

AGENDA ITEM

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DATE: May 11, 2017

TO: Members, Stakeholders, Access to Justice, and Appointments Committee

FROM: Rodney Low, Program Developer, Office of Legal Services

SUBJECT: Proposed Process for Lawyer Referral Services Rules Revision

EXECUTIVE SUMMARY

The current rules regulating Certified Lawyer Referral Services were most recently approved by the California Supreme Court effective February 2014. Staff and members of the certified lawyer referral community feel it is time to review the current rules to explore potential modifications reflecting new efficiencies in technology that may expand access to affordable, competent legal services while maintaining standards in the interest of public protection. This is an informational item only and no action is expected.

BACKGROUND

California Business & Professions Code § 6155 authorizes the State Bar to promulgate rules governing the certification and maintenance of certified lawyer referral services (LRS). These rules are codified at Title 3, Division 5, Chapter 3 of the Rules of the State Bar (Rule 3.800 et seq.) (Rules). Pursuant to these Rules, the State Bar regulates lawyer referral services by reviewing and monitoring their practices on a periodic basis to ensure compliance.

In addition, the Rules regulating lawyer referral services are referenced in the Rules of Professional Conduct Rule 1-320, California Civil Code § 43.95, and the California Evidence Code § 965-968.

Certified LRS' are distinguished from existing on-line directories by several operational functions as mandated by the Rules. For example, LRS' are required to respond to requests for referrals, either by phone or other electronic methods, by assisting callers in analyzing what type of legal assistance is needed, re-directing callers to more appropriate agencies or entities if necessary, reviewing subject matter panels and identifying attorneys for referral (on a rotational basis), and soliciting evaluations of the quality of service.

The State Bar oversees LRS compliance on an annual basis. Certified Lawyer Referral Services pay an annual Recertification Fee that is roughly equivalent to one percent of their gross annual revenue.

Online directories on the other hand, consist of lists of subscribing attorneys who are not subject to regulation or oversight. Consumers using such directories are reliant on the representations made by participating attorneys.

Prior to acceptance onto LRS panels, attorneys are vetted by LRS staff as having professional liability coverage, demonstrable, objective experience in their asserted subject matter areas, and being willing to provide free consultations. Once accepted, this compliance monitoring continues as long as the attorney is a member of the LRS. A review of lawyer referral services nationally, including in the states of Illinois, Texas and New York, reveals a similar set of vetting processes.

The statutes and the Rules governing these services were last amended in 2014 and are outdated as they precede the internet service economy. A comprehensive review of the Rules is needed to ensure that they allow for the expanded access to legal services that technology affords, while also continuing to protect consumers.

DISCUSSION

While the Rules were amended most recently in 2014, the actual review process began in 2009 with the goals of conforming the State Bar Rules to a “Plain English” format, deleting obsolete references, and modernization.

The issue of the impact of emerging web-based entities on LRS practices was raised but not addressed by the 2014 review and revision process. Since 2014, technology has continued to evolve at a rapid pace. Accordingly, it may now be appropriate to consider modifications to the current Rules that reflect new developments in technology that may expand consumer access to affordable, competent legal services.

As a result, staff proposes that a new review process be undertaken, addressing the following issues:

- a. Market demands to utilize developing technology in order to expand access to legal services;
- b. Other changes that might streamline the certification process; and
- c. The need to continue to protect the public and service quality .

The 2017 Rules revision process, which is anticipated to begin in May, will include the solicitation of input from the public and other stakeholders, an analysis of other states’ LRS rules, and a thorough vetting of any Rules or statutes identified for potential revision.

FISCAL/PERSONNEL IMPACT

No fiscal impact is contemplated.

RULE AMENDMENTS

TITLE 3. PROGRAMS AND SERVICES Division 5. Providers of Programs and Services
Chapter 3. Lawyer Referral Services

BOARD BOOK IMPACT

None anticipated

BOARD GOALS & OBJECTIVES

Goal 4: Support access to justice for all California residents and improvements to the state's justice system.