

Title 3. Programs and Services  
Division 5. Providers of programs and services

## Chapter 3. Lawyer referral services

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## Article 1. Certification

### Rule 3.700 Certification required

An individual or organization that refers prospective clients to attorneys must comply with minimum standards and be certified by the State Bar of California as a lawyer referral service unless exempt by law.<sup>1</sup> These rules set forth the minimum standards and certification requirements.<sup>2</sup>

### Rule 3.701 Application for certification

- (A) To initiate or continue certification, a lawyer referral service must submit an Application for Certification as a Lawyer Referral Service and a separate application fee for each county in which it operates. The State Bar may waive the separate application requirement for a lawyer referral service operating in more than one county on written request supported by evidence and for good cause.<sup>3</sup>
- (B) Notwithstanding provision (A), a lawyer referral service operating in two or more counties defined by the State Bar as underserved is required to submit only one application and one application fee to initiate or continue certification.<sup>4</sup>
- (C) Every application must include panel membership criteria, including criteria for suspension and removal that provide for written notice and review with an opportunity to respond.<sup>5</sup>

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<sup>1</sup> Business & Professions Code § 6155. See also California Rules of Professional Conduct, Rule 1-600, Legal Service Programs.

<sup>2</sup> See current rule 1.1: “The purpose of these Rules and Regulations Including Minimum Standards (“Rules”) is to establish minimum standards for the operation of Lawyer Referral Services and facilitate the enforcement of Business & Professions Code §6155 pertaining to Lawyer Referral Services.”

<sup>3</sup> See current rule 8.2, “2 If a Lawyer Referral Service operates in more than one county, it shall apply for separate certification for each county in which the Lawyer Referral Service operates and fulfill these Rules for each county. For the purpose of this Rule, a Lawyer Referral Service “operates” in a county if it makes referrals to attorneys in that county. . . . This requirement may be waived if the Lawyer Referral Service presents written evidence to the State Bar that good cause exists for not fulfilling all these Rules for each county in which it operates.”

<sup>4</sup> Current rule 8.2 includes this provision: “A Lawyer Referral Service will not be required to establish a separate office in each county in which it operates. For the purposes of this Rule, District 1 will be considered as if it were one county. State Bar District 1 counties: Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity and Yuba.”

<sup>5</sup> See current rule 11.5, which requires that “Each Lawyer Referral Service shall establish a uniform procedure to review refusals to admit an attorney to, and decisions to suspend or remove an attorney from, membership on any panel. In every case where a Lawyer Referral Service refuses to admit an attorney to a panel or suspends or expels an attorney from a panel, the Lawyer Referral Service must give the attorney a written statement of the reasons for its decision and offer the attorney a meaningful opportunity to be heard.”

- (D) An application for initial certification may be submitted at any time. An application for continuance of certification must be submitted with the annual report required by Rule 3.728. Within a reasonable time, the State Bar will notify an applicant that certification has been granted or denied or that an application is incomplete or noncompliant.<sup>6</sup>
- (E) An application must be completed in accordance with application instructions and filed with any required fee.<sup>7</sup>

#### Rule 3.702 Application fees

- (A) Application fees for initial and continued certification, which are set forth in the Schedule of Charges and Deadlines, depend on the number of counties in which a service operates and whether a service is non-profit or for-profit. Application fees may not exceed \$10,000 or one percent of gross annual revenues, whichever is less.<sup>8</sup>
- (B) An application fee not received by the deadline is subject to the late penalty set forth in the Schedule of Charges and Deadlines. If the fee and penalty are not received within thirty days of the deadline, certification may be suspended and the lawyer referral service must cease any activity subject to these rules.
- (C) Fifty percent of an initial application fee is refundable if an applicant submits a written request to withdraw the application within twenty days of submitting it. An application fee is otherwise not refundable.<sup>9</sup>

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<sup>6</sup> See current rule 6.3, which states that "Applications for first time certification may be filed at any time during the year. Applications for recertification must be submitted in conjunction with the filing of the annual report to the State Bar pursuant to Rule 15.2."

<sup>7</sup> See State Bar rules 1.24 and 1.22(E). Rule 1.24 provides that "When a rule refers to a form, the State Bar reserves the right to reject a form that is altered in language or structure or that is not completed and submitted according to instructions." Rule 1.22(E) states that "The "Schedule of Charges and Deadlines" is the current schedule adopted by the Board of Governors that specifies by rule number and title any amount that must be paid and the date for paying it or otherwise taking an action required to comply with a rule."

