

**FINAL REPORT OF THE
SPECIAL COMMITTEE TO IMPROVE THE DELIVERY OF LEGAL SERVICES**

By:

John Stewart, Chair

Cesar Alvarez

Joseph Corsmeier

Josias Dewey

Santo DiGangi

Adriana Gonzalez

John F. Harkness, Jr.

Shawwna Hoffman-Childress

Lansing Scriven

Sarah Sullivan

Bar Consultant Lori Holcomb

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I. Introduction

On November 6, 2019, the Supreme Court of Florida (the Court) sent a letter to John Stewart, then president of The Florida Bar, requesting that a study be conducted “into whether and how the rules governing the practice of law in Florida may be revised to improve the delivery of legal services to Florida’s consumers and to assure Florida lawyers play a proper and prominent role in the provision of these services.” (A copy of the referenced is attached in Appendix A.) The Court requested that the study address:

Lawyer Advertising

Referral Fees

Fee Splitting

Entity Regulation

Regulation of Online Service Providers

Regulation of Nonlawyer Providers of Limited Legal Services

Additional Topics Consistent with the Subject of the Study

Pursuant to the Court’s directive, the Special Committee to Improve the Delivery of Legal Services (the Committee) was appointed. The composition of the Committee is diverse in practice area, firm size, geography, gender and ethnicity and includes a member of the public considered an expert in artificial intelligence and other areas of technology. Because of the variety of issues involved, the Committee divided into subcommittees as follows:

Review of Rule 4-5.4 Professional Independence of a Lawyer and accompanying ethics opinions

Review of pertinent advertising rules as found in Chapter 4-7 of the Rules Regulating The Florida Bar

Review of Rule 4-7.17 relating to payment of referral to persons other than lawyers (including related rules and ethics opinions)

Review of Lawyer Referral services including Rule 4-7.22 (For Profit) and Chapter 8 (Not-for-Profit) and related rules and ethics opinions

Review of regulatory framework including entity regulation, regulatory sandbox and related concepts

Member and public engagement and data collection and review

Review of Advanced Florida Registered Paralegal Proposal

The Committee met a total of 16 times. The subcommittees met a total of 45 times with some subcommittees meeting more often than others.

The Committee reviewed hundreds of pages of reports¹ and had discussions with the following individuals who have studied the issues before the Committee:

Justice Deno Himonas, Utah Supreme Court (the Committee heard from Justice Himonas two times)

Andrew Arruda, member of the California Task Force on Access Through Innovation of Legal Services

Crispin Passmore, Passmore Consulting, United Kingdom (the Committee heard from Crispin Passmore two times)

Vice Chief Justice Ann A. Scott Timmer, Arizona Supreme Court

John Lund, Chair of the Utah Office of Legal Services Innovation, past-president of the Utah Bar

In addition, the subcommittee studying public engagement and data collection had a conversation with Lawrence Alexander, Chair of the Access to Justice Service Innovation Lab of the Law Society of British Columbia. Mr. Alexander's presentation was made available to the Committee.

The input from these individuals was invaluable. They were able to provide insight into the thoughts and work of their committees/jurisdictions, interactions with their courts, and with members of their bars.

The Committee also heard from Mark Gold, a member of The Florida Bar, and reviewed the results from the 2021 Florida Bar Member Survey and the Florida Bar Survey of Florida Registered Paralegals.

II. The Court's Constitutional Authority

As the work of the Committee includes studying the provision of legal services by those not admitted to the practice of law, the Committee considered the ability of the Court to regulate such services. The questions addressed were the Court's regulatory authority in such instances. The Court has dealt with these issues on several occasions although the approach has varied. The Committee concluded that because the Court has the exclusive jurisdiction to admit persons to the practice of law, the Court can admit/authorize anyone to practice law and, once admitted, can regulate their conduct.

As noted in the Court's November 6, 2019 letter, Article V, section 15 of the Florida Constitution gives "[t]he supreme court . . . exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." Even though the Florida Constitution gives the Court this exclusive jurisdiction, the Constitution does not dictate how the Court must regulate the admission of persons to the practice of law or how the Court may discipline persons admitted. While most individuals are admitted via The Florida Bar examination, that is not the sole process.²

¹ The reports can be found under Background Materials on the Committee's webpage on The Florida Bar's website at <https://www.floridabar.org/about/cmtes/cmtes-me/special-committee-to-improve-the-delivery-of-legal-services/>. The agendas and minutes can be found at that link as well.

² See Rules of the Supreme Court Relating to Admission to the Bar

For example, chapter 17 of the Rules Regulating The Florida Bar admits out-of-state lawyers to the practice of law for the limited purpose of acting as in-house counsel for a corporation located in Florida. Those lawyers may be admitted without having to successfully complete The Florida Bar examination. There are many other examples where through the Rules Regulating The Florida Bar, the Court has admitted individuals to the practice of law.³ Although the rules do not speak in terms of admission, that is what the rules are doing – admitting someone to practice law in Florida by authorizing the practice in one or more areas.

In addition to the rules that admit/authorize an individual to practice law, case law has also authorized the practice of law. The Court can either authorize anyone to engage in an activity or can authorize only specific individuals to engage in an activity. For example, the Court has authorized anyone to complete a legal form with information provided by the individual who will be using the form in a court proceeding.⁴ However, only certain individuals not admitted to the practice of law may draft and file a complaint for residential eviction for nonpayment of rent.⁵ Similarly, case law authorizes a real estate licensee to prepare the documents necessary to bring together the buyer and seller including the contract for sale.⁶ Alternatively, anyone who is not a real estate licensee who prepares a contract for sale is not admitted to the practice of law for that purpose and can be prosecuted for the unlicensed practice of law.⁷

Once someone is admitted or authorized to practice law in Florida, the Court can regulate that practice. This extends to anyone admitted to practice. As held by the Court, in addition to acting in a judicial capacity, the Court also “acts in its administrative capacity as chief policy maker, regulating the administration of the court system and supervising *all persons* who are engaged in rendering legal advice to members of the general public.”⁸ Part of this grant of constitutional authority and supervision is the authority to establish rules, regulations, and the parameters of practice that, if violated, will result in discipline.

There are many examples of the Court establishing rules, regulations, and parameters under which a person may practice law, the most obvious being the Rules of Professional Conduct.⁹ For example, Chapter 17, which governs the admission of out-of-state lawyers to act as in-house counsel to Florida corporations, limits permissible activities to giving advice and providing services only to the corporation.¹⁰ The lawyer is

³ Chapter 11 – Certified Legal Intern Program
Chapter 12 – Emeritus Lawyer Rule
Chapter 16 – Foreign Legal Consultants
Chapter 18 – Military Legal Assistance Counsel
Chapter 21 – Military Spouse
Rule 4-5.5 – Multijurisdictional Practice of Law

⁴ *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978); R. Regulating Fla. Bar 10-2.2.

⁵ *The Fla. Bar re: Advisory Opinion Nonlawyer Preparation of Landlord Uncontested Evictions*, 605 So. 2d 868 (Fla. 1992), *clarified*, 627 So. 2d 485 (Fla. 1993).

⁶ *Keyes Co. v. Dade County Bar Association*, 46 So. 2d 605 (Fla. 1950).

⁷ *The Florida Bar v. Arango*, 461 So. 2d 932 (Fla. 1984).

⁸ *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978) (emphasis supplied).

⁹ R. Regulating Fla. Bar; Cp. 4 Rules of Professional Conduct.

¹⁰ R. Regulating Fla. Bar 17-1.3(a).

not considered a member of The Florida Bar; however, the lawyer may be subject to discipline or sanctions if the lawyer engages in unethical conduct or provides services other than those allowed by the rule.¹¹

Case law also provides examples of when the Court has regulated the conduct of individuals authorized or admitted to the practice of law. For example, in a case involving an out-of-state lawyer who was authorized through Federal statutes and regulations to practice tax law in Florida, the Court regulated how he could practice, including how he could advertise his services in Florida.¹² The Court has also established guidelines under which an interstate law firm may practice law in Florida, thereby regulating the conduct of all lawyers who are part of the firm.¹³

In sum, what the rules and case law show is that once an individual is admitted to the practice of law in Florida, the Court can regulate that individual's activities as they relate to the practice of law. After reviewing the case law and rules, the Committee concluded that the Court's constitutional authority to regulate the admission of persons to the practice of law and the discipline of persons who are admitted allows the Court to admit or authorize anyone to the practice of law and, once admitted, regulate the admittee's conduct.

III. Summary of Committee's Findings and Recommendations

Introduction

In 2014, the American Bar Association (ABA) commissioned a study on the future of legal services in the United States. The report begins with several observations which are still relevant today.

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex, making them increasingly out of reach for most Americans. Many who need legal advice cannot afford to hire a lawyer and are forced to either represent themselves or avoid accessing the legal system altogether. Even those who can afford a lawyer often do not use one because they do not recognize that their problems have a legal dimension or because they prefer less expensive alternatives. For those whose legal problems require use of the courts but who cannot afford a lawyer, the persistent and deepening underfunding of the court systems further aggravates the access to justice crisis, as court programs designed to assist these individuals are being cut or not implemented in the first place.

At the same time, technology, globalization, and other forces continue to transform how, why, and by whom legal services are accessed and delivered. Familiar and traditional practice structures are giving way in a marketplace that continues to evolve. New providers are emerging, online and offline, to offer a range of services in dramatically different ways. The legal profession, as the steward of the justice

¹¹ R. Regulating Fla. Bar 17-1.6.

¹² *The Florida Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

¹³ *The Florida Bar v. Savitt*, 363 So. 2d 559 (Fla. 1978).

system, has reached an inflection point. Without significant change, the profession cannot ensure that the justice system serves everyone and that the rule of law is preserved. Innovation, and even unconventional thinking, is required. The justice system is overdue for fresh thinking about formidable challenges. The legal profession's efforts to address those challenges have been hindered by resistance to technological changes and other innovations. Now is the time to rethink how the courts and the profession serve the public. The profession must continue to seek adequate funding for core functions of the justice system. The courts must be modernized to ensure easier access. The profession must leverage technology and other innovations to meet the public's legal needs, especially for the underserved. The profession must embrace the idea that, in many circumstances, people other than lawyers can and do help to improve how legal services are delivered and accessed.¹⁴

Since the ABA report was issued in 2016, the legal marketplace has continued to evolve with little changes being made to how legal services are delivered in the United States. This started to change in 2019 and 2020 when various jurisdictions began studying how legal services are delivered and whether the delivery of legal services could, and should, change to provide greater access. Utah and Arizona led this charge with California, Illinois and New York close behind. Florida joined these jurisdictions in 2020 when the Court requested this study. The work of these jurisdictions, as well as reforms in other countries, helped guide the Committee. While the reforms may have been the starting point, the Committee reviewed the studies considering Florida's rules and legal marketplace. The recommendations in this report take all of this into account.

While the report contains several recommendations, the Committee is not recommending any rule changes at this time. Instead, the Committee took final action on certain items and voted to approve other items in concept.

Final Action Taken:

1. The Committee voted to recommend to The Florida Bar that The Florida Bar promote a better understanding of Rule 4-1.2(c) of the Rules Regulating The Florida Bar. This rule allows lawyers to limit the scope of their representation and provide unbundled legal services. As noted in the comment to the rule, “[a] limited representation may be appropriate because the client has limited objectives for the representation” or because the client may wish to “exclude actions that the client thinks are too costly . . . or which the client regards as financially impractical.”¹⁵ Although this option is available to both the lawyer and the client, it is being underutilized. Providing education in this area will help lawyers understand the rule. With better understanding, the rule may be utilized more with clients reaping the benefits.
2. The Committee voted that the Court should establish a regulatory sandbox where the recommendations approved in concept may be tested and appropriate data

¹⁴ American Bar Association Report on the Future of Legal Services in the United States, American Bar Association Commission on the Future of Legal Services (2016) at pgs. 8 – 9 *available at* https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf

¹⁵ R. Regulating Fla. Bar 4-1.2(c).

collected. The regulatory sandbox will be referred to in this report as the Law Practice Innovation Laboratory Program or the Lab. Although the Committee voted that the Lab be established, the format was approved in concept only. The Lab is discussed in more detail in section IV of this report.

3. The Committee agreed with the subcommittee report that Chapter 8 - Lawyer Referral Rule should not be amended.

4. The Committee agreed with the subcommittee report that rule 4-7.17 - Payment for Advertising and Promotion and rule 4-7.22 - Referrals, Directories and Pooled Advertising should not be amended at this time. Should changes be made to rule 4-5.4 and the advertising rules, these rules may have to be revisited.

Approved in Concept:

1. Rule 4-5.4, Fee Splitting and Law Firm Ownership

Rule 4-5.4 prohibits a lawyer from sharing legal fees with a nonlawyer and prohibits a lawyer from forming “a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.”¹⁶ Florida first adopted a rule prohibiting fee sharing and entering into a partnership with a nonlawyer in 1955. Florida's current rule is based on the American Bar Association (ABA) Model Rule which was promulgated in 1969.¹⁷ For over a decade, the ABA and several states, including Florida, debated whether the rule should be relaxed.¹⁸ Until recently, the answer has been no.¹⁹ Now, states are taking a fresh look at the rule and its prohibitions and are making changes.

The change is being driven in part to increase innovation in how legal services are provided with the hope of addressing unmet legal needs in the United States. Although the United States has one of the highest concentrations of lawyers in the world, the United States “ranks just 109 out of 128 countries in access to justice and affordability of civil legal services, below Zambia, Nicaragua, and Afghanistan. Two-thirds of American adults reported having a civil legal problem in [2019 – 2020], but only one-third of those received any help. . . Small businesses have significant legal issues as well, and yet 60% of small business owners who have at least one such issue– which they describe as one of the ‘greatest threats to their business’ – do not have a lawyer to assist them.”²⁰ Unfortunately, “[l]egal aid and pro bono alone

¹⁶ R. Regulating Fla. Bar 4-5.4,

¹⁷ Alternative Law Business Structures ABA Issue Paper (April 5, 2011) available at http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf

¹⁸ Ann Marie Puente, *Modern Complexity Demands New Ways of Working: The Future of the Lawyer-Nonlawyer Partnership*, 95 Fla. B. J. 34 (May/June 2021) available at <https://www.floridabar.org/the-florida-bar-journal/new-ways-of-working-the-future-of-the-lawyer-nonlawyer-partnership/>

¹⁹ *Id.*

²⁰ Jason Solomon, Deborah Rhode & Annie Wanless, *How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice*, Stanford Center on the Legal Profession, April 2020 at 1, available at https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/Rule_5.4_Whitepaper_-_Final.pdf

cannot solve the problem. Providing even one hour of attorney time to everyone in the United States with a legal problem would cost around \$40 billion, but total expenditures on legal aid . . . are just 3.5% of that amount. Providing one hour of pro bono per justice problem would require over 200 hours of pro bono work per attorney per year, but the average pro bono hours worked per attorney is only 42.8.”²¹ Jurisdictions are now realizing that changes to how lawyers may form firms to practice law can help solve the problem.

While “the environment in which legal services are provided has been rapidly changing,”²² “law firms suffer from a lack of innovation in marketing, finance systems, project management, and more” because law firms cannot offer equity to nonlawyers.²³ This prohibition is seen as “a major contributing factor to America’s access to justice problem” because “prohibiting investment from non-lawyers leaves law firms strapped for capital [and] . . . makes it harder for law firms to keep up with modern innovations in business practices. Firms cannot form cost-effective multidisciplinary practices with other service providers, and few have incentive to invest in technology and business processes. Consumers today expect seamless, integrated services, and Rule 5.4 prevents lawyers from meeting the needs of their clientele.”²⁴ The prohibition also impedes a lawyer’s ability to practice law. Instead of using the skills learned in law school and focusing on the practice of law, “[t]he ban on nonlawyer ownership means lawyers — who receive no training on how best to manage a business during their three years in law school — are expected to run businesses” spending “only 2.5 hours of billable time per 8 hour work day.”²⁵ “Many jurisdictions and entities have recognized that changing the prohibition on non-lawyer ownership may create strong, more stable law firms, as well as free up lawyers to focus more on legal practice” which they are trained to do.²⁶

“Jurisdictions [outside of the United States] that have eliminated regulations similar to Rule [4-5.4] . . . demonstrate that involvement of non-lawyers fuels innovation without compromising legal services. . . . [C]omparative research finds no evidence that [alternative business] models result in adverse effects on consumers. Rather, they allow for increased choice and competition, improved services to consumers, reduced prices, and increased innovation in the provision of legal services.”²⁷ Perhaps most telling of the success of relaxing or eliminating the prohibitions

²¹ *Id.*

²² *See* Court Letter at Appendix A.

²³ Solomon, *supra* note 20 at 5.

