

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES REGULATING THE
FLORIDA BAR – CHAPTER 23
REGISTERED ONLINE SERVICE
PROVIDER PROGRAM

CASE NO. SC19-2077

**OPPOSITION TO, AND MOTION TO STRIKE,
THE FLORIDA BAR’S MOTION FOR LEAVE TO RESPOND AND
RESPONSE TO COMMENTS**

The below signed attorney, James J. McGuire, a member of The Florida Bar in good standing who has filed a comment in this proceeding, opposes The Florida Bar’s Motion for Leave to Respond and Response to Comments (the “Motion for Leave”). I also respectfully move to strike the Motion for Leave because the Motion includes in its text the very response that this Court has not yet permitted The Bar to file. Grounds for this Opposition and Motion are provided below.

I. The Motion For Leave Should Be Denied Because It Is Not Authorized And The Bar Has Failed To Provide Any Justification For It.

The Bar’s Petition to Amend the Rules Regulating the Florida Bar (the “Petition to Amend”) is governed by Rule 1-12 of the Rules Regulating the Florida Bar. That Rule provides that Florida Bar members may file written comments concerning proposed amendments, as many Bar members have done in this proceeding. *See* R. Reg. Fla. Bar 1-12.1(g). But the Rule does not provide for a response from the Bar or for a motion for leave to file a response. Because a response is not permitted by the Rule, the Motion for Leave should be denied.

RECEIVED, 02/12/2020 02:55:41 PM, Clerk, Supreme Court

Similarly, the Florida Rules of Appellate Procedure state that they “shall govern all proceedings commenced on or after [March 1, 1978] in the supreme court.” Inasmuch as the Rules of Appellate procedure apply to this proceeding, Rule 9.300(a) would apply to the Motion for Leave. In relevant part, Rule 9.300(a) provides that

an application for an order or other relief available under these rules shall be made by filing a motion therefor. The motion shall state the grounds on which it is based, the relief sought, argument in support thereof, and appropriate citations of authority. . . . A motion may be accompanied by an appendix, which may include affidavits and other appropriate supporting documents not contained in the record.

Fla. R. App. P. 9.300(a).

Here, The Bar’s Motion for Leave fails to state *any* grounds on which it is based, *any* supporting argument, or *any* citation to authorities. Because the grounds for the Motion for Leave are wholly unstated, the Motion fails to meet the requirements of Rule 9.300(a) to the extent they are applicable, and therefore should be denied.

Additionally, The Bar has already had more than adequate time and space to articulate whatever arguments it may have in favor of the Registered Online Service Provider Program (“Proposed Rule 23”). In particular:

- The Bar filed its Petition to Amend on December 12, 2019, after many months of Bar committee meetings and revisions. *See* Petition to Amend at 3. By contrast, Bar members had to review and respond to the Petition within 30 days, a time period that included the Christmas, Chanukah, and new year’s holidays.

- Appendix A to the Petition to Amend provides the language of Proposed Rule 23 along with detailed comments from The Bar on the rationale behind each and every section of the Proposed Rule. This single-spaced work of advocacy is more than nine pages long.
- Appendix B to the Petition to Amend provides additional explanation and argument in favor of the Proposed Rule.
- Appendix D to the Petition to Amend includes another three-page, single-spaced memorandum further advocating for and attempting to justify Proposed Rule 23.

Given the time and space already utilized by The Bar, its position in favor of Proposed Rule 23 has been more than thoroughly briefed.

Moreover, the thrust of The Bar's (unstated) argument in favor of the Motion for Leave is that, despite comments opposing Proposed Rule 23 from 44 Florida Bar members (and no members filing comments in support), the 44 opposing comments are, in The Bar's view, actually a relatively insignificant number. The Bar's belief that only a few attorneys truly commented on the Proposed Rule counsels against granting The Bar an additional opportunity to restate and re-advocate for its position.

Finally, the undisputed fact that *no Florida Bar members* commented in support of Proposed Rule 23 strongly suggests that The Bar's position is not supported by Bar membership. Granting The Bar another opportunity to argue against the will of its membership is unfair to all Florida Bar members.

For these reasons, the Motion for Leave should be denied.

II. The Motion For Leave Should Be Stricken To The Extent That It Actually Constitutes The Bar's Proposed Response Brief.

The Motion for Leave seeks this Court's permission to file a response brief addressing the comments filed by Florida Bar members. But, as noted above, Rule 1-12 does not permit The Bar to file a response. For this reason, the Motion for Leave should be stricken.

More critically, the Court has not yet granted The Bar permission to file a response. Nevertheless, The Bar's Motion for Leave actually *incorporates the entire text of its proposed response brief*, a brief that addresses 13 specific matters raised in the comments.

This type of gamesmanship should not be countenanced. As noted above, inasmuch as Rule 9.300(a) is applicable to these proceedings, it states that a motion filed in this Court may be "accompanied by an appendix, which may include affidavits and other appropriate supporting documents not contained in the record." Fla. R. App. P. 9.300(a). The Rule does not permit a party to attach to its motion and file *the precise brief* it is seeking permission to file. Because this Court has not granted leave for The Bar to file a response, The Bar's response (masquerading as a Motion for Leave) should be stricken.

The Motion for Leave also should be stricken because, in the section of the Motion that is, in actuality, a "response brief," the Motion misstates the content of Proposed Rule 23. The "response brief" portion of the Motion for Leave purports

to list concerns raised in Bar members' comments, and then attempts to refute or clarify those concerns. For example, the Motion for Leave states that one concern raised by Bar members is that "[t]he proposal will allow online service providers to set lawyer fees." Motion for Leave at 3, ¶ 5. In response to this concern, the Motion asserts that "[n]othing in the proposal states that an online service provider may set lawyer fees." *Id.* But this simply is not accurate.

Proposed Rule 23-7.1 *expressly permits* online service providers to set the fees charged by lawyers. Indeed, the permission could not be clearer: "the registered online service provider's charge may vary, and *the registered online service provider may set the fee the lawyer charges.*" Proposed Rule 23-7.1(a) (emphasis added). Because such inaccurate assertions about Proposed Rule 23 should not be tolerated, the Motion for Leave should be stricken.

In sum, it is not appropriate for The Bar to use its Motion for Leave as a backdoor mechanism to file its unauthorized response to the comments of Florida Bar members. It is even less appropriate – and more troubling – when that "response" mischaracterizes The Bar's Proposed Rule.

Conclusion

WHEREFORE, I oppose the Motion for Leave and respectfully request that the Court deny the Motion and strike the portions of the Motion that constitute an improper response brief.

Dated: February 12, 2020.

Respectfully submitted,

s/ James J. McGuire

James J. McGuire

Florida Bar No. 0187798

THOMAS & LOCICERO PL

601 South Boulevard

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

jmcguire@tlolawfirm.com

tgilley@tlolawfirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-filed and served via the Florida Court's E-Filing Portal and/or electronic mail this **12th** day of **February, 2020**, to all parties and counsel of record.

CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210

Undersigned counsel hereby certifies that this comment is typed in 14-point (proportionately spaced) Times New Roman and otherwise meets the requirements of Florida Rule of Appellate Procedure 9.210.

/s/ James J. McGuire

Attorney