.2(a)(2). The bar believes it is unduly burdensome to require lawyers to carry professional liability insurance solely because they choose to participate in a group or pooled advertising program.

The bar also recommends deleting the requirement that all communications with the public state that the entity is a lawyer referral service and that lawyers pay to participate in existing subdivisions (a)(10) and (11). Nationwide entities object to requirements that they must refer to themselves as lawyer referral services. Many states that prohibit for-profit lawyer referral services do not consider group or pooled advertising programs to be prohibited for-profit lawyer referral services and permit those programs to operate. Thus, being deemed a “lawyer referral service” and being required to explicitly state that under the existing rule is problematic for entities that advertise and operate nationwide. Florida’s existing rule puts these entities in a Catch 22 situation, because they are required to refer to themselves in advertisements and other communications as lawyer referral services, when to do so could violate another state’s rules, even though the other state would allow them to operate in that state. The bar believes that lesser regulation would address the greater concern: that communications with the public not mislead the public into thinking that the entity directly provides the legal services, operates as a law firm, or is otherwise misleading. That express prohibition is recommended in proposed subdivision (d)(11).

Additionally, the bar recommends deleting the requirement that all communications with the public state that lawyers pay to participate in existing subdivision (a)(11). Not all entities require lawyers to pay to participate: some require the prospective clients to pay in order to be matched; others are funded by advertising on their websites. In either circumstance, the required disclaimer that lawyers pay to participate is not true. In cases where the lawyers do pay to participate, it seems apparent in their advertising that the entities are profiting from the matching, regardless of who pays. If the advertising states or implies otherwise, proposed subdivision (d)(1), which requires that the entity comply with lawyer advertising rules, would operate to prohibit any misleading statements in the advertising for the entity.

Proposed subdivision (d)(6) would require all qualifying providers to provide participating lawyers with documentation that they are in compliance with bar rules. A concomitant proposed subdivision (e)(2)(A) would require that lawyers engage in due diligence in determining the compliance of an entity if the lawyer chooses to participate. Both provisions would protect the public by helping to ensure qualifying providers and participating lawyers comply with Florida Bar rules. Proposed commentary provides guidance to lawyers on steps they may take to engage in due diligence.

An additional level of public protection is added in proposed new subdivision (d)(4). Proposed new subdivision (d)(4) would prohibit a lawyer from participating with a qualifying entity that requires or puts pressure on the lawyer to make referrals to the entity. The proposal, in addition to proposed commentary that addresses participating lawyers' obligations under existing Florida Bar rules addressing conflicts of interest, would address conflicts arising from requirements of cross-referrals. The bar believes these proposals adequately address this Court's concerns regarding referrals by a lawyer referral service to multiple professional service providers (e.g., to both a doctor and a lawyer) from a single incident. As has been pointed out to this Court in comments filed in *In Re Amendments to Rules Regulating the Florida Bar - 4-7.22 Lawyer Referral Services*, above, lawyers may have similar conflicts that relate to referrals or relationships directly between lawyers and other professionals. For example, a lawyer may have either a potential or actual personal conflict when representing a client whose interests differ from those of a medical professional that has referred patients to the lawyer, or who is an expert witness or treating physician in other cases the lawyer is handling. Under some circumstances, a lawyer may refer a client to a business owned by the lawyer. The rules do not per se prohibit this conduct, but the conflicts rules

address the lawyer's responsibilities when this kind of personal conflict arises. Similarly, the bar believes that the existing conflicts rules address the conflict that arises with cross referrals between a lawyer and a lawyer referral service or its owners or related entities. The bar recommends against a per se prohibition, which does not allow variation in appropriate circumstances. The bar believes the proposed prohibition against required or pressured cross-referrals, together with existing conflicts rules, adequately addresses the potential conflict.

Other proposed amendments address notice to the bar of a lawyer's participation with a qualifying entity. Proposed subdivision (e)(1) requires lawyers to notify the bar within 15 days of either starting or ceasing participation with a qualifying entity. The proposal puts the onus of notification to the bar on the lawyer rather than the entity. However, to ensure that the entity also provides some notification to the bar, the subdivision requiring the entity to provide the bar with a list of participating lawyers remains (renumbered (d)(5)), but the reporting period is lowered from quarterly to at least annually to place more of a responsibility on the participating lawyer, as opposed to the qualifying entity. Current subdivision (a)(6) on notifying the bar of persons authorized to act on behalf of the entity is proposed to be deleted, as existing subdivision (a)(7) (proposed subdivision (d)(7)) requires response within 15 days to bar counsel, so that the bar can obtain that information if the bar needs it.

