



COUNCIL OF STATE BAR SECTIONS

THE STATE BAR OF CALIFORNIA

DATE: May 7, 2009
TO: Members of the Board of Governors
FROM: Officers of the Council of State Bar Sections
RE: **Council of State Bar Sections Comments Regarding “Find a Lawyer” Project**

The Council of State Bar Section’s met on April 8, 2009 and discussed a version of the “Find a Lawyer” project as described by Board Member Paul Kramer. While acknowledging that the project has continued to evolve since the Council met, this letter outlines some of the concerns raised by the State Bar Sections.

Consensus of Comments and Concerns Raised by Section Executive Committees:

1. The Find a Lawyer Task Force did not include any State Bar Section or general membership participation, but was represented by local bars, Lawyer Referral Services and Legal Aid Societies. Whereas Section members represent approximately 35% of the active membership (while paying additional, voluntary dues and as a body contributing thousands of hours to State Bar activities) attorneys represented by the LRS’s represent fewer than 3% of active Bar members.
2. It is critical to include self-designated areas of practice as a search feature, with appropriate disclaimers. It is our understanding there is division among Task Force members regarding this issue

Members of the public looking for an attorney rarely have a lawyer’s name in mind. They are looking for representation in a particular area of law (divorce, drafting a trust, criminal defense, etc.) and in a particular geographical area (city or county). They may also be looking for additional refinements, such as specialty certification, gender, language proficiency, etc.

If searching for a lawyer by practice area is not allowed, then “Find a Lawyer” is virtually worthless to the public and members of the bar.

3. The member database should not be searchable by section membership, although section membership should continue to be displayed on an individual’s profile.

Section’s membership lists represent some of their most valuable intellectual property. If the database were searchable by Section membership, then it would be possible for anyone to obtain a full membership list for each Section. The Sections have always taken great precaution in carefully guarding these lists. While it is recognized that lists can be “mined”, section membership lists or portions thereof should not be allowed to be given away on the bar website.

Further, should Section lists be made available through the new “Find a Lawyer” site, the potential for misuse and misrepresentation would be significant. For instance, an unauthorized email beginning: “As a member of the State Bar Family Law Section, our organization believes that you would have a special interest in”.

Showing section membership on an individual profile is very different from allowing a full database search of section membership. It is also a very different concept than searching by self-designated practice areas. Membership in a specific section does not necessarily correlate with practice in that area.

4. Allowing members of the public to access the State Bar membership database *only after* clicking through either a Legal Aid or Lawyer Referral Services site is not recommended. It is important that members of the public not be discouraged by being forced to click through several pages before obtaining results. Perhaps another approach should be considered that would provide users with all available options equally displayed on one page.
5. Some Sections expressed concern that (in the current proposal) the bar dues of 160,000 active attorneys will go toward enhancing the advantage of the 5,100 attorneys who pay into the Lawyer Referral Systems that do not cover the statewide needs of the public.

What benefit is there to adding a photograph, web site link, or MapQuest (tm) directions to a law office that no one can find on the web site? While we support the Lawyer Referral Services and the Legal Aid Societies, we do not support them to the detriment of bar members who pay for the bar web site.

6. Unlike the system as originally previewed by the Sections in the fall of 2008 (which would have represented a service and member benefit to all attorneys), this new system provides a direct benefit to only 3% of the statewide attorney population.
7. The current Task Force recommendations may benefit local bar associations, but will operate to the detriment of many practitioners: in particular, this will impact solo and small firm practitioners – a group that the State Bar has determined to better serve.
8. Currently, State Bar members must utilize web sites that charge them thousands of dollars for online listings. The original goal of the “Find a Lawyer” system (e.g. to offer “free” to attorneys statewide what they would otherwise have to pay for via systems like Find Law and Attorneys.com) has been lost in the recent permutation of the product. Nor does it any longer serve the best interests of consumers.

Council of State Bar Sections Conclusion:

We request that more time be included in the process for purposes of working through some of the ramifications of this project. If that is not possible, the preference would be to maintain the “status quo” (e.g. the current State Bar database as it now exists on the Bar’s site) than to move forward with the revised version of “Find a Lawyer” for the reasons stated in this letter.

Thank for your consideration.

May 11, 2009

Dear President Fujie and State Bar Governors:

This letter is written on behalf of the State Bar Find-a-Lawyer Task Force (“FAL Task Force”) members who are not Governors of the State Bar of California: Dan Burkhardt, Stuart Forsyth and Tom Kuhnle.¹ On May 5th, we received an email from Paul Kramer titled “Find-A-Lawyer” - Proposed Adoption of Program Recommendations (the “Kramer Memorandum”). We also received related PowerPoint slides on both May 5th and May 6th. The Kramer Memorandum invites us “to report [our] thoughts in a separate memo.” Those thoughts are below.

I. Executive Summary

The State Bar is the exclusive regulator of legal services in the State of California. As noted on the landing page of its website, “the State Bar is a public corporation within the judicial branch of government, serving as an arm of the California Supreme Court.” That same landing page declares that the State Bar “protects the public and assists attorneys in meeting their professional obligations.” Consistent with this promise, in 2007 approximately 81% of the State Bar’s general fund was spent on its attorney discipline system.

The Find-a-Lawyer program (“FAL”) proposal described in the Kramer Memorandum will undermine the State Bar’s critical mission of protecting the public. FAL exploits the State Bar’s exclusive access to the contact information of each and every lawyer licensed to practice law in California. FAL will advertise lawyers based on (among other things) their self-identified (and unverified) practice expertise, and on their membership (and not expertise) in State Bar Sections. Under FAL the State Bar’s advertisements for its members would also include a color photo and a link to more advertising on the attorney’s own website.

The grave potential of FAL tarnishing the public trust and reducing public protections are our primary concerns, regardless of who came up with the idea or their motivation. But in fact the motivation for launching FAL is troubling. A PowerPoint slide distributed to FAL Task Force members reveals the true intent of State Bar. *See* Exh. A (cover email and PPT slide). That slide, entitled “Motivations,” describes FAL as a tool to “[g]ather member demographic information to help the State Bar.” It then states that the demographic information will be used to: (1) “Target mailings”; (2) “Target benefit opportunities”; (3) “Better serve the members in other ways”; (4) “Bring members to the Bar web site”; (5) “Develop an electronic communication habit leading to reduced costs by providing more services via the web.” The slide explains: “To get the information voluntarily, we need to provide members an incentive—searchable data—practice area, languages, links to web sites.” The slide also muses: “Or do we mandate provision of the information—another mandatory report? (Statutory authority required)”.

