

# AGENDA ITEM

**NOVEMBER 701**

“Find A Lawyer” — Proposed  
Adoption of Program  
Recommendations

DATE: November 21, 2008

TO: Members of the Board of Governors

FROM: Gary Clarke, Sr. Executive Information Technology /  
CIO State Bar of California

SUBJECT: “Find A Lawyer” - Proposed Adoption of Program Recommendations

## EXECUTIVE SUMMARY

The State Bar of California is developing an enhanced attorney search and member profile feature for its website, currently referred to as “Find A Lawyer (FAL).” FAL is designed as an online attorney directory for consumers searching for information about California lawyers and other legal resources. It is intended to enhance the State Bar’s current online and searchable roll of attorneys and will allow members to supplement their current State Bar profile by, for example, adding a photo, including self-designated practice areas or linking to a firm website that will be posted online. FAL would create a robust communications pipeline between the Bar and its membership. Knowing that consumers will have access to these expanded member profiles gives lawyers an incentive to voluntarily provide the Bar with valuable census, practice-related and other data. The Bar would also benefit because FAL’s expanded database would enable us to better design and tailor programs to meet the needs of the membership. FAL would be offered free initially, although a nominal fee may be assessed in the future to cover administrative costs.

On behalf of local bar associations that operate State Bar certified lawyer referral services (LRS), the Executives of California Lawyers Associations (“ECLA”) have objected to the State Bar’s “Find A Lawyer” online directory project, questioning its compatibility with the State Bar’s regulatory role and raising concerns that FAL would effectively operate as a competing LRS.

As a result of these concerns, then State Bar President Jeffrey Bleich appointed a task force that included members of the Board of Governors as well as Stuart Forsyth, Chair of ECLA and Executive Director of the Los Angeles County Bar. During two task force meetings convened to hear concerns and fashion solutions and responses, the Bar clarified its position by explaining that FAL would not operate as a LRS, nor would it compete with or supplant California’s network of LRS programs. Instead, FAL would supplement the LRS’s by providing access to information about lawyers to those members of the public who do not wish to avail themselves of LRS’s or for whom LRS’s do not exist as a viable option -- either because there is no program in the consumer’s geographic location (**See Attachment #1, Map pinpointing LRS locations.**) or the local service does not have a paneled attorney with expertise in the area of law sought. The “Find A Lawyer” program will also provide business opportunities for those lawyers throughout the state

who do not participate in the certified LRS's. Only 5,500 lawyers out of our 160,000 active attorneys participate on LRS panels and those LRS attorneys cannot possibly meet the legal needs of the over 36 million California residents.

Subsequent to the creation of the task force, The Legal Aid Association of California ("LAAC") representing 80 legal services nonprofits, expressed concerns over the potential negative impact on State Bar Certified LRS's and possible reduced revenue flowing to legal services, pro bono and diversity programs. LAAC also emphasized the need for a direct link to the LawHelpCalifornia.org website, which provides legal information and resources for low income persons.

An additional meeting with representatives of California Certified LRS's also occurred during a recent ABA LRIS Workshop in Garden Grove. The LRS's reiterated their concerns that the proposed Find a Lawyer site would compete with the certified LRS's, but also provided a number of suggestions to further enhance the prominent placement of the LRS's on the site.

The State Bar has agreed to make modifications to "Find A Lawyer" to feature the LRS's prominently and to clearly distinguish between the attorney's official state bar record and any additional information provided by the attorney (which may be viewed as similar to attorney advertising). For these reasons and to assure that full consideration is given to the opinions of our stakeholders, we are seeking Board authorization to implement "Find A Lawyer" to create a valuable member benefit and give the public greater access to enhanced member information. To help the Board better understand the "Find A Lawyer" proposal, the FAL feature will be demonstrated at the Board meeting.

## **BACKGROUND**

### **The Board of Governors' Member Services Initiative – A Brief Summary**

In 2001, the Board of Governors launched its Member Services Initiative aimed at creating a more member centric State Bar responsive to member practice needs and bar services and benefits. While the State Bar has many regulatory functions, it also has many associational characteristics. It should be noted that the State Bar is expressly authorized to engage in activities that "may advance the professional interests of the members of the State Bar." (Cal. Bus & Prof. Code, § 6031, subd. (a)) Board direction to pursue non-dues revenue is also permitted and supported in statute (Cal. Bus. & Prof. Code §§ 6001(g) and 6140.9). Funds generated from non-dues revenue sources currently pay, in part, for the mandatory Lawyer Assistance Program (LAP), the member call center, and the California Bar Foundation's scholarship program.

The first step in the Member Services Initiative was to approve a budget authorization of \$250,000 as "start-up" costs for the development of a Member Services Center. The Member Services Center now provides a single-source contact point for members

seeking assistance and information via integrated, multichannel contacts such as telephone, E-mail and web contact.

At the direction of the Board, staff next reviewed and revitalized the State Bar's insurance portfolio. The bar re-negotiated its contract with its professional liability insurance carrier. Now the bar receives greater royalty payments and offers a guaranteed-issue \$675 PLI policy for new admittees who have never practiced in another state. New lawyers can obtain a free (issue-guaranteed up to age 50) \$50,000 life insurance policy good for the first six months after admission. The bar sought to expand the types of endorsed insurance offerings, moving into personal lines of insurance, such as auto and homeowners, securing 10 – 15% discounts for members. The bar re-negotiated its contract with the California Bar Foundation, which agreed to relinquish all affinity programs to the bar. Since that time, the bar has retained an affinity administrator that has secured products and programs offered at 10 – 15% discounts accessible through the member's only website *CalBar Connect* published in March 2008.

In early 2008, State Bar staff began to focus on the next phase of member services development -- products and services that can help members meet the demands of practice and profession. The State Bar made Bank of America its financial partner. In addition to exclusive offers and discounts on numerous financial products and services such as credit cards and merchant services, Bank of America agreed to early compliance with new IOLTA regulations that resulted in significantly higher yields on attorney trust accounts and generated increased revenue for legal services programs.

Currently, the State Bar is seeking to contract with vendors to provide a discount on a suite of products and services to help small and solo firm practitioners better manage their practices. As know you, 95% of discipline complaints involve small and solo firm lawyers. The bar is actively negotiating vendor services to help small and solo firm lawyers market their practices, develop law practice Web sites, provide web enhanced e-mail, buy office furniture at a discount, and provide automated, centrally managed data backup and recovery services to help firms protect their data. Additionally, the State Bar is developing a 1 ½ day "Solo Summit," a set of MCLE offerings specifically aimed at issues and challenges facing small and solo firm lawyers, to be held in conjunction with the 2009 Section Educational Institute (SEI).

Most recently, the State Bar of California has developed an enhanced attorney search and member profile feature for its website, referred to as "Find a Lawyer (FAL)." FAL is designed as an online attorney directory for consumers searching for California lawyers and other useful legal resources. It is intended to enhance the State Bar's current online and searchable roll of attorneys and will allow members to supplement their current State Bar profile by, for example, adding a photo or including self-designated practice areas or linking to a firm that will be posted online. FAL will be offered free initially, although a nominal fee may be assessed in the future to cover administrative costs.

The intersection of website content and advertising linkages in “Find A Lawyer” has raised concerns from LRS’s, legal services programs and local bars that FAL could potentially compete with the State Bar certified LRS’s and have a negative impact on LRS revenues and subsequent reduced financial support for the legal services programs. FAL is, however, not a lawyer referral service. FAL is intended to enhance the search features on the State Bar’s existing Member Search page on the State Bar’s Web site and to operate as an online attorney directory similar to an electronic Yellow Pages rather than a lawyer referral service. FAL will not resemble a lawyer referral service as it will not screen or evaluate consumer inquiries, nor will it refer consumers to attorneys that it feels are appropriate based on the legal nature of issues presented. Moreover, the State Bar will not split fees with the FAL member subscribers as is the practice between certified lawyer referral services and their attorney members.

At the Pathways to Justice Conference, “Find A Lawyer” was discussed with LRS staff who indicated that, if the project were to be implemented, they wanted the LRS’s to be prominently featured on the website as the primary option for consumers to locate a lawyer. In response to the concerns expressed by ECLA and the LRS’s, the Board of Governors appointed a “Find A Lawyer” Task Force that includes members of the Board of Governors and ECLA President, Stuart Forsyth (LACBA) **(See Attachment #2, Pathway LRS Meeting Summary).**

Staff convened a small group of Legal Services representatives to demonstrate the current version of the Consumer Information and “Find A Lawyer” site and to solicit feedback. Legal services programs were aware of the proposed site from prior ECLA and LRS communications. The programs expressed concerns over the potential negative impact on State Bar Certified LRS's and possible reduced revenue flowing to legal services, pro bono and diversity programs. Several design recommendations were received **(See also in Attachment #2, Legal Services Meeting Summary).**

An additional meeting with representatives of California Certified LRS’s also occurred during the ABA LRIS Workshop in Garden Grove on October 15-18, 2008. The LRS’s reiterated their concerns that the proposed Find a Lawyer site would compete with the certified LRS’s, but also provided a number of suggestions to further enhance the prominent placement of the LRS’s on the site **(See also in Attachment #2, ABA LRIS Workshop Meeting Summary).**

As a result of input obtained from stakeholders, discussions and overall agreement during the four task force meetings that the members did not want to compete with the LRS’s the State Bar has agreed to make modifications to feature the LRS’s prominently and to clearly distinguish between the attorney’s official state bar record and any additional information provided by the attorney (which was viewed as similar to attorney advertising) and, to eliminate several of the original FAL design’s searchable options and restrict the information that will be displayed following a search. For these reasons and to assure that full consideration is given to the opinions of our stakeholders, we are seeking Board direction.

## **A MORE INTERACTIVE BAR CREATING INCENTIVES TO DRAW MEMBERS TO WEB SITE AND INCREASE USE OF ONLINE SERVICES**

The State Bar has over 217,500 members. About one-half of our membership has provided a current e-mail address to the State Bar. Of these, approximately 25,000 pay their fees and regularly transact State Bar business online. While the Bar continues to enhance and provide additional online services, the absence of any requirement that attorneys provide e-mail addresses means that the State Bar is reliant on voluntarily compliance. The lack of a robust communications pipeline between the Bar and its membership limits our ability to collect valuable census, practice-related and other data that could be used to design and tailor programs to better meet the needs of the membership. Consequently, we must rely on costly traditional methods to communicate with our members and process their requests.

The “Find A Lawyer” initiative is an opportunity to create a valuable member benefit and give the public greater access to enhanced member information. “Find A Lawyer” is also a means to draw members to our website to voluntarily provide census and other data as described above. It is a foundation for future online dialogue between the Bar and its membership. As we continue to seek ways to streamline operations and reduce our costs, it is critical that our membership become familiar and comfortable conducting business with the State Bar through the web site.

Our current Attorney Search function is a rudimentary system that allows for an exact, phonetic search of the official roll of California Attorneys. In addition, this function can be used to search for Legal Specialists and Lawyer Referral Services. Even in this simple state, the Attorney Search function is our most accessed web service, getting over 12 million hits annually.

The information about attorneys is limited to name, address, telephone and fax number, e-mail address, date of admission to The State Bar of California, undergraduate and law schools attended, membership status (current eligibility to practice law in California), and public record of discipline.

By contrast, the prototype for the “Find A Lawyer” program developed this year would have allowed members to post a bio and link to a firm website. It also created an enhanced search function that allows members and the public to search the State Bar’s database by attorney name, bar number, self designated area(s) of practice, zip code, certified specialty or State Bar section membership, other languages spoken, years admitted, size of law firm, accepting credit cards, and accepting new clients, modest means and “unbundled” services.

When the search criteria is met, the Official Record of the Attorney is presented along with the option to view additional information provided by the attorney including: all of the searchable data, the attorney’s Web site address (if applicable) and photo (if applicable). Other information to be collected but not displayed to the public is whether

the attorney is accepting pro bono clients and/or offers sliding scale fees, information that could be provided to public interest organizations.

The enhanced “Find A Lawyer” program is one of many services that will be featured in the State Bar’s new Consumer Clearinghouse Center. We envision The Consumer Clearinghouse Center as the cornerstone of our initiative to reposition the Bar as a “One Stop Source of Information for California’s Lawyers and Law.” In the same way that collecting information about our membership boosts our capacity to create programs for their benefit, collecting data about the search and usage patterns of the public allows us to fine-tune existing member programs and develop new programs for California consumers.

Because this service assists attorneys and improves the access to and availability of information for the public, other bars have implemented similar enhancements as both a member benefit and public service. These bars report favorable acceptance from their members and the public.

## **OTHER STATE, LOCAL, AND NATIONAL PROGRAMS**

The State Bar of California is not the only bar undertaking this type of member and public service endeavor. The ABA has a “Lawyer Locator” on its website that serves as a portal to “Martindale.com” and allows consumers to search for an attorney by location, type of practice, years in practice, languages spoken, and law school attended. The Illinois Bar Association, The State Bar of Arizona, Arkansas Bar Association, The State Bar of Texas, The Colorado Bar Association and The Oklahoma Bar all provide “Find A Lawyer” programs, some charging from \$50 to \$1,000 per year. Of these state bars, the following are mandatory bars: Arizona, Texas and Oklahoma. Other local bars providing “Find A Lawyer” programs are: Columbus, Ohio; Montgomery County, Maryland; Washoe County, Nevada; Boulder County, Colorado; and Santa Clara County, California.

## **LEGAL SPECIALIZATION AND SECTION SUPPORT**

The “Find A Lawyer” feature was presented to the Board of Legal Specialization at its July 25<sup>th</sup> meeting and was well received. **(See Attachment #3, letter from Chair of the Board of Legal Specialization, Alice O’Sullivan).** FAL was also presented on August 11<sup>th</sup> to the Council of State Bar Sections and the orientation and training session for new executive committee members. The feedback from the Sections has generally been “positive.” **(See also in Attachment #3, letter from Officers of the Council of State Bar Sections.)** FAL was discussed with the California Young Lawyers Associations’ Board at their September 26<sup>th</sup> Board meeting and was seen as a positive website enhancement for new attorneys **(See also in Attachment #3, letter from CYLA President on behalf of the Board).**

## LOCAL BAR CONCERNS

There has been a great deal of interest and concern over this program and its implementation expressed by LRS's, The Beverly Hills Bar Association, the ABA, and the Executive of California Lawyers' Association (ECLA), comprised of the executive directors of those local, mostly county, bars that have hired staff. Their expressed concerns have been around the potential impact a robust and consumer friendly "Find A Lawyer" function could have on local LRS programs. The California LRS programs empanel approximately 5,500 attorneys throughout the state with a recommended concentration of programs in urban and coastal metropolitan areas. The "Find A Lawyer" service will feature the certified lawyer referral services as the primary option, but will also provide access to information about lawyers to those members of the public who do not wish to avail themselves of LRS's or for whom LRS's do not exist as a viable option -- either because there is no program in the consumer's geographic location or the local service does not have a paneled attorney with expertise in the area of law sought. The "Find A Lawyer" program will also provide business opportunities for those lawyers throughout the state who do not participate in the certified LRS's. Only 5,500 lawyers out of our 160,000 active attorneys participate on LRS panels and those LRS attorneys cannot possibly meet the legal needs of the over 36 million California residents.

In response to the concerns expressed by ECLA and the LRS's (**See Attachment #4, Public Comment in Opposition**), the Board of Governors appointed a "Find A Lawyer" Task Force that includes members of the Board of Governors and ECLA President, Stuart Forsyth (LACBA). At the initial meeting, State Bar staff advised the Task Force that the planned launch of FAL would also include a strategy to re-invigorate the LRS message and re-introduce consumers to the advantages of using the LRS network. The State Bar also agreed to make modifications to feature the LRS's prominently and to distinguish clearly between the attorney's official state bar record and any additional information provided by the attorney.

At the September 10, 2008 meeting, these changes were reviewed and there appears to be some consensus that the new design has addressed most concerns. A key feature of the new design is the prominent showcasing of LRS programs. This enhanced focus of LRS programs and services is likely to benefit the LRS community and may substantially increase the number of consumers using LRS programs. Lawyers, knowing of an enhanced consumer focus on and traffic to the bar's Web site, may have a greater incentive to join LRS panels. If implementation is authorized, staff will regularly monitor, measure, and report on the program.

At the October 22, 2008 meeting, issues concerning conflict of interest and including attorneys' unverified information regarding their practice and public protection were addressed. To conclude its assignment, the task force held its last meeting on October 27, 2008, which resulted in several motions to eliminate the type of voluntary information that would be searchable to and displayed for the public (**See Attachment #5, Executive Summary**).

## **ADDITIONAL STATE BAR ASSISTANCE TO THE LRS COMMUNITY**

The State Bar of California certifies Lawyer Referral Services, as authorized by Business & Professions Code Sections 6155 and 6156 and the resulting Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services, including Minimum Standards for a Lawyer Referral Service in California.

The State Bar's Office of Legal Services, Access & Fairness Programs conducts the compliance review of renewing LRS's and new entities applying for certification status. Technical assistance is provided in the certification and recertification process on an ongoing basis.

In addition to the compliance matters, OLSAFP is authorized to provide technical assistance in developing the scope of services, such as creating or expanding subject matter panels. Popular topics, such as percentage fees and the use of LRS revenues are also areas of programmatic development. Given concerns about organizational health and growth, OLSAFP is preparing to provide additional resources and information to LRS's on these topics to assure the continuing viability of our LRS programs. Finally, the major issue of increasing market share and techniques to achieve that will be part of enhanced services and resources to LRS's in the near future.

## **WHAT'S IN A NAME?**

There is also a continuing concern about what the "Find A Lawyer" program should be called. Some believe that use of the name "Find A Lawyer" conveys the misleading impression that it will "match consumers to lawyers like an LRS".

In its detailed and comprehensive Terms of Use – acceptance of which is required of both consumers and lawyers -- the State Bar has made clear that the bar's "Find A Lawyer" service is NOT a lawyer referral service that matches consumers with attorneys.

Staff had come to using "Find A Lawyer" naturally, because from a consumer perspective, "Find A Lawyer" is a simple, real life phrase that clearly articulates what they are trying to do. "Find A Lawyer" has become common parlance --- much like the words "Xerox" and "Kleenex," are synonymous with their generic twins "photocopy" and "facial tissue." Most bars that have this online feature call it "Find A Lawyer." Consumers that don't know about the State Bar's Web site are likely to use the "Find A Lawyer" nomenclature with Internet search engines such as Google. Go to any Internet search engine and type in the words "Find A Lawyer" as search criteria. The names of bar associations with "Find A Lawyer" programs, as well as proprietary online legal directories, such as LegalMatch, FindLaw, Avvo, and LawyerFinder, typically come up

when this search criteria is used. “Find A Lawyer” has become the generic name for online lawyer directories.

Although we still believe that “Find A Lawyer” is a good, consumer-friendly name for the program, we are in the process of developing alternatives, given the concerns raised.

## **ORIGINAL STAFF PROTOTYPE**

The prototype of “Find A Lawyer” was presented to the task force. The original staff concept was to create a searchable membership database which emphasizes to consumers the safeguards afforded by the LRS’s, allows users easy and direct access to an enhanced attorney search capacity, and offers our members an opportunity to supplement their current State Bar profile. The State Bar’s membership database could be searched using each of the following criteria:

- Currently searchable State Bar member record data: Name, Bar #, City, State, Zip, District, County and Certified legal specialty
- Self-designated practice areas
- Section Membership
- Languages spoken
- Accepting new clients
- Offering “unbundled” legal services

The following information would be collected and displayed to the consumer within the member profile:

- Accepting credit cards
- Size of law firm
- Offering a free consultation
- Attorney photograph
- Link to attorney website

The following information would be collected available for State Bar use and not published on the State Bar of California’s website for consumer users:

- Accepting pro bono
- Accepting sliding fees
- Accepting modest means

Thus, as originally conceived, a consumer could search the bar’s database to obtain, for example, a list of Spanish-speaking attorneys in Modesto that are certified specialists in Immigration law that are accepting new clients and willing to accept credit cards payments.

As a result of input obtained from stakeholders, discussions and overall agreement during the four task force meetings that the members did not want to compete with the LRS's, the State Bar has agreed to make modifications to feature the LRS's prominently and to clearly distinguish between the attorney's official state bar record and any additional information provided by the attorney (which was viewed as similar to attorney advertising) and, to eliminate several of the original FAL design's searchable options and restrict the information that will be displayed following a search.

To reduce the risk of false and misleading postings, staff also proposed that members be required to state under penalty of perjury that any information, such as biographical information (sometimes referred to in Task Force meetings and voting as the "attorney advertising component"), not independently verified by the State Bar, is true and correct. Before submission, members would also be reminded that the posting of false and misleading information could subject the member to discipline. **(See Attachment #6, Chart of FAL search capabilities – current state, task force and staff recommendation)**

## **REPORT OF THE TASK FORCE**

### **Task Force Voting Summary**

The Find A Lawyer Task Force was chaired by now-former Board member James Penrod and included current Board members Angela J. Davis, Richard A. Frankel, Paul A. Kramer, Jr., and Patricia P. White as well as Stuart Forsyth, Chair of ECLA and Executive Director of the Los Angeles County Bar. After several meetings that further refined the original staff concept, the Task Force took series of votes at its October 22, 2008 meeting to recommend to the Board of Governors a more restrictive approach to "Find A Lawyer."

**First Motion:** The Task Force moved to proceed with the "Find A Lawyer" concept, but to eliminate the so-called "attorney-advertising component," wherein an attorney could post on the State Bar's website biographical information not independently verified by the State Bar.

**Motion passes unanimously.**

**In favor: Angela Davis, Stuart Forsyth, Richard Frankel, Paul Kramer, and Patti White**

**Not voting: James Penrod**

**Second Motion:** Include Weblinks to attorneys' websites, with an interrupt page clearly indicating that user was leaving the State Bar's webpage.

**Motion passes, 3 to 2.**

**In favor: Angela Davis, Paul Kramer, and Richard Frankel**

**Opposed: Patti White and Stuart Forsyth**

**Not voting: James Penrod**

**Third Motion:** Include self-designated areas of practice.

Vote on the motion to allow attorneys to provide self-designated areas of practice, provided the information was submitted under penalty of perjury and subject to discipline if false and/or misleading.

**Motion passes, 3 to 2.**

**In Favor: Paul Kramer, Patti White, Angela Davis**

**Opposed: Richard Frankel and Stuart Forsyth**

**Not voting: James Penrod**

**Conclusion:** Recommend to the full board that this project go forward, but eliminate the “attorney-advertising component,” wherein an attorney could post on the State Bar’s website biographical information not independently verified by the State Bar and allow links to the attorney’s website, if any, and self-designated areas of practice.

### **October 27, 2008 Task Force Meeting**

**First Motion:** Publish only the following information on the website:

- Official regulatory information that is already displayed on the State Bar’s website, including certified legal specialization(s), if any and section membership(s), if any.
- Self-designated areas of practice, accompanied by information explaining the significance of the self-designation (as distinguished from certified specialty or section membership) as well as guidance on how to evaluate a lawyer’s experience [this material to be accessible on the profile page], and that information is submitted under penalty of perjury and subject to discipline if false and/or misleading.
- A link to the attorney’s website, if any, with an interrupt page indicating that the user is leaving the State Bar’s website
- A photograph

**Motion passes, 3 to 2.**

**In favor: Stuart Forsyth, Dick Frankel, Patti White**

**Opposed: Angela Davis and Paul Kramer**

**Not voting: James Penrod**

**Second Motion:** Include language(s) spoken in the office as a searchable data point.

**Motion failed 2 to 3.**

**In favor: Angela Davis and Paul Kramer**

**Opposed: Stuart Forsyth, Dick Frankel, and Patti White**

**Not voting: James Penrod**

**Third Motion:** Display language(s) spoken in the office on the attorney's profile page, but not as a searchable data point.

**Motion passes 4 to 1.**

**In favor: Angela Davis, Dick Frankel, Paul Kramer and Patti White**

**Opposed: Stuart Forsyth**

**Not voting: James Penrod**

**Conclusion:** Information regarding languages spoken in the attorney's office will be included on the attorney profile page, but not as a searchable data point.

