

AGENDA JULY 14, 2020 MEETING 10:00 – 12:00 VIA ZOOM
SPECIAL COMMITTEE TO IMPROVE THE DELIVERY OF LEGAL SERVICES

1. Approval of minutes June 15, 2020 meeting (p. 1)
2. Discussion of priorities (p. 2)
3. Discussion of proposed Advanced Florida Registered Paralegal rule (p. 3)
4. Review of orders of the Supreme Court of Florida regarding the use of technology during the Covid pandemic (orders at the following link
<https://www.floridasupremecourt.org/News-Media/Court-News/Chief-Justices-issues-new-guidelines-on-pandemic-operations-including-flexible-local-return-to-jury-trials-based-on-local-conditions>)
5. Rule 4-1.2(c) – unbundled legal services (p. 24)

One recommendation in the Arizona report is to increase education and information on unbundled legal services. Rule 4-1.2(c) allows Florida lawyers to limit the scope of legal services. Should Florida do more to educate members and clients on this rule?

6. Discussion of rule 4-5.4 and fee splitting (p. 29)
7. Proposed Chapter 23 – Registered Online Service Provider Program (p. 38)

MINUTES JUNE 15, 2020 MEETING
SPECIAL COMMITTEE TO IMPROVE THE DELIVERY OF LEGAL SERVICES
Via Zoom

Members present:	Josias Dewey
John Stewart, chair	Cesar Alvarez
Joseph Corsmeier	Also present:
Santo DiGangi	Lori Holcomb, Florida Bar Consultant
Lansing Scriven	Visitors:
John F. Harkness, Jr.	Joshua Doyle
Sarah Sullivan	Gary Blankenship
Shawwna Hoffman-Childress	Lorna Brown-Burton
Adriana Gonzalez	Cathy McEwen

The meeting began at 10:00 am with a brief introduction of committee members after which John Stewart reviewed the mission statement and proposed meeting schedule. Meetings will be held via Zoom. In-person meetings will be held during the bar's Fall and Winter meetings if it is safe to do so.

Lori Holcomb gave a brief overview of the regulation of the practice of law in Florida.

John Stewart then opened the floor for committee members to comment on what they hope the committee will accomplish. Because the scope of the Court's request and the mission statement is broad, it was suggested that the committee prioritize what should be done. John Stewart asked that the members send their thoughts on this to him and Lori. A request was also made that each member send Lori a brief bio.

Lori informed the committee that the next Zoom meeting will be the week of July 13, 2020. She will be sending a doodle poll.

The meeting adjourned at approximately 11:30 am.

PRIORITIES

1. Discussion of referral fees/fee sharing/profit sharing with non-lawyers (fee/profit sharing permitted in Washington D.C.), including rules, concepts, and studies in other jurisdictions; discussion of data (possible creating of data subcommittee)
2. Discussion of the state of the delivery of legal services, current regulation of the practice of law/limited practice of law, and potential revised rules, and creation of regulatory “sandbox”, including rules, concepts, and studies on other jurisdictions; , can we change the rules to allow for hybrid types of firms? Maybe non-profit firms that train young lawyers in partnership with law schools, maybe non-profit law firms that train service-oriented lawyers how to have their own sustainable non-profit law firm? Discussion of the rules around nonlawyer ownership of law firms.
3. Discussion of oral argument re: proposed chapter 23, Registered Online Service Provider Program, discussion of online service providers, including rules, concepts, and studies in other jurisdictions.
4. Discussion of nonlawyer providers of limited legal services, limited licensing programs, proposed Advanced Registered Paralegal program, and rules, concepts, and studies in other jurisdictions; a discussion regarding the utilization of Certified Legal Interns (CLIs) and the Rules governing their certification/admission.
5. Discussion of lawyer advertising, including APRL/ABA recommended revisions.
6. Discussion of modernizing our legal education curriculum. (Ultimately, access to legal services can be improved through the profession’s use of technology. Greater investment can increase the deployment of that technology. Of course, lawyers also need proper training on how to use technology in their practice. Currently, few law schools are focused on providing this training as part of their law school curriculum.)

CHAPTER 20. FLORIDA REGISTERED PARALEGAL AND ADVANCED FLORIDA REGISTERED PARALEGAL PROGRAMS

20-1. PREAMBLE

RULE 20-1.1 PURPOSE

The purpose of this chapter is to set forth a definition that must be met in order to use the title paralegal, to establish the requirements to become a Florida Registered Paralegal and an Advanced Florida Registered Paralegal, and to establish the requirements to maintain Florida Registered Paralegal and Advanced Florida Registered Paralegal status. In addition, the purpose of establishing the Advanced Florida Registered Paralegal status is to increase access to civil justice for lower and moderate income or disadvantaged Floridians. With the exception of the assistance an Advanced Florida Registered Paralegal may provide, ~~This chapter is not intended to set forth the duties that a paralegal may perform because those restrictions are set forth in the Rules of Professional Conduct and various opinions of the Professional Ethics Committee. Nothing contained in this rule is deemed relevant in charging or awarding fees for legal services rendered by nonlawyers under the supervision of an employing or supervising lawyer, which are being based on the nature of the services rendered and not the title of the person rendering the services. Nothing in these rules creates or changes any legal requirements for charging or awarding fees or costs for services provided by nonlawyers under the supervision of an employing or supervising lawyer. Those legal requirements are based on the nature of the services provided and not on the title or status of the person providing the services.~~

20-2. DEFINITIONS

RULE 20-2.1 GENERALLY

For purposes of this chapter, the following terms have the following meaning:

(a) Paralegal. A paralegal is a person with education, training, or work experience, who works under the direction and supervision of an employing or supervising lawyer and who performs specifically delegated substantive legal work for which an employing or supervising lawyer is responsible.

(b) Florida Registered Paralegal. A Florida Registered Paralegal is someone who meets the definition of paralegal and the requirements for registration as set forth elsewhere in these rules.

(c) Advanced Florida Registered Paralegal. An Advanced Florida Registered Paralegal is someone who meets the definition of a paralegal, the requirements for registration as a Florida Registered Paralegal, and the additional requirements for advanced registration as set forth elsewhere in these rules and is supervised by a member of The Florida Bar.

(ed) Paralegal Work and Paralegal Work Experience. Paralegal work and paralegal work experience are specifically delegated substantive legal work that is performed by a person with education, training, or work experience under the direction and supervision of an employing or supervising lawyer for which an employing or supervising lawyer is responsible. In order to qualify as paralegal work or paralegal work experience for purposes of meeting the eligibility

and renewal requirements for Florida Registered Paralegal status, the paralegal must primarily perform paralegal work and the work must be continuous and recent. In order to qualify as paralegal work or paralegal work experience for purposes of meeting the eligibility requirements for Advanced Florida Registered Paralegal status, the paralegal must primarily perform paralegal work, at least half of which is in an authorized area of law and the work must be continuous and recent. In order to qualify as paralegal work or paralegal work experience for renewal of Advanced Florida Registered Paralegal status, the Advanced Florida Registered Paralegal must be providing the services set forth in rule 20-6.3. If the Advanced Florida Registered Paralegal does not meet these requirements, the Advanced Florida Registered Paralegal may be eligible to renew as a Florida Registered Paralegal. Recent paralegal work for the purposes of meeting the eligibility and renewal requirements means work performed during the previous 5 years in connection with an initial registration, and during the preceding year in the case of a registration renewal. Time spent performing clerical work is specifically excluded.

(de) Approved Paralegal Program. An approved paralegal program is a program approved by the American Bar Association (ABA) or a program that is in substantial compliance with the ABA guidelines by being an institutional member of the American Association for Paralegal Education (AAfPE) and accredited by a nationally recognized accrediting agency approved by the United States Department of Education.

(ef) Employing or Supervising Attorney/Lawyer. An employing or supervising lawyer for a paralegal or Florida Registered Paralegal is a member of The Florida Bar, authorized house counsel, foreign legal consultant, or military lawyer, as defined in the Rules Regulating The Florida Bar, who employs or supervises having direct supervision over the work product of the paralegal or Florida Registered Paralegal. An employing or supervising lawyer for an Advanced Florida Registered Paralegal is a member of The Florida Bar who employs or supervises the Advanced Florida Registered Paralegal. The supervising lawyer for an Advanced Florida Registered Paralegal must be located in Florida and must practice in the same area of law that the Advanced Florida Registered Paralegal the lawyer is supervising is providing services. A supervising lawyer may supervise no more than 2 Advanced Florida Registered Paralegals.

(fg) Board. The board is the Board of Governors of The Florida Bar.

(gh) Respondent. A respondent is the individual whose conduct is under investigation.

(hi) Designated Reviewer. The designated reviewer is a member of the board of governors appointed by the president of The Florida Bar from the district of the district paralegal committee and is responsible for review and other specific duties as assigned by the board of governors with respect to a particular district paralegal committee or matter. If a designated reviewer ~~recuses or~~ is recused or unavailable, another board member from the district may be appointed by the president of The Florida Bar to serve as designated reviewer in that matter.

(ij) Probable Cause. A finding of probable cause is a finding that there is cause to believe that a Florida Registered Paralegal or Advanced Florida Registered Paralegal is guilty of misconduct justifying disciplinary action.

(jk) Bar Counsel. Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

(l) Direction and supervision. Direction and supervision of:

(1) A paralegal or Florida Registered Paralegal means that the employing or supervising lawyer directly supervises the work product of the paralegal or Florida Registered Paralegal.

(2) An Advanced Florida Registered Paralegal means that the supervising lawyer:

(A) ensures that the Advanced Florida Registered Paralegal is aware of the lawyer's ethical obligations for the performance of services authorized by rule 20-6.3; and

(B) provides guidance to the Advanced Florida Registered Paralegal relating to the performance of services authorized by rule 20-6 and ensures that the Advanced Florida Registered Paralegal does not undertake services not authorized by this rule.