¹ Mr. Burkhardt is the Executive Director and General Counsel of the Bar Association of San Francisco (“BASF”). Mr. Forsyth is the Executive Director of the Los Angeles County Bar Association (“LACBA”). Mr. Kuhnle is the Immediate Past President of the Santa Clara County Bar Association (“SCCBA”). BASF, LACBA and SCCBA together have more than 35,000 members. Most are active members of the State Bar of California.

Despite our misgivings about FAL diminishing the public trust in exchange for advertising attorneys and collecting information about members that can be used to “target mailings,” among other things, the three of us have worked hard to develop a compromise package. While reluctantly agreeing to some design elements of FAL, we protested again and again the inclusion of two search fields: section membership and self-designated practice expertise. We also fought against the “three-pane” LRS information page and in favor of the “two-pane” approach. We stand ready to support the compromise package despite our belief that it will undercut the State Bar’s charter to protect the public.

In sum, we believe the Board of Governors (“BOG”) should terminate further consideration of FAL. Should the FAL program move forward, we support the compromise package that would eliminate two search fields proposed in the Kramer Memorandum (section membership and self-designated practice areas) and include the “two-pane” LRS information page. Finally, before any version of the FAL is implemented, the FAL Task Force should examine many other important issues, including the list of information that will be extracted from members in exchange for their ability to post enhanced profiles.

II. The State Bar’s Duty to Protect the Public

By regulating admission to the profession, and maintaining a comprehensive attorney discipline program, the State Bar protects the public by ensuring that those who practice law in the State of California meet the required qualifications and practice law at the highest ethical standards. The *2008 Report on the State Bar of California Discipline System*, dated April 2009, confirms the primacy of the Bar’s duty to protect the public:

One of the most important functions of the State Bar is to protect the public, the courts and the legal profession from lawyers who fail to adhere to their professional responsibilities. Most of the 2008 annual membership fee of \$400 supports the State Bar’s public protection programs. In 2008, General Fund expenditures totaled approximately \$62,348,000. Of this amount, approximately \$51,805,000 was expended directly on the State Bar’s discipline and related regulatory functions.

Given its mission, it is not surprising that the State Bar is a public corporation within the judicial branch of government, serving as an arm of the California Supreme Court.

To protect the public, the State Bar is charged with ensuring that advertisements of lawyers do not contain “any false, misleading, or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading, or deceptive.” Bus. & Prof. Code § 6157.1. These rules expressly apply to information presented through electronic media. *Id.* § 6158.

Another duty for ensuring public protection is the State Bar’s oversight of lawyer referral services (“LRSs”). The Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services (“LRS Rules”) state: “It is also the policy of the State Bar of California that activities in violation of these Rules, the Business and Professions Code or other authorities pertaining to Lawyer Referral Services, be curtailed.” As part of its regulatory function, the State Bar is required to certify LRSs every two years. *See* LRS Rule 8.1. For this

privilege, organizations sustaining LRSs are charged up to \$10,000 annually by the State Bar (LRS Rule 9.2) and must fill out, and file, an application for recertification each year.

The State Bar, through its BOG, is thus entrusted, first and foremost, with protecting the public. The BOG must scrutinize with the utmost care any new program that derogates from this duty, and if there is even a small risk that the public protection mandate will be compromised, the program should be rejected.

III. The Board's Directive to the FAL Task Force

At the BOG meeting on November 21, 2008, we expressed our concerns that FAL would compromise the BOG's duty to protect the public. We said that FAL would lead to the irreversible presumption that the State Bar was sponsoring attorney advertising, and that the State Bar could not police the accuracy of that advertising, including claimed practice area expertise, language proficiency, or statements on attorney websites to which citizens could directly link from FAL. We also pointed out that the State Bar suffered a direct conflict of interest; that on the one hand it is directed by statute to regulate LRSs, and on the other hand FAL would serve as an LRS (and compete against other LRSs) but not be subject to the State Bar's own regulations.

After listening to our concerns, the BOG referred FAL back to the FAL Task Force for further consideration. The resolution in the official BOG meeting minutes states:

RESOLVED that the Board of Governors refers back to an expanded Task Force to be appointed by the President, the Find A Lawyer proposal, with explicit direction that the *final design* include a prominent and specific reference and support of lawyer referral services, and with further instruction that the Task Force bring the *complete design* back to the Board for its consideration."

The resolution requires the FAL Task Force to bring back a "final design" and a "complete design" back to the BOG for its consideration. By any measure, the FAL Task Force has failed to abide by the BOG's direction. The design is neither "final" nor "complete." The FAL Task Force as a whole *did not* draft the Kramer Memorandum which sets forth specific resolutions for the BOG to consider. The FAL Task Force *did not* participate in the design of the slides to be presented at the BOG meeting. The FAL Task Force *did not* decide on the text of disclaimers. The FAL Task Force *did not* decide on what information State Bar members would submit in order to participate in FAL. The FAL Task Force *did not ever discuss* the concept of "pop up" boxes that now appear on some of the slides, let alone their content. And in the past week the BOG Task Force members have raised the idea of using very high level practice areas (*e.g.*, litigation, corporate, criminal), which is another issue that was *never discussed*. See also Exh. B (noting other procedural deficiencies).

The failure of the FAL Task Force to consult with all of its members can be attributed to a last-minute rush during which important decisions were made on the fly. As the still-incomplete design was only partially revealed well after the last FAL Task Force meeting, there was no meaningful opportunity for all FAL Task Force members to provide input on the "final design" or "complete design" as mandated by the BOG last November. The result is a half-baked

proposal that raises deep-rooted concerns. While we have views that are quite different than the Council of State Bar Sections, we agree with its statement that “more time be included in the process for purposes of working through some of the ramifications of this project.”

IV. The Risks the Find-a-Lawyer Proposal Will Generate

The risks posed by FAL are numerous and worrisome. There are three, however, that are particularly troubling: the disintegration of the State Bar’s credibility in connection with enforcing misleading advertising, harm to LRSs and related modest means panels, and the backlash when State Bar members learn the true motivation for FAL is to use their information to generate additional email spam. Each of these risks is discussed in more detail below.

