

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR RE:  
PETITION TO AMEND RULE  
REGULATING THE FLORIDA BAR 4-7.22

CASE NO. SC18-XXX

**THE FLORIDA BAR’S PETITION TO AMEND RULE REGULATING  
THE FLORIDA BAR 4-7.22**

The Florida Bar (the bar) respectfully files this petition containing draft amendments to Rule Regulating The Florida Bar 4-7.22 as directed by this Court.

This Court adopted amendments to rule 4-7.22 regarding lawyer referral services in *In re Amendments to Rules Regulating the Fla. Bar-Subchapter 4-7 (Lawyer Referral Services)*, No. SC16-1470, 238 So.3d 164 (Fla. Mar. 8, 2018). In that order, this Court specifically referenced the first recommendation of the July 2012 report of the Special Committee on Lawyer Referral Services (the special committee), which would prohibit a lawyer from accepting client referrals from a service that refers or attempts to refer clients to another type of professional service for the same incident. As noted by this Court, the bar did not agree with the first recommendation made by the special committee and did not propose amendments to implement it; the bar’s reasons are set forth in the petition in case number SC16-1470. Because this Court believes that “additional measures are needed to ensure the public is not exposed to harm,” this Court directed the bar “to submit a petition within ninety days proposing amendments to rule 4-7.22, and any other rule necessary, to implement the Special Committee’s first recommendation.” Although the bar continues to have concerns about this Court’s directive as expressed in the bar’s earlier petition, the bar files this petition containing draft amendments to Rule Regulating The Florida Bar 4-7.22 as instructed by this Court.

RECEIVED, 06/05/2018 02:33:29 PM, Clerk, Supreme Court

## **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 Amendments**

The bar files these amendments to Rule 4-7.22 as directed by this Court. This section provides information regarding development of these rules proposals. The organization of these amendments appears as required by Part III of this Court's administrative order number AOSC 06-14 of June 14, 2006 in *In Re: Guidelines for Rules Submissions*. The following information is provided: an explanation of the amendment; the reasons for the recommended changes; the source of the proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; voting records of pertinent committees and the Board of Governors; and dissenting views within the Board of Governors, if any, regarding each submission.

## **Amendments**

### **CHAPTER 4 RULES OF PROFESSIONAL CONDUCT SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING**

*Explanation:* Adds new subdivision (d)(5) prohibiting a lawyer from participating with a qualifying provider that receives any benefit from referring clients to both a lawyer and another professional from the same event. Non-substantive changes are proposed for consistency, to correct grammar, and to comply with this Court's Guidelines for Rules Submissions.

*Reasons:* The proposal is being adopted at the direction of the Supreme Court of Florida in its final order in *In re Amendments to Rules Regulating the Fla. Bar-Subchapter 4-7 (Lawyer Referral Services)*, No. SC16-1470, 238 So.3d 164 (Fla. Mar. 8, 2018).

*Source:* This petition is being filed at the direction of this Court.

*Background Information – Member Commentary / Committee Action:*

*Board Action:* Board Review Committee on Professional Ethics approved 6-2 on March 22, 2018. Rules Committee approved 6-0 on procedural basis with style changes on April 3, 2018. Budget Committee approved the significant fiscal impact 8-0 on April 18, 2018. Program Evaluation Committee approved 11-0 on strategic basis on May 17, 2018. Board Review Committee on Professional Ethics approved additional amendments to clarify ambiguous language in proposed subdivision (d)(5) 9-0 on May 17, 2018. Board of Governors approved on unanimous voice vote, including waiver of publication of official notice, on May 18, 2018.

### **Official Notice of Amendments**

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file all the proposals in this petition was published in the May 1, 2018 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. The official notice can also be found at:

<https://www.floridabar.org/news/tfb-news/?durl=%2Fdivcom%2Fjn%2Fjnnews01.nsf%2F8c9f13012b96736985256aa900624829%2F86fcb05a177c308525826d0071166b>

Subsequent to publication of this official notice, the Board of Governors approved further amendments to subdivision (d)(5) to clarify potentially ambiguous language.

