

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

**COMMENTS OPPOSING THE FLORIDA BAR’S PETITION TO AMEND
THE RULES REGULATING THE
FLORIDA BAR**

These comments are submitted by Ted L. Hollander, a member in good standing with the Florida Bar. I oppose the Petition as it will injure members of the bar, will not increase access to legal services and will injure consumers of legal services.

**THE PETITION WILL CREATE A NEW OPPORTUNITY FOR NON-
LAWYERS TO ENTER THE LEGAL SERVICES MARKET, TO THE
DETRIMENT OF UNSUSPECTING CONSUMERS**

Proponents of the Petition claim that if approved, consumers will have better access to legal services, as cost will be less prohibitive. Speaking from a position of experience on this exact issue, I can say with certainty that this is untrue. In the area of law that I practice, an on-line service provider recently offered legal services to consumers. Their initial fee was more than double what mine was. However, based upon their unrealistic promises in their unregulated advertisements, some consumers chose their service over mine, or that of other duly licensed lawyers. The on-line service provider claimed that they would

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resolve the legal issue in a certain amount of time, gave legal advice that was inaccurate on their website, made statements that were untrue on their website about other law firms and missed court appearances on numerous occasions.

In that situation, what should the consumer do? Who should they complain to when the on-line service provider's lawyer misses court? The on-line service provider, who is run by non-lawyers, and is not a member of Florida bar will not be subject to discipline, as they are not members. Again, this actually happened on numerous occasions. The on-line service provider was hired (charged a fee that was twice the standard in the industry) and then the lawyer that they hired missed court. If this Petition is approved, this will happen with much more frequency with no accountability.

**ON-LINE SERVICE PROVIDERS' ADVERTISEMENTS WILL NOT BE
REVIEWED BY THE FLORIDA BAR**

Rule 23-3.1 Generally: States that a registered on-line service provider may advertise, charge, and collect fees as provided elsewhere in this rule and is not required to file advertisements with the Florida bar for review.

This poses two significant issues. First, the unsuspecting consumer will be duped into believing that false claims are in fact true. By advertising that the provider is "registered" with the Florida bar, this gives the appearance that they are "accepted" by the Bar. Claims to resolve legal issues in lightning fast time, at a fraction of the cost, by the "best" lawyers, will all be believed by the consumer. It

will be too late, once the consumer realizes that the legal issue was not resolved quickly, many of the claims made by the provider were in fact false, and the consumer paid twice the standard fee.

Next, members of the bar that are in good standing, who submit their advertisements for review are at an unfair competitive advantage. I cannot promise to resolve a legal matter in a certain amount of time and I surely cannot provide inaccurate legal advice on my website. Those members of the bar who comply with the rules, will be placed in a poor posture by the passage of this Petition.

The Petition further states that The Florida bar will not directly handle or resolve any consumer complaints about the registered online service provider.

IMPROPER FEE SPLITTING JEOPARDIZES THE QUALITY OF REPRESENTATION

This Petition allows for non-lawyers to charge consumers legal fees and then split those fees with lawyers. This practice has been prohibited by the Bar for many years for good reason. It is important to distinguish lawyers vs. non-lawyers and the oath that each Bar member has taken. Non-lawyers have not taken that oath. The referring on-line provider will expect certain results from the lawyers, or will cease sending the referrals. This creates a dilemma for the lawyer. Should he/she do what is best for the consumer, or what is best to continue the revenue

stream. This is one of the many reasons that fee splitting of this sort has been and much continue to be prohibited.

**THE PROPOSED RULE INVITES UNQUALIFIED PERSONS TO SELL
LEGAL SERVICES, WHICH PUTS CONSUMERS AT RISK**

A complete reading of the proposed rule uncovers the fact that there are no prohibitions as to who may enter this market as an on-line provider. Are disbarred lawyers welcome? Convicted felons? Those who have a history of dishonesty?

Those of us who attended a four year university, three years of law school, passed the bar exam, passed the ethics exam and passed the Bar's investigation into our fitness to practice law, seem to be better screened to protect the legal rights of Florida consumers. The purpose of these strict requirements is to protect the public. This proposed rule does nothing of the sort.

What type of education is required for the on-line provider? What is their criminal history? The unanswered questions go on and on. The Florida bar must do all that it can to protect the public and its members. This proposed rule does neither. I am very disappointed in the bar members who are proponents of this rule.

How does allowing convicted felons, disbarred lawyers, those who have failed the bar etc...protect and help the public?

ACCESS TO LEGAL SERVICES

In today's market, whether you are searching for a lawyer or a car mechanic, consumers have many options. In the past, access may have been limited, but now it is not the case. Traditional advertising is a thing of the past, and now consumers have access to many choices with the touch of a button. In virtually every Florida city, a quick internet search will reveal many lawyers in any field. Fees vary depending on many factors, but consumers have choices as there are many Florida bar members in good standing. Competition is a good thing and consumers benefit from that. Lawyers that may have been able to dictate their fees in the past, must charge reasonable rates to compete with their fellow bar members. The proposed rule fails to show any evidence to support their claims, that access to legal services needs improvement.

If on-line service providers are permitted to share legal fees, the lawyer will have to increase his/her fee in order to earn their normal fee. This will lead to higher legal fees for consumers, and will do nothing to help consumers access legal services.

THE UNLAWFUL PRACTICE OF LAW WILL GO UNREGULATED

In a recent Florida Bar News article (May, 2019) discussing this proposed rule, the bar admitted that on-line service providers are less likely to face sanctions for the unlawful practice of law. This of course, will injure Florida Consumers.

CONCLUSION

For each of the reasons stated above, I strongly oppose this proposed rule. Allowing those who have not gone through the strict background and fitness checks performed by the Florida bar, allowing fee-splitting with non-lawyers who will have great control over the case and which lawyer the case is assigned to, the future unregulated UPL claims, the Bar's position not to address consumer complaints all point to certain trouble for Florida consumers. Florida lawyers would also be at a great disadvantage as on-line service provider advertisements (which would never be approved for a Florida lawyer) will go unchecked and promises will be made that will not be kept. Fee-splitting will lead to higher legal fees which will impede consumers' access to legal services. I join many of my colleagues in strongly opposing this new rule. I respectfully request this Court does not adopt Proposed Rule 23.

Respectfully Submitted,

s/ Ted L. Hollander, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed on this 10th 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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