<sup>8</sup> Business & Professions Code § 6155f.4. Current 9.2 provides that "Such fees [for certification or recertification] shall be determined, in whole or in part, by a consideration of any combination of the following factors: a Lawyer Referral Service's gross annual revenues, number of panels, number of panel members, amount of fees charged to panel members, or for-profit or non-profit status; provided that such application or recertification fees not exceed ten thousand dollars (\$10,000) or one percent (1%) of the applicant's gross annual revenues generated by lawyer referral activity, whichever is less."

<sup>9</sup> Current 9.6 provides that "If an application is withdrawn in writing within twenty (20) days after submission, fifty percent (50%) of the application fee shall be refunded. There shall be no refund of fees after that period of time."

- (D) An application or late fee for continued certification may be waived or reduced because of demonstrated financial necessity as evidenced by gross annual revenues, panel size, geographic area served, length of time in operation, or the like.<sup>10</sup>

#### Rule 3.703 Denial of application<sup>11</sup>

- (A) An application for initial certification that fails to comply with these rules is denied in a written notice explaining the denial.
- (1) Upon receipt of a notice of denial, an initial applicant may submit a written request for reconsideration within thirty days of the date of the notice. The request must explain why the application was compliant and be supported by any relevant evidence.
  - (2) Within sixty days of receiving a request for reconsideration of denial, the State Bar may grant certification or confirm denial of the initial application. If the denial is confirmed, the applicant may submit a petition for review to the State Bar Court in accordance with its rules.
  - (3) Denial of an application for initial certification does not preclude an applicant from submitting a new application. A new application must be submitted in accordance with application instructions and with the fee set forth in the Schedule of Charges and Deadlines.<sup>12</sup>
- (B) An application for continued certification that fails to comply with these rules subjects a lawyer referral service to suspension or revocation pursuant to rule 3.706.

#### Rule 3.704 Issuance of certification

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<sup>10</sup> Current 9.7 provides that "An applicant may request in writing a waiver or reduction of fees based on financial necessity. The State Bar shall approve or deny the request for waiver or reduction of fees based on a consideration of, among other factors, the Lawyer Referral Service's gross annual revenues, panel size, geographic area served, and length of time in operation."

<sup>11</sup> Current rule 7, Denial of Application for Certification to Operate a Lawyer Referral Service, details more complex procedures.

<sup>12</sup> Current rule 8.5 provides that "Denial of an application for first time certification shall not prohibit the filing of a new application. Upon reapplication, the applicant must demonstrate full compliance with all requirements for certification. The fee for reapplication shall be the same as for application."

The State Bar may grant certification with or without conditions for two years or a shorter time specified by the State Bar.<sup>13</sup> Certification terminates at the end of the certification period unless renewed in accordance with these rules.

#### Rule 3.705 Audits<sup>14</sup>

Before granting or continuing certification, waiving an application fee, or at any other time, the State Bar may conduct an audit to determine whether a lawyer referral service has complied with these rules. Any audit must be at the expense of the lawyer referral service.

#### Rule 3.706 Suspension or revocation of certification<sup>15</sup>

- (A) The State Bar may suspend or revoke certification of a lawyer referral service for failure to comply with these rules or for other good cause.
- (B) A lawyer referral service is entitled to notice of intention to suspend or revoke certification that states the reasons for the State Bar's action.<sup>16</sup>

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<sup>13</sup> Three current rules are comparable. Current rule 7.4 provides that "Upon the completion of such consideration [pursuant to review of denial of application], the subcommittee shall 1) certify the Lawyer Referral Service with or without conditions as the subcommittee determines appropriate; 2) request further information or amendment to the application; or 3) decline to certify the Lawyer Referral Service." Current rule 8.1 provides, "Certification shall be for no more than two years from the date issued or for such shorter periods of time as may be determined by the State Bar. Certification shall be renewed every two years or for such shorter periods of time as may be determined by the State Bar, by the filing of a recertification application." Rule 8.4 provides, "If certification is not renewed or is revoked pursuant to Rule 19, it shall expire and terminate. All activities subject to certification must cease upon the expiration of certification, non-renewal of certification or upon notice of revocation of certification, unless certification is extended pursuant to Rule 8.3."

<sup>14</sup> The two parts of current rule 16 deals with this topic. "16.1 Prior to certification or recertification and/or waiving the application or renewal fee under Rule 9.7, the State Bar of California shall review and conduct an investigation and administrative audit of each Service, as the State Bar deems appropriate and as resources allow, to determine and assure compliance with these Rules. 16.2 The State Bar shall have the right at any time to conduct an audit or investigation of any Service. Any audit or investigation under Rule 16 shall be at the Service's expense. The Service and its sponsoring entity shall have the obligation to cooperate fully therewith."