The bar believes that these amendments properly balance protection of the public with constitutional concerns regarding overly restrictive regulation. The bar has proposed amendments that broaden application of the rules and continue to protect core values of the profession, while recommending deletion of those parts of rule 4-7.22 that unduly burden either Florida Bar members, the entities that market the services of Florida Bar members, or both.

To aid Florida Bar members in understanding the proposals, information was posted on the bar's website on a dedicated page ([www.floridabar.org/proposedlrsamend](http://www.floridabar.org/proposedlrsamend)). That information is provided to this Court in Appendix D and includes an overview, assertions and facts on the proposed amendments, a comparison chart between the existing and proposed rules, a Q and A, and a procedural history/timeline with policy considerations. Florida Bar members were invited to comment on the proposals, both in bar *News* articles and on the dedicated page of the bar's website. All comments received were carefully considered by the Board of Governors.

*Source:* Board Review Committee on Professional Ethics

*Background:*

- Board Review Committee on Professional Ethics approved 9-0 on March 3, 2016.
- Board of Governors first reading on March 11, 2016.
- Rules Committee approved on a procedural basis by vote of 5-0 on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on April 28, 2016.
- Program Evaluation Committee approved 12-0 on voice vote without objection on May 19, 2016.

*Board Action:* Board of Governors approved on voice vote with 1 objection on July 29, 2016.

**Rule 4-7.12 REQUIRED CONTENT**

*Explanation:* Within subdivision (a)(1) and the comment, adds qualifying provider as an entity required to include its name as the responsible party for the content of an advertisement.

*Reasons:* The change adds the term "qualifying provider" to be consistent with proposed amendments to Rule 4-7.22 regarding terminology proposed to be used for referral or matching services.

*Source:* Board Review Committee on Professional Ethics

*Background:*

- Board Review Committee on Professional Ethics approved 9-0 on May 19, 2016.
- Board of Board of Governors first reading on May 20, 2016.
- Rules Committee approved 7-0 on procedural basis on May 26, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on June 13, 2016.

- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.

*Board Action:* Board of Governors approved on voice vote with 1 objection on July 29, 2016.

### **Rule 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS**

*Explanation:* Within the commentary, adds qualifying providers as entities that may not state or imply Florida Bar endorsement or approval.

*Reasons:* Changes in the commentary add "qualifying providers" as entities that cannot state or imply Florida Bar endorsement or approval to be consistent with proposed amendments to Rule 4-7.22 regarding terminology proposed to be used for referral or matching services.

*Source:* Board Review Committee on Professional Ethics

*Background:*

- Board Review Committee on Professional Ethics approved 9-0 on May 19, 2016.
- Board of Governors first reading on May 20, 2016. Rules Committee approved 7-0 on procedural basis on May 26, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on June 13, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.

*Board Action:* Board of Governors approved on voice vote with 1 objection on July 29, 2016.

### **Rule 4-7.16 PRESUMPTIVELY VALID CONTENT**

*Explanation:* Within subdivision (b), adds "qualifying providers" as entities which may advertise specific presumptively valid content.

*Reasons:* The change adds the term "qualifying providers" to describe what presumptively valid content may be advertised by qualifying providers to be consistent with proposed amendments to Rule 4-7.22 regarding terminology proposed to be used for referral or matching services.

*Source:* Board Review Committee on Professional Ethics

*Background:*

- Board Review Committee on Professional Ethics approved 9-0 on May 19, 2016.
- Board of Governors first reading on May 20, 2016.
- Rules Committee approved 7-0 on procedural basis on May 26, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on June 13, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.

*Board Action:* Board of Governors approved on voice vote with 1 objection on July 29, 2016.

#### **Rule 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION**

*Explanation:* Within subdivision (b) and the comment, adds "qualifying provider" so that lawyers may pay the usual charges of a qualifying provider.

*Reasons:* The change adds the terminology "qualifying provider" to be consistent with proposed amendments to Rule 4-7.22 regarding terminology proposed to be used for referral or matching services.

*Source:* Board Review Committee on Professional Ethics

*Background:*

- Board Review Committee on Professional Ethics approved 9-0 on May 19, 2016.
- Board of Governors first reading on May 20, 2016.

- Rules Committee approved 7-0 on procedural basis on May 26, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on June 15, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.

