

# **OPEN SESSION AGENDA ITEM**

## **AUGUST 2018 PROGRAMS COMMITTEE ITEM III.B.**

**DATE:** August 17, 2018

**TO:** **Members, Programs Committee**

**FROM:** Rodney Low, Senior Program Analyst, Office of Access & Inclusion

**SUBJECT:** **Informational Update on Revisions to the Lawyer Referral Services Certification Rules**

---

### **EXECUTIVE SUMMARY**

In 2014, with the approval of the California Supreme Court, the State Bar Board of Trustees adopted the latest amendments to the rules regulating lawyer referral services (LRS). In March of 2018, the Board of Trustees added objective c to Goal 4 of the 2017-2022 Strategic Plan, directing staff to review the certified lawyer referral service rules with an eye toward reducing or eliminating barriers to access to justice imposed by the current rules. The proposal below reflects input of the certified lawyer referral community to incorporate advances in technology in the LRS model that may help to expand access to affordable, competent legal services while maintaining appropriate standards to ensure public protection. In addition, a comprehensive review of the rules was conducted to revise rules that inhibit the formation of lawyer referral services, the willingness to participate in a lawyer referral service, and the willingness and ability to utilize the services of a lawyer referral service.

---

### **BACKGROUND**

California Business and Professions Code § 6155<sup>1</sup> prohibits an individual, partnership, corporation, association, or any other entity from operating for the direct or indirect purpose of referring potential clients to attorneys, and prohibits attorneys from accepting a referral of such potential clients, unless the service is registered with the State Bar of California and meets the minimum standards for a lawyer referral service.

Section 6155 requires the State Bar to promulgate rules governing the certification and maintenance of certified lawyer referral services (LRS), including rules that address: minimum standards for an LRS; membership on LRS panels; the requirement to establish separate ongoing activities that serve persons of limited means; requiring lawyer members of LRSs maintain a minimum level of professional liability insurance; and other criteria for the continuation or termination of a certificate issued to operate an LRS.

---

<sup>1</sup> All further statutory references are to this code unless otherwise noted.

Subdivision (f) of section 6155 requires such rules to be approved by the Supreme Court.

Title 3, Division 5, Chapter 3 of the Rules of the State Bar commencing with Rule 3.800 sets forth the certification requirements and minimum standards for each LRS.

At the May 2017 meeting of the Stakeholders, Access to Justice, and Appointments Committee (hereafter Stakeholders Committee), the Committee directed staff to seek informal comment on revision of the LRS rules to explore the use of technology to expand access to LRSs and on other rule changes that might streamline the certification process, all while continuing to ensure public protection and quality service.

Staff surveyed the current LRSs seeking their opinion on the current set of LRS regulations and inviting their suggestions on amending any of the rules in order to increase access to their services. We received a modest response.

After an informal public comment period, from February through October of 2017, and outreach to all stakeholders in the Lawyer Referral Service community was completed, nineteen responses were received. The comments focused on four issues: remove the requirement that an LRS must submit an Application for Certification with a separate fee for each county in which it intends to operate; reduce the number of attorneys necessary to form an LRS and subject matter panel; permit automated referrals without requiring staff review; remove the requirement that publicity for a certified LRS include the purpose of serving the community and improving the quality and affordability of legal services.

In March 2018, the BOT added the objective c to Goal 4 of the 2017-2022 Strategic Plan: "By December 31, 2018, review Lawyer Referral Services certification rules with a goal of increasing access to justice."

## **DISCUSSION**

Business and Professions Code sections 6155 and 6166, and the State Bar Rules governing LRSs were adopted for the purpose of regulating lawyer referral services and establishing minimum standards for their operation to protect the public.

The statutes and rules also seek to increase access to the justice system by requiring each LRS to "establish separate ongoing activities or arrangements that serve persons of limited means". Section 6155(d)(4).

Following the direction of the Stakeholders Committee in 2017 and the BOT in March of 2018, staff has undertaken a comprehensive review of the current LRS rules with an "access lens," to determine if they impair or limit the public from accessing attorneys and/or if they impede or discourage attorneys from joining a certified LRS (reducing the pool of available attorneys and thereby limiting access) and if so, whether amendments can be made without reducing public protection.

All of the State Bar Rules regarding lawyer referral services have been reviewed with the following analysis in mind:

- Does the rule impede or discourage consumers from contacting an LRS?
- Does the rule impede or delay consumers from receiving a referral from an LRS?
- Does the rule make it difficult for an LRS to serve its potential consumers?
- Does the rule impede or discourage attorneys from joining the LRS?