²⁴ *Id.* at 2 & 3.

²⁵ *Id.* at p. 5.

²⁶ *Id.* at 8.

²⁷ *Id.*

against nonlawyer ownership and fee sharing is the fact that “[t]o date, no jurisdiction that eliminated its prohibition . . . has reinstated it.”²⁸

It is against this environment and research that Arizona and Utah amended their rules in 2020 to eliminate the prohibitions of rule 4-5.4. Arizona eliminated their rule in its entirety.²⁹ Utah took a different approach by creating a regulatory sandbox where relaxation or elimination of the prohibition can be tested in a controlled environment.³⁰ The Committee is suggesting that Florida take the route taken by Utah and has unanimously voted to approve in concept the following recommendations of the subcommittee studying rule 4-5.4:

Amend Rule 4-5.4 to permit nonlawyers to have a non-controlling equity interest in law firms with restrictions.

The approved concept, similar to the Washington D.C. rule, allows for nonlawyers to have a non-controlling equity interest in a law firm with restrictions. Specifically, the work of the nonlawyer must actively support the work of the law firm. For example, a nurse who analyzes medical records for a personal injury firm could have a non-controlling equity interest in the law firm. The lawyers in the firm must retain a controlling interest in the firm (e.g., the aggregate nonlawyer equity interest should be less than 50%). The lawyers would remain responsible for the actions of the nonlawyers, and the nonlawyers must agree to comply with the Rules of Professional Conduct. Additional amendments to the rule make it clear that none of the recommended changes would impact the lawyer’s ethical obligation to exercise independent professional judgment.

Nothing in the rule or concept would *require* a law firm to offer an equity interest to any nonlawyers. To the contrary, if implemented, the Committee’s approved concept would operate to eliminate the current restriction that limits a lawyer’s ability to decide with whom the lawyer associates.

The Special Committee explicitly voted that professional rules should not be amended to permit passive ownership of law firms.

Passive ownership would allow outside investors with no relationship to the law firm or the practice of law to have an ownership interest in a law firm. Although the subcommittee felt that there could be some benefit to consumers if passive ownership were allowed, the subcommittee was concerned with the risk of conflicts of interest and a possible impact on the lawyer’s independent professional judgment. While passive ownership could allow for more ambitious ventures between law firms and technology companies, the other changes being proposed regarding fee splitting may also achieve the same goals but with fewer risks. If passive ownership were to be explored, it should

²⁸ *Id.*

²⁹ *In the Matter of Restyle and Amend Rules 31, 41, 42 (Various ERs from 1.0 to 5.7), 46-51, 54-58, 60 and 75 – 76*, Case No. R-20-0034 (AZ. Aug. 27, 2020) available at <https://www-media.floridabar.org/uploads/2020/08/AZ-order-amending-ad-rules.pdf>

³⁰ Utah Supreme Court Standing Order No. 15 (2020), *amended*, (April 30, 2021) available at <https://www-media.floridabar.org/uploads/2021/06/Utah-Supreme-Court-Amended-Order-15-re-Sandbox.pdf>

be done in the context of the proposed Law Practice Innovation Laboratory Program so that safeguards can be put in place and data collected.

Within the Law Practice Innovation Laboratory Program eliminate the restriction on fee sharing with nonlawyers under Rule 4-5.4.

The subcommittee concluded that there are benefits to allowing fee sharing with nonlawyers. The benefits include opening up new ways that lawyers can work with technology companies or other nonlawyer companies and individuals to provide more innovative ways to deliver services, and in some cases, provide consumers with more information useful to the selection of legal counsel. An innovation that is hindered by the current rule could include an arrangement between a technology company and law firm to streamline referrals, the engagement process, or case flow for situations where the client wants extra help. By not allowing a revenue share between others and the law firm, these types of relationships are inhibited.

The subcommittee considered several different approaches to allow fee splitting while protecting the core values of the legal profession. One would be to retain the idea of registered online providers pending before the Court as the Chapter 23 amendment to the Rules Regulating the Florida Bar but eliminate restrictions on how the fee is calculated.³¹ Similarly, a distinction can be made between a true referral service and one that makes referrals ancillary to providing a product or service to consumers, such as forms preparation. Another approach is to only eliminate some restrictions on how a fee is calculated, not all. For example, fee sharing could be allowed on a per engagement basis but not on the value of a potential case. Also considered was whether to maintain the current restrictions on some types of cases but not others.

Rather than attempting to determine the best approach in a vacuum, perhaps the best approach is to eliminate or modify the fee sharing restrictions, but only as part of a pilot program or Law Practice Innovation Laboratory Program. This would allow the Court and The Florida Bar the flexibility to respond to issues and concerns that arise during the pilot program and to collect data around these types of relationships. A pilot or lab program also permits the drafting of a final regulatory scheme based on empirical data rather than anecdotal observations and conjecture.

Depending on the approach taken, other rules may have to be amended including,, but not necessarily limited to Rule 4-7.17 on referral fees and Rule 4-7.22 regarding referral services. Specific rule language was not approved.

Amend the rules to allow for not-for-profit law firms.

Also approved in concept is amending the rules to permit not-for-profit legal service providers to organize as a corporation and to permit nonlawyers to serve on the not-for-

³¹ *In Re: Amendments to Rules Regulating The Florida Bar – Chapter 23 Registered Online Service Provider Program*, SC19-2077 (Dec. 2019). On November 3, 2020, the Court entered an order deferring consideration of this petition until after the Court receives the Committee's final report. Other than the discussion noted here, the Committee did not discuss Chapter 23 or take any action on Chapter 23. Whether the petition needs consideration and action will depend on how the Court views the recommendations made in this report.

profit legal service provider's board of directors. This conforms the rules to current practice. The amendments include a definition of a not-for-profit law firm.

Not-for-profit law firms play a vital role in Florida's legal landscape as the only place for low income people to receive civil legal assistance. Adopting a rule change to explicitly authorize their charitable corporate structure and incorporate the federal requirements for nonlawyer eligible client board members³² is essential to validate the already existing network of Florida legal aid providers, many of which have operated since the Rules of Professional Conduct were adapted from the prior canons. The omission of legal aid organizations as "law firms" for purposes of the Rules of Professional Conduct can be explained as an oversight, as there is no public policy reason or benefit from exclusion. A study done in 2017 showed that on a nationwide basis, 77% of persons with legal problems do not receive legal help³³ and 86% of the civil legal needs of low-income individuals receive inadequate legal help or no legal help at all.³⁴ The Special Committee's amendments pertaining to legal service non-profits would fuel innovation within these entities to provide an even broader scope to underserved communities and populations.

All of the aforementioned changes approved in concept are included in Appendix B. Although some of the changes are in rule amendment format, they were approved in concept only and have not been vetted by The Florida Bar's rule making process. As noted, the recommendations anticipate that should the recommendation to establish a Law Practice Innovation Laboratory Program be adopted by the Court, all or part of the recommended changes would be placed in the Lab for implementation and study.

One possibility the subcommittee studying fee sharing discussed is the concept of an entity that includes both lawyers and nonlawyers and provides both legal and nonlegal services to its clients. The arrangement could involve direct or indirect fee sharing. An example might be a single business organization that offers both legal services and accounting services or a non-profit legal provider that also provides social work, therapeutic services, or job coaching to its low-income clients. An additional possibility the subcommittee discussed is the ability of nonlawyers to provide certain legal services within the operation of a law firm.

The subcommittee believes that the Lab could consider (1) entities that offer both legal and non-legal services, whether owned entirely by lawyers or not and (2) entities that allow nonlawyers to provide certain legal services. As with other recommendations made by the Committee, the subcommittee is not proposing a rule change. Rather, the subcommittee is recommending that the scope of the Lab not be limited to certain types of entities and that each entity applying to the Lab be evaluated on its individual merits. The Committee agrees with this approach.

³² 45 C.F.R. § 1607.2(c) (2019).

³³ World Justice Project, Global Insights on Access to Justice, 2018, *available at*, <https://worldjusticeproject.org/news/global-insights-access-justice>

³⁴ The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans, Legal Services Corporation (June 2017) *available at* <https://worldjusticeproject.org/news/global-insights-access-justice>

2. Lawyer Advertising

As requested by the Court, the Committee reviewed Florida's advertising rules. Although the advertising rules are continually amended, the last major revision of the advertising rules was in 2013.³⁵ Much has changed during the past eight years. Consumers access legal services differently, relying heavily on websites, social media, and peer reviews. The Association for Professional Responsibility Lawyers (APRL), a national association of lawyers who are immersed in lawyer ethics rules and professional responsibility issues, recognized this in 2015 when it recommended that the ABA model rules on advertising be amended and streamlined. As noted in the report:

The realities of on-line and other forms of electronic media advertising reflect the advent of ecommerce, competition, and changes in market forces. . . . The legal profession today is an integral part of the Internet-based economy, and advertising regulations should enable lawyers to effectively use new on-line marketing tools and other innovations to inform the public. The sharp increase in mobile technology and Internet marketing options have resulted in borderless forms of marketing and advertising. Virtual law practice and web-based delivery of legal services, as well as the public's increased reliance on and use of the Internet and mobile technology, mandate a reexamination of how the legal profession views lawyer advertising and what can or should be effectively regulated.

A realignment of the balance between the core values of professional responsibility and effective lawyer advertising designed to communicate accurate information about the availability of legal services for consumers in the twenty-first century is essential. . . . [T]he overarching goals are two-fold: (1) establishing a uniform and simplified rule that prohibits false and misleading advertisements; and (2) ensuring that consumers have access to accurate information about legal services while not being deceived by members of the Bar.³⁶

The APLR's conclusion was that the public and the profession are best served "by having a single rule that prohibits false and misleading communications about a lawyer or the lawyer's services."³⁷

Taking the lead from APRL, the American Bar Association adopted Resolution 101 in 2018, which reduced the number of model advertising rules and focused on preventing advertisements that are unfair, deceptive, or misleading.³⁸

This is also the approach that Arizona took in 2019 when the Arizona Task Force on the Delivery of Legal Services recommended that their advertising rules be amended and

³⁵ *In re: Amendments to the Rules Regulating The Florida Bar – Subchapter 4-7, Lawyer Advertising Rules*, 108 So. 3d 609 (Fla. 2013).

³⁶ Association of Professional Responsibility Lawyers 2015 report of the Regulation of Lawyer Advertising Committee, p. 5 available at <https://www-media.floridabar.org/uploads/2021/06/aprl-advertising-report-6-22-15-final.pdf>

³⁷ *Id* at p. 3.

³⁸ American Bar Association Resolution 101 (Aug. 2018) available at <https://www-media.floridabar.org/uploads/2021/06/ABA-Resolution-101-Lawyer-Advertising.pdf>

simplified.³⁹ On August 27, 2020, the Supreme Court of Arizona adopted the amendments.⁴⁰

Following the example of APRL, ABA, and the Supreme Court of Arizona, the Committee unanimously voted to approve amendments to the advertising rules in concept. These amendments would streamline the advertising rules, make the language of the rules more succinct, and eliminate any processes or requirements that are no longer as appropriate or necessary as they may have been in the past.

In streamlining the language of the advertising rules and making them more succinct, the amendments approved in concept simplify prohibited advertisement to deceptive and misleading advertisements. A substantial amount of language contained in the body of the rules is moved to the comment section of the rules. The language which has been moved to the comment sections mainly consist of examples that helped illustrate the content of each respective rule. The comments are guides to interpretation and can be used as guidance to determine if discipline is warranted.⁴¹

Among the other notable changes are deletions to outdated requirements in the rules, for example, the use of celebrities in advertisements; deletions to language regarding presumptively valid content in advertisements; and deletions to required content in advertisements. The Committee believes that these sections of the rules are no longer necessary based on the more streamlined definition of prohibited advertisements in addition to modern views on lawyer advertising and lawyer advertising rules. The amendments also propose language which would be required in advertisements for lawyers with virtual offices.

One process and requirement that would be eliminated if the rules are proposed and adopted is removing the requirement of pre-authorization and approval of an advertisement by The Florida Bar. Instead, a lawyer may voluntarily submit their advertisement to The Florida Bar for review. Upon review and approval, the lawyer/law firm will be provided with a “safe harbor” and not be subject to discipline. A lawyer who does not voluntarily submit her or his advertisement for review and produces a deceptive and misleading advertisement will be subject to discipline by The Florida Bar.

The history of discipline regarding advertising violations supports the recommendations to streamline the rules and remove the pre-authorization and approval process. For fiscal year 2019-2020, The Florida Bar reviewed 4,089 new advertisements and 1,056 revisions for a total of 5,145 advertisements reviewed. During that same period, there were 12 cases regarding lawyer advertising, which can include cases closed, and pending that fiscal year and no cases where discipline was imposed. Over the past 10 years, the bar has imposed discipline in only 10 cases involving advertising.

³⁹ Arizona Task Force on the Delivery of Legal Services, (Oct. 2019) 21- 28 *available at* <https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750>

⁴⁰ *In the Matter of Rule 42 Rules of the Supreme Court*, Case No. R-20-0030 (AZ Aug. 27, 2020) *available at* <https://www-media.floridabar.org/uploads/2020/08/AZ-order-amending-ad-rules.pdf>

⁴¹ Chapter 4. Rules of Professional Conduct Preamble: A Lawyer’s Responsibilities.

The revisions approved in concept are included in Appendix C. Although the revisions are in rule amendment format, they were approved in concept only and have not been reviewed by The Florida Bar's rule making process.

3. Regulation of Nonlawyer Providers of Limited Legal Services

In 2020, Rebecca L. Sandefur, a professor at the Arizona State University School of Social and Family Dynamics and Faculty Fellow of the American Bar Foundation, published an article titled, "Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms."⁴² The article started with several observations, beginning with the crisis in access to civil justice in the United States.

"The crisis in access to civil justice in the United States is well-established. Recently, the World Justice Project compared access to justice in nations across the globe based on surveys of ordinary people's experiences with civil justice problems. This study highlighted the United States' poor performance. Americans experience an enormous number of civil justice problems, many affecting basic needs in core areas of life: fully two-thirds of surveyed American adults reported having a justice problem in the past two years. Of those reporting justice problems, only one third received any help, despite the fact that their problems caused hardships such as illness, economic adversity, or damage to important relationships for 45% of those who had them. Most of the time people navigate these problems and their sequelae without help, much less help from a lawyer."⁴³

The article concludes that "[o]ne small change in the typical regulation of the practice of law could put a meaningful dent in this massive and to-date intractable problem: allowing people and things that are not lawyers to give legal advice. Expanding sources of legal advice is part of a broader approach to access to justice, which recognizes that achieving justice is not the same as receiving a specific type of service, such as the services of a lawyer. Rather, achieving justice means realizing substantively just solutions to situations and conflicts that are endemic to contemporary life."⁴⁴

In Florida, as in most United States jurisdictions, a consumer's options for obtaining legal advice and services are mostly limited to lawyers. There are some areas of the law where individuals other than lawyers can provide legal advice and services.⁴⁵ However, for the most part, the consumer's choice is restricted by court rules and prohibitions against the unlicensed practice of law.

⁴² Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 *Stan. J. C.R. & C.L.* 283 (2020) available at <https://www-media.floridabar.org/uploads/2021/02/Sandefur-article-Legal-Advice-from-Nonlawyers.pdf>

⁴³ *Id* at 284.

⁴⁴ *Id* at 284 – 285.

⁴⁵ *Id* at 289.

In 2012, Washington became the first state to license nonlawyers to provide limited legal services.⁴⁶ ⁴⁷ Since then, other states have adopted programs and rules allowing nonlawyers to provide some legal services and more are studying the issue.

In 2018, Utah adopted rules establishing a licensing program for Limited Paralegal Professionals allowing the provision of legal services in certain circumstances.⁴⁸ More recently, in 2020, the Utah Supreme Court approved the establishment of a regulatory sandbox, housed in the Office of Legal Services Innovation, to allow traditional and nontraditional legal services providers to provide legal services.⁴⁹ This can include a nonlawyer providing legal services.

New York has allowed nonlawyers to act as court navigators since 2014.⁵⁰ In late 2020, the New York Working Group on Regulatory Innovation recommended that the navigator program be expanded and that social workers be permitted to provide limited legal services and advocacy.⁵¹ Those recommendations are pending.

In August 2020, the Supreme Court of Arizona adopted licensing rules for nonlawyers, called legal paraprofessionals. Licensed paraprofessionals may provide limited legal services, including going to court with clients.⁵² The rule became effective January 1, 2021. California⁵³, Illinois⁵⁴, and New Mexico⁵⁵ are studying limited licensing. Changes in those jurisdictions have not yet been implemented.