*Board Action:* Board of Governors approved on voice vote with 1 objection on July 29, 2016.

### **Rule 4-7.23 LAWYER DIRECTORY**

*Explanation:* Rule is deleted in its entirety and instead is addressed through rule 4-7.22.

*Reasons:* Because the broadened definition proposed in rule 4-7.22 above encompasses lawyer directories, the lawyer directory rule would be superfluous if the proposal is adopted.

*Source:* Board Review Committee on Professional Ethics

*Background:*

- Board Review Committee on Professional Ethics approved 9-0 on March 3, 2016.
- Board of Governors first reading on March 11, 2016.
- Rules Committee approved 5-0 on a procedural basis 5-0 on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on April 28, 2016.
- Program Evaluation Committee approved 12-0 on May 19, 2016.

*Board Action:* Board of Governors approved on voice vote with 1 objection on July 29, 2016.

## Official Notice of Amendments

Pursuant to R. Reg. Fla. Bar 1-12.1(g), formal notice of intent to file all the proposals in this petition was published in the July 15, 2016 issue of the bar *News*. A copy of that published notice from the Internet version of that *News* issue is included with this petition, in Appendix C. This notice can also be found at:

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/1B966547222BD8BB85257FD9006B93D4>

### Discrepancy with Thomson Reuters Rules of Court 2016

During the preparation of this petition, the bar noted 2 discrepancies between the Rules Regulating the Florida Bar as maintained by the bar and the Rules Regulating the Florida Bar as published in the 2016 version of Thomson Reuters *Florida Rules of Court*. The 2 discrepancies occur in rule 4-7.13(b)(6) and (b)(10), in which the 2016 version of Thomson Reuters *Florida Rules of Court* uses only ellipses (3 dots), while the bar's master copy of the rule contains ellipses plus a period (4 dots). The bar verified its master copy with this Court's order in *In re: Amendments to the Rules Regulating the Florida Bar - Subchapter 4-7, Lawyer Advertising Rules*, 108 So.3d 609, Case No. SC11-1327 (Fla. Jan. 31, 2013). The bar has notified the publisher, which has indicated the errors will be corrected.

### Editorial Corrections and Request for Waiver of Rules Procedures

During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were not reviewed by the Board of Governors, but were made under the authority granted to bar staff to correct errors in this Court's June 14, 2006 administrative order AOSC06-14. These editorial errors were not corrected in the official bar *News* notice either in print or on-line. The editorial errors are as follows:

Within the commentary to rule 4-7.13, in the last sentence under the header "Dramatizations," the bar proposes to change the word "rule" from upper to lower case as required by this Court's June 14, 2006 administrative order number AOSC

06-14 in *In Re: Guidelines for Rules Submissions*. This change is shown in legislative format in Appendices A and B. Appendix B notes that the change was neither approved by the Board of Governors nor published in the bar *News*.

Within the commentary to rule 4-7.13, in the last sentence under the header “Implying Lawyer Will Violate Rules of Conduct or Law,” the bar proposes to change the case name of *Fla. Bar v. Pape*, 918 So.2d 240 (Fla. 2005) from underlining to italics to be consistent with other Florida Bar rules. This is shown in legislative format in Appendices A and B. Appendix B notes that the change was neither approved by the Board of Governors nor published in the bar *News*.

Within the commentary to rule 4-7.17, the bar proposes to delete 1 reference to rule 4-7.23, because the rule is proposed to be deleted in its entirety. This is shown in legislative format in Appendices A and B. Appendix B notes that the change was neither approved by the Board of Governors nor published in the bar *News*.

Within the proposed commentary to rule 4-7.22, the word “rule” as approved by the Board of Governors and published in the bar *News* was capitalized instead of lower case when modifying specific rule numbers, and the bar proposes that these references be in lower case to comply with this Court’s June 14, 2006 administrative order number AOSC 06-14 in *In Re: Guidelines for Rules Submissions*. Appendix B notes that the change was neither approved by the Board of Governors nor published in the bar *News*.

Within proposed subdivision (a) of rule 4-7.22, the word “the” was capitalized in the phrase “Rules Regulating The Florida Bar” as approved by the Board of Governors and published in the bar *News*, and the bar proposes that this reference be in lower case to comply with this Court’s June 14, 2006 administrative order number AOSC 06-14 in *In Re: Guidelines for Rules Submissions*. Appendix B notes that the change was neither approved by the Board of Governors nor published in the bar *News*.

