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IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR – SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES

CASE NO. SC22-

PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR

The Florida Bar (the bar) petitions this Court for an order amending the Rules Regulating The Florida Bar and states:

Jurisdictional Statement

This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors) under R. Regulating Fla. Bar 1-12.1.

Organization of Amendments

The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. The bar is filing 4 petitions simultaneously that include rules amendments approved by the Board of Governors after submission of the last biennial petition in October 2020. The petitions are separated by topic: amendments relating to lawyer discipline, amendments to the lawyer advertising rules in subchapter 4-7, amendments relating to the Board of Specialization and Legal Education, and miscellaneous amendments. This petition contains amendments relating to the lawyer advertising rules in subchapter 4-7 of the Rules Regulating

The Florida Bar. This section provides information regarding development of these rules proposals as required by Part III of this Court's administrative order number AOSC 06-14 of June 14, 2006, *In Re: Guidelines for Rules Submissions*. Each entry provides the following information: an explanation of each amendment; the reasons for each recommended change; the sources of each proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; voting records of pertinent committees and the Board of Governors; and dissenting views within the Board of Governors, if any, regarding each submission.

Some rules were the subject of multiple proposed revisions that were considered at different times. When that occurred, those amendments are reported as separate items to better reflect the distinctive aspects of their development.

Amendments

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT
SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.12 REQUIRED CONTENT

Summary: In Rule 4-7.12(d), changes "reasonably prominent" to "clear and conspicuous" to describe the requirements for all required information and provides information on what is meant by the term. Adds commentary further clarifying the meaning of "clear and conspicuous."

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

Summary: Within subdivisions (b)(5), (b)(6) and (b)(7), replaces "reasonably prominent" with "clear and conspicuous." Added commentary describes "clear

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

Summary: Within subdivision (a)(6), replaces "reasonably prominent" with "clear and conspicuous." Commentary describing "clear and conspicuous" is added.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Summary: Within subdivision (b)(2)(B), replaces "reasonably prominent" and contrasting for the "advertisement" mark for direct mail to "clear and conspicuous" and provides direction on the meaning of "clear and conspicuous."

Reasons: The amendments in the above rules 4-7.12, 4-7.13, 4-7.14, and 4-7.18 replace the term "reasonably prominent" to "clear and conspicuous" regarding information that these rules require to be contained in communications regarding legal services. Currently, all information required by the rules must appear reasonably prominent in the advertisement or communication. "Clear and conspicuous" is a term used by the Federal Trade Commission to describe disclaimers, has a body of information regarding its definition and requirements, and will therefore be clearer to bar members and the public.

Source: Board Review Committee on Professional Ethics

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 11-0 on May 20, 2021.
- The bar's chief financial officer agreed with the de minimis fiscal impact assessment on June 24, 2021.
- Program Evaluation Committee approved 12-0 on a strategic basis on July 22, 2021.
- Board of Governors first reading on July 23, 2021. Rules Committee approved 5-0 on a procedural basis with style edits on August 25, 2021.

Board Action: Board of Governors approved on voice vote without objection on December 3, 2021.

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

Summary: Within subdivisions (b)(6) and (b)(7), makes disclaimers required only when necessary to avoid misleading a reasonable viewer, and makes the wording of a required disclaimer discretionary. Commentary is amended consistent with this change.

Reasons: The Standing Committee on Advertising has reviewed advertisements in which it was clear that an enactment was a dramatization or that actors were merely actors, for example, when a depiction is a cartoon or when using children as actors. Requiring a disclaimer in those circumstances is unnecessary. Additionally, the current rule has exact wording requirements, and lawyers should have some discretion to use appropriately worded disclaimers that do not match the exact wording required by the rule as long as the chosen disclaimer adequately addresses the circumstances that could potentially mislead consumers.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 8-3 on January 28, 2021.
- Program Evaluation Committee approved 17-0 on strategic basis on March 4, 2021.
- Rules Committee approved 6-0 on a procedural basis with style edits on March 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact on April 8, 2021.

Board Action: Board of Governors approved on voice vote without objection on May 21, 2021.

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

Summary: Within subdivision (a)(4)(B), omits the requirement that lawyers certified by entities accredited by the American Bar Association, but not The Florida Bar, contain a disclaimer that the lawyer is "Not Certified as a Specialist by The Florida Bar."