### **Read-against with Thomson Reuters' Florida Rules of Court**

The 2018 Thomson Reuters' *Florida Rules of Court* was published immediately prior to the amendments taking effect that were ordered by this Court in *In re Amendments to Rules Regulating the Fla. Bar-Subchapter 4-7 (Lawyer Referral Services)*, No. SC16-1470, 238 So.3d 164 (Fla. Mar. 8, 2018). The rule as published in the 2018 edition was therefore the prior version of Rule 4-7.22 before

the April 30, 2018 amendments took effect. The bar therefore could not perform a read-against between the Rules Regulating the Florida Bar as maintained by the bar and the Rules Regulating The Florida Bar as published in the 2018 Thomson Reuters' *Florida Rules of Court*.

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

The Board of Governors made changes on May 18, 2018, to clarify ambiguous language in proposed subdivision (d)(5) that were not published in either the print or on-line version of the official bar *News* notice.

Additionally, during the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were approved by the Board of Governors at its May 18, 2018 meeting. These editorial errors were not corrected in the print version of the official bar *News* notice, but all of them were corrected in the official bar *News* notice as published on-line.

In order to meet this Court's deadline of a submission within 90 days of its March 8, 2018 order, the bar did not have time to re-publish with the new language. The bar therefore requests that these additional revised proposals be accepted by this Court, and that this Court waive official notice in the bar *News*, pursuant to R. Regulating Fla. Bar 1-12.1(i).

### **Other Pending Amendments**

There is 1 pending petition to amend the Rules Regulating The Florida Bar currently pending before this Court:

*In re: Amendments to the Rules Regulating The Florida Bar and the Rules of the Supreme Court Relating to Admissions to the Bar - Military Spouse Rules, case number SC18-158.*

The proposed amendments within this filing are unrelated to this different rules matter and may be considered independent of it.

## **Contents of Appendices**

The complete text of all proposals is included in Appendix A to this petition, in legislative format (i.e., 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.

Appendix D contains 2 comments received by the bar during this process from Florida Bar member Charles D. Scott regarding these proposed amendments. Mr. Scott opposes the amendments to subdivision (d)(5) and proposes an alternative.

## **Comments in Response to Amendments**

Florida Bar member Charles D. Scott filed comments objecting to the bar's proposal which were considered and rejected by the Board of Governors in the rules amendments process. The comments, including alternative language, are in this petition in Appendix D.

## **Oral Argument Not Requested**

The bar does not seek oral argument regarding these amendments, unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

## **Comment Period and Effective Date Request**

The bar respectfully requests that this Court permit comments to proposed rule 4-7.22(d)(5) for the customary 30 days following the filing of this petition.

The bar also requests, should this Court adopt new subdivision (d)(5) of rule 4-7.22, that the 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 the amendment. As the remaining amendments address style and grammar, the bar requests that those amendments be made effective within 10 days of this Court's order.

Respectfully submitted,

/s/ Joshua E. Doyle

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Joshua E. Doyle  
Executive Director  
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Michael J. Higer  
President 2017-18  
Florida Bar Number 500798

Michelle R. Suskauer  
President-elect 2017-18  
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651 East Jefferson Street  
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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/ Joshua E. Doyle

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Joshua E. Doyle  
Executive Director  
Florida Bar Number 25902  
The Florida Bar  
651 E. Jefferson St.  
Tallahassee, FL 32399-2300  
850-561-5600

## CERTIFICATE OF READ-AGAINST

I certify that no read-against could be performed between the Rules Regulating the Florida Bar set forth within this petition and the most recent copy of *Thomson Reuter's Florida Rules of Court* because the 2018 edition of the *Thomson Reuter's Florida Rules of Court* was published before the April 30, 2018 effective date, and the amendments to Rule 4-7.22 therefore were not published by Thomson Reuter in its most recent copy.

/s/ Joshua E. Doyle

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Joshua E. Doyle  
Executive Director  
Florida Bar Number 25902



# **APPENDIX A**

## **PROPOSED AMENDMENT IN LEGISLATIVE FORMAT**

**JUNE 5, 2018**

# RULES REGULATING THE FLORIDA BAR

## CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

### 4-7. INFORMATION ABOUT LEGAL SERVICES

#### RULE 4-7.22 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~~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~~ matching 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 website or in its publications.