Within the last paragraph of the commentary to rule 4-7.22, the word “the” was capitalized in the phrase “Rules Regulating The Florida Bar” as approved by the Board of Governors and published in the bar *News*, and the bar proposes that this reference be in lower case to comply with this Court’s June 14, 2006 administrative order number AOSC 06-14 in *In Re: Guidelines for Rules Submissions*. Appendix B notes that the change was neither approved by the Board of Governors nor published in the bar *News*.

The bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 are minimal and not substantive. The bar therefore requests that these additional revised proposals be accepted by this Court, and that this Court waive Board of Governors approval and official notice in the print and on-line version of the bar *News* regarding these edits, pursuant to R. Reg. Fla. Bar 1-12.1(i).

All other requested amendments in this petition were promulgated in full compliance with applicable rules and policies.

### **Other Pending Amendments**

There are 2 pending rules petitions affecting Rules Regulating the Florida Bar that the bar is aware of: *The Florida Bar Petition to Amend Rule 4-1.5 Fees and Costs for Legal Services (Lien Resolution)*, Case No. SC16-104 (filed January 15, 2016) and *The Florida Bar Petition to Amend Rules Regulating the Florida Bar 4-1.1 and 6-10.3 (Technology)*, Case No. SC16-574 (filed April 4, 2016). The proposed amendments within this filing are unrelated to these 2 different rules petitions and may be considered independent of them.

### **Contents of Appendices**

The complete text of all proposals is included in Appendix A to this petition, in legislative format (deleted language struck through, shown first, followed by new language underlined).

A separate two-column presentation follows in Appendix B, which includes extracted text of affected rules with proposed amendments in legislative format and an abbreviated recitation of the reasons for the changes.

The notice of intent to file this petition is provided in Appendix C.

The letter notifying the bar of this Court's extension to file these amendments, information provided by the bar to its members about the proposals via the bar's website, and comments received during the rules development process are provided in Appendix D.

## Comments in Response to Amendments

Comments in opposition to the bar's proposal were received and are provided in Appendix D. Some criticisms of the bar's proposal offered by opponents include that:

- the proposal would allow division of fees between lawyers and lawyer referral services;
- the proposal would allow the unlicensed practice of law by for-profit lawyer referral services;
- there will be less regulation of out-of-state corporations;
- the changes would adversely impact not-for-profit lawyer referral services of The Florida Bar and voluntary bars; and
- for-profit lawyer referral services will provide unfair competition for Florida Bar members and for not-for-profit lawyer referral services of The Florida Bar and voluntary bars.

The bar disagrees with these assertions and offers the following brief response to these criticisms:

- R. Reg. Fla. Bar 4-5.4 and 4-7.22 prohibit lawyers from sharing fees with nonlawyers and are unchanged by the proposal;
- the proposed amendments have no impact on whether any person or entity can engage in the unlicensed practice of law, and the bar will continue to investigate and prosecute any persons or entities that engage in the unlicensed practice of law;
- there will be more regulation of lawyers' participation with marketing by for-profit entities as the definition is broadened under the proposed rules;
- not-for-profit lawyer referral services of The Florida Bar and local voluntary bars are explicitly exempted from the vast majority of proposed rule changes; and

- the proposal does not affect for-profit lawyer referral services competing or advertising in Florida as for-profit lawyer referral services are already permitted under existing rule 4-7.22.

### **Oral Argument Requested**

The bar seeks oral argument regarding these amendments.

### **Effective Date Request**

As to all amendments in this filing, the bar requests that any changes be made effective no sooner than 60 days from the date of this Court's order so that the bar can educate its members regarding any amendments.

The bar requests that this Court enter an order amending the Rules Regulating the Florida Bar as requested in this petition.

Respectfully submitted,

/s/ John F. Harkness, Jr.

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### **CERTIFICATE OF TYPE SIZE AND STYLE**

I certify that this petition is typed in 14 point Times New Roman Regular type.

/s/ John F. Harkness, Jr.

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John F. Harkness, Jr.  
Executive Director  
Florida Bar Number 123390

### **CERTIFICATE OF READ-AGAINST**

I certify that the Rules Regulating the Florida Bar set forth within this petition have been read against the 2016 copy of Thomson Reuters *Florida Rules of Court*.

/s/ John F. Harkness, Jr.

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John F. Harkness, Jr.  
Executive Director  
Florida Bar Number 123390