Rule 3.720(G), General duties of a lawyer referral service, requires a lawyer referral service to cooperate with an audit.

<sup>15</sup> See Business & Professions Code § 6155g. Current Rule 19 allows for suspension or revocation for noncompliance with the LRS rules or other authority and for "other good cause," including "Sharing common or cross ownership, interests, or operations with any entity which engages in referrals to licensed or unlicensed health care providers" and "Direct or indirect consideration regarding referrals between an owner, operator or member of a Lawyer Referral Service and any licensed or unlicensed health care provider," and "Advertising on behalf of attorneys in violation of the Rules of Professional Conduct." The proposal deletes these reasons because they repeat Business & Professions Code § 6155g.

- (C) A lawyer referral service may file a written request for review of suspension or revocation of certification within thirty days of receipt of the notice. The request must explain why the action was inappropriate and be supported by any relevant evidence. Failure to request review results in final suspension or revocation of certification.<sup>17</sup>
- (D) The State Bar must respond to a request for review that meets the requirements of these rules within sixty days of filing and give the lawyer referral service an opportunity to support the request. The State Bar may then continue, suspend, or revoke certification with or without conditions as it deems appropriate. The State Bar must provide the lawyer referral service a written statement of the reasons for its determination.
- (E) Within thirty days of receipt of the notice of suspension or revocation, the lawyer referral service may submit a petition for review to the State Bar Court in accordance with its rules.<sup>18</sup> Certification is suspended or revoked for failure to submit a timely petition for review of suspension or revocation.
- (F) Pending review of a denial to continue certification, certification remains in effect unless the State Bar suspends or revokes it.

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<sup>16</sup> See Rule 3.708, Notice, which would apply to any notice required by these rules. Current rule 6.5 provides that "The Chief Executive Officer of the State Bar or a person or persons designated by the Chief Executive Officer shall review each application and within a reasonable time thereafter approve or deny the application and notify the applicant of the reasons therefore, or seek additional information regarding an incomplete or insufficient application. If the application is determined to be complete and in compliance with these Rules and other applicable authorities, a certificate of compliance shall be issued. This review may include an investigation and administrative audit as provided in Rule 16."

<sup>17</sup> See current rule 19.4, which states that "A Lawyer Referral Service may request review of a determination to suspend or revoke certification within thirty (30) days of written notice of the intent to revoke or suspend. The request must be in writing, set forth the reasons review is sought and include all relevant evidence supporting the position of the Lawyer Referral Service. The request shall be considered by a subcommittee appointed by the Board of Governors or another committee appointed for this purpose by it. The subcommittee shall provide the Lawyer Referral Service with an opportunity to be heard consistent with due process requirements."

<sup>18</sup> Current rule 19.9 differs: "Any further review of the issues shall be in accordance with rule 9.13(d), California Rules of Court." An alternative possibility is provided by Code of Civil Procedure § 1085, which states that "(a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person. (b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter."

- (G) When suspension or revocation of certification is final, a lawyer referral service must immediately cease any activity subject to these rules,<sup>19</sup> and the State Bar must notify every panel member of the lawyer referral service that certification has been suspended or revoked.<sup>20</sup>

#### Rule 3.707 Complaints about a lawyer referral service

- (A) The State Bar must review a complaint about a lawyer referral service submitted pursuant to these rules<sup>21</sup> within a reasonable time and
- (1) if the complaint demonstrates an apparent violation of these rules or other authority provide the service written notice of the complaint and an opportunity to respond; and
  - (2) provide written notice to the complainant regarding what action, if any, it deems appropriate.<sup>22</sup>
- (B) A complaint and investigations related to it are the property of the State Bar and remain confidential until final suspension or revocation of certification or a proceeding is initiated in State Bar Court, whichever is earlier.<sup>23</sup>

#### Rule 3.708 Notice<sup>24</sup>

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<sup>19</sup> Current rule 8.4 provides that "If certification is not renewed or is revoked pursuant to Rule 19, it shall expire and terminate. All activities subject to certification must cease upon the expiration of certification, non-renewal of certification or upon notice of revocation of certification, unless certification is extended pursuant to Rule 8.3."

<sup>20</sup> See current rule 19.5, which provides that "Upon the completion of such consideration, the subcommittee shall 1) revoke or suspend a certificate of compliance; 2) request further information; 3) decline to revoke or suspend a certificate of compliance, with or without conditions as the subcommittee may determine appropriate 19.6 The subcommittee shall report in writing its findings, determinations and reasons for its determinations. A copy of that report shall be served by mail upon the Lawyer Referral Service, and the affected panel attorneys shall be given notice of any adverse action taken."