- Does the rule make it difficult for an entity to apply for certification as an LRS?

In all of these cases, the following inquiry was also made: Would amending the rule sacrifice public protection or service quality for greater access?

Using that rubric, the Rules recommended for revision are discussed below

## RULES IMPEDING CONSUMER ACCESS TO / USE OF LRSs

### *No Automated Referral*

Rule 3.826(c)(4), prohibits LRSs from providing referrals “exclusively by technological means without staff evaluation of client needs and panel members’ qualifications.”

This rule has been interpreted to mean that LRS staff must evaluate the appropriateness of a proposed referral *before* the name of the attorney is given to the consumer, thereby prohibiting automated referrals, or referrals completed by a computer program. With the advances in technology and Artificial Intelligence, one could make the case that a computer program could complete the match as easily and as accurately as LRS staff.

Having to wait for the office hours of the LRS to get a referral may not meet a consumer’s needs. If, for example, a loved one is arrested for a DUI on Friday evening, currently the family member would need to await the LRS opening on Monday morning to get assistance. An automated referral process would allow the referral to occur Friday evening, and may in fact enable the loved one to speak with the referred attorney before the weekend is out. The rule prohibiting the use of automated referrals has the effect of discouraging consumers from using an LRS and delaying the receipt of a referral – negatively impacting access to justice.

For those who can effectively characterize their needs, an automated referral may be a useful service technique. This model would also allow services to handle less complex matters in a more efficient manner. Overall, the benefits of increasing access to an attorney more quickly would outweigh the potential dangers of an erroneous referral, which could be mitigated if the service follows up on the referrals, identifies what led to the erroneous referral, and continues to make improvements to its referral software to address known issues.

There are eight states that currently employ an automated referral option at a state level: Alabama, Florida, Massachusetts, New York (just beginning), North Carolina, South Carolina, Texas, and Wisconsin<sup>2</sup>. Generally, these states report a positive outcome and acceptance of the automated referral process from both the consumer and the attorney members’ point of view.

The states experience a usage rate of automated referrals ranging from 6% to 40% of their total referrals. These services continue to operate their phone-based referral systems employing call-center staff to handle the majority of their calls. All services felt that this additional feature resulted in increased access to their service and were generally pleased by the results of their automated referral systems. There were some complaints about the accuracy and functionality of the software currently in place and plans were made to purchase new software. However, there were no negative comments about having adopted automated referrals.

---

<sup>2</sup> Unlike California, these eight states operate their own lawyer referral services. (The State Bar of California does not operate a lawyer referral service, it certifies them.) Other state bars operate their own services in counties that lack LRSs. The majority of lawyer referral services operate out of county bars or other entities, either for-profit or non-profit. In this discussion, regarding automatic referrals, we are only counting and reflecting the experiences of state bar-operated entities that allow automated referrals.

To allow automated referrals in California would streamline the process and take advantage of technological efficiencies, thereby increasing access. However, as new technology is developed and implemented, staff believes it would be wise to require prompt follow up to ensure the accuracy and adequacy of the referral and ascertain whether adjustments to the automated system are necessary to better understand the type of referral required by the consumer. Staff therefore proposes that for the first 12 months after adoption of automated referral software, LRSs be required to make reasonable efforts to follow up with the client to evaluate whether the client's needs were met with the automated referral. After 12 months, staff recommend that each LRS continue to be responsible for follow up on 25% of the automated referrals as a method of ensuring the continued accuracy of the technology. As an additional method of ensuring continued quality and public protection, the service must also provide the option to obtain staff assistance if there is any question about the referral provided or any delay or complication in the referral process.

Further, the amendment would prohibit the LRS from imposing a referral fee if the match is not satisfactory. The new rule would also require the LRS to regularly analyze the efficiency and accuracy of the automated referrals, with adjustments to the programming as needed and develop a unique customer satisfaction survey that would capture important functions and data of the automated referral system.

In order to assess the effectiveness of this change in the rule, the amendments also require an LRS electing to implement this method of referrals to maintain separate records for the automated referral system and submit them as part of their Recertification Application each year. Amendments to the rules permitting the use of automated referrals, and related requirements, are included in Rules 3.820, 3.826 and 3.827. (See Attachment A.)

#### *Access for Consumers of Limited Means*

Rule 3.820(C)(3) currently requires every LRS to establish 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 panel members; or the availability of pro bono or other legal services for persons of limited means."

