



THE STATE BAR
OF CALIFORNIA

180 Howard Street, San Francisco, CA 94102-1639

OFFICE OF LEGAL SERVICES

Interim Director, Mary Lavery Flynn

Legal Services Trust Fund Program (415) 538-2098 – Fax (415) 538-2529

Center on Access to Justice (415) 538-2176 – Fax (415) 538-2552

Memorandum

To: Legal Services, Pro Bono and Equal Access Committee (LSC)

From: Rodney Low, Program Developer, Office of Legal Services
Mary Lavery Flynn, Interim Director, Office of Legal Services

Re: Lawyer Referral Services: Discussion of Issues for Rule Revision Process and Report
from State Bar Forum

Date: December 17, 2009

Introduction to the Certified Lawyer Referral Services Rules Revision Project:

The State Bar of California is undertaking a revision of all of its rules, including the **Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services Including Minimum Standards for a Lawyer Referral Service in California (Effective January 1, 1997)**.

The goal is to conform the Rules to the “Plain English” format, as well as to delete obsolete references and modernize the rules relating to operations of the certified lawyer referral services. The State Bar Board of Governors recognizes the importance of supporting, promoting and enhancing certified lawyer referral services. The original intent of the certification system was to provide a sensible and ethical way to match clients with attorneys that meet certain standards to protect the public, for example, by ensuring that panel members have malpractice insurance and relevant experience, and agree to be accountable for any disputes. With over 5300 panel members in certified lawyer referral services in 2008, more than 175,000 Californians were provided with 30 minute consultations. As a result, in 2008 alone, thousands of free consultations were given, hundreds of reduced fee cases were accepted, and hundreds of thousands of dollars were donated in support of legal services and pro bono programs.

State Bar Sponsored LRS Forum

On October 2, 2009, the State Bar sponsored and hosted a day-long forum for all certified lawyer referral services, designed to provide an opportunity for every service to network and share their experiences and give each other technical assistance, particularly in the developing areas of electronic marketing and recruiting to the legal community. Funded by a grant from the California Bar Foundation, 54 members of the lawyer referral services community attended and provided valuable information about the state of their services to the State Bar and to each other.

At this forum, certain issues were raised which could impact the substantive revision of these rules in addition to the other proposals. While certain rules may be obsolete, they may or may not need updating.

Examples of Rules to Consider Amending:

The following examples describe issues that will be considered during the Rule Revision process:

LRS Rotational System Requirement: Newly-emerging web-based entities (not certified lawyer referral services) are promoting a ratings-based system and releasing information about their attorneys which will allow a consumer to make a selection based on an attorney's rating among the public. Rule 13.1 precludes this because of the rotational requirement of an attorney referral. If a certified lawyer referral service does not have an adequate experience-progressive subject matter panel, the LRS would suffer in comparison to a ratings system. The rule mandating a strict sequential rotation may need to be rewritten. This is one example of how the rules may need to be modernized.

Possible Revisions to Address New Technologies: Rule 13.5, which states, "A Lawyer Referral Service shall not be principally operated by a telephone answering service or device." The original intent of this rule was to require services to have trained phone consultants assist the caller in identifying and categorizing their legal issues, which has proven to be the most effective way to properly place and match a caller with an attorney that has the relevant experience. While this is a generic reference to electronic communications, some services may be resorting more to web-based communications or electronic mail in order to serve as many inquiries with fewer staff. This rule may need to address the newer technologies.

Consider Change to Malpractice Coverage Requirement. Rule 11.3, which requires that attorney members must have Errors & Omissions coverage in the minimum amount of \$100,000 for each occurrence and \$300,000 aggregate per year. The Rules Revision Committee would consider whether or not to increase the coverage amounts.

Conclusion

This is merely a sampling of issues that have arisen over the years as rules possibly in need of revision. With this proposed overhaul of all the Rules, this is an appropriate time to review and consider all of the possible technical and substantive changes necessary.

State Bar staff will present a draft of revisions to the current Rules & Regulations for public comment by the March Board Meeting.

Attachments: Agenda, LRS Forum, October 2, 2009;
Business and Professions Code Section 6155;
Rules and Regulations of the State Bar of California Related to Lawyer Referral Services.