<sup>21</sup> Rule 3.720(E).

<sup>22</sup> See rule 18.2, which provides that "The Chief Executive Officer of the State Bar, or a person or persons designated by the Chief Executive Officer, shall review all complaints and within a reasonable time thereafter determine what action, if any, is appropriate. The complainant shall be entitled to notice of what action, if any, is taken in connection with the complaint. The State Bar shall provide the entity complained against with written notice of the complaint and an opportunity to respond when it appears that a violation of these Rules or other applicable authorities is involved."

<sup>23</sup> Current rule 18.3 provides that "Upon receipt, a complaint shall become the property of the State Bar. Complaints and investigations shall remain confidential until service of written notice of intent to revoke or suspend certification."

<sup>24</sup> Compare rule 3.690 of the rules for the Legal Services Trust Fund: "For purposes of this article, receipt of a document mailed by staff or the Commission is deemed to be the earlier of either five days after the date of mailing or is the actual time of receipt when staff or the Commission delivers a document"

In these rules, a notice or other document is deemed received the fifth day after being sent by first-class mail or upon actual receipt when delivered otherwise.

## Article 2. Minimum standards for lawyer referral services

### Rule 3.720 General duties of a lawyer referral service<sup>25</sup>

A lawyer referral service must

- (A) have a governing committee; one or more panels of attorneys to provide legal services; and a staff to evaluate and process requests for legal assistance;
- (B) encourage widespread attorney membership;<sup>26</sup>
- (C) serve its community and improve the quality and affordability of legal services by
  - (1) assisting those in need of legal services to find a qualified, insured attorney or other appropriate legal services, including dispute resolution;
  - (2) providing the public with general information about appropriate legal services; and
  - (3) establishing services for persons of limited means unless it demonstrates that doing so is unreasonable or impractical given the community needs; its financial resources, staff size, or panel membership; the fees charged by its

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*physically by courier or otherwise.” Current rules have eleven references to written notice. For instance, rule 7.2 provides that “Written notice of the denial of the application and of the reason(s) for the denial shall be served by mail upon the applicants. Notice shall also be given to the panel attorneys listed in the application.” Notice is also mentioned in rule. 7.7, 8.4, 9.4, 9.5, 18.2, 18.3, 19.3, 19.4, 19.6, and 19.8.*

<sup>25</sup> See current rule 5.1, which states that

*“The purposes of a Lawyer Referral Service shall be:*

- (a) To 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;*
- (b) To provide information about lawyers and the availability of legal services which will aid the public in their selection of a lawyer;*
- (c) To inform the public when and where to seek legal and dispute resolutions services;*
- (d) To provide general, legal and dispute resolution information needed by the public;*
- (e) To improve the quality of legal services available to the public; and*
- (f) To provide access to affordable legal services to the public.”*

<sup>26</sup> *Business & Professions Code § 6155f.1 requires minimum standards “ ensuring that panel membership shall be open to all attorneys practicing in the geographical area served who are qualified by virtue of suitable experience, and limiting attorney registration and membership fees to reasonable sums which do not discourage widespread attorney membership.” Current rule 11.1(a) requires that “Attorney registration and membership fees shall be limited to reasonable amounts and shall encourage widespread attorney membership.”*

panel members; or the availability of pro bono or other legal services for persons of limited means;

- (D) charge no fee or combination of fees that increase a client's cost beyond that normally charged for legal services or that decrease the quantity or quality of services otherwise available to the client;<sup>27</sup>
- (E) tell each client how to submit a complaint about the service or one of its panel members and inform the client that an unresolved complaint may be submitted to the State Bar, provided it is in writing and supported by factual information that demonstrates a violation of these rules or other applicable authority;<sup>28</sup>
- (F) if non-profit use its income only to pay reasonable operating expenses and to fund its pro bono, legal services, and other service programs;<sup>29</sup>
- (G) fully cooperate with any State Bar audit;<sup>30</sup>
- (H) provide each panel member a copy of these rules; and<sup>31</sup>
- (I) at all times comply with these rules and applicable law.