Although the rules and programs vary, all share the characteristic of allowing nonlawyers to provide legal services under a regulatory system monitored by the court or a body established by the court. The Committee is recommending that Florida explore this option by approving a pilot program allowing Florida Registered Paralegals to provide limited legal services in specific areas and within a law office.

⁴⁶ *In the Matter of Adoption of New APR 28-Limited Practice Rule for Limited License Legal Technicians*, Case No. 25700-A-1005 (Wash. June 15, 2012) available at https://www.abajournal.com/files/2012_court_order_LLLTs.pdf

⁴⁷ On June 5, 2020 the Supreme Court of the State of Washington sunset the LLLT program finding that the overall cost of the program and the small number of LLLTs was not an effective way to address the issue of the unmet legal needs of individuals who could not hire a lawyer. June 5, 2020 letter from The Supreme Court of the State of Washington available at https://www.abajournal.com/files/Stephens_LLLT_letter.pdf. The Committee believes that their proposal does not have the issues that lead to the sun setting of Washington's program.

⁴⁸ See www.utcourts.gov/legal/llp

⁴⁹ Utah Supreme Court Standing Order No. 15, *supra* note 30.

⁵⁰ See www.mycourts.gov/courts/nyc/housing/rap.shtml

⁵¹ New York Commission to Reimagine the Future of New York's Courts, Report and Recommendations of the Working Group on Regulatory Innovation, Dec. 3, 2020 available at https://www-media.floridabar.org/uploads/2021/02/New-York-RegulatoryInnovation_Final_12.2.20.pdf

⁵² *In the Matter of Restyle and Amend Rules*, *supra* note 29.

⁵³ *State Bar of California Task Force on Access Through Innovation of Legal Services* (March 6, 2020) available at <http://www.calbar.ca.gov/Portals/0/documents/publicComment/ATILS-Final-Report.pdf>

⁵⁴ *Chicago Bar Foundation Task Force Report Ensuring Access to Justice for All* (Sept. 28, 2020) available at <http://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf>

⁵⁵ *Innovation to Address the Access to Justice Gap, Report of the New Mexico Supreme Court of the Ad Hoc Licensed Legal Technicians Workgroup*, (Dec. 2019) available at <https://www-media.floridabar.org/uploads/2021/06/New-Mexico-Report-to-Supreme-Court-Ad-Hoc-Licensed-Legal-Technicians-Workgroup.pdf>

Specifically, the Committee unanimously voted to approve in concept a Limited Assistance Paralegal Pilot Program (the pilot program) to allow qualified Florida Registered Paralegals (FRP) to provide certain limited services to some clients of a law firm or legal aid organization.⁵⁶ Rule amendments were not discussed and are not being proposed. Rather, the Committee is recommending that a pilot program be tested in the Lab.

The Limited Assistance Paralegal Pilot Program would allow a qualified Florida Registered Paralegal to assist a client in preparing and filing legal forms, provide some information to the client regarding their legal matter, and provide ministerial assistance in court proceedings. All the services must be provided in a law office and are limited to specified areas of the law.

The Committee discussed two settings where the pilot program may take place: the Law Practice Innovation Laboratory Program or the office of a legal aid organization.⁵⁷ Putting the pilot program in the Lab would allow any law firm or authorized business entity accepted into the Lab to apply to the Lab to allow the FRP to provide the limited services to clients. As with all other entities in the Lab, the Lab would establish an application and review process and criteria for reporting results and data.

A Florida Registered Paralegal working in the pilot program would be able to provide assistance to a limited representation client, a term defined in the outline as “a person who agrees in writing to receive authorized services from a paralegal providing services as part of the pilot program and acting under the authority of a supervising lawyer.” The authorized services may only involve certain areas of the law. The areas of the law are areas where litigants are often self-represented and where access may be limited. The areas encompass suggestions made by the Family Law and Real Property and Probate Sections of The Florida Bar when the sections, at the request of the Board of Governors of The Florida Bar, reviewed a rule being considered by the Services Options Committee of the Florida Commission on Access to Civil Justice. Ultimately, a rule amendment was not proposed. While the definitional language in the outline incorporates the suggestions made by the Family Law and Real Property, Probate and Trust Law Sections of The Florida Bar, those sections have not been consulted on the language in the outline and have not given input regarding the pilot program.

The responsibilities of the supervising lawyer are also spelled out in the outline. The supervising lawyer must ensure that the Florida Registered Paralegal is aware of the lawyer’s responsibilities and provide guidance to the paralegal. The supervising lawyer remains professionally responsible for the services provided. Moreover, the services performed by the FRP supplement, merge with, and become the lawyer’s work product.

⁵⁶ The Florida Bar’s Florida Registered Paralegal Program is set forth in Chapter 20 of the Rules Regulating The Florida Bar.

⁵⁷ Although not fully vetted by the subcommittee, it was mentioned at a Committee meeting that clerks of court with a self-help assistance program may also be able to use the Limited Assistance Paralegal Pilot Program to provide services. As this was not fully explored, no recommendation is being made to include the clerks of court at this time. However, this should not preclude a clerk from applying to the Lab if the pilot program is put in the Lab.

Perhaps, the topic of most discussion was the scope of permissible activities. The Committee sought to strike a balance between protecting the public and allowing activities that would assist a limited representation client and provide greater access. The list of permissible activities strikes this balance. While some of the activities expand services a nonlawyer is authorized to provide, thereby making an exception to the unlicensed practice of law or authorizing the practice of law, many of the activities are currently permitted.

In brief, the activities the Committee approved in concept are:

Selection, Completion, and Filing Forms.

A paralegal in the pilot program may assist a limited representation client in selecting a form (including conducting intake to obtain relevant information), completing the form, and filing and serving the form. Assisting an individual in selecting a form is the unlicensed practice of law.⁵⁸ The pilot program expands existing case law by allowing this activity. The remaining activities are authorized and not the unlicensed practice of law.⁵⁹

Providing Information.

A paralegal in the pilot program may give general information about the form, the court process, and legal rights, procedures or options. Giving general information is not the unlicensed practice of law.⁶⁰ However, there may be instances where the information would be more specific and constitute giving legal advice which would be the unlicensed practice of law.⁶¹ This provision could expand the unlicensed practice of law depending on the information given.

Assistance with Court Proceedings.

A paralegal in the pilot program may accompany a limited representation client to court appearances to provide administrative support and reassurance. The support is limited to ministerial matters such as assisting with scheduling court proceedings. These activities are not an expansion of what a paralegal is now authorized to do as the activities are not the practice of law.

Even though most of the permissible activities are not the unlicensed practice of law and do not expand existing case law, the pilot program itself does expand the concept of reliance found in unlicensed practice of law case law. Generally, it constitutes the unlicensed practice of law for a nonlawyer to put themselves in a position where an individual is relying on them to properly complete a legal form.⁶² When discussing the preparation of legal forms, the Court is assuming that the nonlawyer is merely providing a secretarial service and the individual is responsible for the choices and selections they

⁵⁸ *The Florida Bar v. Glueck*, 985 So. 2d 1052 (Fla. 2008).

⁵⁹ R. Regulating Fla. Bar 10-2.2(a).

⁶⁰ *In re Joint Petition Raymond, James and Associates, Inc.*, 215 So. 2d 613 (Fla. 1968); R. Regulating Fla. Bar 10-2.2(a).

⁶¹ *Id.*

⁶² *Brumbaugh*, 355 So. 2d 1186 (Fla. 1978).

make as they are representing themselves. As the pilot program allows the Florida Registered Paralegal to do more than act as a secretarial service, the pilot program places the paralegal in a position of being relied upon, thereby creating an exception to this general concept. However, as the services are taking place in a law office and under the supervision of a lawyer, the chance of public harm is lessened and is outweighed by the increased access the pilot program can provide.

Again, the Committee is not recommending a rule change and is instead recommending a pilot program to be included in the Law Practice Innovation Laboratory Program so that the concept may be tested. A recent survey of Florida Registered Paralegals supports this recommendation. The survey asked two substantive questions:

1) If you were allowed to have more responsibility and provide services to clients including helping the client fill out forms and explaining how the court process works, would you want to do that?

Over two-fifths (45%) of those responding were in favor of being allowed to have more responsibility and provide the additional services to clients. One-quarter (25%) were either neutral or need additional information before providing an opinion.

2) If you were allowed to have responsibility and provide services to clients including helping the client fill out forms and explaining how the court process works, do you believe that it would help people who are unable to obtain legal services solve their legal problems?

In response, over one-third (37%) said that the ability to provide more services would help people obtain legal services; however, 45% are either not sure or need more information before providing an opinion.⁶³

The Committee believes that taking the approach of a pilot program allows the gathering of more information and data on whether these services lead to positive outcomes. Studies have shown that “[w]hen American consumers have the choice of using an authorized nonlawyer provider, many do so.”⁶⁴ The Committee’s recommendation allows Florida consumers to have this choice in a controlled environment where data can be collected and changes to protect the public can more easily be made. An outline of the pilot program is included in Appendix D.

IV. Law Practice Innovation Laboratory Program

In 2021, The Florida Bar conducted a member survey.⁶⁵ The Committee requested that the survey include questions relating to nonlawyer ownership and fee sharing with nonlawyers. A majority of lawyers responding did not feel that eliminating or relaxing the rule prohibiting fee sharing would increase business development opportunities for lawyers (53%), did not feel that technology companies who match clients with lawyers

⁶³ See Results of the Delivery of Legal Services Survey – Florida Registered Paralegals *available at* <https://www-media.floridabar.org/uploads/2021/06/Results-of-the-Delivery-of-Legal-Services-Survey-Florida-Registered-Paralegals.pdf>

⁶⁴ Sandefur, *supra* note 43 at 289.

⁶⁵ See <https://www-media.floridabar.org/uploads/2021/02/2021-Florida-Bar-Member-Survey-Final-2-17-21.pdf>

should be permitted to retain a portion of the fee paid by the consumer (65%), did not feel that nonlawyers who supports a legal practice should be permitted to have an ownership interest in the practice (81%), and did not approve of passive ownership of law firms by nonlawyers (84%).⁶⁶ In other words, most lawyers responding did not want to see any change. Unfortunately, the reality is that the current rules are not addressing “the challenges facing Florida lawyers, and the difficulties that many Floridians encounter in securing legal services.”⁶⁷ This fear of change is likely more fear of the unknown – how will relaxing the rules on firm ownership, fee splitting, and nonlawyer practice affect the practice of law. While this is understandable, it is no reason to keep the status quo when the status quo is not working.

Understanding the fear of the unknown and the reluctance to change, most of the recommendations the Committee is making are changes in concept only with the changes taking place in the controlled environment of the Law Practice Innovation Lab Program (the Lab). The Lab concept is not new. It has been utilized in the United Kingdom for several years⁶⁸ and is now being utilized in Utah⁶⁹, Ontario⁷⁰, and British Columbia⁷¹. The Committee looked at the different approaches being taken elsewhere and voted that the model being used in Utah would best fit Florida’s needs and rules.

A Lab, or regulatory sandbox, is a mechanism whereby the Court, or a body appointed by the Court, permits entities that may be different from a traditional law firm to offer new and innovative methods, ideas, and types of legal services without a wholesale amendment of the rules. The Utah model, known as a regulatory sandbox, is under the direction of the Office of Legal Services Innovation, an office established by and under the control of the Supreme Court of Utah to evaluate, recommend, and monitor entities that wish to try new approaches to practicing law.⁷² “A regulatory sandbox is a policy tool through which new models or services can be offered and tested to assess marketability and impact and inform future policy-making. . . . In the sandbox, regulations can be relaxed, data gathered, and policy improved. . . . [T]he legal regulatory Sandbox creates a limited and controlled space outside of the traditional rules governing legal practice [and] is open to legal business models and services that would not have been

⁶⁶ *Id.* questions 60 – 63.

⁶⁷ See Court Letter at Appendix A.

⁶⁸ See Report prepared by Crispin Passmore available at <https://www-media.floridabar.org/uploads/2020/12/2020-10-01-Passmore-Consulting-submission-to-Florida-working-group.pdf>

⁶⁹ Narrowing the Access-to-Justice Gap by Reimagining Regulation Report and Recommendations from the Utah Work Group on Regulatory Reform (Aug. 2019) available at <https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf>; Utah Supreme Court Standing Order No. 15, *supra* note 30. See also The Office of Legal Services Innovation, an office of the Utah Supreme Court at <https://utahinnovationoffice.org/>

⁷⁰ Law Society of Ontario Approves Regulatory Sandbox for Legal Tech, The Canadian Bar Association (April 22, 2021) available at <https://www.nationalmagazine.ca/en-ca/articles/legal-market/regulatory/2021/law-society-of-ontario-approves-regulatory-sandbox>

⁷¹ See Innovation in the British Columbia Justice Sector presentation by Lawrence Alexander available at <https://www-media.floridabar.org/uploads/2020/12/Larry-Alexander-Presentation.pdf>

⁷² Utah Supreme Court Standing Order No. 15, *supra* note 30.

permitted under the traditional rules of professional conduct and unauthorized practice of law doctrine.”⁷³

As of April 30, 2021, the Office of Legal Services Innovation had received 47 applications to the Sandbox. From those, the Supreme Court of Utah authorized 26 entities to provide services. “Services provided range across legal needs, including family law, end of life planning, and small-business needs. Entities include those with new business structures, including nonlawyer ownership and investment and joint ventures between lawyers and nonlawyers. Several entities have been authorized to use nonlawyer human or software providers of legal advice and assistance. . . . To date, the Office has not observed evidence of consumer harm in the services being provided by the Sandbox.”⁷⁴

The Committee is recommending that Florida adopt a Law Practice Innovation Lab Program very similar to the approach taken in Utah. The advantage to taking this approach is that the concepts recommended by the Committee can be tested in a controlled environment where data can be collected, and public harm can be assessed and prevented.

Just as in Utah, the Committee is recommending that the Lab be under the direction of a Commission established and supervised by the Court. The regulatory objective and authority would be delegated to The Florida Bar for budgetary and staffing purposes much in the way lawyer discipline is structured. The Commission will designate a supervisory body that will evaluate applications and make recommendations regarding approval. The Commission will also have the ability to selectively modify current rules or regulations to see how much and what kinds of innovation might be possible within the legal services market. It is recommended that the initial phase of the Lab be 3 years.

To be considered for acceptance into the Lab, the organization or individual proposing the new venture must detail exactly what the new offering is; how they expect it to benefit the public; what risks or harms they expect might arise; how they will deploy and measure this offering; and which rules or regulations need to be modified in order for this offering to be allowed. While in the Lab, the participant must collect and provide requested data to the supervisory body. The data may vary by organization and services offered. The supervisory body and Commission will regularly report to the Court.

Participants in the Lab will be regulated by the supervisory body, the Commission and ultimately the Court. At any time, a regulated entity may be removed if the data shows that unacceptable levels of consumer harm are occurring. If consumer harm is not taking place and the other requirements imposed on the regulated entity are met within the designated period, the entity will be granted a license by the Court and can continue

⁷³ The Office of Legal Services Innovation, an office of the Utah Supreme Court at <https://utahinnovationoffice.org/>

⁷⁴ <https://utahinnovationoffice.org/wp-content/uploads/2021/05/Sandbox-Extension-PR-4-21.pdf>; See also Sandbox Public Report through March 2021 at <https://www-media.floridabar.org/uploads/2021/05/Sandbox-Public-Report-through-March-2020.pdf>

offering the approved services outside of the Lab under the guidelines established by the Commission and the supervisory body. If study shows that amendments to the rules would be beneficial to the practice of law, the Commission may recommend that changes be made.

As noted earlier, the Committee is recommending that the initial phase of the Lab be 3 years. At the end of the 3 year period, the Commission will recommend to the Court whether to permanently establish the Commission as a standing Supreme Court Commission or whether to sunset the Commission. To encourage innovation and participation in the Lab, those who have been licensed and exited the Lab will be allowed to continue offering the approved services under the regulation of the supervisory body after the Lab is formally concluded, provided there is a continued showing of low consumer harm. In other words, the regulated entity will be licensed and allowed to offer its services after the 3-year period unless there is evidence of harm to the consumer. Allowing the venture to continue is necessary to encourage innovators to apply to the Lab. Organizations and individuals will not invest the capital necessary to ensure that the venture is a success if the venture will automatically be terminated after 3 years. It is the opinion of the Committee that the Lab will be successful and will be made a permanent Commission by the Court at the conclusion of the initial 3 year period.

There are primarily two areas of the Committee's recommendations where the Lab will allow for innovation and provide valuable data: (1) the conceptual changes to rule 4-5.4 and; (2) the Limited Assistance Paralegal Pilot Program. One change to rule 4-5.4 approved in concept would allow a nonlawyer to have an ownership interest in a law firm under certain circumstances and conditions. Imagine a law firm practicing in the area of consumer debt which employs a debt counselor to work with clients on the non-legal aspects of reducing debt. The law firm could apply to the Lab for approval for the debt counselor to have an ownership interest in the firm. After evaluation, the Commission could recommend approval with conditions and for a certain time period. If all conditions are met during that time period, the firm would exit the Lab with the debt counselor having an ownership interest. This ownership interest would remain in place unless there is later evidence of consumer harm or the law firm decides to discontinue the relationship.