A. The Loss of the State Bar’s Enforcement Credibility

Imagine a resident of Antioch, California who just lost her job. She feels she was unjustly fired. She jumps online and learns of FAL. She searches for a lawyer who self-identified himself as an employment lawyer. She reviews his profile on FAL; she clicks on the link to his firm’s website. The next day she tells a friend: “I think I’m in luck. I found a lawyer who is endorsed by the State Bar’s website, has expertise in employment law, and whose website promises a “quick victory” with “full compensation for all losses.” It turns out the lawyer has handled just two employment law cases. The complaint is filed, but the case languishes. Fees and costs are incurred. Ultimately, the resident of Antioch gets nothing through her suit. The resident of Antioch is angry not just at her attorney, but at the State Bar for facilitating that attorney’s charade. She doesn’t file a complaint with the State Bar, however, because what good would it do? After all, it was the State Bar who suggested the lawyer in the first place.

BOG Task Force members reported that State Bar counsel has advised that appropriate disclaimers will eliminate any risk associated with the State Bar’s role in assisting the public in finding an appropriate lawyer. We disagree. A separate written communication to the BOG will cover these issues in much more detail.

The important point, however, is that the question should not be whether the State Bar will escape liability. The question is whether the explicit or implicit endorsement of an attorney’s practice area or the content of an attorney’s website will create the appearance that the State Bar is no longer putting its public protection duties first. The State Bar will have no answer to the questions: “What steps are you taking to ensure attorneys have expertise in their self-reported practice areas?” “What standards are you applying to assess expertise?” “Has the State Bar reviewed the content of the websites to which it now links from its own website?” “Does the State Bar have a ‘take down’ procedure by which false or infringing information can be removed?” “Why is State Bar directing the public to lawyers who didn’t have malpractice insurance?”

FAL lends the State Bar’s imprimatur to each and every lawyer who posts a profile on FAL. Citizens will have the impression that each lawyer is endorsed by the State Bar, or perhaps even pre-screened. These assumptions are false, and since they are false, the State Bar will lose credibility in its core mission of protecting the public.

B. Harm to the Public Caused by Weakening Lawyer Referral Services

The State Bar has an explicit directive to support LRSs. LRS Rule 3.1 states:

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.

In addition, the Lawyer Referral menu page on the State Bar's website states:

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

The BOG has repeatedly embraced similar mandates. The November 21, 2008 Resolution on FAL, for example, required the FAL Task Force to "include a prominent and specific reference and support of lawyer referral services."

FAL will function as an LRS. Under LRS Rule 4.1, an LRS is an entity "which operates for the direct or indirect purpose of referring potential clients to lawyers, whether or not the term 'referral service' is used." Likewise, under LRS Rule 5.1(b), the purposes of an LRS include "To provide information about lawyers and the availability of legal services which will aid the public in their selection of a lawyer." The FAL envisioned by the BOG Task Force members meets these descriptions. One slide, for example, states: "If you are looking for an attorney to represent you and you don't have a name or bar number, click here."

While serving as an LRS, FAL will fail to provide lawyers who meet LRS standards – the very standards the State Bar is charged with enforcing. FAL will not require that all lawyers with profiles have malpractice insurance. FAL will not establish "one or more specific subject matter panels" and will not establish any "moderate and no fee panels" as set forth in LRS Rule 12.1. As noted above, FAL will not determine or review the qualifications for membership on the subject matter panel as required by LRS Rule 12.3. It is also unclear whether the State Bar will be enforcing, up front, its statutory mandate to regulate advertising on LRSs like FAL. *See Bus. & Prof. Code § 6157.4*

In addition, FAL will take business away from LRSs, thus robbing the public of the very same benefits the State Bar endorses. As directors and members of bar associations, we discussed this issue with the employees who run our LRSs and our members who participate on panels. In every instance we heard that practice-area searching on the State Bar website would steer traffic away from bar association LRSs. We pointed out to FAL Task Force members that instead of citizens receiving pre-screened lawyers with certified subject-matter expertise and malpractice insurance, those choosing lawyers on FAL would receive a photo, self-designated expertise and a web link. This would not protect the public.

A final note: LRSs are strongly encouraged to provide modest means panels. The Bar Association of San Francisco, the Los Angeles County Bar Association, and the Santa Clara County Bar Association each provide such panels as do most of the other bar association LRSs. FAL does not, and to the extent it undermines the viability of LRSs, modest means panels too will be threatened. In the end, State Bar sponsored attorney advertisements will trump serving the needs of members of the public who cannot otherwise afford representation.

C. State Bar Member Backlash

The Executive Summary, above, quotes from a PowerPoint slide prepared by State Bar staff explaining the true motivation of FAL. We won't repeat that text here. What we will say, however, is this: it is virtually certain that members will be upset when they learn that FAL will extract their information so that the State Bar can and use that data to target members for additional communications. It could be said, based on the State Bar's own slide, that FAL is little more than a carrot for encouraging members to provide demographic information for the State Bar to exploit.²

During the FAL Task Force meetings there was no substantive discussion concerning what information members would need to provide to the State Bar in order to "earn" a FAL profile. There were suggestions, however, that the State Bar might request the size of the firm or department at which the attorney worked or other attorney-specific information that would *not be included anywhere in an attorney's FAL profile*. The FAL Task Force likewise did not resolve what would happen if a member refused to provide the supplemental information. These are critical issues that deserve a full discussion by the FAL Task Force, and full disclosure to the BOG.

Equally troubling is the fact that outside vendors could use FAL to target their own mailings and phone calls to lawyers who meet certain criteria. An accounting expert, for example, might search for attorneys in Fresno with family law practices in order to drum up work in divorce cases. With just a few keystrokes that expert could locate all such State Bar members. So in addition to getting even more unsolicited emails from the State Bar, FAL would facilitate waves of unsolicited emails and phone calls from outside vendors and other commercial enterprises to State Bar members. This risk is highlighted in the comments by the Council of State Bar Sections, which denounces the plan to use section membership as a search criterion.

In short, FAL raises substantial risks to the State Bar. The BOG is entrusted with protecting the public, promoting LRSs, and overseeing the regulation of State Bar members. All three of those mandates would be compromised if FAL is implemented.

² This aspect of FAL may explain why the Council of State Bar Sections is so fervent in its support for greater searchability, including by practice area. The State Bar Sections could easily conduct searches to identify members who indicate their practice area is, for example, "family law" but who aren't members of the Family Law Section. This could easily result in "targeted communications" aimed at recruiting the non-members to join that section.