(m) 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 ~~employing or~~ supervising lawyer, or a form customarily used in the ~~employing or~~ supervising lawyer's practice. For the purposes of this chapter, a form may include a letter or other document that is not a pleading or will not be filed in a court.

(n) Limited Representation Client. A lawyer may ethically limit the objectives and scope of representation of a client. Under this chapter, a limited representation client is a person who agrees in writing to receive authorized services from an Advanced Florida Registered Paralegal acting under the authority of ~~an employing or a~~ supervising lawyer.

(o) Authorized Area of Law. An authorized area of law for an Advanced Florida Registered Paralegal 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 this chapter, family law does not include adoption, dependency, juvenile proceedings, or the preparation of a Qualified Domestic Relations Order or other order utilized in the division of retirement benefits.

20-3. ELIGIBILITY REQUIREMENTS

RULE 20-3.1 REQUIREMENTS FOR FLORIDA REGISTERED PARALEGAL REGISTRATION

In order to be a Florida Registered Paralegal under this chapter, an individual must meet 1 of the following requirements.

(a) Educational and Work Experience Requirements. A person may become a Florida Registered Paralegal by meeting 1 of the following education and paralegal work experience requirements:

(1) a bachelor's degree in paralegal studies from an approved paralegal program, plus a minimum of 1 year of paralegal work experience;

(2) a bachelor's degree or higher degree other than a juris doctorate from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 3 years of paralegal work experience;

(3) an associate's degree in paralegal studies from an approved paralegal program, plus a minimum of 2 years of paralegal work experience;

(4) an associate's degree from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 4 years of paralegal work experience; or

(5) a juris doctorate degree from an American Bar Association accredited institution, plus a minimum of 1 year of paralegal work experience; or

(6) a juris doctorate degree from an American Bar Association accredited institution and licensure in good standing in a United States jurisdiction other than Florida, with no minimum paralegal work experience.

(b) Certification. A person may become a Florida Registered Paralegal by obtaining 1 of the following certifications:

(1) successful completion of the Paralegal Advanced Competency Exam (PACE certification as offered by the National Federation of Paralegal Associations "NFPA") and good standing with NFPA; or

(2) successful completion of the Certified Legal Assistant/Certified Paralegal examination (CLA/CP certification as offered by the National Association of Legal Assistants "NALA") and good standing with NALA.

(c) Grandfathering Reapplication. A paralegal who was registered under the grandfathering provision on or prior to March 1, 2011, who resigns or whose registration is revoked may reapply based on work experience alone. The paralegal must provide work experience as defined elsewhere in these rules for 5 of the 8 years immediately preceding the date of reapplication.

RULE 20-3.2 REQUIREMENTS FOR ADVANCED FLORIDA REGISTERED PARALEGAL REGISTRATION

In order to be an Advanced Florida Registered Paralegal under this chapter, an individual must meet the requirements to be a Florida Registered Paralegal and the following requirements:

(a) Education and Work Experience. If applying based on the criteria of rule 20-3.1(a), the education must include a course of at least 3 credit hours in authorized area of law, litigation, or general civil law and the paralegal work experience must include specifically delegated substantive legal work in an authorized area of law.

(b) Certification. If applying based on the criteria of rule 20-3.1(b), the individual must have a minimum of 1 year of paralegal work experience which must include specifically delegated substantive legal work in an authorized area of law.

(c) Grandfathering Reapplication. A Florida Registered Paralegal who was registered under the grandfathering provision on or prior to March 1, 2011, who resigns or whose registration is revoked may reapply and seek Advanced Florida Registered Paralegal status based on work experience alone. The paralegal must provide work experience as defined elsewhere in these rules for 5 of the 8 years immediately preceding the date of reapplication and the work experience must include specifically delegated substantive legal work in an authorized area of law.

20-4. REGISTRATION

RULE 20-4.1 GENERALLY

The following must be filed with The Florida Bar by an individual seeking to be registered as a Florida Registered Paralegal under this chapter:

(a) Educational, Certification, or Experience Requirement.

(1) evidence that the individual has satisfied the education and work experience requirements ~~of rule 20-3.1(a)~~ by supplying evidence of the degree and attestation from the employing or supervising lawyer showing that the individual has the appropriate paralegal work experience; or

(2) a certificate showing that the individual has obtained 1 of the certifications set forth in rule 20-3.1(b) and attestation from the employing or supervising lawyer(s) showing that the individual is currently primarily performing paralegal work and, if applying for Advanced Florida Registered Paralegal status, meets the work experience requirement.

(b) Statement of Compliance. A sworn statement by the individual that the individual has read and will abide by the Code of Ethics and Responsibility set forth elsewhere in this chapter.

(c) Registration Fee. An appropriate registration fee set by the board.

(d) Review by The Florida Bar. ~~Upon~~On receipt of the items set forth in subdivision 204.1(a)-(c), The Florida Bar will review the items for compliance with this chapter. Any incomplete submissions will be returned. If the individual meets all of the requirements of this chapter, the individual will be added to the roll of Florida Registered Paralegals and a certificate evidencing such registration will be issued. Individuals meeting the requirements for Advanced Florida Registered Paralegal status will be shown as such on the roll and on the certificate. If

there is an open unlicensed practice of law complaint against the individual, the application will be held as pending until the investigation is resolved.

(e) Annual Renewal; Content and Registration Fee. Except as provided elsewhere in this rule, the registration pursuant to this subdivision will be annual and consistent with that applicable to a lawyer licensed to practice in the state of Florida. An annual registration fee will be set by the board in an amount not more than the annual fees paid by inactive members of The Florida Bar. The renewal must contain a statement that the individual is primarily performing paralegal work as defined elsewhere in this chapter and a statement that the individual is not ineligible for registration set forth elsewhere in this chapter. If renewing status as an Advanced Florida Registered Paralegal, the renewal must also contain a sworn statement that at least half of the paralegal work is in an authorized area of law and a sworn statement from the supervising lawyer concurring that at least half of the Advanced Florida Registered Paralegal's work is in their authorized area of the law. A Florida Registered Paralegal or Advanced Florida Registered Paralegal who is not primarily performing paralegal work is not eligible for renewal of the registration but may reapply for registration. An Advanced Florida Registered Paralegal who is no longer performing paralegal work in an authorized area of law is not eligible for renewal of Advanced Florida Registered Paralegal status but may be eligible for renewal of Florida Registered Paralegal status if those renewal requirements are met. If there is an open unlicensed practice of law complaint against the individual, the renewal will be held as pending until the investigation is resolved.

(f) Installment Payment of Renewal Fee. If a Florida Registered Paralegal or Advanced Florida Registered Paralegal is employed by a federal, state, or local government, the Florida Registered Paralegal or Advanced Florida Registered Paralegal may elect to pay their annual renewal fee in 3 equal installments. ~~The Florida Registered Paralegal's~~ notice of election to pay the renewal fee in installments under this rule and the first installment payment must be postmarked no later than August 15. The second and third installment payments must be postmarked no later than November 1 and February 1, respectively.

Second and third installment payments postmarked after their respective due date(s) are subject to a one-time late charge of \$50 per fiscal year, which shall accompany the final payment.

The Florida Bar will send written notice by registered or certified mail to the last official address of each Florida Registered Paralegal or Advanced Florida Registered Paralegal whose renewal fee and late fee have not been paid under this rule by February 1. Upon failure to pay renewal fees and any late charges under this rule by March 15, the individual's status as a Florida Registered Paralegal or Advanced Florida Registered Paralegal will be revoked.

(g) Renewal Fee Exemption for Activated Reserve Members of the Armed Services. Florida Registered Paralegals or Advanced Florida Registered Paralegals engaged in reserve military service in the Armed Forces of the United States who are called to active duty for 30 days or more during the bar's fiscal year are exempt from the payment of the annual renewal fee required under this rule. For purposes of this rule, the Armed Forces of the United States includes the United States Army, Air Force, Navy, Marine Corps, Coast Guard, as well as the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, the Air

National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve. Requests for an exemption must be made within 15 days before the date renewal fees are due each year or within 15 days of activation to duty of a reserve member. To the extent renewal fees were paid despite qualifying for this exemption, such renewal fee will be reimbursed by The Florida Bar within 30 days of receipt of a Florida Registered Paralegal's or Advanced Florida Registered Paralegal's request for exemption. Within 30 days of leaving active duty status, the Florida Registered Paralegal or Advanced Florida Registered Paralegal must report to The Florida Bar that he or she is no longer on active duty status in the United States Armed Forces.

20-5. INELIGIBILITY FOR REGISTRATION OR RENEWAL

RULE 20-5.1 GENERALLY

The following individuals are ineligible for registration ~~as a Florida Registered Paralegal~~under this chapter or for renewal of a registration that was previously granted:

- (a) a person who is currently suspended or disbarred or who has resigned in lieu of discipline from the practice of law in any state or jurisdiction;
- (b) a person who has been convicted of a felony in any state or jurisdiction and whose civil rights have not been restored;
- (c) a person who has been found to have engaged in the unlicensed (unauthorized) practice of law in any state or jurisdiction within 7 years of the date of application;
- (d) a person whose registration or license to practice has been terminated or revoked for disciplinary reasons by a professional organization, court, disciplinary board, or agency in any jurisdiction;
- (e) a person who is no longer primarily performing paralegal work as defined elsewhere in these rules;
- (f) a person who fails to comply with prescribed continuing education requirements as set forth elsewhere in this chapter; or
- (g) a person who is providing services directly to the public as permitted by case law and subchapter 10-2 of these rules.

RULE 20-5.2 DUTY TO UPDATE

An individual applying for registration ~~as a Florida Registered Paralegal~~ or who is registered ~~as a Florida Registered Paralegal~~under this chapter has a duty to inform The Florida Bar promptly of any fact or circumstance that would render the individual ineligible for registration or renewal, and The Florida Bar will notify the employing or supervising lawyer as defined elsewhere in this chapter of any changes to the registration status. The employing or supervising lawyer has a duty to inform The Florida Bar if a paralegal registered under this rule is no longer employed by the employing or supervising lawyer.