Reasons: The subdivision already requires that advertisements claiming board certification must include the certifying entity and area of certification. Requiring the further disclaimer that the lawyer is not certified by The Florida Bar is unnecessary.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Board of Specialization and Legal Education approved 14-0 on January 15, 2021.
- Board Review Committee on Professional Ethics approved 11-0 on January 28, 2021.
- Program Evaluation Committee approved 17-0 on strategic basis on March 4, 2021.
- Rules Committee approved 6-0 on a procedural basis with style edits on March 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact on April 8, 2021.

Board Action: Board of Governors approved on voice vote without objection on May 21, 2021.

RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

Summary: Within subdivision (a)(1), adds social media contact information including social media icons or logos.

Reasons: Lawyers frequently add social media icons for Facebook or Twitter to their advertisements and, in electronic media, the icon also often contains a link to the lawyer's social media site. As in a URL linking to a lawyer's website, this information is common and presumptively non-misleading such that the lawyer should not have to file the advertisement merely because social media icons and links are included.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 11-0 on January 28, 2021.

- Program Evaluation Committee approved 17-0 on strategic basis on March 4, 2021.
- Rules Committee approved 6-0 on a procedural basis with style edits on March 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact on April 8, 2021.

Board Action: Board of Governors approved on voice vote without objection on May 21, 2021.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Summary: Within subdivision (b)(2)(E), deletes the first sentence required for targeted direct written solicitations "If you have already retained a lawyer for this matter, please disregard this letter." Makes current subdivisions (b)(2)(H) and (b)(2)(I) [proposed subdivisions (b)(2)(G) and (b)(2)(H)] consistent using a "know or reasonably should know" standard for whether the direct written solicitation is targeted (prompted by a specific event affecting the intended recipient or the recipient's family member). Adds commentary addressing the prohibition against disclosing the nature of the prospective client's legal problem and indicating that the prohibition does not apply in circumstances where an occurrence has a widespread impact, but the advertising lawyer does not specifically know that the recipient was impacted by the occurrence.

Reasons: The first sentence "If you have already retained a lawyer for this matter, please disregard this letter" currently required by subdivision (b)(2)(E) is unnecessary and protects other lawyers more than consumers; lawyers are permitted to give second opinions to persons already represented by counsel and there is already a requirement that a lawyer not send direct written solicitations if the lawyer knows or reasonably should know that the intended recipient is already represented in the matter in subdivision (b)(1)(A). Changes to current subdivisions (b)(2)(H) and (b)(2)(I) [proposed subdivisions (b)(2)(G) and (b)(2)(H)] relating to targeted direct written solicitations make the subdivisions consistent with one another by imposing on the lawyer a standard that if the lawyer knows or reasonably should know the

communication is targeted (prompted by a specific occurrence affecting the intended recipient), then the lawyer has the additional requirements that the lawyer must disclose where the lawyer obtained the information prompting the direct mail solicitation and the lawyer must not disclose the nature of the prospective client's legal matter on the outside of the direct mail solicitation. These are requirements in the existing rules, but the language was inconsistent.

Source: Board Review Committee on Professional Ethics

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 11-0 on May 20, 2021.
- The bar's chief financial officer agreed with the de minimis fiscal impact assessment on June 25, 2021.
- Program Evaluation Committee approved 12-0 on a strategic basis on July 22, 2021.
- Rules Committee approved 5-0 on a procedural basis with style edits on August 25, 2021.

Board Action: Board of Governors approved on voice vote without objection on December 3, 2021.

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

Summary: Adds new subdivision (d)(12) which requires that lawyers cannot participate with a qualifying provider unless the qualifying provider has lawyers from at least 4 different law firms participating.

Reasons: The rule defines qualifying providers as matching or referral programs, group or pooled advertising programs with a common name or telephone number, and the like. Qualifying providers and lawyers frequently ask how many participating lawyers a qualifying provider must have to be properly constituted. An individual lawyer cannot advertise in the guise of a qualifying provider with no other lawyers from different law firms participating, as that would be misleading. Having a defined minimum number of participating lawyers in the rule would be

clearer for qualifying providers and participating lawyers as well as make enforcement of the rule easier.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 6-0 on a substantive and procedural basis on December 6, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on January 11, 2022.
- Program Evaluation Committee approved 13-0 on a strategic basis on January 20, 2022.

