

1 **CHAPTER 23**

2 **REGISTERED ONLINE SERVICE PROVIDER PROGRAM**

3 **23-1 PURPOSE**

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

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

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

19 **COMMENT**

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22 The chapter is intended to provide greater access to legal services, the legal system, and
23 members of The Florida Bar while at the same time providing public protection which is lacking.
24 These goals are achieved by creating voluntary registration for online companies that are
25 providing or offering to provide legal services to the citizens of Florida. The chapter is not
26 intended to establish regulation of the online service providers that are not registered under this
27 chapter. Online service providers that voluntarily register under this chapter agree to be
28 regulated by The Florida Bar and the Supreme Court of Florida. Online services providers that
29 voluntarily register under this chapter also receive benefits that are not available to online service
30 providers that do not register. This chapter recognizes that some online service providers that do
31 not voluntarily register will be subject to other rules contained in the Rules Regulating The
32 Florida Bar. Nothing in this chapter is intended to replace or supersede those rules. This chapter
33 does not permit activities that would otherwise constitute the unlicensed practice of law or
34 provides as a defense in an unlicensed practice of law matter.
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36 **23.2 DEFINITIONS**

37 **RULE 23-2.1 GENERALLY**

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

39 **(a) Online Service Provider.** An online service provider is an internet-based business
40 that provides or offers to provide legal services to members of the public. Legal services for the
41 purposes of this chapter include only the following: 1) providing legal forms the consumer can

42 complete without a lawyer’s assistance, 2) providing legal forms with the availability of a lawyer
43 to respond to questions from the consumer including assisting the consumer in completing and
44 filing the legal form, and 3) referring the consumer to, or matching a consumer with, a lawyer.
45 Nothing in this rule allows or authorizes an online service provider to engage in the unlicensed
46 practice of law.

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

49 **(c) Legal Form.** A legal form is:

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

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

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

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

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

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

59 **23-3 APPLICATION OF QUALIFYING PROVIDER RULE**

60 **RULE 23-3.1 GENERALLY**

61 An online service provider that meets the definition of a qualifying provider under rule 4-
62 7.22 must comply with that rule, except that a registered online service provider may advertise,
63 charge, and collect fees as provided elsewhere in this rule and is not required to file
64 advertisements with The Florida Bar for review.

65 **COMMENT**

66 In some instances, a registered online service provider will also be considered a
67 qualifying provider as defined elsewhere in these rules. This would occur, for example, where
68 the registered online service provider matches a consumer with a lawyer to assist with a legal
69 issue. If a registered online service provider is also a qualifying provider, the registered online
70 service provider must also comply with the requirements of the qualifying provider rule
71 including complying with lawyer advertising rules, referring consumers only to persons lawfully
72 permitted to practice law in Florida, receiving no payment that is an improper division of legal
73 fees, placing no requirement or pressure on participating lawyers for cross referrals, annual
74 reporting to The Florida Bar of the names and bar numbers of participating lawyers, providing
75 documentation of compliance with these rules to participating lawyers, responding to any official
76 bar inquiry within 15 days, using its actual or registered fictitious name in all communications
77 with the public, not leading the public to believe the provider is a law firm or directly provides
78 legal services to the public, and disclosing to prospective clients at the time of referral the
79 lawyer’s bona fide office location by city, town, or county. However, unlike a qualifying

80 provider who is not registered pursuant to this chapter, a registered online service provider may
81 advertise using the designation “Registered With The Florida Bar,” may include an approved
82 logo on all advertisements and communications, and may collect the lawyer’s fee directly from
83 the consumer and take a portion of the fee for the referral or match.

84 Not all registered online service providers will also be considered a qualifying provider.
85 For example, a registered online service provider would not be a qualifying provider and would
86 not have to meet the requirements of rule 4-7.22 if the registered online service provider only
87 provides forms that can be completed without the assistance of a lawyer, instructions and general
88 information about the legal process and legal issues. This type of registered online service
89 provider would be able to use the designation “Registered With The Florida Bar” and include an
90 approved logo on all advertisements and communications.

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23-4 REQUIREMENTS

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RULE 23-4.1 APPLICATION

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

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

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

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

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

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

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

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

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

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

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

125 **RULE 23-4.2 ANNUAL RENEWAL**

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

132 **RULE 23-4.3 DUTY TO UPDATE**

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

136 **23-5 ADVERTISING AND COMMUNICATIONS**

137 **RULE 23-5.1 GENERALLY**

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

140 (b) **Prohibited Communications.** A registered online service provider may not state or
141 imply that its services, including forms that are provided, are a substitute for the advice of a
142 lawyer. A registered online service provider may not state or imply that the bar has approved an
143 advertisement, the registered online service provider, any participating lawyer, or the services
144 offered by the registered online service provider or any participating lawyer.

145 **RULE 23-6 REQUIRED DISCLOSURES**

146 **RULE 23-6.1 GENERALLY**

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

152 (b) **Lawyer-Client and Work Product Privilege.** The registered online service
153 provider must inform consumers that communications with the registered online service provider

193 A registered online service provider may charge a lawyer who participates in its service.
194 Charging a lawyer is not prohibited unless the charge constitutes fee sharing. The prohibition
195 against fee sharing is based on preserving the lawyer's independent professional judgment and
196 discouraging improper solicitation of clients by a third party who expects to collect a portion of
197 the lawyer's fee for doing so. A charge based on the registered online service provider's
198 advertising and administrative costs plus a reasonable profit would not constitute fee sharing and
199 is allowed as long as the lawyer is charged regardless of whether the consumer ultimately
200 chooses representation by that lawyer. This charge may vary based on the method of advertising
201 and the type of matter. For example, a registered online service provider may have a standard
202 charge for a dissolution matter that varies from the standard charge for an immigration matter.
203 Because the charge is the same regardless of the actual or perceived value of the consumer's
204 legal matter or whether the lawyer accepts the case or the client accepts the lawyer, the charge is
205 not improper fee splitting. Conversely, a registered online service provider's charge based on the
206 perceived or actual value of the consumer's legal matter would constitute improper fee splitting
207 and is prohibited.

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

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219 **23-8 REVOCATION OF REGISTRATION**

220 **RULE 23-8.1 GRANTING AND REVOKING REGISTRATION**

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

223

COMMENT

224 The Florida Bar may revoke registration including, but not limited to, for failure to
225 comply with these rules. For example, The Florida Bar may revoke registration for nonpayment
226 of registration and renewal fees, failing failure to timely update information required by these
227 rules, and failing to provide the required sworn statement of compliance signed by an individual
228 with authority to bind the online service provider. The Florida Bar may revoke registration
229 based on consumer complaints about the registered online service provider, although The Florida
230 Bar will not directly handle or resolve any consumer complaints about the registered online
231 service provider.