Section 6155 requires the State Bar to adopt rules which "[r]equire that, to increase access to the justice system for all Californians, lawyer referral services establish separate ongoing activities or arrangements that serve persons of limited means."

To better carry out the spirit of that requirement, staff proposes to amend the rules to specify that services for persons of limited means includes modest means panels, limited scope panels, flat fee panels and free 30-minute consultations. The waiver for such a requirement based on unreasonable or impractical reasons will be deleted.

#### **RULES IMPACTING AN LRS' ABILITY TO OPERATE**

##### *Separate Applications/Application Fees for Each County*

Rule 3.801 currently requires an LRS to submit a separate application (and application fee) for each county in which it operates. This requirement can be waived if the LRS is operating in two or more counties determined by the State Bar to be underserved, in which case only a single application and application fee is required. For programs needing to submit two or more applications, the primary differences between the applications is the list of attorney panel members. Staff recommends that this rule be relaxed to allow a single application for new or continuing LRSs, and discounted application fees for the additional counties to be served by the

same LRS. This will result in slightly reduced revenue for the State Bar but may allow LRSs to expand their service area, thereby increasing access to legal services. The impact of permitting one application for multiple counties may not be large, but it does make sense in an era where attorneys frequently cross county lines in order to represent clients. This can be observed in many urban areas such as Southern California and the San Francisco Bay Area.

### *Panel Composition*

Rule 3.823(B) provides that a lawyer referral service must have at least 20 attorneys, meeting specified requirements, and any subject matter panel must include at least 4 of those attorneys. Rule 3.824 limits eligibility to participate on an LRS to attorneys “practicing in the community served by the lawyer referral service.” These rules have been interpreted to require an LRS operating in multiple counties to have separate, non-overlapping lists of at least 20 attorneys each.

In the current day and age, with attorneys frequently crossing county lines to represent clients, this requirement imposes an unnecessary hurdle for the certification of a lawyer referral service. Staff therefore proposes to amend Rules 3.823 and 3.824 to permit attorneys to serve on multiple county panels for an LRS if the attorney maintains a place of business in the county or commits to providing an otherwise suitable location for client meetings and performance of other legal services. The rule permits the State Bar to waive these 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 participation. Staff believes the waiver should be expanded to allow for a lesser number of attorneys if the LRS demonstrates it is nonetheless providing referrals in the subject matter areas in which there is a high demand. In other words, the LRS may have fewer than 20 attorneys, but the primary consumer demand of that LRS is for criminal defense lawyers, for example, and that demand is being met by the attorneys on the panel.

## **RULES IMPEDING ATTORNEY MEMBERSHIP ON LRS PANELS**

### *Standards for Eligibility to Join an LRS*

In order to qualify to join an LRS, attorneys must demonstrate possession of professional liability coverage, prove that they have demonstrable, objective experience in their asserted subject matter areas, and agree to abide by the rules of the LRS. The service shall continue to monitor the panel member for compliance with the minimum standards, such as malpractice coverage, competence in the chosen substantive field, and disciplinary record, for as long as the attorney is a member of the LRS. The State Bar shall continue to monitor the service’s compliance of the standards as needed.

This and similar requirements should be maintained, even if it discourages or prevents some attorneys from joining an LRS. These rules are inserted for public protection purposes and the standards should not be lowered in order to make it easier for an attorney to join.

The balance of the rules either do not impact access to justice and/or are necessary for public protection, and therefore no proposals are put forth for their revision.

The proposed, revised rules are found in Attachment A.

## **OTHER PROPOSED RULE AMENDMENTS**

The draft contains additional amendments to better organize and clean up some of the language, as well as a proposed revision to the process to appeal denials of certification.

#### **FISCAL/PERSONNEL IMPACT**

Unknown at this time.

#### **RULE AMENDMENTS**

Title 3, Division 5, Chapter 3 of the Rules of the State Bar, rules 3.801, 3.802, 3.803, 3.806, 3.807, 3.820, 3.822, 3.823, 3.824, 3.826, 3.827, 3.828; Appendix A, Schedule of Charges and Deadlines.

#### **BOARD BOOK AMENDMENTS**

None

#### **STRATEGIC PLAN GOALS & OBJECTIVES**

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

Objective: c. By December 31, 2018, review Lawyer Referral Services certification rules with a goal of increasing access to justice.

