

IN THE SUPREME COURT OF FLORIDA

Case No.: SC19-2077

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

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

This comment opposing the Florida Bar’s Petition to Amend the Rules Regulating the Florida Bar (the “Petition”) is submitted by Mark S. Gold, a member of The Florida Bar in good standing. As discussed below, I oppose the Petition.

THE PROPOSED RULE WILL IRREPERABLY HARM CONSUMERS

The Florida Bar has proposed a Rule (Proposed Rule 23) that will allow non-lawyer “online service providers” to advertise for legal services and share legal fees (fee splitting). The Proposed Rule provides for no regulation of either the advertising of legal services or the business operations of these online service providers. For anyone to believe that Proposed Rule 23 will do anything other than legitimize the lowest common denominator of hucksters, charlatans, and scam artists is naïve, to say the least.

History is replete with stories of unregulated charlatans who have taken advantage of unsophisticated consumers, making wild and unsubstantiated claims regarding their products, hence the term “snake oil salesman.”

RECEIVED, 01/09/2020 01:32:36 PM, Clerk, Supreme Court

Passage of Proposed Rule 23 will empower the modern day “snake oil salesman” to make false and misleading advertisements and claims, all in order to separate the unwitting consumers from their money, with no repercussions. One cannot fathom a single reason that the Bar would propose a rule that would allow non-lawyers (online service providers) to advertise with impunity any false or misleading claim they wish, while requiring attorneys (and rightly so) to comply with a plethora of advertising restrictions, and go through a lengthy and costly advertising review process (Fl. Bar Rules of Professional Conduct, Chapter 4-7.2-4-7.22).

P.T. Barnum reportedly stated, “There is a sucker born every minute.” Proposed Rule 23 empowers the PT Barnum’s of the world to rip off unsuspecting consumers in need of real legal services, the very same unsophisticated consumer the Bar’s Proposed Rule is supposed to help.

While chapter 4-7 of the Rules of Professional Conduct of the Florida Bar strictly governs advertising by lawyers, including a method of review and approval of ads, NO SUCH RULE exists governing Online Service Providers in Proposed Rule 23.

In other words, while a lawyer is limited to truthful advertising that cannot even be impliedly misleading (*See*, Rule 4-7.13), Proposed Rule 23 allows the non-lawyer to make false claims with impunity.

This is not just anecdotal. Many non-lawyer internet-based companies have been operating outside the rules of the Florida Bar, with disastrous results.

One such company, TIKD, currently before this Honorable Court for UPL, has been accused of false advertising by the Florida Bar (*The Florida Bar v. TIKD Services LLC, et al.*, Case No. SC2018-149). TIKD’s website proudly proclaims what happens “with TIKD” and what would happen “without TIKD.”

The screenshot shows a dark background with the title "WHY TIKD IS THE BETTER SOLUTION" in white. Below the title, there are two columns. The left column is headed "WITH TIKD" with a checkmark icon. It lists three benefits: "Get all the benefits of a court challenge along with the convenience of simply paying your fine.", "Avoid Points on your license and thousands in higher insurance costs.", and "Get extra time to pay while avoiding late fees and other negative actions." The right column is headed "WITHOUT TIKD" with an 'X' icon. It lists four negative outcomes: "Points on your license and increased insurance costs.", "Always pay the full amount.", "No ability to pay over time.", and "Additional costs and hassle of hiring a lawyer."

WITH TIKD	WITHOUT TIKD
✓ Get all the benefits of a court challenge along with the convenience of simply paying your fine.	✗ Points on your license and increased insurance costs.
✓ Avoid Points on your license and thousands in higher insurance costs.	✗ Always pay the full amount.
✓ Get extra time to pay while avoiding late fees and other negative actions.	✗ No ability to pay over time.
	✗ Additional costs and hassle of hiring a lawyer.

The statements above, taken on their face, are clearly false and misleading. If you don’t use TIKD (“WITHOUT TIKD”): you will get points on your license, always pay the full amount, no ability to pay over time and have additional costs and hassle of hiring a lawyer. No attorney would be permitted by the Bar to make such claims. Yet, a non-lawyer online service provider, under the Proposed Rule 23 could do so.

In *TIKD Services LLC v. The Florida Bar, et al.*, Case No. 17-24103 (U.S. Dist. Ct., So. Dist. Florida), Chris Riley, founder of TIKD, discussed during his deposition the misleading nature of his advertising, while trying to justify it. *See*

excerpt from Deposition of Chris Riley, pp. 294-317 (attached as Ex. 1). Had this been an advertisement by a Florida attorney, it would never have been permitted. In fact, TIKD's very motto, the very basis of its business model, "snap it, and forget it" is false. Riley admits in his deposition, that despite this promise, after you "snap it" (take a picture of the ticket), that just begins a process of TIKD finding an attorney for your case, which may take days, according to Riley, and several communications between the prospective client and TIKD, or the attorney. *See*, deposition of Chris Riley, dated June 21, 2018, pp. 254-55 (attached as Ex. 2). Such falsity would never pass muster with the Florida Bar, had an actual lawyer said it.

According to an investigation into TIKD's Facebook reviews, many of the reviews were fake in that the reviewer did not, in fact, have a ticket, nor did they use TIKD to fight it. *See* Investigative Report, Blue Line Investigations (redacted and attached as Ex. 3).