20-6. PERFORMANCE OF SERVICES

20-6.1 GENERALLY

A paralegal registered under this chapter must act prudently in determining the extent to which a client may be assisted without the ~~presence-independent professional judgment~~ of a lawyer.

RULE 20-6.2 FLORIDA REGISTERED PARALEGAL

A Florida Registered Paralegal registered under this chapter may perform services for a lawyer in the representation of a client, provided:

- (a) the services do not require the exercise of independent professional legal judgment;
- (b) the lawyer is responsible for the client, maintains a direct relationship with the client, and maintains control of all client matters;
- (c) the lawyer supervises the paralegal;
- (d) the lawyer remains professionally responsible for all services provided on behalf of the 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; and
- (e) the services performed supplement, merge with, and become the lawyer's work product.

RULE 20-6.3 ADVANCED FLORIDA REGISTERED PARALEGAL

(a) ~~In addition to performing services that may be performed by a Florida Registered Paralegal, a~~An Advanced Florida Registered Paralegal may perform the following services when assisting a limited representation client ~~who comes to the law office of the supervising lawyer~~ in matter involving an authorized area of law:

(1) *Selection, Completion, and Filing Forms.* An Advanced Florida Registered Paralegal may assist a limited representation client in selecting a form, ~~inserting information given by the limited representation client into blank or fill in spaces on the form, and assist a limited representation client in completing,~~ filing and serving the form as authorized by this chapter. This includes conducting intake to obtain relevant information from a limited representation client. The form must include the name, law firm, ~~physical address, e-mail address~~ and telephone number of the Advanced Florida Registered Paralegal who assisted in preparing the form ~~and the name and Florida Bar number of the supervising lawyer~~. If other documents are necessary to the matter and ancillary to the form, an Advanced Florida Registered Paralegal may assist a limited representation client in obtaining, 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 an Advanced Florida Registered 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 document~~ affects a limited representation client's rights and obligations; and

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

(b) Mandatory Disclosures. Before an Advanced Florida Registered Paralegal provides any of the services set forth in subdivision (a) of this rule, a limited representation client must give informed consent to the provision of legal services by the Advanced Florida Registered Paralegal in a written agreement that discloses the limited scope of services the Advanced Florida Registered Paralegal may provide and meets any other requirement of rule 4-1.2(c). The agreement must be signed by the limited representation client, the Advanced Florida Registered Paralegal, and the supervising ~~or employing~~ lawyer. If the Advanced Florida Registered Paralegal knows or reasonably should know that a limited representation client requires services outside of those permitted by this rule, the Advanced Florida Registered Paralegal must advise the limited representation client to seek legal advice from a lawyer and may refer the limited representation client to the Advanced Florida Registered Paralegal's supervising or employing lawyer.

(c) Prohibited Activities. When providing services pursuant to this rule, Advanced Florida Registered Paralegals may not hold themselves 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 ~~orally or in writing~~ as the representative of a limited representation client or on behalf of a limited representation client.

(d) Advertising. Advanced Florida Registered Paralegals may not independently advertise their services. A lawyer may advertise the availability of the Advanced Florida Registered Paralegal and the services the Advanced Florida Registered Paralegal may provide in compliance with all rules regulating information about a lawyer's services in subchapter 4-7.

(e) Limitation of Practice Areas. An Advanced Florida Registered Paralegal may only provide the services set forth in subdivision (a) of this rule in an authorized area of law. If a

limited representation client has a legal issue outside of an authorized area of law, the Advanced Florida Registered Paralegal may not provide the services. However, nothing in this rule prevents an Advanced Florida Registered Paralegal from providing the services a Florida Registered Paralegal may provide.

(f) Responsibilities of ~~Employing or~~ Supervising Lawyer. The ~~employing or~~ supervising lawyer for an Advanced Florida Registered Paralegal remains professionally responsible for all information and 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 Advanced Florida Registered Paralegal in connection with the information or services. The services performed by the Advanced Florida Registered Paralegal supplement, merge with, and become the lawyer's work product.

COMMENT

Studies have shown that there is an unmet need in Florida for access to civil justice. ~~Litigants~~ ~~Persons with lower or moderate income or disadvantaged Floridians~~ often cannot afford to hire a lawyer or do not know that their legal issue requires a lawyer. This rule addresses the access issue by authorizing Advanced Florida Registered Paralegals to provide services to a limited representation client while providing protection to the public through the Advanced Florida Registered Paralegal's and lawyer's ethical responsibilities.

This rule sets forth the services a Florida Registered Paralegal may provide and the services an Advanced Florida Registered Paralegal may provide. A Florida Registered Paralegal may provide services that do not require the exercise of independent professional judgment, require direct oversight by the lawyer, and are performed for a client of the lawyer. In contrast, in addition to the services that may be performed by a Florida Registered Paralegal, an Advanced Florida Registered Paralegal may also provide services that involve the limited exercise of independent professional judgment, do not require lawyer oversight, and are performed for a client who is provided limited representation. These services are not open-ended but are limited to the services set forth in this rule.

The Code of Ethics and Responsibility in this chapter and the Rules of Professional Conduct set forth elsewhere in these rules apply and provide a level of protection that would not be present if the services were provided outside of the direction and supervision of a lawyer. The ~~supervising~~ lawyer remains responsible for the Advanced Florida Registered Paralegal at all times and must make reasonable efforts to ensure that the Advanced Florida Registered Paralegal's conduct is compatible with the professional obligations of the lawyer.

A level of protection is also provided by limiting the services to assistance with Supreme Court Approved Forms and forms that have been prepared or are customarily used by the Advanced Florida Registered Paralegal's employing or supervising lawyer in the ordinary course of the lawyer's practice. The services are also limited to certain authorized areas of law where limited representation is common and assistance is needed.

Protection is also provided by requiring the Advanced Florida Registered Paralegal to disclose their status and scope of services in writing. The limited representation client will be

fully informed about the limitations at the beginning of the matter and can choose to hire the lawyer instead. If it becomes apparent during the matter that a lawyer's services are needed, the Advanced Florida Registered Paralegal is required to advise the limited representation client to seek the services of a lawyer.

This rule is silent on the fees the law firm may charge for the Advanced Florida Registered Paralegal's services. As noted in the purpose of this chapter, the rules do not create or change any legal requirements regarding charging or awarding fees for services performed by a nonlawyer. While the fees charged should be based on the Advanced Florida Registered Paralegal's experience and services, they should not be the same as or exceed the fees charged by the lawyer--as that would do little to increase access to civil justice. Improper fee splitting is not implicated as the limited representation client is hiring an employee of a lawyer and fees would go to the lawyer with the Advanced Florida Registered Paralegal being compensated accordingly.

A client may choose full representation by a lawyer. As with any other representation, the lawyer may delegate tasks to the Advanced Florida Registered Paralegal that are properly delegable, while maintaining responsibility for the representation. In that circumstance, although the Advanced Florida Registered Paralegal holds the title of Advanced Florida Registered Paralegal, the Advanced Florida Registered Paralegal is acting as any other paralegal in performing the delegated tasks.

Nothing in this chapter prevents an Advanced Florida Registered Paralegal from providing services a Florida Registered Paralegal may provide. In other words, if the employing or supervising lawyer assigns a task that is outside the scope of the services set forth in subsection 20-6.3, but which may be performed by a Florida Registered Paralegal, the Advanced Florida Registered Paralegal may perform the services and provide the assistance to the lawyer.

20-67. CONTINUING EDUCATION

RULE 20-67.1 ~~GENERALLY~~ FLORIDA REGISTERED PARALEGAL

Florida Registered Paralegals must complete a minimum of 33 hours of continuing education every 3 years, 5 hours of which must be in legal ethics or professionalism and 3 hours of which must be in technology. Acceptable courses include those approved for credit by The Florida Bar, the National Association of Legal Assistants (NALA), or the National Federation of Paralegal Associations (NFPA). A Florida Registered Paralegal who resigns or whose status has been revoked but is otherwise eligible for re-registration must complete at least 11 hours of continuing education for each year the Florida Registered Paralegal was previously registered in order to be eligible for re-registration. The new registration will be revoked unless the continuing education hours are completed before the re-registration application and posted on The Florida Bar website within 30 days of the effective date of the re-registration. The Florida Registered Paralegal will be given a new 3-year continuing education cycle on re-registration.

Comment

~~Continuing education is an important component of the Florida Registered Paralegal program and necessary to maintain the status of a Florida Registered Paralegal. If a Florida~~

Registered Paralegal resigns or has had the paralegal's status revoked at the end of a continuing education cycle without completing the necessary hours, the paralegal must show that the paralegal has completed a minimum of 11 hours of continuing education for each year of the immediately preceding term that the paralegal was registered. For example, if the paralegal was registered for 2 years, the paralegal must complete at least 22 hours of continuing education in order to re-register. The courses must be completed prior to the date the paralegal reapplies for Florida Registered Paralegal status. As an example, assume that a Florida Registered Paralegal was given a continuing education cycle that ran from January 1, 2011, to January 1, 2014, and the Florida Registered Paralegal resigned or had the paralegal's status revoked in October 2013. If the paralegal reapplies for Florida Registered Paralegal status in February 2014, the paralegal must show 22 hours of continuing education credit completed between January 1, 2011, to January 1, 2014, to be eligible to re-register. Because a Florida Registered Paralegal must enter all course credits on The Florida Bar's website and access to the portion of the website where credits are posted is not available during the period the paralegal was not registered, the Florida Registered Paralegal will have 30 days after re-registration to enter the credits. Failure to timely enter the credits will result in the Florida Registered Paralegal's status being revoked. The Florida Registered Paralegal will be given a new continuing education cycle on re-registration. The purpose of this rule is to ensure that Florida Registered Paralegals continue their education. This is meant to avoid a situation where a Florida Registered Paralegal has not completed the continuing education requirement, resigns, and then re-registers with a new 3-year cycle, having failed to complete the requisite hours when previously registered.