**(d) When Lawyers May Participate with Qualifying Providers.** A lawyer may 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 is a division or sharing of fees, 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;

(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) 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) does not receive any benefit or consideration, monetary or otherwise, from either the lawyer or any other person, entity, or service for the referral or attempted referral of clients to both that lawyer and that other person, entity, or service for any type of professional service arising from the same incident, transaction, or circumstance;

~~(56)~~ provides The Florida Bar, on 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 pursuant to chapter 8 of these rules;

~~(67)~~ 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;

~~(78)~~ 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 qualifying provider or a lawyer who participates with the qualifying provider;

~~(89)~~ neither represents nor implies to the public that the 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 approved by The Florida Bar pursuant to chapter 8 of these rules;

~~(910)~~ uses its actual legal name or a registered fictitious name in all communications with the public;

(4011) 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

(412) 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.

**(e) Responsibility of Lawyer.** A lawyer who 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.

### **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 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~~. 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 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~~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).

# **APPENDIX B**

## **SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE**

**June 5, 2018**

## RULES REGULATING THE FLORIDA BAR

### CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

#### 4-7. INFORMATION ABOUT LEGAL SERVICES

##### RULE 4-7.22 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~~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~~matching 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.

The non-substantive to the title change adds the Oxford comma. This amendment was approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.

The non-substantive change in subdivision (a) is requested for consistency with other Rules Regulating The Florida Bar, a vast majority of which use the capital "The." This amendment was approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.

The non-substantive change in subdivision (b)(1) corrects a grammatical error. This amendment was approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.

The non-substantive change in subdivision (b)(2) adds the Oxford comma. This amendment was approved by the Board of



<p><b>(c) Entities that are not Qualifying Providers.</b> [No change]</p> <p><b>(d) When Lawyers May Participate with Qualifying Providers.</b> A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:</p> <p>(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;</p> <p>(2) receives no fee or charge that is a division or sharing of fees, 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;</p> <p>(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;</p> <p>(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;</p> <p><u>(5) does not receive any benefit or consideration, monetary or otherwise, from either the lawyer or any other person, entity, or service for the referral or attempted referral of clients to both that lawyer and that other person, entity, or service for any type of professional service arising from the same incident, transaction, or circumstance;</u></p> <p>(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the</p>	<p>Governors and noticed in the on-line, but not the print, version of the official notice.</p> <p>The non-substantive change to subdivision (d)(3) adds the Oxford comma. This amendment was approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.</p> <p>The non-substantive changes to subdivision (d)(4) adds the Oxford comma in 2 places. These amendments were approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.</p> <p>The change to subdivision (d)(5) is at the direction of this Court in <i>In re Amendments to Rules Regulating the Fla. Bar- Subchapter 4-7 (Lawyer Referral Services)</i>, No. SC16-1470, 2018 WL 1193467 (Fla. Mar. 8, 2018). The exact language of this</p>
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service 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;

(67) 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;

(78) 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 qualifying provider or a lawyer who participates with the qualifying provider;

(89) neither represents nor implies to the public that the 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 approved by The Florida Bar pursuant to chapter 8 of these rules;

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

(4011) 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

(412) 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.

**(e) Responsibility of Lawyer.** [No change]

proposed rule change was approved by the Board of Governors unanimously at its May 18, 2018 meeting and differs slightly from the language that was published in the official notice of filing the petition published in the May 1, 2018 bar *News*, because publication is required at least 30 days in advance of the filing scheduled for no later than June 8, 2018. The publication requirement meant that the official notice had to be published before final Board of Governors approval; hence, the differences.

Subdivisions (d)(6) through (d)(11) are renumbered.

The non-substantive changes to subdivision (d)(11) add the Oxford comma in 3 places. These amendments were approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.

### 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 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;

The non-substantive changes to paragraph 3 of the comment adds commas around "e.g." after the third sentence, adds the Oxford comma after the word "regulation" in the

~~whether.~~ 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~~1 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 agreement if the qualifying provider does not comply with this rule.

last sentence, and divides the last sentence into 2 sentences for grammatical correctness. These amendments were approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.

Changes the word "one" to an Arabic number "1" in paragraph 5. This amendment was approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating ~~the~~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).

The non-substantive change in the last paragraph of the comment is requested for consistency with other Rules Regulating The Florida Bar, a vast majority of which use the capital "The." This amendment was approved by the Board of Governors and noticed in the on-line, but not the print, version of the official notice.

