

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES CASE NO. SC19-2077
REGULATING THE FLORIDA BAR –
CHAPTER 23 REGISTERED ONLINE
SERVICE PROVIDER PROGRAM

**SUPPLEMENTAL COMMENTS REGARDING
PROPOSED AMENDMENTS**

Florida Bar member Timothy P. Chinarris respectfully submits these supplemental comments regarding The Florida Bar's Petition to Amend the Rules Regulating The Florida Bar by adding proposed new Chapter 23. This Court authorized the filing of supplemental comments in its Order dated March 2, 2022.

The undersigned concurs in The Florida Bar's Motion to Defer Consideration filed on March 11, 2022, to the extent that the Bar seeks deferral of this matter until after the Bar submits a report to this Court on or before December 30, 2022.

Alternatively, the undersigned continues to oppose the Bar's Petition to adopt Chapter 23 for the reasons set forth in the undersigned's comments previously filed with this Court on January 7, 2020, as well as for the following reasons: (1) the access

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to legal services rationale advanced by the Bar does not provide support for adopting the proposed rules; (2) any advertising by nonlawyer legal service providers should be subject to the same rules that govern advertising by lawyers and qualifying providers; and (3) the proposed “Registered With The Florida Bar” designation will confuse or mislead the public.

**THE ACCESS RATIONALE ADVANCED BY THE BAR
DOES NOT SUPPORT ADOPTION OF THE PROPOSED RULES**

Access to the legal system or to legal services is repeatedly mentioned in proposed Rule 23-1 as the purpose underlying the Bar’s request for this Court to adopt proposed Chapter 23. The hope that Chapter 23 will improve access is the rationale for the Bar’s Petition. Unfortunately, this hope is unfounded. When the Bar’s Petition was filed in 2019, this rationale was speculative at best. Now, as a result of experience in other states, we no longer have to speculate – we *know* that the Bar’s asserted rationale for its unprecedented request to grant “registered” status to nonlawyer legal service providers is completely lacking in empirical support.

Arizona and Utah recently relaxed their rules regarding nonlawyer involvement in the practice of law to permit sharing of

legal fees with nonlawyers and nonlawyer ownership of law firms. These changes were made with the hope that they would improve access to the legal system for ordinary people, but there is a notable lack of any evidence that these radical rule changes have increased access to legal services. To the contrary, the experience of these jurisdictions argues forcefully *against* the adoption of proposals such as Chapter 23.

In Arizona, none of the first three pilot programs approved through the state’s “regulatory sandbox” meaningfully addressed the access concern that purportedly justified the rule changes – that is, the problem lower income people have finding access to the legal services they need in their daily lives, such as family law, landlord-tenant law, and employment law. The first program approved by the Arizona Supreme Court was an entity in which a lawyer and a wealth management company combined to provide estate planning services to consumers. The second program was a company that provides transactional legal services along with tax and accounting advice. The third program was a company that provides accounting and tax services as well as trust, probate, and corporate transactional services.¹ These types of legal services are

hardly at the top of the list of services needed by underserved clients.

Further, for a number of years the District of Columbia's ethics rules have permitted limited nonlawyer ownership interests in law firms. Yet, as noted by Florida Bar President Tanner, the chair of the Special Committee to Improve the Delivery of Legal Services acknowledged to the Board of Governors that there has been no demonstrated improvement in access to justice as a result of those rule changes. See President Tanner's letter to Chief Justice Canady and this Court dated December 29, 2021, p. 6.

Additional evidence that extreme rule changes have not had the desired effect of improving access to legal services is found in the State of Washington's experience with its Licensed Limited Legal Technician ("LLLT") program. In 2012 the Washington Supreme Court approved the LLLT program, which authorized nonlawyers who met the program's criteria to offer legal services directly to clients in family law matters. In 2020, however, the state supreme

¹ See "Arizona Licenses First Three Alternative Business Structures for Delivering Legal Services," online at <https://www.lawsitesblog.com/2021/05/arizona-licenses-first-three-alternative-business-structures-for-delivering-legal-services.html>.

court sunsetted the LLLT program. During the program's eight-year life, only 45 persons were licensed as LLLTs (with only 39 active LLLTs listed as of 2020).²

The approval of proposed Chapter 23 in the absence of any evidence that it could accomplish its goal of improving access to legal services would be both unwise and, as explained below, potentially harmful to the public.

**ANY ADVERTISING BY NONLAWYER LEGAL SERVICE
PROVIDERS SHOULD BE SUBJECT TO THE SAME RULES THAT
GOVERN ADVERTISING BY LAWYERS AND QUALIFYING
PROVIDERS**

Florida lawyers and qualifying providers must comply with strict rules governing their advertising. See Rules 4-7.11 through 4-7.22, Rules Regulating The Florida Bar. This includes the requirement that most advertisements be filed with the Bar for review. Rule 4-7.19.

