

In The Supreme Court of Florida

In Re Amendments to the Rules  
Regulating The Florida Bar –  
Chapter 23: Online Service  
Provider Program.

Case No.: SC19-2077

**COMMENT ON PROPOSAL TO CREATE  
REGISTERED ONLINE SERVICE PROVIDER PROGRAM**

We write to question the need for and to oppose The Florida Bar's proposal to promote and certify online providers of legal services. At a minimum, the proposal should not be considered by the Court until after the Bar completes the study requested by the Chief Justice regarding regulation of the legal profession. If the Court does consider the proposal now, it should be rejected. Neither The Florida Bar nor this Court should be in the business of promoting legal services of favored lawyers or service providers by "certifying" their bone fides. The proposed rule and the certification of online service providers would mislead the legal consumer and provide nothing new that is not already easily available online, and would disadvantage Florida lawyers by permitting online service providers to advertise without Bar oversight. The Court should regulate Florida lawyers and not start down the slippery slope of managing the business of law.

**The Proposal Should Be "Put on Hold"**

At the request of Chief Justice Charles Canady, The Florida Bar will in January launch a "comprehensive study of issues related to the regulation of the legal profession in Florida" that will "focus on lawyer advertising, referral fees, fee splitting, entity regulation, regulation of online service providers, and regulation of nonlawyer providers of limited legal services" (emphasis supplied). See <https://tinyurl.com/yx3btdqr>. Bar President John Stewart tells us that the Bar, with this upcoming comprehensive study, will "embark on a more detailed, exploratory voyage – to take a deeper dive into the mysterious and complex seas of change" and will "soon set sail to carefully survey the environment in which legal services are provided." See <https://tinyurl.com/rackmwj>. The Bar itself thus acknowledges that the proposal before the Court is premature, as the complex issue raised will be further studied over the coming year. Respectfully, the Bar should finish the

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requested and planned comprehensive report and publish the results before requesting the Court to devote its time and energy to this issue.

In announcing the comprehensive study, The Florida Bar News quotes Chief Justice Canady as commenting, “We are committed to ensuring a strong and vibrant Bar to meet the legal needs of the people of Florida and to enforcing appropriate ethical standards for Florida lawyers. We believe that the study we are asking the Bar to entertain can assist us in carrying out this important constitutional responsibility.” Any conclusion by the Court about the propriety of certifying online providers of legal services or “matching” technology should await the assistance that will be provided to it by the results of the newly-announced study.

### **The Problems with the Current Proposal**

If the Court determines to now consider the proposed rule, the rule should be rejected as misleading to the public, unnecessary to the delivery of legal services to Floridians, and a misguided effort to regulate the business of the legal profession and the profitability of some lawyers at the expense of others.

### **The Rule will Confuse and Mislead the Public**

In our judgment, the Court should view the effects and implementation of the proposed rule from the perspective of the person or entity seeking legal services and with an eye toward the role that this Court is charged with fulfilling in the regulation of the practice of law and to the administration of justice. The Florida Constitution gives the Supreme Court the exclusive jurisdiction to regulate the admission and discipline of lawyers in Florida. In doing so, the Court created The Florida Bar with the express purpose to “inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.” Rules Regulating The Florida Bar, 1-2. The primary purpose of the Bar, then, is to protect the public from improper conduct by lawyers and to ensure that those admitted are properly qualified to perform legal services. Protecting lawyers from other lawyers, promoting the business of law, or enhancing the profitability of lawyers, law firms, or those providing legal services is and should be of secondary importance.

The first consumer to come into contact with a “Registered Online Service Provider” will undoubtedly be an individual – probably using a ubiquitous internet search engine – trying to find a “form” to solve a legal problem or looking for a

lawyer to do so. Likely, that consumer will have no lawyer, not know any, and/or believe that the cost of hiring a lawyer for the transaction or problem faced is not justified. The internet is awash with opportunities to find forms or lawyers (AVVO, Super Lawyers, Best Lawyers, Lawyer.com, etcetera; in addition, the specific web sites of many lawyers actively practicing law in Florida come quickly to mind). What does Florida Bar registration recognition add to assist the person looking to solve a legal problem, whether for free or for a fee?<sup>1</sup> Nothing that is not already available to the consuming public.