V. The Compromise Proposal Rejected by the Board Members of the FAL Task Force

As noted in the Kramer Memorandum, there was a “healthy exchange of views” during the FAL Task Force conferences. It is also true that “there was no consensus recommendation from the Task Force.” What is not true, however, is that the points of agreement and disagreement were broken out issue-by-issue.

So there is no mistake, as the non-BOG members on the FAL Task Force, we have unyielding concerns about FAL. Despite these deep concerns, however, we supported a compromise. We agreed that FAL could offer enhanced profiles; we agreed that searches could be conducted using the “certified specialty” field; we agreed that if a member (and not someone in his or her office) could certify that he or she could speak a language fluently, the language field could be used for searching. In exchange, we demanded that the section membership and self-designated practice area fields not be searchable, and that the “two-pane” LRS approach be used.

This compromise was proposed as a package. It was never meant to be a piecemeal summary of elements we liked and disliked. This sentiment could not have been stated more clearly. On March 18, 2009, Tom Kuhnle wrote to the entire FAL Task Force:

Just to be clear about the proposal for those who weren’t on the call, we agreed to explore with our respective constituencies a possible *compromise package* with three specific components: (1) a “two-box” LRS speed bump; (2) the addition of two of the four proposed search fields (i.e., add language and certified specialty, but do not add section membership and practice area); and (3) the addition of enhanced profiles (e.g., adding a picture, website link, map, other info.). As shown in Paul’s slides, there are some other less important tweaks on which we agreed.

From my Bar Association’s perspective, leaving out the section membership and practice area search fields is critical. It is these two fields that would facilitate the most direct competition against our LRS, thus harming it. So it is not quite accurate to say we have “two remaining issues.” *What we have is a proposed compromise package.* If our respective constituencies can live with the *package as a whole*, we could have something the entire task force could support.

See Exh. C. The FAL Task Force members agreed to take the proposal back to their respective constituencies and report back to the entire FAL Task Force on their position by April 15.

As agreed, the non-BOG Task Force members took the compromise package back to their constituencies and reported back to the entire FAL Task Force on April 14, 2009 that as a compromise package, the proposal was acceptable. Unfortunately, the BOG Task Force members did not report back until April 23, 2009, and in an email on that date, they said they could not support the compromise and that they would be formulating a separate proposal to be submitted to BOG without discussion by the full FAL Task Force.

As noted in the conclusion below, we remain willing to support the compromise package. But because it was as far as our constituencies would allow us to go, we cannot support any version of FAL that contains additional harmful features.

VI. Recommendation

Because it will compromise the primary objective of the State Bar which is to protect the public; because it will harm the public benefits derived from robust LRSs; and because of a likely backlash from State Bar members, we have deep concerns about any implementation of FAL. We think the *BOG should consider this threshold issue, by itself, at its May 15 BOG meeting.*

If the BOG decides not to terminate FAL, we think it should approve the compromise package for which we expressed our support. The compromise package eliminates the most harmful elements of FAL described in the Kramer Memorandum.

If the compromise package is approved, the FAL Task Force should continue to meet in order to address the significant elements that are missing from the current proposal, including but not limited to: (1) the text of the disclaimers; (2) the information that would be solicited from members in order for them to be eligible for a FAL profile; and (3) the design of “pop-up” boxes for which slides have yet to be prepared. In this regard, we agree with the Council of State Bar Sections which states that absent more time to work through the open issues, “the preference would be to maintain the ‘status quo’ (e.g. the current State Bar database as it now exists on the Bar’s site) than to move forward....”

We look forward to presenting these views to you at the May 15 BOG meeting.

Sincerely yours,

/s/

Dan Burkhardt, Executive Director and General Counsel, Bar Association of San Francisco
Stuart Forsyth, Executive Director, Los Angeles County Bar Association
Tom Kuhnle, Immediate Past President, Santa Clara County Bar Association

EXHIBIT A

From: Paul Kramer [Pkramer@energy.state.ca.us]
Sent: Thursday, February 19, 2009 9:52 AM
To: Kuhnle, Tom; Cathy.Torney@calbar.ca.gov; george@davisbroadband.com; hmiller@girardikeese.com; english@jeannineenglish.com; sforsyth@lacba.org; micha@libertylaw.com; jamesaguirre@sbcglobal.net; dburkhardt@sfbar.org; bwbsf@yahoo.com
Cc: hfujie@buchalter.com; Gary Clarke
Subject: Find a Lawyer Task Force conference call
Attachments: data capture screens.ppt; FIND A LAWER - FEBRUARY 2009_3.ppt



data capture
screens.ppt



FIND A LAWER -
EBRUARY 2009_3.

We had a fruitful discussion yesterday but did not finish. We agreed to reconvene the meeting on:

February 25
3:00 - 4:30 pm

You should have received the meeting notice for the web meeting link and call-in numbers a few minutes ago from Gary.

Attached is a slightly revised version of the slides we were looking at yesterday along with a few slides from a previous staff presentation showing the member data input screens. After looking at the data input slides again, I may have misspoke in suggesting a intention to require that demographic data (size of firm, etc.) be supplied in order to be able to be searched by language and practice area. How that should be handled has been added as one of the "editorial decisions."

Also note that the input screens do not necessarily reflect the data that staff is currently seeking. These are draft pages from some time ago and have not been modified to reflect the discussions that have occurred in the interim. Gary, it would be helpful if you could give us a current list of the demographic data (searchable and not searchable) that staff would like to collect.

Paul

Motivations

Help the public and LRS' by more actively promoting and explaining the benefits of using a LRS

Gather member demographic information to help the State Bar

Target mailings

Target benefit opportunities

Better serve the members in other ways

Bring members to Bar web site, develop an electronic communication habit, leading to reduced costs by providing more services via the web

To get the information voluntarily, we need to provide members an incentive—searchable data—practice area, languages, links to web sites

Or do we mandate provision of the information--another mandatory report? (Statutory authority required)

EXHIBIT B

From: Stuart A. Forsyth [sforsyth@lacba.org]
Sent: Wednesday, April 29, 2009 3:46 PM
To: Paul Kramer; Kuhnle, Tom; George Davis; Howard Miller; Jeannine English; Micha Liberty; James Aguirre; Daniel Burkhardt; bwbsf@yahoo.com
Cc: Holly Fujie; Cathy Torney; Gary Clarke; Judy Johnson
Subject: Re: Find a Lawyer Task Force -- report of State Bar contingent positions
Importance: High

Dear Paul,

Your email of April 22nd raises significant concerns for the three members of the Find-a-Lawyer Task Force who are not members of the Board of Governors (Dan Burkhardt, Stuart Forsyth and Tom Kuhnle).

