

AGENDA ITEM

MARCH 127
Consideration of
LRS Certification
Revocation

DATE: February 16, 2007

TO: Members, Board of Governors
Members, Regulation, Admissions and Discipline Committee (RAD)

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Appointment of Subcommittee To Consider Revocation or Suspension of Lawyer Referral Service (LRS) Certification & Adoption of Process

EXECUTIVE SUMMARY

This is a request of the Board of Governors and the Board Committee on Regulation, Admissions & Discipline (RAD) to appoint a subcommittee consistent with Rule 19 of the Rules & Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California) to review the decision of the State Bar's LRS Certification Program to revoke or suspend the certification of a certified LRS, and to adopt the governing process. LRS rule 19.4 provides that the Board of Governors shall appoint a subcommittee upon the request of a certified LRS to review a State Bar determination to revoke or suspend LRS certification. The request here is for the Board of Governors to approve or ratify the referral of this matter to RAD, to empower RAD to appoint a RAD subcommittee and hear this matter consistent with the governing authorities, and to adopt the process that will otherwise govern. The issues are discussed in further detail below. If you have any questions regarding these rules or this item, please contact Robert Hawley at robert.hawley@calbar.ca.gov; 415-538-2277.

DISCUSSION

Business & Professions Code section 6155 provides that a Lawyer Referral Service (LRS) may operate in California only if certified by the State Bar of California in accordance with Minimum Standards adopted by the Supreme Court and administered by the State Bar of California. (Attachment 1). In accordance with Section 6155 (a), the State Bar promulgated, and the California Supreme Court adopted, Rules & Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Services in California) ("Rules & Regulations"). (Attachment 2).

Consistent with these authorities, the State Bar has for many years administered the LRS Certification Program by which LRSs are certified, recertified, audited, and decertified as appropriate.

Rule 19 of the Rules & Regulations provides that the Chief Executive Officer of the State Bar, or designee, may revoke or suspend certification of a LRS for noncompliance with the governing standards. Rule 19.4 provides that a LRS may request review of the State Bar's determination to suspend or revoke certification. The request for review is to be considered by a subcommittee appointed by the Board of Governors or another appropriate committee appointed for this purpose. This subcommittee is to provide the LRS with an opportunity to be heard consistent with due process requirements.

Upon completion of this review hearing, the subcommittee is to report its findings in writing. The LRS is then entitled to request review of the subcommittee's action. This appellate review is to be conducted by the appropriate Board Committee, which in this case would be the Board Committee on Regulation, Admissions & Discipline as a whole. Upon completion of this review, RAD is to report its findings and determinations. The action of RAD is to be final and binding as an action of the Board of Governors.

Further review of this action shall be in accordance with Rule 952 (d) California Rules of Court. Rule 952 (d) provides that any action of the Board of Governors of the State Bar of California or of any committee appointed by it, is subject to review, upon petition, to the Supreme Court of California. (Attachment 3).

The Chief Executive Officer of the State Bar of California has delegated to the LRS Certification Program the authority to investigate and make preliminary determinations regarding the certification and the decertification of LRSs. The LRS Certification Program has determined that a LRS is to have its certification revoked. That LRS has requested review under Rule 19. As a result, the Board is requested to delegate responsibility over this issue to the RAD Committee and to adopt for RAD the procedures attached as Attachment 4.

RECOMMENDATION/RESOLUTION

In accordance with the governing authorities, it is recommended that the Board of Governors authorize or ratify the action of the Board Committee on Regulation, Admissions & Discipline to appoint a subcommittee of RAD to hear this matter in the first instance subject to review thereafter by the full RAD Committee. The final determination by RAD under the governing authorities will then be subject to review by the Supreme Court in accordance with 952(d), Rules of Court. It is further recommended that the hearing process be governed by the procedures attached as Attachment 4.

In the event that Board and its Committee on Regulation, Admissions & Discipline concur, the following resolution is suggested:

RESOLVED that, upon the recommendation of the Board on Regulation, Admissions & Discipline Oversight Committee, the Board of Governors designates the Board Regulation, Admissions & Discipline Oversight Committee (RAD) to serve as the review body under Rule 19 of the

Rules & Regulations Pertaining to Lawyer Referral Services. RAD is authorized to appoint a subcommittee to act in accordance with Rule 19.4 through 19.6. RAD as a whole is authorized to act for the Board under Rule 19.7 through 19.8 of the Rules & Regulations; and it is

FURTHER RESOLVED that the proceedings before RAD are to conform to Business & Professions Code Section 6155 and the Rules & Regulations Pertaining to Lawyer Referral Services; and it is

FURTHER RESOLVED, that the proceedings are to conform as well to the Procedures Governing the State Bar of California Board of Governors Consideration of a Determination to Revoke or Suspend Certification of a Lawyer Referral Service hereby adopted for this purpose”

Attachments:

Attachment 1: Business & Professions Code Section 6155

Attachment 2: Rules & Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California)

Attachment 3: Rule 952, California Rules of Court

Attachment 4: Procedures Governing the State Bar of California Board of Governors Consideration of a Determination to Revoke or Suspend Certification of a Lawyer Referral Service