#### Rule 3.721 Ownership<sup>32</sup>

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<sup>27</sup> Business & Professions Code § 6155a.2. *This statute provides that "The combined charges to the potential client by the referral service and the attorney to whom the potential client is referred do not exceed the total cost that the client would normally pay if no referral service were involved." Current rule 17.1(b) includes this provision: "A Lawyer Referral Service is prohibited from charging a combination of fees which increases the client's cost for legal services beyond that which he or she would normally pay, or decreases the quantity or quality of services which he or she would otherwise receive, absent involvement of the Lawyer Referral Service."*

<sup>28</sup> *Current 10.5 provides that "A Lawyer Referral Service shall establish and provide, to each client referred to an attorney, an address and telephone number in his or her county to which complaints about the Lawyer Referral Service or its attorneys may be directed, and shall inform clients that any unresolved complaints should be addressed to the State Bar of California."*

<sup>29</sup> *Current rule 17.2 provides that "The income generated by a non-profit Lawyer Referral Service shall be used only to pay reasonable operating expenses of the Service and/or to fund programmatic public service activities of the Service or its sponsoring entity, including the delivery of pro bono legal services."*

<sup>30</sup> *See Rule 3.705. Current rule 16.2 provides that "The State Bar shall have the right at any time to conduct an audit or investigation of any Service. Any audit or investigation under Rule 16 shall be at the Service's expense. The Service and its sponsoring entity shall have the obligation to cooperate fully therewith."*

<sup>31</sup> *Current rule 11.6 provides that "Each Lawyer Referral Service shall provide every panel member with a copy of these Rules."*

<sup>32</sup> *Business & Professions Code § 6155b. Current 10.4 provides that "A Lawyer Referral Service shall not be owned or operated, directly or indirectly, wholly or in part, by those lawyers to whom, individually or collectively, more than 20 percent of referrals are made. For purposes of this subdivision, a Lawyer*

A lawyer referral service owned or operated by a bar association is deemed to be owned or operated by its governing committee. An attorney may not directly or indirectly own or operate a lawyer referral service if the attorney individually or jointly receives more than twenty percent of the referrals of the lawyer referral service.

Rule 3.722 Governing committee<sup>33</sup>

- (A) A lawyer referral service must be supervised by a governing committee of three or more members. A majority of the governing committee must be active members of the State Bar. No more than half the members of the governing committee may receive referrals from the lawyer referral service.<sup>34</sup>
- (B) The governing committee must
  - (1) establish criteria for subject matter and general panel membership and use the criteria to evaluate panel members at least once every two years;<sup>35</sup>
  - (2) establish and assess compliance with the referral procedures required by these rules;<sup>36</sup>
  - (3) review and submit the annual report required by these rules;<sup>37</sup>

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*Referral Service that is owned or operated by a bar association shall be deemed to be owned or operated by its Governing Committee so long as the Governing Committee is constituted and functions in the manner described by these Rules."*

<sup>33</sup> This rule derives from two current rules. Current 10.2 provides that "The Committee shall meet at least quarterly and shall review the annual report submitted by the Lawyer Referral Service pursuant to Rule 15.2." Current 10.3 provides that "The Committee shall also conduct and annually review the results of a random sampling of at least 10% of the clients referred to attorneys as to the client's satisfaction with the attorney's handling of the case and whether the client felt the fee charged was reasonable. Based on its review, the Committee shall make such alterations to the operation of the Lawyer Referral Service as it deems necessary."

<sup>34</sup> Current rule 10.1 provides that "The Lawyer Referral Service shall be supervised in its establishment and operation by a Governing Committee ("Committee") consisting of a minimum of three (3) members [members of what? The State Bar? A panel of the LRS?], having authority to make decisions necessary to operate the Lawyer Referral Service. At least 50% of the Committee shall be active members of the State Bar of California, and at least 50% of the Committee shall not receive referrals from the Lawyer Referral Service."

<sup>35</sup> Current rule 11.4 provides that "The Governing Committee or its designee shall establish a method of review for continued panel membership. Such review shall be conducted at least once every two years and shall evaluate the quality of services provided by member attorneys."

<sup>36</sup> Rule 3.726.

<sup>37</sup> Rule 3.728.

- (4) annually survey a random sample of at least ten percent of the clients of the service to determine client satisfaction with services and fees;
- (5) on the basis of the annual survey, make any operational changes it deems necessary; and
- (6) meet at least quarterly.

#### Rule 3.723 Panels<sup>38</sup>

- (A) A lawyer referral service must establish panels of attorney members qualified to provide legal services to the public. The panels must be organized by subject matter but may include a general panel.
- (B) At least twenty attorney members, ten of whom are from separate and independent law firms, are required for all lawyer referral services, and each panel must have at least four members. The State Bar may waive these minimum requirements if a lawyer referral service provides written evidence that the size of the community or the number of its attorneys warrants a lesser number.
- (C) A lawyer referral service must require that each panel member
  - (1) have errors and omissions insurance in the amounts set forth in the Schedule of Charges and Deadlines and provide proof of insurance to the State Bar upon request;<sup>39</sup>
  - (2) not receive referrals evaluated and processed by a lawyer referral service staff member employed or otherwise compensated by the panel attorney;<sup>40</sup>
  - (3) agree in writing to submit any fee dispute to mandatory arbitration compliant with statute or State Bar requirements upon election of a client referred by the lawyer referral service.<sup>41</sup>

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<sup>38</sup> See current rule 12, *Organization of Panels*.