Following the October 27th meeting, circulated notes of the meeting indicated that the Task Force had narrowly approved the concept that the State Bar's database would be searchable by the following criteria: certified legal specialization(s), if any, section membership(s), if any, and self-designated areas of practice. Once these notes were circulated, some Task Force members believed the Task Force had narrowly voted that the database would not be searchable. They believed that they were voting only to publish information on a bar member's profile about legal specialty, section member and practice area but that this information would not be searchable data points. Because of the shortness in time and the need to get this agenda item posted for the November 20-21 Board meeting, the Chair<sup>1</sup> directed staff to make a recommendation on the issue of "searchability" and any other related issues to Find-a-Lawyer.

## **BOARD BOOK/ADMINISTRATIVE MANUAL UPDATE**

There is no known impact on the Board Book.

## **STATE BAR RULES IMPACT**

None known.

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<sup>1</sup> James Penrod, immediate past member of the Board of Governors, was appointed as the Chairperson of the FAL Task Force. Due to a trial commitment, Mr. Penrod assigned the Chairperson responsibility to Richard Frankel.

## RECOMMENDATIONS / RESOLUTIONS

### Staff Recommendation

In forming our recommendation, staff notes that the State Bar member record is currently searchable by Name, Bar #, City, State, Zip, District, County and Certified legal specialty. To provide a robust site, which consumers would find useful and members would find beneficial, staff recommends that in addition to the currently searchable member record data we include:

- **Self designated area(s) of practice** (*allows consumer to identify attorneys that practice law in areas related to their legal issue and substantially reduces the amount of search time*)
- **Section membership**
- **Other language(s) spoken** (*promotes language access for non-English proficient clients, particularly necessary in California*)
- **Accepting new clients** (*helps avoid wasting the time of consumers and attorneys that cannot or do not wish to accept clients, such as government lawyers, in-house counsel or members on inactive status; allows such attorneys to present an expanded profile and avoid client contact; would be useful for attorneys and judges seeking information about other lawyers*)
- **Offering “unbundled” services** (*while not always available or appropriate, limited scope representation helps the moderate income consumer contain the costs of legal services; encourages attorneys to offer “unbundled” legal services by agreeing to represent a client in a narrow area of a case, rather than full representation*)

If the members of the Board of Governors concur with the recommendation of staff, it would be appropriate for the Board to adopt the following resolutions:

**RESOLVED**, that the Board approves the recommendation of staff and implementation of the “Find A Lawyer” design which constitutes the following information on the website; and it is:

- Official regulatory information that is already searchable on the State Bar’s website: Name, Bar #, City, State, Zip, District, County and Certified Legal Specialization(s). (**searchable**)

- Self-designated areas of practice, accompanied by information explaining the significance of the self-designation (as distinguished from certified specialty or section membership) as well as guidance on how to evaluate a lawyer's experience (**searchable**)
- Section membership (**searchable**)
- Accepting new clients (**searchable**)
- Providing "unbundling" services (**searchable**)
- Languages spoken (**searchable**)
- A link to the attorney's website, if any, with an interrupt page indicating that the user is leaving the State Bar's website
- Attorney photograph

**FURTHER RESOLVED** that an alternative to the "Find A Lawyer" name will be given to this program; and it is

**FURTHER RESOLVED** that the enhanced member profile be offered initially at no cost, with the understanding that if a charge is proposed, a report and request for authorization will be submitted for consideration by the Board.



**Board of Governors Agenda Item November 700**  
**Attachment II**  
**STAFF REPORTS on PRESENTATIONS**  
**Re “Find A Lawyer” Function to State Bar’s Website**

<b>No.</b>	<b>Date</b>	<b>Name, Title and Affiliation Of Staff</b>	<b>Circumstances of Presentation</b>	<b>Comments</b>
1.	6-6-08	Rodney Low, Program Developer OLSAFP	2008 Pathways to Justice Conference – California LRS’s in Los Angeles	Suggestions-Increase prominence of LRS information. Get more public comments before moving forward.
2.	10-17-08	Pat Lee, Director OLSAFP	2008 ABA LRIS Workshop in Garden Grove	Insufficient admonition that some information on Attorney Search was provided by attorney without verification by State Bar. Include information about malpractice insurance in data publication.
3.	10-18-08	Pat Lee, Director OLSAFP	Legal Services Providers at State Bar Office in San Francisco	Suggestions: Direct consumers to LRS pages exclusively. Direct consumers of free and low-cost legal services to LawHelpCA.org. Collect and publish information on attorneys willing and trained to perform limited scope representation and other ways to serve moderate income.

**2008 Pathways to Justice Conference  
June 6, 2008  
State Bar Certified Lawyer Referral Services Meeting**

Brief report of issues that were raised at LRS meeting:

The LRS representatives and members of the State Bar staff met at the Pathways to Justice Conference in Los Angeles. Eleven certified LRS's and 3 interested agencies (including the courts), attended. The participants raised legitimate concerns about the State Bar's initiative, Find a Lawyer, and requested that staff bring their viewpoint and perspective to the Find a Lawyer Working Group. This working group consists of various department representatives (Office of General Counsel, Office of Legal Services, Information Technology, Member Services, Meeting Services, Media Services and the Executive Office.)

Suggestions from the LRS representatives who attended:

1. The State Bar homepage should more prominently display the LRS option.
2. The Find A Lawyer page should clearly define what "Certification of Lawyer Referral Services" means for the general public.
3. The LRS dropdown menu should be more prominent. Attorneys obtained through LRS programs are screened and their performances are tracked. Even an excellent attorney who appears in the listing through the "local attorney" dropdown cannot make this claim. The LRIS system was developed by the State Bar to best serve the public. Certified LRS's are a time-tested public service and this deserves consideration.
4. Under the heading, "Where Can I go for more assistance" where it says, "Participating attorneys must..." add the words "State Bar certified" in front of attorneys; so it reads, "Participating State Bar certified attorneys must..."
5. Rather than rush the project, slow the process in order to receive more public comments and be more careful in ensuring no economic harm to the Certified LRS's.

**2008 ABA LRIS Workshop  
California Services Session  
October 17, 2008**

**Presentation of Consumer Information/Attorney Search Site**

**A total of 27 Representatives attended from the Following LRS's:**

Alameda County Bar Association, Bar Association of San Francisco, Beverly Hills Bar Association, Contra Costa County Bar Association, Housing Rights LRS, Legal Zoom, Los Angeles County Bar Association, Monterey County Bar Association, Napa County Bar Association, Orange County Bar Association, Orange County Legal Aid, Riverside County Bar Association, San Diego County Bar Association, San Fernando Valley Bar Association, San Joaquin County Bar Association, San Mateo County Bar Association, Santa Cruz County Bar Association, Santa Monica LRS, and Southeast Bar Association.

**ABA LRIS Standing Committee Members:** Sheldon Warren, Chair, Ron Abernathy, Immediate Past Chair.

**State Bar Staff:**

Gary Clarke, Chief Information Officer, Patricia Lee, Director of the Office of Legal Services, Access & Fairness Programs (OLSAFP), and Rodney Low, Program Developer, OLSAFP.

\*\*\*\*\*

After viewing PowerPoint slides of the current version of the Consumer Information/Attorney Search site, the LRS representatives offered the following comments and suggestions addressing policy and design issues.

**Policy Issues:**

**Consumer Disclaimer:** There was an observation that the disclaimer to the consumer was not conspicuous enough to alert the consumer that additional information provided by the attorney is not reviewed for accuracy by the State Bar. The concern is that the public will, after finding an attorney through this function, assume and believe that the attorney is "approved" by the State Bar. Additional comments suggested that along with the enhanced disclaimer there should be additional promotion of the Certified LRS's as a positive alternative.

**Directing Consumers to LRS's:** There was a recommendation that when the consumer uses the Advanced Attorney Search feature, before the consumer sees the list of attorneys, that the consumer first sees a list of the LRS's in that county. It was further suggested that the Certified LRS's be promoted on the Attorney Search pages.

**Consumers By-Passing LRS Option:** There was a strong sentiment that despite our attempts to emphasize the benefits of State Bar Certified LRS's and despite our prominent placement of the LRS options, consumers will prefer to go directly to the Advanced Attorney Search, especially where the attorneys indicate free initial consultations, thereby undercutting the LRS's.

**Consumer Protection Issue:** There was the sentiment that the Advanced Attorney Search function, without any verification of information provided by the attorney, represents a contradiction of the State Bar's duty of consumer protection.

**Additional Consumer Protection Issue:** It was recognized that the certified LRS's afforded benefits to the consumer that did not exist through the random attorney search. Among the key features is the requirement of E&O coverage for LRS panel attorneys. It was suggested that in the Attorney Search listings, attorneys have the opportunity to indicate voluntarily if they have E&O coverage.

**LRS Reference in Attorney Listings:** One suggestion was made to allow attorneys who are LRS members to post in their profile "Go to the LRS in your County" and for the attorney to receive a refund of any portion of his/her State Bar dues which was allocated towards the website design. Staff explained that the basic Attorney Profile has the official State Bar data and is the same Attorney Profile that currently exists on the website. Staff also indicated that the attorney did not have to participate in the advanced search function, thereby avoiding additional costs on behalf of that attorney. Finally, staff indicated that we had considered noting on an attorney profile if that attorney is associated with an LRS, but decided that such a reference could possibly undermine the rotational referral process inherent in the LRS system.

**Impact on State Bar Certified LRS's:** The services asked that the State Bar seriously consider the ramifications for the public and the local bars, if LRS's are forced to fold because of the Advanced Attorney Search Function.

**Featuring Certified LRS's in Marketing for the Attorney Search Site:** The representatives asked that reference to the certified LRS's be included in marketing efforts on behalf of the new Attorney Search Feature.

**Consumer Complaints:** A question was raised as to whether the State Bar has considered the possibility of increased consumer complaints as a result of negative experiences with attorneys located through the Advanced Search feature.

**Staff Referrals:** The LRS representatives wanted to be assured that State Bar staff would continue to refer callers to State Bar Certified LRS's should the Attorney Search feature be implemented. Staff explained that the current practice is to refer callers to the Certified LRS's and that the practice would not change.

## **Design Issues:**

**Attorney Names:** One attendee noted that the current State Bar's Attorney Profile system prevents him from listing his name as he wants it (first initial, middle name). Staff indicated that we have addressed that issue.

**ABA LRS Logo:** It was requested that the ABA LRIS logo be added to the listing for those LRS's that are qualified under the ABA standards.

**System Capacity:** It was asked what could be done if a consumer's computer is incapable of supporting the pop-up video or is blocked. We indicated there may be options for the user to select and view the written script/text.

**Sorting LRS's by Areas of Services Offered:** A suggestion was made to enhance the county listings of LRS's, enabling the consumer to sort the LRS's by types of services offered. Staff indicated that this would be possible, but that it was necessary for the LRS's to provide and continue to update the information, so that staff could make the necessary programming adjustments.

**Provide for Multiple Zip Code Listings:** It was noted that an attorney's practice area might cover more than one zip code (e.g. the example given was an attorney with his office in one zip code and appearing in the court located in another zip code). This would not be reflected in the current design Attorney Search design. Suggestions were made to search by city and/or allow for additional addresses/zip codes to be included in the profile.

**Feature Benefits of State Bar Certified LRS's:** It was suggested that the distinguishing benefits of State Bar Certified LRS's appear on the site. Staff explained that the LRS features would be included on the Attorney Search "home page".

**Design of State Bar LRS Pages:** There were questions as to how the LRS pages would look. Concerns were expressed re: whether the LRS's would have to spend additional funds to make design changes to their websites or modify outreach consistent with State Bar listings. We indicated that the LRS listings would link to the individual LRS websites and that the design of the LRS pages was still in development, but that we would keep these concerns in mind.

**Examples of Bar Association FAL Sites:** A question was raised as to which of the sample State Bars with Find a Lawyer sites (Arizona, Illinois, Oklahoma and Texas) were mandatory bars. Staff determined that the Arizona, Oklahoma and Texas bars are mandatory bar associations.

## **Find A Lawyer Presentation to Legal Services Representatives**

**The State Bar of California**

**San Francisco Office**

**Friday, October 10, 2008**

### **SUMMARY:**

Staff convened a small group of Legal Services representatives on Friday, October 10, 2008, to share the current version of the Consumer Information and Attorney Search Site. Legal services programs were aware of the proposed site from the prior ECLA and LRS communications. The programs have expressed concerns over the potential negative impact on State Bar Certified LRS's and possible reduced revenue flowing to legal services, pro bono and diversity programs. This was an opportunity to provide a firsthand presentation of the current version of the proposed site and to solicit feedback on the Attorney Search Function, as well as the Consumer Information features.

### **Participants:**

**Legal Services Representatives:** Bob Capistrano (Legal Aid Association of California, Vice President, Bay Area Legal Aid), Leslie Alexander (LAAC), Linda Kim (Public Interest Clearinghouse), Tiela Chalmers (Bar Association of San Francisco-Volunteer Legal Services Program), Elizabeth Hom (Alameda County Bar Association-Volunteer Legal Services Corporation)

**Staff:** Gary Clarke, Cathy Schoenfeld, Pat Lee, Stephanie Choy, Michael Dayao, Rodney Low, Terrie Mesa, and Christy White (temp) (Sharon Ngim attended part of the discussion)

Following the showing of the latest version of the Consumer Information/Attorney Search website, the following Comments/Recommendations were offered by the Legal Services Representatives.

### **CONSUMER INFORMATION PAGES:**

**Coordinate with existing sites for consumer access/navigation:** The programs questioned the need for State Bar listings of consumer information and resources that appeared to duplicate what appears on LawHelpCalifornia.org (a national and state site providing resources for low income consumers). It was also noted that we should take care to minimize the number of "clicks" needed by consumers to reach their destination.

We explained that our site was a vehicle for linking consumers to existing resources and that where resources/sites already exist, we would be linking as opposed to creating our own content. The State Bar consumer information includes State Bar-created resources (e.g. consumer pamphlets, Kids and the Law, "When You Turn 18", access & fairness materials, etc) and also links to LawHelpCalifornia, CourtInfo.net and other existing sites. We also noted that it made sense for us to have this general information (and all other links) on our site, given the volume of consumers accessing the State Bar website and who may not be aware of the LawHelpCalifornia or other key consumer sites and resources. .

**Suggestions:** To facilitate linking to LawHelpCalifornia, we suggest adding a button prominently featured on the home page that says: "For Low Income Legal Services click here". This would link directly to the LawHelpCalifornia site. This button would immediately direct consumers unable to afford an attorney to Law Help California and low income legal services resources, rather than have them navigating the LRS and Attorney Search sites for services they could not afford.

We also propose that this button appear on the Attorney Search Page (the one with the four boxes) and that the "low income services" choice appear as part of the menu going across the top of key pages.

We also suggest that the low income eligibility guidelines be featured in some way on the State Bar site, so consumers will know if they are eligible for free legal services. When we asked if the LawHelpCalifornia site listed the financial eligibility guidelines, the response was that it was not immediately featured and that consumers would have to drill down to get this information. Listing on the State Bar site would facilitate consumer guidance re: program eligibility.

## **ATTORNEY SEARCH FUNCTIONS:**

**Minimize potential negative impact on LRS's by channeling consumers directly to the State Bar Certified LRS listings:** The recommendation of the Legal Services representatives was to provide direct links to the State Bar Certified LRS's and not provide the Advanced Attorney Search option. A similar suggestion also made by ECLA. The feedback from the legal services representatives was that clients should be directed to the LRS sites, which would screen and provide assistance or referrals to legal services programs or other services. If a consumer could not be assisted through the LRS and legal services network, the consumer should not be provided the option to return to the Attorney Search pages, as the consumer probably does not have a viable legal claim or question.

An alternative suggestion was to have consumers directed to those counties with viable, "robust" LRS's that would be capable of responding to the consumer

demands. It would be up to the State Bar to create the criteria for determining which LRS's would be included in this select LRS listing. It would also be the responsibility of the State Bar to work with the other LRS's to raise the level of consumer services, so they could be included in this limited listing.

Staff explained that the State Bar was not inclined to channel consumers in any one direction but to allow consumers a choice of navigation. Staff also noted that given the concentration of LRS's in the key urban areas (Los Angeles, SF Bay Area, San Diego and Orange County) and given that only 5,500 attorneys participate in the State Bar Certified LRS's, it is not conceivable that the LRS's alone could respond to the potential numbers of consumers seeking legal assistance.

Staff also felt that it was not a good idea to abandon consumers who could not be assisted through the LRS or legal services options. These consumers should be re-directed to the State Bar Attorney Search site.

**Suggestion:**

During discussion, a suggestion was made to feature a button on the Attorney Search page (the one with the four boxes) that says: " Need to talk to a lawyer right away? Click here" (this would take the consumer to the LRS site). In addition to directing consumers to the LRS's, it is hoped that this extra button would provide consumers with immediate screening through the LRS's to avoid any missed filing deadlines, responses, statutes of limitations, etc.

Also, the language in the State Bar Certified LRS box should be modified to say something like: "Not sure where to find a lawyer? Click here for a State Bar Certified LRS. This would link to the bulleted features/benefits of the LRS's and then allow the consumer to find the appropriate LRS's by county listing.

**Additional Considerations:**

**Need to Address Modest Means options:**

During the discussion it became evident to staff that the LawHelp California and the Attorney Search options were addressing low income and regular consumers -- consumers on both end of the financial eligibility spectrum. Given the disparate needs and situations of moderate income consumers, we need to identify modest means services, both through the State Bar Certified LRS's and through the individual attorney profiles.

**Suggestions:**

Categories could be added to the Voluntary Attorney Profile as follows:  
Sliding Fees, Unbundled Services, and Rates (the attorney would have the option of providing specific information or could put "Varies")

Certified LRS descriptions should feature the offering of Modest Means Panels, sliding fee scales and unbundled services.

Board of Governors Agenda Item November 700

Attachment III

PUBLIC COMMENTS IN SUPPORT

Correspondence regarding proposed “Find A Lawyer” Function to State Bar’s Website

No.	Date Received	Name, Title and Affiliation of Correspondent	Comments	Staff Comments
1.	9-15-2008	John Cosmides, Principal Barustors, Certified LRS	<p>“This is a great idea whose time has come.”</p> <p>“I’d like to see “Business &amp; Corporate” as a category in the list of practice areas in the left nav, because many consumers have questions about starting or building a business.”</p> <p>“And, I’d like to see the references to Lawyer Referral Services more prominently displayed so that they catch the eye more quickly. It’s the State Bar’s interest to feed as many of these FAL visitors to an LRS because of the annual registration revenues they’d generate for the State Bar. Those who don’t need the LRS are no worse for the wear.”</p>	Also has design suggestions.
2.	9/17/08	Alice O’Sullivan, Chair California Board of Legal Specialization	<p>“This letter is in further support of the State Bar’s “Find A Lawyer” updated on-line attorney search proposal...This proposal for the State Bar’s website appears to be a streamlined method by which consumers searching for an attorney to handle a legal matter could locate a certified legal specialist... I have reviewed the proposed response to the concerns expressed by the local bar Lawyer Referral Services program and believe that it seems to be responsive to the needs of the public in locating legal services.”</p>	
3.	9/18/08	Officers of the Council of State Bar Sections	<p>“To date, the feedback from the Sections has generally been positive. ...Various Sections have raised concerns relative to the ultimate design and implementation of the project (for example, the potential liability of the State Bar for information posted by lawyers and the utility/efficacy of a search services that produces “random” results), as well as the ramifications the project may have (for example, the effect on local bar associations.) ... With appropriate protections, this project has potential to provide a valuable member benefit for State Bar members, as well as for the public.”</p>	Qualified support.

4.	11/4/08	Christele Demuro, President California Young Lawyers Association	<p>“The California Young Lawyers’ Association (CYLA) generally supports the Find A Lawyer project (FAL) proposed by the Board of Governor.</p> <p>“Contrary to some concerns expressed by the Executives of California Lawyer Associations and other commenters, CYLA does not view FAL as a substitute for or competitor to formal Lawyer Referral Service (LRS) programs. Rather, the FAL concept appears to complement existing basic attorney information on the State Bar website that can benefit young attorneys who seek to build their legal profiles. FAL would also complement existing LRS programs by providing access to information about lawyers to whom the public may be referred via LRS programs... CYLA, however, submits that posting and viewing information on FAL should be available free of charge...charging fees to post information, except perhaps a nominal fee to cover administrative costs, would unfairly disadvantage lawyers, including young lawyers, who cannot afford this service...Charging fees to post this information would appear to place the FAL program closer to prohibited advertising activities and the State Bar should not compete with these services...”</p>	Supports project in concept, but objects to being charged fees, other than nominal administrative costs.
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**From:** cosmides@barustors.com  
**Sent:** Monday, September 15, 2008 7:34 PM  
**To:** Low, Rodney  
**Subject:** RE: CA[LRS]: Update on the Find A Lawyer Initiative at The State Bar of California: Draft FAL Mock Screen Shots for Board Consideration

Hi Rodney,

This is a great idea whose time has come.

I'd like to see "Business & Corporate" as a category in the list of practice areas in the left nav, because many consumers have questions about starting or building a business.

And, I'd like to see the references to Lawyer Referral Services more prominently displayed so that they catch the eye more quickly. It's in the State Bar's interest to feed as many of these FAL visitors to an LRS because of the annual registration revenues they'd generate for the State Bar. Those who don't need the LRS are no worse for the wear.

Thanks.

John Cosmides

BARUSTORS

707-319-3937

----- Original Message ----- On 9/15/2008 10:44 PM Low, Rodney wrote:

**(This memorandum is intended to be read concurrently with the draft PowerPoint "Find a Lawyer" series of screen shots. In order to avoid being rejected as spam, we have loaded the PowerPoint on to a staging site at the following URL. To view the Find a Lawyer [Draft] Screen Shots, go to: <http://calbar.org/FALdraft/> )**

**Dear Lawyer Referral Services:**

As you may know, the State Bar of California is developing an enhanced attorney search and member profile feature for its website, initially referred to as "Find a Lawyer (FAL)." (We are currently calling this new feature "Find a Lawyer [FAL]," the name used in most other states, but the name will likely change. We use FAL in this communication simply because we have not arrived at a new name.)

We believe that this service will add value for our membership and most importantly, improve access to and availability of information for the public. Like the ABA, the state bars of Illinois,

Arizona, Oklahoma and Texas have implemented similar enhancements and report favorable acceptance from their members and the public. Additionally, we've added enhancements to promote California's network of Lawyer Referral Services and encourage more consumer usage of LRS services.

When we briefed various LRS representatives about this project during the Pathways to Justice Conference in June, the LRS representatives expressed concern that this could potentially compete with the Certified LRS's. However, they said that, if the project were to be implemented, they wanted the LRS's to be prominently featured on the website as the primary option for consumers to locate a lawyer.

We have also received feedback from ECLA expressing similar concerns regarding the potential harm to LRS's and whether, given the State Bar's regulatory and consumer protection functions, it is appropriate for the State Bar to offer an FAL service.

Our Office of General Counsel has carefully reviewed the issues raised by ECLA and concluded that there is no conflict of interest between the State Bar's regulatory role and its proposed FAL. While the State Bar's primary purpose is to assist the California Supreme Court in admissions, discipline and regulation of the legal profession, the State Bar is also expressly authorized to engage in activities that "may advance the professional interests of the members of the State Bar" and "concern the relations of the bar with the public." Cal. Bus. & Prof. Code, § 6031, subd. (a). Absent a statute or court rule prohibiting such activities, the FAL creates no general conflict with existing regulatory functions of the State Bar.

Nor will, as some suggest, the State Bar's proposed FAL "compete," with the LRS's. FAL is not a lawyer referral service. It is an online attorney directory similar to an electronic Yellow Pages rather than a lawyer referral service. FAL will not resemble a lawyer referral service as it will not screen or evaluate consumer inquiries nor will it refer consumers to attorneys that it feels are appropriate based on the legal nature of issues presented. Moreover, the State Bar will not split fees with the FAL member subscribers as is the practice between certified lawyer referral services and their attorney members.

Finally, some have argued that the bar's real motivation in proposing FAL is to raise non-dues revenue. Even if revenue generation were the **only** reason for FAL, the State Bar is also expressly authorized by statute to raise such revenues. Bus. & Prof. Code § 6001, subd. (g) states that "it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means, including, but not limited to, the creation of foundations or not-for-profit corporations."