If the same law firm wishes to have one of the Florida Registered Paralegals employed by the firm assist clients with selecting, completing and filing forms in defending a debt collection matter, the law firm could apply to the Lab to have the Florida Registered Paralegal authorized to provide the services outlined in the Limited Assistance Paralegal Pilot Program proposal. The supervisory body would evaluate and make a recommendation. If recommended for approval and approved by the Commission, the Florida Registered Paralegal would be able to provide the service with conditions and for a certain period of time which would continue unless there is later evidence of consumer harm or the law firm decides it no longer wants to participate in the Lab.

In both scenarios, the law firm would have to provide data to the supervisory body and Commission while the activity is taking place in the Lab and possibly for a period of time after. In both examples, the data could include whether more clients are served by the

firm; whether the firm is able to provide the services at a reduced fee; and whether the services or ownership interest benefit the clients. In both examples, if there is evidence of unacceptable levels of consumer harm, participation in the Lab would be terminated.

The outline for the Lab approved in concept by the Committee is attached in Appendix E. Although the outline is somewhat extensive, it only sets forth the core of the program with certain details yet to be determined. The outline goes as far as it can until the Court provides some direction on the recommendations approved in concept by the Committee. Once that direction is received, the outline can be finalized and the Lab put in place.

V. Conclusion

An important objective of The Florida Bar's 2019-2022 strategic plan is to "strive for equal access to and availability of legal services" in part by evaluating "new and innovative potential solutions to address the gap in legal services for under-served Florida citizens."⁷⁵ Many Floridians are facing significant difficulties in securing needed legal services. Protection of the public has been of paramount importance in all of the Committee's recommendations, but that protection must be weighed against the current harm the public faces in receiving no legal services. The Committee also believes that rule changes need to be made. However, those changes should not occur based upon conjecture nor should needed changes be rejected based upon fear of the unknown. The Committee, through extensive research and study, finds that data driven decision making through the regulatory framework of the Law Practice Innovation Laboratory Program strikes the proper balance between these competing needs. For the reasons set forth in this Final Report, the Committee respectfully requests that the Court direct the Committee to prepare and deliver to the Court, within 6 months of the Court's direction, a fully developed Law Practice Innovation Laboratory Program for the Court's consideration as to whether the same should be created as Commission of the Florida Supreme Court. The Committee's recommendations are a necessary step toward meeting the Court's request for the study which can be attained by continuing the vital work the Committee started.

⁷⁵The Florida Bar 2019-2022 Strategic Plan available at <https://www.floridabar.org/about/stratplan/2019-2022-strategic-plan/>

TABLE OF APPENDICES

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Appendix B	Amendments to Rule 4-5.4 approved in concept
Appendix C	Amendments to advertising rules approved in concept
Appendix D	Outline of Paralegal Pilot Program approved in concept
Appendix E	Outline of Law Practice Innovation Laboratory Program approved in concept

APPENDIX A



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
RICKY POLSTON
JORGE LABARGA
C. ALAN LAWSON
BARBARA LAGOA
ROBERT J. LUCK
CARLOS G. MUÑIZ
JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

November 6, 2019

Mr. John M. Stewart
President
The Florida Bar
651 E Jefferson Street
Tallahassee, Florida 32399

Dear President Stewart:

Thank you for your letter of September 27, 2019, concerning a potential study of issues related to the regulation of the legal profession in Florida. In your letter you suggest a “study into whether and how the rules governing the practice of law in Florida may be revised to improve the delivery of legal services to Florida’s consumers and to assure Florida lawyers play a proper and prominent role in the provision of these services.”

As discussed in your letter, the environment in which legal services are provided has been rapidly changing. In view of that changing environment, the challenges facing Florida lawyers, and the difficulties that many Floridians encounter in securing legal services, the Court agrees that The Florida Bar should conduct a study of the rules governing the practice of law to ensure that our regulation meets the needs of Floridians for legal services while also protecting against misconduct and maintaining the strength of Florida’s legal profession.

As you have suggested, the topics that should be addressed in this study include the following: lawyer advertising; referral fees; fee splitting; entity

Mr. John M. Stewart
November 6, 2019
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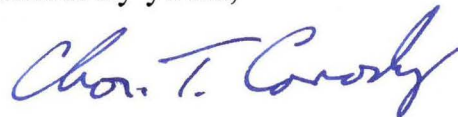
regulation; regulation of online service providers; and regulation of nonlawyer providers of limited legal services. Additional topics consistent with the subject of the study may also be addressed.

The Court requests that this study be undertaken by a study group chaired and appointed by you. The work of the study group should begin by January 2020 and should be completed by July 1, 2021. Quarterly reports of the study group's work should be submitted to the Court and to the Board of Governors of The Florida Bar. A final report, including recommendations for any rule changes or other actions, should be submitted no later than July 1, 2021, to the Board of Governors and the Court.

In fulfilling the Court's responsibility under Article V, section 15 of the Florida Constitution "to regulate . . . the discipline of persons admitted" "to the practice of law," we are committed to ensuring a strong and vibrant Bar to meet the legal needs of the people of Florida and to enforcing appropriate ethical standards for Florida lawyers. The foundation of our efforts in this arena is the recognition that The Florida Bar exists to serve the people of our state. We believe that the study we are asking the Bar to undertake can assist us in carrying out this important constitutional responsibility.

The Court is grateful to you for your leadership in this important initiative. We look forward to receiving updates on the work of the study group as well as the final report that will result from the study group's labors.

Sincerely yours,



Charles T. Canady

CTC/jo

**APPENDIX
B**

RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or law firm shall not may share legal fees with a nonlawyer, ~~except that:~~

~~(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons;~~

~~—— (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;~~

~~—— (3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price;~~

~~—— (4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and~~

~~—— (5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.~~

[If the nonlawyer is a qualifying provider (as defined elsewhere in these rules) that is primarily engaged in the business of operating a lawyer referral network or service or otherwise being compensated in exchange for referring potential clients to lawyers, the fee may not be calculated as a percentage of the fee received by a lawyer; calculated as a percentage of the client's recovery in the matter; based on the perceived value of the case referred to or accepted by a participating lawyer; a flat charge that differs based on the perceived value of the case referred to or accepted by

*a participating lawyer; a flat charge per case accepted by a participating lawyer; or a flat charge per case accepted by a participating lawyer that differs based on the type of matter.*¹

(b) Qualified Pension Plans. A lawyer or law firm may include nonlawyer employees in a qualified pension, profit-sharing, or retirement plan, even though the lawyer's or law firm's contribution to the plan is based in whole or in part on a profit-sharing arrangement.

(c) Partnership Ownership Interest with Nonlawyer. ~~A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.~~ A lawyer may practice law in a partnership or other form of authorized business entity in which an ownership interest is held by an individual nonlawyer who performs professional services that assist the entity in providing legal services to clients, but only if:

(1) the partnership or authorized business entity has as its sole purpose providing legal services to clients;

(2) all persons having an ownership interest in the partnership or authorized business entity agrees to abide by these Rules of Professional Conduct;

(3) the lawyers who have an ownership interest or managerial authority in the partnership or authorized business entity agree to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 4-5.1;

(4) the aggregate ownership interests of all nonlawyer participants are a minority interest in the partnership or authorized business entity; and

(5) the above conditions are confirmed in writing.

¹ Possible alternatives: (1) leave ethics opinion framework in place and restrict permissible fee sharing among lawyers and qualified providers (keep italicized text); (2) remove all restrictions on fee sharing with qualified providers (*delete italicized text*); (3) retain some restrictions on fee sharing with qualified providers, while eliminating others (e.g., *deleting blue, italicized text*); or (4) distinguish between non-lawyers who operate a business whose primary purpose is to serve as a lawyer referral network or service (e.g., typical qualified provider) versus one that does not (e.g., LegalZoom, Willing.com) and retain restrictions on the former, but not the latter (add *purple italicized text*). Depending on outcome of analysis, conforming changes may be needed to other rules restricting certain payments of marketing fees.

(d) Exercise of Independent Professional Judgment. A lawyer shall will not permit a person who recommends, employs, or pays the lawyer to render legal services for another, a nonlawyer who the lawyer is sharing a fee with, or a nonlawyer who has an ownership interest in the law firm to direct or regulate the lawyer's professional judgment in rendering such legal services.

~~(e) Nonlawyer Ownership or Management of Authorized Business Entity. A lawyer may practice with a not-for-profit business entity authorized to practice law. For purposes of this rule and applicable to not-for-profit business entities only, the business entity may be formed as a corporation and a nonlawyer may be a corporate director or officer of the authorized business entity. However, a nonlawyer owner, corporate director, or corporate officer does not have the right to direct or control the professional judgment of a lawyer working with the not-for-profit business entity.~~

(e) Nonlawyer Governance of Not-for-Profit Authorized Business Entity.

(1) Generally. A lawyer may practice with a not-for-profit business entity authorized to practice law.

(2) Definition of not-for-profit business entity. A not-for-profit business entity is an organization providing pro and low bono legal services operating as a tax-exempt public charity authorized by section 501(c)(3) of the Internal Revenue Code with the purpose of providing legal services to clients within 400% of the Federal Poverty level as defined by the United States Code of Federal Regulations. The lawyer's compensation by the not-for-profit business entity cannot be tied, directly or indirectly, to the client's ability to pay.

(3) Form of authorized business entity. For purposes of this rule and applicable to not-for-profit business entities only, the business entity may be formed as a corporation and a nonlawyer may be a member of the board of directors of the authorized business entity. However, a nonlawyer board member does not have the right to direct or control the professional judgment of a lawyer working with the not-for-profit business entity.

(4) Obligations of authorized business entity. The not-for-profit business entity must:

(i) ensure that confidential information is inaccessible to board members of the not-for-profit business entity who are not engaged in legal services representation;

(ii) ensure that any communications which the lawyer intends to be kept protected under attorney-client privilege meet existing prerequisites for such privilege;

(iii) inform the client that all communications within the not-for-profit business entity may not fall under attorney-client privilege; and

(iv) ensure that all nonlawyers assisting the lawyer in providing legal services abide by the ethical standards governing the lawyer.

Comment

~~The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. One of the core values of the legal profession is that the lawyer's professional independence of judgment must be protected. The simple act of sharing a legal fee with a nonlawyer does not lead to the conclusion that the lawyer's professional independence of judgment will be compromised.~~ Where someone other than the client shares a fee with a lawyer, pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subdivision (d), such arrangements should not and may not interfere with the lawyer's professional judgment.

[CONFORM TO FINAL TEXT IN SUBPART (a) Although sharing of fees with a nonlawyer does not in and of itself compromise the lawyer's independence of professional judgment, when the fee is being shared with a qualifying provider as defined elsewhere in this chapter, certain safeguards are necessary due to the nature of the relationship between the lawyer and qualifying provider. These safeguards are

set forth in the rule and are intended to prevent the lawyer's independence of professional judgment from being influenced by the fee sharing arrangement.]

~~This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also rule 4-1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent). The prohibition against sharing legal fees with nonlawyer employees is not intended to prohibit profit-sharing arrangements that are part of a qualified pension, profit-sharing, or retirement plan. Compensation plans, as opposed to retirement plans, may not be based on legal fees.~~

Similarly, a lawyer's independence of professional judgment is not compromised simply by a nonlawyer having an ownership interest in the law firm or authorized business entity. This rule allows a nonlawyer to have an ownership interest as long as the requirements of the rule are met and makes clear that a nonlawyer who has an ownership interest in an entity is not permitted to direct or regulate the lawyer's professional judgment in rendering legal services.

A nonlawyer may only have an ownership interest in a law firm or authorized business entity if the sole purpose of the firm or entity is to provide legal services to clients. The entity may only practice law and the nonlawyer must be assisting the lawyer in the practice of law. Therefore, the rule does not permit a lawyer to open an office with a doctor to provide legal and medical services. Only a law firm engaged exclusively in the practice of law is allowed.

While the sole purpose of the entity must be the practice of law, the activity the nonlawyer is engaging in does not in and of itself have to involve the practice of law. For example, a personal injury law firm may have a doctor on staff to assist in the analysis of medical records. A patent law office may have a patent agent on staff to work on patent matters. Many real estate practices employ paralegals to handle real estate closings. A family law practice may employ financial advisors and counselors to assist in matters involving the dissolution of marriage. A practice that provides legal services in the area of governmental affairs may have a nonlawyer lobbyist employed

at the firm. Most large offices have a nonlawyer office manager who is in charge of the daily operation of the office from the business side. All of these individuals are performing professional services that assist the entity in providing legal services to clients and under this rule may have an ownership interest in the entity. Nonlawyers are limited to a minority ownership interest. If there is more than one nonlawyer owner, all of the combined ownership interests of the nonlawyers must equal a minority ownership interest.

Subdivision (e) provides that if the law firm or authorized business entity is a not-for-profit entity, the entity may practice law in the form of a corporation. This creates an exception to the authorized forms of business entities set forth in rule 4-8.6 for purposes of not-for-profit firms only.

**APPENDIX
C**

NOTE

**THE BOARD OF GOVERNORS AND THE BOARD REVIEW
COMMITTEE ON PROFESSIONAL ETHICS HAVE APPROVED
AMENDMENTS TO THE ADVERTISING RULES**

**THOSE AMENDMENTS ARE NOT REFLECTED IN THE REDLINED
OR CLEAN VERSION OF THE RULES INCLUDED IN THIS APPENDIX
AS THE AMENDMENTS HAVE NOT BEEN APPROVED BY THE COURT**

RULE 4-7.11 APPLICATION OF RULES

Commented [HL1]: No changes were made to this rule.

(a) Type of Media. Unless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media. The terms “advertising” and “advertisement” as used in chapter 4-7 refer to all forms of communication seeking legal employment, both written and spoken.

(b) Lawyers. This subchapter applies to lawyers, whether or not admitted to practice in Florida or other jurisdictions, who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. The term “lawyer” as used in subchapter 4-7 includes 1 or more lawyers or a law firm. This rule does not permit the unlicensed practice of law or advertising that the lawyer provides legal services that the lawyer is not authorized to provide in Florida.

(c) Referral Sources. This subchapter applies to communications made to referral sources about legal services.

Comment

Websites

Websites are subject to the general lawyer advertising requirements in this subchapter and are treated the same as other advertising media. Websites of multistate firms present specific regulatory concerns. Subchapter 4-7 applies to portions of a multistate firm that directly relate to the provision of legal services by a member of the firm who is a member of The Florida Bar. Additionally, subchapter 4-7 applies to portions of a multistate firm’s website that relate to the provision of legal services in Florida, e.g., where a multistate firm has offices in Florida and discusses the provision of legal services in those Florida offices. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services by lawyers who are not admitted to The Florida Bar and who do not provide legal services in Florida. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services in jurisdictions other than Florida.

Lawyers Admitted in Other Jurisdictions

Subchapter 4-7 does not apply to any advertisement broadcast or disseminated in another jurisdiction in which a Florida Bar member is admitted to practice if the advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not broadcast or disseminated within the state of Florida or targeted at Florida residents. Subchapter 4-7 does not apply to such advertisements appearing in national media if the disclaimer “cases not accepted in Florida” is plainly noted in the advertisement. Subchapter 4-7 also does not apply to a website advertisement that does not offer the services of a Florida Bar member, a lawyer located in Florida, or a lawyer offering to provide legal services in Florida.

Subchapter 4-7 applies to advertisements by lawyers admitted to practice law in jurisdictions other than Florida who have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law and who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

For example, in the areas of immigration, patent, and tax, a lawyer from another jurisdiction may establish a regular or permanent presence in Florida to practice only that specific federal practice as authorized by federal law. Such a lawyer must comply with this subchapter for all advertisements disseminated in Florida or that target Florida residents for legal employment. Such a lawyer must include in all advertisements that the lawyer is “Not a Member of The Florida Bar” or “Admitted in [jurisdiction where admitted] Only” or the lawyer’s limited area of practice, such as “practice limited to [area of practice] law.” See *Fla. Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

A lawyer from another jurisdiction is not authorized to establish a regular or permanent presence in Florida to practice law in an area in which that lawyer is not authorized to practice or to advertise for legal services the lawyer is not authorized to provide in Florida. For example, although a lawyer from another state may petition a court to permit admission pro hac vice on a specific Florida case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Florida. A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law.