First, at our last Task Force meeting, all Task Force members agreed to explore the viability of a proposed compromise with our respective constituencies. It was agreed that not all Task Force members supported all aspects of the compromise proposal, but as a package, the Task Force hoped to bring closure to the issue.

- Tom presented the proposed compromise to the Executive Committee of the Santa Clara County Bar Association (SCCBA), and also to its Board. Tom described the compromise as a good faith effort to reach closure, and while he understood that the SCCBA had significant concerns about the effect the proposal would have on its Lawyer Referral Service and LRSs of other Bar Associations, he urged support. While expressing significant reservations, the SCCBA Board approved supporting the compromise proposal. Tom reported the Board's approval to the Task Force on April 14th.

Dan and Stuart presented the proposed compromise to ECLA. After considerable discussion by ECLA, Dan reported back to the entire Task Force on April 14th that ECLA would support the proposed compromise, although it remains deeply concerned about the detrimental effects of any attempt to go beyond the compromise.

- The BOG members of the Task Force did not report back by April 15th as agreed.
- When the BOG members reported back on April 22nd, you informed us that the Board members of the Task Force "have met several times" and not only rejected the proposed compromise, but also decided to present a new

proposal, including new screens, to the full Board at its May 15th meeting.

We are very concerned that instead of proceeding as the Task Force members had agreed, the Board members of the Task Force have chosen to abort the Task Force process and have acted on their own. We are also concerned that the Board members have gone well beyond the scope of the resolution and charge to this Task Force by the BOG. You may recall that the BOG adopted the following resolution at its November 21, 2008 meeting in San Francisco:

“RESOLVED that the Board of Governors refers back to an expanded Task Force to be appointed by the President, the Find A Lawyer proposal, with explicit direction that the **final design** include a prominent and specific reference and support of lawyer referral services, and with further instruction that the Task Force bring the **complete design** back to the Board for its consideration.”

Second, we have the following concerns about what the BOG members of the Task Force have agreed to do at this point, in direct contravention to the above resolution.

- Evidently, what the BOG Task Force members have decided to do will not be discussed by the Task Force as a whole before being presented to the Board, thereby effectively excluding the three non-Board members of the Task Force from the process.
- The BOG Task Force members thus propose to present us with a fait accompli (which is still being written), indicating that they “may attempt to summarize [our] positions,” further stating that they “welcome [our] submission of [our] own written materials” and then you predict that “oral presentations [at the Board meeting] will likely be time constrained.”

Frankly, it is impossible for us to “submit [our] own written materials” until we know precisely what the BOG members of the Task Force are recommending independent of us, and we are concerned about the integrity and fairness of the process now being used to develop a recommendation for the Board.

We note that you “hope to submit [the Board members’] materials to staff by May 1.” We would request that you provide the materials to us as soon possible and before they have been submitted to staff. We will attempt to work on a constructive substantive response.

We await the BOG members’ proposed recommendation to the Board.

Sincerely yours,

Dan Burkhardt
Stuart Forsyth
Tom Kuhnle

From: Paul Kramer <pkramer@energy.state.ca.us>

Date: Wed, 22 Apr 2009 09:21:45 -0700

To: Thomas Kuhnle <tom.kuhnle@bingham.com>, George Davis <george@davisbroadband.com>, Howard Miller <hmliller@girardikeese.com>, Jeannine English <english@jeannineenglish.com>, "Stuart A. Forsyth" <sforsyth@lacba.org>, Micha Liberty <micha@libertylaw.com>, James Aguirre <jamesaguirre@sbcglobal.net>, Daniel Burkhardt <dburkhardt@sfbar.org>, <bwbsf@yahoo.com>

Cc: Holly Fujie <hfujie@buchalter.com>, Cathy Torney <cathy.torney@calbar.ca.gov>, Gary Clarke <gary.clarke@calbar.ca.gov>, Judy Johnson <judy.johnson@calbar.ca.gov>

Subject: Find a Lawyer Task Force -- report of State Bar contingent positions

Task Force members:

The Find a Lawyer Task Force previously agreed that bar member profiles can include a photograph, the member's address shown on a map, a link to the member's web site (with a cautionary intermediate note that the user is leaving the Bar's web site for parts unknown), and languages spoken by the member.

Certified specialty and languages spoken would be searchable via the advanced search screen. (Certified specialty is already searchable, but not from the advanced search screen.) Members could opt to avoid being searchable by practice area; this would allow a district attorney or public defender to tell us that she practices criminal law without getting calls about taking criminal cases.

The State Bar members of the task force have met several times to consider the remaining points for which agreement was not reached: whether to make the member roster searchable by Section membership and/or self-designated practice areas.

We will recommend to the BOG that searching by both Section membership and practice area be enabled. On further reflection, we cannot recommend driving all users through the LRS/Legal Aid search choice before a simple search by attorney name or bar number can be made. This is our most used feature at present; our members (and judges) will be outraged if it were made less convenient. What we will recommend is illustrated on the attached slides;

The Bar's new home page would have two search links--one to the simple name or

bar number search, and another to a consumer search page. Explanatory balloons would pop up when the user hovers her mouse over either of them. See the attached mockup.

The name or number search page would allow the entry of an attorney's name or bar number and search the member records for matches. That is the same as the present function, though instead of a direct link to the advanced search in the event that the user doesn't have the attorney's name or number, it would now link the user to the consumer page.

The consumer page could be either the 2-pane or 3-pane versions shown in the attachment. Each has its fans in our group (State Bar subset). The 2-pane approach would require one to conduct an LRS search before being offered the link to the advanced search. The 3-pane page offers LRS, Legal Aid and name/number or advanced searches all in one convenient place, with LRS receiving top billing.

Some of us are concerned that forcing members (and judges) to go through an LRS search before they can access the advanced search will result in additional outrage from those quarters; not as much as would burying the name/number search, but enough.

On a side note, we recently received a request from the Public Interest Clearinghouse and Legal Aid Association of California to direct Legal Aid searches to their LawHelpCalifornia.org web site. Their letters are attached. We already link to that page, though not as the only source of legal aid referrals. The sample slides now link to their site. We welcome your thoughts.

