

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR  
PETITION TO AMEND RULE  
REGULATING THE FLORIDA BAR  
4-7.22 LAWYER REFERRAL SERVICES

CASE NO. SC14-

**PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR**

The Florida Bar (the bar), pursuant to R. Regulating Fla. Bar 1-12.1, petitions this court for an order amending the Rule Regulating The Florida Bar 4-7.22 Lawyer Referral Services and states:

**Authority to File Petition**

This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors).

**Organization of Petitions**

The bar's biennial submission has been divided into 4 parts, with all 4 petitions filed simultaneously. The first petition, entitled Petition to Amend Rules Regulating The Florida Bar - Biennial Filing 2014, encompasses those rules that the bar believes may require more consideration and reflection by this Court. The second petition, entitled Petition to Amend Rules Regulating The Florida Bar - Biennial Filing 2014 Housekeeping, comprises those rules that the bar believes may require less contemplation by this Court and for which this Court may be inclined to expedite review. Many amendments in the housekeeping petition involved editorial changes, housekeeping amendments to update the rules based on the passage of prior amendments, changes to codify long-standing practice, changes to court rules, and other amendments likely to require less of this Court's attention than the proposals in the first petition. The third petition, entitled Petition to Amend Rule Regulating The Florida Bar 4-1.5 Fees and Costs for Legal

Services, includes amendments solely to rule 4-1.5, addresses issues that may require more consideration and reflection by this Court, and for which the Bar seeks oral argument. The fourth petition, entitled Petition to Amend Rule Regulating The Florida Bar 4-7.22 Lawyer Referral Services, includes amendments solely to rule 4-7.22, addresses issues that may require more consideration and reflection by this Court, was the subject of a study by a special committee, and for which the Bar seeks oral argument.

This petition is to amend R. Regulating Fla. Bar 4-7.22 Lawyer Referral Services and includes amendments to rule 4-7.22 that were approved by the Board of Governors between July 2012 and July 2014.

## **Organization of Amendments**

The bar proposes amendments to R. Regulating Fla. Bar 4-7.22 as indicated below. This section provides information regarding development of proposed amendments to rule 4-7.22 as required by Part III of this Court's administrative order number AOSC 06-14 of June 14, 2006 in *In Re: Guidelines for Rules Submissions*. This section 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.

## **Amendments**

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

#### **Rule 4-7.22 Lawyer Referral Services**

*Explanation:* Within subdivision (a), adds new subdivision (4) that prohibits lawyers from accepting referrals from a lawyer referral service that directly or indirectly requires the participating lawyers to refer clients to another person or entity for other services or places economic pressure on the lawyer to make such referrals and renumbers other subdivisions accordingly. Within subdivisions (a)(5) and (a)(6) [new subdivisions (a)(6) and (a)(7)], adds "at its headquarters address in Tallahassee" after "The Florida Bar." Within subdivision (a)(7) [new subdivision (a)(8)] adds that a lawyer who has notified the bar of a relationship that the lawyer is accepting referrals may not accept referrals from a service who has not

responded to bar inquiries only after being notified by the bar of the service's failure to respond. Within subdivision (a)(8) (new subdivision (a)(9), changes "subject" to "approved by The Florida Bar pursuant." Within subdivision (a)(10) [new subdivision (a)(11)] adds "and other communications to consumers." Adds new subdivision (a)(13) prohibiting lawyers from accepting referrals from a lawyer referral service unless the service discloses to the consumer at the time the referral is made the location of the lawyer's bona fide office by city, town or county. Adds new subdivision (a)(14) prohibiting lawyers from accepting referrals from a lawyer referral service unless the service uses a name that is not misleading to the public and does not use any name that would lead consumers to believe the service directly provides legal services. Within subdivision (b), exempts Florida Bar approved lawyer referral services under chapter 8 from lawyer's responsibility for advertising by the lawyer referral service. Adds new subdivision (b)(2) requiring lawyers to notify the bar within 15 days of agreeing to accept referrals from a lawyer referral services, except for Florida Bar approved lawyer referral services under chapter 8. Adds new subdivision (b)(3) requiring lawyers to notify the bar within 15 days of terminating a relationship with a lawyer referral service, except for Florida Bar approved lawyer referral services under chapter 8. Adds new subdivision (b)(4) requiring lawyers to designate a lawyer in a law firm that is responsible for compliance with bar rules and for responding to bar inquiries regarding a lawyer referral service when the agreement is between the service and a law firm, except for Florida Bar approved lawyer referral services under chapter 8. Adds new subdivision (b)(5) requiring lawyers to pay an administrative fee to be set by the bar for administering the program and enforcing these rules except for Florida Bar approved lawyer referral services under chapter 8. Adds new subdivision (b)(6) prohibiting lawyers from making the initial contact in person, by telephone, telegraph, facsimile or any written communication that does not comply with the direct mail rules with a consumer after the referral is made. Adds new subdivision (b)(7) prohibiting a lawyer from referring clients to any person or entity in exchange for receiving referrals from the service. Adds new subdivision (b)(8) prohibiting lawyers from accepting referrals if the lawyer referral service interferes with the participating lawyer's professional judgment, including if the lawyer referral service requires the lawyer to refer the lawyer's clients to the lawyer referral service, an owner of the service, or an entity owned by the service or the service's owner. Adds new subdivision (b)(9) prohibiting participating lawyers from referring clients to the lawyer referral service, an owner of the service, or an entity owned by the service or the service's owner unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure to the client of the relationship and obtains the client's informed consent, confirmed in writing. Adds new subdivision (b)(10) requiring lawyers to disclose in writing to clients at

