

AMERICAN BAR ASSOCIATION **Standing Committee on
Lawyer Referral and
Information Service**

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<http://www.abalegalservices.org/Iris>

September 10, 2010

Carol Madeja
The State Bar of California
Office of Bar Relations Outreach
1149 S. Hill St., Fl. 7
Los Angeles, CA 90015

Dear Ms. Madeja:

Thank you for the opportunity to comment on the proposed revisions to the State Bar of California Rules Governing Lawyer Referral Services. The ABA Standing Committee on Lawyer Referral Service (ABA LRIS Committee) has a particular appreciation for the tremendous role that these Rules play in the complex and evolving world of legal services delivery to the moderate-income public. We remain appreciative of the leadership that the State Bar of California demonstrated when it first initiated these Rules to guide lawyer referral services delivery.

General Observations: The format of the proposed Rules presents a marked improvement in the readability of the rules. Extraneous material that appeared in the 1997 Revision has been eliminated making the Rules easier to understand and follow. The addition of the index provides a particularly valuable resource. That having been said, it is not clear from the draft which, if any, footnotes will remain in the final version. It is suggested that the footnotes that include citations and the pertinent language of the relevant codes, e.g. B&P §6155, and other State Bar rules and regulations should be retained in the final version because these citations make it easier to use the rules. This is especially true since the revised Rules have eliminated much of the language and information the referral services are accustomed to finding explicitly stated in the Rules.

Of concern, however, are the several instances where it appears that there has been a diminished emphasis in the Rules on the public service aspect of lawyer referral. The ABA LRIS Committee is concerned about this apparent change in focus, as it has traditionally been the position of the State Bar of California, and it remains that of the ABA, that lawyer referral is primarily a public service. While the accompanying material states that the policy statements will be found instead at the State Bar of California website and in the LRS certification forms we could not find, at this point in time, any such policy statements on the State Bar of California website. The ABA LRIS Committee recognizes that these web-based materials.

may make it clear that the State Bar of California remains committed to the public service focus of lawyer referral; however, the reduced emphasis on public service in the Rules themselves is of concern

Finally, the ABA LRIS Committee strongly recommends the inclusion of a confidentiality statement in the Rules such as found in the ABA Model Rule XIV. “A disclosure of information to a lawyer referral service for the purpose of seeking legal assistance shall be deemed a privileged lawyer-client communication.”

Rule 3.700: The current Rules define a “Lawyer Referral Service” as being an entity which “operates for the direct *or indirect purpose* of referring potential clients to lawyers, . . .” (emphasis added). It strikes us that simply saying that an individual or organization “that refers prospective clients to attorneys” must comply with the Rules creates the same problem that existed when the Rules were originally drafted. That is, an individual or organization claiming that they do not “refer” clients to attorneys, but rather simply provides information on attorneys which prospective clients can then use to contact that attorney. The result is the same, i.e. a referral is made to an attorney. We recommend that comparable clarifying language that currently exists be added to address this issue.

Rule 3.701(A): This Rule allows the waiver of a separate application for a LRIS operating in more than one county. The State Bar of California may want to consider whether this waiver of a separate application may open the door to inquiries about whether the separate application fee is also waived.

Rule 3.701(B): This Rule automatically reduces the number of applications and associated fees if the LRIS operates in two or more underserved counties. This is a commendable provision. If not already debated, perhaps application fees should be waived altogether if the LRIS operates in a threshold number of underserved counties, for example in Northern California.

Rule 3.702(D): This subparagraph addresses a waiver or reduction of application/late fees based upon hardship. The following factor might be considered for addition to the list (**in bold**): “. . . length of time in operation, **the number of underserved counties in which the LRS operates,** or the like.”

Rule 3.720 (C) (3): Lawyer referral services, as opposed to pro bono programs, are not generally designed or equipped to serve individuals of limited means. That having been said, many successful LRIS programs have incorporated a modest means referral panel into the services they provide. The proposed Rule states a referral service *must* serve its community by establishing services for those of limited means, but then indicates the LRIS can ignore this requirement if it can show the requirement is “unreasonable”, “impractical” or other programs are available that specifically provide services for those with limited means. More significantly the LRIS does not have to meet this requirement because of the “fees charged by its panel members.” This is a troublesome addition in that one of the values of an LRIS program is to encourage panel members to think about and participate in helping those with legal needs and with limited means to pay legal fees. The reality is that many attorneys do provide reduced fee services to clients.