Process wise, we've fully discussed the issues and have come as far as we can. It is time to present the questions to the Board of Governors for their decision on May 15. Our group will prepare a summary of our recommendations for the Board agenda packets. While we may attempt to summarize your positions, we welcome your submission of your own written materials (the best avenue as oral presentations will likely be time constrained). We hope to submit our materials to staff by May 1.

Paul

EXHIBIT C

From: Kuhnle, Tom
Sent: Wednesday, March 18, 2009 4:47 PM
To: 'Paul Kramer'; Cathy.Torney@calbar.ca.gov; george@davisbroadband.com; hmiller@girardikeese.com; english@jeannineenglish.com; sforsyth@lacba.org; micha@libertylaw.com; jamesaguirre@sbcglobal.net; dburkhardt@sfbar.org; bwbsf@yahoo.com
Cc: hfujie@buchalter.com; Gary.Clarke@calbar.ca.gov
Subject: RE: Find a Lawyer Task Force -- status report only on March Board agenda

Paul:

Thanks for revising these slides so quickly.

Just to be clear about the proposal for those who weren't on the call, we agreed to explore with our respective constituencies a possible compromise package with three specific components: (1) a "two-box" LRS speedbump; (2) the addition of two of the four proposed search fields (i.e., add language and certified specialty, but do not add section membership and practice area); and (3) the addition of enhanced profiles (e.g., adding a picture, website link, map, other info.). As shown in Paul's slides, there are some other less important tweaks on which we agreed.

From my Bar Association's perspective, leaving out the section membership and practice area search fields is critical. It is these two fields that would facilitate the most direct competition against our LRS, thus harming it. So it is not quite accurate to say we have "two remaining issues." What we have is a proposed compromise package. If our respective constituencies can live with the package as a whole, we could have something the entire task force could support.

-----Original Message-----

From: Paul Kramer [mailto:Pkramer@energy.state.ca.us]
Sent: Wednesday, March 18, 2009 4:37 PM
To: Kuhnle, Tom; Cathy.Torney@calbar.ca.gov; george@davisbroadband.com; hmiller@girardikeese.com; english@jeannineenglish.com; sforsyth@lacba.org; micha@libertylaw.com; jamesaguirre@sbcglobal.net; dburkhardt@sfbar.org; bwbsf@yahoo.com
Cc: hfujie@buchalter.com; Gary.Clarke@calbar.ca.gov
Subject: Find a Lawyer Task Force -- status report only on March Board agenda

Sorry, I forgot to include a slide with ECLA's additional concerns from today's meeting.

Find a Lawyer Subcommittee members:

Here are the slides, revised during our meeting this afternoon.

As a reminder, the Bar and Bar Association groups agreed to communicate back to each other our positions about the two remaining issues--searching by Section membership and by practice area--by April 15 so that we can prepare for the discussion of the project at the May Board of Governors meeting. No further subcommittee meetings are scheduled at this time but could be if we feel the need.

Paul



THE BAR ASSOCIATION OF
SAN FRANCISCO

May 15, 2009

The Consumer Perspective

on

the State Bar's proposed "Find A Lawyer" Program

"If you're looking for a lawyer, you're in safer hands with the State Bar."

presented by

David E. Hopmann, BASF Board Member



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State Bar Messaging Context

I. The State Bar's Messaging to the Public

For over 20 years the State Bar has been communicating the following key messages to the public:

- *When looking for a lawyer...*
 - you are in safer hands with the State Bar.
 - you should choose a lawyer who has been pre-screened for minimum qualifications in a State Bar program.
 - it's important to find an attorney who is required by the State Bar to carry malpractice insurance.

This messaging from the State Bar has been:

- Voluntary
- Express
- Consistent



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State Bar Messaging Context

These are the key features and benefits of so-called “State Bar Certified Lawyer Referral Services.” The features are widely touted by the State Bar itself, and by licensees of the State Bar’s certification mark.



This messaging is ubiquitous on the Internet,
and it will be ongoing.



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State Bar Rules Context

II. The State Bar's Rules and Regulations

How do the Rules define “lawyer referral service”?

– **Definition.**

- “Lawyer Referral Service” includes “any [] entity ... which operates for the direct or indirect purpose of referring potential clients to lawyers, whether or not the term ‘referral service’ is used.” *State Bar Rules, Rule 4.*

– **Purpose.**

- A principal purpose of a Lawyer Referral Service is “[t]o provide a way in which any person may be referred to a *qualified, insured lawyer* who is able to render and is interested in rendering needed legal services...” *State Bar Rules, Rule 5.*



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State Bar Rules Context

- In California, Lawyer Referral Services must meet certain minimum standards and be *certified* by the State Bar.
 - See *Cal. Bus. & Prof. Code § 6155(f)(1),(2)*.
- Minimum standards for lawyers on a “certified” Lawyer Referral Service
 - Attorneys on a subject matter-specific panel must:
 - Be “qualified by virtue of suitable experience”
 - Hold malpractice coverage of at least \$300,000 per year.
 - Lawyer Referral Service must periodically review quality of attorney work and continuing eligibility of attorneys for each panel.
 - *State Bar Rules, Rule 11.*



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“Find A Lawyer” in Context

III. Putting “Find A Lawyer” in Context

The proposed “Find A Lawyer” program:

- Is a lawyer referral service within the meaning of the State Bar’s own Rules.
- Does not comply with the letter or the spirit of the State Bar’s own Rules.
- Conflicts with the State Bar’s voluntary, express, and consistent messaging to the public about the benefits of finding a lawyer with the help of the State Bar.
- Is likely to confuse and deceive the public as to the benefits of relying on the State Bar for help in finding an attorney.
- Cannot be patched up with disclosures and disclaimers on the State Bar’s website that purport to shift risk to the consumer, and negate ubiquitous State Bar messaging that directly conflicts with the disclosures and disclaimers.
- Will be virtually impossible to advertise without running afoul of long-standing precedents prohibiting bait advertising and bait-and-switch practices.



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Goals for State Bar

IV. How to Fix It.

- Any State Bar searchable attorney database, whatever it is called, should either:
 - Limit database information to objective, verified facts.
 - attorney contact information
 - year of Bar admission
 - college and law school education
 - Bar-certified legal specialty (if any)
 - record of discipline (if any)

OR

- Comply with the State Bar’s own Rules applicable to “Certified” Lawyer Referral Services.



