

IN THE SUPREME COURT OF FLORIDA

Case number SC 16-1470

In re: AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR -
SUBCHAPTER 4-7 (Lawyer Referral Services)

**Broward County Bar Association Comments to Proposed Rule Changes
to Rule 4-7.22 and 4-7.23**

1. On September 24, 2015 in case number SC14-2126, this Honorable Court ordered the Board of Governors back to the drawing board to propose rules that prohibited Florida lawyers from accepting referrals from for profit referral services owned by non-Florida Bar members. Several committees constituted by the Florida Bar balked at this Court's order and advocated a different path - apparently forgetting that the Florida Supreme Court is the ultimate authority on these issues which greatly impact Floridians.

2. The Bar has proposed a new rule which ignores this Court's directive of September 24, 2015, guts existing protections in several areas, and loosens current restrictions relating to the vetting, hiring, compensation and retention of Florida lawyers and ultimately, harms consumers.

3. As Appendix D discloses, of the more than 103,000 members of the Florida Bar who were asked to comment on the Court's proposed rules, not one supported the proposed changes. Unanimously, the dozens of Florida lawyers who

RECEIVED, 09/19/2016 02:48:37 PM, Clerk, Supreme Court

did comment, opposed the proposed rules and the deletion of 4-7.23.

4. We will be brief. Since 1986, for profit lawyer referral services have been regulated by the Florida Bar with this Court's blessing. <http://www.floridabar.org/divexe/rrtfb.nsf/FV/6220F8DD9146EA1B85257B48005BFC37>. The enumerated protections within the rule include liability coverage for lawyers who participate in the referral services, an absolute prohibition on fee splitting, furnishing the names on a quarterly basis of Florida Bar members who participate and strict time limits to comply with official inquiries by Bar counsel. The rule also mandates certain disclosures including that the referral service must affirmatively state in every advertisement that it is a lawyer referral service, that the lawyers pay to participate in the service and that the service is not endorsed or approved by the Florida Bar.

5. The proposed rules delete each and every one of the above required disclosures. This is inexplicable, illogical and wrong.

6. As the Court's opinion on September 24, 2015 in case number 14-2126 points out, the public policy reasoning and evidence before the Court in that case provided the reasoning for the need to strengthen the rule and for the Court's order. The Order was not a request, or an invitation, but rather the directive of this Court to the Florida Bar to do one thing, and one thing only on this issue. The Bar ignored this and has proposed an entirely different scheme—one far worse than the

existing rule allows. Not content with the recent defeat on the reciprocity issues confronting the public and lawyers, we now see a wholesale weakening of the protections—for counsel and consumers alike—historically so carefully guarded by the Court.

7. The Broward County Bar Association, made up of over 3,000 lawyers and serving the public since 1925, filed its Resolution and Opposition to the Proposed Rules on June 30, 2016. This appears in Appendix D of the Bar’s filing and is linked here. https://efactssc-public.flcourts.org/casedocuments/2016/1470/2016-1470_petition_64968.pdf. Two other bar associations similarly filed opposing resolutions. No bar association supported The Florida Bar’s efforts. Even AVVO, Inc. recognizes the folly of the Bar’s work and is opposed to the new rules as being over broad and ill considered. See AVVO filing of August 25, 2016 (Comments of AVVO, Inc.).

8. Proposed rule 4-7.22 attempts to re-categorize lawyer referral services into “Qualifying Providers.” This euphemism masks the real issue at hand. Lawyer referral services are already defined, controlled and regulated to protect the public. And time and technology advances have taught us they should not be owned by non-Florida Bar members.

9. In an obvious concession to the lobbying of special interests, proposed Qualifying Providers and their participants will not be required to have any legal

malpractice insurance - ending a thirty year requirement. How could this possibly protect consumers? Statistically we know that a majority of lawyers do not carry malpractice insurance. The privilege of participating in lawyer referral services means you must carry it. Since for profit corporations want as many participating lawyers as possible using their service, they do not want any barriers whatsoever - any member of the bar will do for them. That includes every uninsured lawyer in Florida. The existing standards, implemented to protect the most vulnerable consumers of legal services, should not be lowered.

10. Amazingly, under the “Reasons” section in the Bar’s petition in this case, the task given to the Bar by this Honorable Court was not assigned to the committee that had previously worked on it and reached a conclusion different from the Florida Bar. Instead, an entirely new committee was given this task and, shockingly, reached an opposite conclusion. The “special committee” which had come out against the Bar’s recommendations and had recommended something exactly opposite of what the Bar adopted in 2014, was shelved and its recommendations ignored. Instead a “Board Review Committee on Professional Ethics” and a “Board Technology Committee” that were selected by the Florida Bar’s Board of Governors were utilized.

11. For the reasons espoused in the Court’s September 25, 2015 opinion in case number 14-2126 and for the reasons offered by the resolution of the

Broward Bar and the commentators including the erudite comments of Bill Wagner, this Court should once and for all stop the Bar's attempts at watering down the protections of the public and issue a rule which protects the public and ends this circuitous merry-go-round of non-qualifying proposals (pun intended.).

Other states are in accord. See generally:

New York, http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=179;

Texas, <https://www.legalethicstexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct/VII--INFORMATION-ABOUT-LEGAL-SERVICES/7-03-Prohibited-Solicitations-Payments.aspx>;
<http://law.justia.com/codes/texas/2009/occupations-code/title-5-regulation-of-financial-and-legal-services/chapter-952-lawyer-referral-services>

Illinois, http://www.illinoiscourts.gov/supremecourt/rules/art_viii/artviii_new.htm;

Ohio, http://www.supremecourt.ohio.gov/Boards/BOC/Advisory_Opinions/2016/Op_16-003.pdf.

(Continued on next page.)

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing document has been furnished to John F. Harkness, Jr., Esq. at jharkness@flabar.org and eto@flabar.org, Alan F. Wagner, Esq. at AlanWagner@WagnerLaw.com and Angela@WagnerLaw.com, Bill Wagner, Esq. at billwagner@WagnerLaw.com and angela@wagnerlaw.com, Charles D. Scott, Esq. at itslegal@aol.com, Elizabeth Clark Tarbert, Esq. at eto@flabar.org, William J. Schifino, Jr., Esq. at wschifino@burr.com, Michael J. Higer, Esq. at mhiger@bergersingerman.com, Lori S. Holcomb, Esq. at lholcomb@floridabar.org, Carl B. Schwait, Esq. at cschwait@gmail.com, John M. Stewart, Esq. at jstewart@rosswayswan.com, Timothy Patrick Chinaris, Esq. at tchinaris@gmail.com, and Thomas M. Gordon, Esq. at tom@responsivelaw.org and info@responsivelaw.org by e-service through the E-filing Portal System this 16th day of September 2016.

Respectfully submitted,

By: /s/ Charles A. Morehead III

Charles A. Morehead III

President, Broward County Bar Association

Florida Bar Number: 501255

ABRAMOWITZ, POMERANTZ & MOREHEAD, P.A.

Belle Terre of Sunrise - Suite 101A

7800 West Oakland Park Boulevard

Sunrise, Florida 33351

Phone (954) 572-7200

Fax (954) 748-6488