Many attorneys do provide community service legal work. The ABA LRIS Committee is, however, concerned that this changed language may somehow be interpreted as a diminished emphasis on the provision of legal services to those of limited means.

Rule 3.720 (F): The ABA LRIS Committee asks that the State Bar of California consider that, as with the current Rule, the proposed Rule be modified to clearly state that any income of the LRIS be used to pay reasonable operating expenses *of the LRIS* (as opposed to the sponsoring organization) and that the phrase “other service programs” be modified to read “other *public* service programs”. The ABA LRIS Committee believes the deletion of the “public service” aspect of the current Rule creates the potential for misapplication of funds to general revenue uses within a sponsoring organization.

Rule 3.722 (B) (4): The ABA LRIS Committee asks that the State Bar of California re-consider its proposed language regarding this particularly valuable consumer protection provision. Current Rule 10.3, which provides that an LRIS must randomly sample 10% of all the clients that it refers (and then annually review this data), has always been a significant quality control mechanism. It allows an LRIS to ensure that it is receiving the percentage fees it is due and, more importantly, it provides the LRIS an “early warning” as to a panel attorney who might be having substance abuse or other problems that impacts their representation of an LRIS referred client. The new Rule, which seemingly only requires a *single annual* survey, provides far less protection to both the consumer and the LRIS.

Rule 3.723 (B): The current rule allows for a reduction in the size of a panel from 4 if there is “good cause.” While seemingly implied, the proposed rule does not explicitly state a “good cause” showing. Additionally, consideration might be given to the following amendment: “The State Bar may waive these minimum requirements if a lawyer referral service **operates in an underserved county** or provides written evidence that the size of the community or the number of its attorneys warrants a lesser number.”

Rule 3.724 (A): The current rule encourages the LRIS to establish, among others, moderate and no fee panels. The proposed rule no longer has this provision. There is no explanation for this change, and as noted in the General Observations section above, this would appear to be a provision that diminishes the public service focus of the current rules. The ABA LRIS Committee believes that retaining the public service oriented language of current Rule 12.2 would be in the interest of both the public and the State Bar of California.

Rule 3.726 (A): The Committee opposes dropping the language in the current Rule requiring that referrals be made on a rotational basis. Making referrals in this rotational manner, while at the same time recognizing that this procedure has to accommodate “all circumstances of the client”, as stated in the current Rule, ensures that “fair and impartial [referral] procedures” required by the new Rule are in fact maintained. The ABA LRIS Committee believes that removing the rotational referral mechanism would create the potential for significant abuse and runs counter to what is being done in most, if not all, legitimate lawyer referral services across the country.

Letter to State Bar of California

September 10, 2010

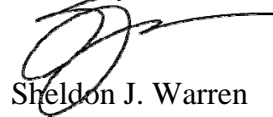
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Rule 3.726 (C) (4): The new provision makes it very clear that technology without human assessment is not permitted for LRIS certified program referrals, which is a strong positive statement. Requiring referral staff evaluation of client needs helps to ensure the most appropriate referral and is simply a cornerstone to providing the consumer with a value added service.

Rule 3.729 (A) (1)&(2): The proposed rule modifies the publicity provisions of current Rule 14. Given the public service-oriented provision of (A)(1), consideration should be given as to whether (A)(2) should be amended to include the following (**in bold**): “. . . acknowledge any sponsorship by the lawyer referral service; **identify whether the lawyer referral service is non-profit or for-profit**; identify the counties in which the service operates; and provide the State Bar certification number or certification mark.”

Again, we thank the State Bar of California for the opportunity to comment on these significant Rules. We would welcome the opportunity to discuss any of our comments.

Sincerely,

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

Sheldon J. Warren



PROMOTING JUSTICE SINCE 1877

September 9, 2010

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

Dear Carol:

Thank you for the opportunity to comment on the proposed revisions to the State Bar Rules Governing Lawyer Referral Services. At its August 4, 2010 meeting, the ACBA Lawyer Referral Service Governing Committee reviewed the proposed rules. The ACBA Board of Directors met on September 7, 2010, and approved the LRS Governing Committee's following comments:

Comment 1: The ACBA agrees and supports the proposed revised State Bar Rules Governing Lawyer Referral Services as presented by the Board Committee on Legal Services, Pro Bono and Equal Access.

