

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES REGULATING THE FLORIDA
BAR – SUBCHAPTER 4-7, LAWYER
ADVERTISING

CASE NO. SC11-1327

**COMMENTS OF 1-800-411-PAIN REFERRAL SERVICE, LLC
REGARDING PROPOSED RULE 4-7.12(a)(11)**

COMES NOW 1-800-411-PAIN Referral Service, LLC (the “Service”), represented by Florida Bar member Timothy P. Chinaris, and files the following comments regarding The Florida Bar’s Petition asking this Court to adopt proposed Rule Regulating The Florida Bar 4-7.12(a)(11), and states:

1. These comments are filed in response to the Notice published in the June 15, 2011, issue of the *Florida Bar News*.
2. The Service operates as a lawyer referral service pursuant to rule 4-7.10, Rules Regulating The Florida Bar.
3. The undersigned is a member in good standing of The Florida Bar.
4. The Service respectfully requests that this Court stay consideration of the Bar’s request to adopt proposed rule 4-7.12(a)(11) until the conclusion of the

Board of Governors' ongoing study of lawyer referral services. Alternatively, the Service urges this Court to reject proposed rule 4-7.12(a)(11).

This Court should stay action on the proposal

5. This Court should stay action on proposed rule 4-7.12(a)(11) for the reasons set forth below.

6. In early 2011 the Bar president appointed a Special Committee on Lawyer Referral Services (the "LRS Committee"). According to the Bar's website, the LRS Committee is charged with reviewing the practices of lawyer referral services, the rules and other regulations applicable to lawyer referral services, and the issue of whether and to what extent the Bar can directly regulate lawyer referral services.

7. The work of the LRS Committee has not been completed and may not be completed for some time. At least one more public hearing is scheduled for late September 2011.

8. Upon completion of the LRS Committee's work, it will present a report to the Bar's Board of Governors. The Board may then decide to approve proposed rule changes for submission to this Court.

9. In its Petition in this cause, the Bar has informed this Court that any rule change proposals resulting from the Bar's study of lawyer referral services will be submitted to the Court at a later date. Appendix B to Bar's Petition, p. 82.

In order to deal with *all* proposals affecting lawyer referral services as a comprehensive package, this Court should stay action of the Bar's present proposal to adopt rule 4-7.12(a)(11) until the LRS Committee and the Board complete their work. The Bar has not explained why proposed rule 4-7.12(a)(11) should be ruled on apart from other lawyer referral service rule changes.

Alternatively, this Court should reject the proposal

10. Alternatively, if this Court declines to stay action on the proposal it should reject proposed rule 4-7.12(a)(11) for the reasons set forth below.

11. The proposed rule would impose a new requirement that all lawyer referral service advertisements affirmatively state that lawyers who accept referrals "pay to participate in" the service. This proposed requirement would have a significant adverse effect on private lawyer referral services, which have been permitted in Florida and regulated through the Rules of Professional Conduct for more than a quarter century.

12. Many lawyer referral services advertise using radio and television. Advertisements in those media are short, often running for thirty seconds or less. The existing rules already require an affirmative disclosure that the ad is for a lawyer referral service. If a non-lawyer spokesperson is used in the ad – which is virtually always the case – an additional "non-attorney spokesperson" disclosure is required. Adding a *third* required disclosure would be a substantial burden.

Lawyer referral services will be forced either to forego running the shorter ads or to purchase longer ads at greater expense. The Bar has offered no justification to support this additional burden.

13. This Court should reject this proposed new requirement. If, however, the Court agrees with the Bar that additional disclosure must be made regarding payment for referrals, then such a disclosure rule should be more inclusive. Two examples of disclosure rules that would treat lawyers and lawyer referral services equitably, rather than singling out referral services for more restrictive treatment, appear below.

14. Under both the existing and proposed rules, a lawyer who runs an advertisement for cases that the lawyer intends to refer to another lawyer must include a statement so advising the viewer. *The lawyer's ad, however, does not have to state that the referring lawyer will receive a portion of the fee or that the lawyer to whom the case is referred will share the fee with the advertiser.* If it is really necessary that prospective clients be told that payments are made in connection with case referrals, then the rules should uniformly provide that *any* ad involving a potential referral – whether for a law firm or a lawyer referral service – must contain the disclosure.

15. Under the proposed “lawyer directory” rule 4-7.13, ads for lawyer directories would *not* be required to disclose that lawyers pay to be listed. The Bar

has provided no explanation for the failure to require that the fact of fee payment be disclosed in “lawyer directory” ads as would be required in “lawyer referral service” ads. The two situations should be treated similarly.

Conclusion and Prayer for Relief

16. For the foregoing reasons, the Service respectfully requests that this Court stay action on proposed rule 4-7.12(a)(11) until the LRS Committee and the Board have completed their work. Alternatively, this Court should decline to adopt proposed rule 4-7.12(a)(11).

Respectfully submitted,

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For:
1-800-411-PAIN Referral Service, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by

U.S. Mail on this 26th day of July 2011, to:

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CERTIFICATE OF TYPE SIZE AND STYLE

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

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