A lawyer from another jurisdiction may be authorized to provide Florida residents legal services in another jurisdiction. For example, if a class action suit is pending in another state, a lawyer from another jurisdiction may represent Florida residents in the litigation. Any such advertisements disseminated within the state of Florida or targeting Florida residents must comply with this subchapter.

RULE 4-7.12 REQUIRED CONTENT

(a) Name and Office Location. All advertisements for legal employment must include:

~~(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and~~

~~(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.~~

(b) Referrals. If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to this effect.

Commented [HL2]: The requirements of (a)(1) and (2), (b) (c) and (d) have been moved to the comment language of new 4-7.2 which prevents misleading and deceptive advertising. Grammatical changes made where necessary but intent of rule remains.

(c) Languages Used in Advertising. Any words or statements required by this subchapter to appear in an advertisement must appear in the same language in which the advertisement appears. If more than 1 language is used in an advertisement, any words or statements required by this subchapter must appear in each language used in the advertisement.

(d) Legibility. Any information required by these rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.

Comment

Name of Lawyer or Lawyer Referral Service

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service, qualifying provider or lawyer directory must include its actual legal name or a registered fictitious name in all advertisements in order to comply with this requirement.

Geographic Location

For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule. An advertisement cannot state or imply that a lawyer has offices in a location where the lawyer has no bona fide office. However, an advertisement may state that a lawyer is "available for consultation" or "available by appointment" or has a "satellite" office at a location where the lawyer does not have a bona fide office, if the statement is true.

Referrals to Other Lawyers

If the advertising lawyer knows at the time the advertisement is disseminated that the lawyer intends to refer some cases generated from an advertisement to another lawyer, the advertisement must state that fact. An example of an appropriate disclaimer is as follows: "Your case may be referred to another lawyer."

Language of Advertisement

Any information required by these rules to appear in an advertisement must appear in all languages used in the advertisement. If a specific disclaimer is required in order to avoid the advertisement misleading the viewer, the disclaimer must be made in the same language that the statement requiring the disclaimer appears.

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising. An advertisement is deceptive or misleading if it:

~~(a) Deceptive and Inherently Misleading Advertisements.~~ An advertisement is deceptive or inherently misleading if it:

(1 ~~a~~) contains a material statement that is factually or legally inaccurate;

(2 ~~b~~) omits information that is necessary to prevent the information supplied from being misleading; or

(3 ~~c~~) implies the existence of a material nonexistent fact.

(4 ~~d~~) is subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context; or

(5 ~~e~~) is literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(6 ~~f~~) is unduly manipulative or intrusive, or

(7 ~~g~~) cannot be objectively verified.

~~(b) Examples of Deceptive and Inherently Misleading Advertisements.~~ Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain:

(1 ~~1~~) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;

(2 ~~2~~) references to past results unless the information is objectively verifiable, subject to rule 4-7.14;

(3 ~~3~~) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;

(4 ~~4~~) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;

(5 ~~5~~) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";

(6 ~~6~~) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN

Commented [HL3]: (d), (e) and (g) are moved from 4-7.14. (f) is moved from 4-7.15.

Commented [HL4]: The language of (b) is moved to the comment as it gives examples.

Commented [HL5]: This language is removed in its entirety and not included in new rule or comment language.

ACTUAL EVENT.” When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: “ACTOR. NOT ACTUAL [. . . .]”;

~~(7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;~~

~~(8) a testimonial:~~

~~(A) regarding matters on which the person making the testimonial is unqualified to evaluate;~~

~~(B) that is not the actual experience of the person making the testimonial;~~

~~(C) that is not representative of what clients of that lawyer or law firm generally experience;~~

~~(D) that has been written or drafted by the lawyer;~~

~~(E) in exchange for which the person making the testimonial has been given something of value; or~~

~~(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;~~

~~(9) a statement or implication that The Florida Bar has approved an advertisement of a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating the Florida Bar; or~~

~~(10) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person’s name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state “Judge Doe (retired)” or “Judge Doe, former circuit judge.” She may state “Jane Doe, Florida Bar member, former circuit judge” or “Jane Doe, retired circuit judge....”~~

Comment

A lawyer may not engage in deceptive or misleading advertising. The examples of deceptive or misleading advertising contained in this rule and this comment are illustrative and not exhaustive. An advertisement may be considered deceptive or

Commented [HL6]: New introductory paragraph added.

misleading even if it does not fall within one of the examples given in this rule or comment.

Material Omissions

An advertisement may be considered to contain a material omission if the advertisement does not state the name of at least 1 lawyer in the advertising firm or the name of the law firm and the city, town or county of 1 or more bona fide office location of the lawyer who will perform the services advertised, or if practicing virtually a statement that the lawyer is practicing virtually. Failure to include the name of the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory is also a material omission. If the case or matter will be referred to another lawyer or law firm, the failure to disclose this in the advertisement is a material omission.

Commented [HL7]: Language regarding name of lawyer, location of firm, and referral moved from 4-7.12 Language about virtual office added.

~~An example of a material omission is stating~~ Stating “over 20 years’ experience” when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states “over 20 years’ experience” when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied Existence of Nonexistent Fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of Success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: “I will save your home,” “I can save your home,” “I will get you money for your injuries,” and “Come to me to get acquitted of the charges pending against you.”

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer

will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past Results

~~The prohibitions in subdivisions (b)(1) and (b)(2) of this~~ This rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client’s actual damages, is also misleading. The information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, “I have successfully represented clients,” or “I have won numerous appellate cases,” may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words “successful” or “won” in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word “successful” to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words “successful” or “won” to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

Comparisons

~~The prohibition against comparisons~~ Advertisements that contain comparisons that cannot be factually substantiated are prohibited as deceptive or misleading. Comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of Skills, Experience, Reputation or Record

~~The rule prohibits statements that characterize skills, experience, reputation, or record that are not objectively verifiable.~~ Statements that characterize skills, experience, reputation, or record that are not objectively verifiable are prohibited as deceptive and misleading. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not characterize the lawyer's skills, experience, reputation, or record. These statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as "the best," "second to none," or "the finest" will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy." For example, the statement, "I am dedicated to excellence in my representation of my clients," is permissible as a goal.

Similarly, the statement, “My goal is to provide high quality legal services,” is permissible.

Areas of Practice

A lawyer may not advertise references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of advertisement. However, this rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Commented [HL8]: From 4-7.13(b)(4).

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, “DRAMATIZATION. NOT AN ACTUAL EVENT.” For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the reconstruction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer ~~under rule 4-7.15.~~

All required disclaimers must be in the same language or languages as the advertisement and be reasonably prominent and clearly legible if written or intelligible if spoken.

Commented [HL9]: From 4-7.12

Unduly Manipulative or Intrusive

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement that uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client’s emotions rather than to a rational evaluation of a lawyer’s suitability to represent the prospective client is unduly manipulative or intrusive. An advertisement that uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer is also unduly manipulative or intrusive.

Commented [HL10]: From the rule language of 4-7.15. Language prohibiting voice or image of celebrity deleted.

A lawyer also may not offer consumers an economic incentive to employ the lawyer or review the lawyer’s advertising. However, a lawyer is not prohibited from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and is not prohibited from offering free legal advice or information that might indirectly benefit a consumer economically.

Implying Lawyer Will Violate Rules of Conduct or Law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in “combative and vicious tactics” that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer’s firm regarding the quality of the lawyer’s services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

However, a testimonial regarding matters on which the person making the testimonial is unqualified to evaluate; is not the actual experience of the person making the testimonial; is not representative of what clients of that lawyer or law firm generally experience; that has been written or drafted by the lawyer; is in exchange for which the person making the testimonial has been given something of value; or that does not include the disclaimer that the prospective client may not obtain the same or similar results is deceptive and misleading.

Commented [HL11]: From 4-7.13(b)(8)

Florida Bar Approval of Ad or Lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, “This advertisement was approved by The Florida Bar.” A lawyer referral service also may not state that it is a “Florida Bar approved lawyer referral service,” unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar. A qualifying provider also may not state that it is a “Florida Bar approved qualifying provider” or that its advertising is approved by The Florida Bar.

Judicial, Executive, and Legislative Titles

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person’s name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or

former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer's name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one's judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer's name and is clearly modified by terms such as "former" or "retired." For example, a former judge may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge."

As another example, a former state representative may not include "Representative Smith (former)" or "Representative Smith, retired" in an advertisement, letterhead, or business card. However, a former representative may state, "John Smith, Florida Bar member, former state representative."

Further, an accurate representation of one's judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person's name. For example, the statement "John Jones was governor of the State of Florida from [. . . years of service . . .]" would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge may not use the title in any form in a court pleading. A former or retired judge who uses that former or retired judge's previous title of "Judge" in a pleading could be sanctioned.

Awards, honors, and ratings

Commented [HL12]: Moved from comment language of 4-7.14

Awards, honors, and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of board certification, specialization or expertise

Commented [HL13]: Moved from comment language of 4-7.14

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as "certified" or "board certified" or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is "certified" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms "specialization," "expertise," or other variations of those terms, conveys some meaningful information to the public and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a lawyer's "of counsel" relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the "of counsel" lawyer's board certification or qualifications only if the "of counsel" practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the "of counsel" qualifications in making the claim.

Fee and cost information

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are permissible: "No Fee if No Recovery, but Client is Responsible for Costs," "No Fee if No Recovery, Excludes Costs," "No Recovery, No Fee, but Client is Responsible for Costs" and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements "No Fees or Costs If No Recovery" and "No Recovery - No Fees or Costs" are permissible.

~~RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS~~

~~A lawyer may not engage in potentially misleading advertising.~~

~~**(a) Potentially Misleading Advertisements.** Potentially misleading advertisements include, but are not limited to:~~

~~(1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;~~

~~(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;~~

~~(3) references to a lawyer's membership in, or recognition by, an entity that purports to base the membership or recognition on a lawyer's ability or skill, unless the entity conferring the membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based on objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;~~

~~(4) a statement that a lawyer is board-certified or other variations of that term unless:~~

~~(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating The Florida Bar and the advertisement~~

Commented [HL14]: Moved from comment language of 4-7.14

Commented [HL15]: The rule language has been deleted and the comment language has been moved to the general rule prohibiting deceptive and misleading advertising.

includes the area of certification and that The Florida Bar is the certifying organization;

~~(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization; or~~

~~(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization.~~

~~In the absence of the certification, a lawyer may communicate the fact that the lawyer limits his or her practice to 1 or more fields of law;~~

~~(5) a statement that the lawyer is a specialist or an expert in an area of practice, or other variations of those terms, unless the lawyer is certified under the Florida Certification Plan or an American Bar Association or Florida Bar accredited certification plan or the lawyer can objectively verify the claim based on the lawyer's education, training, experience, or substantial involvement in the area of practice in which specialization or expertise is claimed;~~

~~(6) a statement that a law firm specializes or has expertise in an area of practice, or other variations of those terms, unless the law firm can objectively verify the claim as to at least 1 of the lawyers who are members of or employed by the law firm as set forth in subdivision (a)(5) above, but if the law firm cannot objectively verify the claim for every lawyer employed by the firm, the advertisement must contain a reasonably prominent disclaimer that not all lawyers in the firm specialize or have expertise in the area of practice in which the firm claims specialization or expertise; or~~

~~(7) information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.~~

(b) Clarifying Information. A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

Comment

Awards, honors, and ratings

Awards, honors, and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of board certification, specialization or expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as "certified" or "board certified" or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is "certified" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms “specialization,” “expertise,” or other variations of those terms, conveys some meaningful information to the public and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a lawyer’s “of counsel” relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the “of counsel” lawyer’s board certification or qualifications only if the “of counsel” practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the “of counsel” qualifications in making the claim.

Fee and cost information

Every advertisement that contains information about the lawyer’s fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer’s advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter’s outcome, the following statements are permissible: “No Fee if No Recovery, but Client is Responsible for Costs,” “No Fee if No Recovery, Excludes Costs,” “No Recovery, No Fee, but Client is Responsible for Costs” and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements “No Fees or Costs If No Recovery” and “No Recovery—No Fees or Costs” are permissible.

RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement is unduly manipulative if it:

Commented [HL16]: Introductory language, (a), (b) and (d) are moved to the comment of the rule prohibiting deceptive and misleading advertising.

~~(a) uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client;~~

~~(b) uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer;~~

~~(c) contains the voice or image of a celebrity, except that a lawyer may use the voice or image of a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm; or~~

~~(d) offers consumers an economic incentive to employ the lawyer or review the lawyer's advertising; provided that this rule does not prohibit a lawyer from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and does not prohibit the lawyer from offering free legal advice or information that might indirectly benefit a consumer economically.~~

Commented [HL17]: This language is deleted in its entirety.

Comment

Commented [HL18]: The comment language is deleted and not moved to other comment language.

Unduly Manipulative Sounds and Images

Illustrations that are informational and not misleading are permissible. As examples, a graphic rendering of the scales of justice to indicate that the advertising lawyer practices law, a picture of the lawyer, or a map of the office location are permissible illustrations.

An illustration that provides specific information that is directly related to a particular type of legal claim is permissible. For example, a photograph of an actual medication to illustrate that the medication has been linked to adverse side effects is permissible. An x-ray of a lung that has been damaged by asbestos would also be permissible. A picture or video that illustrates the nature of a particular claim or practice, such as a person on crutches or in jail, is permissible.

An illustration or photograph of a car that has been in an accident would be permissible to indicate that the lawyer handles car accident cases. Similarly, an illustration or photograph of a construction site would be permissible to show either that the lawyer handles construction law matters or workers' compensation matters. An illustration or photograph of a house with a foreclosure sale sign is permissible to indicate that the lawyer handles foreclosure matters. An illustration or photograph of a person with a stack of bills to indicate that the lawyer handles bankruptcy is also permissible. An illustration or photograph of a person being arrested, a person in jail, or an accurate rendering of a traffic stop also is permissible. An illustration, photograph, or portrayal of a bulldozer to indicate that the lawyer handles eminent domain matters is permissible. Illustrations, photographs, or scenes of doctors examining x-rays are permissible to show that a lawyer handles medical malpractice or medical products

liability cases. An image, dramatization, or sound of a car accident actually occurring would also be permissible, as long as it is not unduly manipulative.

Although some illustrations are permissible, an advertisement that contains an image, sound or dramatization that is unduly manipulative is not. For example, a dramatization or illustration of a car accident occurring in which graphic injuries are displayed is not permissible. A depiction of a child being taken from a crying mother is not permissible because it seeks to evoke an emotional response and is unrelated to conveying useful information to the prospective client regarding hiring a lawyer. Likewise, a dramatization of an insurance adjuster persuading an accident victim to sign a settlement is unduly manipulative, because it is likely to convince a viewer to hire the advertiser solely on the basis of the manipulative advertisement.

Some illustrations are used to seek attention so that viewers will receive the advertiser's message. So long as those illustrations, images, or dramatizations are not unduly manipulative, they are permissible, even if they do not directly relate to the selection of a particular lawyer.

Use of Celebrities

A lawyer or law firm advertisement may not contain the voice or image of a celebrity. A celebrity is an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on a regional or local level, not just a national level. Local announcers or disc jockeys and radio personalities are regularly used to record advertisements. Use of a local announcer or disc jockey or a radio personality to record an advertisement is permissible under this rule as long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm.

RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

Commented [HL19]: Rule and comment deleted in its entirety.

The following information in advertisements is presumed not to violate the provisions of rules 4-7.11 through 4-7.15:

(a) Lawyers and Law Firms. A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(1) the name of the lawyer or law firm subject to the requirements of this rule and rule 4-7.21, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, website addresses, and electronic mail addresses, office and telephone service hours, and a designation such as "attorney" or "law firm";

(2) date of admission to The Florida Bar and any other bars, current membership or positions held in The Florida Bar or its sections or committees or those of other state bars, former membership or positions held in The Florida Bar or its sections or committees with dates of membership or those of other state bars, former positions of employment held in the legal profession with dates the positions

were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;

~~(3) technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions;~~

~~(4) military service, including branch and dates of service;~~

~~(5) foreign language ability;~~

~~(6) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (a)(4) of rule 4-7.14 regarding use of terms such as certified, specialist, and expert;~~

~~(7) prepaid or group legal service plans in which the lawyer participates;~~

~~(8) acceptance of credit cards;~~

~~(9) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (a)(5) of rule 4-7.14 regarding cost disclosures and honoring advertised fees;~~

~~(10) common salutory language such as "best wishes," "good luck," "happy holidays," "pleased to announce," or "proudly serving your community";~~

~~(11) punctuation marks and common typographical marks;~~

~~(12) an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of, or employed by, the firm against a plain background such as a plain unadorned office or a plain unadorned set of law books.~~

(b) Lawyer Referral Services and Qualifying Providers. A lawyer referral service or qualifying provider may advertise its name, location, telephone number, the fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred or matched. The Florida Bar's lawyer referral service or a lawyer referral service approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar also may advertise the logo of its sponsoring bar association and its nonprofit status.

