



To: ATILS Task Force
From: Kevin Mohr, Mark Tuft, and Randall Difuntorum
Date: February 18, 2020
Re: B.6. Certified Lawyer Referral Services

Short Statement of the Recommendation

ATILS recommends that the Board of Trustees consider recommendations for amendments to Certified Lawyer Referral Service (LRS) rules and statutes to ensure that they properly balance public protection and innovation in light of access to justice concerns and with a particular emphasis on ascertaining if existing laws impose unnecessary barriers to referral modalities (including online matching services) that are in the public interest. Information and data generated by a regulatory sandbox, pilot program, or other similar time-limited program can help inform this rule study.

Discussion

At ATILS' January 10, 2020 meeting, the Task Force approved a proposal to recommend to the Board that the regulatory LRS rules and statutes be re-examined together with relevant rules. The issue arose as a subtopic of the Task Force's consideration of possible lawyer advertising and solicitation amendments. The regulation of lawyer advertising and solicitation in the rules includes the issue of compensation paid by a lawyer for a client referral. Rule 7.2 in part provides that:

(b) A lawyer shall not compensate, promise or give anything of value to a person for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm, except that a lawyer may:

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(2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California;

Rule 5.4 in part provides that:

(a) A lawyer or law firm shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:

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(4) a lawyer or law firm may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or

The forgoing rules establish that a lawyer who pays compensation to an uncertified business or service engaged in a referral activity is subject to discipline. Recently, case law has clarified the scope of what is

considered to be referral activity (see *Jackson v. Legalmatch.com*, ___ Cal.App.5th ___, 2019 WL 6334544, No. A152442 (Cal.App. 11/26/19)).¹ The Task Force believes that innovative referral activity, including online modalities, carries the potential of enhancing the ability of consumers to consult with a qualified lawyer, particularly on the basic issue of whether a consumer is facing a civil justice legal problem, and that existing laws should be reviewed for possible revisions that are in the public interest.

ATILS Charter and Request for Public Comment

In part, ATILS' charter instructs the Task Force to:

Evaluate existing rules, statutes and ethics opinions on lawyer advertising and solicitation, partnerships with non-lawyers, fee splitting (including compensation for client referrals) and other relevant rules in light of their longstanding public protection function with the goal of articulating a recommendation on whether and how changes in these laws might improve public protection while also fostering innovation in, and expansion of, the delivery of legal services and law related services especially in those areas of service where there is the greatest unmet need.

This recommendation responds to the charter by proposing a study of statutory amendments and rule changes that could enhance access to legal services by expanding permissible lawyer referral activity that would result from a potential streamlining or other revision to the existing regulatory requirements for becoming certified and for maintaining that certification through compliance with the minimum standards.

An explicit proposal on LRS regulations was not included in ATILS' request for public comment on various options for regulatory reform.

Conclusion and Possible Next Steps

Similar to the Task Force's view of the existing lawyer advertising rules, ATILS believes that a study of the lawyer referral service regulations can lead to revisions that will balance public protection and the free flow of information about the availability of legal services. Should the Board of Trustees agree with this proposal, it is anticipated that the next step of further study and drafting of the actual revisions would be informed by data generated by a regulatory sandbox, pilot program, or other similar time-limited program in which the program participants can experiment with new delivery systems that might, for example, involve a business offering consumers a combination of online matching activities, limited scope representation, legal document production and/or a prepaid or subscription based legal services plan.

¹ A legal analysis of this case is outside of the scope of ATILS' work. ATILS takes no position on the holding of this case. It is cited for the limited purpose of providing an example of the application of the statutory lawyer referral service regulatory scheme.