

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULES
REGULATING THE FLORIDA BAR –
MISCELLANEOUS PETITION

CASE NO. SC2025-1178

COMMENTS OF BAR MEMBER TIMOTHY P. CHINARIS

Florida Bar member Timothy P. Chinaris files these comments in response to The Florida Bar’s Petition to Amend Rule Regulating The Florida Bar 4-7.20. The undersigned respectfully requests that this Court decline to approve the Bar’s proposal and instead amend Rule 4-7.20 as shown on the attached Appendix.

Florida Bar rules require that internet advertisements be filed with the Bar for review. Sponsored search engine results are a type of internet advertisement. The Bar has asked this Court to amend Rule 4-7.20 to exempt some, but not all, sponsored search engine results from the filing requirement.

The Bar proposes to exempt only those “sponsored search engine results *that do not include any images, audio, or video other than the permissible content of advertisements set forth in Rule 4-7.16*” (emphasis added). While the Bar’s intent to expand the exemption is laudable, its proposed amendment is too narrow.

Rule 4-7.20 should be amended to exempt *all* sponsored search engine results from the filing requirement.

By adopting the broader exemption shown on the attached Appendix, this Court would treat all sponsored search engine results the same way that the rules treat law firm websites – their *content* would have to comply with the substantive advertising rules, but they would be exempt from required *filing*.

There are several compelling reasons why this Court should expand the Bar’s proposal and exempt all sponsored search engine results from the filing requirement: (1) the limited exemption proposed by the Bar will not accomplish the Bar’s stated objective; (2) the Bar’s proposed amendment fails to adequately consider the realities of evolving technology; and (3) maintaining the existing filing requirement for any sponsored search engine results is inconsistent with constitutional law.

Background information

Internet advertisements can be static or dynamic. Static internet advertisements are similar to traditional media advertising in that the advertising lawyer determines their content and format. In contrast to static advertisements, sponsored search engine

results are dynamic – they change in response to interactions by viewers. The advertising lawyer provides headlines and text for use in a dynamic advertisement, but the lawyer does *not* determine the format and specific content of each advertisement. Instead, a computer program or algorithm generates the format and content based largely on viewer reaction to prior advertisements. This means that just a few descriptive statements provided by a lawyer for a short dynamic internet advertisement can be combined in different ways to generate hundreds or thousands of unique sponsored search engine results, each of which is considered a separate advertisement under Bar rules.

Unlike other forms of advertising, the content and format of sponsored search engine results change constantly and can appear in an extremely high number of variations. This happens without direction or control by the advertising lawyer. For example, the Bar has advised that an advertiser filed a proposed advertising campaign as a single file (paying one \$150 filing fee), with combinations of 3 of 15 headlines and 2 of 5 descriptive statements being used to generate sponsored search engine results. This particular filing could generate 54,600 unique advertisements.

Charging a filing fee of \$150 for each of those 54,600 different advertisements would total more than \$8 million.

Additionally, and importantly, Bar staff admittedly does not have the resources to evaluate that many advertisements within the 15-day time period mandated by Rule 4-7.19(b).

The limited exemption proposed by the Bar will not accomplish the Bar's stated objective

The Bar's Petition, p.5, acknowledges that continuing to require filing of all sponsored search engine results will impose an unreasonable and impractical burden on Bar staff and resources:

These amendments are intended to resolve difficulties associated with submitting and reviewing sponsored search engine results that frequently include thousands of potential iterations when each iteration is considered a separate advertisement submission.

To address this problem the Bar proposes exempting some, but not all, sponsored search engine results from the filing requirement. But the limited exemption proposed by the Bar will not solve the problem. The many sponsored search engine results containing images, audio, or video that fall outside the limited list of "presumptively permissible content" in Rule 4-7.16 would still need to be filed (with advertisers paying exorbitant fees) and reviewed by

Bar staff within 15 days of receipt, as required by Rule 4-7.19. The Bar's Petition recognizes that this deadline cannot be met with respect to sponsored search engine results filings that have hundreds, if not thousands, of possible variations.

Fortunately, past experience provides an answer. Years ago the Bar faced *these very same issues* with respect to law firm websites. As with sponsored search engine results, the size, complexity, and frequency with which website content changes made it impractical to require websites to be filed for review.