Comment

~~The presumptively valid content creates a safe harbor for lawyers. A lawyer desiring a safe harbor from discipline may choose to limit the content of an advertisement to the information listed in this rule and, if the information is true, the advertisement complies with these rules. However, a lawyer is not required to limit the information in an advertisement to the presumptively valid content, as long as all information in the advertisement complies with these rules.~~

RULE 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION

Commented [HL20]: Changes made to rule numbers only (not shown here)

(a) Payment by Other Lawyers. No lawyer may, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by subdivision (f)(4)(D)(ii) of rule 4-1.5 advertises.

(b) Payment for Referrals. A lawyer may not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory, qualifying provider or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) Payment by Nonlawyers. A lawyer may not permit a nonlawyer to pay all or a part of the cost of an advertisement by that lawyer.

Comment

Paying for the Advertisements of Another Lawyer

A lawyer is not permitted to pay for the advertisements of another lawyer not in the same firm. This rule is not intended to prohibit more than 1 law firm from advertising jointly, but the advertisement must contain all required information as to each advertising law firm.

Paying Others for Recommendations

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs, qualifying providers, or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.22. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Commented [HL21]: Changes made to rule numbers only (not shown here)

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference, or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each separate enclosure of the communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet, on the inside of the brochure or pamphlet, and on each separate enclosure. If the written communication is sent via electronic mail, the subject line must begin with the word "Advertisement."

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or

matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter must not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client's request.

Comment

Prior Professional Relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing Where the Lawyer Obtained Information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Group or Prepaid Legal Services Plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

RULE 4-7.19 EVALUATION OF ADVERTISEMENTS

(a) Voluntary Filing Requirements. ~~Subject to the exemptions stated in rule 4-7.20, any lawyer who advertises services shall file.~~ Filing of advertisements is voluntary. Any lawyer may obtain an opinion from The Florida Bar regarding an advertisement's compliance with these rules by filing with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement. The advertisement must be filed at The Florida Bar headquarters address in Tallahassee. A lawyer who seeks an opinion from The Florida Bar regarding compliance with these rules will not be subject to discipline for dissemination of an advertisement deemed to

Commented [HL22]: Filing changed from mandatory to voluntary.

be compliant. Dissemination of an advertisement deemed to be noncompliant may subject the lawyer to discipline.

(b) Evaluation by The Florida Bar. The Florida Bar will evaluate all advertisements voluntarily filed with it pursuant to this rule for compliance with the applicable provisions set forth in ~~rules 4-7.11 through 4-7.15 and 4-7.18(b)(2)~~ this subchapter. If The Florida Bar does not send any communication to the filer within 15 days of receipt by The Florida Bar of a complete filing, or within 15 days of receipt by The Florida Bar of additional information when requested within the initial 15 days, the lawyer will not be subject to discipline by The Florida Bar, except if The Florida Bar subsequently notifies the lawyer of noncompliance, the lawyer may be subject to discipline for dissemination of the advertisement after the notice of noncompliance.

~~**(c) Preliminary Opinions.** A lawyer may obtain an advisory opinion concerning the compliance of a contemplated advertisement prior to production of the advertisement by submitting to The Florida Bar a draft or script that includes all spoken or printed words appearing in the advertisement, a description of any visual images to be used in the advertisement, and the fee specified in this rule. The voluntary prior submission does not satisfy the filing and evaluation requirements of these rules, but once completed, The Florida Bar will not charge an additional fee for evaluation of the completed advertisement.~~

~~**(d) Opinions on Exempt Advertisements Websites.** A lawyer may obtain an advisory opinion concerning the compliance of an existing or contemplated advertisement intended to be used by the lawyer seeking the advisory opinion that is not required to be filed for review by submitting the material and fee specified in subdivision (h) of this rule to The Florida Bar, except that a lawyer may not file an entire website for review. A lawyer who wishes to obtain an opinion regarding the lawyer's website may not file an entire website for review. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.~~

(e) Facial Compliance. Evaluation of advertisements is limited to determination of facial compliance with rules ~~4-7.11~~ through 4-7.15 and 4-7.18(b)(2), and notice of compliance does not relieve the lawyer of responsibility for the accuracy of factual statements.

(f) Notice of Compliance and Disciplinary Action. A finding of compliance by The Florida Bar will be binding on The Florida Bar in a grievance proceeding unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. The Florida Bar has a right to change its finding of compliance and in such circumstances must notify the lawyer of the finding of noncompliance, after which the lawyer may be subject to discipline for continuing to disseminate the advertisement, including dissemination of the portions of the lawyer's Internet website(s). A lawyer will be subject to discipline as provided in these rules for:

- (1) ~~failure to timely file the advertisement with The Florida Bar;~~

Commented [HL23]: Rule number references will be changed to correspond with new numbering.

~~(2) dissemination of a noncompliant advertisement in the absence of a finding of compliance by The Florida Bar;~~

~~(3) filing of an advertisement that contains a misrepresentation that is not apparent from the face of the advertisement;~~

~~(4) dissemination of an advertisement for which the lawyer has a finding of compliance by The Florida Bar more than 30 days after the lawyer has been notified that The Florida Bar has determined that the advertisement does not comply with this subchapter; or~~

~~(5) dissemination of portions of a lawyer's Internet website(s) that are not in compliance with rules 4-7.14 and 4-7.15 only after 15 days have elapsed since the date of The Florida Bar's notice of noncompliance sent to the lawyer's official bar address.~~

(g f) Notice of Noncompliance. If The Florida Bar determines that an advertisement is not in compliance with the applicable rules, The Florida Bar will advise the lawyer that dissemination or continued dissemination of the advertisement may result in professional discipline.

(h g) Contents of Filing. A filing with The Florida Bar as ~~required~~ or permitted by subdivision (a) must include:

(1) a copy of the advertisement in the form or forms in which it is to be disseminated, which is readily capable of duplication by The Florida Bar (e.g., video, audio, print media, photographs of outdoor advertising);

(2) a transcript, if the advertisement is in electronic format;

(3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;

(4) an accurate English translation of any portion of the advertisement that is in a language other than English;

(5) a sample envelope in which the written advertisement will be enclosed, if the advertisement is to be mailed;

(6) a statement listing all media in which the advertisement will appear, the anticipated frequency of use of the advertisement in each medium in which it will appear, and the anticipated time period during which the advertisement will be used;

(7) the name of at least 1 lawyer who is responsible for the content of the advertisement;

(8) a fee paid to The Florida Bar, in an amount of \$150 for each advertisement timely filed as provided in subdivision (a), or \$250 for each advertisement not timely filed. This fee will be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules; and

(9) additional information as necessary to substantiate representations made or implied in an advertisement if requested by The Florida Bar.

(h) Change of Circumstances; Refiling Requirement. If a change of circumstances occurs subsequent to The Florida Bar's evaluation of an advertisement that raises a substantial possibility that the advertisement has become false or misleading as a result of the change in circumstances, the lawyer must promptly re-file the advertisement or a modified advertisement with The Florida Bar at its headquarters address in Tallahassee along with an explanation of the change in circumstances and an additional fee set by the Board of Governors, which will not exceed \$100 if the lawyer wishes to obtain an opinion regarding compliance which will be binding in disciplinary proceedings as provided elsewhere in this rule.

(i) Maintaining Copies of Advertisements. A copy or recording of an advertisement must be submitted to The Florida Bar in accordance with the requirements of this rule, and the lawyer must retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used. If identical advertisements are sent to 2 or more prospective clients, the lawyer may comply with this requirement by filing 1 of the identical advertisements and retaining for 3 years a single copy together with a list of the names and addresses of persons to whom the advertisement was sent.

Comment

~~All advertisements must be filed for review pursuant to this rule, unless the advertisement is exempt from filing under rule 4-7.20. Even where an advertisement is exempt from filing under rule 4-7.20, a lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement that is exempt from the filing requirement and obtain The Florida Bar's opinion prior to disseminating the advertisement. Filing of advertisements prior to dissemination is voluntary. A lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement and obtain The Florida Bar's opinion prior to disseminating the advertisement.~~ A lawyer who files an advertisement and obtains a notice of compliance is therefore immune from grievance liability unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement.

Subdivision (c) of this rule precludes a lawyer from filing an entire website as an advertising submission, but a lawyer may submit a specific page, provision, statement, illustration, or photograph on a website. A lawyer who wishes to be able to rely on The Florida Bar's opinion as demonstrating the lawyer's good faith effort to comply with these rules has the responsibility of supplying The Florida Bar with all information material to a determination of whether an advertisement is false or misleading.

RULE 4-7.20 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT

Commented [HL24]: Rule and comment deleted in its entirety.

The following are exempt from the filing requirements of rule 4-7.19:

~~(a) an advertisement in any of the public media that contains no illustrations and no information other than that set forth in rule 4-7.16;~~

~~(b) a brief announcement that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than the permissible content of advertisements listed in rule 4-7.16, and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement, the following criteria may be considered:~~

~~(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;~~

~~(2) whether the announcement concerns a legal subject;~~

~~(3) whether the announcement contains legal advice; and~~

~~(4) whether the lawyer or law firm paid to have the announcement published;~~

~~(c) a listing or entry in a law list or bar publication;~~

~~(d) a communication mailed only to existing clients, former clients, or other lawyers;~~

~~(e) a written or recorded communication requested by a prospective client;~~

~~(f) professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients; and~~

~~(g) information contained on the lawyer's Internet website(s).~~

RULE 4-7.21 FIRM NAMES AND LETTERHEAD

Commented [HL25]: Changes to rule references only (not shown here)

(a) False, Misleading, or Deceptive Firm Names. A lawyer may not use a firm name, letterhead, or other professional designation that violates rules 4-7.11 through 4-7.15.

(b) Trade Names. A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rules 4-7.11 through 4-7.15. A lawyer in private practice may use the term "legal clinic" or "legal services" in

conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) Advertising Under Trade Names. A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in Multiple Jurisdictions. A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) Name of Public Officer in Firm Name. The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Business Entities. A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) Insurance Staff Attorneys. Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

(1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;

(2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;

(3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;

(4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be

required by these rules if the lawyers were private practitioners sharing space with the insurer; and

(5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Comment

Misleading Firm Name

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. See *Fla. Bar v. Fetterman*, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An example of such an improper name is "A. Aaron Able." Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Trade Names

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

Insurance Staff Lawyers

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating the Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

(1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;

(2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website

address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;

(3) publishing in any media a listing of lawyers or law firms together in one place; or

(4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

(1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and

(2) a local or voluntary bar association solely for listing its members on its website or in its publications.

(d) When Lawyers May Participate with Qualifying Providers. A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the qualifying provider or a lawyer who participates with the qualifying provider;

(8) neither represents nor implies to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or county of the lawyer to whom the referral, match or other connection is being made; and

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

(e) Responsibility of Lawyer. A lawyer who participates with a qualifying provider:

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) The Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

Comment

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to

encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s) and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide

documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a clause allowing immediate termination of the agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

NEW RULE NUMBERING

4-7. INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.1 APPLICATION OF RULES

RULE 4-7.2 DECEPTIVE AND MISLEADING ADVERTISEMENTS

RULE 4-7.3 PAYMENT FOR ADVERTISING AND PROMOTION

RULE 4-7.4 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

RULE 4-7.5 EVALUATION OF ADVERTISEMENTS

RULE 4-7.6 FIRM NAMES AND LETTERHEAD

RULE 4-7.7 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

4-7. INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.1 APPLICATION OF RULES

(a) Type of Media. Unless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media. The terms “advertising” and “advertisement” as used in chapter 4-7 refer to all forms of communication seeking legal employment, both written and spoken.

(b) Lawyers. This subchapter applies to lawyers, whether or not admitted to practice in Florida or other jurisdictions, who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. The term “lawyer” as used in subchapter 4-7 includes 1 or more lawyers or a law firm. This rule does not permit the unlicensed practice of law or advertising that the lawyer provides legal services that the lawyer is not authorized to provide in Florida.

(c) Referral Sources. This subchapter applies to communications made to referral sources about legal services.

Comment Websites

Websites are subject to the general lawyer advertising requirements in this subchapter and are treated the same as other advertising media. Websites of multistate firms present specific regulatory concerns. Subchapter 4-7 applies to portions of a multistate firm that directly relate to the provision of legal services by a member of the firm who is a member of The Florida Bar. Additionally, subchapter 4-7 applies to portions of a multistate firm’s website that relate to the provision of legal services in Florida, e.g., where a multistate firm has offices in Florida and discusses the provision of legal services in those Florida offices. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services by lawyers who are not admitted to The Florida Bar and who do not provide legal services in Florida. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services in jurisdictions other than Florida.

Lawyers Admitted in Other Jurisdictions

Subchapter 4-7 does not apply to any advertisement broadcast or disseminated in another jurisdiction in which a Florida Bar member is admitted to practice if the advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not broadcast or disseminated within the state of Florida or targeted at Florida residents. Subchapter 4-7 does not apply to such advertisements appearing in national media if the disclaimer “cases not accepted in Florida” is plainly noted in the advertisement. Subchapter 4-7 also does not apply to a website advertisement that

does not offer the services of a Florida Bar member, a lawyer located in Florida, or a lawyer offering to provide legal services in Florida.

Subchapter 4-7 applies to advertisements by lawyers admitted to practice law in jurisdictions other than Florida who have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law and who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

For example, in the areas of immigration, patent, and tax, a lawyer from another jurisdiction may establish a regular or permanent presence in Florida to practice only that specific federal practice as authorized by federal law. Such a lawyer must comply with this subchapter for all advertisements disseminated in Florida or that target Florida residents for legal employment. Such a lawyer must include in all advertisements that the lawyer is “Not a Member of The Florida Bar” or “Admitted in [jurisdiction where admitted] Only” or the lawyer’s limited area of practice, such as “practice limited to [area of practice] law.” See *Fla. Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

A lawyer from another jurisdiction is not authorized to establish a regular or permanent presence in Florida to practice law in an area in which that lawyer is not authorized to practice or to advertise for legal services the lawyer is not authorized to provide in Florida. For example, although a lawyer from another state may petition a court to permit admission pro hac vice on a specific Florida case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Florida. A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law.

A lawyer from another jurisdiction may be authorized to provide Florida residents legal services in another jurisdiction. For example, if a class action suit is pending in another state, a lawyer from another jurisdiction may represent Florida residents in the litigation. Any such advertisements disseminated within the state of Florida or targeting Florida residents must comply with this subchapter.

RULE 4-7.2 DECEPTIVE AND MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or misleading advertising. An advertisement is deceptive or misleading if it:

- (a) contains a material statement that is factually or legally inaccurate;
- (b) omits information that is necessary to prevent the information supplied from being misleading;
- (c) implies the existence of a material nonexistent fact;

(d) is subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(e) is literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(f) is unduly manipulative or intrusive, or (g) cannot be objectively verified.

Comment

A lawyer may not engage in deceptive or misleading advertising. The examples of deceptive or misleading advertising contained in this rule and this comment are illustrative and not exhaustive. An advertisement may be considered deceptive or misleading even if it does not fall within one of the examples given in this rule or comment.

Material Omissions

An advertisement may be considered to contain a material omission if the advertisement does not state the name of at least 1 lawyer in the advertising firm or the name of the law firm and the city, town or county of 1 or more bona fide office location of the lawyer who will perform the services advertised, or if practicing virtually a statement that the lawyer is practicing virtually. Failure to include the name of the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory is the advertisement is for the lawyer directory is also a material omission. If the case or matter will be referred to another lawyer or law firm, the failure to disclose this in the advertisement is a material omission.

Stating “over 20 years’ experience” when the experience is the combined experience of all lawyers in the advertising firm is an example of a material omission. Another example is a lawyer who states “over 20 years’ experience” when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied Existence of Nonexistent Fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the

lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of Success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include:

“I will save your home,” “I can save your home,” “I will get you money for your injuries,” and
“Come to me to get acquitted of the charges pending against you.”

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past Results

This rule precludes advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts,

if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client's actual damages, is also misleading. The information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, "I have successfully represented clients," or "I have won numerous appellate cases," may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words "successful" or "won" in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word "successful" to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words "successful" or "won" to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

Comparisons

Advertisements that contain comparisons that cannot be factually substantiated are prohibited as deceptive or misleading. Comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of Skills, Experience, Reputation or Record

Statements that characterize skills, experience, reputation, or record that are not objectively verifiable are prohibited as deceptive and misleading. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not

characterize the lawyer's skills, experience, reputation, or record. These statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as "the best," "second to none," or "the finest" will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy." For example, the statement, "I am dedicated to excellence in my representation of my clients," is permissible as a goal. Similarly, the statement, "My goal is to provide high quality legal services," is permissible.