In response to the concerns expressed by ECLA and the LRS's, the Board of Governors appointed a "Find a Lawyer" Task Force that includes members of the Board of Governors and ECLA President, Stuart Forsyth (LACBA). At the initial meeting, State Bar staff advised the Task Force that the planned launch of FAL would also include a strategy try to re-invigorate the LRS message and to re-introduce consumers to the advantages of using the LRS network. The State Bar also agreed to make modifications to feature the LRS's prominently and to distinguish clearly between the attorney's official state bar record and any additional information provided by the attorney (which was viewed as similar to attorney advertising).

The appointed BOG Task Force met again on September 10 and viewed the planned changes in the attached slide show. Some additional changes were suggested during this meeting and State Bar staff is currently implementing many of those suggestions. However, in order to solicit your opinion in time to share them with the Board of Governors, we are attaching them now without edit, but with an explanation as to how FAL will look when presented to the Board of Governors at their September 24<sup>th</sup> meeting.

**The State Bar Board of Governors will meet on Wednesday, September 24, 2008, at 3:00 p.m., in Monterey** prior to the Annual Meeting, to consider the recommendations of the Find a Lawyer Task Force. We are inviting the LRS community to view the prototype screens, to comment on the current status, and to attend the Board meeting, if desired.

To view the Find a Lawyer [Draft] Screen Shots, go to <http://calbar.org/FALdraft/>

## I. Explanation of Mock Screen Shots - Attachment

### Page 1 - Cover Sheet

As you will note, the term "Find a Lawyer" is bracketed and is subject to further discussion regarding an appropriate name for this project. By using the name "Find A Lawyer," the State Bar does not want to create the misleading impression that it is a lawyer referral service that matches consumers with attorneys. On the other hand, "Find A Lawyer" has become common parlance --- much like the words "Kleenex," and "Xerox" are synonymous with their generic twins "facial tissue" and "photocopy." Most state bars that have this online feature call it "Find A Lawyer." Consumers, unaware of the State Bar site, are also likely to use the "Find A Lawyer" nomenclature when using Internet search engines such as Google. Go to any Internet search engine and use the words "Find A Lawyer" as search criteria to confirm this -- the names of proprietary online legal directories such as LegalMatch, FindLaw, Avvo, and LawyerFinder typically come up when this search criteria is used.

## **Page 2 - "Public Web Site" - (Information Clearinghouse) -**

This is the Home Page for the Information Clearinghouse. As suggested during the Task Force meeting, the words "your trusted source" in the upper right corner will be deleted.

- **Left Menu:** offers a full range of consumer information on various legal issues
- **Right side:** Current issues of interest to consumers-text will change as new issues arise.
- **Middle Section:** the attorney search feature. CLICK ON "**Need help?**" to go to the next slide (Page 6)

**Page 3 - "Public Web Site (Information Clearinghouse) -** On the home page, when you click on "Legal Information" you reach this page. Click on the various icons and information about that legal topic will appear.

## **Page 4 - "Public Web Site - (Information Clearinghouse)**

Using Family Law as an example, when you click on Family Law topic icon, you reach this screen showing various family law resources.

## **Page 5 - "Public Web Site - (Information Clearinghouse) FAQ's**

This is the FAQ portion of the Information Clearinghouse

## **Page 6 - "Public Web Site - Home Page for the attorney search function. -**

Based on discussion during the Task Force meetings, the configuration of the boxes on this page are now top to bottom, instead of left to right. The first box allows searching by attorney name or bar number. The middle box is the LRS option and the advanced attorney search

feature is at the bottom. Note that the LRS option states: *"For personal assistance, contact a certified lawyer referral services. This is the most reliable way to find the right lawyer for you. Available in most counties, such services screen and match attorneys with clients. To participate, lawyers must carry insurance and meet certain standards."*

When the consumer clicks on "Click here to find out how" near the top of the page a video will appear with a person explaining the advantages of using an LRS. The person will provide the message in English and Spanish.

**The latest version of the script to this video is as follows:**

*"Need a lawyer? We can help. You can use the State Bar's attorney search service to locate an attorney by name, bar number, legal issue or legal specialty. But the best way to find the right lawyer is to contact a State Bar-certified Lawyer Referral Service. Available in most counties, these services screen and match lawyers with clients. And lawyers who participate must meet certain standards. To locate a service, go to the middle box, enter your county, and click "Next"." End of Video.*

This will open up the LRS browser, allowing the user to select the county and view all the certified LRS's authorized that operate in that county. We are considering adding the talking video to the margins in the LRS browser to further repeat the advantages of using an LRS. We are also considering making the video message available to LRS's for use on their websites or in PSA's.

It has been suggested that we randomize the listing of the Certified LRS's in each county and this is being considered.

**Locating an Attorney (Page 6 continued)**

**Top Box: Attorney Name/Bar number:** If the person knows the attorney name or bar number, that information can be entered in the first box. This approach is similar to finding a lawyer on the current State Bar Attorney Search site.

**Middle Box: LRS locator by county**

## **Last Box: Advanced Attorney Search**

Should a consumer not know the attorney name or chooses not to contact an LRS, the third box on Page 6 is the new "Find a Lawyer" function. To use this option, the consumer must agree to a detailed disclaimer. Once a user enters the zip code and selects a "Legal Issue" in the pull down menu, the user will be taken to **Page 9 - Public Website - Search Results Web Page**.

It was proposed and accepted that a fourth "**Legal Specialist Search**" box will be added to the Find A Lawyer options on this page. This function currently exists at [http://members.calbar.ca.gov/search/lis\\_search.aspx](http://members.calbar.ca.gov/search/lis_search.aspx).

**Page 7** - this provides information re the "virtual spokesperson" feature mentioned above.

**Page 8 - Public Web Site - Consumer Terms of Use:** The Consumer must agree to these terms before proceeding with the Advanced Search feature.

**Page 9: Public Web Site - Search Results Web Page:** Attorneys that fit the search parameters entered by the consumer will be listed in random order on the search page, along with a Google map of their office location. The page will list six attorneys at a time. If the list is unsatisfactory, the user can click "Next" for the next six randomized attorneys fitting the search parameters. However, before the next list appears, the message on **Page 10** will appear. This screen will ask if the user is having a difficult time finding a lawyer through this method and reminds the user of the availability of the LRS option, then links back to the "Need a Lawyer?" page to select the LRS box.

**Page 11 - Sample result of Attorney Search - Official State Bar Record, including discipline.** The State Bar seal will be added to this screen to reinforce that the information that appears is from the Official State Bar Record. .

**Page 12 - Sample result of Advanced Attorney Search** -Details with Additional Attorney-Provided Information. This information is provided by the attorney, obtained from the Data Capture in the "My State Bar Account Prototype" pages, **Pages 15 - 17**.

As recommended by the Board Task Force, the information on this slide will be clearly distinguished from the official State Bar Information both visually and with the disclaimers

appearing on the page. (Note: **Page 13** is the cover sheet for the Data Capture pages 15-17)

**Page 14: Attorney Terms of Use.** The attorney must agree to this before s/he can complete and submit an additional profile. The Task Force agreed that the Terms of Use should include reference to the possibility of disciplinary action against any attorney who intentionally provides misleading or incorrect information for the profile. Additionally, when the attorney clicks the "submit" button to upload information, a dialogue box will appear -- again cautioning the attorney to clearly review the information for accuracy and that the submission of false and misleading information can result in discipline.

## **II. Name**

The Task Force is aware that ECLA and LRS's have expressed concerns about the use of the term "Find a Lawyer" and is considering alternate names for the site. If you have suggestions for the naming of the site, please forward the proposed name(s) to [Rodney.low@calbar.ca.gov](mailto:Rodney.low@calbar.ca.gov).

## **III. Cost/Revenue**

The FAL project coincides with an overall redesign of the State Bar's website, as well as a transition to an online vehicle for communication with attorney members and for generating an attorney database that will allow the State Bar to better meet the needs of its members. Online communication with members will reduce, and in some cases, eliminate the need for mass mailings to members and will generate substantial cost savings. For these reasons, the State Bar does not at this time plan to charge lawyers a subscription fee to participate in FAL, although a subscription fee may be added later.

## **IV. Increased Support for Lawyer Referral Services**

The State Bar Office of Legal Services, Access & Fairness Programs has initiated an enhanced support program for the Certified Lawyer Referral Services, with improved compliance review, technical assistance in marketing and organizational development, as well as ideas for member recruitment. This effort includes offering the streaming video mentioned above to insert on the LRS webpage, providing a more robust consumer education clearinghouse that can help reduce the number of misdirected calls, and coordination with the Administrative Office of the Courts' website, for better direction to the State Bar's LRS browser,

among other efforts.

**Deadline for Comments:** Provide your comments, suggestions, and feedback to Rodney Low at [Rodney.low@calbar.ca.gov](mailto:Rodney.low@calbar.ca.gov) **by Friday, September 19, 2008, noon**, so the Board of Governors can compile them for consideration.

**Remember, to view the FAL draft Screen Shots, go to <http://calbar.org/FALdraft/>**

**Rodney Low**, *Program Developer*  
*The State Bar of California*  
180 Howard Street,  
San Francisco, CA 94105  
Tele:415/538-2219  
Fax:415/538-2552  
Email: [rodney.low@calbar.ca.gov](mailto:rodney.low@calbar.ca.gov)

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CALIFORNIA BOARD OF LEGAL SPECIALIZATION  
OF THE STATE BAR OF CALIFORNIA



180 HOWARD STREET  
SAN FRANCISCO, CALIFORNIA 94105-1639  
TELEPHONE: (415) 538-2100

July 29, 2008

Richard A. Frankel, Esq.  
Frankel & Goldware, LLP  
6111 Bollinger Canyon Road, Suite 475  
San Ramon, CA 94583

Re: "Find A Lawyer" Project

Dear Mr. Frankel:

On Friday, July 25, 2008, at the Board of Legal Specialization (BLS) meeting, Gary Clarke, the State Bar's Chief Information Officer, made a presentation on the proposed "Find A Lawyer" project. The presentation was well received. We believe that the proposed "Find A Lawyer" project would be an important resource for California's consumers.

Since the 1970's one of the purposes of the legal specialization program has been to identify for the public attorneys who have demonstrated their experience and proficiency in specific areas of law. Currently, the public can locate certified legal specialists by clicking on "Legal Specialist Search" as well as using local Lawyer Referral Services where certified legal specialists serve on various subject matter panels throughout the State. This proposal for the State Bar's website appears to be a streamlined method that consumers searching for an attorney to handle a legal matter could use to locate a certified legal specialist and appreciate the value of retaining a certified specialist.

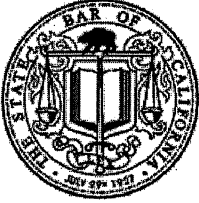
I understand that there is to be a meeting with the local bar associations on Friday, August 1, 2008 to discuss the "Find A Lawyer" project and their concerns about the project. Because the Board of Legal Specialization has an interest in this project I ask, on its behalf, to be given an opportunity for input. We would like to share our perspectives and to write to you to let you know that should you wish the BLS to assist you with your review and consideration of this project we would be happy to do so.

Yours truly,

A handwritten signature in cursive script that reads "Alice O'Sullivan".

Alice O'Sullivan, Chair  
California Board of Legal Specialization

cc: Judy Johnson, Executive Director



## COUNCIL OF STATE BAR SECTIONS

THE STATE BAR OF CALIFORNIA

DATE: September 18, 2008  
TO: Dick Frankel, Chair, "Find a Lawyer" Task Force  
FROM: Officers of the Council of State Bar Sections  
SUBJECT: "Find A Lawyer" Project

The "Find a Lawyer" project was demonstrated at the Council of State Bar Sections meeting on August 11, by Gary Clarke, the State Bar's Chief Information Officer. It was explained that the project, as detailed in Gary's PowerPoint presentation, is clearly a concept/work-in-process and that the Board of Governors has not yet made a formal decision to pursue the project.

The Board members present at the meeting asked the Council to assist the Board in making its decision by reaching out to the Sections to determine whether there was consensus among the Sections relative to the project. The PowerPoint presentation was made available to Council members to enable them to explain the project to, and thus be able to obtain meaningful input from, their respective Executive Committees.

To date, the feedback from the Sections has generally been positive. That having been said, various Sections have raised concerns relative to the ultimate design and implementation of the project (for example, the potential liability of the State Bar for information posted by lawyers and the utility/efficacy of a search service that produces "random" results), as well as the ramifications the project may have (for example, the effect on local bar associations). As a result, any consensus view among the Sections as to whether it makes sense to move forward is subject to these issues being appropriately addressed in order to ensure the success of the project.

While the project will be an agenda item for the Council at its meeting in Monterey on September 25th, this letter is being sent to you now, as we understand the Board of Governors is looking for input from the Sections *in advance* of that meeting.

The Sections would like to work with the Board as it continues to consider this project. With appropriate protections, this project has potential to provide a valuable member benefit for State Bar members, as well as for the public. Please let us know how we can be of assistance.

cc: Judy Johnson, Executive Director  
Pam Wilson, Director, Section Education & Meeting Services

H/Council/find a lawyer/ltr to Dick Frankel-9-18-final

# CALIFORNIA YOUNG LAWYERS ASSOCIATION

## THE STATE BAR OF CALIFORNIA

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*STEVEN SUTOW, Long Beach*

November 4, 2008

Ms. Judy Johnson  
Executive Director  
The State Bar of California  
180 Howard Street, Floor 10  
San Francisco, CA 94015

Dear Ms. Johnson:

The California Young Lawyers' Association (CYLA) generally supports the Find a Lawyer project (FAL) proposed by the Board of Governors and offers the following comments.

Contrary to some concerns expressed by the Executives of California Lawyer Associations and other commenters, CYLA does not view FAL as a substitute for or competitor to formal Lawyer Referral Service (LRS) programs. Rather, the FAL concept appears to complement existing basic attorney information on the State Bar website that can benefit young attorneys who seek to build their legal profiles. FAL would also complement existing LRS programs by providing access to information about lawyers to whom the public may be referred via LRS programs. Not only would FAL allow young lawyers to establish a more detailed profile with the State Bar (allowing the State Bar to gather additional information about its members), but FAL would allow young lawyers to make such a profile available to the public. Such benefits are symbiotic as well, allowing the public to learn information about young lawyers – including areas of practice and experience – that may not be available elsewhere.

CYLA, however, submits that posting and viewing Information on FAL should be available free of charge. Some State Bar information on FAL indicates FAL could operate as a non-dues revenue generator for the State Bar. CYLA is unaware of how revenue could or would be generated from FAL, but objects to charging fees to State Bar members to post information or charging fees to attorneys or members of the public to view the information for the following reasons. First, charging fees to post information, except perhaps a nominal fee to cover

administrative costs, would unfairly disadvantage lawyers, including young lawyers, who cannot afford this service. If only lawyers who pay a posting fee are able to receive what will be perceived by the public as a State Bar endorsement or recognition by posting information on FAL, lawyers who do not pay for this recognition may be placed at an economic disadvantage by their own State Bar. Second, fee-based information listing services such as Martindale Hubble already exist for this purpose. Charging fees to post this information would appear to place the FAL program closer to prohibited advertising activities and the State Bar should not compete with these services; rather the State Bar should allow its members to post this information without cost. Finally, charging fees to view the information posted would defeat any informational purpose of the FAL project. Because one purpose of FAL is to provide information “for consumers searching for information about California lawyers and other legal resources,” charging the public or other lawyers to view this information would be counterproductive to this purpose.

Very truly yours,

A handwritten signature in cursive script that reads "C. Demuro". The signature is written in dark ink and is positioned above the typed name.

Christele Demuro, Esq.  
President, California Young Lawyers Association

cc: The State Bar of California  
“Find A Lawyer” Task Force Members

**Board of Governors Agenda Item November 700, Attachment IV.**

**PUBLIC COMMENTS IN OPPOSITION**

**Correspondence regarding proposed “Find A Lawyer” Function to State Bar’s Website**

<b>No.</b>	<b>Date Received</b>	<b>Name, Title and Affiliation of Correspondent</b>	<b>Comments</b>	<b>Staff Comments</b>
1.	6-9-08	Michele Morley, San Fernando Valley Bar Association LRS	Feels design needs to feature benefits of LRS’s more prominently.	
2.	7-1-2008	Jane Nosbisch, Staff Counsel American Bar Association LRIS Committee	“At our recent ABA LRIS Committee meeting we received a preliminary report on the development of a possible online State Bar of California membership directory. I was asked by the ABA LRIS Committee to seek more information on the current status of the matter and any implementation plans or proposals. As you would expect, this issue is of great concern to the LRIS programs in California, which constitute about thirty percent of the public service LRIS programs operating in this country.”	Request for further information.
3.	7-8-2008	Stuart A. Forsyth, President Executives of California Lawyers’ Associations	<p>“We respectfully request that: The “Find a Lawyer” project not be implemented until our concerns have been addressed and we be notified of the time and place of any meeting at which the project will be discussed”</p> <p>“We still have the following serious concerns about potential harm to the public, the State Bar certified lawyer referral services, the local bars that run lawyer referral services [and] the public service programs that are supported by lawyer referral services”</p> <p>“Abandonment of the State Bar’s traditional role of protecting the public by failing to incorporate into the “Find a Lawyer” web site those public protection measures that the Sate Bar requires lawyer referral services to provide”</p> <p>“Conflicts of interest: Between the State Bar’s role as a regulator of lawyer referral services and a de-facto competitor of such services if this project goes forward in its current form; Between the State Bar’s duty to protect the public by effectively regulating lawyers and its desire to promote individual attorneys by marketing them via “Find a Lawyer” and perhaps raise money from them; Between the State Bar’s duty to discipline miscreant lawyers and its desire to provide a member benefit to all attorneys by advertising them to potential clients”</p>	

4.	7-24-2008	Marc L. Sallus, President Beverly Hills Bar Association	<p>“...only voluntary bar associations in California have provided Lawyer Referral and Information Services (LRIS) to the public, as authorized and regulated by the State Bar. Such proposal therefore raises a number of serious concerns regarding the propriety of the State Bar competing with, while at the same time regulating, voluntary bar associations in the area of lawyer referral services”</p> <p>“We believe such a project should be abandoned”</p> <p>“This letter is to inform the Legislature, and all interested parties, of the Beverly Hills Bar Association’s position”</p>	
5.	8-26-2008	Thomas E. Kuhnle, President Santa Clara County Bar Association	<p>“...allowing attorneys to furnish information about their practices that would be invited by the State Bar and accessed through the Find a Lawyer project would create a conflict of interest within the State Bar. One of the primary and perhaps most significant roles of the State Bar is public protection, which it fulfills by, among other activities, attorney regulation and regulation of lawyer referral services. The State Bar’s sponsorship of a program that would provide unregulated attorney advertisements to the public would necessarily conflict with he State Bar’s role in regulating attorneys.”</p> <p>“...Find a Lawyer will unfairly compete with the State Bar certified lawyer referral services, including those supported by local bar associations.”</p> <p>“If the Find A Lawyer project is launched with attorney advertising, members of the public could hire lawyers through a lawyer referral service abiding by restrictive (yet sensible) requirements for certification, or through advertisements posted on the unregulated State Bar Find a Lawyer service. Find a Lawyer could very well put the regulated lawyer referral services out of business by the State Bar’s own unregulated advertisements.”</p> <p>“The SCCBA therefore supports enhancing the ability of the public to access lawyer referral services and to search for the names of California attorneys, but it strongly opposes allowing those attorneys to place advertisements on the State Bar website accessible to the public by location and/or practice area.”</p>	

6.	9-9-2008	Catherine Castaldi, 2008 President Orange County Bar Association	<p>“The State Bar’s regulation of lawyer referral services provides a critical public benefit. In Orange County, our Lawyer Referral and Information Service (“LRIS”) ensures that members of the public receive referrals to attorneys who maintain malpractice insurance, meet educational and experiential requirements for practice in the referral area, and are accountable to their clients. Our LRIS also serves as a screening mechanism for clients who qualify for pro bono or discounted legal services. In short, the local bar association referral services provide a substantial benefit for the public in our communities.”</p> <p>“In addition to the direct public benefit provided by these services, the revenue from these non-profit operations is granted to worthy local community pro bono programs, such as the Public Law Center (the “PLC”), Orange County’s pro bono law firm. The PLC is committed to providing access to justice for low income residents.”</p> <p>“...the State Bar of California, as the principal regulator of the practice of law, should not also be a commercial vehicle for lawyer advertising. This project may damage the public confidence in the legal system and the State Bar of California.”</p>	
7.	9-15-08	Deborah Kemper, Executive Director San Mateo County Bar Association	<p>“Why can't we change this language to read as follows:</p> <p>The latest version of the script to this video is as follows:  <i>"Need a lawyer? We can help. The best way to find the right lawyer is to contact a State Bar-certified Lawyer Referral Service. Available in most counties, these services screen and match lawyers with clients. And lawyers who participate must meet certain standards. To locate a service, go to the middle box, enter your county, and click "Next".</i>" But you can use the State Bar's attorney search service to locate an attorney by name, bar number, legal issue or legal specialty. End of Video.”</p>	

8.	9-17-2008	Thomas E. Kuhnle, President Santa Clara County Bar Association	<p>“The conflict of interest inherent in this project is the primary reason the SCCBA strongly opposes including “enhanced attorney profiles” as part of the service.”</p> <p>“While a State Bar web site with contact information and disciplinary histories can benefit the public, allowing attorneys to provide “enhanced” profiles (which amount to advertising) presents substantial risks. Those risks are generated by two sets of conflicts of interest. First, allowing attorneys to advertise on a web site designed, hosted and endorsed by the State Bar would directly conflict with the State Bar’s mandate to regulate attorneys. One of the primary and perhaps most significant roles of the State Bar is public protection, which it fulfills by, among other activities, attorney regulation and regulation of lawyer referral services. The State Bar’s sponsorship of a program that would provide unregulated attorney advertisements to the public would necessarily conflict with the State Bar’s role in regulating attorneys.”</p> <p>“Second, allowing attorneys to advertise on the State Bar website poses a direct conflict of interest between the State Bar’s regulation of Lawyer Referral Service (“LRS”) entities (which LRS entities pay for) and, in turn, its proposed facilitation of unregulated advertisements that would take business away from LRS entities.”</p> <p>“...taking business away from LRS entities will adversely affect local bar associations’ bottom lines. Thus, local bar associations will have less to spend on programs that support the courts, the State Bar through local fee arbitration programs and other public service programs, which local bars are required to do as part of their mission and state bar LRS certification.”</p> <p>“To ameliorate the State Bar’s inherent conflict of interest and its ability to unfairly compete against LRS entities, we understand the Task Force is considering “layering” the search pages of the website so that the initial page provides information about the services provided by LRS entities including language that encourages the public to use them. The Task Force also recommends having a strong disclaimer that would warn the public about the accuracy of the attorney advertisements cannot be guaranteed...Such mixed messages do not serve the public interest. Indeed, this is the essence of the conflict of interest.”</p>	
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9.	9-17-08	Stuart Forsyth, President ECLA	<p>“While a number of improvements have been made, the September 10<sup>th</sup> redesign still contains a critical flaw, and further changes are recommended.”</p> <p>“Given the importance of this project and the significance of the concerns related to LRS entities and legal services programs throughout the State, ECLA respectfully requests that the Board of Governors postpone taking any action on the proposal until ECLA’s concerns and specific recommendations have been considered and addressed in a design finalized by the Task Force.”</p> <p>“at the first Task Force meeting on August 1<sup>st</sup>, the Task Force resolved to:</p> <ol style="list-style-type: none"> <li>1. Emphasize the benefits of State Bar certified lawyer referral services and the protections and benefits that they afford the public by referring first to LRS;</li> <li>2. Provide information about lawyers that the State Bar maintains for regulatory purposes; and</li> <li>3. Only then provide unverified information that an attorney has furnished (advertisements).</li> </ol> <p>The September 10<sup>th</sup> redesign still retains all three options...This fails to implement one of the Task force’s major directions, which was at its heart that the LRS option have a higher priority and more visibility than the search option.”</p>	<p>See Staff Report, 10-16-08 Attachment V.1.</p> <p>There is no legal conflict of interest, FAL is not a lawyer referral service, there is no prohibition against posting unverified attorney information. Balance of recommendations from ECLA re design will be taken into consideration as project moves forward.</p>
10.	Not dated	Matthew P. Guasco, President Board of Directors Ventura County Bar Association	<p>“The Ventura County Bar Association strongly supports all reasonable measures promoting the protection of clients and the practices of lawyers.”</p> <p>“In light of the potential impact of the Find a Lawyer program on existing State Bar Certified LRS programs and the clients they serve, VCBA urges the State Bar to refrain from implementing such a program unless and until a meaningful and adequate period for receipt and thoughtful consideration of public comment occurs.”</p> <p>“VCBA expresses its strong opposition to the current Find a Lawyer proposal unless and until such a process occurs.”</p>	