#### **RECOMMENDATION**

None

#### **ATTACHMENTS LIST**

- A.** Proposed Revisions to Rules Regulating Certified Lawyer Referral Services – Redline
- B.** Proposed Revisions to Rules Regulated Certified Lawyer Referral Services – Clean Version

Article 1. Certification

Rule 3.801 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 that identifies~~ 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.~~
- ~~(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.~~
- (B) 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.
- (C) 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 3.828. 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.
- (D) An application must be completed in accordance with application instructions and filed with any required fee.

*Rule 3.801 adopted effective January 21, 2014.*

### Rule 3.802 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>2</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.~~ Application fees will be refunded upon written withdrawal of the application by the service. An application fee is otherwise not refundable.
- (D) An application or late fee for continued certification may be waived or reduced. Such application will be reviewed based on~~because of~~ demonstrated financial necessity~~as evidenced by gross annual revenues, panel size, geographic area served, length of time in operation, or the like.~~

*Rule 3.802 adopted effective January 21, 2014.*

---

<sup>2</sup> Business & Professions Code § 6155(f)(4).



### Rule 3.803 Denial of application

- (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 denial is confirmed, the State Bar will provide a written notice and explanation of the confirmation.
  - (3) Upon receipt of a notice confirming a denial ~~If the denial is confirmed~~, the applicant may ~~submit a petition for request~~ review ~~to by the State Bar Court in accordance with its rules~~ Executive Director within thirty days of receiving the notice.
  - (4) Within sixty days of receiving a request for review, the Executive Director may direct the State Bar to grant certification, confirm the denial, or remand the matter for further consideration. The record considered by the Executive Director on review will include all of the materials provided to the State Bar in support of the initial application, the written notice of denial of the initial application, all of the materials provided to the State Bar in support of the request for reconsideration, and the written notice confirming the denial. The Executive Director must provide written notice to the applicant explaining the determination.
  - (35) 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.
- (B) An application for continued certification ~~that fails to comply with these rules subjects a lawyer referral service to suspension or revocation~~ is subject to the review procedures set forth in rule 3.806.

*Rule 3.803 adopted as Rule 3.703 January 7, 2011; renumbered as Rule 3.803 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

Rule 3.806 Suspension or revocation of certification<sup>3</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) The State Bar shall provide written notice to a lawyer referral service no less than thirty days prior the intended effective date of a suspension or revocation of certification ~~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.
- ~~(C1)~~ Upon receipt of a notice of intention to suspend or revoke certification, a lawyer referral service may file submit a written request for ~~review~~ reconsideration of suspension or revocation of certification within thirty days of receipt of the notice. The request must explain why the action ~~wa~~is inappropriate and be supported by any relevant evidence. Failure to timely request ~~review reconsideration~~ results in final suspension or revocation of certification.
- ~~(D2)~~ Within sixty days of receiving a request for reconsideration of intention to suspend or revoke certification, t~~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~~ notice and explanation of ~~for~~ its determination.
- ~~(E3)~~ Upon receipt of a notice as described in subsection (2) of this rule~~If the denial is confirmed~~ Within thirty days of receipt of the notice of suspension or revocation, the lawyer referral service may request submit a petition for review by to the Executive Director within thirty days of receiving the notice~~State Bar Court in accordance with its rules. Failure to timely request review results in final suspension or revocation of certification, or imposition of conditions~~ Certification is suspended or revoked for failure to submit a timely petition for review of suspension or revocation.
- (4) Within sixty days of receiving a request for review, the Executive Director may direct the State Bar to continue certification, confirm the suspension or revocation of certification or the imposition of conditions, or remand the matter for further consideration. The record considered by the Executive Director on review will include the written notice of intention to suspend or revoke certification, all of the materials provided to the State Bar in support of the request for reconsideration, and the written notice

---

<sup>3</sup> See Business & Professions Code § 6155(g).

described in subsection (2) of this rule. The Executive Director must provide written notice to the applicant explaining the determination.

(~~FC~~) ~~Pending review of a denial to continue certification, c~~Certification remains in effect during the pendency of any review pursuant to section (B) of this rule, unless the ~~State Bar~~ notice of intention to suspend~~s~~ or revoke~~s~~ it expressly provides otherwise.

(~~GD~~) When suspension or revocation of certification is final, a lawyer referral service must immediately cease any activity subject to these rules, and the State Bar must notify every panel member of the lawyer referral service that certification has been suspended or revoked.