<sup>39</sup> Business & Professions Code 6155f.6. *This statute requires that "each lawyer who is a member of a certified lawyer referral service to comply with all applicable professional standards, rules, and regulations, and to possess a policy of errors and omissions insurance in an amount not less than one hundred thousand dollars (\$100,000) for each occurrence and three hundred thousand dollars (\$300,000) aggregate, per year. By rule, the State Bar may provide for alternative proof of financial responsibility to meet this requirement." Current rule 11.3 mirrors the statute: "Each Lawyer Referral Service shall require each panel member to possess a policy of errors and omissions insurance in an amount not less than \$100,000 for each occurrence and \$300,000 aggregate per year. Proof of insurance shall be provided to the State Bar upon request."*

<sup>40</sup> See current rule 13.4, which requires that "The staff persons making the referrals and processing the requests for legal assistance may not be employees of any attorney to whom referrals are made."

- (D) A lawyer referral service may disclose a panel member's past performance when the information is accurate, complete, and not misleading.<sup>42</sup>

#### Rule 3.724 Eligibility for membership

- (A) Only an active member of the State Bar practicing in the community served by the lawyer referral service may be a member of the service.<sup>43</sup> To serve on a subject matter panel, such a member must meet the experience and other substantial and objective criteria of the lawyer referral service. Certification as a legal specialist qualifies an attorney to serve on a panel that deals with the area of certification, provided the attorney meets other criteria for panel membership.<sup>44</sup>
- (B) Panel membership may not be contingent upon membership in a sponsoring entity.<sup>45</sup>

#### Rule 3.725 Panel membership fees

- (A) Panel membership fees must be reasonable, encourage widespread panel membership, and otherwise comply with these rules and applicable law.<sup>46</sup>

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<sup>41</sup> See Business & Professions Code § 6200 et seq. Current rule 11.2 provides that "Each attorney member of a Lawyer Referral Service panel shall agree in writing to abide by all rules and regulations of the Lawyer Referral Service including the requirement that each panel member submit any fee dispute arising between such member and a client referred by the Lawyer Referral Service, if the client so elects, to binding arbitration by a Fee Arbitration Committee of a bar association or other established Fee Arbitration Committee established pursuant to Business & Professions Code §§6200 et seq., or by means otherwise acceptable to the State Bar."

<sup>42</sup> Current rule 11.1(d) includes this language: "Lawyer Referral Services may disclose actual past performance when the information is accurate, complete and not misleading."

<sup>43</sup> Current rule 11.1(a) provides that "Membership on any panel operated by the Lawyer Referral Service shall be open to all active members of the State Bar of California practicing in the geographical area served who are qualified by virtue of suitable experience in conformity with Rule 12.2."

<sup>44</sup> Current rule 12.2 provides that "Each Lawyer Referral Service shall establish one or more specific subject matter panels, and is encouraged to establish moderate and no fee panels, foreign language panels, alternative dispute resolution panels, and other special panels which respond to the referral needs of the consumer public, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria. Any attorney who is certified by the California Board of Legal Specialization as a specialist in a particular field shall be qualified for membership on the subject matter panel for such field by virtue of his or her certification. A Lawyer Referral Service may maintain a general panel."

<sup>45</sup> Current rule 11.1(b) provides that "Membership on any panel may not be made contingent upon membership in a sponsoring entity; however, a separate, nominal administrative charge may be made to non-members of the sponsoring entity to reimburse the entity for its administrative services."

<sup>46</sup> Business & Professions Code § 6155f.1. This statute requires that "The minimum standards shall include provisions ensuring that panel membership shall be open to all attorneys practicing in the geographical area served who are qualified by virtue of suitable experience, and limiting attorney

- (B) Panel membership fees may not in any way be based on or guarantee contacts, calls, cases, referrals, or clients.<sup>47</sup>
- (C) Panel members who are not members of a sponsoring entity may be required to pay a nominal charge for administrative services.<sup>48</sup>

#### Rule 3.726 Referrals<sup>49</sup>

- (A) The governing committee of a lawyer referral service must establish fair and impartial procedures to assure that referrals are allocated equitably to panel members and respond insofar as possible to clients' legal needs and other circumstances, such as geographic convenience and language issues.<sup>50</sup>
- (B) All referrals in a geographical area may not be made to a single attorney or law firm.<sup>51</sup> The State Bar may deny certification or recertification for failure to make referrals fairly and impartially to panel members or to maintain current and complete records of referrals.<sup>52</sup>

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registration and membership fees to reasonable sums which do not discourage widespread attorney membership." See Rule 3.720(B).