11.	10-15-2008	Julia R. Wilson, Executive Director Public Interest Clearinghouse and Legal Aid Association of California	<p>“PIC is a statewide back-up center on access to justice issues for the IOLTA-funded community. PIC administers the statewide legal referral and information website, LawHelpCA.org, which for many years has served as the trusted source for referrals to legal services organizations, court-based self-help programs, public interest nonprofits, and State Bar approved Lawyer Referral Services. LawHelpCA.org serves the general public in California, but its focus is ensuring that low-income Californians are able to access legitimate and high-quality free legal services, thereby fulfilling an important public protection role.”</p> <p>“PIC therefore requests that the Consumer Clearinghouse/Attorney Search website ensure that low-income residents, who are eligible for legal assistance through the legal services and public interest or pro bono delivery systems, are prompted quickly and repeatedly to use LawHelpCA.org, rather than the Attorney Search system.”</p> <p>“...PIC requests clear placement of links to and information about LawHelpCA.org throughout the Attorney Search website and that the Attorney Search home page include detailed information about the range of options for consumers, including LawHelpCA.org and local LRS’s.”</p> <p>“The Legal Aid Association of California is a non-profit organization founded in 1982 for the purpose of ensuring the effective delivery of legal services to low-income people throughout California.”</p> <p>“...the Project has potential, if not handled properly, to significantly reduce the public’s use of the Lawyer Referral Services (“LRS’s”), which would reduce the income that LRS’s receive. Many legal services programs obtain substantial funding from LRS’s.”</p> <p>“...in many areas, the local LRS is actually part of the legal services delivery system in several ways.”</p> <p>“...some LRS’s are actually run by IOLTA-funded programs. These LRS’s often train their panel attorneys and ensure that they have adequate qualifications and expertise. Many LRS’s require their panel attorneys to take a certain number of pro bono and low-cost, sliding-scale cases per year.”</p> <p>“...LAAC requests that the Task Force bear in mind the role that LRS’s play in the delivery system of legal services to the state’s most vulnerable residents when considering the Project’s components and website.”</p>	<p>Many concerns raised relate to design issues and information placement. After the project is approved by BOG to move forward, the State Bar will address these questions.</p>
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12.	10-16-2008	Tiela Chalmers, Executive Director The Bar Association of San Francisco VLSP	<p>“The proposed “Find a Lawyer” site on the State Bar’s web page, unfortunately, would undermine the State Bar’s excellent work in areas of services to the community, consumer protection, and diversity in the profession.”</p> <p>“...compromise approach: that the State Bar launch the site with a searchable list of attorneys only for the counties where there are no LRS’s, and those where there are no LRS’s that the State Bar deems effective.”</p> <p>“LAAC requests that the Task Force bear in mind the role that LRS’s play in the delivery system of legal services to the state’s most vulnerable residents when considering the Project’s components and website. It is vital that the LRS’s receive dominant displays on all possible website pages, including but not limited to the home page and all searches.”</p>	
13.	10-20-2008	James Donato, President The Bar Association of San Francisco	<p>“I write on behalf of The Bar Association of San Francisco (BASF) to express our ongoing serious concerns regarding the State Bar’s proposed Find-a-Lawyer Web site. BASF shares the very grave concerns already conveyed to you – that this Web site as designed holds significant potential to harm the public, endanger access to justice programs, and gut support for efforts to diversify the legal profession in our state.”</p> <p>“...we continue to believe that, even with the disclosures and disclaimers now present on the proposed site, referring the public to unscreened attorneys who have no requirement to carry professional liability insurance would remove a crucial consumer safeguard.”</p> <p>“We also urge – in the strongest possible terms – that you and your colleagues on the Board of Governors reconsider the implementation of the proposed Web site and fully address and resolve the other serious concerns expressed by local bar associations, State Bar certified lawyer referral services, and legal services and pro bono organizations across our state.”</p>	

14.	10-31-2008	Leslie Alexander, Staff Attorney and Program Manager LAAC	<p>“I am writing on behalf of the Legal Aid Association of California (LAAC) and its legal services member organizations to express some comments and concerns regarding the State Bar of California’s Consumer Clearinghouse and Attorney Search project and website, and to request that LAAC be included in ongoing discussions regarding the website design.”</p> <p>“First, the Project has the potential, if not handled properly, to significantly reduce the public’s use of the Lawyer Referral Services (“LRS’s”), which would reduce the income that LRS’s receive. Many legal services programs obtain substantial funding from LRS’s...To the extent that LRS’s are hurt financially by the Project, it could have the effect of reducing the available funding for legal services.”</p> <p>“...in many areas, the local LRS is actually part of the legal delivery system in several ways...for certain types of cases where legal services programs cannot provide services, the LRS guarantees low-income clients a 30-minute appointment with an attorney for a very low cost, allowing them to obtain critical information and advice about the merits of their case.”</p> <p>“...some LRS’s are actually run by IOLTA-funded programs...Many LRS’s require their panel attorneys to take a certain number of pro bono and low-cost, sliding-scale cases per year.”</p> <p>“Because of these concerns, LAAC requests that the Board of Governors bear in mind the role that LRS’s play in the delivery of legal services to the states most vulnerable residents when considering the Project’s components and website. It is vital that the LRS’s receive dominant displays on all possible website pages, including but not limited to the home page and all searches.”</p>	
15.	10-31-08	Siobhan Waldron, Program Coordinator LawHelpCalifornia.org	<p>“LawHelpCA.org serves the general public in California, but its focus is ensuring that low-income Californians are able to access legitimate and high-quality free legal services, thereby fulfilling an important public protection role.”</p> <p>“PIC therefore requests that the Consumer Clearinghouse/Attorney Search website ensure that low-income residents, who are eligible for legal assistance through the legal services and public interest or pro bono delivery systems, are prompted quickly and repeatedly to use LawHelpCA.org, rather than the Attorney Search system. ...PIC requests clear placement of links to and information about LawHelpCA.org throughout the Attorney Search website and that the Attorney Search home page include detailed information about the range options for consumers, including LawHelpCA.org and local Lawyer Referral Services.</p>	Staff will work with PIC regarding design considerations and redirecting consumers in need of free or low-cost legal services.

16.	11-12-08	Ellen Miller, Executive Director San Diego County Bar Association	<p>“please find two technical suggestions regarding the State Bar of California’s Public Website/Find a Lawyer proposal dated September 24, 2008:</p> <p>1. Public Web Site - Home Page I would suggest that the forth search box titled “Search for a lawyer by type of legal issue (Enter your zip code)” be moved from the public site home page to a sub page, or the second level of display. I think people will look for a fast/quick option from this home page and searching by zip code is a fast/quick option.”</p> <p>2. Our experience is that “screening” is a sophisticated term for the public. Given this, I would suggest that the language be slightly modified to describe what "screening" really means. For example, instead of:</p> <p>“Available in most counties, these services screen and match lawyers with clients. And lawyers who participate must meet certain standards”, you may want to consider:</p> <p>"Available in most counties, these services establish requirements for the attorneys who participate in the lawyer referral service to ensure quality. They also carefully listen to the facts of the case and link you to an attorney who would be best suited to meet your needs”</p>	
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**From:** Michele Morley [morley@sfvba.org]

**Sent:** Monday, June 09, 2008 10:43 AM

**To:** Low, Rodney

**Cc:** 'Rosie Soto'

Rodney:

Thank you for hosting the meeting and lunch on Friday. It is always useful and informative to have a chance for the various program staff to meet and greet. I agree with many of the comments made about the Need a Lawyer website proposal. I am old enough and experienced enough to know that this program will be implemented and that our task is just to make it as good as possible. I know that State Bar staff know all of the advantages to the public in finding an attorney through a referral service and the LRIS programs are putting our trust in you to advocate our positions. I am confident that you have been doing so and will continue to do so. I also know that the LRIS programs while supported by the State Bar are somewhat of a lower priority in ranking to other State Bar member and public services.

My comments:

1. Negotiate a prominent placement on the State Bar homepage of the LRIS programs.
2. You define specialization in the draft, but do not define what certification means. This should be included
3. What can be done to make the LRIS dropdown more prominent should be done. Attorneys obtained through LRIS programs are screened and their performances are tracked. Even an excellent attorney who appears in the listing through the "local attorney" dropdown cannot make this claim. The LRIS system was developed by the State Bar to best serve the public. We have done this for many decades and are continuing to work hard to provide the service to the public. We are a time tested public service that ranks consideration.
4. Under the heading, "Where Can I go for more assistance" where it says, "Participating attorneys must," add the words "State Bar certified" in front of attorneys; so it reads, "Participating State Bar certified attorneys."

If it is ok, I plan to take this draft to the June 20<sup>th</sup> meeting of the ABA Standing Committee on LRIS for their comments. If they have further suggestions, I will forward those to you.

Also, the SFVBA would really like to have some award given to Don Breer and we would contribute to such an award. Let me know.

**Michele C. Morley, Esquire\***

Consultant

San Fernando Valley Bar Association

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\*Admitted: Missouri, Minnesota and Massachusetts

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July 1, 2008

Judy Johnson  
Executive Director  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Dear Judy:

At our recent ABA LRIS Committee meeting we received a preliminary report on the development of a possible online State Bar of California membership directory. I was asked by the ABA LRIS Committee to seek more information on the current status of this matter and any implementation plans or proposals. As you would expect, this issue is of great concern to the LRIS programs in California, which constitute about thirty percent of the public service LRIS programs operating in this country.

I look forward to hearing from you at your convenience.

Sincerely,



Jane Nosbisch  
Staff Counsel, ABA LRIS Committee

Cc: Ron Abernethy  
Sheldon Warren

# Executives of California Lawyers' Associations

*"Supporting California Legal Associations to Improve the Legal Profession and the Administration of Justice"*

July 8, 2008

Ms. Carol Madeja  
Director, Bar Relations Outreach  
The State Bar of California  
1149 S. Hill Street  
Floor 7  
Los Angeles, CA 90015-2212

**Re: Proposed State Bar "Find a Lawyer" Web site**

Dear Carol:

This letter is written on behalf of Executives of California Lawyers' Associations (ECLA), which is the professional membership organization of executive directors of California bar associations.

Its purpose is to codify our serious concerns about the "Find a Lawyer" project, request that it not be implemented until our concerns have been addressed and further request that we have an opportunity to be present at any Board meeting at which the project is discussed.

## **Background**

As you know, most in our organization first learned of the existence of the "Find a Lawyer" project at our annual retreat meeting in Santa Barbara on May 16-17, 2008, although a few of our members attended a District 3 lunch meeting on April 16, 2008 where the project was discussed. At our retreat, we were told that it was an initiative to provide non-dues revenue for the State Bar.

The project also was discussed with representatives of several of California's lawyer referral services at a meeting in Los Angeles on June 6, 2008. At that time they were told that it was not a revenue initiative, but rather an initiative to provide information to the public.

Naturally, we were confused and concerned about these different articulations of the purpose of the project.

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Business and Professions Code Section 6155 was passed without opposition by the legislature and signed into law. The State Bar then established mandatory minimum standards for LRS programs. The existing standards were revised and strengthened by the Standing Committee on Lawyer Referral Services and approved by the Supreme Court in 1989.

The State Bar undertook to enforce the Minimum Standards, holding a meeting in Los Angeles on November, 1990, which included the drafters of the legislation, representatives of various law enforcement agencies, and the Standing Committee on Lawyer Referral Service. At this meeting, representatives of the State Bar outlined a five-point enforcement plan, including the goal of seeking stronger and/or corrective legislation. In response to problems with the enforcement of the original legislation, Business and Professions Code Section 6155 was amended in 1992 to strengthen the consumer protection intent of the original bill.

Once State Bar certification was mandated, the Minimum Standards were upgraded several times. The most recent version became effective January 1, 1997, entitled Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services Including Minimum Standards for a Lawyer Referral Service in California. Rule 3 defines the policy of the State Bar regarding Lawyer Referral Services as follows:

- 3.1 It is the policy of the State Bar of California that every community be served by one or more certified Lawyer Referral Service. Where the size of the community or the number of lawyers serving it make the establishment of a separate Lawyer Referral Service impractical, the State Bar encourages the establishment of a regional Lawyer Referral Service embracing two or more such communities, subject to Rule 8.2 which requires separate certification for each county in which a Lawyer Referral Service operates.
- 3.2 It is also the policy of the State Bar of California that activities in violation of these Rules, the Business & Professions Code, or other authorities pertaining to Lawyer Referral Services, be curtailed.

Through its certification program, the State Bar collects annual fees from lawyer referral programs of up to \$5,000 for non-profit programs and \$10,000 for for-profit services.

### Potential Harm to the Public

State Bar LRS Certification was established in large part to ensure consumer protection – that’s why the State Bar requires, among other things, experience panels, malpractice insurance, panel rotation, and a mechanism to remove panelists for unacceptable behavior. Certified LRS programs pay a fee to the State Bar for their certification. LRS programs must abide by rules of the State Bar and are regulated by the State Bar. County LRS programs provide a necessary community service. Such LRS programs serve many clients – for example, LACBA alone receives and handles more than 110,000 calls each year. Local LRS programs provide qualified employees to assure proper referrals are made to qualified attorneys who possess malpractice insurance and who are in good standing with state and local bar.

As we understand it, The “Find-A-Lawyer” Web site appears to offer none of these protections and seems in conflict with a basic tenet of the State Bar’s philosophy vis-à-vis public protection:

- An alphabetical online directory may be the best way for the State Bar to enable the public to find out whether an attorney is admitted to practice in California. Arranging or dividing such a listing by self-designated area of practice, however, would be misleading and would remove an

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important consumer safeguard because it would give the public the false impression that the State Bar has conducted a vetting or qualification process.

- An online searchable database also would eliminate the critical link provided by trained legal referral staff: a means for directing consumers to appropriate legal resources. An online subject area checklist cannot replace trained referral specialists. The legal system is complex, and consumers often mischaracterize or misunderstand their area of need.
- Publishing an online listing by self-designated area of law, which rotates names of participating attorneys by some as yet to be determined mechanism, also can undermine the standards and procedures that lawyer referral services have established, such as requiring and confirming that lawyers being referred have professional liability insurance.
- A directory alone would not be equipped to measure client satisfaction. Such feedback is a core feature of a Lawyer Referral Service.

The State Bar proposal also could have other very serious consequences for the public:

- State Bar Certified LRSs are required to use “excess” LRS income to support pro bono or other community service activities, including fee arbitration programs. These “excess” funds allow sponsoring bar associations to provide such services when they might not otherwise be in a position to do so. If county bars discontinue offering fee arbitration services, the State Bar will have to dramatically expand its own staff and expend more resources to handle the resulting caseload.
- County LRSs, such as the BASF LRS, also provide an important client screening function for their pro bono legal services programs. In addition, LRSs use “excess” income to help to support in part pro bono legal services programs; and county bar association efforts to help diversify the legal profession are also often supported by LRS revenue. Any negative financial impact on county LRSs resulting from the State Bar “Find a Lawyer” proposal could have serious consequences for both access to justice and diversity efforts.

### **Potential Damage to Certified Lawyer Referral Services**

Currently, the State Bar publishes local attorney information using an “attorney search” system. This search function allows individuals to search for an attorney by name or, if they have been certified by an organization accredited by the State Bar to certify California attorneys in certain areas, by that specialty area of practice and location. However, this is merely a basic search function, not an endorsement by the State Bar of the attorney.

In addition, currently the State Bar encourages clients to use the certified lawyer referral programs, by inserting this language on its site:

**“The State Bar cannot give you legal advice or refer you to an attorney.** If you need to hire an attorney to handle your case or want to consult an attorney on a potential case, a certified lawyer referral service can put you in touch with a lawyer who can handle your problem. If your particular problem can be resolved without a lawyer, the referral service will tell you how to get the help you need.

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Be sure that the service is certified by the State Bar. **Lawyer referral services which are certified follow certain rules which will protect you.** [Emphasis added.]

Many clients go to the State Bar to find an attorney and, if they do not have the name of a particular lawyer, often access the State Bar's listing of certified Lawyer Referral Services. As we understand it, the proposed "Find a Lawyer" program would not promote Lawyer Referral Services in the same manner that the State Bar Web site does now, but rather likely will undermine these critical public service programs in the following ways:

1. Diminished attorney participation, referral requests, and revenues and higher costs
  - Attorneys pay for membership in LRS programs in order to receive cases and promotion. In most cases, they also pay forwarding fees. Because bar association brand recognition is a primary reason the public trusts and contacts an LRS, attorneys will be less likely to join a referral panel if their names are listed on an online database with the same or similar brand advantage. This decreased membership would result in direct financial harm to certified LRSs.
  - Efforts that enable attorneys to advertise or promote themselves on the State Bar's Web site would likely diminish the number of referral requests and, therefore, revenues to local programs. Attorneys also frequently send clients to a lawyer referral service when the clients' problems are not within the attorneys' area of practice. Access to an online database that is searchable by practice area may result in attorneys providing clients with a few names from that source rather than suggesting that clients call the LRS.
  - LRSs would have to spend time, energy, and money combating public misconceptions that an online database sponsored by the State Bar is screening its attorneys.
  - LRSs will have to invest in the high cost of Web related marketing necessary to compete with the State Bar's Web site

Diminished attorney participation, referral requests, and revenues -- along with increased marketing and communications costs -- necessarily will severely reduce the size of -- or eliminate -- some county LRSs.

2. Diminished ability to support other public service programs of the sponsoring bar associations (See Potential Harm to the Public section, above)
3. Diminished reputation of lawyer referral programs.

The LRS community has worked hard for many years, with the direct support of the State Bar and sanctioned by the California Supreme Court and the Legislature, to ensure that important public protection mechanisms are in place in all certified referral services. Consequently, the credibility of LRS programs and bar associations in the community is high. A few bad apples in the proposed State Bar system, which appears not to have any of these important safeguards, will tarnish the hard-earned reputation of programs that are in compliance with the State Bar's own mandates, further diminishing the likelihood of the public relying on lawyer referral services.

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**Request to Delay Implementation in Order to Address Concerns**

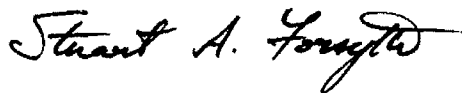
The State Bar has a long and proud tradition of protecting the public and facilitating access to legal services by fostering the creation and success of California's lawyer referral services. Today, that tradition is in jeopardy.

We believe inadequate consideration has been given to the serious negative impacts that the "Find a Lawyer" project is likely to have on certified lawyer referral services and the bar associations that run them. Properly crafted, the "Find a Lawyer" project could serve the public and support the existing network of lawyer referral services, rather than destroy them.

We respectfully request that you pause and take time to meaningfully address our concerns. The end result will be better for all concerned, including the State Bar and the public it serves.

Thank you in advance for your kind consideration of this request.

Sincerely yours,



Stuart A. Forsyth  
President  
Executives of California Lawyers' Associations

Writer's direct contact information:

[sforsyth@lacba.org](mailto:sforsyth@lacba.org)

213-896-6424

c/o Los Angeles County Bar Association  
261 S. Figueroa St., Suite 300  
Los Angeles, CA 90012

cc: Richard Frankel  
Patricia White  
Judy Johnson  
LRS Programs  
ECLA Members

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# Beverly Hills Bar Association

Lead. Advocate. Serve.

July 24, 2008

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\*Deceased

Mr. Dave Jones  
State Assembly Judiciary Committee  
State Capitol-P.O. Box 942849  
Sacramento, CA 94249-0009

Dear Chairman Jones:

The Board of Governors of the Beverly Hills Bar Association has requested that the attached letter, from Executives of California Lawyers Association (ECLA) to the State Bar of California dated July 8, 2008, be forwarded to you for your information. The Beverly Hills Bar Association is in support of this letter.

Specifically, the ECLA letter responds to a proposal by the State Bar of California to launch a "Find a Lawyer" project. It appears to be a proposal to create a Lawyer Referral and Information Service. This is highly unusual for a State Regulatory Organization to do.

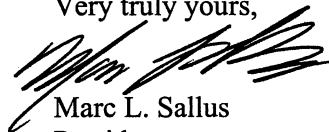
Traditionally, only voluntary bar associations in California have provided Lawyer Referral and Information Services (LRIS) to the public, as authorized and regulated by the State Bar. Such proposal therefore raises a number of serious concerns regarding the propriety of the State Bar competing with, while at the same time regulating, voluntary bar associations in the area of lawyer referral services.

Following a meeting between representatives of ECLA and the State Bar on July 7, 2008, and the submission of the attached letter, the State Bar responded on July 11, 2008 informing ECLA that a task force had been appointed to review and address the issues raised by ECLA and that, pending completion of such review, the rollout of the "Find a Lawyer" project would be delayed. **We believe such a project should be abandoned.**

This letter is to inform the Legislature, and all interested parties, of the Beverly Hills Bar Association's position.

Thank you for your attention to this matter.

Very truly yours,



Marc L. Sallus  
President

MLS:jbb

Enclosure

Cc: Ex Comm

ECLA (via email)

Stuart Forsyth, E.D., LA County Bar Assn.

CA State Bar Board of Governors

Judy Johnson, CEO, CA State Bar

Ms. Carol Madeja

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phone: 310.601.2422 • fax: 310.601.2423 • www.bhba.org

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July 24, 2008

Letter to State and Senate Judiciary Committees re BHBA support of ECLA position on the State Bar  
"Find a Lawyer" Project

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Senator Dick Ackerman  
Senator Sheila Kuehl  
Senator Darrell Steinberg

# Executives of California Lawyers' Associations

*"Supporting California Legal Associations to Improve the Legal Profession and the Administration of Justice"*

July 8, 2008

Ms. Carol Madeja  
Director, Bar Relations Outreach  
The State Bar of California  
1149 S. Hill Street  
Floor 7  
Los Angeles, CA 90015-2212

**Re: Proposed State Bar "Find a Lawyer" Web site**

Dear Carol:

This letter is written on behalf of Executives of California Lawyers' Associations (ECLA), which is the professional membership organization of executive directors of California bar associations.

Its purpose is to codify our serious concerns about the "Find a Lawyer" project, request that it not be implemented until our concerns have been addressed and further request that we have an opportunity to be present at any Board meeting at which the project is discussed.

## Background

As you know, most in our organization first learned of the existence of the "Find a Lawyer" project at our annual retreat meeting in Santa Barbara on May 16-17, 2008, although a few of our members attended a District 3 lunch meeting on April 16, 2008 where the project was discussed. At our retreat, we were told that it was an initiative to provide non-dues revenue for the State Bar.

The project also was discussed with representatives of several of California's lawyer referral services at a meeting in Los Angeles on June 6, 2008. At that time they were told that it was not a revenue initiative, but rather an initiative to provide information to the public.

Naturally, we were confused and concerned about these different articulations of the purpose of the project.

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Bar Association

Business and Professions Code Section 6155 was passed without opposition by the legislature and signed into law. The State Bar then established mandatory minimum standards for LRS programs. The existing standards were revised and strengthened by the Standing Committee on Lawyer Referral Services and approved by the Supreme Court in 1989.

The State Bar undertook to enforce the Minimum Standards, holding a meeting in Los Angeles on November, 1990, which included the drafters of the legislation, representatives of various law enforcement agencies, and the Standing Committee on Lawyer Referral Service. At this meeting, representatives of the State Bar outlined a five-point enforcement plan, including the goal of seeking stronger and/or corrective legislation. In response to problems with the enforcement of the original legislation, Business and Professions Code Section 6155 was amended in 1992 to strengthen the consumer protection intent of the original bill.