*Rule 3.806 adopted as Rule 3.706 January 7, 2011; renumbered as Rule 3.806 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

### Rule 3.807 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>4</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.
- (B) All State Bar records pertaining to a complaint and any investigations thereof ~~related to it~~ are the property of the State Bar and will remain confidential until ~~final~~ suspension or revocation of certification pursuant to rule 3.806 or a ~~proceeding is initiated in State Bar Court, whichever is earlier.~~

*Rule 3.807 adopted as Rule 3.707 January 7, 2011; renumbered as Rule 3.807 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

---

<sup>4</sup> Rule 3.820(E).

## Article 2. Minimum standards for lawyer referral services

### Rule 3.820 General duties of a lawyer referral service

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; and, if engaging in automated referrals as described in rule 3.826(C), appropriate technology and safeguards to ensure accurate referrals;~~
- (B) encourage widespread attorney membership;<sup>5</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;
  - (3) establishing services for persons of limited means, such as a modest means panel, a limited scope panel, flat fee panels, or providing a free referral for a 30 minute consultation by an attorney panel member ~~unless it demonstrates that doing so is unreasonable or impractical given the community needs; its financial resources, staff size, or panel membership; or the fees charged by its panel members; or the availability of pro bono or other legal services for persons of limited means; and~~
- (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>6</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;
- (F) if non-profit use its income only to pay reasonable operating expenses and to fund its pro bono, legal services, and other public service programs;

---

<sup>5</sup> Business & Professions Code § 6155(f)(1).

<sup>6</sup> Business & Professions Code § 6155(a)(2).

- (G) fully cooperate with any State Bar audit;<sup>7</sup>
- (H) provide each panel member a copy of these rules; and
- (I) at all times comply with these rules and applicable law.

*Rule 3.820 adopted effective January 21, 2014.*

---

<sup>7</sup> See Rule 3.805.

## Rule 3.822 Governing committee

- (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.
- (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;
  - (2) establish and assess compliance with the referral procedures required by these rules;<sup>8</sup>
  - (3) review and submit the annual report required by these rules;<sup>9</sup>
  - (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;
  - (6) provide to the State Bar the information required to be collected under rule 3.826; and
  - ~~(6)~~ meet at least quarterly.

*Rule 3.822 adopted as Rule 3.722 January 7, 2011; renumbered as Rule 3.822 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

---

<sup>8</sup> Rule 3.826.

<sup>9</sup> Rule 3.828.

## Rule 3.823 Panels

- (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. A lawyer referral service is encouraged to establish moderate and no-fee panels and other special panels that respond to the needs of the public, in order to provide services that serve persons of limited means as required under rule 3.820(C)(3).<sup>10</sup>
- (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 operates in an underserved county, provides written evidence that the size of the community or the number of its attorneys warrants a lesser number, or provides evidence that it is providing referrals in subject matter areas where there is a high demand for referrals.
- (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>11</sup>
  - (2) not receive referrals evaluated and processed by a lawyer referral service staff member employed or otherwise compensated by the panel attorney;
  - (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>12</sup>
  - (4) indicate each county the service operates in from which the panel member has agreed to take referrals from the service.
- (D) A lawyer referral service may disclose a panel member's past performance when the information is accurate, complete, and not misleading.

*Rule 3.823 adopted effective January 21, 2014.*

---

<sup>10</sup> Business and Professions Code § 6155(f)(5).

<sup>11</sup> Business & Professions Code 6155(f)(6).

<sup>12</sup> See Business & Professions Code § 6200 et seq.



### Rule 3.824 Eligibility for Membership

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. A member of any service that operates in more than one county may take referrals from any of the counties in which the service operates; provided, however, that the member must agree to travel to each county as reasonably necessary to perform legal services (such as client meetings), and must either maintain a place of business in each county or be able to offer an otherwise suitable location for the performance of such services. 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 service on a panel that deals with the area of certification, provided the attorney meets other criteria for panel membership.