If a Florida Registered Paralegal resigns or has the paralegal's status revoked during the continuing education cycle, the cycle will not reset. For example, assume a Florida Registered Paralegal has a continuing education cycle beginning January 1, 2011 and ending January 1, 2014. The Florida Registered Paralegal's status is revoked in October 2012, for failure to pay the annual renewal. If the paralegal reapplies and is re-registered in December 2012, the continuing education cycle will remain the same, and the Florida Registered Paralegal will have until January 1, 2014, to complete the necessary hours.

RULE 20-7.2 ADVANCED FLORIDA REGISTERED PARALEGAL

An Advanced Florida Registered Paralegal must meet the continuing education requirement for a Florida Registered Paralegal. At least 116 hours of the 33 hour minimum requirement must include courses in an authorized area of law, litigation, or general civil law. The courses in an authorized area of law, litigation, or general civil law must be courses approved by The Florida Bar.

Comment

Continuing education is an important component of the Florida Registered Paralegal program and necessary to maintain registered status. Advanced Florida Registered Paralegals are encouraged to must complete continuing education in the area of law in which they are providing services under the supervision of a Florida Bar member. If a Florida Registered Paralegal or Advanced Florida Registered Paralegal resigns or has had the paralegal's status revoked at the end of a continuing education cycle without completing the necessary hours, the paralegal must show that the paralegal has completed a minimum of 116 hours of continuing

education for each year of the immediately preceding term that the paralegal was registered. For example, if the paralegal was registered for 2 years, the paralegal must complete at least 22 hours of continuing education in order to re-register. The courses must be completed prior to the date the paralegal reapplies for Florida Registered Paralegal or Advanced Florida Registered Paralegal status. As an example, assume that a continuing education cycle ran from January 1, 2011, to January 1, 2014, and the status was resigned or revoked in October 2013. If the paralegal reapplies in February 2014, the paralegal must show 22 hours of continuing education credit completed between January 1, 2011, to January 1, 2014, to be eligible to re-register. Because all course credits must be entered on The Florida Bar's website and access to the portion of the website where credits are posted is not available during the period the paralegal was not registered, the Florida Registered Paralegal or Advanced Florida Registered Paralegal will have 30 days after re-registration to enter the credits. Failure to timely enter the credits will result in the status being revoked. Upon re-registration, a new continuing education cycle will be given. The purpose of this rule is to ensure that a Florida Registered Paralegal continue their education. This is meant to avoid a situation where a Florida Registered Paralegal or Advanced Florida Registered Paralegal has not completed the continuing education requirement, resigns and then re-registers with a new 3-year cycle, having failed to complete the requisite hours when previously registered.

If a Florida Registered Paralegal or Advanced Florida Registered Paralegal resigns or has the paralegal's status revoked during the continuing education cycle, the cycle will not reset. For example, assume a continuing education cycle begins January 1, 2011 and ends January 1, 2014 and the status is revoked in October 2012, for failure to pay the annual renewal. If the paralegal reapplies and is re-registered in December 2012, the continuing education cycle will remain the same, and the Florida Registered Paralegal or Advanced Florida Registered Paralegal will have until January 1, 2014, to complete the necessary hours.

20-78. CODE OF ETHICS AND RESPONSIBILITY

RULE 20-78.1 GENERALLY

A Florida Registered Paralegal shall paralegal registered under this chapter must adhere to the following Code of Ethics and Responsibility:

(a) Disclosure. A Florida Registered Paralegal shall paralegal registered under this chapter must disclose their status as a Florida Registered Paralegal at the outset of any professional relationship with a client, lawyers, a court or administrative agency or its personnel thereof, and members of the general public. Use of the initials FRP meets the disclosure requirement only if the title paralegal also appears. For example, J.Doe, FRP, Paralegal. Use of the word "paralegal" alone also complies.

(b) Confidentiality and Privilege. A Florida Registered Paralegal shall paralegal registered under this chapter must preserve the confidences and secrets of all clients. A Florida Registered Paralegal and must protect the confidences of a client, and it shall be. It is unethical for a Florida Registered Paralegal paralegal registered under this chapter to violate any statute or rule now in effect or hereafter to be enacted controlling privileged communications.

(c) Appearance of Impropriety or Unethical Conduct. A Florida Registered Paralegal ~~paralegal registered under this chapter~~ should understand the ~~attorney's~~ lawyer's Rules of Professional Conduct and this code in order to avoid any action that would involve the ~~attorney~~ lawyer in a violation of the rules or give the appearance of professional impropriety. ~~It is the~~ There is an obligation of the Florida Registered Paralegal to avoid conduct that would cause the lawyer to be unethical or even appear to be unethical, and loyalty to the lawyer is incumbent upon the Florida Registered Paralegal.

(d) Prohibited Conduct. Unless specifically authorized by this chapter, a paralegal registered under this chapter ~~A Florida Registered Paralegal~~ should not:

(1) establish attorney-client relationships, accept cases, set legal fees, give legal opinions or advice, or represent a client before a court or other tribunal, unless authorized to do so by the court or tribunal;

(2) engage in, encourage, or contribute to any act that could constitute the unlicensed practice of law;

(3) engage in the practice of law;

(4) perform any of the duties that ~~attorneys~~ lawyers only may perform nor do things that ~~attorneys~~ lawyers themselves may not do; or

(5) act in matters involving professional legal judgment since the services of ~~an attorney~~ a lawyer are essential in the public interest whenever the exercise of such judgment is required.

(e) Performance of Services. ~~A Florida Registered Paralegal must act prudently in determining the extent to which a client may be assisted without the presence of an attorney. A Florida Registered Paralegal may perform services for an attorney in the representation of a client, provided:~~

~~(1) the services performed by the paralegal do not require the exercise of independent professional legal judgment;~~

~~(2) the attorney is responsible for the client, maintains a direct relationship with the client, and maintains control of all client matters;~~

~~(3) the attorney supervises the paralegal;~~

~~(4) the attorney remains professionally responsible for all work on behalf of the client and assumes full professional responsibility for the work product, including any actions taken or not taken by the paralegal in connection therewith; and~~

~~(5) the services performed supplement, merge with, and become the attorney's work product.~~

(fe) Competence. A ~~Florida Registered Paralegal shall~~ paralegal registered under this chapter must work continually to maintain integrity and a high degree of competency throughout the legal profession.

(gf) Conflict of Interest. A ~~Florida Registered Paralegal~~ paralegal registered under this chapter who was employed by an opposing law firm has a duty not to disclose any information relating to the representation of the former firm's clients and must disclose the fact of the prior employment to the employing ~~and supervising attorney~~ lawyer.

(hg) Reporting Known Misconduct. A ~~Florida Registered Paralegal~~ paralegal registered under this chapter having knowledge that another ~~Florida Registered Paralegal~~ paralegal registered under this chapter has committed a violation of this chapter or code ~~shall~~ must inform The Florida Bar of the violation.

20-89. REVOCATION OF REGISTRATION

The following rules and procedures ~~shall~~ apply to complaints against ~~Florida Registered Paralegals~~ paralegals registered under this chapter:

RULE 20-89.1 PARALEGAL COMMITTEES

~~There shall be paralegal committees as are herein provided, each of which shall have the authority and jurisdiction required to perform the functions hereinafter assigned to the paralegal committee and which shall be constituted and appointed as follows:~~

(a) District Paralegal Committees. ~~There shall be at least 1 paralegal committee for each~~ Each appellate district of this state will have 1 paralegal committee. Additional paralegal committees may be established and as many more as shall be found desirable by the board if necessary. ~~Such~~ The committees ~~shall~~ will be continuing bodies notwithstanding changes in membership, and ~~they shall~~ have jurisdiction and the power to proceed in all matters properly before them.

(b) Membership, Appointment, and Eligibility. Each district paralegal committee ~~shall~~ will consist of not fewer than 3 members, at least 1 of whom is a ~~Florida Registered Paralegal a~~ paralegal registered under this chapter and at least 1 of whom is a member of The Florida Bar. Members of district paralegal committees ~~shall~~ will be nominated by the ~~member of the board designated to review the actions of the committee~~ designated reviewer and appointed by the board. All appointees ~~shall~~ must be of legal age and ~~shall be~~ residents of the district or have their principal office in the district. ~~For each~~ Each district paralegal committee ~~there shall be~~ will have a chair designated by the designated reviewer of that committee. A vice-chair and secretary may be designated by the chair of each district committee.

(c) Terms. The terms of the members ~~shall~~ will be for 3 years from the date of administration of the oath of service on the district paralegal committee or until such time as their successors are appointed and qualified. Continuous service of a member ~~shall~~ may not exceed 6 years. A member ~~shall~~ may not be reappointed for a period of 3 years after the end of the member's second term provided, however, the expiration of the term of any member ~~shall~~ will

not disqualify ~~such~~the member from concluding any investigation or participating in the disposition of cases that were pending before the committee when the member's term expired.

(d) Disqualification. No member of a district paralegal committee ~~shall~~will perform any district paralegal committee function when that member:

- (1) is related by blood or marriage to the complainant or respondent;
- (2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;
- (3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or
- (4) is prejudiced or biased toward either the complainant or the respondent.

~~Upon~~On notice of the above prohibitions, the affected members should recuse themselves from further proceedings. The district paralegal committee chair ~~shall have~~ has the power to disqualify any member from any proceeding in which any of the above prohibitions exists and is stated of record or in writing in the file by the chair.

(e) Removal. Any member may be removed from service by the designated reviewer of that committee or by the board.

