

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR RE:  
PETITION TO AMEND RULES  
REGULATING THE FLORIDA BAR

CASE NO. SC08-1890

**THE FLORIDA BAR'S REPLY TO COMMENTS  
OF TIMOTHY P. CHINARIS**

THE FLORIDA BAR, Petitioner, hereby submits its reply to the comments of Bar member Timothy P. Chinaris, filed in response to its petition to amend the Rules Regulating The Florida Bar as follows:

Timothy P. Chinaris is the only individual who filed timely commentary following the filing of the Bar's Petition to Amend the Rules Regulating The Florida Bar on October 7, 2008. Mr. Chinaris's comments relate to the Bar's proposal to amend Rule 4-7.10, subsection (c)(1).

The Bar proposes to amend Rule 4-7.10(c)(1) as follows:

**(c) Definition of Lawyer Referral Service.** A "lawyer referral service is:

(1) any person, group of persons, association, organization, or entity that receives ~~a fee or charge~~ any consideration, monetary or otherwise, given in exchange for referring or causing the direct or indirect referral of a potential client to a lawyer ~~drawn~~ selected from a specific group of panel of

lawyers[.]

Mr. Chinaris objects to this rule change as overbroad and asserts that the Bar did not properly explain the reason behind the proposed rule change in its Petition. The Bar submits that the proposed rule change is not overbroad and there are valid reasons for the proposed rule change.

Contrary to the commentator's assertions, the Bar is not attempting to extend its disciplinary jurisdiction over true directories of lawyers, but is rather trying to eliminate an ambiguity in the existing lawyer referral service rule that arguably allows entities acting in every way as referral services to avoid compliance with the Bar rules because these entities do not charge lawyers money for the privilege of being on their referral lists. Such entities have taken calls and website inquiries from the public and referred them to lawyers who specifically asked or were invited to be part of the referral group. However, instead of requiring monetary payment such entities required a *quid pro quo* from the lawyers in their referral pool, such as referring clients to their medical facilities, MRI clinics, or other businesses in order to continue obtaining referrals.

While the commentator is correct that lawyers are prohibited from such conduct by 4-7.2(c)(14), the Bar cannot control such conduct by non-lawyer referral services without great difficulty. Under the current definition of a lawyer referral

service, Rule 4-7.2 and its subsection 4-7.2(c)(14) do not apply unless a referral service falls squarely within the realm of the current version of Rule 4-7.10 by requiring payment of a monetary fee. This gives an entity owned by non-lawyers, which refers clients to lawyers with a non-monetary “payment” arrangement, a potential argument, under the current rule, that they are not operating a referral service and are therefore not subject to the lawyer advertising rules and Rule 4-7.2(c)(14) does not apply. This problem could be resolved if, as the Bar requests, Rule 4-7.10(c)(1) were revised to cover all contingencies of payment (including non-monetary *quid pro quo* requirements) for a lawyer’s inclusion in a referral service.

Advertisements by noncompliant lawyer referral services have been and continue to be a significant regulatory problem for the Bar and its members. Failure to change the rule would allow entities acting as lawyer referral services, but not charging a monetary fee for their services, to violate the rules to the detriment of the public. Rule 4-7.10 protects the public by requiring that individual lawyer referral services or their individual lawyers have malpractice insurance coverage in an amount not less than \$100,000 per claim or occurrence. Rule 4-7.10(a)(4). Rule 4-7.10, subsections (a)(1) through (a)(3) also protect the public by requiring registration of the service and all the lawyers it employs to ensure that all the

lawyers are members in good standing with The Florida Bar. These rules further require that the service and all its lawyers comply with the Bar's attorney advertising rules.

Failure to add the requested clarification to Rule 4-7.10(c)(1) would put the public at risk and make it difficult for the Bar to enforce its rules as to the lawyers employing unregistered referral services. Since the lawyer referral services that are now escaping regulation due to the current ambiguity of Rule 4-7.10(c)(1) do not register with the Bar, the Bar often encounters great difficulty in learning which lawyers are participating in the improper referral service. It is difficult to sanction lawyers under Rule 4-7.2(c)(14), as the commentator suggests, when the Bar does not know their identity and often cannot learn it without great effort and expense.