The value of the advertising regulations and the benefit to the public of the filing requirement were reaffirmed by the Board of Governors, as reported in Florida Bar President Tanner's letter to

² See "How the Washington Supreme Court's LLLT program met its demise," *ABA Journal*, July 9, 2020, online at <https://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise> .

Chief Justice Canady and this Court dated December 29, 2021, p.

8. Despite this, proposed Chapter 23 would allow registered online service providers to advertise without adhering to the regulations that govern *all other legal services advertising in Florida*.³ There is no justification for this disparate treatment; in fact, logic suggests that the proposed rule has it backwards. Lawyers are licensed by this Court and have stringent ethical obligations. Qualifying providers must follow the specific requirements set out in Rule 4-7.22, including complying with the advertising rules and filing their advertisements with the Bar, or Florida lawyers may not accept referrals from them. In clear contrast, many of the entities that could become Registered Online Service Providers under proposed Chapter 23 are owned by nonlawyers, are not based in Florida, and have no apparent incentive to operate in a manner consistent with the ethical standards set by this Court.

The Bar may respond by arguing that many Registered Online Service Providers also will fall within the definition of “qualifying

³ Even advertising by lawyers who are not admitted to practice in Florida must comply with Florida’s lawyer advertising rules when those out-of-state lawyers “target advertisements for legal employment at Florida residents.” Rule 4-7.11(b), Rules Regulating The Florida Bar.

provider.” This may be true, but it offers no comfort – as the Bar’s own records demonstrate. Three of largest online legal service providers currently are registered with the Bar as qualifying providers (Legal Match, LegalZoom, and Rocket Lawyer). They spend millions of dollars annually on advertising, yet *none of them have ever filed even a single advertisement with the Bar*, despite the requirements of Rule 4-7.22. If these qualifying providers ignore the rules now, there is no reason to believe that their behavior will improve if Chapter 23 is adopted.

**THE PROPOSED “REGISTERED WITH THE FLORIDA BAR”
DESIGNATION WILL CONFUSE OR MISLEAD THE PUBLIC**

The Bar spends substantial effort and resources to educate the public about the lawyer disciplinary system. Proposed Rule 23-5.1(a) would permit a registered online service provider to hold itself out to the public as being “Registered With The Florida Bar.” This designation is reasonably likely to mislead the public into believing that the provider is subject to Bar regulation, as Florida lawyers are.

In order to become a “Registered Online Service Provider” under the proposed rules, an entity must file an application in

which the applicant certifies a number of things. Proposed Rule 23-4.1(a). The Bar will “review” the application and, if the provider “meets all of the requirements,” the applicant will be added to the list of registered providers. Proposed Rule 23-4.1(b). It is not clear what, if anything, that the Bar will do beyond making sure that the application is properly completed. As noted above, there are high-profile, multi-million dollar entities on Bar’s current list of qualifying providers that have not filed their advertising with the Bar. The risk of misleading the public into believing that online service providers are subject to meaningful Bar oversight is a realistic and troubling concern that justifies this Court’s denial of the Bar’s Petition.

Respectfully submitted,

/s/ Timothy P. Chinaris

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed through the Portal and furnished to the persons listed below, by e-mail service, on this 14th day of March, 2022 to:

Joshua E. Doyle, Florida Bar Executive Director; Michael G. Tanner, Florida Bar President; Gary S. Lesser, Florida Bar President-elect; Elizabeth Clark Tarbert, Florida Bar Lawyer Regulation Division Director; Kevin W. Cox; Joel L. Mumford; Adam D. Harmelin; Alan Frederick Wagner; Bill Wagner; James McGuire; Karl M. Schmitz; Samuel M. Yaffa; Mary Jo Rivero; Robin L. Hoyle; David Luther Woodward; Eric S. Kolar; Dana Laganella Gerling; David R. Paz; Lawrence J. Navarro; Teeluck Persad; Evelyn J. Pabon Figueroa; Mark S. Gold; Rodney D. Gerling; Russell J. Frank; Melissa C. Mihok; John Olea; Russell Earl Warren; Nina T. Marano; Hallie L. Zobel; Harry G. Reid; William Falik; Eric M. Beller; Ted L. Hollander; George W. Chesrow; Jose Mauricio Bello; Curtis LeBlanc; Loretta A. Kenna; Louis C. Arslania; Sunny Goldin; Christy L. Glass; Sergiu Gherman; Barry D. Kowitt; Kevin M. Unger; Brian E. Pabian; Matthew Rosenfeld; Christopher J. Cona; Aubrey Harry Ducker; Scott G. Hochman; Cory G. Hauser; Cheryl-Dene Spring; William T. Cotterall; Erwin Rosenberg; and Gerald Salerno.

/s/ Timothy P. Chinaris

Timothy P. Chinaris
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CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that this document is typed in 14 point
Bookman Old Style type.

/s/ Timothy P. Chinaris

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