~~**(f) District Paralegal Committee Meetings.** District paralegal committees should meet at regularly scheduled times, not less frequently than quarterly each year, and either the chair or vice chair may call special meetings.~~

RULE 20-89.2 DUTIES AND AUTHORITY

It is the duty of the district paralegal committees to receive and evaluate complaints against ~~Florida Registered Paralegals~~paralegals registered under this chapter. The district paralegal committees ~~shall~~ have the authority to remove or revoke an individual's registration as a ~~Florida Registered Paralegal~~ in accordance with the procedures set forth ~~elsewhere~~ in this chapter. A registration certificate issued pursuant to these rules may be suspended or revoked for any of the following reasons:

(a) conviction of a felony or of a misdemeanor involving moral turpitude, dishonesty, or false statement;

(b) fraud, dishonesty, or corruption that is related to the functions and duties of a ~~Florida Registered Paralegal~~paralegal registered under this chapter;

(c) gross incompetence or unprofessional or unethical conduct;

(d) willful, substantial, or repeated violation of any duty imposed by statute, rule, or order of court;

- (e) fraud or misrepresentation in obtaining or renewing registration status;
- (f) noncompliance with continuing education requirements;
- (g) nonpayment of renewal fees; or
- (h) violation of the Code of Ethics and Responsibility set forth elsewhere in these rules.

RULE 20-89.3 COMPLAINT PROCESSING

(a) Complaints. All complaints against a ~~Florida Registered Paralegal~~ paralegal registered under this chapter may be initiated either by a sworn complaint asserting a violation of these rules or by The Florida Bar on its own motion.

(b) Review by Bar Counsel. Bar counsel must review the complaint and determine whether the alleged conduct, if proven, would constitute a violation of these rules. Bar counsel may conduct a preliminary, informal investigation to aid in this determination and, if necessary, may employ a Florida Bar staff investigator to aid in the preliminary investigation. If bar counsel determines that the facts, if proven, would not constitute a violation, bar counsel may decline to pursue the complaint. The complainant must be notified of a decision not to pursue a complaint including the reasons for not pursuing the complaint.

(c) Closing by Bar Counsel and Committee Chair. Bar counsel may consult with the appropriate district paralegal committee chair to determine whether the alleged conduct of a complaint, if proven, would constitute a violation of these rules. If bar counsel and the district committee chair concur in a finding that the case should be closed, the complaint may be closed without referral to the district paralegal committee.

(d) Referral to District Paralegal Committee. Bar counsel may refer a file to the appropriate district paralegal committee for further investigation or action as authorized elsewhere in these rules.

(e) Notification of Violation. If a majority of the district paralegal committee finds probable cause to believe that a violation of these rules has occurred, bar counsel or the chair of the district paralegal committee will send written notice to the ~~Florida Registered Paralegal~~ respondent identifying the committee finding and the alleged violation and the paralegal must notify their supervising lawyer of the complaint. The notice ~~shall~~ will be sent by certified U.S. mail directed to the last mailing address on file

(f) Response to Notice of Violation. The ~~Florida Registered Paralegal~~ respondent must file a written response within 30 days of receipt of the notification. If the ~~Florida Registered Paralegal~~ respondent does not respond, the violations identified in the finding of probable cause are deemed admitted.

(g) Committee Review. The district paralegal committee must review the complaint, the finding of probable cause, any responses filed, and any other pertinent materials, after either the filing of a written response by the respondent or the expiration of the time to file a response. The committee must decide whether to dismiss the proceeding or issue a proposed disposition. The

committee ~~promptly~~must send written notice of its decision to the ~~Florida Registered Paralegal~~respondent by certified U.S. mail directed to the last mailing address on file.

RULE 20-89.4 INVESTIGATION

(a) **Conduct of Proceedings.** The proceedings of district paralegal committees when testimony is taken may be informal in nature and the committees ~~shall~~are not be bound by the rules of evidence.

(b) **Taking Testimony.** Bar counsel, each district paralegal committee, and members thereof conducting investigations are empowered to take and have transcribed the testimony and evidence of witnesses. If the testimony is recorded stenographically or otherwise, the witness ~~shall~~will be sworn by any person authorized by law to administer oaths.

(c) **Rights and Responsibilities of Respondent.** The respondent may be required to appear and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel.

(d) **Rights of Complaining Witness.** The complaining witness is not a party to the investigation. The complainant may be granted the right to be present at any district paralegal committee proceeding when the respondent is present before the committee to give testimony. The complaining witness ~~shall have~~has no right to appeal the finding of the district paralegal committee.

RULE 20-89.5 SUBPOENAS

Subpoenas for the attendance of witnesses and the production of documentary evidence before a district paralegal committee ~~shall~~will be issued as follows:

(a) **District Paralegal Committees.** Subpoenas for the attendance of witnesses and the production of documentary evidence ~~shall~~will be issued by the chair or vice-chair of a district paralegal committee in pursuance of an investigation authorized by the committee.

(b) **Bar Counsel Investigations.** Subpoenas for the attendance of witnesses and the production of documentary evidence before bar counsel when bar counsel is conducting an initial investigation ~~shall~~will be issued by the chair or vice-chair of a district paralegal committee to which the matter will be assigned.

(c) **Service.** Subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process.

RULE 20-89.6 DISPOSITION OF COMPLAINTS

On concluding its investigation, the district paralegal committee will determine which of the following action(s) should be taken:

(a) close the matter on a finding of no violation;

- (b) close the matter with a letter of advice;
- (c) require completion of a specified continuing education course;
- (d) accept an affidavit from the ~~Florida Registered Paralegal~~ respondent acknowledging that the conduct surrounding the complaint was a violation of these rules and that the ~~Florida Registered Paralegal~~ respondent will refrain from conduct that would create a violation of these rules;
- (e) suspend the ~~Florida Registered Paralegal's~~ respondent's registration certificate for a period not to exceed 1 year;
- (f) revoke the respondent's registration certificate; or
- (g) deny the ~~Florida Registered Paralegal's~~ respondent's request for renewal.

RULE 20-89.7 REVIEW OF DISTRICT PARALEGAL COMMITTEE ACTION

(a) **Review by the Designated Reviewer.** Notice of district paralegal committee action recommending either revocation or denial of renewal ~~shall~~will be given to the designated reviewer for review. Upon review of the district paralegal committee action, the designated reviewer may affirm the action of the district paralegal committee, request the district paralegal committee to reconsider its action, or refer the district paralegal committee action to the disciplinary review committee of the board of governors for its review. The request for a district paralegal committee reconsideration or referral to the disciplinary review committee ~~shall~~ must be in writing and must be made within 30 days of notice of the district paralegal committee action. If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the district paralegal committee action ~~shall~~becomes final.

(b) **Review by Disciplinary Review Committee.** The disciplinary review committee ~~shall~~will review those district paralegal committee matters referred to it by a designated reviewer or the district paralegal committee and ~~shall~~ make a report to the board. The disciplinary review committee may confirm, reject, or amend the recommendation of the designated reviewer in whole or in part. The report of the disciplinary review committee ~~shall be~~is final unless overruled by the board.

(c) **Board Action on Recommendations of the Disciplinary Review Committee.** On review of a report and recommendation of the disciplinary review committee, the board of governors may confirm, reject, or amend the recommendation in whole or in part.

(d) **Notice of Board Action.** Bar counsel ~~shall~~will give notice of board action to the respondent, complainant, and district paralegal committee.

(e) **Filing Service on Board of Governors.** All matters to be filed with or served upon the board ~~shall~~will be addressed to the board of governors and filed with the executive director. The executive director ~~shall be~~is the custodian of the official records of the Florida Registered Paralegal Program.

RULE 20-89.8 FILES

(a) Files Are Property of Bar. All matters, including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records of other proceedings under these rules are property of The Florida Bar.

(b) Investigatory Record. The investigatory record ~~shall~~ consists of the record before a district paralegal committee and any reports, correspondence, papers, and recordings and transcripts of hearings and transcribed testimony furnished to, served on, or received from the respondent or the complainant or a witness before the district paralegal committee. The record before the district paralegal committee ~~shall~~ consists of all reports, correspondence, papers, and recordings furnished to or received from the respondent and the transcript of district paralegal committee meetings or transcribed testimony, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken.

(c) Limitations on Disclosure. Any material provided to or promulgated by The Florida Bar that is confidential under applicable law ~~shall~~ remain confidential and ~~shall~~ may not be disclosed except as authorized by the applicable law. If this type of material is made a part of the investigatory record, that portion of the investigatory record may be sealed by the district paralegal committee chair.

(d) Disclosure of Information. Unless otherwise ordered by a court, nothing in these rules ~~shall~~ prohibits the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(e) Response to Inquiry. Representatives of The Florida Bar, authorized by the board, ~~shall~~ may reply to inquiries regarding a pending or closed investigation. The Florida Bar may charge a reasonable fee for copying documents consistent with applicable law.

(f) Production of Investigatory Records Pursuant to Subpoena. The Florida Bar, pursuant to a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the investigatory record even if otherwise deemed confidential under these rules. The Florida Bar may charge a reasonable fee for copying the documents consistent with applicable law.

(g) Response to False or Misleading Statements. If public statements that are false and misleading are made about any investigation brought pursuant to this chapter, The Florida Bar may make any disclosure consistent with applicable law necessary to correct such false or misleading statements.

(h) Providing Material to Other Agencies. Nothing ~~contained herein shall~~ prohibits The Florida Bar from providing material to any state or federal law enforcement or regulatory agency, United States Attorney, state attorney, the National Association of Legal Assistants or the National Federation of Paralegal Associations and equivalent organizations, the Florida Board of Bar Examiners and equivalent entities in other jurisdictions, paralegal grievance

committees and equivalent entities in other jurisdictions, and unlicensed practice of law committees and equivalent entities in other jurisdictions.

20-~~9~~10. IMMUNITY

RULE 20-~~9~~10.1 GENERALLY

The members of the district paralegal committees, the board, bar staff and counsel assisting the committees, ~~shall~~ have absolute immunity from civil liability for all acts in the course of their official duties.

20-~~10~~-11. AMENDMENTS

RULE 20-~~10~~-11.1 GENERALLY

Rules governing the Florida Registered Paralegal Program may be amended in accordance with the procedures set forth elsewhere in these rules.

RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION

(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer must abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, must reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client that is impliedly authorized to carry out the representation. A lawyer must abide by a client's decision whether to settle a matter. In a criminal case, the lawyer must abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) No Endorsement of Client's Views or Activities. A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) Limitation of Objectives and Scope of Representation. If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

(d) Criminal or Fraudulent Conduct. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Comment

Allocation of authority between client and lawyer

Subdivision (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer

should assume responsibility for technical and legal tactical issues but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions. The decisions specified in subdivision (a), such as whether to settle a civil matter, must also be made by the client. See rule 4-1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by rule 4-1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. The lawyer should consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See rule 4-1.16(b)(2). Conversely, the client may resolve the disagreement by discharging the lawyer. See rule 4-1.16(a)(3).

At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 4-1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time. In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to rule 4-1.14.

Independence from client's views or activities

Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval. By the same token representing a client does not constitute approval of the client's views or activities.

Agreements limiting scope of representation

The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms

on which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent, or which the client regards as financially impractical.

Although this rule affords the lawyer and client substantial latitude to limit the representation if not prohibited by law or rule, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. In addition, a lawyer and client may agree that the representation will be limited to providing assistance out of court, including providing advice on the operation of the court system and drafting pleadings and responses. If the lawyer assists a pro se litigant by drafting any document to be submitted to a court, the lawyer is not obligated to sign the document. However, the lawyer must indicate "Prepared with the assistance of counsel" on the document to avoid misleading the court, which otherwise might be under the impression that the person, who appears to be proceeding pro se, has received no assistance from a lawyer. If not prohibited by law or rule, a lawyer and client may agree that any in-court representation in a family law proceeding be limited as provided for in Family Law Rule of Procedure 12.040. For example, a lawyer and client may agree that the lawyer will represent the client at a hearing regarding child support and not at the final hearing or in any other hearings. For limited in-court representation in family law proceedings, the attorney shall communicate to the client the specific boundaries and limitations of the representation so that the client is able to give informed consent to the representation.

Regardless of the circumstances, a lawyer providing limited representation forms an attorney-client relationship with the litigant, and owes the client all attendant ethical obligations and duties imposed by the Rules Regulating The Florida Bar, including, but not limited to, duties of competence, communication, confidentiality, and avoidance of conflicts of interest. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal

knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See rule 4-1.1.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and law. For example, the client may not be asked to agree to representation so limited in scope as to violate rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

Criminal, fraudulent, and prohibited transactions

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not assist a client in conduct that the lawyer knows or reasonably should know to be criminal or fraudulent. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See rule 4-1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation, or the like. See rule 4-1.1.

Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

Subdivision (d) applies whether or not the defrauded party is a party to the transaction. For example, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Subdivision (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last sentence of subdivision (d) recognizes that determining the validity or interpretation of a statute or regulation

may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See rule 4-1.4(a)(5).

RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or law firm shall not 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.

(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 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.

(d) Exercise of Independent Professional Judgment. A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(e) Nonlawyer Ownership of Authorized Business Entity. A lawyer shall not practice with or in the form of a business entity authorized to practice law for a profit if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a 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. Where someone other than the client 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 interfere with the lawyer's professional judgment.

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.

FLORIDA BAR ETHICS OPINION
OPINION 17-1
June 23, 2017

Advisory ethics opinions are not binding.

Florida Bar members may divide legal fees with an out-of-state lawyer whose firm includes non-lawyer ownership where: the out-of-state lawyer is providing only services that the out-of-state lawyer is authorized by law to provide; nonlawyer ownership of the out-of-state firm is permitted in the jurisdiction where that law firm is located; the out-of-state firm is in compliance with that jurisdiction's requirements; and the division of fees complies with Florida Bar rules on fee division. The opinion does not address a Florida Bar member becoming a partner, shareholder, employee, or other formal arrangement with a law firm with nonlawyer ownership.

RPC: Rules 4-1.5(g), 4-5.4(a), 4-5.5

Opinions: 90-8; 88-10; 62-3; ABA Formal Opinion 464 (2013); New York City Bar Formal Ethics Opinion 2015-8 (2015); and Philadelphia Bar Association Ethics Opinion 2010-7 (2010)

The Professional Ethics Committee has been asked by the Board of Governors of The Florida Bar to give an opinion on the issue of whether Florida Bar members may divide fees with out-of-state lawyers where those out-of-state lawyers are members of law firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in the jurisdiction where the other law firm is located.

Florida Bar members frequently work with lawyers outside their firms in representing clients. Florida Bar members also co-counsel cases with lawyers who are admitted solely in jurisdictions outside of Florida. Lawyers admitted solely in jurisdictions outside Florida are authorized to provide legal services in Florida under limited circumstances. Co-counseling with out-of-state lawyers thus raises potential concerns regarding assisting in the unlicensed practice of law and improper division of legal fees. Florida Bar members may divide fees with lawyers from other jurisdictions only where the out-of-state lawyers are providing legal services to the same client that the out-of-state lawyers are authorized by other law to provide and only in compliance with Florida Bar rules. *See*, Rules 4-1.5(g), 4-5.4(a), 4-5.5, and Florida Ethics Opinions 90-8, 88-10, and 62-3.

Florida Bar members are prohibited from partnering or sharing legal fees with nonlawyers. *See*, Rule 4-5.4. Most U.S. jurisdictions share a similar prohibition. The only United States jurisdictions that currently permit nonlawyer ownership of law firms are Washington, D.C. and Washington state. Nonlawyer ownership of law firms is permitted in Canadian provinces Ontario, British Columbia and Quebec, England, Wales, Scotland, Germany,

the Netherlands, Brussels, and New Zealand.¹ Requirements and limitations on nonlawyer ownership vary in jurisdictions that allow it.

This opinion addresses Florida Bar members in co-counseling and dividing fees with out-of-state lawyers with whom the Florida Bar members are permitted to divide fees as noted above, and in which the out-of-state lawyers practice in law firms with nonlawyer ownership as permitted by the other jurisdiction.

The committee is of the opinion that sharing fees with an out-of-state lawyer in accordance with Florida rules, law, and ethics opinions does not violate the prohibition against fee sharing set forth in Rule 4-5.4. A Florida Bar member should not be subject to discipline merely because a nonlawyer ultimately may receive some part of the out-of-state lawyer's fee solely by virtue of being an owner of the out-of-state law firm. The Florida Bar member has no control over the organization and ownership of the out-of-state firm. The out-of-state law firm may be organized in accordance with the rules of its own jurisdiction. The fact that the nonlawyer ownership would not be permitted in Florida should not impact what the out-of-state lawyer is permitted to do under the rules of that jurisdiction. To opine otherwise unnecessarily places Florida Bar members at risk and deprives clients of counsel of their own choosing from other jurisdictions.

Other jurisdictions that have addressed the issue have reached similar conclusions. *See*, ABA Formal Opinion 464 (2013); New York City Bar Formal Ethics Opinion 2015-8 (2015); and Philadelphia Bar Association Ethics Opinion 2010-7 (2010).

ABA Formal Opinion 464 also cautions lawyers that they:

. . . must continue to comply with the requirement of Model Rule 5.4(c) to maintain professional independence. Even if the other law firm may be governed by different rules regarding relationships with nonlawyers, a lawyer must not permit a nonlawyer in the other firm to interfere with the lawyer's own independent professional judgment. As noted above, the actual risk of improper influence is minimal. But the prohibition against improper nonlawyer influence continues regardless of the fee arrangement.

The committee agrees with and adopts the reasoning of the ABA Standing Committee on Ethics and Professional Responsibility in formal opinion 464 above.

Finally, the committee notes that this opinion does not address a Florida Bar member becoming a partner, shareholder, associate, or other formal arrangement in a law firm that is permitted to have nonlawyer ownership in its home jurisdiction and does so in compliance with the rules of its home jurisdiction. Neither does this opinion address the issue of a Florida Bar member who also is admitted to practice in another jurisdiction where nonlawyer ownership is permitted joining a law firm with nonlawyer owners under the rules of the other jurisdiction.

¹ *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.

**FLORIDA BAR ETHICS OPINION
OPINION 18-1
December 14, 2018**

Advisory ethics opinions are not binding.

The opinion provides guidelines on permissible and impermissible payments to a for-profit qualifying provider.

- RPC:** 4-5.4, 4-7.22
- Ethics Opinions:** Arizona Ethics Opinion 11-02 (2011); Arizona Ethics Opinion 99-06 (1999); Indiana Ethics Opinion 1-18 (2018); Kentucky Ethics Opinion E-429 (2008); New Jersey Ethics Opinion 732 (2017); New Jersey Ethics Opinion 43 (2011) New York City Bar Opinion 2000-1 (2000); New York State Ethics Opinion 1132 (2017); New York State Bar Association Ethics Opinion 1131 (2017); Maine Ethics Opinion 174 (2000); Ohio Ethics Opinion 2016-3 (2016); Oregon Ethics Opinion 2007-180 (2007); Pennsylvania Ethics Opinion 2016-200 (2016); South Carolina Ethics Opinion 16-06 (2016); South Carolina Ethics Opinion 01-03 (2001); South Carolina Ethics Opinion 01-01 (2001); South Dakota Ethics Opinion 98-10 (1999); Utah Ethics Opinion 17-05; Utah Ethics Opinion 15-05 (2015)
- Other Authority:** *Annotated Model Rules of Professional Conduct*, 8th Edition (2015); Simon, “Fee Sharing Between Lawyers and Public Interest Groups,” 98 Yale L.J. 1069 (1989)

The Board of Governors of The Florida Bar has received inquiries regarding which methods of payment by Florida Bar members to for-profit qualifying providers are permissible.

Lawyers are permitted to participate with for-profit qualifying providers only if the qualifying providers meet specific requirements set forth in Rule 4-7.22(d). Lawyers may not participate with a for-profit qualifying provider if that qualifying provider charges a fee that constitutes a division of legal fees. *See* Rule 4-7.22(d)(2). *See also*, Rule 4-5.4.

The comment to Rule 4-7.22 provides further guidance:

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.

