

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

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

This comment is submitted by Mark S. Gold, a member of The Florida Bar in good standing. I have read and oppose The Florida Bar’s Petition to Adopt Proposed Chapter 23 of the Rules Regulating The Florida Bar. This Comment supplements the Comment that I filed on January 9, 2020.

In a motion filed March 11, 2022, The Bar asks this Court to defer ruling until after December 2022 or, in the alternative, adopt Proposed Chapter 23 as stated. The Court should do neither.

I. The Florida Bar Board of Governors Unanimously Opposes Fee-Splitting with Non-lawyers.

On November 10, 2021, The Florida Bar Board of Governors voted unanimously (46-0) to oppose an amendment to Bar Rule 4-5.4 that would “allow fee splitting with non-lawyers, such as online legal services companies.” See Gary Blankenship, “Board of Governors Unanimously Opposes Non-Lawyer Firm Ownership, Fee Splitting Ideas,” *Florida Bar News* (Nov. 10, 2021) (www.floridabar.org/the-florida-bar-news/board-of-

RECEIVED, 03/15/2022 02:58:20 PM, Clerk, Supreme Court

governors-unanimously-opposes-non-lawyer-firm-ownership-fee-splitting-ideas/). This vote was nearly two years after The Bar filed its petition in this case. Yet Chapter 23 as proposed in this case would accomplish exactly what the Board of Governors voted unanimously to prevent – namely, the sharing of legal fees with nonlawyers.

Proposed Rule 23-71(c) provides:

c) Collection of Payments to Lawyers. When the services of a registered online service provider include the participation of a lawyer, the registered online service provider may collect the participating lawyer’s fee directly from the consumer, retain its charge imposed on the participating lawyer from the fee collected from the consumer, and remit the remainder to the participating lawyer.

This proposed rule is the very definition of fee splitting, unanimously rejected by the Board of Governors on November 10, 2021. It is disingenuous, at the very least, for Bar Counsel to suggest this Honorable Court now adopt that which its Board of Governors and its constituents so clearly reject.

In fact, the Board of Governors made it abundantly clear, in a December 27, 2021, letter to Chief Justice Charles Canady, that allowing nonlawyer ownership, fee splitting with nonlawyers, and broadly expanding the work of paralegals “would be so profoundly transformative of the practice of law in Florida” that such proposals should not be allowed, even

on a test basis, without “clear and compelling empirical data” that they would help solve access to justice in a meaningful way with little or no risk to the public. See Mark D. Killian, “Board Details its Opposition to Special Committee’s Proposals,” *Florida Bar News* (Jan. 10, 2022) (<https://www.floridabar.org/the-florida-bar-news/board-details-its-opposition-to-special-committees-proposals/>). This letter to the Chief Justice was correct. Bar counsel should not be permitted to backtrack from this position now.

II. **This Court Has Already Declined To Adopt Rules On Fee Splitting With Non Lawyers**

Just two weeks ago, this Court refused to permit fee-splitting with non-lawyers. A March 3, 2021, letter to The Florida Bar from this Court stated that the Court “does not intend to adopt” recommendations from the final report of its Special Committee to Improve the Delivery of Legal Services. Those recommendations included testing nonlawyer ownership in law firms, **fee splitting with nonlawyers**, and broadly expanding the work paralegals are allowed to perform. See Mark D. Killian, “Supreme Court Declines To Adopt Recommendations On Nonlawyer Ownership, Fee Splitting, And Expanded Paralegal Work,” *Florida Bar News* (March 8, 2022) (<https://www.floridabar.org/the-florida-bar-news/supreme-court-declines-to-adopt-recommendations-on-nonlawyer-ownership-fee-splitting->

and-expanded-paralegal-work/). The Court should not retreat from this position now.

III. There Is No Evidence That Adoption of Rule 23 Will Improve Access to The Legal System.

There is no evidence that allowing online service providers to provide legal services and share fees with lawyers will improve access to the legal system. In fact, with the internet now available in every home, anyone seeking counsel need only use Google or other search engines to find a plethora of attorneys seeking to fulfill that need. Internet searches create a competitive environment, through which anyone seeking legal services is easily able to find the best lawyer to suit particular needs. Any claim to the contrary is merely anecdotal and is not supported by any competent evidence. With the use of the Internet, there are no access issues to the public, and the use of a middleman, such as an online services provider, will only harm the public.

IV. Rule 23 Provides No Regulatory Framework.

Proposed Rule 23-6(c) provides:

(c) Dispute Resolution. The registered online service provider must inform consumers of the process for submitting complaints and of the process for resolving disputes, **including a statement that the registered online service provider will submit to jurisdiction in a Florida forum for resolution of disputes** with Florida consumers. The registered online service provider must require the

consumer to acknowledge this disclaimer before the consumer may proceed with the service.

In this seemingly benign paragraph, the Bar washes its hands of any regulation of online service providers. Instead, Rule 23-6(c) provides only that the consumer may avail him or herself of a Florida forum. In other words, the consumer would need to hire a lawyer to sue the online service provider. But the Bar will not review the provider's advertising, and the Bar will not discipline attorneys accepting cases from the provider (unless the provider is also a qualified provider). The online service provider, therefore, could advertise anything with impunity. This unregulated advertising would this harm the public and create an unfair advantage against ethical attorneys who submit their ads for review and comply with the rules.

V. **Rule 23 Directly Contradicts This Court's Decision In *The Florida Bar v. TIKD Services, LLC*.**

Less than six months ago, this Court rejected the model that proposed Rule 23 advances. In *The Florida Bar v. TIKD Services LLC*, 326 So. 3d 1073 (Fla. 2021), the Court firmly refused to sanction “the unregulated commoditization of legal services—a paradigm shift that would put corporations governed solely by the profit motive between lawyers and their clients.” *Id.* at 1081. Proposed Rule 23 would do exactly that. The *TIKD Services* decision made clear that a for-profit corporation providing

legal services is by its very existence committing the unauthorized practice of law. Accordingly, any online services provider that makes it living by offering legal services and then splitting the fee with the lawyer is committing the unauthorized practice of law. Adoption of Rule 23 would negate the findings of this Court in *TIKD Services* and its predecessors.

WHEREFORE, it is respectfully requested this Honorable Court deny the Bar's motion to defer ruling and decline to adopt proposed Rule 23.

Respectfully submitted,

MARK GOLD, ESQ.

Florida Bar No. 359051

18500 NE 5TH Avenue

North Miami Beach, FL 33179

Tel.: (305) 775-7996

Email: markgold@theticketclinic.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed on this ____ day of March, 2022, via the statewide e-portal for filing and service upon 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) Arial Font, and otherwise meets the requirements of Florida Rule of Appellate Procedure 9.210.

/s/ Mark Gold, Esq.
Attorney