Areas of Practice

A lawyer may not advertise references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of advertisement. However, this rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, "DRAMATIZATION. NOT AN ACTUAL EVENT." For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the reconstruction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer.

All required disclaimers must be in the same language or languages as the advertisement and be reasonably prominent and clearly legible if written or intelligible if spoken.

Unduly Manipulative or Intrusive

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement that uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client is unduly manipulative or intrusive. An advertisement that uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer is also unduly manipulative or intrusive.

A lawyer also may not offer consumers an economic incentive to employ the lawyer or review the lawyer's advertising. However, a lawyer is not prohibited from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and is not prohibited from offering free legal advice or information that might indirectly benefit a consumer economically.

Implying Lawyer Will Violate Rules of Conduct or Law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in "combative and vicious tactics" that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla. 2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer's firm regarding the quality of the lawyer's services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

However, a testimonial regarding matters on which the person making the testimonial is unqualified to evaluate; is not the actual experience of the person making the testimonial; is not representative of what clients of that lawyer or law firm generally experience; that has been written or drafted by the lawyer; is in exchange for which the person making the testimonial has been given something of value; or that does not

include the disclaimer that the prospective client may not obtain the same or similar results is deceptive and misleading.

Florida Bar Approval of Ad or Lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, “This advertisement was approved by The Florida Bar.” A lawyer referral service also may not state that it is a “Florida Bar approved lawyer referral service,” unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar. A qualifying provider also may not state that it is a “Florida Bar approved qualifying provider” or that its advertising is approved by The Florida Bar.

Judicial, Executive, and Legislative Titles

The use of a judicial, executive, or legislative branch title is prohibited as deceptive and misleading unless accompanied by clear modifiers and placed subsequent to the person’s name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer’s name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computeraccessed communications, letterhead, and business cards.

However, an accurate representation of one’s judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer’s name and is clearly modified by terms such as “former” or “retired.” For example, a former judge may state “Jane Doe, Florida Bar member, former circuit judge” or “Jane Doe, retired circuit judge.”

As another example, a former state representative may not include “Representative Smith (former)” or “Representative Smith, retired” in an advertisement, letterhead, or business card.

However, a former representative may state, “John Smith, Florida Bar member, former state representative.”

Further, an accurate representation of one’s judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person’s name. For example, the statement “John Jones was governor of the State of Florida from [. . . years of service . . .]” would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge may not use the title in any form in a court pleading. A former or retired judge who uses that former or retired judge's previous title of "Judge" in a pleading could be sanctioned.

Awards, honors, and ratings

Awards, honors, and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of board certification, specialization or expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as "certified" or "board certified" or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is “certified” in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms “specialization,” “expertise,” or other variations of those terms, conveys some meaningful information to the public and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a lawyer’s “of counsel” relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the “of counsel” lawyer’s board certification or qualifications only if the “of counsel” practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the “of counsel” qualifications in making the claim.

Fee and cost information

Every advertisement that contains information about the lawyer’s fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer’s advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter’s outcome, the following statements are permissible: “No Fee if No Recovery, but Client is Responsible for Costs,” “No Fee if No Recovery, Excludes Costs,” “No Recovery, No Fee, but Client is Responsible for Costs” and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements “No Fees or Costs

RULE 4-7.3 PAYMENT FOR ADVERTISING AND PROMOTION

(a) **Payment by Other Lawyers.** No lawyer may, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by subdivision (f)(4)(D)(ii) of rule 4-1.5 advertises.

(b) **Payment for Referrals.** A lawyer may not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory, qualifying provider or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) **Payment by Nonlawyers.** A lawyer may not permit a nonlawyer to pay all or a part of the cost of an advertisement by that lawyer.

Comment Paying for the Advertisements of Another Lawyer

A lawyer is not permitted to pay for the advertisements of another lawyer not in the same firm. This rule is not intended to prohibit more than 1 law firm from advertising jointly, but the advertisement must contain all required information as to each advertising law firm.

Paying Others for Recommendations

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs, qualifying providers, or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.22. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

RULE 4-7.4 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) **Solicitation.** Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference,

or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.1 through 4-7.3 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.1 through 4-7.3 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.1 through 47.3 of these rules.

(B) Each separate enclosure of the communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet, on the inside of the brochure or pamphlet, and on each separate enclosure. If the written communication is sent via electronic mail, the subject line must begin with the word "Advertisement."

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to

enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter must not reveal on the envelope, or on the outside of a selfmailing brochure or pamphlet, the nature of the client's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client's request.

Comment Prior Professional Relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing Where the Lawyer Obtained Information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information

source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Group or Prepaid Legal Services Plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

RULE 4-7.5 EVALUATION OF ADVERTISEMENTS

(a) Voluntary Filing Safe Harbor. Filing of advertisements is voluntary. Any lawyer may obtain an opinion from The Florida Bar regarding an advertisement's compliance with these rules by filing with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement. The advertisement must be filed at The Florida Bar headquarters address in Tallahassee. A lawyer who seeks an opinion from The Florida Bar regarding compliance with these rules will not be subject to discipline for dissemination of an advertisement deemed to be compliant. Dissemination of an advertisement deemed to be noncompliant may subject the lawyer to discipline.

(b) Evaluation by The Florida Bar. The Florida Bar will evaluate all advertisements voluntarily filed with it pursuant to this rule for compliance with the applicable provisions set forth in this subchapter. If The Florida Bar does not send any communication to the filer within 15 days of receipt by The Florida Bar of a complete filing, or within 15 days of receipt by The Florida Bar of additional information when requested within the initial 15 days, the lawyer will not be subject to discipline by The Florida Bar, except if The Florida Bar subsequently notifies the lawyer of noncompliance, the lawyer may be subject to discipline for dissemination of the advertisement after the notice of noncompliance.

(c) Opinions on Websites. A lawyer who wishes to obtain an opinion regarding the lawyer's website may not file an entire website for review. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.

(d) Facial Compliance. Evaluation of advertisements is limited to determination of facial compliance with rules 4-7.1, 4-7.2 4-7.4(b)(2), and notice of compliance does not relieve the lawyer of responsibility for the accuracy of factual statements.

(e) Notice of Compliance and Disciplinary Action. A finding of compliance by The Florida Bar will be binding on The Florida Bar in a grievance proceeding unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. The Florida Bar has a right to change its finding of compliance and in such circumstances must notify the lawyer of the finding of noncompliance, after which the lawyer may be subject to discipline for continuing to disseminate the advertisement, including dissemination of portions of a lawyer's Internet website(s).

(f) Notice of Noncompliance. If The Florida Bar determines that an advertisement is not in compliance with the applicable rules, The Florida Bar will advise the lawyer that dissemination or continued dissemination of the advertisement may result in professional discipline.

(g) Contents of Filing. A filing with The Florida Bar as permitted by subdivision (a) must include:

- (1) a copy of the advertisement in the form or forms in which it is to be disseminated, which is readily capable of duplication by The Florida Bar (e.g., video, audio, print media, photographs of outdoor advertising);
- (2) a transcript, if the advertisement is in electronic format;
- (3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;
- (4) an accurate English translation of any portion of the advertisement that is in a language other than English;

(5) a sample envelope in which the written advertisement will be enclosed, if the advertisement is to be mailed;

(6) a statement listing all media in which the advertisement will appear, the anticipated frequency of use of the advertisement in each medium in which it will appear, and the anticipated time period during which the advertisement will be used;

(7) the name of at least 1 lawyer who is responsible for the content of the advertisement;

(8) a fee paid to The Florida Bar, in an amount of \$150 for each advertisement timely filed as provided in subdivision (a), or \$250 for each advertisement not timely filed. This fee will be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules; and

(9) additional information as necessary to substantiate representations made or implied in an advertisement if requested by The Florida Bar.

(h) Change of Circumstances; Refiling Requirement. If a change of circumstances occurs subsequent to The Florida Bar's evaluation of an advertisement that raises a substantial possibility that the advertisement has become deceptive, false or misleading as a result of the change in circumstances, the lawyer must promptly re-file the advertisement or a modified advertisement with The Florida Bar at its headquarters address in Tallahassee along with an explanation of the change in circumstances and an additional fee set by the Board of Governors, which will not exceed \$100 if the lawyer wishes to obtain an opinion regarding compliance which will be binding in disciplinary proceedings as provided elsewhere in this rule .

(i) Maintaining Copies of Advertisements. A lawyer who voluntarily files an advertisement with The Florida Bar must retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used. If identical advertisements are sent to 2 or more prospective clients, the lawyer may comply with this requirement by filing 1 of the identical advertisements and retaining for 3 years a single copy together with a list of the names and addresses of persons to whom the advertisement was sent.

Comment

Filing of advertisements prior to dissemination is voluntary. A lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement and obtain The Florida Bar's opinion prior to disseminating the advertisement. A lawyer who files an advertisement and obtains a notice of compliance is therefore immune from grievance liability unless the advertisement contains a misrepresentation that is not

apparent from the face of the advertisement. Subdivision (c) of this rule precludes a lawyer from filing an entire website as an advertising submission, but a lawyer may submit a specific page, provision, statement, illustration, or photograph on a website. A lawyer who wishes to be able to rely on The Florida Bar's opinion as demonstrating the lawyer's good faith effort to comply with these rules has the responsibility of supplying The Florida Bar with all information material to a determination of whether an advertisement is deceptive, false or misleading.

RULE 4-7.6 FIRM NAMES AND LETTERHEAD

(a) False, Misleading, or Deceptive Firm Names. A lawyer may not use a firm name, letterhead, or other professional designation that violates rule 4-7.2.

(b) Trade Names. A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rule 4-7.2. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) Advertising Under Trade Names. A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in Multiple Jurisdictions. A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) Name of Public Officer in Firm Name. The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Business Entities. A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) Insurance Staff Attorneys. Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer

representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

- (1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;
- (2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;
- (3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;
- (4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the lawyers were private practitioners sharing space with the insurer; and
- (5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Comment Misleading Firm Name

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. See *Fla.*

Bar v. Fetterman, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An example of such an improper name is "A. Aaron Able." Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Trade Names

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

Insurance Staff Lawyers

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized

the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

RULE 4-7.7 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating the Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

- (1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;
- (2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;
- (3) publishing in any media a listing of lawyers or law firms together in one place; or
- (4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

- (1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and
- (2) a local or voluntary bar association solely for listing its members on its website or in its publications.

(d)When Lawyers May Participate with Qualifying Providers. A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the qualifying provider or a lawyer who participates with the qualifying provider;

(8) neither represents nor implies to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or

county of the lawyer to whom the referral, match or other connection is being made; and

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

(e) Responsibility of Lawyer. A lawyer who participates with a qualifying provider:

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) The Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

Comment

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s) and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a clause allowing immediate termination of the agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients

to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

**APPENDIX
D**

OUTLINE FOR LIMITED ASSISTANCE PARALEGAL PILOT PROGRAM

Applicability/Perimeters

The specific applicability/perimeters of the pilot program will need to be determined. The pilot program may be part of the Law Practice Innovation Lab or a pilot program within a legal aid organization.

Qualifications

To qualify as a paralegal to provide services under the pilot program the candidate must be a Florida Registered Paralegal with X¹ years of work experience.

The Florida Bar's Florida Registered Paralegal Program will evaluate the qualifications of the Florida Registered Pilot Paralegal although the ultimate decision of whether to hire the Florida Registered Pilot Paralegal will rest with the law firm or legal aid organization.

Definitions

Form. A form is a document with blank spaces to be filled in with information unique to the limited representation client's facts and circumstances and must be a Supreme Court Approved Form as defined in chapter 10 of the Rules Regulating The Florida Bar, a form prepared by the supervising lawyer, or a form customarily used in the supervising lawyer's practice. A form may include a letter or other document that is not a pleading or will not be filed in a court.

Limited Representation Client. A limited representation client is a person who agrees in writing to receive authorized services from a paralegal providing services as part of the pilot program and acting under the authority of a supervising lawyer.

Authorized Area of Law. An authorized area of law for an paralegal providing services as part of the pilot program is family law, residential landlord tenant law on behalf of the tenant, guardianship law, wills, advance directives, Baker Act, Marchman Act, guardian advocate of the person only, or debt collection defense. For purposes of the pilot program, family law does not include adoption by individuals other than a step-parent, dependency, juvenile proceedings, or the preparation of a Qualified Domestic Relations Order or other order utilized in the division of retirement benefits.

Responsibilities of Supervising Lawyer

The supervising lawyer of the paralegal providing services under the pilot program must ensure that the paralegal is aware of the lawyer's ethical obligations for the

¹ In order to register as an FRP, the applicant must have education and work experience or be certified as a Certified Legal Assistant or Certified Paralegal. One issue to consider is whether both of these options should be available to a paralegal providing services as part of the pilot program or should the eligibility criteria be more limited.

performance of services authorized by the pilot program and must provide guidance to the paralegal relating to the performance of authorized services and ensure that the paralegal does not undertake services that are not authorized. The supervising lawyer for the paralegal remains professionally responsible for all services provided on behalf of a limited representation client and assumes full professional responsibility for the work product, including any actions taken or not taken by the paralegal in connection with the services. The services performed by the paralegal supplement, merge with, and become the lawyer's work product.

Permissible Activities

The paralegal providing services under the pilot program may perform the following services when assisting a limited representation client in matter involving an authorized area of law:

- (1) *Selection, Completion, and Filing Forms.* The paralegal may assist a limited representation client in selecting a form and assist a limited representation client in completing, filing and serving the form. This includes conducting intake to obtain relevant information from a limited representation client. The form must include the name, firm, address and telephone number of the paralegal who assisted in preparing the form. If other documents are necessary to the matter and ancillary to the form, the paralegal may assist a limited representation client in obtaining, preparing, gathering, and organizing those documents, as well as filing and serving those documents.
- (2) *Providing Information.* When assisting a limited representation client with selecting and completing a form the paralegal may:
 - (A) give general information about how to complete the form;
 - (B) explain the form and supporting documents and provide information on how to gather or find the documents;
 - (C) give general information about the anticipated course of the proceedings and legal process, deadlines, documents that must be filed, and the applicable procedure for filing and service;
 - (D) explain the other party's documents;
 - (E) advise a limited representation client as to other documents that may be necessary to the limited represented client's case, and explain how such additional documents or pleadings may affect the limited represented client's case;
 - (F) obtain relevant facts, and explain the relevancy of such information to a limited representation client;

(G) explain how a court order affects a limited representation client's rights and obligations; and

(H) provide general information about legal rights, procedures or legal options.

(3) *Assistance with Court Proceedings.* The paralegal may accompany a limited representation client to court appearances to provide administrative support and reassurance. This support is limited to:

(A) assisting in scheduling court proceedings;

(B) informing a limited representation client about and assisting in obtaining available court services such as interpreter services and court reporters;

(C) informing a limited representation client what to expect at the hearing, how to dress and act, and how to organize paperwork to present to the court;

(D) taking notes for a limited representation client; and

(E) assisting a limited representation client in locating documents or information the court requests.

The paralegal may only provide the services in an authorized area of law. If a limited representation client has a legal issue outside of an authorized area of law, the paralegal may not provide the services.

Limited Services Disclosures

When the paralegal provides any of the services as part of the pilot program, a limited representation client must give informed consent to the provision of legal services by the paralegal in a written agreement that discloses the limited scope of services the paralegal may provide and meets any other requirement of rule 4-1.2(c) of the Rules Regulating The Florida Bar. The agreement must be signed by the limited representation client, the paralegal, and the supervising lawyer. If the paralegal knows or reasonably should know that a limited representation client requires services outside of those permitted by the pilot program, the paralegal must advise the limited representation client to seek legal advice from a lawyer and may refer the limited representation client to the paralegal's supervising lawyer.

Prohibited Activities

When providing services pursuant to the pilot program, the paralegal may not hold out as representing, speaking for, or advocating on behalf of a limited representation client and may not represent a limited representation client in court, in depositions, or in appeals. This prohibition includes addressing the court or judge as the representative of a limited representation client or on behalf of a limited representation client.

**APPENDIX
E**

LAW PRACTICE INNOVATION LABORATORY PROGRAM

The Committee's proposal for Florida's Law Practice Innovation Laboratory (the Lab) Program is outlined below. The proposal designs a data driven approach beginning with an initial three year term that will be one of research, development and data collection to determine the structure and framework which best accomplishes the regulatory objective and whether the Lab should be recommended as a permanent program. The regulatory objective is to ensure that

- the Rules Regulating The Florida Bar improve, not impede, the delivery of legal services to Florida's consumers,
- Florida lawyers play a proper and prominent, though not exclusive, role in the provision of these services and
- any regulation protects the public against misconduct and maintains the highest ethical standards of all of those who are authorized by the Supreme Court of Florida to provide legal services.