Once State Bar certification was mandated, the Minimum Standards were upgraded several times. The most recent version became effective January 1, 1997, entitled Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services Including Minimum Standards for a Lawyer Referral Service in California. Rule 3 defines the policy of the State Bar regarding Lawyer Referral Services as follows:

- 3.1 It is the policy of the State Bar of California that every community be served by one or more certified Lawyer Referral Service. Where the size of the community or the number of lawyers serving it make the establishment of a separate Lawyer Referral Service impractical, the State Bar encourages the establishment of a regional Lawyer Referral Service embracing two or more such communities, subject to Rule 8.2 which requires separate certification for each county in which a Lawyer Referral Service operates.
- 3.2 It is also the policy of the State Bar of California that activities in violation of these Rules, the Business & Professions Code, or other authorities pertaining to Lawyer Referral Services, be curtailed.

Through its certification program, the State Bar collects annual fees from lawyer referral programs of up to \$5,000 for non-profit programs and \$10,000 for for-profit services.

### Potential Harm to the Public

State Bar LRS Certification was established in large part to ensure consumer protection – that’s why the State Bar requires, among other things, experience panels, malpractice insurance, panel rotation, and a mechanism to remove panelists for unacceptable behavior. Certified LRS programs pay a fee to the State Bar for their certification. LRS programs must abide by rules of the State Bar and are regulated by the State Bar. County LRS programs provide a necessary community service. Such LRS programs serve many clients – for example, LACBA alone receives and handles more than 110,000 calls each year. Local LRS programs provide qualified employees to assure proper referrals are made to qualified attorneys who possess malpractice insurance and who are in good standing with state and local bar.

As we understand it, The “Find-A-Lawyer” Web site appears to offer none of these protections and seems in conflict with a basic tenet of the State Bar’s philosophy vis-à-vis public protection:

- An alphabetical online directory may be the best way for the State Bar to enable the public to find out whether an attorney is admitted to practice in California. Arranging or dividing such a listing by self-designated area of practice, however, would be misleading and would remove an

*Stuart Forsyth*  
**President**  
Los Angeles County  
Bar Association

*Maria Elousu*  
**President Elect**  
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Alameda County  
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important consumer safeguard because it would give the public the false impression that the State Bar has conducted a vetting or qualification process.

- An online searchable database also would eliminate the critical link provided by trained legal referral staff: a means for directing consumers to appropriate legal resources. An online subject area checklist cannot replace trained referral specialists. The legal system is complex, and consumers often mischaracterize or misunderstand their area of need.
- Publishing an online listing by self-designated area of law, which rotates names of participating attorneys by some as yet to be determined mechanism, also can undermine the standards and procedures that lawyer referral services have established, such as requiring and confirming that lawyers being referred have professional liability insurance.
- A directory alone would not be equipped to measure client satisfaction. Such feedback is a core feature of a Lawyer Referral Service.

The State Bar proposal also could have other very serious consequences for the public:

- State Bar Certified LRSs are required to use “excess” LRS income to support pro bono or other community service activities, including fee arbitration programs. These “excess” funds allow sponsoring bar associations to provide such services when they might not otherwise be in a position to do so. If county bars discontinue offering fee arbitration services, the State Bar will have to dramatically expand its own staff and expend more resources to handle the resulting caseload.
- County LRSs, such as the BASF LRS, also provide an important client screening function for their pro bono legal services programs. In addition, LRSs use “excess” income to help to support in part pro bono legal services programs; and county bar association efforts to help diversify the legal profession are also often supported by LRS revenue. Any negative financial impact on county LRSs resulting from the State Bar “Find a Lawyer” proposal could have serious consequences for both access to justice and diversity efforts.

### **Potential Damage to Certified Lawyer Referral Services**

Currently, the State Bar publishes local attorney information using an “attorney search” system. This search function allows individuals to search for an attorney by name or, if they have been certified by an organization accredited by the State Bar to certify California attorneys in certain areas, by that specialty area of practice and location. However, this is merely a basic search function, not an endorsement by the State Bar of the attorney.

In addition, currently the State Bar encourages clients to use the certified lawyer referral programs, by inserting this language on its site:

**“The State Bar cannot give you legal advice or refer you to an attorney.** If you need to hire an attorney to handle your case or want to consult an attorney on a potential case, a certified lawyer referral service can put you in touch with a lawyer who can handle your problem. If your particular problem can be resolved without a lawyer, the referral service will tell you how to get the help you need.

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Be sure that the service is certified by the State Bar. **Lawyer referral services which are certified follow certain rules which will protect you.** [Emphasis added.]

Many clients go to the State Bar to find an attorney and, if they do not have the name of a particular lawyer, often access the State Bar's listing of certified Lawyer Referral Services. As we understand it, the proposed "Find a Lawyer" program would not promote Lawyer Referral Services in the same manner that the State Bar Web site does now, but rather likely will undermine these critical public service programs in the following ways:

1. Diminished attorney participation, referral requests, and revenues and higher costs
  - Attorneys pay for membership in LRS programs in order to receive cases and promotion. In most cases, they also pay forwarding fees. Because bar association brand recognition is a primary reason the public trusts and contacts an LRS, attorneys will be less likely to join a referral panel if their names are listed on an online database with the same or similar brand advantage. This decreased membership would result in direct financial harm to certified LRSs.
  - Efforts that enable attorneys to advertise or promote themselves on the State Bar's Web site would likely diminish the number of referral requests and, therefore, revenues to local programs. Attorneys also frequently send clients to a lawyer referral service when the clients' problems are not within the attorneys' area of practice. Access to an online database that is searchable by practice area may result in attorneys providing clients with a few names from that source rather than suggesting that clients call the LRS.
  - LRSs would have to spend time, energy, and money combating public misconceptions that an online database sponsored by the State Bar is screening its attorneys.
  - LRSs will have to invest in the high cost of Web related marketing necessary to compete with the State Bar's Web site

Diminished attorney participation, referral requests, and revenues -- along with increased marketing and communications costs -- necessarily will severely reduce the size of -- or eliminate -- some county LRSs.

2. Diminished ability to support other public service programs of the sponsoring bar associations (See Potential Harm to the Public section, above)
3. Diminished reputation of lawyer referral programs.

The LRS community has worked hard for many years, with the direct support of the State Bar and sanctioned by the California Supreme Court and the Legislature, to ensure that important public protection mechanisms are in place in all certified referral services. Consequently, the credibility of LRS programs and bar associations in the community is high. A few bad apples in the proposed State Bar system, which appears not to have any of these important safeguards, will tarnish the hard-earned reputation of programs that are in compliance with the State Bar's own mandates, further diminishing the likelihood of the public relying on lawyer referral services.

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**Request to Delay Implementation in Order to Address Concerns**

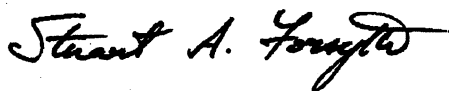
The State Bar has a long and proud tradition of protecting the public and facilitating access to legal services by fostering the creation and success of California's lawyer referral services. Today, that tradition is in jeopardy.

We believe inadequate consideration has been given to the serious negative impacts that the "Find a Lawyer" project is likely to have on certified lawyer referral services and the bar associations that run them. Properly crafted, the "Find a Lawyer" project could serve the public and support the existing network of lawyer referral services, rather than destroy them.

We respectfully request that you pause and take time to meaningfully address our concerns. The end result will be better for all concerned, including the State Bar and the public it serves.

Thank you in advance for your kind consideration of this request.

Sincerely yours,



Stuart A. Forsyth  
President  
Executives of California Lawyers' Associations

Writer's direct contact information:

[sforsyth@lacba.org](mailto:sforsyth@lacba.org)

213-896-6424

c/o Los Angeles County Bar Association  
261 S. Figueroa St., Suite 300  
Los Angeles, CA 90012

cc: Richard Frankel  
Patricia White  
Judy Johnson  
LRS Programs  
ECLA Members

*Stuart Forsyth*  
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Alameda County  
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James Penrod  
Chair, Find A Lawyer Task Force  
The State Bar of California  
Board of Governors

August 26, 2008

Dear Mr. Penrod,

As the President of the Santa Clara County Bar Association (SCCBA), I thank you for chairing the State Bar Board of Governors' Task Force that is focusing on the scope and implementation of the "Find a Lawyer" project. We understand your Task Force is considering a recommendation to include information attorneys would voluntarily furnish that would be available to the public, searchable by location and/or practice area, through the Find a Lawyer project. For the reasons set forth below, the SCCBA strongly opposes this recommendation.

First, allowing attorneys to furnish information about their practices that would be invited by the State Bar and accessed through the Find a Lawyer project would create a conflict of interest within the State Bar. One of the primary and perhaps most significant roles of the State Bar is public protection, which it fulfills by, among other activities, attorney regulation and regulation of lawyer referral services. The State Bar's sponsorship of a program that would provide unregulated attorney advertisements to the public would necessarily conflict with the State Bar's role in regulating attorneys. In the starkest terms, the State Bar could very well facilitate and sponsor conduct by attorneys that could be disciplined by the State Bar for that very same conduct. The inherent conflict of interest will be heightened further if attorneys pay the State Bar for enhancements to their profiles. In that case, attorneys would be paying the State Bar for activities that could be sanctioned by the State Bar.

Second, Find a Lawyer will unfairly compete with State Bar certified lawyer referral services, including those supported by local bar associations. As you know, a bar association cannot sponsor a lawyer referral service without the State Bar certification. This certification was driven by the State Bar's mission to ensure lawyers serving the public would meet minimum qualifications in providing services in particular practice areas and by its desire that such lawyers have liability insurance. If the Find a Lawyer project is launched with attorney advertising, members of the public could hire lawyers through a lawyer referral service abiding by restrictive (yet sensible) requirements for certification, or through advertisements posted on the unregulated State Bar Find a Lawyer service. Find a Lawyer could very well put the regulated lawyer referral services out of business by the State Bar's own unregulated advertisements.

To ameliorate the State Bar's inherent conflict of interest and its ability to unfairly compete against bar association lawyer referral services, we understand the Task Force is considering "layering" the search pages of the website so that the initial page provides information about lawyer referral services, including language that encourages the public to use lawyer referral services, and at the same time disclaims the accuracy of the attorney advertisements. The SCCBA opposes this proposal, as it would only underscore the problems that would be caused by the Find a Lawyer project. The "layering" approach really says to the public: "The State Bar encourages you, the consumer, to use a lawyer referral service because they are regulated and are required to provide attorneys who meet certain minimum qualifications and who carry liability insurance. Nevertheless, if you click here, the State Bar will provide information about attorneys that it does not guarantee is

accurate, and you will be able to contact attorneys who do not necessarily meet acceptable minimum qualifications or carry liability insurance."

The solution to the problems that would be created by the Find a Lawyer project would be to eliminate its advertising component. We wholeheartedly support the State Bar doing more to encourage the public to use lawyer referral services and providing to the public basic information about each licensed attorney, including disciplinary actions, that is searchable by location and practice area. Those activities are consistent with the State Bar's regulatory role. The problems crop up when attorneys are allowed to provide additional information that may be inaccurate and may result in the public being deceived, even though it has the endorsement of the State Bar.

The SCCBA therefore supports enhancing the ability of the public to access lawyer referral services and to search for the names of California attorneys, but it strongly opposes allowing those attorneys to place advertisements on the State Bar website accessible to the public by location and/or practice area.

Very truly yours,  
Thomas E. Kuhnle  
President, Santa Clara County Bar Association

cc Task Force members  
ECLA List Serv  
Judy Johnson, State Bar of California  
Pat Lee, State Bar of California  
Rodney Low, State Bar of California



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BAR ASSOCIATION**

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OC DEPUTY PUBLIC DEFENDERS

OC TRIAL LAWYERS ASSOC.

OC WOMEN LAWYERS ASSOC.

September 9, 2008

James Penrod, Esq.  
Chair, Find A Lawyer Task Force  
The State Bar of California  
Board of Governors

RE: Proposed State Bar "Find a Lawyer" Web Site

Dear Mr. Penrod,

As the President of the Orange County Bar Association, I appreciate your chairmanship of the State Bar Board of Governors' Task Force regarding the "Find a Lawyer" project. I am writing to convey OCBA's joinder in the views expressed by the Executives of California Lawyers' Association's July 8, 2008 letter to Ms. Carol Madeja. In short, the OCBA emphatically opposes the Find A Lawyer project.

It is our understanding that the Find A Lawyer project will promote attorney direct advertising to the public through the State Bar of California website. We are concerned with the impact that this proposed project will have on the public, State Bar Certified Lawyer Referral Services, and the public benefit legal service providers that receive much needed support from the revenues generated by such lawyer referral services.

The State Bar's regulation of lawyer referral services provides a critical public benefit. In Orange County, our Lawyer Referral and Information Service ("LRIS") ensures that members of the public receive referrals to attorneys who maintain malpractice insurance, meet educational and experiential requirements for practice in the referral area, and are accountable to their clients. Our LRIS also serves as a screening mechanism for clients who qualify for pro bono or discounted legal services. In short, the local bar association referral services provide a substantial benefit for the public in our communities.

In addition to the direct public benefit provided by these services, the revenue from these non-profit operations is granted to worthy local community pro bono programs, such as the Public Law Center (the "PLC"), Orange County's pro bono law firm. The PLC is committed to providing access to justice for low income residents.

Local bar association's non-profit lawyer referral services are already competing with commercial services and the yellow pages. They should not also have to compete with the State Bar of California, the body that regulates these services.

OCBA Letter Re Find A Lawyer Website

September 9, 2008

Page 2

Finally, the State Bar of California, as the principal regulator of the practice of law, should not also be a commercial vehicle for lawyer advertising. This project may damage public confidence in the legal system and the State Bar of California.

The OCBA respectfully requests that the Task Force delay any decision or implementation regarding the Find A Lawyer Project until public hearings can be held in both Northern California and Southern California to address the impact that the proposed program will have on the public and local bar associations. Thank you for considering the Orange County Bar Association's views on this project.

Very truly yours,

ORANGE COUNTY BAR ASSOCIATION



Cathrine Castaldi  
2008 President

cc Task Force members  
ECLA List Serv  
Judy Johnson, State Bar of California  
Pat Lee, State Bar of California  
Rodney Low, State Bar of California  
Carol Madeja, State Bar of California

**From:** Madeja, Carol

**Sent:** Monday, September 15, 2008 5:21 PM

**To:** Low, Rodney

**Subject:** FW: ECLA FW: CA[LRS]: Update on the Find A Lawyer Initiative at The State Bar of California: Draft FAL Mock Screen Shots for Board Consideration  
And the beat goes on.

---

**From:** webzeal@web-zealot.com on behalf of Deborah Kemper

**Sent:** Mon 9/15/2008 4:47 PM

**To:** ecla@web-zealot.com

**Subject:** RE: ECLA FW: CA[LRS]: Update on the Find A Lawyer Initiative at The State Bar of California: Draft FAL Mock Screen Shots for Board Consideration

**Why can't we change this language to read as follows:**

**The latest version of the script to this video is as follows:**

*"Need a lawyer? We can help. The best way to find the right lawyer is to contact a State Bar-certified Lawyer Referral Service. Available in most counties, these services screen and match lawyers with clients. And lawyers who participate must meet certain standards. To locate a service, go to the middle box, enter your county, and click "Next". But you can use the State Bar's attorney search service to locate an attorney by name, bar number, legal issue or legal specialty. End of Video.*

---

**From:** webzeal@web-zealot.com [mailto:webzeal@web-zealot.com] **On Behalf Of** Stuart A. Forsyth

**Sent:** Monday, September 15, 2008 3:46 PM

**To:** ECLA listserv

**Subject:** ECLA FW: CA[LRS]: Update on the Find A Lawyer Initiative at The State Bar of California: Draft FAL Mock Screen Shots for Board Consideration

FYI. This was just sent by the State Bar to its LRS listserv.

--

**Stuart A. Forsyth**

**Executive Director**

**Los Angeles County Bar Association**

261 South Figueroa Street, Suite 300

Los Angeles, CA 90012

Direct (213) 896-6424

Fax (213) 613-1315

<file:///V:/2008/Find%20a%20Lawyer/>

[www.lacba.org](http://www.lacba.org)

----- Forwarded Message

**From:** Rodney Low <<file:///V:/2008/Find%20a%20Lawyer/>>

**Reply-To:** Rodney Low <<file:///V:/2008/Find%20a%20Lawyer/>>

**Date:** Mon, 15 Sep 2008 15:44:29 -0700

**To:** Lawyer Referral Services <<file:///V:/2008/Find%20a%20Lawyer/>>

**Cc:** Judy Johnson <<file:///V:/2008/Find%20a%20Lawyer/>>, "Hart, Matthew"

<<file:///V:/2008/Find%20a%20Lawyer/>>, "Beitiks, Kathleen"

<<file:///V:/2008/Find%20a%20Lawyer/>>

**Subject:** CA[LRS]: Update on the Find A Lawyer Initiative at The State Bar of California: Draft FAL Mock Screen Shots for Board Consideration

**(This memorandum is intended to be read concurrently with the draft PowerPoint "Find a Lawyer" series of screen shots. In order to avoid being rejected as spam, we have loaded the PowerPoint on to a staging site at the following URL. To view the Find a Lawyer [Draft] Screen Shots, go to: <http://calbar.org/FALdraft/> )**

## **Dear Lawyer Referral Services:**

As you may know, the State Bar of California is developing an enhanced attorney search and member profile feature for its website, initially referred to as "Find a Lawyer (FAL)." (We are currently calling this new feature "Find a Lawyer [FAL]," the name used in most other states, but the name will likely change. We use FAL in this communication simply because we have not arrived at a new name.)

We believe that this service will add value for our membership and most importantly, improve access to and availability of information for the public. Like the ABA, the state bars of Illinois, Arizona, Oklahoma and Texas have implemented similar enhancements and report favorable acceptance from their members and the public. Additionally, we've added enhancements to promote California's network of Lawyer Referral Services and encourage more consumer usage of LRS services.

When we briefed various LRS representatives about this project during the Pathways to Justice Conference in June, the LRS representatives expressed concern that this could potentially compete with the Certified LRS's. However, they said that, if the project were to be implemented, they wanted the LRS's to be prominently featured on the website as the primary option for consumers to locate a lawyer.

We have also received feedback from ECLA expressing similar concerns regarding the potential harm to LRS's and whether, given the State Bar's regulatory and consumer protection functions, it is appropriate for the State Bar to offer an FAL service.

Our Office of General Counsel has carefully reviewed the issues raised by ECLA and concluded that there is no conflict of interest between the State Bar's regulatory role and its proposed FAL. While the State Bar's primary purpose is to assist the California Supreme Court in admissions, discipline and regulation of the legal profession, the State Bar is also expressly authorized to engage in activities that "may advance the professional interests of the members of the State Bar" and "concern the relations of the bar with the public." Cal. Bus. & Prof. Code, § 6031, subd. (a). Absent a statute or court rule prohibiting such activities, the FAL creates no general conflict with existing regulatory functions of the State Bar.

Nor will, as some suggest, the State Bar's proposed FAL "compete," with the LRS's. FAL is not a lawyer referral service. It is an online attorney directory similar to an electronic Yellow Pages rather than a lawyer referral service. FAL will not resemble a lawyer referral service as it will not screen or evaluate consumer inquiries nor will it refer consumers to attorneys that it feels are appropriate based on the legal nature of issues presented. Moreover, the State Bar will not split fees with the FAL member subscribers as is the practice between certified lawyer referral services and their attorney members.

Finally, some have argued that the bar's real motivation in proposing FAL is to raise non-dues revenue. Even if revenue generation were the **only** reason for FAL, the State Bar is also expressly authorized by statute to raise such revenues. Bus. & Prof. Code § 6001, subd. (g) states that "it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means, including, but not limited to, the creation of foundations or not-for-profit corporations."

In response to the concerns expressed by ECLA and the LRS's, the Board of Governors appointed a "Find a Lawyer" Task Force that includes members of the Board of Governors and ECLA President, Stuart Forsyth (LACBA). At the initial meeting, State Bar staff advised the Task Force that the planned launch of FAL would also include a strategy try to re-invigorate the LRS message and to re-introduce consumers to the advantages of using the LRS network. The State Bar also agreed to make modifications to feature the LRS's prominently and to distinguish clearly between the attorney's official state bar record and any additional information provided by the attorney (which was viewed as similar to attorney advertising).

The appointed BOG Task Force met again on September 10 and viewed the planned changes in the attached slide show. Some additional changes were suggested during this meeting and State Bar staff is currently implementing many of those suggestions. However, in order to solicit your opinion in time to share them with the Board of Governors, we are attaching them now without edit, but with an explanation as to how FAL will look when presented to the Board of Governors at their September 24th meeting.

**The State Bar Board of Governors will meet on Wednesday, September 24, 2008, at 3:00 p.m., in Monterey** prior to the Annual Meeting, to consider the recommendations of the Find a Lawyer Task Force. We are inviting the LRS community to view the prototype screens, to comment on the current status, and to attend the Board meeting, if desired.

**To view the Find a Lawyer [Draft] Screen Shots, go to**  
**<http://calbar.org/FALdraft/>**

## **I. Explanation of Mock Screen Shots - Attachment**

### **Page 1 - Cover Sheet**

As you will note, the term "Find a Lawyer" is bracketed and is subject to further discussion regarding an appropriate name for this project. By using the name "Find A Lawyer," the State Bar does not want to create the misleading impression that it is a lawyer referral service that matches consumers with attorneys. On the other hand, "Find A Lawyer" has become common parlance --- much like the words "Kleenex," and "Xerox" are synonymous with their generic twins "facial tissue" and "photocopy." Most state bars that have this online feature call it "Find A Lawyer." Consumers, unaware of the State Bar site, are also likely to use the "Find A Lawyer" nomenclature when using Internet search engines such as Google. Go to any Internet search engine and use the words "Find A Lawyer" as search criteria to confirm this -- the names of proprietary online legal directories such as LegalMatch, FindLaw, Avvo, and LawyerFinder typically come up when this search criteria is used.

### **Page 2 - "Public Web Site" - (Information Clearinghouse) -**

This is the Home Page for the Information Clearinghouse. As suggested during the Task Force meeting, the words "your trusted source" in the upper right corner will be deleted.

- **Left Menu:** offers a full range of consumer information on various legal issues
- **Right side:** Current issues of interest to consumers-text will change as new issues arise.
- **Middle Section:** the attorney search feature. CLICK ON "**Need help?**" to go to the next slide (Page 6)

**Page 3 - "Public Web Site (Information Clearinghouse) -** On the home page, when you click on "Legal Information" you reach this page. Click on the various icons and information about that legal topic will appear.

### **Page 4 - "Public Web Site - (Information Clearinghouse)**

Using Family Law as an example, when you click on Family Law topic icon, you reach this screen showing various family law resources.

## **Page 5 - "Public Web Site - (Information Clearinghouse) FAQ's**

This is the FAQ portion of the Information Clearinghouse

## **Page 6 - "Public Web Site - Home Page for the attorney search function. -**

Based on discussion during the Task Force meetings, the configuration of the boxes on this page are now top to bottom, instead of left to right. The first box allows searching by attorney name or bar number. The middle box is the LRS option and the advanced attorney search feature is at the bottom. Note that the LRS option states: *"For personal assistance, contact a certified lawyer referral services. This is the most reliable way to find the right lawyer for you. Available in most counties, such services screen and match attorneys with clients. To participate, lawyers must carry insurance and meet certain standards."*

When the consumer clicks on "Click here to find out how" near the top of the page a video will appear with a person explaining the advantages of using an LRS. The person will provide the message in English and Spanish.

### **The latest version of the script to this video is as follows:**

*"Need a lawyer? We can help. You can use the State Bar's attorney search service to locate an attorney by name, bar number, legal issue or legal specialty. But the best way to find the right lawyer is to contact a State Bar-certified Lawyer Referral Service. Available in most counties, these services screen and match lawyers with clients. And lawyers who participate must meet certain standards. To locate a service, go to the middle box, enter your county, and click "Next"." End of Video.*

This will open up the LRS browser, allowing the user to select the county and view all the certified LRS's authorized that operate in that county. We are considering adding the talking video to the margins in the LRS browser to further repeat the advantages of using an LRS. We are also considering making the video message available to LRS's for use on their websites or in PSA's.

It has been suggested that we randomize the listing of the Certified LRS's in each county and this is being considered.