- V. How Do Consumers Understand the State Bar’s messaging about certified Lawyer Referral Services?
- Will consumers understand the term “*certified*”?
 - Consumers will have a *common sense* understanding (e.g., “certified” means “approved”), not the technical and legal definition in the State Bar’s Rules.
 - What does “*lawyer referral service*” mean to a consumer?
 - Internet searches for terms like “find lawyer” and “lawyer referral services” yield numerous indicative results:
 - law firm home pages
 - commercial directories of attorneys
 - businesses that sell “lawyer referral services” (*some sites proudly state they are State Bar “certified” and explain why it matters*)
 - ABA website links to various “find a lawyer” services
 - online search services such as “Florida Bar Referral Service Online”



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Effect of State Bar's Outreach

- Will consumers look to technical definitions of “Lawyer Referral Service”? *No*.
 - Thus, a disclaimer on some website that “this is not a lawyer referral service” is a meaningless disclaimer.
 - Consumers will, however, likely believe that:
 - It is important to pre-screen attorneys for quality and malpractice insurance.
- AND*
- A State Bar-offered service would refer consumers only to attorneys who have been pre-screened for quality and malpractice insurance.
 - Why would consumers believe these things?
 - Because the State Bar has expressly invited them to do so.



Challenges of Disclaimers

- Rules from FTC's *Policy Statement on Deception*
 - “Written disclosures or fine print may be insufficient to correct a misleading representation.”
 - “Pro forma statements or disclaimers may not cure otherwise deceptive messages or practices.”
- Rules from case law on *disclosures in consumer materials*
 - Standards for visibility and clarity are *far* higher than, e.g., standards for disclosures in financial reports for investors.
- Rules from FTC's monograph entitled “*Dot Com Disclosures*”
 - An advertiser must be able to substantiate all reasonable interpretations of an advertisement. (footnote 12)
 - Disclosure cannot cure a false claim. (p. 4)



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NAD Case Law

- Large body of case law developed by the National Advertising Division (“NAD”) of the Council of Better Business Bureaus
 - Consistently holds that footnotes and disclaimers can be used to qualify, but not contradict, a main claim.
 - The State Bar’s own “main claims” outlined above, are powerful and ubiquitous.
- The basic teaching of case law on “click-through” and other on-line disclaimers: they are ineffective to do anything that confounds consumers’ reasonable pre-existing expectations.



Consumer expectations

How would consumers react to State Bar disclosures?

- Consumers, with lives to lead, are driven by common sense and impatience.
- Consumers routinely click through seas of gray print to download software, or make purchases on line, without reading any of it.
 - This makes some sense, because the law basically provides they're not bound by anything in the disclosures that would present any major surprises, or confound their expectations in any significant way.
- Consumers will view the State Bar's disclaimers and disclosures as just another “toaster warranty” that can be ignored.
- They will be confident in the expectation that they are in safer hands looking for a lawyer through the State Bar. Why?
 - Because the State Bar has repeatedly told them it “certifies” the superior quality and safety of its lawyer locator offerings.



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Risks of “Bait” Advertising

- Find A Lawyer advertisements face significant hurdles
 - Rules against *“bait” advertising & practices*.
 - *See Guides Against Bait Advertising, 16 CFR PART 238 (“Even though the true facts are subsequently made known to the buyer, the law is violated if first contact or interview is secured by deception.”)*.
 - *Consumer confusion*
 - *Disclaimers that are* convoluted, oxymoronic and *ineffective*.
- Example of possible “teaser ad” that faces these hurdles
 - “Need a lawyer in California? Try the State Bar’s Find A Lawyer search service, not certified by the State Bar, and not to be confused with a lawyer referral service.”



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Program Will Confuse Consumers

- The Find A Lawyer program is no more safe or reliable than the yellow pages or an Internet search engine.
 - Teaser ads will suggest otherwise (just by using the State Bar’s name), unless the ads are laced with disclaimers and disclosures.
 - Teaser ads can’t dispel the State Bar’s *main message* to consumers over the years:
 - ***When looking for a lawyer, you are in safer hands with the State Bar.***
 - This message has been reinforced for years by the State Bar’s claims for its program to “certify” lawyer referral services.
 - “Lawyer referral services which are certified follow certain rules which will protect you.” *State Bar of California website.*
 - http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10182



VI. Summing It Up

- It really is pretty simple...
 - In the lawyer search space, the public believes that the **State Bar's brand** stands for the following:
 - you are in safer hands than you would be finding a lawyer on your own.
 - you should choose a lawyer pre-screened for minimum qualifications.
 - you should choose a lawyer who carries malpractice insurance.
 - This is all thanks to ongoing advertising by the State Bar.
 - Because this is what the **State Bar brand** means to consumers in the lawyer search space, all uses of the **brand** in that space will evoke these key messages for consumers.



- Any effort by the brand owner – the State Bar – to use a State Bar-branded platform, such as the State Bar website, to disavow this well-established meaning of the brand in that space is self-contradictory and doomed to failure.
- Which is it – does pre-screening for minimum qualifications matter, or doesn't it?
- Which is it – does malpractice insurance matter, or doesn't it?
- Which is it – does this search function do anything for me that the Yahoo! Yellow pages doesn't do? I certainly thought it did, because (after all) I am in the hands of the State Bar. Am I not?
- ***Any lawyer search function that uses the State Bar's brand (whatever the function is called, and whether or not the term "certified" is used in describing the function) should comply with the State Bar's own Rules for Certified Legal Referral Services.***



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Thank you for your attention.

I would be happy to answer any questions.

David E. Hopmann

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May 13, 2009

Holly Fujie, President
Members, Board of Governors
State Bar of California
BY EMAIL ONLY

Re: Find a Lawyer

Dear President Fujie and Board Members:

I am a practitioner and professor of legal ethics in San Francisco. My background as it is relevant to this letter includes having been one of the drafters of the original formulations of Business & Professions Code § 6155, regulating lawyer referral and information services (LRISes), one of three principal drafters of the State Bar Minimum Standards governing LRISes,¹ and one of the three principal drafters of the ABA Model Rule and Model Legislation on Lawyer Referral and Information Services. Since 1989, I have served as an ABA "PAR consultant" advising bar associations around the country about setting up LRISes to serve the public interest.

I understand that the State Bar's proposed "Find a Lawyer" program is on the Board's agenda again on May 15, 2009. I have read the agenda item and proposed resolution. I am also aware that many bar associations have strongly opposed the resolution. Finally, I am aware that the Task Force appointed by Ms. Fujie was unable to reach a consensus on this resolution.

