



## **Fla. High Court Instructs Bar To Limit Nonlawyer Referrals**

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The Florida Supreme Court on Thursday rejected proposed changes from the Florida Bar to rules governing lawyers who use referral services, saying the suggestions don't go far enough to protect the public and should be reworked to prohibit lawyers from accepting referrals from agencies not owned or operated by Bar members.

Addressing a need for reform, the bar had asked the court to sign off on two sets of amendments including a number of additions to existing rules regarding referral services that would not allow attorneys to accept referrals from services with misleading names or that fail to tell customers where the lawyer is located. Attorneys would also not be allowed to take referrals from services that either require or pressure lawyers to refer clients to other professionals.

In its opinion, the court focused on a specific rule change that had been proposed by a Florida Bar special committee. That change would restrict attorneys from accepting client referrals from any entity or service that also refers clients to any other type of professional service for the same incident and prohibit attorneys from referring a client to a professional service in consideration of the lawyer's receipt of referrals from a referral service.

According to the opinion, the proposal was amended by another committee within the Florida Bar before it was submitted for court approval with language that contradicted what was in the special committee's proposal.

The justices said that after careful review of the special committee's final report — which included anecdotes from clients who were deceived through the referral system — they reject the current petition and are instructing the bar to propose amendments more in line with what was originally proposed. They said a new rule should preclude Florida lawyers from accepting referrals from any lawyer referral service that is not owned or operated by a member of the Bar.

“The dangers that non-lawyer-owned, for-profit referral services pose to members of the public — who may be especially vulnerable after they suffer an injury, or when they face a legal matter that they never anticipated — leads us to conclude that much stricter regulations upon lawyer referral services are required than those proposed,” the court said.

Though its decision may be viewed by some as severe, the court explained, it is necessary to protect clients from being directed to undesired, unnecessary or even harmful treatment or services. It will also prevent lawyers from feeling pressured to refer a client to a specific business so that the lawyer may continue to receive referrals from that service.

The high court further instructed the bar to review any other rules or regulations that address lawyer referral services to determine whether new rules are needed to implement stricter oversight.

Andrew S. Berman, a shareholder at Young Berman Karpf & Gonzalez PA, told Law360 on Thursday that the court's ruling and outlook on the issue is good for the public and for high-quality personal injury attorneys in the state. He said the pervasiveness of the quid pro quo system of referral services is something that's bothered him for a long time because it eliminates incentives to direct clients to the best lawyers.

“A lot of people were very concerned with the referral services,” he said. “It was wrought with too many conflicts and too many incentives to not do what's best for the clients.”

Berman said he knows a lot of personal injury attorneys who reluctantly work with referral services simply because “if they don't, business just dries up or goes down markedly.”

He said the court did what it needed to do to kill the snake — chop off the head.

The bar will now either follow the court's instructions or go back and ask the justices to reconsider their decision, Barry Richard of Greenberg Traurig LLP, who served as outside counsel to the special committee, told Law360 on Thursday.

Richard said the bar's attorneys worked very hard on this proposal and were looking at multiple proposals before they eventually settled on one. He noted that the rule change process will proceed in a transparent manner and be open for public comment.

The Florida Bar is represented by executive director John F. Harkness Jr.

The cases are In re: Amendments to Rule Regulating the Florida Bar 4-1.5 — Fees and Costs for Legal Services, case number SC14-2112, and In re: Amendments to Rule Regulating the Florida Bar 4-7.22 Lawyer Referral Services, case number SC14-2126, in the Supreme Court of Florida.