Consequently, in 1999 this Court agreed with the Bar and decided that law firm websites would not be subject to the filing requirement. *Amendments to Rules Regulating The Florida Bar – Advertising Rules*, 762 So. 2d 392, 430 (Fla. 1999) (exempting websites and other “computer-accessed communications” from filing). The Court has maintained the website filing exemption ever since. *See In re Amendments to Rules Regulating The Florida Bar – Advertising*, 971 So. 2d 763, 764 (Fla. 2007) (declining to amend website filing exemption and other advertising rules pending report of Bar special committee on regulation of internet advertising).

When this Court changed the content rules governing lawyer

websites in 2009, the website filing exemption was left intact. *In re Amendments to Rules Regulating The Florida Bar – Rule 4-7.6, Computer Accessed Communications*, 24 So. 3d 172 (Fla. 2009).

In the Bar’s petition seeking wholesale changes to the advertising rules in 2011, the Bar proposed changing the substantive website advertising rules but asked this Court to leave the website filing exemption in place – which the Court did. *In re Amendments to Rules Regulating The Florida Bar – Subchapter 4-7, Lawyer Advertising Rules*, 108 So. 3d 609, 635 (Fla. 2013). Not only did this Court leave the website filing exemption unchanged, but the Court amended Rule 4-7.19(d) to prohibit lawyers from voluntarily asking the Bar for advisory advertising opinions regarding their websites:

Opinions on Exempt Advertisements. A lawyer may obtain an advisory opinion concerning the compliance of an existing or contemplated advertisement intended to be used by the lawyer seeking the advisory opinion that is not required to be filed for review by submitting the material and fee specified in subdivision (h) of this rule to The Florida Bar, *except that a lawyer may not file an entire website for review*. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.

Id., at 632-633 (emphasis added).

The reason given by the Bar for this was that “websites, which *can be literally thousands of pages and can also contain electronic aspects such as video and sound, are too voluminous to be reviewed in their entirety via the filing and review process.*” Petition to Amend the Rules Regulating The Florida Bar – Subchapter 4-7, Lawyer Advertising Rules, App. B, pp. 73-74 (emphasis added). This reason applies with even greater force to sponsored search engine results. They can change more frequently than websites due to their dynamic nature and the filing fees, if applied to each possible variation of the advertisement, are exponentially greater.

The similarities between websites and sponsored search engine results show that the Bar’s stated concern about “difficulties associated with submitting and reviewing sponsored search engine results that frequently include thousands of potential iterations” will not be resolved by the limited filing exemption the Bar proposes. Rather, this Court should exempt *all* sponsored search engine results from the filing requirement.

The proposed amendment fails to adequately consider the realities of evolving technology

The Bar provides no data indicating what percentage of sponsored search engine results contain content that is not listed in Rule 4-7.16. The scope of the “presumptively valid content” for images, video, and audio in Rule 4-7.16 is relatively narrow; for example, the visuals include only:

scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of, or employed by, the firm against a plain background such as a plain unadorned office or a plain unadorned set of law books.

Rule 4-7.16(a)(12).

The volume of sponsored search engine results that would not be covered by the Bar’s limited proposal is likely to be substantial and is certain to increase as technology evolves and more internet advertisements use images, video, and audio. This means that many sponsored search engine results will still be required to be filed and reviewed, resulting in a burden on the Bar and increased

non-compliance by advertising lawyers due to unreasonably expensive filing fees.

Maintaining the existing filing requirement for any sponsored search engine results is inconsistent with constitutional law

The Bar does not explain why its proposed filing exemption excludes sponsored search engine results with content that falls outside of Rule 4-7.16. Nevertheless, constitutional law requires that the Bar bear the burden of justifying this restriction on lawyers' commercial speech rights. *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n*, 447 U.S. 557, 563-64 (1980);¹ *see also Mason v. Florida Bar*, 208 F.3d 952, 958 (11th Cir. 2000) (Florida Bar opinion requiring disclaimer in advertisement unconstitutional because Bar failed to carry its burden of proof).