<sup>47</sup> Rule 11.1(d) provides that "Panel membership fees shall not be set with any representation, promise, agreement, understanding or guarantee to attorneys of a minimum number of contacts, calls, cases, referrals or clients or any arrangement or practice by a Lawyer Referral Service which directly or indirectly produces a guaranteed number of contacts, calls, cases, referrals or clients, including but not limited to: compensation for rejected referrals; free or reduced-fee extension of the attorney's contract with the Lawyer Referral Service; representation of referrals based upon past averages or formulas. Lawyer Referral Services may disclose actual past performance when the information is accurate, complete and not misleading."

<sup>48</sup> Current rule 11.1(b) provides that "Membership on any panel may not be made contingent upon membership in a sponsoring entity; however, a separate, nominal administrative charge may be made to non-members of the sponsoring entity to reimburse the entity for its administrative services."

<sup>49</sup> See current Rule 13.

<sup>50</sup> See current rule 13.1, which requires that "The Governing Committee shall establish rotational procedures to assure that each referral is made in a fair and impartial manner. To the extent feasible, such procedures shall be designed to respond to all circumstances of the client, including the type of the legal problem presented, geographic convenience and language needs. The Lawyer Referral Service shall not operate so that all referrals from a specific geographical area are made to a single lawyer or law firm. Failure to rotate sequentially all referrals to lawyers on the panel and/or failure to keep and maintain complete, current and continuous records of all referrals made to attorneys are grounds for denial of certification or recertification or for decertification."

<sup>51</sup> Current rule 13.1 requires that "The Lawyer Referral Service shall not operate so that all referrals from a specific geographical area are made to a single lawyer or law firm."

<sup>52</sup> Current rule 13.1 states that "Failure to rotate sequentially all referrals to lawyers on the panel and/or failure to keep and maintain complete, current and continuous records of all referrals made to attorneys are grounds for denial of certification or recertification or for decertification."

(C) A referral may not

- (1) discriminate on the basis of race, color, sex, age, religious creed, national origin, ancestry, sexual orientation, disability, medical condition, marital status, political affiliation, or veteran status;<sup>53</sup>
- (2) violate restrictions against unlawful solicitation and false and misleading advertising or otherwise violate the Rules of Professional Conduct or law applicable to a member of the State Bar;<sup>54</sup>
- (3) be made directly or indirectly by a person employed or otherwise compensated by an attorney or firm to whom the referral is made;<sup>55</sup> or
- (4) be made exclusively by technological means without staff evaluation of client needs and panel members' qualifications.<sup>56</sup>

#### Rule 3.727 Records

(A) A lawyer referral service must maintain and provide to the State Bar upon request current records for

- (1) each panel member that include
  - (a) name, contact information, and qualifications;
  - (b) number and type of referrals; and
  - (c) fees remitted for membership, referrals or consultations, advertising; or any other reason; and

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<sup>53</sup> Current rule 13.2 states that "13.2 No referral shall discriminate on the basis of race, color, sex, age, religious creed, national origin, ancestry, sexual orientation, disability, medical condition, marital status, political affiliation or veteran status."

<sup>54</sup> Current rule 13.3 states that "13.3 No referral shall be made which violates any provision of the State Bar Act or Rules of Professional Conduct, including, but not limited to, restrictions against unlawful solicitation and false and misleading advertising."

<sup>55</sup> Current rule 13.4 states that "The staff persons making the referrals and processing the requests for legal assistance may not be employees of any attorney to whom referrals are made."

<sup>56</sup> Business & Professions Code § 6155h.2. This provision states that "Certifiable referral activity involves, among other things, some person or entity other than the consumer and advertising attorney or law firms which, in person, electronically, or otherwise, refers the consumer to an attorney or law firm not identified in the advertising." Current rule 13.5 states that "A Lawyer Referral Service shall not be principally operated by a telephone answering service or device."