Board Action: Board of Governors passed on voice vote without objection on May 20, 2022.

Official Notice of Amendments

The bar published its formal notice of intent to file all the proposals in this petition was published in the September 1 issue of the bar *News* as required by R. Regulating Fla. Bar 1-12.1(g A copy of the notice including the extracted text in legislative format published on the bar's website is included with this petition, in Appendix C. The online notice can also be found at:

https://www.floridabar.org/the-florida-bar-news/biennial-florida-bar-rules-proposals-2/

Discrepancy with Thomson Reuters' Florida Rules of Court

During the preparation of this petition, the bar noted a discrepancy between the Rules Regulating the Florida Bar as maintained by the bar and the Rules Regulating The Florida Bar as published in Thomson Reuters' *Florida Rules of Court*. The bar has notified the publisher of the following discrepancy, which has indicated that the errors will be corrected:

- Missing semicolon at the end of Rule 4-7.14(a)(4)(C).

Editorial Corrections and Request for Waiver of Rules Procedures

During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were not reviewed by the Board of Governors but were made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*. All of these editorial errors were corrected in the extracted text in legislative format published in the official bar *News* notice online. The editorial corrections are noted in the right-hand column of Appendix B and enumerated in a separate list in Appendix D, p. D-2.

The bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 are minimal and the amendments themselves are non-controversial. The bar therefore requests that this Court accept these additional edits and waive Board of Governors approval under R. Regulating Fla. Bar 1-12.1(i).

All other requested amendments in this petition were promulgated in full compliance with applicable rules and policies.

Other Pending Amendments

There is 1 pending petition involving amendments to Rules Regulating the Florida Bar: *In re Amendments to Rules Regulating the Florida Bar- Chapter 23 Registered Online Service Provider Program,* Case No. SC19-2077, filed December 12, 2019. The amendments in that petition are solely to propose new Chapter 23 of the Rules Regulating The Florida, there are no amendments to

proposed Chapter 23 in this petition, and the 2 petitions may be considered independently of each another.

Contents of Appendices

The complete text of all proposals is included in Appendix A to this petition in legislative format (deleted language struck through, shown first, followed by new language underlined).

A separate two-column presentation follows in Appendix B, which includes extracted text of affected rules with proposed amendments in legislative format and an abbreviated recitation of the reasons for the changes.

The notice of intent to file this petition is provided in Appendix C.

Comments and editorial corrections are included in Appendix D. During the amendments process, a comment was received regarding rule 4-7.22. The comment, by Florida Bar member Timothy P. Chinaris, suggests a further amendment that provides a qualifying provider with 60 days to obtain lawyers from at least 4 different law firms to participate to accommodate qualifying providers that are in the beginning stages of development. The Board of Governors fully considered the comment and rejected the suggestion. The comment is provided in Appendix D. *See* D-3. The editorial corrections are listed in Appendix D, p. D-2.

Oral Argument Not Requested

The bar does not seek oral argument regarding these amendments unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

Effective Date Request

The bar requests that any amendments in response to this petition be made effective no sooner than 60 days from the date of this Court's order so that the bar can educate its members regarding any amendments.

The bar requests that this Court enter an order amending the Rules Regulating the Florida Bar as requested in this petition.

Respectfully submitted,

/s/ Joshua E. Doyle

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CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this petition is typed in 14-point Bookman Old type.

/s/ Joshua E. Doyle

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Joshua E. Doyle
Executive Director
Florida Bar Number 25902

CERTIFICATE OF READ-AGAINST

The Rules Regulating The Florida Bar were amended on June 2, 2022, effective August 1, 2022, in SC20-1467 (In re: Amendments to the Rules Regulating The Florida Bar- Biennial Petition). The most recent copy of Thomson Reuters contains amendments up to February 15, 2022. For that reason, the read-against for rules 4-7.13 and 4-7.18 were done against the court's order.

I certify that the other Rules Regulating the Florida Bar in this petition have been read against the most recent copy of *Thomson Reuter's Florida Rules of Court*.

/s/ Joshua E. Doyle

Joshua E. Doyle
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