Members of the Court and most members of the Florida Bar Board of Governors likely have not needed to turn to the internet to obtain legal services. In evaluating the proposed rule, though, members of the Court should use their preferred search engine to search for: a) “real estate deed form for Florida property;” b) an “Orlando medical malpractice lawyer;” or, c) “Tampa DUI lawyer.” The search results will be voluminous and educational. A plethora of forms are also already available from many of the state’s clerks of court. See, e.g., [www.hillsclerk.com/About-Us/Forms](http://www.hillsclerk.com/About-Us/Forms). What does the imprimatur of The Florida Bar and the Florida Supreme Court certification add to this mix, other than to provide another revenue source for the Bar when online services will surely feel the need to register just to get the Bar and the Court’s perceived seal of approval? The tangible benefit provided is little or nothing at all -- and comes at the expense of misleading the unsophisticated, consuming public seeking legal help.

The person searching for a lawyer or the solution to a legal problem will quite rationally believe that the registered online service provider has been approved by the Bar and the Court – that it has been designated as qualified to provide legal services and is “better” than those who have not voluntarily registered. Surely, as well, the consumer would assume that statements made by the online provider in its advertisements were factual and accurate, since the company itself had garnered the approval of the State’s highest court and the Bar

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<sup>1</sup> It is perhaps obvious, but bears mention here, that registration is, as a practical matter, directed to individuals – and, more particularly, primarily those unsophisticated in the law. GEICO or State Farm; Chevron or Shell; Amazon or Best Buy – these and other wealthy or frequent flyer legal consumers will not look for Online Service Providers to locate a lawyer. They all have departments, staff, forms, or their own and countless well-honed, longstanding, and efficient methods and resources to satisfy their legal needs. This Bar proposal is directed to one market: the unsophisticated legal consumer with a legal problem. The Court should be mindful of the rule’s intended audience.

with whom it is registered. None of that would be true, however, and – as the rule specifically provides – the online service provider need not even submit its advertisements to the Bar for review, a distinct advantage it will have over Florida lawyers. The Bar’s and the Court’s approval also implies that the forms provided through the service are valid and appropriate – even though the form, any form, need only be reviewed by a Florida lawyer without regard to that lawyer’s experience. Review by a first-year lawyer fresh out of law school satisfies the rule.

A legal consumer will rely on the importance, validity, and credibility that would necessarily attach to registration and certification. Many knowledgeable about the law may question the wisdom of hiring a lawyer simply because that lawyer has a logo saying that he or she is a member of the “Million Dollar Verdict Club” or that they are one of Florida’s “Top 100 Lawyers” and, indeed, even an unsophisticated consumer may recognize these logos or accolades as advertising hype or puffery. If the Court and the Bar will now certify businesses delivering legal services, that will mean something quite different, just as the Court’s certification that a lawyer is a member of The Florida Bar and qualified to practice law means something quite different than a law school certification that someone has graduated from law school.

At present, the Court’s certification that a lawyer is qualified to practice law or has been board certified to do so is a meaningful and valuable designation that the public may rely upon when deciding how to solve a legal problem. Permitting an online service provider to advertise the Court’s stamp of approval for their service to influence the public’s decision-making process would cheapen what is otherwise a brand of quality, accountability, and the ethical performance of legal services. If the Court is going to approve online service providers and lead – indeed, encourage – Floridians to rely upon the importance of that certification, then it must mean something substantive about the quality of the services that will be delivered. The proposed rule does not do so in the least.<sup>2</sup>

Do the Court and the Bar really want to become advertisers for legal services, promoting some businesses over others? The proposed rule would do precisely that.

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<sup>2</sup> If the solution is suggested that the Bar should provide a large, bold typed disclaimer that a consumer should not rely on the certification, then there is no value or need for the certification at all.

## **The Rule Raises Questions and Solves No Problems**

The practice of law is rapidly changing and has been for some time. There is rightly being increasingly criticized for its profit-motive goal to capture an additional “\$100 billion of annual revenue to the U.S. legal market” with a goal “to deliver more work to Florida attorneys.” <http://tinyurl.com/w8uq6au>. Strongly endorsed by the Florida Bar leadership, the goal is singularly focused on how to make more money for some lawyers and some new types of law-related business, even though it may mean that other lawyers or firms will consequentially make less money. We urge the Court to consider carefully whether the Bar should be in the *business* of the law, pursuing a goal of making lawyers more money, or whether its role should be more properly limited to ensuring lawyers licensed to practice law are properly qualified and protecting the public from those who are not or who perform services or conduct themselves unethically.<sup>3</sup>

The proposed rule solves none of the problems faced by the unsophisticated consumer seeking legal help. It does, however, create a plethora of new issues, problems, and questions. Among those are these:

1. Proposed Rule 23-8 makes it clear that the Bar has complete discretion to revoke registration. For any reason? Is there a revocation process? Will the public know? What recourse is there for the business that is revoked for no apparent reason, an invalid reason, a political reason, or no reason at all? Make no mistake, a Supreme Court-approved registration certificate will be a valuable commodity, just as is a court-approved license to practice law.