*Rule 3.824 adopted effective January 21, 2014.*

## Rule 3.826 Referrals

- (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.
- (B) All referrals in a geographical area may not be made to a single attorney or law firm. The State Bar may deny certification or recertification, or suspend or revoke certification, for failure to make referrals fairly and impartially to panel members or to maintain current and complete records of referrals.
- (C) If a lawyer referral service makes any referrals using purely technological means, the service must:
  - (1) for a minimum of twelve (12) months immediately following the implementation of any automated referral system, establish quality control and assurance measures that, at a minimum:
    - (a) provide for staff to make reasonable efforts to follow up within two (2) business days of each automated referral to evaluate whether the client's needs were adequately met; and
    - (b) allow for electronic feedback from clients regarding whether the automated referral was successful or failed to meet client's needs;
  - Any time after the twelve (12) months following implementation has elapsed, if the service can demonstrate to the State Bar that the automated referral system results in successful referrals at a rate as high or higher than traditional referral methods, then the service may reduce its quality control and assurance efforts to follow up with twenty-five percent (25%) of automated referrals. The requirements of this subsection also apply after the adoption of a new technological platform for an existing automated referral system;
  - (2) ensure that any client who encounters a technical problem or any other difficulty or delay in using service's automated referral system is provided with information to contact an appropriate service staff member;
  - (3) forgo any fee if a referral is made that does not accurately reflect the needs of the client, unless the fee is applied to further referral efforts in the same matter that are successful;
  - (4) regularly analyze the efficiency and accuracy of the automated referrals and make adjustments to the technological platforms as needed;; and

- (5) provide data to the State Bar enumerating how many requests for referrals were made in a calendar year through the service's automated referral system, and how many such referrals were made using purely technological means.

(GD) A referral may not

- (1) discriminate on the basis of race, color, sex, gender, gender identity, gender expression, age, religious creed, national origin, ancestry, sexual orientation, mental or physical disability, medical condition, genetic information, marital status, political affiliation, ~~or military or~~ veteran status, citizenship, primary language, or immigration status;
- (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; or
- (3) be made directly or indirectly by a person employed or otherwise compensated by an attorney or firm to whom the referral is made.;  
~~or~~
- (4) ~~be made exclusively by technological means without staff evaluation of client needs and panel members' qualifications.~~<sup>14</sup>

*Rule 3.826 adopted effective January 21, 2014.*

<sup>14</sup>~~Business & Professions Code § 6155(h)(2).~~

## Rule 3.827 Records

- (A) A lawyer referral service must maintain and provide to the State Bar upon request current records ~~for~~
- (1) for each panel member that include
- (a) name, contact information, and qualifications;
  - (b) number and type of referrals, including whether referrals were made using purely technological means; and
  - (c) fees remitted for membership, referrals or consultations, advertising; or any other reason; and
- (2) for each referral that include
- (a) the client's name and contact information;
  - (b) type of matter ~~and~~, date of referral, and whether each referral was made using purely technological means; and
  - (c) panel member to whom the referral was made; and
- (3) sufficient to demonstrate compliance with section (C) of Rule 3.826.
- (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 Trustees, or consent of the lawyer referral service.

*Rule 3.827 adopted effective January 2,1 2014.*

### Rule 3.828 Annual report

- (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
    - (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, including information about the proportion of referrals made through an automated referral system;<sup>13</sup> and
  - (3) summarize the annual client survey and any operational changes it prompted.<sup>14</sup>
- (B) Failure to submit an annual report on time suspends certification unless the State Bar extends the report deadline for good cause.

*Rule 3.828 adopted as Rule 3.728 January 7, 2011; renumbered as Rule 3.828 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

---

<sup>13</sup> See Rule 3.826(C).

<sup>14</sup> Rule 3.822(B)(4) and (5).

## Appendix A: Schedule of Charges and Deadlines

### Rule 3.802(A) Application Fee:<sup>15</sup>

#### (1) Non-profit services.

Amount: \$1,000 for a service that operates in one county only. \$500 for the second county in which the service will operate, if any. \$250 for each additional county in which the service will operate, if any. For continued certification and regardless of the number of counties in which the service operates, one percent (1%) of gross revenue up to maximum of \$10,000.

Deadline: Upon filing of application for certification or continued certification.

#### (2) For-profit services.

Amount: \$5,000 for a service that operates in one county only. \$2,500 for the second county in which the service will operate, if any. \$1,250 for each additional county in which the service will operate, if any. For continued certification and regardless of the number of counties in which the service operates, one percent (1%) of gross revenue up to maximum of \$10,000.

Deadline: Upon filing of application for certification or continued certification.

*Rule 3.802(A) amended March 7, 2014, retroactively effective January 21, 2014.*

---

<sup>15</sup> Business & Professions Code § 6155(f)(4) provides that the application fee and renewal fees be determined by a combination of factors including for-profit or non-profit status and that the fees do not exceed \$10,000 or 1 percent of gross annual revenues, whichever is less.