the outset of representation who are referred by a service that the lawyer received the referral and, if the lawyer paid the service for referrals, that the lawyer paid the service for referrals. Adds new subdivision (b)(11) prohibiting lawyers from charging referred clients any higher fee or cost than if no lawyer referral service were involved. New commentary defines what constitutes an improper division of fees. New commentary explains that lawyers may not charge referred clients a higher fee or cost to offset the lawyers' cost of doing business with the lawyer referral service.

*Reasons:* The Special Committee on Lawyer Referral Services, after a year of study and public hearings on lawyer referral services, including for-profit and Florida Bar approved chapter 8 lawyer referral services, recommended amendments to Rule 4-7.22 on lawyer referral services. The special committee was concerned about abuses reported when the special committee invited comment from bar members and the public and recommended amendments to the lawyer referral service rule to address those abuses. The special committee had particular concerns regarding conflict of interests when a lawyer referral service referred consumers to both a lawyer and another professional from the same incident, particularly when the lawyer referral service was owned by the other professional receiving the referral. Additionally, the special committee had concerns regarding reports that lawyer referral services were engaged in direct solicitation. A copy of the final report is in Appendix D of this petition.

The Board Review Committee on Professional Ethics of the Board of Governors was tasked with reviewing the final report and making recommendations to the Board of Governors regarding amendments to the lawyer referral service rule to address the concerns with these reported abuses. The Board Review Committee on Professional Ethics did not recommend adoption of all the proposals of the special committee and recommended adoption of some amendments that were not considered by the special committee. The Board Review Committee on Professional Ethics received written and verbal comments from several for-profit lawyer referral services which disagreed with some of the specific recommendations of the Special Committee on Lawyer Referral Services and carefully reviewed the report of the Special Committee on Lawyer Referral Services. The Special Committee on Lawyer Referral Services made recommendations in its July 2012 final report for amendments to Rules Regulating The Florida Bar regarding lawyer referral services. The final 2 recommendations, regarding enforcement of rules and public education, were not within the purview of the Board Review Committee on Professional Ethics. The Board Review Committee on Professional Ethics reviewed the following recommendations (numbering corresponds to the final report of the Special Committee on Lawyer Referral Services):

1. A lawyer shall not accept client referrals from any person, entity or service that also refers or attempts to refer clients to any other type of professional service for the same incident, transaction or circumstance, and shall furthermore be prohibited from referring a client to any other professional service in consideration of the lawyer's receipt of referrals from any lawyer referral service. These recommendations appear in proposed amendments in new subdivisions (a)(4) and (b)(7), (b)(8) and (b)(9), but are modified by the Board Review Committee on Professional Ethics to indicate that a lawyer referral service cannot require the lawyer to refer matters to the lawyer referral service or its owners, that the lawyer cannot accept referrals if there is an adverse effect on the lawyer's independent professional judgment, and any referrals to the lawyer referral service or its owners must comply with conflicts of interest rules.

2. A lawyer receiving or accepting client referrals from a referral service shall register such referral service participation with The Florida Bar, including all referral services with which the lawyer participates. This recommendation appears in proposed amendments in new subdivision (b)(2), and the Board Review Committee on Professional Ethics also drafted amendments requiring the lawyer to notify the bar within 15 days after the relationship is terminated in new subdivision (b)(3). In addition, any such lawyer shall provide complete disclosures regarding the lawyer's relationship with the referral service, ownership of the service, financial arrangements between the service and the lawyer, and the lawyer's affirmation of compliance with all Bar rules regarding referral services. The Board Review Committee on Professional Ethics did not recommend adoption of this recommendation and did not draft any proposed amendments to address it. Such attorney registration shall require payment of a fee as may be determined by The Florida Bar. This recommendation appears in proposed amendments in new subdivision (b)(5).

3. A lawyer participating with a referral service for the purpose of receiving or accepting client referrals must designate a lawyer within the lawyer's firm to serve as the responsible party for the firm for all cases referred to the firm or any attorney in the firm by a referral service. This recommendation appears in proposed amendments in new subdivision (b)(4).

4. A lawyer is prohibited from initiating contact with a prospective client referred by a referral service; all such contact must be initiated by the prospective client. This recommendation appears in proposed amendments in new subdivision (b)(6).

