

APPENDIX B

SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE

AUGUST 15, 2016

RECEIVED 08/15/2016 8:13:44AM FLORIDA SUPREME COURT

RULES REGULATING THE FLORIDA BAR

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT

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SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES

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RULE 4-7.12 REQUIRED CONTENT

(a) Name and Office Location. All advertisements for legal employment must include:

(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and

(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.

(b) Referrals. If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to ~~such~~this effect.

(c) Languages Used in Advertising. [no change]

(d) Legibility. [no change]

COMMENT

Name of Lawyer or Lawyer Referral Service

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service, qualifying provider or lawyer directory must include its actual legal name or a registered fictitious name in

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.

Nonsubstantive change conforms to *Guidelines for Rules Submissions*.

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

all advertisements in order to comply with this requirement.

Geographic Location

[no change]

Referrals to Other Lawyers

[no change]

Language of Advertisement

[no change]

* * *

services.

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

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

(a) Deceptive and Inherently Misleading Advertisements. [no change]

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

(1) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;

(2) references to past results unless ~~such~~the information is objectively verifiable, subject to rule 4-7.14;

(3) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;

(4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;

(5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";

(6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT." When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: "ACTOR. NOT ACTUAL [.

Nonsubstantive change conforms to *Guidelines for Rules Submissions*.

Thomson Reuters *Florida Rules of Court* uses only an ellipsis (3 dots) instead of ellipses plus a period (4 dots), which is not

. . .]”;

(7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;

(8) a testimonial:

(A) regarding matters on which the person making the testimonial is unqualified to evaluate;

(B) that is not the actual experience of the person making the testimonial;

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

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

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

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

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

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

in compliance 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.

Thomson Reuters *Florida Rules of Court* uses only an ellipsis (3 dots) instead of ellipses plus a period (4 dots), which is not

“Jane Doe, Florida Bar member, former circuit judge” or “Jane Doe, retired circuit judge....”

COMMENT

Material Omissions

[no change]

Implied Existence of Nonexistent Fact

[no change]

Predictions of Success

[no change]

Past Results

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

in compliance 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.

Nonsubstantive change conforms to *Guidelines for Rules Submissions*.

while the average prospective client likely would interpret the words "successful" or "won" to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

Comparisons

[no change]

Characterization of Skills, Experience, Reputation or Record

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

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

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

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prospective clients as to the quality of the legal services offered.

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

Areas of Practice

[no change]

Dramatizations

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

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

Implying Lawyer Will Violate Rules of Conduct or Law

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

The bar proposes to change the capitalized "rule" to lower case to comply with this Court's style guide. This change was under staff's editorial discretion, was not approved by the Board of Governors, and was not noticed in the bar *News*.

The bar proposes to change the font for the case name from underlined to italics for *Fla. Bar v. Pape* to be consistent with font

Conduct. ~~Fla. Bar v. Pape~~*Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

Testimonials

[no change]

Florida Bar Approval of Ad or Lawyer

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

Judicial, Executive, and Legislative Titles

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

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

for case names in other Rules Regulating the Florida Bar. This change was under staff's editorial discretion, was not approved by the Board of Governors, and was not noticed in the bar *News*.

Within the commentary, adds that qualifying providers may not state or imply Florida Bar endorsement or approval to be consistent with proposed changes to Rule 4-7.22 regarding terminology proposed to be used for referral or matching services.

circuit judge.”

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

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

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

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Nonsubstantive change conforms to *Guidelines for Rules Submissions*.

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RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

The following information in advertisements is presumed not to violate the provisions of rules 4-7.11 through 4-7.15:

(a) Lawyers and Law Firms. [no change]

(b) Lawyer Referral Services and Qualifying Providers. A lawyer referral service or qualifying provider may advertise its name, location, telephone number, the ~~referral~~ fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred or matched. ~~A~~The Florida Bar's lawyer referral service or a lawyer referral service approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar also may advertise the logo of its sponsoring bar association and its nonprofit status.

COMMENT

[no change]

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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, omits the term "referral" to describe "fee" to clarify that fees for matching or leads is also included, and clarifies that the bar's lawyer referral service may use its logo as presumptively valid content.

RULE 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION

(a) Payment by Other Lawyers. [no change]

(b) Payment for Referrals. A lawyer may not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory, qualifying provider or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) Payment by Nonlawyers. [no change]

COMMENT

Paying for the Advertisements of Another Lawyer

[no change]

Paying Others for Recommendations

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs, qualifying providers, or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rules 4-7.22 ~~and 4-7.23~~. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

CHAPTER [NUMBER AND TITLE]

* * *

SUBCHAPTER [NUMBER]

* * *

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.

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.