Article 1. Certification

Rule 3.801 Application for certification

- (A) To initiate or continue certification, a lawyer referral service must submit an Application for Certification as a Lawyer Referral Service that identifies each county in which it operates.
- (B) 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.
- (C) 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 3.828. 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.
- (D) An application must be completed in accordance with application instructions and filed with any required fee.

*Rule 3.801 adopted effective January 21, 2014.*

### Rule 3.802 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>2</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) An application fee is otherwise not refundable.
- (D) An application or late fee for continued certification may be waived or reduced if there is demonstrated financial hardship.

*Rule 3.802 adopted effective January 21, 2014.*

---

<sup>2</sup> Business & Professions Code § 6155(f)(4).



### Rule 3.803 Denial of application

- (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 denial is confirmed, the State Bar will provide a written notice and explanation of the confirmation.
  - (3) Upon receipt of a notice confirming a denial, the applicant may request review by the Executive Director within thirty days of receiving the notice.
  - (4) Within sixty days of receiving a request for review, the Executive Director may direct the State Bar to grant certification, confirm the denial, or remand the matter for further consideration. The record considered by the Executive Director on review will include all of the materials provided to the State Bar in support of the initial application, the written notice of denial of the initial application, all of the materials provided to the State Bar in support of the request for reconsideration, and the written notice confirming the denial. The Executive Director must provide written notice to the applicant explaining the determination.
  - (5) 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.
- (B) An application for continued certification is subject to the review procedures set forth in rule 3.806.

*Rule 3.803 adopted as Rule 3.703 January 7, 2011; renumbered as Rule 3.803 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

Rule 3.806 Suspension or revocation of certification<sup>3</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) The State Bar shall provide written notice to a lawyer referral service no less than thirty days prior the intended effective date of a suspension or revocation of certification that states the reasons for the State Bar's action.
  - (1) Upon receipt of a notice of intention to suspend or revoke certification, a lawyer referral service may submit a written request for reconsideration of suspension or revocation of certification within thirty days of receipt of the notice. The request must explain why the action is inappropriate and be supported by any relevant evidence. Failure to timely request reconsideration results in final suspension or revocation of certification.
  - (2) Within sixty days of receiving a request for reconsideration of intention to suspend or revoke certification, the State Bar may then continue, suspend, or revoke certification with or without conditions. The State Bar must provide the lawyer referral service a written notice and explanation of its determination.
  - (3) Upon receipt of a notice as described in subsection (2) of this rule, the lawyer referral service may request review by the Executive Director within thirty days of receiving the notice. Failure to timely request review results in final suspension or revocation of certification, or imposition of conditions.
  - (4) Within sixty days of receiving a request for review, the Executive Director may direct the State Bar to continue certification, confirm the suspension or revocation of certification or the imposition of conditions, or remand the matter for further consideration. The record considered by the Executive Director on review will include the written notice of intention to suspend or revoke certification, all of the materials provided to the State Bar in support of the request for reconsideration, and the written notice described in subsection (2) of this rule. The Executive Director must provide written notice to the applicant explaining the determination.
- (C) Certification remains in effect during the pendency of any review pursuant to section (B) of this rule, unless the notice of intention to suspend or revoke it expressly provides otherwise.
- (D) When suspension or revocation of certification is final, a lawyer referral service must immediately cease any activity subject to these rules, and the State Bar must notify every panel member of the lawyer referral service that certification has been suspended or revoked.

---

<sup>3</sup> See Business & Professions Code § 6155(g).

*Rule 3.806 adopted as Rule 3.706 January 7, 2011; renumbered as Rule 3.806 November 4, 2011;  
approved by the Supreme Court effective January 21, 2014.*

### Rule 3.807 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>4</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.
- (B) All State Bar records pertaining to a complaint and any investigations thereof are the property of the State Bar and will remain confidential until suspension or revocation of certification pursuant to rule 3.806.

*Rule 3.807 adopted as Rule 3.707 January 7, 2011; renumbered as Rule 3.807 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

---

<sup>4</sup> Rule 3.820(E).

## Article 2. Minimum standards for lawyer referral services

### Rule 3.820 General duties of a lawyer referral service

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; and, if engaging in automated referrals as described in rule 3.826(C), appropriate technology and safeguards to ensure accurate referrals;
- (B) encourage widespread attorney membership;<sup>5</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;
  - (3) establishing services for persons of limited means, such as a modest means panel, a limited scope panel, flat fee panels, or providing a free referral for a 30 minute consultation by an attorney panel member unless it demonstrates that doing so is unreasonable or impractical given the community needs; its financial resources, staff size, or panel membership; or the fees charged by its panel members; or the availability of pro bono or other legal services for persons of limited means; and
- (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>6</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;
- (F) if non-profit use its income only to pay reasonable operating expenses and to fund its pro bono, legal services, and other public service programs;

---

<sup>5</sup> Business & Professions Code § 6155(f)(1).