5. A lawyer accepting referrals from a lawyer referral service shall provide complete disclosures to clients of their participation in referral services, such as either a revised or addendum to the Client's Statement of Rights, notification in law firm reception areas and inclusion of the referral service participation in lawyer advertising. This recommendation appears in proposed amendments in new subdivision (b)(9), but the Board Review Committee on Professional Ethics modified the recommendation to solely require that the lawyer notify referred clients in writing at the outset of representation that the lawyer received a referral and paid for it, if applicable.

In addition to the recommendations of the Special Committee on Lawyer Referral Services, the Board Review Committee on Professional Ethics also proposed the following amendments:

1. The addition of new subdivision (b)(10) which prohibits the lawyer from charging any additional fee or cost to a client that is higher than that if the client was not referred by a lawyer referral service.

2. The addition of a new provision in current sub division (a)(7) that a lawyer will not be subject to discipline for a failure of a lawyer referral service to respond to the bar unless the lawyer has been notified by the bar of the service's failure to respond.

3. The addition of a new provision in current subdivision (a)(10) that lawyer referral services must affirmatively state in all communications to consumers that it is a lawyer referral service.

4. The addition of new subdivision (a)(13) that lawyers cannot accept referrals from a lawyer referral service unless the service discloses to consumers at the time a referral is made a bona fide office location of the lawyer by city, town or county.

5. The addition of new subdivision (a)(14) that prohibits a lawyer from accepting referrals from a lawyer referral service that uses a name that is misleading to the public, including a name that could cause consumers to reasonably conclude that the service is a law firm or directly provides legal services.

6. Exempted not-for-profit lawyer referral services approved under Chapter 8 from the requirements of subdivisions (b)(1) (responsibility of lawyer for compliance with ad rules), (b)(2) (notification to bar of joining LRS), (b)(3) (notification to bar of terminating relationship with LRS), and (b)(4) (designation of responsible lawyer in firm), (b)(5) (payment of administrative fee to the bar).

7. The addition of commentary describing what constitutes an improper division of fees with a lawyer referral service, which would include a percentage of the fee received by the lawyer, a fixed fee based on the perceived value of the case, and a fee per matter accepted by the lawyer from the service. A fee that is not an improper division of fees would include a flat fee per time period (flat weekly, monthly or annual fee), a reasonable fixed fee per matter referred (pay per lead), and a fixed fee per time a consumer views information about the lawyer (pay per click).

*Source:* Special Committee on Lawyer Referral Services and Board Review Committee on Professional Ethics

*Background Information – Member Commentary / Committee Action:*

- Board Review Committee on Professional Ethics approved by vote of 8-0 on January 30, 2014.
- Budget Committee approved by vote of 6-0 on February 21, 2014.
- Rules Committee approved by voice and e-mail of 6-0 vote on February 24, 2014.

*Board Action:* Board of Governors approved March 28, 2014. A small minority of Board of Governors members voted against the proposal and would have followed the recommendations of the Special Committee on Lawyer Referral Services.

## 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 August 15, 2014 issue of the bar *News*. A photocopy of that published notice, printed from the Internet version of that *News* issue is included with this petition, in Appendix C. This notice can also be found at

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/13895FEBD04AE96D85257D260049FFB1>

## **No Discrepancy with West's Online 2014**

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 online in the most recent version of West's Florida Rules of Court.

### **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. These editorial errors were not corrected in the official bar *News* notice.

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 these additional revisions be accepted by this Court, and that this Court waive approval by the Board of Governors as to all the edits and Board of Governors approval and official notice in the print version of the bar *News* for this rule, pursuant to 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**

One petition to amend R. Regulating Fla. Bar 1-7.3, filed by more than 50 members of the bar in good standing, is pending before this Court in case SC14-1165. The proposed amendments within this filing are unrelated to the pending petition in case SC14-1165 and may be considered independent of it. There are no other proposed amendments to rule 4-7.22 pending before this Court and no proposed amendments to rule 1-7.3 are contained in this petition.

## **Contents of Appendices**

The complete text of all proposed amendments 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 rule 4-7.22 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.

The final report of the Special Committee on Lawyer Referral Services, correspondence of note, newspaper articles, and amendment proposals by other persons or groups received during the rules development process are provided in Appendix D.

## **Comments in Response to Amendments**

Extensive information was collected by the Special Committee on Lawyer Referral Services during its study. Numerous comments were received by the Board Review Committee on Professional Ethics during its review of the report of the Special Committee on Lawyer Referral Services; those comments are attached to this petition in Appendix D. Most of the comments received dealt with proposals that the Board Review Committee on Professional Ethics altered before making a final recommendation to the Board of Governors. No comments were received by the bar after publication of official notice to file a petition to adopt amendments to Rule 4-7.22.

## **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/ John F. Harkness, Jr.

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### **CERTIFICATE OF TYPE SIZE AND STYLE**

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

/s/ John F. Harkness, Jr.

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John F. Harkness, Jr.  
Executive Director  
Florida Bar Number 123390

### **CERTIFICATE OF READ-AGAINST**

I certify that the Rules Regulating The Florida Bar set forth in this petition have been read against the on-line version of *West's Florida Rules of Court*.

/s/John F. Harkness, Jr.

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John F. Harkness, Jr.  
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