# **APPENDIX C**

## **THE FLORIDA BAR NOTICE OF FILING**

**June 5, 2018**

# The Florida Bar News

May 1, 2018

## Florida Bar Petition to Amend Rule 4-7.22

The Board of Governors of The Florida Bar gives notice of filing with the Supreme Court of Florida, on or about June 5, 2018, a petition to amend the Rule Regulating The Florida Bar 4-7.22. The full text of the proposed amendments is printed below. A copy of the submission may be requested by contacting the Rules Administrative Coordinator, The Florida Bar, 651 East Jefferson St., Tallahassee 32399-2300 or calling (850) 561-5780. Members who desire to comment on these proposed amendments may do so within 30 days of the filing of the Bar's petition. Comments must be filed directly with the clerk of the Supreme Court of Florida, and a copy must be served on the executive director of The Florida Bar. Rule 1-12.1, Rules Regulating The Florida Bar, governs these proceedings.

### **RULE 4-7.22 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~~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~~matching 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 website or in its publications.

**(d) When Lawyers May Participate with Qualifying Providers. A lawyer may 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 is a division or sharing of fees, 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;

(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) 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) does not receive any benefit or consideration, monetary or otherwise, for the referral or attempted referral of clients to both a lawyer and any other person, entity, or service for any type of professional service arising from the same incident, transaction, or circumstance;

~~(5)~~ provides The Florida Bar, on 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 pursuant to chapter 8 of these rules;



(~~6~~7) 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~~8) 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 qualifying provider or a lawyer who participates with the qualifying provider;

(~~8~~9) neither represents nor implies to the public that the 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 approved by The Florida Bar pursuant to chapter 8 of these rules;

(~~9~~10) uses its actual legal name or a registered fictitious name in all communications with the public;

(~~10~~11) 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

(~~11~~12) 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.

**(e) Responsibility of Lawyer.** A lawyer who 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.

### 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 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~~. 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~~1 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 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~~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).

<https://www.floridabar.org/news/tfb-news/?durl=%2Fdivcom%2Fjn%2Fjnnews01.nsf%2F8c9f13012b96736985256aa900624829%2F86fcb05a177c308525826d0071166b>

**APPENDIX D**

**BACKGROUND**

**MATERIALS**

**June 5, 2018**

**From:** "Charles D. Scott, Esquire" <[itslegal@aol.com](mailto:itslegal@aol.com)>

**Date:** March 22, 2018 at 10:12:44 AM EDT

**To:** [etarbert@floridabar.org](mailto:etarbert@floridabar.org)

**Subject:** **Supreme Court of Florida on Rule 4-7.22, Lawyer Referral Services**

Dear Mrs. Tarbert

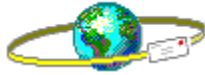
I wanted to share with you my thoughts on the recent supreme court decision, requiring the Bar to draft a rule consistent with the special committee's recommendations regarding referral services.

I totally agree with the supreme courts recommendations including: "prohibiting a Florida lawyer from accepting client referrals "from any person, entity or service that also refers or attempts to refer clients to any other type of professional service for the same incident, transaction or circumstance." Majority op. at 2. **I hope that the Bar will comply with the courts order and draft and implement this rule promptly.**

I respectfully disagree with Justice Lawson's dissent in which he stated "that the special committee recommendations were from 6 years ago, and ....have not identified a single incident of misconduct by those entities or by any lawyer or medical professional who takes referrals from those entities" **The problem still exists, these entities are still operating in the exact same manner as they were 6 years ago when the special committee identified the problems, deception of the public, and ethical conflicts.**

Best regards,

Charles D. Scott  
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Personal Injury and Auto Accident Lawyers  
Since 1997



"Charles D. Scott, Esquire" <itslegal@aol.com> on 05/15/2018 03:29:13 PM

Please respond to "Charles D. Scott, Esquire" <itslegal@aol.com>

To: etopinion@flabar.org, etarbert@floridabar.org  
cc: (bcc: Ethics Mail)  
Subject: Qualifying Provider Rule Comment  
Staff:

-----Original Message-----

From: Charles D. Scott, Esquire <itslegal@aol.com>  
To: Ethics\_Opinions <Ethics\_Opinions@flabar.org>  
Cc: sandra <sandra@diamonddlawflorida.com>; josh <josh@jpfirm.com>; bog6 <bog6@floridabar.org>  
Sent: Tue, May 15, 2018 3:19 pm  
Subject: Re: Additional change