Finally, the proposed change to Rule 4-7.10(c)(1) would not give the Bar jurisdiction over true listing services which allow lawyers to list their services for free, with no expectation of remuneration of any type, monetary or non-monetary. For example, the "Find a Lawyer" section of the Bar's website does not require any special payment to be listed in that section. All that is required is that the lawyer be a current or former member of The Florida Bar.

The fact that The Florida Bar is a mandatory bar which requires fees from its members does not mean that it is charging its members for the "Find a Lawyer"

section of its website. There is no additional charge for this service, which is offered free to all Bar members as a service to the public just as the Ethics Hotline is a free service for Bar members.

Unlike a referral service, where only certain individuals give consideration to enlist in the service, the Find a Lawyer service covers all current and former Florida Bar members, providing public information such as the member's address and telephone numbers, Bar committee participation and the member's discipline history. In fact, one of the main purposes of this service is to give the public access to discipline information about individual Bar members. In addition to providing information about members in good standing, the Find a Lawyer service pulls up names of disbarred and suspended attorneys and gives the public access to their discipline file numbers so that members of the public can then obtain precise information about the person's past history with the Bar.

This service would no in any way become a "referral service" under the proposed changes to Rule 4-7.10(c)(1). The Bar's website makes this clear with the following language:

The Find A Lawyer directory provides limited basic information about attorneys licensed to practice in Florida and is provided as a public service by The Florida Bar. The information contained herein is provided "as is" with no warranty of any kind, express or implied. The Florida Bar, its Board of Governors, employees, and agents thereof are

not responsible for the accuracy of the data. Much of the information is provided by the attorney and it is the attorney's responsibility to review and update the information. Publication of attorneys' contact information within this listing should not be construed as their consent to receive unsolicited communications in any form. Certain unauthorized uses of this data may result in civil or criminal penalties. The Find A Lawyer directory is not a lawyer referral service.

Similarly, neither would the Yellow Pages be considered a referral service under the proposed change to Rule 4-7.10(c)(1). The Yellow Pages is a publication containing a collection of individual advertisements by individual businesses, all of which pay to be included in the Yellow Pages listings. There is no central number to call for "referrals" to an individual lawyer. The Yellow Pages is not in the business of making sure that its advertisers make money or get clients from their advertisements as is a referral service. The Yellow Pages is merely a publication that groups by subject matter individual advertisements that are paid for with monetary consideration.

Likewise, a listing service like Martindale-Hubbell would not be affected by the proposed rule change because it offers a free listing service to any lawyer in good standing who asks to be included in the directory and sends basic information for such listing. Lawyers can pay for more elaborate listings with more information if they so choose, but the basic service is free to all.

Proposed Rule 4-7.10(c)(1) is not an attempt by the Bar to interfere with legitimate legal directories, but rather is a sensible proposal to ensure that all actual referral services are subject to the same rules to protect the public. The commentator's proposal to block the proposed change would impede rather than advance the goal of protecting the public.

Finally, the commentator objects to the proposed change in the language of Rule 4-7.10(c)(1) which would change "drawn from" a pool of lawyers to "selected from." The Bar submits that the words "selected from" more accurately describe what occurs when a member of the public calls a lawyer referral service. The typical referral service does not randomly "draw" a name from a hat; rather, it specifically reviews its listing of lawyers and selects a lawyer or lawyers who will best meet the needs of the prospective client in experience, area of practice, fee and geographic location. A specific selection process occurs when a referral service responds to an inquiry and this is what a lawyer is paying for when that lawyer signs up with the service. Therefore, the Bar submits that the proposed change to "selected from" most accurately describes the process. If the Court should wish to consider another term, "chosen from" would also convey more accurately than the words "drawn from" the process of recommendation which is the business of lawyer referral services.

WHEREFORE, The Florida Bar respectfully requests that this court reject the comments of Timothy P. Chinaris as they relate to the proposed amendments to rule 4-7.10(c)(1), Rules Regulating The Florida Bar.

Respectfully submitted,

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



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply has been sent by United States mail to the following individuals on this 25<sup>th</sup> day of November, 2008.

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November 25, 2008

**CERTIFICATE OF TYPE SIZE AND STYLE**

I HEREBY CERTIFY that this Reply is typed in 14 point Times New Roman Regular type.

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