(2) each referral that include

- (a) the client's name and contact information;
- (b) type of matter and date of referral; and
- (c) panel member to whom the referral was made.<sup>57</sup>

(B) Any record in the possession of the State Bar pertaining to a lawyer referral service is the property of the State Bar and confidential unless authorized for disclosure by these rules, order of the Board of Governors, or consent of the lawyer referral service.<sup>58</sup>

#### Rule 3.728 Annual report<sup>59</sup>

- (A) The governing committee of a lawyer referral service must submit an annual report of its activities and those of the lawyer referral service. The report must at a minimum
- (1) provide a detailed accounting of

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<sup>57</sup> Current rule 15.1 requires that "Each Lawyer Referral Service shall maintain and provide to the State Bar, upon request, current records of its operation including at least the following information:

- (a) The name, address and pertinent qualifications of each panel member and the number and types of matters referred to each panel member;
- (b) The name, address and type of matter presented by each client referred, the name of the panel member to whom the referral was made, and the date the referral was made;
- (c) The total fees the Lawyer Referral Service requires of its panel attorneys, including but not limited to: registration fees to join the Lawyer Referral Service; fees paid to belong to each panel an attorney elects to join; referral or consultation fees remitted back to the Lawyer Referral Service; forwarding fees; advertising fees or other miscellaneous fees paid by the panel attorney to the Service."

<sup>58</sup> Current rule 15.4 states that "All documents, records, communications, and other materials from or pertaining to a Lawyer Referral Service, including its application for certification, shall become the property of the State Bar and shall be held in confidence and not released except upon prior order of the Board of Governors or by consent of the applicant."

<sup>59</sup> Current rule 15.2 provides that "The Committee of each Lawyer Referral Service shall file with the State Bar an annual report on the activities of the Service and of the Committee. Such report shall include at least the following:

- (a) Statistics derived from the operating records required by Rule 15.1 and what, if any, alterations have been made in the conduct of the Service by the Committee pursuant to Rule 10.3;
- (b) A detailed accounting of all sources and amounts of income to the Service, all expenses related to the operations and promotion of the Lawyer Referral Service, the amount of current reserves held by the Lawyer Referral Service, and the specific disposition over the past two years of any reserves and/or surpluses derived from the Lawyer Referral Service; and
- (c) The number of cases sampled pursuant to Rule 10.3, together with the results of the random sampling.

- (a) all sources and amounts of income, expenses, and reserves during the reporting period;
  - (b) the disposition of any reserves or surpluses derived from activities of the service during the reporting period and the immediately preceding reporting period;
- (2) include statistics derived from the records the service is required to maintain; and
- (3) summarize the annual client survey and any operational changes it prompted.<sup>60</sup>
- (B) Failure to submit an annual report on time suspends certification unless the State Bar extends the report deadline for good cause.<sup>61</sup>

#### Rule 3.729 Publicity<sup>62</sup>

- (A) Publicity, which includes advertising or any other kind of promotional material, must
  - (1) indicate that the purpose of the lawyer referral service is to serve its community and improve the quality and affordability of legal services as required by these rules;<sup>63</sup> and
  - (2) acknowledge any sponsorship by the lawyer referral service; identify the counties in which the service operates; and provide the State Bar certification number or certification mark.

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<sup>60</sup> Rule 3.722(B)(4) and (5). *Current 15.2(a) requires that the governing committee include in the annual report "Statistics derived from the operating records required by Rule 15.1 and what, if any, alterations have been made in the conduct of the Service by the Committee pursuant to Rule 10.3."*

<sup>61</sup> Rule 15.3 provides "Failure to file the annual report by the recertification due date without a showing of good cause to the State Bar shall result in the immediate withdrawal of certification to operate a Lawyer Referral Service."

<sup>62</sup> Rule 14, which has two parts, provides that "14.1 Any publicity program or advertising developed, maintained or utilized by a Service shall promote the purposes of a Lawyer Referral Services as set forth in Rule 5. A copy of all materials used in publicity programs, advertising or other disseminations to the public shall be filed with the State Bar with any application for certification or recertification, and with the Lawyer Referral Service's annual report upon request of the State Bar. 14.2 The form and content of all publicity of the Lawyer Referral Service shall not be false or misleading and shall comply with the standards for such publicity defined in the Rules of Professional Conduct and Business & Professions Code. For the purpose of public information and evaluation of the Service and its advertising, all advertising shall include the identity of the sponsor(s), the fact that it is a Lawyer Referral Service, the counties in which it operates and the State Bar Certification number of the Lawyer Referral Service."

<sup>63</sup> See Rule 3.720(B).

- (B) Any publicity by a lawyer referral service must comply with the California Rules of Professional Conduct and any other legal requirements.<sup>64</sup>
- (C) A copy of any publicity
  - (1) must be submitted with an application for certification or recertification; and
  - (2) may be required with the annual report.<sup>65</sup>

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<sup>64</sup> Current rule 14.2 requires that "The form and content of all publicity of the Lawyer Referral Service shall not be false or misleading and shall comply with the standards for such publicity defined in the Rules of Professional Conduct and Business & Professions Code."

<sup>65</sup> Rule 3.728.