Comment 2: The ACBA suggests eliminating Minimum Standard 17.2, "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 service," for the following reasons:

- 1) the State Bar should not inject itself into the internal operations of another corporate entity;
- 2) the issue of LRS's supporting pro bono work is addressed in the statute at Bus. and Prof. Code Section 6155(f)(5) and at Minimum Standard 12.5;
- 3) the words "reasonable" and "programmatic public service activities" are open to interpretation making the rule largely unenforceable; and
- 4) the rule has never been addressed as a compliance issue in the twenty year history of State Bar LRS regulation.

ALAMEDA COUNTY BAR ASSOCIATION

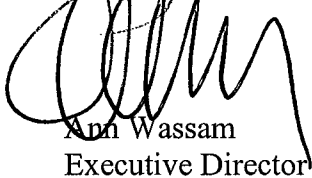
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As a bar association with a robust Lawyer Referral Service and a commitment to pro bono, we appreciate the excellent work of the Board Committee on Legal Services, Pro Bono and Equal Access. If you have any questions, please feel free to contact me at (510) 302-2208 or by email at ann@acbanet.org. You may also contact Kalie Moore, Lawyer Referral Service Program Administrator, at (510) 302-2210 or at kalie@acbanet.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann Wassam', written over the word 'Sincerely,'.

Ann Wassam
Executive Director

Cc: Greg Brown, ACBA President
Janette Tom, LRS Governing Committee Chair
Kalie Moore, LRS Program Administrator

SCCBA MEMORANDUM

TO: CAROL MADEJA
FROM: SANTA CLARA COUNTY BAR ASSOCIATION, CHRISTINE BURDICK,
EXECUTIVE DIRECTOR & GENERAL COUNSEL
SUBJECT: PROPOSED REVISIONS TO STATE BAR MINIMUM STANDARDS &
REGULATIONS FOR LAWYER REFERRAL SERVICES
DATE: 9/7/2010

The State Bar of California is proposing a number of revisions to the Minimum Standards & Regulations governing State Bar Certified Lawyer Referral Services and has requested public comment on these proposed revisions. The Santa Clara County Bar Association (SCCBA) Board of Trustees at its meeting on July 29, 2010, authorized the following comments on behalf of the SCCBA with respect to the proposed revisions.

The SCCBA has no objection to the proposed revision with the exception of the proposed revision to what is now enumerated Rule 3.726(C). This rule sets out the method by which a lawyer referral service can process a request for an attorney.

The current rule states that "A Lawyer Referral Service shall not be principally operated by a telephone answering service or device." Thus, virtually all State Bar certified lawyer referral services use a live person to answer the phone and process the referral request because until the internet, there was no other method by which to process the referral request.

The proposed revision, Rule 3.726(C), would require that "A referral may not...be made exclusively by technological means without staff evaluation of client needs and panel members' qualifications." The Business & Professions Code § 6155h.2 upon which this proposed rule is based and by which it must conform (as pointed out in the footnotes by the State Bar itself) states as follows: "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." (emphasis added.) The proposed revision seems to be directed at precluding services from automating the referral process on line by mandating that a staff person screen all referral requests.

This revision is more restrictive than the prior version but more importantly, the SCCBA believes that the proposed revision contradicts what is actually required by the Business & Professions Code. As noted above, the B&P Code simply requires that to the certified referral screening must involve a person or entity which in person, electronically or otherwise does the screening and makes the referral. The B & P code provision is in the disjunctive not the conjunctive. Thus, a referral service could pursuant to the B & P code be in compliance if it does not use in person screening for each referral but it would violate the proposed revision.

The SCCBA suggests that Rule 3.726(C) simply reflect the corresponding B & P Code. In deed, the SCCBA questions whether the minimum standard can be more restrictive than the B & P Code. In any event, the SCCBA believes that there should be latitude as proscribed by the B & P Code screening that includes “in person, electronically or other” methods.

Restricting referral services to only a staff person as the screening method puts certified lawyer referral services at a competitive disadvantage to the for-profit, on line, internet based find a lawyer sites. The SCCBA strongly encourages the State Bar to modify the proposed Rule 3.726(C) to simply reflect the corresponding B & P Code.

If there are questions or clarifications regarding our concern, please do not hesitate to contact us. Thank you for the opportunity to comment.