In upholding Florida's 20-day advertisement pre-filing requirement, the Eleventh Circuit pointed out that pre-filing gives the Bar a brief opportunity to review advertisements before they are

¹ To justify regulation of speech that is only potentially misleading, *Central Hudson* requires the Bar to show that: (1) it has a substantial interest to support the restriction; (2) the restriction directly and materially advances such interest; and (3) the restriction is narrowly tailored to that purpose. *Central Hudson*, 447 U.S. at 563-64. *See also State v. Bradford*, 787 So. 2d 811 (Fla. 2001). The Bar must present tangible evidence to satisfy its burden. *Borgner v. Brooks*, 284 F.3d 1204, 1211 (11th Cir. 2002); *Rubenstein v. Florida Bar*, 72 F.Supp.3d 1298, 1315 (S.D.Fla. 2014). Absent such proof, the Bar's restriction cannot stand. *See Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993) (state's burden may be satisfied only by showing that harms recited by Bar "are real and that its restriction will in fact alleviate them to a material degree," and this burden "is not satisfied by mere speculation or conjecture").

published, *without* imposing “a burden that is unreasonable in relation to the goal of enforcing the rules’ various substantive restrictions.” *Harrell v. Florida Bar*, 608 F.3d 1241, 1271 (11th Cir. 2010). In contrast, the burden of having to pay thousands of dollars to file sponsored search engine results simply because they include non-exempt images or audio – when a similar text-only advertisement is exempt from filing – *will* impose an unreasonable burden on the advertising lawyer.

Another federal court has held that a filing requirement for internet advertisements was unconstitutional precisely because of this unreasonable burden, where the state bar failed to offer sufficient evidence to justify the requirement. *Public Citizen v. Louisiana Attorney Disciplinary Bd.*, 642 F.Supp.2d 539, 559 (E.D.La. 2009), *aff’d in part, rev’d in part, Public Citizen Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212 (5th Cir. 2011). In holding that a proposed rule requiring the plaintiff lawyers to pay a \$175 filing fee for internet advertisements was unconstitutional, the court stated that the filing fee was “prohibitively expensive for the nature of Internet advertising” and concluded that the state bar failed to “address the unique considerations with Internet

advertising, specifically, the short length of ads and the multiple variations used, each of which would be required to be filed as a unique advertisement.” *Id.* Similarly, The Florida Bar has not provided sufficient justification for limiting the scope of its proposal.

Prayer for Relief

For the foregoing reasons, the undersigned respectfully asks this Court to adopt the proposed amendment shown on the attached Appendix, which would exempt all sponsored search engine results from the advertisement filing requirement.

Oral Argument Not Requested

Oral argument is not requested unless this Court orders oral argument.

Respectfully submitted,

/s/ Timothy P. Chinaris

Timothy P. Chinaris
Florida Bar Number 564062
Primary email address:
tchinaris@chinarislaw.com
Secondary email address:
tim.chinaris@belmont.edu

APPENDIX

RULE 4-7.20 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT

The following are exempt from the filing requirements of rule 4-7.19:

(a) – (f) [unchanged];

(g) information contained on the lawyer’s Internet website(s);
~~and~~

(h) advertisements and other communications regarding legal services made by or on behalf of a legal aid organization, which is a not-for-profit business entity as defined elsewhere in these rules;
and

(i) sponsored search engine results.

CERTIFICATE OF SERVICE

I certify that a copy was furnished on September ___, 2025, by
email through the Florida Courts E-Filing Portal to:

Joshua E. Doyle
Florida Bar Number 25902
jdoyle@floridabar.org

Rosalyn Sia Baker-Barnes
Florida Bar Number 327920
jdoyle@floridabar.org

Michael Fox Orr
Florida Bar Number 14594
jdoyle@floridabar.org

Elizabeth Clark Tarbert
Florida Bar Number 861294
jdoyle@floridabar.org

Kelly N. Smith
Florida Bar Number 97636
jdoyle@floridabar.org

Laura Roe
Florida Bar Number 92110
laura.roe@stpete.org

CERTIFICATE OF TYPE SIZE AND STYLE

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

/s/ Timothy P. Chinaris

Timothy P. Chinaris
Florida Bar Number 564062
Primary email address:
tchinaris@chinarislaw.com
Secondary email address:
tim.chinaris@belmont.edu