

AGENDA ITEM

142 March

DATE: February 12, 2014

TO: Members, Planning, Program Development and Budget Committee
Members, Board of Trustees

FROM: Robert A. Hawley, Deputy Executive Director
Carol Madeja, Managing Director, Bar Relations Outreach
Rodney Low, Program Developer, Office of Legal Services

SUBJECT: Lawyer Referral Services Program: Addition of Fees and Deadlines to the State Bar Rules, Appendix A: Schedule of Charges and Deadlines

EXECUTIVE SUMMARY

The Supreme Court approved rules 3.800-3.829 of the State Bar Rules to replace the old rules of the Lawyer Referral Services program, effective January 21, 2014. Rules 3.800-3.829 refer to fees and deadlines set forth in the Schedule of Charges and Deadlines, which is Appendix A of the State Bar Rules.

This agenda item requests that the Board add fees and deadlines of the Lawyer Referral Services program to the schedule, as referenced in the newly revised rules. In addition, this agenda item requests that the Board correct a reference in a footnote in one of the revised rules.

Board members with questions may contact Rodney Low at (415) 538-2219 or rodney.low@calbar.ca.gov, Carol Madeja at (213) 765-1705 or carol.madeja@calbar.ca.gov, or Robert Hawley at (415) 538-2277 or Robert.Hawley@calbar.ca.gov.

BACKGROUND

In November 2011, the Board adopted State Bar rules 3.800-3.829 for the Lawyer Referral Services (“LRS”) program and on November 19, 2013, the California Supreme Court approved State Bar rules 3.800-3.829 and repealed the old LRS program rules 1 through 19, effective January 21, 2014. The newly revised LRS rules refer a reader to the Schedule of Charges and Deadlines for fees and deadlines of the LRS program. This complies with a core principle of the State Bar Rules, which is stated in rule 1.20(L) (Construction): “If a rule refers to the Schedule of Charges and Deadlines, the

referenced date or amount is part of the rule.” The schedule is a central location of the fees and deadlines of all State Bar programs.

Accordingly, this agenda item requests that the Board add the LRS program fees and deadlines to the schedule, as shown on Attachment A. Since there is no change in the program’s fees and deadline dates, no public comment is needed. It is further requested that the effective date of adding the LRS program fees and deadlines to the schedule be made retroactive to January 21, 2014, in order to be consistent with the effective date of the revised rules.

This item also requests that the Board amend a footnote in rule 3.829(A) (Publicity) to correct an inadvertently erroneous reference to another LRS rule. No public comment is needed because State Bar rule 1.10 (Public comment), paragraph (B)(1) provides that “(B) Public comment is not required (1) to correct clerical errors, clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes”.

ISSUE

Whether to add the pre-existing LRS program fees and deadlines to the Schedule of Charges and Deadlines, effective retroactive to January 21, 2014, as shown on Attachment A; and whether to correct an inadvertent erroneous rule reference appearing in a footnote in State Bar rule 3.829(A)(1), as shown on Attachment B.

CONCLUSION

Given the Supreme Court’s approval of revised rules for the LRS program, it would be appropriate for the Board of Trustees to add the pre-existing LRS program fees and deadlines to the Schedule of Charges and Deadlines, effective retroactive to January 21, 2014. It would also be appropriate for the Board to correct the rule reference appearing in the footnote in State Bar rule 3.829(A)(1).

DISCUSSION

Addition to the Schedule of Charges and Deadlines

Listed below are relevant parts of the revised LRS rules that refer to fees and deadline set forth in the Schedule of Charges and Deadlines. (Any footnote citations included in a rule are recited in the rule in brackets for readability):

1. Rule 3.802(A) (Application fees) states:

(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. [Footnote citation reads “Business & Professions Code § 6155(f)(4).”]

2. Rule 3.803(A)(3) (Denial of application) states:

(A)(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.

3. Rule 8.823(C)(1) (Panels) states:

(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; [Footnote citation reads “Business & Professions Code § 6155(f)(6).”]

Amendment of the Footnote in Rule 3.829(A)

A footnote in rule 3.829(A)(1) (Publicity) correctly refers to rule 3.820 (General duties of a lawyer referral service), but erroneously refers to rule 3.820’s paragraph (B), which concerns a duty to encourage widespread attorney membership. The correct reference should be to paragraph (C), which concerns a duty to serve the community and improve the quality and affordability of legal services. With the correction, rule 3.829(A)(1) should read:

(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; [Footnote citation reads “See Rule 3.820(C).”] 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.

The correction will require approval by the California Supreme Court. This is because footnotes are considered part of the rules and Business and Professions Code section 6155(f) provides in relevant part “With the approval of the Supreme Court, the State Bar shall formulate and enforce rules and regulations for carrying out this section....” Section 6155 is the governing authority for certification of lawyer referral services in California.

FISCAL / PERSONNEL IMPACT:

None known.

RULE AMENDMENTS:

Lawyer Referral Services fees and deadlines shown on Attachment A should be added to the Schedule of Charges and Deadlines, with an effective date of January 21, 2014; and

State Bar rule 3.829(A) should be amended as shown on Attachment B, to be effective on a date determined by the California Supreme Court.

BOARD BOOK IMPACT:

None known.

RECOMMENDATION

It is recommended that the Board add the LRS program fees and deadlines to the Schedule of Charges and Deadlines, effective January 21, 2014, as shown on Attachment A. It is further recommended that the Board amend the footnote in rule 3.829(A) as shown on Attachment B, to be effective on a date determined by the California Supreme Court.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Planning, Program Development and Budget Committee agree with the above recommendation, the following resolutions would be appropriate:

RESOLVED, that no public comment being required, the Planning, Program Development and Budget Committee recommends that the Board add the fees and deadlines of the Lawyer Referral Services program referenced in rules 3.802(A), 3.803(A)(3) and 3.823(C)(1) to the Schedule of Charges and Deadlines, effective retroactive to January 21, 2014, as shown on Attachment A; and it is

FURTHER RESOLVED, that no public comment being required, the Planning, Program Development and Budget Committee recommends that the Board amend the footnote in State Bar rule 3.829(A) as shown on Attachment B and instruct staff to transmit rule 3.829(A) to the Supreme Court for consideration and approval.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Planning, Program Development and Budget Committee's recommendation, the following resolutions would be in order:

RESOLVED, that no public comment being required and upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby adds the fees and deadlines of the Lawyer Referral Services program referenced in rules 3.802(A), 3.803(A)(3) and 3.823(C)(1) to the Schedule of Charges and Deadlines, effective retroactive to January 21, 2014, as shown on Attachment A; and it is

FURTHER RESOLVED, that no public comment being required and upon recommendation of the Planning, Program Development and Budget Committee, that the Board amends the footnote in State Bar rule 3.829(A) as shown on Attachment B and instructs staff to transmit rule 3.829(A) to the Supreme Court for consideration and approval.

ATTACHMENT A: schedule of fees and deadlines of the Lawyer Referral Services program

ATTACHMENT B: State Bar rule 3.829(A) (Publicity) with amended footnote