### **Locating an Attorney (Page 6 continued)**

**Top Box: Attorney Name/Bar number:** If the person knows the attorney name or bar number, that information can be entered in the first box. This approach is similar to finding a lawyer on the current State Bar Attorney Search site.

**Middle Box: LRS locator by county**

**Last Box: Advanced Attorney Search**

Should a consumer not know the attorney name or chooses not to contact an LRS, the third box on Page 6 is the new "Find a Lawyer" function. To use this option, the consumer must agree to a detailed disclaimer. Once a user enters the zip code and selects a "Legal Issue" in the pull down menu, the user will be taken to **Page 9 - Public Website - Search Results Web Page.**

It was proposed and accepted that a fourth "**Legal Specialist Search**" box will be added to the Find A Lawyer options on this page. This function currently exists at <http://members.calbar.ca.gov/search/lsearch.aspx>.

**Page 7** - this provides information re the "virtual spokesperson" feature mentioned above.

**Page 8 - Public Web Site - Consumer Terms of Use:** The Consumer must agree to these terms before proceeding with the Advanced Search feature.

**Page 9: Public Web Site - Search Results Web Page:** Attorneys that fit the search parameters entered by the consumer will be listed in random order on the search page, along with a Google map of their office location. The page will list six attorneys at a time. If the list is unsatisfactory, the user can click "Next" for the next six randomized attorneys fitting the search parameters. However, before the next list appears, the message on **Page 10** will appear. This screen will ask if the user is having a difficult time finding a lawyer through this method and reminds the user of the availability of the LRS option, then links back to the "Need a Lawyer?" page to select the LRS box.

**Page 11 - Sample result of Attorney Search - Official State Bar Record, including discipline.** The State Bar seal will be added to this screen to reinforce that the information that appears is from the Official State Bar Record. .

**Page 12 - Sample result of Advanced Attorney Search** -Details with Additional Attorney-Provided Information. This information is provided by the attorney, obtained from the Data Capture in the "My State Bar Account Prototype" pages, **Pages 15 - 17.**

As recommended by the Board Task Force, the information on this slide will be clearly distinguished from the official State Bar Information both visually and with the disclaimers appearing on the page. (Note: **Page 13** is the cover sheet for the Data Capture pages 15-17)

**Page 14: Attorney Terms of Use.** The attorney must agree to this before s/he can complete and submit an additional profile. The Task Force agreed that the Terms of Use should include reference to the possibility of disciplinary action against any attorney who intentionally provides misleading or incorrect information

for the profile. Additionally, when the attorney clicks the "submit" button to upload information, a dialogue box will appear -- again cautioning the attorney to clearly review the information for accuracy and that the submission of false and misleading information can result in discipline.

## **II. Name**

The Task Force is aware that ECLA and LRS's have expressed concerns about the use of the term "Find a Lawyer" and is considering alternate names for the site. If you have suggestions for the naming of the site, please forward the proposed name(s) to <file:///V:/2008/Find%20a%20Lawyer/>.

## **III. Cost/Revenue**

The FAL project coincides with an overall redesign of the State Bar's website, as well as a transition to an online vehicle for communication with attorney members and for generating an attorney database that will allow the State Bar to better meet the needs of its members. Online communication with members will reduce, and in some cases, eliminate the need for mass mailings to members and will generate substantial cost savings. For these reasons, the State Bar does not at this time plan to charge lawyers a subscription fee to participate in FAL, although a subscription fee may be added later.

## **IV. Increased Support for Lawyer Referral Services**

The State Bar Office of Legal Services, Access & Fairness Programs has initiated an enhanced support program for the Certified Lawyer Referral Services, with improved compliance review, technical assistance in marketing and organizational development, as well as ideas for member recruitment. This effort includes offering the streaming video mentioned above to insert on the LRS webpage, providing a more robust consumer education clearinghouse that can help reduce the number of misdirected calls, and coordination with the Administrative Office of the Courts' website, for better direction to the State Bar's LRS browser, among other efforts.

**Deadline for Comments:** Provide your comments, suggestions, and feedback to Rodney Low at <file:///V:/2008/Find%20a%20Lawyer/> **by Friday, September 19, 2008, noon**, so the Board of Governors can compile them for consideration.

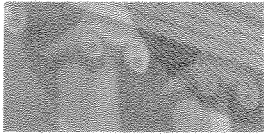
**Remember, to view the FAL draft Screen Shots, go to**  
<http://calbar.org/FALdraft/> <<http://calbar.org/FALdraft/>>

**Rodney Low**, *Program Developer*  
*The State Bar of California*  
180 Howard Street,  
San Francisco, CA 94105  
Tele:415/538-2219  
Fax:415/538-2552  
Email: [file:///V:/2008/Find%20a%20Lawyer/](mailto:file:///V:/2008/Find%20a%20Lawyer/)

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SCCBA: The Bar Association of Silicon Valley™

September 17, 2008

Board of Governor Members  
State Bar of California

Re: Proposed "Find a Lawyer" Project

Dear Governor,

As the President of the Santa Clara County Bar Association (SCCBA), I thank you for the opportunity to address the Board of Governors both in writing and, hopefully, at your meeting on September 24, 2008, regarding the "Find a Lawyer" project. While I communicated much of this to the special Task Force established to review issues related to the project, I do not believe that the conflict of interest concerns were adequately addressed. The conflict of interest inherent in this project is the primary reason the SCCBA strongly opposes including "enhanced attorney profiles" as part of the service.

The SCCBA supports and applauds the State Bar for developing a public information web site. Such a site can be an effective and needed vehicle to provide legal consumers with important legal information, including how to find and hire a qualified attorney and to obtain essential information about attorneys, such as their most recent contact information and disciplinary history. In meeting these public interest objectives, the public web site provides the State Bar an excellent opportunity to promote and feature State Bar certified lawyer referral services. Lawyer referral services are regulated by the State Bar and must pay the State Bar a percentage of the lawyer referral service gross income each year for the privilege of being certified. We strongly recommend that the development and implementation of the public web site be done in such a manner that it supports and advances the very public services the State Bar regulates, especially non-profit lawyer referral services as sponsored by local bar associations.

While a State Bar web site with contact information and disciplinary histories can benefit the public, allowing attorneys to provide "enhanced" profiles (which amount to advertising) presents substantial risks. Those risks are generated by two sets of conflicts of interest. First, allowing attorneys to advertise on a web site designed, hosted and endorsed by the State Bar would directly conflict with the State Bar's mandate to regulate attorneys. One of the primary and perhaps most significant roles of the State Bar is public protection, which it fulfills by, among other activities, attorney regulation and regulation of lawyer referral services. The State Bar's sponsorship of a program that would provide unregulated attorney advertisements to the public would necessarily conflict with the State Bar's role in regulating attorneys. In the starkest terms, the State Bar could very well facilitate and sponsor conduct by attorneys that could be disciplined by the State Bar for that very same conduct. The inherent conflict of interest would be heightened further if attorneys pay the State Bar for the advertising enhancements to their profiles. In that case, attorneys would be paying the State Bar for activities that could be sanctioned by the State Bar.

Second, allowing attorneys to advertise on the State Bar website poses a direct conflict of interest between the State Bar's regulation of Lawyer Referral Service ("LRS") entities (which LRS entities pay for) and, in turn, its proposed facilitation of unregulated advertisements that would take

accurate, and you will be able to contact attorneys who do not necessarily meet acceptable minimum qualifications or carry liability insurance."

The solution to the problems that would be created by the Find a Lawyer project would be to eliminate its advertising component. We wholeheartedly support the State Bar doing more to encourage the public to use lawyer referral services and providing to the public basic information about each licensed attorney, including disciplinary actions, that is searchable by location and practice area. Those activities are consistent with the State Bar's regulatory role. The problems crop up when attorneys are allowed to provide additional information that may be inaccurate and may result in the public being deceived, even though it has the endorsement of the State Bar.

The SCCBA therefore supports enhancing the ability of the public to access lawyer referral services and to search for the names of California attorneys, but it strongly opposes allowing those attorneys to place advertisements on the State Bar website accessible to the public by location and/or practice area.

Very truly yours,  
Thomas E. Kuhnle  
President, Santa Clara County Bar Association

cc Task Force members  
ECLA List Serv  
Judy Johnson, State Bar of California  
Pat Lee, State Bar of California  
Rodney Low, State Bar of California

# Executives of California Lawyers' Associations

*"Supporting California Legal Associations to Improve the Legal Profession and the Administration of Justice"*

**Date:** September 17, 2008  
**To:** Members of the State Bar "Find a Lawyer" Task Force  
**Fr:** Stuart A. Forsyth, President, Executives of California Lawyers' Associations  
**Re:** **Requested Comments on September 10<sup>th</sup> Redesign**

Ladies and Gentlemen:

This memorandum is written on behalf of Executives of California Lawyers' Associations (ECLA), which is the professional membership organization of executive directors of California bar associations.

As you know, at the second Task Force meeting in San Francisco on September 10, 2008, the staff presented a major redesign of the proposed website. None of us really had an opportunity during this short meeting to absorb and reflect on all of the changes that had been made.

You asked me to seek ECLA's comments on the redesign, and the purpose of this letter is to respond to that request and convey ECLA's:

- Continuing concerns about the implementation,
- Specific recommendations for resolving them, and
- Request that this project not be presented to the Board of Governors for approval (even in concept) at its meeting in Monterey next Wednesday, September 24<sup>th</sup>, because it is not yet ready for Board action.

## Summary of ECLA's Recommendations

While a number of improvements have been made, the September 10<sup>th</sup> redesign still contains a critical flaw, and further changes are recommended.

ECLA commends and wholeheartedly supports the State Bar in developing a separate website to serve as an information clearinghouse for the public. Such a website presents a tremendous opportunity for the State Bar to achieve a number of its public protection objectives, not the least of which is to provide information about how to find and hire a qualified attorney.

However, ECLA does not believe that the September 10<sup>th</sup> website redesign addresses or resolves the most significant of ECLA's concerns: highlighting and making available to the public information about State Bar certified lawyer referral services (LRS entities) before directing the public to attorney enhanced profiles (attorney advertising).

---

<i>Stuart Forsyth</i> <b>President</b> Los Angeles County Bar Association	<i>Maria Elousu</i> <b>President Elect</b> Santa Barbara County Bar Association	<i>Robynn Gaspar</i> <b>Treasurer</b> Marin County Bar Association	<i>Deborah Kemper</i> <b>Secretary/Membership</b> San Mateo County Bar Association	<i>Ann Wassam</i> <b>Immediate Past President</b> Alameda County Bar Association
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Given the importance of this project and the significance of the concerns related to LRS entities and legal services programs throughout the State, **ECLA respectfully requests that the Board of Governors postpone taking any action on the proposal until ECLA's concerns and specific recommendations have been considered and addressed in a design finalized by the Task Force.**

### ECLA's Specific Concerns

As you may recall, at the first Task Force meeting on August 1<sup>st</sup>, the Task Force resolved to:

1. Emphasize the benefits of State Bar certified lawyer referral services and the protections and benefits that they afford the public by referring first to LRS;
2. Provide information about lawyers that the State Bar maintains for regulatory purposes; and
3. Only then provide unverified information that an attorney has furnished (advertisements).

The September 10<sup>th</sup> redesign still retains all three options (search for a lawyer by name, contact a certified LRS and search for a lawyer by type of legal issue) on the same page (page 6 of the September 10<sup>th</sup> draft). This fails to implement one of the Task Force's major directions, which was at its heart that the LRS option have a higher priority and more visibility than the search option.

The September 10<sup>th</sup> redesign doesn't emphasize LRS, nor direct the public to an LRS first. The public is immediately and without distinction between the three options directed to the Zip Code and legal issue search, which does not contain the public protections embodied in LRS.

### ECLA's Specific Design Recommendations

1. The "Find a Lawyer" button on the home page (page 2 of the September 10<sup>th</sup> design) should link to an LRS home page, which should explain the advantages of LRS and allow selection of a California county to display the LRS programs therein in random or rotating order.
2. A new button, entitled "Check the Status of a Lawyer" should be added to the home page (page 2 of the September 10<sup>th</sup> design), which should link to the current mechanism for checking on the status of a California lawyer by name or State Bar number.
3. The search for a random list of six lawyers by Zip Code, practice area, or other criteria should be an option that is reached only after display of the LRS programs in a county (#1 above). This should use a term other than "Find a Lawyer," such as "Directory" or "Search."
4. Page 6 of the September 10<sup>th</sup> redesign should be eliminated.

5. Throughout the website, the term “State Bar certified lawyer referral service” should be used instead of just “lawyer referral service” or “certified lawyer referral service.”
6. The LRS menu category should be visible on all secondary pages of the web site, on the horizontal navigation menu, the left side navigation menu or some other clearly visible position of the web pages.
7. All information re LRS should be presented in short, bulleted sentences or phrases that are easily understood and readable by the public.
8. The disclaimer on the page of information furnished by the attorney (page 12 of the September 10<sup>th</sup> design) should be more strongly worded and displayed in bolder and larger font. Wording should be used similar to that crafted for the terms of use of the search function (page 8 of the September 10<sup>th</sup> design), specifically that “the State Bar cannot guarantee the truthfulness or accuracy of this information.” There is room for such a larger, clearer disclaimer beneath the map.
9. The terms of use that the public must agree to before using the search function (page 8 of the September 10<sup>th</sup> design) are lengthy and hard to read. Because many people simply agree to terms of use without actually reading them, this page should be separated into two: (1) a disclaimer page with larger, bolder and clearer disclaimers that the information in the profile is not prepared by, reviewed by, or verified by the State Bar and the State Bar cannot guarantee its truthfulness or accuracy, and (2) a terms of use page that includes acknowledgement of awareness of the disclaimers.
10. While there has been an expressed desire by the State Bar to provide further support for certified lawyer referral services, the nature and details of that support should be fleshed out. Perhaps some of it should appear on the this new public information website.

#### ECLA Assistance

ECLA would be pleased to assist the State Bar staff in redesigning the website along these lines, which would address these concerns and comport with the Task Force’s direction of August 1<sup>st</sup>.

#### Board Action Would Be Premature

ECLA very much appreciates creation of this Task Force and the State Bar’s commitment that “[t]he Task Force recommendations will be shared and discussed with ECLA before any final action.” Letter to ECLA President, Stuart A. Forsyth, from Judy Johnson, dated July 11, 2008.

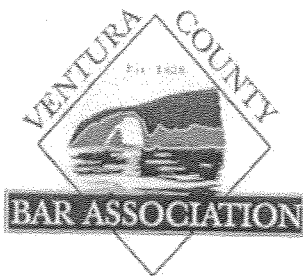
Thus, we do not understand the need for Board action at this time. The design has not been finalized; and if it has, the Task Force has not reviewed and discussed it. In this case, the design and implementation details are critical.

It is important that this project be done right. In order to do so, adequate time must be spent and feedback must be sought and considered to ensure that all relevant concerns have been addressed.

### Conclusion

Care must be taken in designing this new public information website to ensure that the State Bar's long-standing support for the California lawyer referral services, which it certifies and which embody significant protections and benefits for the public, are not eroded.

Thank you for the opportunity to share these comments and recommendations. ECLA looks forward to working with the Task Force and the staff to implement them.



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Ms. Carol Madeja  
Director, Bar Relations Outreach  
The State Bar of California  
1149 S. Hill Street  
Floor 7  
Los Angeles, CA 90015-2212

**Re: Proposed State Bar "Find a Lawyer" Web Site**

Dear Mr. Bleich, Ms. Madeja, and Assembly Member Jones:

The Board of Directors of the Ventura County Bar Association ("VCBA") has asked that I write to you to express VCBA's joinder in the views expressed by the Executives of California Lawyers' Associations ("ECLA") in their July 8, 2008, letter to Ms. Madeja, a copy of which is attached hereto. Additionally, the VCBA joins in the views expressed by the Beverly Hills Bar Association ("BHBA") in its letter to Assembly Member Jones on July 24, 2008, a copy of which is attached hereto.

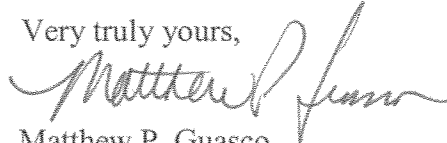
The Ventura County Bar Association strongly supports all reasonable measures promoting the protection of clients and the practices of lawyers. Connecting clients with lawyers is a good thing which the State Bar Certified Lawyer Referral Services, including that operated by VCBA, have been doing for the public for a long time. The proposal currently being explored is certain to have fiscal impacts upon State Bar Certified LRS programs throughout the State, including that operated by VCBA. At least as importantly, the current proposal has none of the client safeguards which attend certification of LRS programs, including screening and qualifications of lawyers.

In light of the potential impact of the Find a Lawyer program on existing State Bar Certified LRS programs and the clients they serve, VCBA urges the State Bar to refrain from implementing such a program unless and until a meaningful and adequate

period for receipt and thoughtful consideration of public comment occurs. VCBA concurs with both ECLA and BHBA that such a process has not yet occurred concerning this proposal. VCBA expresses its strong opposition to the current Find a Lawyer proposal unless and until such a process occurs. Sound process makes for sound policy.

Thank you for considering VCBA's views on this topic. If you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew P. Guasco". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Matthew P. Guasco  
President, Board of Directors

cc. Board of Directors, VCBA  
Steve Henderson, Executive Director, VCBA  
M. Carmen Ramirez, District Six Representative



October 15, 2008

State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Re: PIC and LAAC Comments on Consumer Clearinghouse and Attorney Search Site

Dear Consumer Clearinghouse/Attorney Search Website Task Force:

I am writing on behalf of the Public Interest Clearinghouse and the Legal Aid Association of California and its legal services member organizations to express some comments and concerns regarding the State Bar of California's Consumer Clearinghouse and Attorney Search project and website.

The Public Interest Clearinghouse (PIC) is a statewide back-up center on access to justice issues for the IOLTA-funded community. PIC administers the statewide legal referral and information website, LawHelpCA.org, which for many years has served as the trusted source for referrals to legal services organizations, court-based self-help programs, public interest nonprofits, and State Bar approved Lawyer Referral Services. LawHelpCA.org assists over 200,000 unique users each year, with its comprehensive referral database and hundreds of legal information resources in multiple languages. The State Bar of California has been a vital partner in the development of LawHelpCA.org and remains a strong supporter, including most recently the joint efforts to develop and launch the new website, [www.ForeclosureInfoCA.org](http://www.ForeclosureInfoCA.org). PIC deeply appreciates this essential support and collaborative relationship with the State Bar.

LawHelpCA.org serves the general public in California, but its focus is ensuring that low-income Californians are able to access legitimate and high-quality free legal services, thereby fulfilling an important public protection role. This role has become particularly important due to the growing number of scam artists that use the name "legal aid" or "legal services" and then charge low-income residents for services that are never delivered. PIC therefore requests that the Consumer Clearinghouse/Attorney Search website ensure that low-income residents, who are eligible for legal assistance through the legal services and public interest or pro bono delivery systems, are prompted quickly and repeatedly to use LawHelpCA.org, rather than the Attorney Search system. Therefore, PIC requests clear placement of links to and information about LawHelpCA.org throughout the Attorney Search website and that the Attorney Search home page include detailed information about the range of options for consumers, including LawHelpCA.org and local LRS's. PIC staff would very much appreciate the opportunity to participate in and serve as a resource to State Bar staff in the Attorney Search website design process to ensure that eligible clients are not improperly routed away from free or low-cost legal aid.

The Legal Aid Association of California (LAAC) is a non-profit organization founded in 1982 for the purpose of ensuring the effective delivery of legal services to low-income people throughout California. LAAC is the statewide membership organization for legal services programs. Our 2008 membership represents over 80 legal services nonprofits, as well as many individual attorneys working at such programs.

Our members provide high-quality legal services to our state's most vulnerable populations. These services to low-income and other underrepresented individuals form an essential safety net in California and often ensure that the programs' clients have access to life's basic necessities, such as food, safe and

*Public Interest Clearinghouse and Legal Aid Association of California  
47 Kearny Street, Suite 705, San Francisco, CA 94108  
Phone: 415-834-0100 Fax: 415-834-0202*

affordable housing, freedom from violence, health care, employment, economic self-sufficiency, and access to the legal system.

LAAC has heard from a number of IOLTA-funded member organizations that they have significant concerns about the Consumer Clearinghouse and Attorney Search Project ("the Project"). First, the Project has the potential, if not handled properly, to significantly reduce the public's use of the Lawyer Referral Services ("LRS's"), which would reduce the income that LRS's receive. Many legal services programs obtain substantial funding from LRS's. In fact, for several legal services programs, LRS funding far exceeds their IOLTA grants. To the extent that the LRS's are hurt financially by the Project, it could have the effect of reducing the available funding for legal services.

Moreover, in many areas, the local LRS is actually part of the legal services delivery system in several ways. For example, when low-income clients call an LRS, the LRS will often refer them to a legal services program. This helps protect low-income clients from being taken advantage of by attorneys who would charge them when they are entitled to free legal services. Also, in some areas of the state, for certain types of cases where legal services programs cannot provide services, the LRS guarantees low-income clients a 30-minute appointment with an attorney for a very low cost where they can obtain critical information and advice about the merits of their case.

Further, some LRS's are actually run by IOLTA-funded programs. These LRS's often train their panel attorneys and ensure that they have adequate qualifications and expertise. Many LRS's require their panel attorneys to take a certain number of pro bono and low-cost, sliding-scale cases per year. This provides a huge incentive for private attorneys to take such cases because they want the paying-client referrals they derive from being on the LRS panel. The Project could make it more difficult for legal services programs to recruit and retain panel attorneys because they could obtain paying-client referrals from the website without committing to taking pro bono and sliding-scale cases.

Because of these concerns, LAAC requests that the Task Force bear in mind the role that LRS's play in the delivery of legal services to the state's most vulnerable residents when considering the Project's components and website. It is vital that the LRS's receive dominant displays on all possible website pages, including but not limited to the home page and all searches.

Thank you in advance for the opportunity for LAAC and PIC staff to attend the next Task Force meeting on October 22, 2008. I would welcome the opportunity to answer any questions or provide any additional information that would be helpful.

Sincerely yours,



Julia R. Wilson  
Executive Director



THE BAR ASSOCIATION OF  
SAN FRANCISCO  
VOLUNTEER LEGAL SERVICES PROGRAM

*vlsp* Changing Lives

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October 16, 2008

Board of Governors  
State Bar of California  
1149 S. Hill Street, Flr. 7  
Los Angeles, CA 90015

Dear Members of the Board of Governors:

I am writing to offer my thoughts and concerns regarding the proposed “Find a Lawyer” program of the State Bar of California. I am writing in my capacity as Executive Director of the Volunteer Legal Services Program of the Bar Association of San Francisco – the largest pro bono legal services provider in San Francisco. I also sit on the State Bar’s Standing Committee for the Delivery of Legal Services, and am a board member of the national organization that facilitates internet support for lawyers doing pro bono work: ProBono.net.

At the outset I would like to recognize the State Bar’s strong leadership in the areas of access to justice for the low-income communities of California, as well as to increasing diversity in the profession. This work is nationally recognized, and we are the envy of many other states in the country when we go to conferences and talk about the legal services community’s partnership with our State Bar. I very much appreciate the commitment that the State Bar has to these issues, and the many ways in which it has made that commitment a concrete reality.

The proposed “Find a Lawyer” site on the State Bar’s web page, unfortunately, would undermine the State Bar’s excellent work in the areas of services to the community, consumer protection, and diversity in the profession. I hope you will consider this issue carefully for proceeding, as I believe there are many unintended consequences of what I’m sure is a well-meaning idea.

I would like to propose a compromise approach: that the State Bar launch the site with a searchable list of attorneys only for the counties where there are no LRS’s, and those where there are no LRS’s that the State Bar deems effective. In that way, the State Bar can determine the effects, and effectiveness, of this idea, help out the counties with no meaningful referral resources, and not jeopardize the State Bar’s partners, legal services to the poor, and efforts to diversify the profession.

Would the proposed site hurt LRS's, or help them?