The prohibition against fee sharing found in Rule 4-5.4 is based on preservation of the lawyer's independent professional judgment against interference by a third party with whom the lawyer partners or divides legal fees. *See, Annotated Model Rules of Professional Conduct*, 8th Edition (2015); Simon, "Fee Sharing Between Lawyers and Public Interest Groups," 98 *Yale L.J.* 1069 (1989). Prohibitions against fee sharing and paying for referrals also discourage improper solicitation of clients. *See, Simon, above.* Rule 4-7.22(d)(1) explicitly prohibits a lawyer's participation with a qualifying provider that violates rules on lawyer advertising and solicitation.

Other states have addressed how entities that connect lawyers and prospective clients are paid. While opinions of other states may be helpful, they are not dispositive of how Florida will address a particular issue. This issue is complicated by the fact that many states prohibit for-profit lawyer referral services. States have permitted lawyers to participate in Internet sites that do not charge the lawyer, but instead profit from charges to consumers or selling advertising to others. *See, New York City Bar Opinion 2000-1 (2000)* (lawyer may participate in website where clients post legal projects, lawyer "bids" on legal projects, but only consumer is charged by website); *Maine Ethics Opinion 174 (2000)* (lawyer may be listed on a website where website charges consumers for using the website and obtains revenue from advertising posted on the website). Two states have opined that a fixed monthly or annual fee (or other set periodic fee not related to cases generated) is permissible. *See, Oregon Ethics Opinion 2007-180 (2007)* (lawyer may pay based on fixed annual or other set periodic fee not related to particular work generated from advertising, but may not pay based on number of referrals, retained clients, or revenue generated from advertisements) and *South Carolina Ethics Opinion 01-01 (2001)* (Lawyer may pay Internet service for advertising services based on a set monthly or yearly fee or based on the number of hits on the lawyer's information, but may not direct the Internet site user to a particular lawyer and may not pay any part of legal fees from clients who were referred).

A majority of states that have addressed payment of a fixed amount "per click" or "per hit" have concluded that lawyers may participate in a group advertising program charging a fixed amount "per click" or "per hit." Those opinions conclude that the payment is for exposure, and not for the referral of clients, the hiring of the lawyer by particular clients, or the amount of fees paid to the lawyer. *See, Arizona Ethics Opinion 11-02 (2011)* (lawyer may pay website on a pay per lead or pay per click basis); *Kentucky Ethics Opinion E-429 (2008)* (lawyer may pay group marketing program based on number of "hits" but not per referral); *New Jersey Ethics Opinion 43 (2011)* (pay per lead or per click is not prohibited).

One state has concluded that a lawyer may participate in a website in which lawyers "bid" on projects posted by consumers and pay for each "bid," because the lawyer pays to bid regardless of whether selected by the consumer. *Utah Ethics Opinion 15-05 (2015)*. Another has advised that lawyers may pay per referral to participate in a for-profit, Internet based service that matches lawyers with prospective clients. *New York State Bar Association Ethics Opinion 1131 (2017)*. However, two states have concluded that payment per referral is prohibited. *See, Kentucky Ethics Opinion E-429 (2008)* (lawyer may pay group marketing program based on number of "hits" but not per referral); *Oregon Ethics Opinion 2007-180 (2007)* (lawyer may pay may not pay based on number of referrals, retained clients, or revenue generated from advertisements).

Several states reviewed an Internet based program in which lawyers agreed to accept flat fees that varied for particular types of cases, the entity collected the entire fee from the client, the entity paid the fee to the lawyer after the lawyer has concluded the legal work on the matter, and the lawyer paid a separate “marketing fee” to the entity that varied according to the type of matter referred to the lawyer. Most of those states concluded that lawyers may not pay a set fee for each accepted case. *See*, Indiana Ethics Opinion 1-18 (2018); New Jersey Ethics Opinion 732 (2017); New York State Ethics Opinion 1132 (2017); Ohio Ethics Opinion 2016-3 (2016); Pennsylvania Ethics Opinion 2016-200 (2016); South Carolina Ethics Opinion 16-06 (2016); Utah Ethics Opinion 17-05.

States also generally have advised lawyers against participating with entities that receive a percentage of the lawyer’s fee. *See*, Arizona Ethics Opinion 99-06 (1999) (lawyer may not participate in website to answer consumer questions where lawyer is charged a one-time fee, a minimum deposit for first 30 questions, a separate fee for each question referred, and a percentage of any fee from a client whose question is referred to the lawyer); South Dakota Ethics Opinion 98-10 (1999) (internet referral service with annual fee and requirement that lawyer pay 10% of legal fees over \$100 for referred cases violates rules prohibiting fee-splitting); South Carolina Ethics Opinion 01-03 (2001) (lawyer may not pay Internet service any part of legal fees from clients referred by the service).

The board cannot address every possible method of calculating the charges of a qualifying provider, which must be assessed on a case-by-case basis. In determining whether a qualifying provider’s particular method of charging for participation violates Rules 4-5.4 and 4-7.22(d)(2), the board believes the following factors should be considered.

The following factors would mitigate in favor of a conclusion that the charge is permissible:

- the charge is reasonably based on the qualifying provider’s costs for marketing and administration plus a reasonable profit; and
- the charge is imposed regardless of whether the lawyer is hired by the prospective client.

The following factors may or may not lead to a conclusion that the charge is permissible, depending on the circumstances, and might require further scrutiny:

- the charge varies and on what basis; and
- the qualifying provider sets the lawyer’s fee and on what basis.

The following factors would mitigate in favor of a conclusion that the charge is impermissible:

- the charge is based on the perceived value of the individual matter;
- the qualifying provider collects the lawyers’ fees directly from the consumer, takes a portion of the fee as the charge for the referral or match, then remits the remainder to the lawyer;

- the qualifying provider interferes with the lawyer’s independent professional judgment in representing clients or directs the lawyer’s activities in representing clients; and
- there is sufficient incentive for the qualifying provider to improperly solicit prospective clients or improperly market the service.

In applying these facts, the board believes the following would generally be permissible:

- a reasonable, pre-arranged fixed charge per time period such as weekly, monthly, or yearly;
- a reasonable, pre-arranged fixed charge for each time a consumer views information about a specific lawyer, commonly referred to as “pay-per-click”;
- a reasonable, pre-arranged fixed charge per matter referred to the lawyer that is not contingent on the outcome of the matter and does not vary based on the amount at issue in the matter; and
- a reasonable, pre-arranged fixed charge per matter referred to the lawyer that varies based on the type of matter only if the varying charge is based on demonstrably different marketing and administrative costs rather than the perceived value of the case;

The board believes the following would generally be impermissible:

- a charge calculated as a percentage of the fee received by a lawyer;
- a charge calculated as a percentage of the client’s recovery in the matter;
- a charge 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; and
- a flat charge per case accepted by a participating lawyer that differs based on the type of matter (e.g., personal injury versus family law).

In summary, determining whether a particular method of charging for the services of a qualifying provider comply with Rules Regulating The Florida Bar which prohibit a lawyer from sharing fees with a qualifying provider must be determined on a case-by-case basis, which will be guided by the considerations set forth in this opinion. The board cautions that this opinion addresses solely the issue of whether a particular method of charging for the services of a qualifying provider constitute impermissible fee splitting, that the method by which particular qualifying providers operate may raise other ethics concerns under the Rules of Professional Conduct, and that lawyers should not assume that a lawyer may participate with a particular

qualifying provider solely because the qualifying provider's method of charging for its services falls within one of the methods the board concludes generally would be found to be permissible.

APPENDIX A

PROPOSED AMENDMENT IN LEGISLATIVE FORMAT

December 12, 2019

RECEIVED, 12/12/2019 09:07:29 AM, Clerk, Supreme Court

RULES REGULATING THE FLORIDA BAR
CHAPTER 23 REGISTERED ONLINE SERVICE PROVIDER
PROGRAM
23-1 PURPOSE

Every resident of Florida should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Floridians often encounter difficulty identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. Qualifying providers meet certain of these needs under rule 4-7.22 and chapter 8 of these rules governing nonprofit lawyer referral services. Notwithstanding those services, a significant gap remains in the access to the justice system for the residents of Florida.

The purpose of this chapter is to allow the voluntary registration of online service providers to provide greater access to legal services and the legal system and greater protection of the public.

This chapter sets forth the registration requirements for an online service provider to qualify for the safe harbor under this chapter. Registration is voluntary. Nothing contained in this chapter may be used in an unlicensed practice of law proceeding under these rules or may be construed to permit any activity that is otherwise prohibited as the unlicensed practice of law, as that is determined by the Florida Supreme Court.

Comment

The chapter is intended to provide greater access to legal services, the legal system, and members of The Florida Bar while at the same time providing public protection which is lacking. These goals are achieved by creating voluntary registration for online companies that are providing or offering to provide legal services to the citizens of Florida. The chapter is not intended to establish regulation of the online service providers that are not registered under this chapter. Online service providers that voluntarily register under this chapter agree to be regulated by The Florida Bar and the Supreme Court of Florida. Online services providers that voluntarily register under this chapter also receive benefits that are not available to online service providers that do not register. This chapter

recognizes that some online service providers that do not voluntarily register will be subject to other rules contained in the Rules Regulating The Florida Bar. Nothing in this chapter is intended to replace or supersede those rules. This chapter does not permit activities that would otherwise constitute the unlicensed practice of law or provides as a defense in an unlicensed practice of law matter.

23-2 DEFINITIONS

RULE 23-2.1 GENERALLY

For purposes of this chapter, the following terms have the following meaning:

(a) Online Service Provider. An online service provider is an internet-based business that provides or offers to provide legal services to members of the public. Legal services for the purposes of this chapter include only the following: 1) providing legal forms the consumer can complete without a lawyer’s assistance, 2) providing legal forms with the availability of a lawyer to respond to questions from the consumer including assisting the consumer in completing and filing the legal form, and 3) referring the consumer to, or matching a consumer with, a lawyer. Nothing in this rule allows or authorizes an online service provider to engage in the unlicensed practice of law.

