

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES CASE NO. SC19-
REGULATING THE FLORIDA BAR –
CHAPTER 23 REGISTERED ONLINE
SERVICE PROVIDER PROGRAM

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. Reg. Fla. Bar 1-12.1.

Amendments

The bar proposes a new chapter of the Rules Regulating The Florida Bar to approve a voluntary registration program for online legal service providers. Online legal service providers have been operating for many years. As technology improves and advances, so do the services offered by the online providers. What started out as a disk or CD with fill in the blank legal forms, has now evolved into interactive software assisting consumers. For the most part, the online service providers are not regulated which means the public is not protected. Several jurisdictions have addressed the issue of online legal service providers from the standpoint of the unlicensed practice of law. The approach of chapter 23 is a bit different. For additional information on approaches taken by other jurisdictions, see August 16, 2019 memo to Board of Governors in Appendix D.

In Florida, nonlawyer preparation of legal forms has not constituted the unlicensed practice of law since 1978 when the Supreme Court authorized nonlawyers to sell legal forms and complete them with information provided in writing by the customer. *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla.

1978). Later, the rules were amended to allow a nonlawyer to engage in limited oral communication when assisting a customer in the completion of a Supreme Court Approved form. *The Florida Bar re Amendment to Rules Regulating The Florida Bar (Chapter 10)*, 510 So. 2d 596 (Fla. 1987). As technology changed, this Court's rules and holdings were applied to the different media. Therefore, in Florida it is not the unlicensed practice of law for a website to provide legal forms that are completed with answers to questions generated by the program.

Because it does not constitute the unlicensed practice of law for an online service provider to provide forms completed with interactive software, chapter 23 focuses on how the services can increase access while at the same time protecting the consumer. Chapter 23 creates a new program that allows online service providers to voluntarily register with The Florida Bar. The chapter provides requirements for online service providers to voluntarily register, permissible and prohibited communications, required disclosures to consumers, permitted and prohibited charges, and how registration is granted and revoked. Chapter 23 defines an online service provider as an internet-based business that provides or offers to provide legal services to the public. The legal services are limited to 1) providing legal forms the consumer can complete without the assistance of a lawyer, 2) providing legal forms with the availability of a lawyer to answer the consumer's questions, and 3) referring the customer to a lawyer. Online service providers who register under the rule must certify, among other things, that the online service provider will not interfere with the lawyer's independent professional judgment, which generally is the stated rationale for prohibiting division of fees with nonlawyers. Registered online service providers may advertise that they are registered with The Florida Bar and may use an approved logo.

By offering voluntary registration and its related requirements, The Florida Bar can exercise some oversight of services that are now largely unregulated.

CHAPTER 23 REGISTERED ONLINE SERVICE PROVIDER PROGRAM

SUBCHAPTERS 23-1 THROUGH 23-8

Explanation: Creates a new chapter of the Rules Regulating The Florida Bar that provides requirements for online service providers to voluntarily register with The Florida Bar, permissible and prohibited communications, required disclosures to consumers, charges, and how registration is granted and revoked.

Reasons: Provides voluntary registration and related requirements for online service providers to protect the public in the provision of legal forms and other limited services in an otherwise unregulated service.

Source: Special Committee on Technologies Affecting the Practice of Law

Background Information – Member Commentary / Committee Action:

- Special Committee on Technologies Affecting the Practice of Law approved 7-0 on February 7, 2019.
- Board of Governor's first reading on May 24, 2019.
- The bar's chief financial officer has determined that this new chapter could result in a significant fiscal impact.
- The Budget Committee approved 10-0 on July 18, 2019.
- Rules Committee approved 8-0 on a procedural basis on July 8, 2019.
- Program Evaluation Committee approved 16-0 on a strategic basis on July 18, 2019.

Board Action: Board of Governors approved on voice vote without objection on September 20, 2019.

Official Notice of Amendments

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file all the proposals in this petition was published in the November 1, 2019 issue of the bar *News*. A copy of that published notice from the Internet version of that *News* issue is included with this petition, in Appendix C. This notice was published in the online version of the bar *News* on October 17, 2019, and can be found at:

<https://www.floridabar.org/the-florida-bar-news/proposal-to-amend-the-rules-regulating-the-florida-bar/>

No Discrepancy with Thomson Reuters' Florida Rules of Court

During the preparation of this petition, the bar noted no discrepancies 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*.

Other Pending Amendments

There are 3 pending petitions to amend Rules Regulating The Florida Bar pending before this Court:

In re: Amendments to Rule Regulating The Florida Bar - 1-3.2, Case No. SC19-1335;

In re: Amendments to Rule Regulating The Florida Bar - Rule 3-6.1, Case Number SC19-1688; and

In re: Amendments to Rule Regulating The Florida Bar 21-4.1, Case No. SC19-1861.

The proposed amendments within this filing are unrelated to the petitions above and may be considered independent of them.

Contents of Appendices

The complete text of all proposals is included in Appendix A to this petition, in legislative format (i.e., 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.

A memo outlining regulatory activity regarding online service providers in other jurisdictions is in Appendix D.

Comments in Response to Amendments

No comments were received by the bar in response to these amendments.

Oral Argument Requested

The bar seeks oral argument regarding these amendments.

Effective Date Request

As to all amendments sought in this filing, the bar requests that any changes 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

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

John M. Stewart
President 2019-20
Florida Bar Number 120472

Dori Foster-Morales
President-elect 2019-20
Florida Bar Number 849332

Lori S. Holcomb
Director, Division of Ethics and Consumer
Protection
Florida Bar Number 501018

Elizabeth Clark Tarbert
Ethics Counsel
Florida Bar Number 861294

The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
Tel: (850) 561-5600
Primary E-mail Address:
jdoyle@floridabar.org
Secondary E-mail Address:
eto@floridabar.org

CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this petition is typed in 14 point Times New Roman Regular type.

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

CERTIFICATE OF READ-AGAINST

I certify that the Rules Regulating the Florida Bar set forth within 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
Executive Director
Florida Bar Number 25902