Some have suggested that the "Find a Lawyer" site will actually help LRS's, by driving referrals to them. I agree that if the State Bar had a site that referred everyone only to the effective LRS's in that county, that more people would call the local LRS's. I appreciate the efforts that have been made to include referrals to, and recommendation of, LRS's on the site. But our experience suggests that when you offer people a chance to just look up a lawyer right then and there, it will be attractive. Indeed, this is the principle upon which this "Find a Lawyer" website is based. This is particularly true given that this site is sponsored by the State Bar – a recognized, credible agency that regulates attorneys and protects consumers. People will understandably expect (no matter what disclaimers are included) that a referral from the State Bar website will be reliable and reflect the State Bar's protective role for consumers.

Does the proposed site undermine the State Bar's credibility and role?

Let me address the issue of consumer protection. VLSP runs twice monthly drop-in clinics. I see first-hand each month that people often do not know what area of law their legal problem falls within. Part of the role of our clinic, and LRS's every day, is to help consumers figure that out and get speedily to the right lawyer. A website like the one proposed cannot help a consumer determine whether their issue involves probate, family law or contract, and presents the likelihood that consumers will waste valuable time and money going to see lawyers who cannot help them – in some cases missing statutes of limitation or filing deadlines while doing so.

I have heard some people argue that this is simply an issue of consumer choice: that the website will alert consumers that a better alternative would be a local LRS, and that it should be up to consumers to choose. This approach, however, ignores the crucial role that the State Bar itself plays in our highly regulated profession. We do not, in fact, have a caveat emptor approach to legal services. Lawyers must be licensed, are publically disciplined for misdeeds, and solicitation and advertising are very limited. Our fee agreements with our clients, too, are regulated. The public looks to the State Bar to ensure that certain standards are met. Consumers already have a choice – it's the yellow pages.

The State Bar itself regulates LRS's, ensuring that consumers have the protection of knowing that they are being referred to an insured attorney, one who is in good standing with the State Bar, and one that has experience in a particular area of the law. To now have the State Bar offer an alternative to those agencies, that itself contains none of the consumer protections that the State Bar requires of LRS's, is frightening, and undermines the State Bar's own articulated goals of:

To assure that the public is protected and served by attorneys and other legal services providers that meet the highest standards of competence and ethics

To assure that all people have access to high quality legal services, regardless of financial or other circumstances

To assure that the mission of the State Bar is fulfilled through effective and supportive relationships with all stakeholders.

Support for Low-income communities and diversity efforts:

LRS's are restricted in what they can do with surplus funds by the Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services, including Minimum Standards for an LRS in California. Such funds may only be directed "to fund programmatic public services activities of the Service or its sponsoring entity including the delivery of pro bono legal services." Section 17.2. In fact, LRS's throughout the state donate, almost exclusively to legal services for the poor and to efforts to diversify the profession. Here at the Bar Association of San Francisco, for example, this year the LRS has funded those programs at a rate of \$175,000. If the revenues of the LRS were to be reduced significantly, this funding would disappear.

LRS's also screen cases for legal services programs which serve the indigent population. Some LRS's like ours, have an articulated screening and referral protocols for sending low-income clients to agencies that provide free services. Others simply refer appropriate calls to local legal services providers. LRS's are well-known in their communities, and their outreach is our outreach to our client base. Without that screening and referral, many agencies will not be able to help as many people, thereby creating an unintended barrier to necessary services. An LRS can afford to spend time doing that screening because it generates the financial resources to staff this activity. An unhealthy LRS will not be able to continue this valuable service, nor could the State Bar's site fill that gap. The quality of appropriate referrals made by an LRS is high because of this screening piece.

LRS's serve consumers holistically by referring them to governmental and social service agencies, not just legal services providers. A careful analysis of each person's situation allows them to make concrete referrals. Again, this role is jeopardized if the funding flow to LRS's is impaired.

Thank you so much for your attention. We in the legal services community very much value our partnership with the State Bar, in the arenas of expanding diversity in our profession, in providing access to justice for low-income communities, and in offering the the assurance of protection for consumers of legal services in California. We look forward to continuing our work together in these areas.

Very truly yours,

A handwritten signature in black ink that reads "Tiela Chalmers". The signature is written in a cursive, flowing style.

Tiela Chalmers  
Executive Director



THE BAR ASSOCIATION OF  
SAN FRANCISCO

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Daniel Burkhardt

October 20, 2008

Members of the State Bar of California  
Find-a-Lawyer Task Force  
180 Howard Street  
10<sup>th</sup> Floor  
San Francisco, CA 94105

Re: Proposed Find-a-Lawyer Web site

Dear Members of the Find-a-Lawyer Task Force:

I write on behalf of The Bar Association of San Francisco (BASF) to express our ongoing serious concerns regarding the State Bar's proposed Find-a-Lawyer Web site. BASF shares the very grave concerns already conveyed to you -- that this Web site as designed holds significant potential to harm the public, endanger access to justice programs, and gut support for efforts to diversify the legal profession in our state.

In particular, we continue to believe that, even with the disclosures and disclaimers now present on the proposed site, referring the public to unscreened attorneys who have no requirement to carry professional liability insurance would remove a crucial consumer safeguard.

In fact, at our board meeting last week, one of our directors, a partner at a major San Francisco law firm with long and deep experience in consumer law, disclaimers and disclosures expressed alarm that the State Bar would put itself at such very serious and substantial legal and financial jeopardy. There is little question in his mind that the State Bar would be held to have a virtual quasi-fiduciary relationship to the public and would be held to a very high standard for its ads and programs. In his view, the very operation of this site by the State Bar could carry with it implied warranties that all lawyers listed in the program were minimally "safe" to use. This "safety factor" would likely include the carrying of basic malpractice insurance, plus qualification to provide service at some minimal level above and beyond just being State Bar admitted. The State Bar's brand simply is so powerful that lending its brand to the proposed referral effort would establish an enormous claim of basic safety and efficacy that would overwhelm any effort by the State Bar to contradict that assertion in a disclaimer.



THE BAR ASSOCIATION OF  
SAN FRANCISCO

BASF asks that you explore, address, and respond to the concern we identify here. We also urge – in the strongest possible terms – that you and your colleagues on the Board of Governors reconsider the implementation of the proposed Web site and fully address and resolve the other serious concerns expressed by local bar associations, State Bar-certified lawyer referral services, and legal services and pro bono organizations across our state.

Sincerely,

James Donato  
President

cc: Governors of the State Bar  
Judy Johnson  
Executives of California Lawyers' Association Members  
Lawyer Referral Programs

*"The Unified Voice of Legal Services"*



October 31, 2008

State Bar of California  
Board of Governors  
180 Howard Street  
San Francisco, CA 94105-163

Re: LAAC Comments on Consumer Clearinghouse and Attorney Search Site

Dear Board of Governors:

I am writing on behalf of the Legal Aid Association of California (LAAC) and its legal services member organizations to express some comments and concerns regarding the State Bar of California's Consumer Clearinghouse and Attorney Search project and website, and to request that LAAC be included in ongoing discussions regarding the website design.

LAAC is a non-profit organization founded in 1982 for the purpose of ensuring the effective delivery of legal services to low-income people throughout California. LAAC is the statewide membership organization for legal services programs. Our 2008 membership represents over 80 legal services nonprofits, as well as many individual attorneys working at such programs.

Our members provide high-quality legal services to our state's most vulnerable populations. These services to low-income and other underrepresented individuals form an essential safety net in California and often ensure that the programs' clients have access to life's basic necessities, such as food, safe and affordable housing, freedom from violence, health care, employment, economic self-sufficiency, and access to the legal system.

LAAC has heard from a number of IOLTA-funded member organizations that they have significant concerns about the Consumer Clearinghouse and Attorney Search Project ("the Project"). First, the Project has the potential, if not handled properly, to significantly reduce the public's use of the Lawyer Referral Services ("LRS's"), which would reduce the income that LRS's receive. Many legal services programs obtain substantial funding from LRS's. In fact, for several legal services programs, LRS funding far exceeds their IOLTA grants. To the extent that the LRS's are hurt financially

47 Kearny Street, Suite 705 | San Francisco, CA 94108 | (415) 834-0100 | (415) 834-0202 (Fax)

[www.CALegalAdvocates.org](http://www.CALegalAdvocates.org)

by the Project, it could have the effect of reducing the available funding for legal services.

Moreover, in many areas, the local LRS is actually part of the legal services delivery system in several ways. For example, when low-income clients call an LRS, the LRS will often refer them to a legal services program. This helps protect low-income clients from being taken advantage of by attorneys who would charge them when they are entitled to free legal services. Also, in some areas of the state, for certain types of cases where legal services programs cannot provide services, the LRS guarantees low-income clients a 30-minute appointment with an attorney for a very low cost, allowing them to obtain critical information and advice about the merits of their case.

Further, some LRS's are actually run by IOLTA-funded programs. These LRS's often train their panel attorneys and ensure that they have adequate qualifications and expertise. Many LRS's require their panel attorneys to take a certain number of pro bono and low-cost, sliding-scale cases per year. This provides a huge incentive for private attorneys to take such cases because they want the paying-client referrals they derive from being on the LRS panel. The Project could make it more difficult for legal services programs to recruit and retain panel attorneys because they could obtain paying-client referrals from the website without committing to taking pro bono and sliding-scale cases.

Because of these concerns, LAAC requests that the Board of Governors bear in mind the role that LRS's play in the delivery of legal services to the state's most vulnerable residents when considering the Project's components and website. It is vital that the LRS's receive dominant displays on all possible website pages, including but not limited to the home page and all searches.

Thank you for allowing LAAC the opportunity to attend the Task Force meeting on October 22, 2008, as well as your meeting on November 20 and 21, 2008. It is our understanding that if the Project is approved at that meeting, there will be further discussion regarding many specific elements of the website design before it is launched. LAAC requests the opportunity to participate in the ongoing discussions of the design aspects on behalf of legal services programs.

I would welcome the opportunity to answer any questions or provide any additional information that would be helpful.

Sincerely yours,

Leslie Alexander  
Staff Attorney & Program Manager

# PUBLIC INTEREST CLEARINGHOUSE

California's Catalyst for Justice

47 Kearny Street, Suite 705 ♦ San Francisco, CA 94108

Phone 415-834-0100 ♦ Fax 415-834-0202 ♦ [www.pic.org](http://www.pic.org)

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**Julia R. Wilson**  
Executive Director

October 31, 2008

State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Re: PIC Comments on Consumer Clearinghouse and Attorney Search Site

Dear State Bar of California Board of Governors,

I am writing on behalf of the Public Interest Clearinghouse to express some comments and concerns about the Consumer Clearinghouse and Attorney Search project and website.

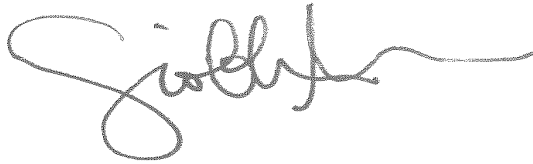
The Public Interest Clearinghouse (PIC) is a statewide support center on access to justice issues for the IOLTA-funded community. PIC administers the statewide legal referral and information website, LawHelpCA.org, which for many years has served as the trusted source for referrals to legal services organizations, court-based self-help programs, public interest nonprofits, and State Bar certified Lawyer Referral Services. LawHelpCA.org assists over 200,000 unique users each year, with its comprehensive referral database and thousands of legal information resources in multiple languages. The State Bar of California has been a vital partner in the development of LawHelpCA.org and remains a strong supporter, including most recently the joint efforts to develop and launch the new website, [www.ForeclosureInfoCA.org](http://www.ForeclosureInfoCA.org). PIC deeply appreciates this essential support and collaborative relationship with the State Bar.

LawHelpCA.org serves the general public in California, but its focus is ensuring that low-income Californians are able to access legitimate and high-quality free legal services, thereby fulfilling an important public protection role. This role has become particularly important due to the growing number of scam artists that use the name “legal aid” or “legal services” and then charge low-income residents for services that are never delivered. PIC therefore requests that the Consumer Clearinghouse/Attorney Search website ensure that low-income residents, who are eligible for legal assistance through the legal services and public interest or pro bono delivery systems, are prompted quickly and repeatedly to use LawHelpCA.org, rather than the Attorney Search system. Accordingly, PIC requests clear placement of links to and information about LawHelpCA.org throughout the Attorney Search website and that the Attorney Search home page include detailed information about the range of options for consumers, including LawHelpCA.org and local Lawyer Referral Services.

PIC staff greatly appreciates the willingness expressed by the State Bar of California Find a Lawyer Task Force during their October 22, 2008 meeting to have links to LawhelpCA.org on the website and also allow PIC staff to be involved in the design process.

PIC thanks State Bar staff and the Task Force for the discussions so far, and that PIC welcomes the opportunity to remain involved in the website discussions and design process.

Sincerely,

A handwritten signature in black ink, appearing to read "Siobhan", with a long horizontal flourish extending to the right.

Siobhan Waldron  
LawHelpCA.org Program Coordinator



**From:** Ellen Miller [ellen@sdcbba.org]  
**Sent:** Tuesday, November 11, 2008 12:07 PM  
**To:** Low, Rodney  
**Cc:** Madeja, Carol; sj kalian; Michelle Chavez  
**Subject:** Technical Comments re: Public Website/Find a Lawyer proposal (9/24/08)  
Dear Rodney,

As a follow up from our discussion, below please find two technical suggestions regarding the State Bar of California's Public Website/Find a Lawyer proposal dated September 24, 2008:

1. Public Web Site - Home Page (see page 7, attached).

I would suggest that the forth search box titled "Search for a lawyer by type of legal issue (Enter your zip code)" be moved from the public site home page to a sub page, or the second level of display. I think people will look for a fast/quick option from this home page and searching by zip code is a fast/quick option.

Ideally, you are trying to point people to the first three search options:

- Option 1 "Search for a lawyer by name"
- Option 2 "For personal assistance, contact a certified lawyer referral service" and
- Option 3 "Search for a certified legal specialist"

If those three options are not helpful to the user, you are providing a second tier or level of search option:

Option 4 "Search for a lawyer by type of legal issue/Enter your zip code". Given this, I would suggest that it moved to second level pages. In fact, it could appear on the sub page that includes search results from the first three search options referenced above.

2. Public Web Site – LRS Video Spokesperson (see attached page 8).

Our experience is that "screening" is a sophisticated term for the public. Given this, I would suggest that the language be slightly modified to describe what "screening" really means. For example, instead of:

"Available in most counties, these services screen and match lawyers with clients. And lawyers who participate must meet certain standards", you may want to consider:

"Available in most counties, these services establish requirements for the attorneys who participate in the lawyer referral service to ensure quality. They also carefully listen to the facts of the case and link you to an attorney who would be best suited to meet your needs"

Please feel free to contact me directly if you have any questions. Thanks, Ellen



**Board of Governors Agenda Item November 700**  
**Attachment V**  
**TASK FORCE REPORT AND RECOMMENDATIONS**  
**Re “Find A Lawyer” Function to State Bar’s Website**

<b>No.</b>	<b>Date</b>	<b>Name, Title and Affiliation Of Staff</b>	<b>DOCUMENT</b>	<b>Comments</b>
1.	10-16-08	Judy Johnson, Executive Director	Responses to ECLA’s Sept. 17, 2008 Letter	Discussion regarding policy concern that FAL creates a conflict of interest and staff response to design recommendations.
2.	10-29-08	Rodney Low, Program Developer OLSAFP	Executive Summary of Report and Recommendations of Task Force from October 22 and October 27 Meeting.	Vote tally on Resolutions
3.	10-22-08	Stuart Forsyth, President ECLA	Stuart Forsyth’s Concurrent Notes from Task Force Meeting of 10-22-08	For Comparison
4.	10-27-08	Stuart Forsyth, President ECLA	Stuart Forsyth’s Concurrent Notes from Task Force Meeting of 10-27-08	For Comparison



180 Howard Street San Francisco, Ca 94105

# THE STATE BAR OF CALIFORNIA

(415) 538-2000

**TO: Board Members James Penrod, Chair, Angela Davis, Richard Frankel, Paul Kramer, Patricia White, and Public Member Stuart Forsyth (“Find a Lawyer” Task Force)**

**FROM: Judy Johnson, Executive Director**

**DATE: October 16, 2008**

**RE: Responses to ECLA and Legal Services Program Recommendations**

## **Executive Summary:**

The State Bar’s “Find a Lawyer” Task Force was appointed by former President Jeffrey Bleich to address concerns raised by ECLA about the propriety, scope, and design of the proposed “Find A Lawyer” feature that would create a searchable State Bar membership database. As a result of Task Force meetings, State Bar staff agreed to make modifications to feature more prominently the Certified LRS’s and to distinguish clearly between the attorney’s official state bar record and any additional information provided by the attorney. Staff modifications to the draft pages were presented to the Task Force, which requested additional changes to further highlight the LRS’s and to further emphasize the distinction between the official and voluntary attorney information, with stronger disclaimer language to be provided through the Office of General Counsel.

The revised pages were circulated to ECLA and all Certified LRS’s. A live informational demonstration was made to the full Board of Governors on September 24, 2008.

Staff held a focus group presentation on October 10<sup>th</sup> to select legal services providers to obtain their input and feedback, which is outlined in this summary.

On October 17<sup>th</sup> staff will demonstrate the latest version of the Consumer Information/Attorney Search features (“Find A Lawyer”) to LRS representatives attending the ABA’s National LRIS Conference. Should comments be received during this meeting, they will be filtered to the Task Force.

In response to the latest design modifications, ECLA has commented further in its most recent communication of September 17, 2008 (see attachment #1), continuing to raise “design-related” issues that really go to the heart of the entire proposal rather than just the “look and feel” of the web pages. Instead of focusing on design, staff recommends that the Task Force first address the fundamental policy questions raised since answering these policy questions also effectively addresses ECLA’s “design suggestions.” The policy issues are:

**Policy Question #1:** Is there a “conflict” between the State Bar’s oversight role in the certification of lawyer referral services and its proposed operation of the “Find A Lawyer” feature? The State Bar believes no legal conflict exists as the Bar is statutorily authorized to provide such services.

**Policy Question #2:** To create a searchable database, members would have to voluntarily post information about themselves and their practices on the bar’s website. Should the bar allow members to post information that the State Bar cannot and does not independently verify?

**Policy Question #3:** Should the State Bar’s searchable database be easily accessible to users?

**Staff Response re ECLA Recommendations:**

Staff offers the following responses first to the policy issues listed above and then to the specific recommendations in ECLA’s September 17<sup>th</sup> letter.

**Policy Question #1: Conflict of Interest Issues:** The State Bar believes that there is no legal conflict of interest with the State Bar’s operation of “Find A Lawyer.” As noted in the draft Board agenda item on this issue (see attachment #2), the State Bar is expressly authorized to engage in activities that “may advance the professional interests of the members of the State Bar.” (Cal. Bus & Prof. Code, § 6031, subd. (a).) Board direction to pursue non-dues revenue is also permitted and supported by statute (Cal. Bus. & Prof. Code §§ 6001(g) and 6140.9). Non-dues revenue funds, in part, the mandatory Lawyer Assistance Program (LAP), the member call center, and the California Bar Foundation’s scholarship program. The decision to implement the “Find A Lawyer” feature is, therefore, a policy matter within the Board’s authority.

It has been suggested that the attorney search function is a de facto lawyer referral service. It is not. By definition, a lawyer referral service is one that screens callers for the legal issues involved and attempts to match the caller with an attorney with the appropriate experience. This further requires screening an attorney and verifying his or her experience. The proposed function does neither. In an effort to eliminate any perception of partiality, however, staff is considering revising the Lawyer Referral Service Rules to remove the Board from consideration of petitions challenging denials or revocations of LRS certifications and placing this review authority in the State Bar Court.

**Policy Question #2: Member posting of unverified information:** This too is a policy issue. Critics argue that posting member practice descriptions with links to firm web pages and members’ professional bios or resumes are “advertising” that ought not be allowed on the State Bar’s website. They contend that only information that the State Bar can independently verify should be permitted on the website. A fundamental assumption of those who oppose allowing members to augment their profile is that lawyers will lie, misrepresent or exaggerate to the

detriment of consumers who will assume, despite disclaimers, that all information on the bar's website is accurate and verified. This assumption ignores the fact that our current member profiles include information that the State Bar does not currently validate before posting. Members currently provide the following information not independently verified by the bar:

- Office addresses
- Office telephone and fax numbers
- Email addresses
- Law firm names
- MCLE compliance
- Admission in other jurisdictions

Additional attorney-submitted but confidential information:

- Date of Birth
- Place of Birth
- Social Security Number
- Fee Scaling Eligibility (subject to audit)

The members provide all of this information without verification. Errors are detected and corrected only when they are brought to our attention. We currently audit one percent (1%) of membership each year for MCLE compliance. But we take the word of the 99% percent of the membership that yearly attest to their compliance.

In order to reduce the potential for attorneys submitting false or misleading information, staff suggests that the information proffered by attorneys for their profiles be submitted under penalty of perjury.

**Policy Question #3: Ease of access / navigation:** This question really goes to the ease of consumer access to "Find A Lawyer." If ECLA's navigation suggestions are followed, consumers will be forced to the LRS home page first, before they can access the enhanced attorney search functions. The State Bar staff recommends rejecting the ECLA design suggestions, as they would result in barriers to easy consumer use of the "Find A Lawyer" features. Navigation barriers that frustrate and discourage consumer use will also make it less likely that State Bar members will participate and provide valuable profile information necessary for a modern membership database.

**Specific Staff Commentary re: ECLA Recommendations:**

**ECLA Recommendation #1:** The "Find a Lawyer" button on the home page (page 2 of the September 10th design) should link to an LRS home page, which should explain the advantages of LRS and allow selection of a California county to display the LRS programs therein in random or rotating order.

Staff disagrees. This would effectively bypass the attorney search function. With 12 million hits annually, the attorney search function is the most-used feature on our website. Additionally, an effective web site does not "force" users to navigate information channels that they are not specifically seeking in order to get to the information they *are* seeking. There are various ways to provide additional information, but there should be a logical path to the information that the user is seeking. We agree that LRS programs should be displayed in "random or rotating order" and we will implement that feature.

**ECLA Recommendation #2:** A new button, entitled “Check the Status of a Lawyer” should be added to the home page (page 2 of the September 10th design), which should link to the current mechanism for checking on the status of a California lawyer by name or State Bar number.

Staff disagrees. This would be an inaccurate substitute for the attorney search function and is therefore inappropriate. Further, editorial control of the State Bar’s web site is handled by our Web Editorial Advisory Committee that is responsible for determining all web content and placement. They will be advised of this suggestion, but they will retain discretion for the final design. (It is also unnecessary if the current design remains as proposed.)

**ECLA Recommendation #3:** The search for a random list of six lawyers by Zip Code, practice area, or other criteria should be an option that is reached only after display of the LRS programs in a county (#1 above). This should use a term other than “Find a Lawyer,” such as “Directory” or “Search.”

Staff disagrees. See #1 above. If such a restriction were imposed, it would make it harder for consumers to use “Find A Lawyer,” which would in turn discourage lawyer participation. While there is no current plan to charge lawyers a subscription fee for participation, this restriction would effectively preclude such a fee. We have already agreed that we will use another name for this program.

**ECLA Recommendation #4:** Page 6 of the September 10th redesign should be eliminated.

Staff disagrees. Again, routing users through the LRS pages sets up barriers to users that have already made the choice to bypass the LRS option when they choose “Find A Lawyer.” This effectively makes the user pay a price in time and energy to use “Find A Lawyer.” Such barriers will drive consumers to other more user-friendly online directories that are run by for-profit entities. Please note that the Santa Clara County Bar Association site is similar to what we propose --the LRS option is on the same page as the advanced attorney search. See attachment #3 from [www.sccbba.com](http://www.sccbba.com). Note that, while objecting to our use of the name “Find A Lawyer,” this is exactly what the Santa Clara County Bar Association calls its online directory. Consumers are told “Need a lawyer?: Find one your way. Two ways to Find A Lawyer.” Consumers are given a choice: use the SCCBA’s online directory or its LRS. Why shouldn’t consumers using our website be given the same right to choose?

**ECLA Recommendation #5:** Throughout the website, the term “State Bar certified lawyer referral service” should be used instead of just “lawyer referral service” or “certified lawyer referral service.”

Staff agrees. We will make the change. Revision of LRS language will be made consistent with recommendations in ECLA Recommendations #7 (easily understood and readable language re benefits of certified LRS’s).