(b) Registered Online Service Provider. A registered online service provider is an online services provider that has registered with The Florida Bar under this chapter.

(c) Legal Form. A legal form is:

(1) a current form approved by the Supreme Court of Florida as defined elsewhere in these rules; or

(2) a form consistent with current Florida Law that has been reviewed and approved by a member of The Florida Bar eligible to practice law in Florida.

(d) Board. The board is the Board of Governors of The Florida Bar.

(e) The Bar. The bar is The Florida Bar.

(f) Lawyer. A lawyer is a member of The Florida Bar eligible to practice law in Florida.

(g) Consumer. A consumer is a person or legal entity which uses, or seeks to use, the services of a registered online service provider.

23-3 APPLICATION OF QUALIFYING PROVIDER RULE **RULE 23-3.1 GENERALLY**

An online service provider that meets the definition of a qualifying provider under rule 4-7.22 must comply with that rule, except that a registered online service provider may advertise, charge, and collect fees as provided elsewhere in this rule and is not required to file advertisements with The Florida Bar for review.

Comment

In some instances, a registered online service provider will also be considered a qualifying provider as defined elsewhere in these rules. This would occur, for example, where the registered online service provider matches a consumer with a lawyer to assist with a legal issue. If a registered online service provider is also a qualifying provider, the registered online service provider must also comply with the requirements of the qualifying provider rule including complying with lawyer advertising rules, referring consumers only to persons lawfully permitted to practice law in Florida, receiving no payment that is an improper division of legal fees, placing no requirement or pressure on participating lawyers for cross referrals, annual reporting to The Florida Bar of the names and bar numbers of participating lawyers, providing documentation of compliance with these rules to participating lawyers, responding to any official bar inquiry within 15 days, using its actual or registered fictitious name in all communications with the public, not leading the public to believe the provider is a law firm or directly provides legal services to the public, and disclosing to prospective clients at the time of referral the lawyer's bona fide office location by city, town, or county. However, unlike a qualifying provider who is not registered pursuant to this chapter, a registered online service provider may advertise using the designation "Registered With The Florida Bar," may include an approved logo on all advertisements and communications, and may collect the lawyer's fee directly from the consumer and take a portion of the fee for the referral or match.

Not all registered online service providers will also be considered a qualifying provider. For example, a registered online service provider would not be a qualifying provider and would not have to meet the requirements of rule 4-7.22 if

the registered online service provider only provides forms that can be completed without the assistance of a lawyer, instructions and general information about the legal process and legal issues. This type of registered online service provider would be able to use the designation “Registered With The Florida Bar” and include an approved logo on all advertisements and communications.

23-4 REQUIREMENTS

RULE 23-4.1 APPLICATION

(a) Application. To register under this chapter, an online service provider must complete and send to the bar at its headquarters address in Tallahassee an application promulgated by the bar that is signed by an individual having the authority to bind the online service provider and includes the following:

(1) the name and the URL address of the online service provider;

(2) a description of the services offered by the online service provider;

(3) the name, address, telephone number, and e-mail address to which a consumer can direct any complaints or concerns about the services received from the online service provider;

(4) a certification that the online service provider will not interfere with the lawyer’s independent professional judgment in representing clients or direct the lawyer’s activities in representing clients;

(5) a certification that the online service provider will submit to jurisdiction in a Florida forum for resolution of disputes with Florida consumers;

(6) a certification that the online service provider will provide The Florida Bar with copies of all consumer complaints about the suitability of the form used or the quality of the services provided and will notify The Florida Bar how all these consumer complaints were resolved without disclosing any information confidential under law;

(7) a certification that the online service provider understands that registration and revocation of registration under this rule is solely at the discretion of The Florida Bar;

(8) a sworn statement by an individual having the authority to bind the online service provider that the online service provider has read and will abide by the provisions of this rule; and

(9) a registration fee set by the bar’s executive director.

(b) Review by The Florida Bar. The bar will review every application received for compliance with this chapter. If the online service provider meets all of the requirements of this chapter, the online service provider will be added to the roll of Florida Bar registered online service providers and a certificate of registration will be issued. If the bar determines that the application is incomplete or that the online service provider does not meet all of the requirements of this chapter, the bar will notify the online service provider.

RULE 23-4.2 ANNUAL RENEWAL

A registered online service provider must re-register annually with the bar to retain its registered status. The annual registration process will follow the time requirements for annual membership fees payments by Florida bar members. The annual registration process will require that registered online service providers pay a fee set by the executive director and provide a certification by an individual having the authority to bind the online service provider that it remains in compliance with the requirements of this rule.

RULE 23-4.3 DUTY TO UPDATE

A registered online service provider must inform the bar promptly of any circumstance that would render the entity ineligible for registration and any changes in the information required by this rule.

23-5 ADVERTISING AND COMMUNICATIONS

RULE 23-5.1 GENERALLY

(a) Designation. A registered online service provider may use the designation “Registered With The Florida Bar.”

(b) Prohibited Communications. A registered online service provider may not state or imply that its services, including forms that are provided, are a substitute for the advice of a lawyer. A registered online service provider may not

state or imply that the bar has approved an advertisement, the registered online service provider, any participating lawyer, or the services offered by the registered online service provider or any participating lawyer.

RULE 23-6 REQUIRED DISCLOSURES
RULE 23-6.1 GENERALLY

(a) Source of Form. If the registered online service provider is using a form approved by the Supreme Court of Florida, the form must be designated as a Supreme Court Approved form. If the registered online service provider is using a form that has been reviewed and approved by a member of the bar, the form must state that it has been reviewed by a member of The Florida Bar.

(b) Lawyer-Client and Work Product Privilege. The registered online service provider must inform consumers that communications with the registered online service provider may not be protected by the lawyer-client privilege or work product privilege before allowing the consumers to provide the registered online service provider with information about their matters. The registered online service provider must require the consumer to acknowledge this disclaimer before the consumer may proceed with the service.

(c) Dispute Resolution. The registered online service provider must inform consumers of the process for submitting complaints and of the process for resolving disputes, including a statement that the registered online service provider will submit to jurisdiction in a Florida forum for resolution of disputes with Florida consumers. The registered online service provider must require the consumer to acknowledge this disclaimer before the consumer may proceed with the service.

(d) Use of Consumer Information. The registered online service provider must inform the consumer of all the ways, if any, the registered online service provider intends to use and share the consumer's personal and legal information. The consumer must be informed before initiating the relationship and be provided with an affirmative opt-in so that the consumer has expressly acknowledged understanding that the information will be used and shared.

Comment

Registered online service providers operating in Florida must comply with state and federal requirements regarding privacy and security of consumer information, which may include personal, legal, medical, and financial information. These requirements are in addition to any requirements imposed by this chapter.

23-7 CHARGES RULE 23-7.1 GENERALLY

(a) Permissible Charges. When the services of a registered online service provider include the participation of a lawyer, the registered online service provider may impose a charge on the participating lawyer. The charge must be reasonable and based on the registered online service provider's costs for marketing and administration and may allow a reasonable profit. In all events, any charge imposed on the participating lawyer must be imposed regardless of whether the lawyer is hired by the consumer. Except as provided elsewhere in this rule, the registered online service provider's charge may vary, and the registered online service provider may set the fee the lawyer charges.

(b) Impermissible Charges. A charge imposed under this rule may not be based on the perceived or actual value of the consumer's legal matter or on the outcome of the services provided.

(c) Collection of Payments to Lawyers. When the services of a registered online service provider include the participation of a lawyer, the registered online service provider may collect the participating lawyer's fee directly from the consumer, retain its charge imposed on the participating lawyer from the fee collected from the consumer, and remit the remainder to the participating lawyer.

Comment

A registered online service provider may charge a lawyer who participates in its service. Charging a lawyer is not prohibited unless the charge constitutes fee sharing. The prohibition against fee sharing is based on preserving the lawyer's independent professional judgment and discouraging improper solicitation of clients by a third party who expects to collect a portion of the lawyer's fee for doing so. A charge based on the registered online service provider's advertising

and administrative costs plus a reasonable profit would not constitute fee sharing and is allowed as long as the lawyer is charged regardless of whether the consumer ultimately chooses representation by that lawyer. This charge may vary based on the method of advertising and the type of matter. For example, a registered online service provider may have a standard charge for a dissolution matter that varies from the standard charge for an immigration matter. Because the charge is the same regardless of the actual or perceived value of the consumer's legal matter or whether the lawyer accepts the case or the client accepts the lawyer, the charge is not improper fee splitting. Conversely, a registered online service provider's charge based on the perceived or actual value of the consumer's legal matter would constitute improper fee splitting and is prohibited.

How the lawyer is paid is a factor that must be considered in determining whether the payment constitutes improper fee splitting. Collecting the payment and remitting it to the lawyer mitigates in favor of a conclusion that the charge is impermissible. Therefore, an online service provider who is not registered with the bar may not collect the payments due to the lawyer. On the other hand, a registered online service provider may collect the payments due to the lawyer and remit that payment to the lawyer. When registering, the online service provider agrees to be bound by this chapter, which contains safeguards to prevent the registered online service provider from affecting the lawyer's independent professional judgment and engaging in improper solicitation. Collecting the payment and remitting it to the lawyer is not improper with these safeguards in place.

23-8 REVOCATION OF REGISTRATION

RULE 23-8.1 GRANTING AND REVOKING REGISTRATION

Granting registration of an online service provider under this chapter is solely at the discretion of The Florida Bar and may be revoked.

Comment

The Florida Bar may revoke registration including, but not limited to, for failure to comply with these rules. For example, The Florida Bar may revoke registration for nonpayment of registration and renewal fees, failing to timely update information required by these rules, and failing to provide the required sworn statement of compliance signed by an individual with authority to bind the

online service provider. The Florida Bar may revoke registration based on consumer complaints about the registered online service provider, although The Florida Bar will not directly handle or resolve any consumer complaints about the registered online service provider.