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<sup>3</sup> A recent Forbes article opines that the regulation of the practice of law and the business of law should be bifurcated, with lawyers regulating the *profession* of the law (training, licensing, ethical responsibilities) and independent business professionals overseeing the method that legal services are delivered to the public to profit lawyers and compete with other businesses (the *business* of the law). <https://tinyurl.com/s3m4aml>. Forbes, The two roles are very different endeavors, and both have very different goals. They should not be conflated. The new Bar committee should evaluate such a proposal as one possible change in our rules that should be considered -- or the Court should specifically request that it do so.

2. Who is liable when an “approved” form, created by a one-year lawyer who has paid to advertise through the registered and approved online provider, is simply wrong and damages a consumer?
3. Online services approved and certified by The Florida Bar and this Court will apparently “match” consumer to lawyer to provide legal services. Lawyers will pay them to perform the “match-making” service. Having registered and approved the online service, however, the Bar will apparently have no idea how, when, or with whom consumers will be “matched” and what criteria will exist to protect the consuming public from an unqualified lawyer or a “match” that is destined for an ugly divorce. Is the “match” by the online provider just a matter of which lawyer pays the most money to get “matched?” Does the Court want to be involved in “approving” and “certifying” a business based upon that process?
4. By disclaiming that there is no attorney-client privilege and no work product protection, does the proposed rule now create a circumstance that will affirmatively harm Floridians seeking legal assistance through an online provider? If there is no privilege, has the Court now invited discovery by litigants of the communications between those seeking legal help and the approved and certified online service providers from whom they seek help? Should these communications be privileged as a matter of law and public policy?
5. Will a service provider be permitted to require a dispute resolution process that denies a consumer access to Florida courts, requires waiver of a jury, imposes monetary limitations on the recovery of damages, or restricts venue to inconvenient locations?

6. Proposed Rule 23-1 refers to a “safe harbor,” but it is entirely unclear what this is a safe harbor from or a safe harbor from whom.
7. The proposed rule exempts online service providers from any requirement to seek advertising approval. Are there any limitations of how they may advertise? Can an online service provider advertise in a manner that a Florida lawyer may not and, if so, why? What justifies providing an advertising advantage to an online service provider at the expense of a Florida lawyer? <sup>4</sup>
8. Is there a difference between an online service provider and a “qualifying provider” as defined by rule 4-7.22? Both “match” lawyers with consumers. What is gained by yet another “matching” designated entity or rule?
9. Rule 4-7.22(d) expressly provides that “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.” Why is a qualifying provider so restricted, while an online service provider will have the advantage of advertising that it has received a certification by the Bar as an approved service provider?
10. There are no requirements concerning the qualifications or experience of lawyers providing forms or explaining their use. They may be a first-year lawyer or perhaps a law student supervised by a Florida lawyer. They could even be temporary employees of the “service” or contract employees. Their relationship to the client is not clear.

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<sup>4</sup> To say that online service providers are already free from advertising regulation misses the mark. The Bar can and does prohibit lawyers from associating with services that violate the advertising restrictions imposed upon lawyers. See, rule 4-7.22(d). Why would we have less restrictions on an online service provider than the Court imposes upon “qualifying providers?”

These are but a few of our concerns, and they illustrate why, in our judgment, the better course here is for the Court to delay consideration of the proposed rule pending a fuller study by The Florida Bar. This is even more so the case because the Bar’s “comprehensive” study of the issues raised by the proposed rule is or will shortly be underway. There is no rational reason to tackle this issue now, when the Bar has not yet finished its analysis and considered the many complexities involved in this evolving issue.

Respectfully submitted,

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

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

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed on this 3rd day of January, 2020, via the statewide e-portal and true and correct copies were furnished via email using the statewide e-portal to:

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