**ECLA Recommendation #6:** The LRS menu category should be visible on all secondary pages of the web site, on the horizontal navigation menu, the left side navigation menu or some other clearly visible position of the web pages.

Staff disagrees. Again, editorial control of the State Bar's web site is handled by our Web Editorial Advisory Committee that is responsible for determining all web content and placement. To the extent that this recommendation (suggesting embedding the LRS option/hyperlink in each of the attorney search pages) is appropriate, staff will make additional related design decisions.

**ECLA Recommendation #7:** All information re LRS should be presented in short, bulleted sentences or phrases that are easily understood and readable by the public.

Staff agrees. We will make the changes.

**ECLA Recommendation #8:** The disclaimer on the page of information furnished by the attorney (page 12 of the September 10th design) should be more strongly worded and displayed in bolder and larger font. Wording should be used similar to that crafted for the terms of use of the search function (page 8 of the September 10th design), specifically that "the State Bar cannot guarantee the truthfulness or accuracy of this information." There is room for such a larger, clearer disclaimer beneath the map.

Staff agrees to enlarge the font (and keep it bolded). The disclaimer is very strong, written by our outside counsel and has a specific caution to the effect that putting up misleading information is subject to discipline. We have not shown the full disclaimer because we do not want to invite a "group write" of the disclaimer. The precise disclaimer language for both consumers and attorney members will be drafted by Office of General Counsel and will be their work product. Attorney members will be strongly admonished regarding the consequences of providing false or misleading information in their profiles. Further, attorneys will submit profile copy and text accompanied by a Declaration, averring that the information is submitted under penalty of perjury.

**ECLA Recommendation #9:** The terms of use that the public must agree to before using the search function (page 8 of the September 10th design) are lengthy and hard to read. Because many people simply agree to terms of use without actually reading them, this page should be separated into two: (1) a disclaimer page with larger, bolder and clearer disclaimers that the information in the profile is not prepared by, reviewed by, or verified by the State Bar and the State Bar cannot guarantee its truthfulness or accuracy, and (2) a terms of use page that includes acknowledgement of awareness of the disclaimers.

The disclaimer will be enlarged and kept bold. Otherwise, the disclaimer will be kept as it is currently drafted and designed.

**ECLA Recommendation #10:** While there has been an expressed desire by the State Bar to provide further support for certified lawyer referral services, the nature and details of that support should be fleshed out. Perhaps some of it should appear on the new public information website. We are happy to share our ideas and get information about what might help.

While staff is happy to dialogue re: support, technical assistance, and program development for certified LRS's, staff disagrees that this information should appear on the website. This is programmatic information about the bar's general support for the

LRS's that is communicated to the LRS's via specific meetings, through the listserv or directly to an affected LRS. Nevertheless, support in the nature of promoting the use of State Bar certified LRS's will be clear through the use of the attorney search functions. There will be continuing guidance to the LRS homepage and information re: the use and benefits of LRS's through video ads. Also there will be a reminder, when users are advancing through pages of attorneys listed through the attorney search, that if they use an LRS, they can receive assistance by consulting with an LRS telephone counselor.

We agree that it's important to flesh out the details of "Find A Lawyer," and feel it's important to keep the big picture in mind. There is widespread attorney advertising on the Internet and a plethora of online attorney directories run by for-profit entities. (NOTE that Bob Shapiro's Legal Zoom just got certified as an LRS and runs ad nightly on CNN.) If the State Bar fails to adopt a "Find A Lawyer" model, we will cede the ground to for-profit companies that will seize this opportunity to market their online lawyer directories. Those directories will not feature the LRS's as we propose to do.

#### **SUMMARY OF LEGAL SERVICES BRIEFING:**

Staff convened a small group of Legal Services representatives on Friday, October 10, 2008, to share the current version of the Consumer Information and Attorney Search Site. Legal services programs were aware of the proposed site from the prior ECLA and LRS communications. The programs have expressed concerns re the potential negative impact on State Bar Certified LRS's and their perception that any change would result in reduced revenue flowing to legal services, pro bono and diversity programs. This was an opportunity to provide a firsthand presentation of the current version of the proposed site and to solicit feedback on the Attorney Search Function, as well as the Consumer Information features.

#### **Participants:**

**Legal Services Representatives:** Robert Capistrano (LAAC Vice President, Bay Area Legal Aid), Leslie Alexander (LAAC), Linda Kim (PIC), Tiela Chalmers (BASF-VLSP), Elizabeth Hom (ACBA-VLSC)

**Staff:** Gary Clarke, Cathy Schoenfeld, Patricia Lee, Stephanie Choy, Rodney Low, Theresa Mesa, and Christy White (temp) (Sharon Ngim attended part of the discussion)

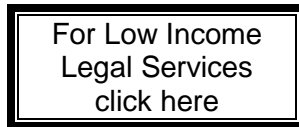
Following the demonstration of the latest version of the Consumer Information/Attorney Search website, the following Comments/Recommendations were offered by the Legal Services Representatives.

#### **CONSUMER INFORMATION PAGES:**

**Legal Services Recommendation #1: Coordinate with existing sites to avoid duplication and to facilitate consumer access and minimize website navigation.** Legal services representatives were concerned that the consumer information on the State Bar site was duplicative of LawHelpCalifornia resources. We explained that our site is a vehicle for linking consumers to existing resources, which includes LawHelpCalifornia **and other key consumer sites and resources.** Moreover, the State Bar has generated its own resources that need to be featured on our site. It makes sense for us to offer this information and to have the links on our site, given the volume of consumers accessing the State Bar website and who may not be aware of the LawHelpCalifornia or other key consumer sites and resources.

**Staff Recommendations:**

**LawHelpCalifornia link:** To facilitate linking to LawHelpCalifornia, we suggest adding a button prominently featured on the home page that says:



This button would immediately direct consumers unable to afford an attorney to the LawHelpCalifornia site and low-income legal services resources, rather than have consumers navigating the LRS and Attorney Search sites for services they cannot afford.

Additional placement of low income button/option: We also propose that this button appear on the Attorney Search Page (the one with the four boxes) and that the "low income services" choice appear as part of the menu going across the top of key pages. To illustrate, the sample button has been added to the slides that will be shown at the Task Force meeting.

**Poverty Guidelines/ Financial Eligibility for free legal services:** We suggest that the low income eligibility guidelines be featured on the State Bar site, so consumers will know if they are eligible for free legal services. The guidelines are included on the LawHelpCalifornia site, but consumers have to drill down to find them. Listing on the State Bar site would facilitate consumer guidance re: eligibility for low-income services. To illustrate, the reference to the financial eligibility guidelines has been added to the slides that will be shown at the Task Force meeting.

**ATTORNEY SEARCH FUNCTIONS:**

**Legal Services Recommendation #2: Minimize potential negative impact on LRS's by channeling consumers directly to the State Bar Certified LRS listings:** This is basically the recommendation offered by ECLA. During the discussion, comments emerged suggesting that if a consumer could not be assisted through the LRS and legal services network, we should not have to provide the consumer with the option to return to the State Bar Attorney Search pages, as the consumer probably does not have a viable legal claim or question.

**Staff Recommendation:** See responses above to ECLA recommendation. Also, we do not agree that consumers should be left without options.

**Legal Services Recommendation #3:** The legal services representatives also suggested that consumers could be directed to those counties with viable, "robust" LRS's, capable of responding to consumer needs. Under this approach, it would be up to the State Bar to create the criteria for determining which LRS's would be included in this select LRS listing.

**Staff Recommendation:** We also disagree with this approach. All LRS's certified by the State Bar have met the minimum standards for operation and enjoy equal status. It would not be appropriate for the State Bar, as the certifying entity, to distinguish between certified LRS's or to recommend one certified LRS over another.

**Additional Considerations from Staff following the meeting:**

**Need to Address Modest Means options:** Following the discussion it became evident to staff that the LawHelpCalifornia and the Attorney Search options were addressing low income and regular consumers -- consumers on both ends of the financial eligibility spectrum. Given the disparate needs and economic situations of moderate income consumers, we need to identify modest means services, both through the State Bar Certified LRS's and through the individual attorney profiles.

**Staff Recommendations:**

Modest means information should be added to the certified LRS descriptions and to the voluntary information provided in the Attorney Profiles: Categories could be added for Modest Means/Sliding Fees, Unbundled Services, etc. To illustrate, the reference to the modest means information has been added to the slides that will be shown at the Task Force meeting.

Subsequent to this meeting, individual letters were received from legal services program directors commenting on "Find A Lawyer" (see attachment 4).

## **Find A Lawyer Task Force**

### **Executive Summary of October 22 and 27, 2008 Meetings State Bar of California**

#### **Attendees:**

##### **Task Force members:**

Jim Penrod, Chair  
Angela Davis  
Stuart Forsyth  
Richard Frankel  
Paul Kramer  
Patti White

##### **Guests (at 10/22/08 Meeting only):**

Leslie Alexander, LAAC  
Dan Burkhardt, ED of BASF  
Siobhan Waldron, PIC  
Carol Woods, BASF LRIS

##### **State Bar Staff**

Judy Johnson, Executive Director  
Cynthia Abramov, OGC  
Starr Babcock, Executive Staff  
Gary Clarke, CIO  
Tricia Horan, SE  
Patricia Lee, OLSAFP  
Rodney Low, OLSAFP  
Carol Madeja, OLSAFP  
Mark Torres-Gil, OG

#### **Discussion of Policy Issues:**

##### **1. Conflict of Interest:**

Task Force Chair, Jim Penrod, stated that based on conversations with counsel, there is no legal conflict between the State Bar's regulatory role and permitting lawyer advertising on its website.

##### **Discussion:**

A lengthy discussion followed regarding the State Bar's role, particularly regarding its statutory duty in regulating attorneys and certifying lawyer referral services, as well as its relationship with the voluntary local bars. Consensus was there was no legal conflict, but a perception of conflict.

##### **2. Posting of Unverified Information**

Discussion followed regarding the inclusion of unverified information regarding an attorney's practice and the potential benefit to consumers in making an informed choice versus the potential risk of harm due to false or misleading information. The main concern focused on what appeared to be allowing attorneys to "advertise" by submitting unverified information regarding themselves and their practices.

**In order to move the discussion forward, the following motion was made:**

The Task Force moved to proceed with FAL, but to eliminate the attorney-advertising component. (Terms constituting “attorney advertising” are discussed further.)

**Motion passed unanimously:** Move forward with project, but eliminate “attorney advertising.”

**A Second Motion was Proposed:** Include Weblinks to attorneys’ websites, with interrupt page clearly indicating that user was leaving the State Bar’s webpage:

Without further discussion:

**Motion passes, 3 to 2.**

**In favor: Angela Davis, Paul Kramer, and Richard Frankel**

**Opposed: Patti White and Stuart Forsyth**

**A Third Motion was proposed:** Include Self-Designated Areas of Practice.

Vote on the motion to allow attorneys to provide self-designated areas of practice, provided the information was submitted under penalty of perjury and subject to discipline if false and/or misleading:

**Motion Passes, 3 to 2.**

**In Favor: Paul Kramer, Patti White, Angela Davis.**

**Opposed: Richard Frankel and Stuart Forsyth.**

**Conclusion:**

**Recommend to the full board that this project go forward, but modify the attorney advertising portion of the profile to delete the narrative box, include Certified Legal Specialization, if any, Section Membership, if any, links to the attorney’s website, if any, and self-designated areas of practice.**

\*\*\*\*\*

The Task Force was reconvened by Conference Call on October 27, 2008, to clarify and refine the decisions passed on October 22, 2008.

**Addendum**

There were additional elements of the proposed “Attorney Profile” that had not been clearly included and decided upon in the motions presented on

October 22. Therefore, these items were discussed in a conference call on Monday, October 27. After a brief discussion, the following motions were discussed and voted upon:

**Motion: Publish only the following information on the website:**

- Official regulatory information that is already displayed on the State Bar's website
- Certified legal specialization(s), if any
- Section membership(s), if any
- Self-designated areas of practice, accompanied by information explaining the significance of the self-designation (as distinguished from certified specialty or section membership) as well as guidance on how to evaluate a lawyer's experience [this material to be accessible on the profile page], and that information is submitted under penalty of perjury and subject to discipline if false and/or misleading
- A link to the attorney's website, if any, with an interrupt page indicating that the user is leaving the State Bar's website
- A photograph

**Motion passes 3 to 2**

**In favor: Stuart Forsyth, Dick Frankel, Patti White**

**Opposed: Angela Davis and Paul Kramer**

(It was understood that the legal specializations, section memberships and self-designated areas of practice would be searchable.)

**New Motion: Include language(s) spoken in the office as a searchable data point**

**Motion failed 2 to 3**

**In favor: Angela Davis and Paul Kramer**

**Opposed: Stuart Forsyth, Dick Frankel, and Patti White**

**New Motion: Display language(s) spoken in the office on the attorney's profile page, but not as a searchable data point**

**Motion passes 4 to 1**

**In favor: Angela Davis, Dick Frankel, Paul Kramer and Patti White**

**Opposed: Stuart Forsyth**

**Conclusion: Information regarding languages spoken in the attorney's office will be included on the attorney profile page, but not as a searchable data point.**

**STATE BAR OF CALIFORNIA  
FIND A LAWYER TASK FORCE**

October 22, 2008

San Francisco

- Introductions and Opening Remarks
  - Guests
    - Dan Burkhardt, BASF
    - Carol Woods, BASF LRS
    - ?, PIC
    - Leslie Alexander
  - Chair's remarks
    - Will probably call it something other than Find a Lawyer, e.g., "Attorney Search"
- Discussion of Policy and Design Issues
  - Conflict of Interest
    - Patti White
      - There is a perceived conflict of interest
      - Issues
        - Section membership
        - Certification
        - Self-designated practice areas
        - No advertising component
      - Motions
        - Patti White: Eliminate the attorney advertising component of the project
          - Eliminate narrative (profile)
          - Include
            - Photograph
            - Section membership
            - Specialization
          - APPROVED unanimously
        - Dick Frankel: Include link to attorney's web page, provided it is clear that the user is leaving the State Bar's website
          - APPROVED 3 to 2
        - Paul Kramer: Include self-designated areas of practice w/ declaration under penalty of perjury & subject to discipline
          - APPROVED 3 to 2
- Guest Comments
  - Dan Burkhardt
    - Low ability of any disclaimer to eliminate any risk to SB
  - Public Interest Clearing House

- Put in links to [lawhelpcalifornia.org](http://lawhelpcalifornia.org)
- Leslie Alexander
  - Make LRS appear as the first result of a search
    - Click to go to LRS programs in the county
  - Let LRS programs have ideas about and want to comment on design
- Gary Clarke
  - First 6 months will be marketing to attorneys to get them to build their profile
  - Can't go to the public until we get a critical mass, e.g., 30,000 attorneys
  - Measure traffic on website, including referrals to LRS programs, as it is deployed
- Task Force Recommendation to Board for consideration at the November 21, 2008 Board Meeting
  - [see three motions above]
- Next Steps
  - Move forward and seek Board approval, based on the Task Force's recommendation
  - Defer further discussion of design issues pending action by the Board

**STATE BAR OF CALIFORNIA  
FIND A LAWYER TASK FORCE**

October 27, 2008

Conference Call

- Chair
  - An issue has arisen regarding interpretation of the Task Force's actions at its meeting on October 22<sup>nd</sup>.
  - The issue involves how much information is to be available on the website.
- Discussion
  - Patti White—
    - When I moved that self-designated practice areas be included, I meant only that and nothing else
    - I thought the website would include only the official information that the State Bar already displays, a link to the attorney's website, specialization, sections, areas of practice and a photograph
    - I did not think it would display additional information such as languages spoken, size of firm, accepting credit cards, accepting new clients, free consultations, etc.
  - Judy Johnson—But that additional information has always been included in the draft and is important
  - Dick Frankel—We do not want to compete with LRS programs by providing all that additional information
  - Patti White—An attorney can display all that information (and more) on his or her website, to which we are linking
  - Dick Frankel—Any additional information provided should not be searchable
  - Judy Johnson—Language(s) spoken is the most important additional data point
  - Angela Davis—I thought we put some protections around the “self designation” of practice areas: they will be accompanied by information explaining the significance of the self-designation (as distinguished from certified specialty or section membership) as well as guidance on how to evaluate a lawyer's experience, and that this material will be accessible on the profile page. (Task Force concurred.)
- Motions
  - Stuart Forsyth: Publish only the following information on the website:
    - Official regulatory information that is already displayed on the State Bar's website
    - Certified legal specialization(s), if any
    - Section membership(s), if any
    - Self-designated areas of practice, accompanied by information explaining the significance of the self-designation (as distinguished

from certified specialty or section membership) as well as guidance on how to evaluate a lawyer's experience [this material to be accessible on the profile page]

- A link to the attorney's website, if any, with an interrupt page indicating that the user is leaving the State Bar's website
  - A picture
  - APPROVED 3 to 2
- Angela Davis: Include language(s) spoken in the office as a searchable data point
    - FAILED 2 to 3
  - Paul Kramer: Display language(s) spoken in the office on the attorney's profile page, but not as a searchable data point
    - APPROVED 4 to 1

Current State	Task Force	Staff
Official State Bar Record: <b>NAME</b> <b>BAR #</b> <b>CITY</b> <b>STATE</b> <b>ZIP</b> <b>DISTRICT</b> <b>COUNTY</b> Section Membership <b>CERTIFIED SPECIALTY</b> Current Status Address Phone # Fax # e-mail Undergrad Law School Status History Discipline Year Admitted	Official State Bar Record: <b>NAME</b> <b>BAR #</b> <b>CITY</b> <b>STATE</b> <b>ZIP</b> <b>DISTRICT</b> <b>COUNTY</b> Section Membership Certified Specialty Current Status Address Phone # Fax # e-mail Undergrad Law School Status History Discipline Year Admitted	Official State Bar Record: <b>NAME</b> <b>BAR #</b> <b>CITY</b> <b>STATE</b> <b>ZIP</b> <b>DISTRICT</b> <b>COUNTY</b> <b>SECTION MEMBERSHIP</b> <b>CERTIFIED SPECIALTY</b> Current Status Address Phone # Fax # e-mail Undergrad Law School Status History Discipline Year Admitted
	<a href="#">Link to Attorney Web Site</a>	<a href="#">Link to Attorney Web Site</a>
	<a href="#">Self Designated Area(s) of Practice</a>	<b>SELF DESIGNATED AREA(S) OF PRACTICE</b>
	<a href="#">Other Languages Spoken</a>	<b>OTHER LANGUAGES SPOKEN</b>
		<a href="#">Size of law firm</a>
		<a href="#">Free Consultation</a>
		<a href="#">Accepting Credit Cards</a>
		<b>SEEING NEW CLIENTS</b>
		<b>UNBUNDLED SERVICES</b>
	<a href="#">Attorney Photograph</a>	<a href="#">Attorney Photograph</a>

**RED = SEARCH CRITERIA**

**BLUE=DISPLAY ONLY**

# Executives of California Lawyers' Associations

*"Supporting California Legal Associations to Improve the Legal Profession and the Administration of Justice"*

November 13, 2008

Members of the Board of Governors  
State Bar of California  
180 Howard Street  
San Francisco, CA 94015

**Re: Proposed Online Directory of Attorneys**

Ladies and Gentlemen:

This letter is written on behalf of Executives of California Lawyers' Associations (ECLA), which is the professional membership organization of executive directors of California bar associations. As you know, we have written twice before to express our serious concerns about the State Bar's proposal to create a searchable, online directory of attorneys admitted to practice law in California.

We very much appreciate Immediate Past President Jeffrey Bleich's appointment of a Task Force to address those concerns, and we have appreciated the opportunity to participate in it through our Immediate Past President, Stuart A. Forsyth.

While progress has been made by the Task Force; the core issue remains: a proposal to create an online directory that is searchable by self-designated areas of practice and location, together with a number of other fields of information.

Because this core issue has not been resolved, and for the reasons detailed in the attached Talking Points, we continue to vigorously oppose the proposal.

Appropriate mechanisms already exist to help the public find lawyers in California. One of them is the network of lawyer referral services, which the State Bar itself has historically fostered and is statutorily mandated to regulate and certify. Those certified lawyer referral services embody numerous public protections that are completely absent from the proposed online directory. And proceeds from the proposed directory would not go to support public service programs, as do proceeds from the lawyer referral services.

The State Bar's prime mission is to protect the public. When its desire to benefit its members or its increase revenue comes in conflict with that prime mission, its desire must give way to its purpose.

Very truly yours,



Robynn Gaspar  
President

*Robynn Gaspar*  
**President**  
Marin County  
Bar Association

*Trudy Levindofske*  
**President Elect**  
Orange County  
Bar Association

*Deborah Kemper*  
**Treasurer**  
Sam Mateo County  
Bar Association

*Dan Burkhardt*  
**Secretary/Membership**  
The Bar Association  
of San Francisco

*Stuart Forsyth*  
**Immediate Past President**  
Los Angeles County  
Bar Association

**TALKING POINTS ABOUT  
THE STATE BAR'S FIND A LAWYER/ATTORNEY SEARCH PROPOSAL**

- Essentially, the State Bar is proposing to create a searchable, online directory of attorneys (proposed directory) within its public information website.
- The State Bar has repeatedly stated that it cannot refer the public to an attorney—because it is the agency responsible for disciplining attorneys.
- For decades the State Bar has fostered lawyer referral services (LRS) as the best way for the public to find an attorney.
- The State Bar has a statutory duty to regulate and certify LRS in California to ensure that their operations embody a number of public protections, e.g.:
  - Verification that attorneys actually have experience in the designated areas of practice
  - Require that attorneys carry malpractice insurance
  - Require that attorneys not be involved in the discipline system
  - Remove attorneys for cause
  - Use of excess funds only for public service programs.
- From the public's perspective, the proposed directory will perform the same function as the LRS that are certified by the State Bar—without ***any*** of the public protections provided by LRS (see comparison chart).
- Experience has shown that the public often does not know the correct area of legal practice for which an attorney is needed; in these situations, the proposed directory would be misleading instead of helpful.
- The proposed directory would only refer the public to attorneys—not to legal services programs and other providers and entities that might be more appropriate in a given situation.
- Statewide more than \$1 million in funds generated by LRS support public service programs (not bar associations) such as legal services for the poor, immigrants and victims of domestic violence as well as efforts to improve diversity in the legal profession; to the extent that LRS are financially harmed by the proposed directory, these public service programs would suffer.
- The State Bar's prime mission is to protect the public; when its desire to benefit members or increase revenue comes in conflict with that prime mission, its desire must give way to its fundamental purpose.



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November 19, 2008

Members of the Board of Governors  
State Bar of California  
180 Howard Street  
San Francisco, CA 94015

Re: **NOVEMBER 700** "Find a Lawyer" Proposal

Ladies and Gentlemen:

For reasons that we have discussed with the members of the Board of Governors from District 7, we strongly oppose the State Bar's proposal to create a searchable, online directory of attorneys admitted to practice law in California.

Appropriate mechanisms already exist to help the public find lawyers in California. One of them is the network of lawyer referral services, which the State Bar itself has historically fostered and is statutorily mandated to regulate and certify. Those certified lawyer referral services embody numerous public protections that are completely absent from the proposed online directory.

As can be seen from the attached comparison, the public protection aspects of the proposed "Find a Lawyer" project have not been adequately addressed.

We sincerely hope you will not approve this flawed proposal.

Sincerely yours,

  
Danette E. Meyers  
President

cc: Judy Johnson  
Members of the Board of Trustees

**COMPARISON  
STATE BAR CERTIFIED LAWYER REFERRAL SERVICES  
AND PROPOSED ONLINE DIRECTORY**

<b>Factor</b>	<b>Lawyer Referral Services</b>	<b>Proposed Online Directory</b>
Help the public identify the correct area of legal practice for which an attorney is needed	Yes	No
Refer the public to legal services programs and other providers and entities, as appropriate	Yes	No
Verify that attorneys actually have experience in the designated areas of practice	Yes	No
Require that attorneys carry malpractice insurance	Yes	No (Information about malpractice insurance coverage is not collected)
Require that attorneys not be involved in the discipline system	Yes	No
Ability to remove attorneys for cause	Yes	No
Funds generated for public service programs, e.g., legal services, diversity, etc.	\$ 1 million + annually	None
Regulated by the State Bar	Yes	No