Deletes reference to rule 4-7.23, because the rule is proposed to be deleted in its entirety. This change was under staff's editorial discretion, was not approved by the Board of Governors, and was not noticed in the bar *News*.

**RULE 4-7.22 LAWYER REFERRAL SERVICES/REFERRALS,
DIRECTORIES AND POOLED ADVERTISING**

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating the Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

(1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;

(2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;

(3) publishing in any media a listing of lawyers or law firms together in one place; or

(4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

(1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and

(2) a local or voluntary bar association solely for listing its members on its

The broad term “qualifying providers” replaces “lawyer referral service” in the rule to clarify that entities other than traditional lawyer referral services are covered by the requirements of the rule.

Proposed subdivision clarifies the concept in current subdivision (a), that lawyers are prohibited from accepting referrals from noncomplying services.

The word “the” in the phrase “Rule Regulating the Florida Bar” in proposed subdivision (a) was originally upper case as proposed. Staff used editorial discretion to change to lower case in this submission, which was not approved by the Board of Governors, and was not noticed in the bar *News*.

In proposed subdivision (b), the definition of a “qualifying provider” is broadened to protect the public by expanding regulation relating to any for-profit entity that receives any benefit from referring or matching consumers and lawyers, including directories, listings, leads or tips services, referral services, and group or pooled advertising programs.

website or in its publications.

(ad) When Lawyers May Accept Referrals Participate with Qualifying Providers. A lawyer may ~~not accept referrals from a lawyer referral service, and it is a violation of these Rules Regulating the Florida Bar to do so, unless the service~~ participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that ~~constitutes~~ is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service is a not-for-profit service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

~~(4) carries or requires each lawyer participating in the service to carry professional liability insurance in an amount not less than \$100,000 per claim or occurrence;~~

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) ~~furnishes~~ provides The Florida Bar, on a ~~quarterly~~ no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar

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, as these are not intended to be covered by this rule.

In proposed subdivision (d), the introductory paragraph changes from a negative to a positive in phrasing.

Proposed subdivision (d)(2) clarifies that while lawyers may not divide fees with a qualifying provider, lawyers may divide fees with the bar's not-for-profit lawyer referral service in addition to not-for-profit services attached to local bar associations.

Proposed subdivision (d)(3) makes clear that all qualifying providers must refer only to those who are authorized to provide the services.

Omits existing subdivision (a)(4), because most bar members are not required to carry insurance, and the bar believes it is unduly burdensome to require merely because a lawyer engaged in group advertising.

Proposed subdivision (d)(4) addresses the

pursuant to chapter 8 of these rules;

~~(6) furnishes The Florida Bar, on a quarterly basis, with the names of all persons authorized to act on behalf of the service;~~

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the ~~service~~qualifying provider or a lawyer who ~~accepts referrals from the service~~participates with the qualifying provider;

(8) neither represents nor implies to the public that the ~~service~~qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service is subject approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

~~(10) affirmatively states in all advertisements that it is a lawyer referral service; and~~

~~(11) affirmatively states in all advertisements that lawyers who accept referrals from it pay to participate in the lawyer referral service~~

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or county of the lawyer to whom the referral, match or other connection is being made; and

conflict issue of cross-referrals by prohibiting lawyers from participating with a provider that requires or pressures the lawyer to cross-refer clients to any other person or entity.

Proposed subdivision (d)(5) changes the requirement on reporting participating lawyers from quarterly to annual because providers are required to respond to the bar if the bar asked for a list in subdivision (d)(7). Omits the reporting requirement for The Florida Bar and local bars as those are addressed in Chapter 8.

Omits existing subdivision (a)(6) requiring notification of persons authorized as unnecessary, as the provider would have to provide the information if the bar needed and requested; see subdivision (d)(7).

Proposed subdivision (d)(6) protects lawyers and the public by requiring that providers give lawyers documentation of compliance with bar rules, but exempting the bar's and local bar's services, as specific documentation is provided to the bar under Chapter 8.

Proposed subdivision (d)(8) amendment

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

~~**(be) Responsibility of Lawyer.** A lawyer who accepts referrals from a lawyer-referral service is responsible for ensuring that any advertisements or written communications used by the service comply with the requirements of the Rules Regulating the Florida Bar, including the provisions of this subchapter participates with a qualifying provider:~~

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) the Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

~~**(e) Definition of Lawyer Referral Service.** A "lawyer referral service" is:~~

~~(1) any person, group of persons, association, organization, or entity that receives a fee or charge for referring or causing the direct or indirect referral of a potential client to a lawyer drawn from a specific group or panel of lawyers; or~~

~~(2) any group or pooled advertising program operated by any person, group~~

clarifies that the bar's lawyer referral service can state or imply it is approved by the bar.