It is anticipated that prior to the conclusion of the initial three-year term the Lab's purpose, structure and framework will be evaluated with data from Lab participants, consumers receiving services and other inputs. After this evaluation a recommendation will be made to the Court as to whether the Lab should be recommended as a permanent program and if any changes to the Lab are recommended. It is envisioned that the initial 3-year term will operate through a Commission or Council of the Court (the Commission) created by Administrative Order, as described more fully below. If recommended by the Commission and approved by the Court, the Commission will be formally and permanently established as a standing Supreme Court Commission or Council pursuant to the Florida Rules of General Practice and Judicial Administration.

Purpose

The Lab is a controlled environment, defined by regulatory policies and desired legal services outcomes, where new consumer-centered innovations, which may be impermissible under current regulations, can be piloted and evaluated. The goal is to allow aspiring innovators to develop new ways of offering legal services intended to benefit the public. These services will be validated in the Lab under the strict supervision of the Commission always with the goal of ensuring that the regulatory objective is met.

The Lab will allow the following:

1. Testing what innovations are possible. The Lab can allow the supervisory body to selectively modify current rules or regulations to see how much and what kinds of innovation might be possible within the legal services market to benefit the public. Modified regulatory enforcement in the Lab can allow alternate business structures, existing law firms, technology platforms and individuals etc. to experiment with offering new legal services in a way that may not otherwise be permitted because of regulatory obstacles or uncertainty as to how the current rules may apply to proposed new models. The supervisory body can use the Lab to understand how much innovation potential

actually exists beyond mere speculation; whether emerging innovations have promise in the legal services market all while evaluating risk of harm to the consumer balanced against increased consumer access to legal services.

2. Tailored evaluation plans focused on risk. The Lab model puts the burden on applicants to define how their services should be measured regarding benefits, harms, and risks. They must propose not only what innovation is possible, but also how it can be assessed by identifying outcomes and metrics which are ascertainable and measurable in terms of success, risk of harm and increased access of legal services to the public.

3. Controlled innovation. The Lab provides an insulated environment to encourage innovative practices while maintaining consumer protection. The Lab allows controlled tests to be run as to what changes to regulation might be possible, both in terms of what rules apply and how regulation is administered. Safeguards can be installed to protect approved ventures from spilling over into the general market for the provision of legal services. These safeguards should include limitations on scope of work performed so that those in the Lab cannot expand to legal services not initially contemplated as part of their application unless a new or amended application is submitted and approved. Ventures accepted into the Lab will do so with the understanding that the project may be terminated at any time if evidence indicates unacceptable levels of harm to consumers or the profession.

4. New sources of data on what regulation works best. The Lab will allow for data-driven, evidence-based policymaking and regulation. Because Lab participants gather and share data about their services' performance, the Lab can help develop standards and metrics around data-driven regulation. It can incentivize more companies to evaluate their services through rigorous understanding of benefits and harms to the public, and it can help the development of protocols to conduct this kind of data-driven evaluation.

Structure and Funding



Supreme Court of Florida

The Lab falls under the regulatory authority of the Supreme Court of Florida. The Court appoints a Commission who will oversee the Lab and the supervisory body. It is preliminarily envisioned that the Commission will have a Chair and sufficient members to achieve its purpose. The Commission's members will be appointed by the Chief Justice after consultation with the Court. The membership will include judges, clerks of

court, members of The Florida Bar including one member of the Board of Governors, members of the public, a data scientist, and an IT professional/legal technologist. To the extent possible the members should come from different judicial circuits, different sized firms and different practice areas. All members must represent the interests of the public and access to legal services and the courts generally.

Commission

The Commission appoints the supervisory body. The Commission members have the following responsibilities:

Chair -- The Chair will be responsible for strategy, meetings of the Commission, budget, operation of the Lab and quarterly reporting to the Court.

Data Scientist -- The data scientist will be responsible for developing the quantitative analytical tools used by the Commission and supervisory body in determining the approval of any application and assessing the risk of benefit or harm to the public.

IT Professional/Legal Technologist -- The IT professional/legal technologist will be responsible for reviewing, assessing, and explaining the technological aspects of any proposed products or services.

Support Staff -- The support staff will be responsible for scheduling of meetings, developing agendas, recording of minutes, assisting in the budgeting process, and assisting in operations, development, and communications.

Consultant – The Commission may retain a consultant in legal technologies when such expertise in evaluating and implementing technology platforms is required.

No member of the Commission or any consultant will be permitted to make recommendations as to any matter under consideration which would be viewed as a conflict of interest.

Supervisory Body

The supervisory body is responsible for the day-to-day operation of the Lab. The supervisory body evaluates applications and makes recommendations regarding approval, responds to applicant's questions and demands quickly and efficiently, monitor and assess the market's development and respond to such appropriately and strategically. For budgetary and staffing purposes, it is recommended that the Court delegate the regulatory objective and authority to both the Commission and the supervisory body to The Florida Bar with the Court always maintaining supervision and ultimate authority much in the way lawyer regulation and discipline is structured.

It is the supervisory body's responsibility to develop a system that works to achieve the regulatory objective. Identifying, quantifying, understanding, and responding to risk of consumer harm using an empirical approach is a priority. There are two major aspects to this priority: (1) assessing risk of consumer harm in the market as a whole (both now and over time); and (2) assessing risk of consumer harm in a particular applicant's legal service offering.

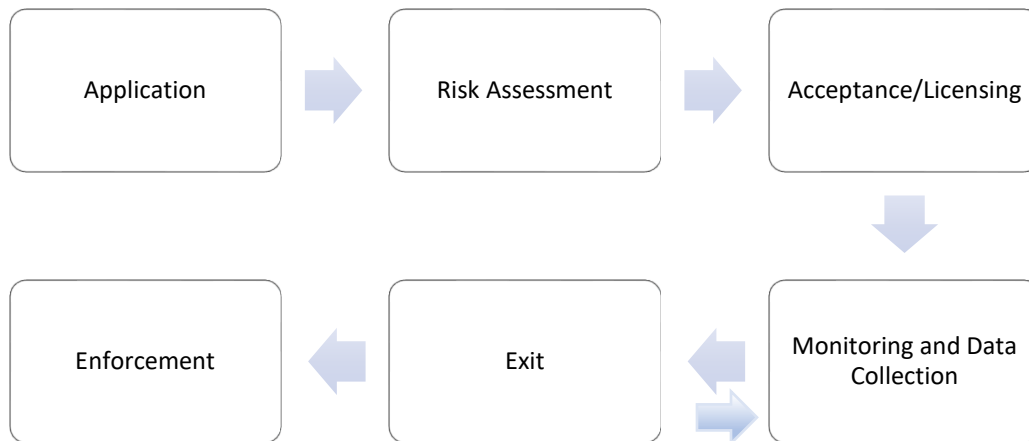
The Commission and supervisory body will work together to establish metrics by which those risks might be measured and identify the data entities will be required to submit to permit the supervisory body to assess risk on an ongoing basis. The participants will be required to submit data on these risks to be considered for participation in the market. The supervisory body should consider what level of risk self-assessment should be required from applicants in addition to any key risks identified by the supervisory body.

The supervisory body may have other duties that advance the regulatory objective. These would include its reporting duties to the Commission which will report to both the Court and the public. Reports would detail the overall state of the market, risks across the market, prioritized risk areas, and specific market sectors (by consumer, by area of law, etc.). The supervisory body may also have the authority to recommend initiatives, including public information and education campaigns to the Commission.

Funding

The Committee proposes that the program be funded primarily from fees collected from participants with the option to waive a fee for not-for-profit entities. Unless the applicant is a not-for-profit entity whose fee has been waived, the applicant would be required to submit an application fee at the outset of the approval process and a licensing fee annually to maintain an active license. At the outset, however, it is envisioned that the program be funded by The Florida Bar.

Program Overview and Regulatory Process



The key to the Lab lies in identifying and assessing risk and developing data to inform the regulatory approach. The key points of the regulatory process are: (1) licensing; (2) monitoring; and (3) enforcement. Each of the three points defines a key interaction between the supervisory body, the Commission and the regulated entity. The Lab Program will perform as follows:

Application

The applicant initiates the process by filing an application. The applicant describes the service/product/business model offered and risks and benefits of the legal service to the public. At a minimum, applicants must detail exactly what the new offering is (e.g., what the innovation is, what it intends to accomplish, and how it functions); how they expect it to benefit the public; what risks or harms they expect might arise; how they will deploy and measure this offering (the method of monitoring and assessing the project for unforeseen impacts on consumers such as surveys, case studies or fiscal impact); and which rules or regulations need to be revised in order for this offering to be allowed. The applicant should submit supplemental materials (visuals, etc.) as necessary. Any type of organization or individual can propose a new venture to be included in the Lab.¹

The supervisory body should develop a mechanism for sealing documents upon request of the applicant if the documents include information such as trade secrets. However, any decision to seal documents will be limited and in no event will it include the confidential reporting of such documents to the Commission and the Court as part of the defined reporting requirements.

Risk Assessment

Based on the description provided in the initial application, supplemented as necessary with information requests to the applicant, the supervisory body initiates the risk assessment process.

The applicant will do a self-assessment and will be expected to identify any risks to consumers. These may be risks specific to the type of project proposed, the business model, the area of law, or the target consumer population.

The supervisory body assesses the applicant's proposal. Does the proposed service implicate one of the key risks (potential for consumer harm, severity of harm, potential for consumer legal need going unmet and potential for consumer purchasing unnecessary legal services), and what is the likelihood and impact of those risks being realized? The applicant must submit required data on these risks and any information on the mitigation of these risks and the response to risk realization built into its model.

The risk level will guide the supervisory body in its regulatory approach going forward, i.e., how frequently to audit, what kind of ongoing monitoring or reporting to employ, and what kinds of enforcement tools need to be considered.

If the supervisory body finds that significant risks have been identified, but it is not clear how the applicant plans to address and mitigate those risks, the supervisory body can impose probationary requirements on the applicant targeted to address those risks or refuse licensure.

¹ Nothing in this proposal is intended to permit a lawyer admitted in another jurisdiction to open a law office in Florida or to be admitted to the practice of law in Florida.

Acceptance into Lab

After review of the application and risk assessment, the supervisory body recommends acceptance to the Commission of only those applicants that have demonstrated an innovative new offering, a strong assessment plan, and a strong potential for public benefit as weighed against any identifiable risk of public harm. The Commission approves appropriate participants to enter the Lab and establishes how the data-sharing, auditing, and evaluation will proceed. If the participants agree to these arrangements, they receive a letter of non-enforcement from the Commission that gives them permission to develop and launch the agreed upon offering, within the confines of the Lab, without being subject to the identified regulations.

Participants accepted into the Lab must conspicuously disclose that they are part of the Lab and refer consumers to the supervisory body where they can learn more about the participant and give feedback or complaints. Participants in the Lab must also agree to submit to the jurisdiction of the Florida courts for resolution of disputes with Florida consumers.

Monitoring and Data Collection

Once an entity or individual or platform is approved, the regulatory relationship moves on to the monitoring and data collection phase. The purpose of monitoring is continual improvement of the regulatory system with respect to the regulatory objective.

Monitoring enables the supervisory body to understand risks in the market and identify trends and to observe, measure, and adjust any regulatory initiatives to drive progress toward the regulatory objective.

In monitoring, the supervisory body can use several different strategies/approaches. The supervisory body should develop requirements such that participants periodically and routinely provide data on the following four key risks: 1) consumer achieves a poor legal result (consumer harm); 2) severity of the harm; 3) consumer fails to exercise their legal rights because they did not know they possessed those rights; or 4) consumer purchases a legal service that is unnecessary or inappropriate for resolution of their legal issue. The supervisory body should have the flexibility to reduce or eliminate specific reporting requirements if the data consistently shows no harm to consumers. The supervisory body should also conduct unannounced testing or evaluation of participants' performance through audits or expert audits of random samples of services or products.

The participants have an affirmative duty to monitor for and disclose any unforeseen impacts on consumers. The participants work on developing their services, instituting them in the legal services market, and collecting data on their performance. The supervisory body observes the performance of the participant to see if the public uses it, if the intended benefits result, if any expected or unexpected harms result, and receives consumer feedback and complaints. The supervisory body can recommend that the Commission suspend or cancel the non-enforcement letter at any time if the participant is not performing according to the agreement, if its services do not engage an audience, or if the services result in harms above what the supervisory body has deemed

acceptable. Whether the services help increase access to justice or the availability of legal services may also be considered.

The supervisory body should conduct consumer surveys across the market and consider how to engage with courts and other agencies to gather performance data. The supervisory body should use the data gathered to issue regular market reports and issue guidance to the public, participants and the Commission.

Exiting the Lab

Once the participant's designated period operating within the Lab finishes, the participant may be granted a license by the Court in which case the participant can continue with its approved services with the non-enforcement authorization still intact. The supervisory body can take stock of the participants, their services, and data, and it can use this information to shape the evaluation of future applications—perhaps changing the terms of the safeguards; the protocols for evaluation of risks, harms, and benefits; or what types of innovation it authorizes. The supervisory body might also use the data to recommend to the Commission permanent changes to the existing regulations for the entire market.

A condition of the Lab is that participants which successfully exit the Lab may continue providing their services as long as the risks of harm were demonstrably within appropriate levels even if the Lab is formally concluded. Periodic review and data will still be required by the supervisory body. If the review or data shows that consumers are being harmed or that services are being provided beyond what was authorized, the supervisory body may recommend to the Court that regulatory action be taken including loss of licensure and cessation of services.

Enforcement²

Enforcement is necessary if the activities of participants are harming consumers. The supervisory body will act when evidence of consumer harm exceeds the applicable level of acceptable harm thresholds outlined in the individualized risk assessment. The supervisory body should strive to make the enforcement process as transparent, specifically targeted, and responsive as possible.

The supervisory body should develop a process for enforcement: intake (a process by which members of the public can approach the supervisory body with complaints about the services received), investigation, and redress. Evidence of consumer harm can come before the supervisory body through multiple avenues:

1. Supervisory body finds evidence of consumer harm through the course of its monitoring, auditing, or testing of participants.
2. Supervisory body finds evidence of consumer harm through its monitoring of the legal services market.

² This outline discusses regulatory enforcement only and does not discuss civil remedies the consumer may have as that is beyond the scope of the program.

3. Consumer complaints.
4. Referrals from courts or other agencies.
5. Whistleblower reports.
6. Media or other public interest reports.

The supervisory body should consider establishing a role or office to focus on consumer questions or complaints about poor legal services (issues such as poor communication, inefficient service, trouble following client direction, costs etc.). This role could be contained within the supervisory body but requires proper structural independence and authority to address complaints, require remedial action, and issue clear guidelines on what kinds of information should be referred to the enforcement authority of the supervisory body. Many of these consumer interventions are already well-established programs and processes within The Florida Bar structure.

If the supervisory body makes a finding of consumer harm that exceeds the applicable threshold, then penalties are triggered. The penalty system should be clear, simple, and driven by the regulatory objective. The supervisory body should strive to address harm in the market without unnecessarily interfering with the market.

There should be a process to appeal enforcement decisions, both within the supervisory body, to the Commission and to the Supreme Court of Florida. The quarterly report made by the Chair to the Court should include enforcement data and actions.

Final Thoughts

The Committee believes that there is a need to prioritize access to legal services in the Lab. The Lab should be designed to incentivize benefits to extend not only to people with less money to spend on services but to all consumers of legal services who currently struggle to access the same. Some specific ideas include:

1. Obligation to distribute innovations to low-income communities. As more services succeed in the Lab, there might be obligations for the companies to give free licenses, software, or other access to people who cannot afford them.
2. Matchmaking between technologists, legal aid, and social services groups. The Commission should explore whether a supervisory body, or associated group, can help encourage more access-oriented entrants by bringing together experts with new technologies and business models with professionals who work closely with low-income communities. In this way, the supervisory body could help legal aid lawyers and social service providers better understand how they might harness emerging technologies and “innovation” (when most of them do not have the resources to do this on their own). The supervisory body might also offer incentives and training to possible entrants who are focused on low-income consumers.
3. Including lawyers in the legal services delivery model to the greatest extent possible. Providing consumers greater access to legal services also includes assisting lawyers in learning how to meet these growing needs. The greatest consumer harm may in fact be no access to legal services. Just as lawyers or the legal profession cannot solve this

problem alone neither can technological innovations. The solution lies in providing the largest numbers of members of the public the greatest access to a variety of legal services with lawyers playing a prominent, though not exclusive, role.