I have "no horse in this race," but perhaps the person most centrally involved in drafting the California and ABA standards and as someone who has approached the LRIS issue from an ethics standpoint, I do want to make these observations:

1. I agree completely that the State Bar "member search" website should make it as easy as possible to locate a lawyer without going through referral pages. Lawyers use this website often. Given my practice, our office probably uses it several times a day.
2. I also see nothing wrong with people listing their section memberships on their State Bar page. In fact, my understanding is that the member page *already* lists those sections. To check this, I went to several pages last week and found members' sections already listed. I am not sure why the resolution addresses this issue.
3. I also see value in consumers being able to search by region or locality, as well as by language spoken, for example, if proof of language literacy is somehow verified.
4. However, I am very concerned about lawyers being able to self-select their own practice areas. It is clear that under the State Bar's own LRIS certification standards, any selected grouping of lawyers by practice area that does not meet the State Bar's Minimum Standards would be an illegal LRIS. Those minimum standards include, among other issues, a requirement that the lawyer carry a policy of errors and

¹ Ronald Abernethy of Napa, one of the two other principal drafters of the California Minimum Standards, has read this letter and wishes to be considered a co-signatory. The other principal California drafter is not available to comment.

omissions insurance and a subject-matter qualification in the particular area of law. It would appear that no qualifications of any kind would be involved here.

5. The current resolution, as I read it literally, merely provides a list of all lawyers who claim to practice in a particular field so that consumers searching by practice area get a complete list of everyone who self-selects that field. Such a list would have little practical utility to consumers or to other lawyers, and could still be construed as an LRIS. Such a resolution would appear to be inadvisable at best.

However, if the consumer who searches by practice area obtains the name of a single lawyer or limited number of lawyers who self-selected that area, then the State Bar will clearly have created an uncertified lawyer referral service. It appears from the “slides,” at page 7, that this may be the case.²

Why is all this so important? First, the last thing the State Bar should be doing is setting up an uncertified LRIS that would violate its own Minimum Standards. Not only would this service be diametrically opposed to existing State Bar policy (as embodied in those standards), but the State Bar would open itself to lawsuits, likely successful, from – among others – any dues paying Bar member on a certified LRIS panel who objects to competing with Find a Lawyer.

The second and more important reason is consumer protection. The State Bar is presumably offering this service to benefit both lawyers and consumers. As a dues-paying State Bar member, I applaud the Bar’s performing services on my behalf. But our duty as an integrated bar is to serve the needs of the public first. On this score, I simply do not see how a list of lawyers, either as an entire list or – even worse – a selected number of names (implying some kind of vetting or general approval), assists the consumer in finding a lawyer.³

Let me compare, from the consumer’s perspective, “Find a Lawyer” to a certified LRIS, say at the Bar Association of San Francisco (BASF).⁴ Prospective client #1 contacts BASF by phone call or on its website looking for, say, a personal injury lawyer. Prospective client #2 looks for an injury attorney on the State Bar’s site. The chart below explains what each client gets:

Type of Qualification	Bar Association of San Francisco	State Bar “Find a Lawyer”
Malpractice insurance	Required	Unknown
Trial experience	Two jury trials to completion	Unknown as to <u>any</u> court experience at all
Handled p.i. cases with serious injuries	Two cases through complete discovery in specific area (e.g., aviation, grave injury, common carriers, etc.)	May never have done a case involving <u>any</u> injury

² The same problem would exist if consumers could search by section membership and get not a list of all members of the section but a limited number of “hits.”

³ It is true, of course, that Find a Lawyer would cover all members of the State Bar while total LRIS membership is probably less than 10,000. However the issue is not pure numbers, but whether an attorney (especially one listed on a Bar list) has undergone vetting as to qualifications to be the consumer’s lawyer.

⁴ I cite their LRIS because it is the one I’m most familiar with. Some years ago, I chaired a committee that revised all of BASF’s panel qualifications.

The dangers of self-selection are obvious. Which lawyer would you choose for a friend or member of your family? The mantra behind the development of LRIS qualifications over the last 20 years – and the impetus for the regulations I have written in California and nationally – is that getting an LRIS panel member should be far better than just looking in the Yellow Pages.⁵ “Find a Lawyer,” unfortunately, will be no better, and because of the perceived imprimatur of the State Bar, could be worse.

In conclusion, if the State Bar intends merely to allow lawyers to list their section memberships, that already exists. If the intent is to allow members to self-select practice areas without a search-engine that provides a rotating limited list, that seems to have no value to consumers and little for lawyers.

However, if the purpose of the resolution is to allow a consumer to search by practice area or by section membership and have displayed a selected number of lawyers in that area, even if the lawyers are selected by rotation, the State Bar will very clearly be creating its own Lawyer Referral Service.

Not only would this “State Bar Lawyer Referral Service” do a disservice to the public, it would not be certified, and it would have no chance to become certified under the Bar’s own carefully-crafted certification rules, the Minimum Standards. The State Bar would also be opening itself up to lawsuits from its dues-paying members – especially members of LRISes – who object to their dues being used to help provide a competing but illegal LRIS.

I ascribe no bad intent on the part of anyone who has supported Find a Lawyer. On first blush, it may seem like a positive, consumer-helpful program. Unfortunately, it is not, and it could also jeopardize the State Bar by putting it at odds with its own published regulations.

Sincerely,

Richard Zitrin
(electronic signature)

Richard Zitrin

RZ/mcm

⁵ I note that at pages 3-4, the Agenda Item implies criticism of local bars for opposing “Find a Lawyer” because the program would cost local bars revenue.

I cannot speak for local bar associations, but the “much better than the Yellow Pages” mantra has been part of my experience with LRIS regulatory schemes from the beginning, both in California and nationally – beginning with the extensive revision of BASF panel qualifications that I led in the mid-1980’s. My (and indeed our) primary concern, even back then, was to provide consumers with a lawyer appropriately qualified in the area of practice, i.e., substantially better than the Yellow Pages or any other list. Indeed at that time, BASF’s LRIS lost money every year, and it was only as a result of implementing marketing techniques suggested by ABA PAR program consultants that BASF later began to make money. This was truly an example of “doing well by doing good.” I have no objection to LRISes making money, but whatever importance revenue may now have for BASF or other local bars, it is not, in my view, the principal or even a terribly important reason for the existence of LRISes.