The important point here is that again, an Online Service Provider could post fake reviews on the internet, thus baiting the consumer to use them. *No regulation leads to abuse.*

Another such company, in California, catraffictickets.com, is a non-lawyer internet company claiming to fight traffic tickets. Their advertising is replete with false statements to lure a client to hire them. The Yelp reviews speak for

themselves. Below are just a few of the many negative reviews for this non-lawyer internet-based scam:

8/24/2019 1 star

BEWARE OF LYING THIEVES! They say they refund your \$99 if they don't win. Well they lost and did I get a refund HELL NO. I was lied to from jump. I was told matter of factly that I could not go to traffic school because I had an out of state DL. Well that was total bullshit. Had they answered my question honestly they wouldn't have gotten my money. They got me for several hundred dollars. After the loss I did further research. Luckily I was able to speak w the Judges clerk, wrote the Judge a letter explaining my experience with these inept thieves and he granted me permission to take traffic school and eliminate the points on my DL. They do nothing but have operators take your money. There oughta be a law against this!

4/17/2019 1 star

**WARNING* DO NOT USE THESE SCAM ARTISTS!!!*

This is the worst company you could ever run across they do nothing but pray on vulnerable people who are a need of help, give them a subpar assistance that is noneffective and then lied you about

refunding your money when they don't win your case! Do not use these people they will take advantage of you and cost you money and end up losing your case and then on top of all that cost you more money!

10/21/2019 1 star

Stay the hell away from these people.

They basically have salespeople in a call center with scripts and it's up to each salesperson's to charge you whatever they want.. obviously they take a cut of what ur paying so they quote you the maximum they charge depending on how ballsy and confident the salesperson is.

When I asked IF they have a refund policy or not. The first person I talked to said no then when I called back the guy dodged my question and kept reading the scripted response "we have great connections in that courthouse blah blah" and when I pressed him he finally said yes we do have a refund policy if we don't win, started stammering and hung up on me when he felt cornered by my question!

What kind of Boiler room operation is this!?

They lost all credibility with me considering I was actually calling

back to sign up with them!

I am better off hiring an attorney than going through their network!

This is not anecdotal and is typical of what consumers will face should Proposed Rule 23 be adopted.

**THE PROPOSED RULE ENCOURAGES UNETHICAL
AND DECIETFUL BEHAVIOR BY ONLINE SERVICE PROVIDERS**

It doesn't stop just with the false advertising. Florida Bar Rules require a lawyer to supervise his or her non-lawyer employees.

Rule 4-5.3 specifically addresses this responsibility. First, the rule deals with non-lawyer assistants, laying out different responsibilities for lawyers depending upon the level of the attorney's responsibility over a non-lawyer's conduct. Under the rule, any lawyer having "direct supervisory authority" over non-legal staff is responsible for making "reasonable efforts" to ensure that the non-lawyer's conduct is consistent with the attorney's own professional obligations. The lawyer will be held responsible for ordering, or ratifying with knowledge, any specific behavior by the non-attorney where the lawyer himself or herself is prohibited from the conduct.

Under Proposed Rule 23 there is no such protection for consumers. Non-lawyer employees, like their non-lawyer employers, may do or say whatever they wish.

In the Pulitzer prize winning words of David Mamet, in Glengarry Glen Ross: the words "Always Be Closing" are written on a board, and repeated several times, in a tirade. And what is the result of this motivational speech? The salespeople resort to a host of unethical tactics to achieve their sales numbers! The key takeaway? "Always Be Closing" is a mantra used in the sales world, meaning a seller must always be in the mindset of closing deals, using whatever tactics are necessary.

Without supervision by a lawyer *who is subject to discipline*, why would one imagine that this scenario would turn out any differently? ABC, always be closing, will be the mantra of every unregulated online service provider. And why not? There are no consequences! Potential conversations between online service providers and unsophisticated customers allowed under Proposed Rule 23 could be:

*"Yes ma'am, we promise you will be divorced by New Years,
can I get your credit card number?"*

“No sir, your landlord can’t evict you just for not paying rent, our lawyers can keep you in your house indefinitely, I’ll take your credit card now...”

“Charged with trafficking in Oxycodone? We can definitely keep you out of jail! Your credit card please”

The possibilities, and severe consequences, boggle the imagination.

CONCLUSION

WHEREFORE, I oppose the Petition and respectfully request that the Court deny the Petition and not adopt Proposed Rule 23.

Dated: January 9th, 2020

Respectfully submitted,

s/ Mark S. Gold

Mark S. Gold

Florida Bar No. 359501

The Ticket Clinic, a law firm

2298 S. Dixie Hwy

Miami, FL 33133

Telephone: (305) 858 9390

markgold@theticketclinic.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed on this 9th day of January 2020, via the statewide e-portal and true and correct copies were furnished via email using the statewide e-portal to:

Joshua E. Doyle Executive Director, The Florida Bar

John M. Stewart President, The Florida Bar

Dori Foster-Morales President-Elect, The Florida Bar

Lori S. Holcomb Ethics and Consumer Protection, The Florida Bar

Elizabeth Clark Tarbert Ethics Counsel, The Florida Bar

/s/ Mark S. Gold, Esq.

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/ Mark S. Gold, Esq.