Omits the requirement that services affirmatively state they are lawyer referral services in existing subdivision (a)(10). Having to call itself a lawyer referral service creates problems for entities that operate nationwide, including in states that prohibit for profit lawyer referral service. The bigger concern is that communications with the public not mislead the public into thinking that the entity directly provides the legal services, operates as law firm, or is otherwise misleading, which is added in proposed subdivision (d)(11).

Omits the requirement that services affirmatively state 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. The subdivision of the rule that requires that the entity comply with lawyer advertising rules would operate to prohibit any misleading statements in the advertising for the entity.

Proposed subdivision (e)(1) puts the onus of

~~of persons, association, organization, or entity wherein the legal services advertisements utilize a common telephone number or website and potential clients are then referred only to lawyers or law firms participating in the group or pooled advertising program.~~

~~A pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration, is not a lawyer referral service within the definition of this rule.~~

COMMENT

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences

notification to the bar on the lawyer rather than the entity as the lawyer's conduct is regulated, not the entity's.

Proposed subdivision (e)(2)(A) protects the public and promotes compliance by requiring that lawyers engage in due diligence in determining the compliance of an entity if the lawyer chooses to participate.

Proposed subdivision (e)(2)(B) allows a lawyer to be disciplined for conduct of the entity if the bar notifies the lawyer of the entity's noncompliance and the lawyer continues participation more than 30 days after the notice.

The definition is moved from existing subdivision (c) to proposed subdivision (b).

Throughout the comment, the word "rule" was capitalized and has been changed to lower case to comply with this Court's style guide. This change was under staff's editorial discretion, was not approved by the Board of Governors or noticed in the bar *News*.

Paragraph 1 recognizes the purpose for qualifying entities is to enhance the legal

the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s) and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a clause allowing immediate termination of the

system by assisting consumers in locating lawyers willing to handle their legal matters.

Paragraph 2 explains the term media as used in the rule.

Paragraph 3 provides guidance on what is and is not considered improper fee-splitting with a qualifying provider.

Paragraph 4 clarifies that lawyers who divide fees with other lawyers are governed by rule 4-1.5.

Paragraph 5 clarifies that lawyers are responsible solely for those individual programs of a qualifying provider that the lawyer agrees to participate in.

Paragraph 6 describes specific steps a lawyer can take to engage in due diligence in determining compliance of a qualifying

agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

* * *

provider before agreeing to participate.

Paragraph 7 describes a lawyer's responsibilities under other Rules Regulating the Florida Bar, including conflicts that occur based on the lawyer's relationships with qualifying providers.

In the first sentence of Paragraph 7, 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*, but is not capitalized in this submission to comply with this Court's June 14, 2006 administrative order number AOSC 06-14 in *In Re: Guidelines for Rules Submissions*.

~~RULE 4-7.23 LAWYER DIRECTORY~~

~~(a) Definition of Lawyer Directory.~~ A lawyer directory is any person, group of persons, association, organization, or entity that receives any consideration, monetary or otherwise, given in exchange for publishing a listing of lawyers together in one place, such as a common Internet address, a book or pamphlet, a section of a book or pamphlet, in which all the participating lawyers and their advertisements are provided and the viewer is not directed to a particular lawyer or lawyers. A local or voluntary bar association that lists its members on its website or in its publications is not a lawyer directory under this rule. This rule does not apply to traditional telephone directories.

~~(b) When Lawyers May Advertise in a Directory.~~ A lawyer may not advertise in a directory unless the directory:

- ~~(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;~~
- ~~(2) receives no fee or charge that constitutes a division or sharing of fees;~~
- ~~(3) lists only persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;~~
- ~~(4) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the directory or a lawyer who pays to be listed in the directory;~~
- ~~(5) neither represents nor implies to the public that the directory is endorsed or approved by The Florida Bar;~~
- ~~(6) uses its actual legal name or a registered fictitious name in all communications with the public; and~~

Rule 4-7.23 is proposed to be deleted in its entirety because a directory would be included in the broadened definition of a qualifying provider in the proposed amendments to rule 4-7.22.

~~(7) affirmatively states in all advertisements that it is a legal directory or lawyer directory.~~

~~**(c) Responsibility of Lawyer.** A lawyer who advertises in a lawyer directory is responsible for ensuring that any advertisements or written communications used by the directory comply with the requirements of the Rules Regulating the Florida Bar, and that the directory is in compliance with the provisions of this subchapter. It is a violation of these Rules Regulating the Florida Bar and a failure of such responsibility if the lawyer knows or should have known that the directory is not in compliance with applicable rules or if the lawyer failed to seek information necessary to determine compliance.~~