Thank you for your reply, I reviewed the proposed language which is below:

(5) does not receive any benefit or consideration, monetary or otherwise, for the referral or attempted referral of clients to both a lawyer and any other person, entity, or service for any type of professional service arising from the same incident, transaction, or circumstance;

**The above fails to solve the issue because it qualifies the requirement by stating that the qualifying provider " does not receive any benefit or consideration for the referral"**

**This gives an out to any qualified provider that refers to another person or entity and does not receive benefit or consideration. For example a qualified provider that makes lawyer referrals and also owns medical clinics under a separate corporation umbrella and no money is paid, rather the qualifying provider simply "markets" for the medical clinics.**

**What the supreme court intended should be written as follows:**

(5) does not refer clients to both a lawyer and any other person, entity, or service for any type of professional service arising from the same incident, transaction, or circumstance;

The above is how the rule should be written.

Thank you for your time.  
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-----Original Message-----

From: Ethics Opinions <[etopinion@flabar.org](mailto:etopinion@flabar.org)>

To: itslegal <[itslegal@aol.com](mailto:itslegal@aol.com)>

Cc: sandra <[sandra@diamondlawflorida.com](mailto:sandra@diamondlawflorida.com)>; josh <[josh@jpfirm.com](mailto:josh@jpfirm.com)>; bog6 <[bog6@floridabar.org](mailto:bog6@floridabar.org)>

Sent: Mon, May 14, 2018 12:14 pm

Subject: Additional change

Dear Mr. Scott,

Your email below was forwarded to me for response. Amendments to the Rules Regulating The Florida Bar by the Board of Governors requires multiple layers of review by various board committees for substantive, strategic, fiscal and procedure review. The Board of Governors will be taking final action on proposed amendments to Rule 4-7.22 at the Court's direction at its meeting this Friday, May 18, 2018. If approved, the amendments will be filed with the Court in June. Official notice of the Board's intent to take final action was in the April 15, 2018 bar *News*. Official notice of the bar's intent to file a petition to amend the rule at the Court's request is on page 2 of the May 1, 2018 bar *News*. A link to the notice, which includes the amendments in legislative format, is below:

<https://www.floridabar.org/news/tfb-news/?durl=/DIVCOM/JN/jnnews01.nsf/Articles/EA86FCB05A177C308525826D0071166B>

Thank you for your concern regarding this matter.

Sincerely,

---

Elizabeth Clark Tarbert  
Ethics Counsel  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, Florida 32399-2300  
850/561-5780  
Toll free: 800-235-8619

**From:** Charles D. Scott, Esquire <[itslegal@aol.com](mailto:itslegal@aol.com)>

**Sent:** Thursday, May 10, 2018 10:24 AM

**To:** Sandra Diamond <[sandra@diamondlawflorida.com](mailto:sandra@diamondlawflorida.com)>; [josh@jpfirm.com](mailto:josh@jpfirm.com); [bog6@floridabar.org](mailto:bog6@floridabar.org)

**Subject:** Additional change

**With regard to question #20 (see below) on the bars explanation of the new**

qualifying provider rule, I am very concerned that the bar has yet to comply with the Florida Supreme Court that twice told the bar to comply with the findings of the special committee that investigated medical / legal referral services.

The ethical issues and problems that were identified by the special committee still exist, nothing has changed. It appears that the Supreme Court was quite clear in two different orders, that qualifying providers (formerly lawyer referral services) should not be allowed to also make referrals to medical clinics, or other providers. I am happy to volunteer my time in writing the language that the supreme court has asked the bar to comply with for over five years. It should not take much time or effort to come up with the language necessary to comply with the Supreme Court, as they were quite clear in what they wanted.

)below is question #20 which is the basis of my comments above)

**20. Am I currently prohibited from accepting referrals from a qualifying provider that also refers to another professional (such as a medical provider or real estate agent) from the same incident?**

No. The Court has directed the bar to file additional amendments to the rule which would prohibit lawyers from accepting referrals from qualifying providers that refer to another professional from the same incident, but the Court must approve amendments and set an effective date for those to take effect.

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