<sup>6</sup> Business & Professions Code § 6155(a)(2).

- (G) fully cooperate with any State Bar audit;<sup>7</sup>
- (H) provide each panel member a copy of these rules; and
- (I) at all times comply with these rules and applicable law.

*Rule 3.820 adopted effective January 21, 2014.*

---

<sup>7</sup> See Rule 3.805.

## Rule 3.822 Governing committee

- (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.
- (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;
  - (2) establish and assess compliance with the referral procedures required by these rules;<sup>8</sup>
  - (3) review and submit the annual report required by these rules;<sup>9</sup>
  - (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;
  - (6) provide to the State Bar the information required to be collected under rule 3.826; and
  - (7) meet at least quarterly.

*Rule 3.822 adopted as Rule 3.722 January 7, 2011; renumbered as Rule 3.822 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

---

<sup>8</sup> Rule 3.826.

<sup>9</sup> Rule 3.828.

### Rule 3.823 Panels

- (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. A lawyer referral service is encouraged to establish moderate and no-fee panels and other special panels that respond to the needs of the public, in order to provide services that serve persons of limited means as required under rule 3.820(C)(3).<sup>10</sup>
- (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 operates in an underserved county, provides written evidence that the size of the community or the number of its attorneys warrants a lesser number, or provides evidence that it is providing referrals in subject matter areas where there is a high demand for referrals.
- (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>11</sup>
  - (2) not receive referrals evaluated and processed by a lawyer referral service staff member employed or otherwise compensated by the panel attorney;
  - (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>12</sup>
  - (4) indicate each county the service operates in from which the panel member has agreed to take referrals from the service.
- (D) A lawyer referral service may disclose a panel member's past performance when the information is accurate, complete, and not misleading.

*Rule 3.823 adopted effective January 21, 2014.*

---

<sup>10</sup> Business and Professions Code § 6155(f)(5).

<sup>11</sup> Business & Professions Code 6155(f)(6).

<sup>12</sup> See Business & Professions Code § 6200 et seq.



#### Rule 3.824 Eligibility for Membership

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. A member of any service that operates in more than one county may take referrals from any of the counties in which the service operates; provided, however, that the member must agree to travel to each county as reasonably necessary to perform legal services (such as client meetings), and must either maintain a place of business in each county or be able to offer an otherwise suitable location for the performance of such services. 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 service on a panel that deals with the area of certification, provided the attorney meets other criteria for panel membership.

*Rule 3.824 adopted effective January 21, 2014.*

## Rule 3.826 Referrals

- (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.
- (B) All referrals in a geographical area may not be made to a single attorney or law firm. The State Bar may deny certification or recertification, or suspend or revoke certification, for failure to make referrals fairly and impartially to panel members or to maintain current and complete records of referrals.
- (C) If a lawyer referral service makes any referrals using purely technological means, the service must:
  - (1) for a minimum of twelve (12) months immediately following the implementation of any automated referral system, establish quality control and assurance measures that, at a minimum:
    - (a) provide for staff to make reasonable efforts to follow up within two (2) business days of each automated referral to evaluate whether the client's needs were adequately met; and
    - (b) allow for electronic feedback from clients regarding whether the automated referral was successful or failed to meet client's needs;

Any time after the twelve (12) months following implementation has elapsed, if the service can demonstrate to the State Bar that the automated referral system results in successful referrals at a rate as high or higher than traditional referral methods, then the service may reduce its quality control and assurance efforts to follow up with twenty-five percent (25%) of automated referrals. The requirements of this subsection also apply after the adoption of a new technological platform for an existing automated referral system;
  - (2) ensure that any client who encounters a technical problem or any other difficulty or delay in using service's automated referral system is provided with information to contact an appropriate service staff member;
  - (3) forgo any fee if a referral is made that does not accurately reflect the needs of the client, unless the fee is applied to further referral efforts in the same matter that are successful;
  - (4) regularly analyze the efficiency and accuracy of the automated referrals and make adjustments to the technological platforms as needed; and

- (5) provide data to the State Bar enumerating how many requests for referrals were made in a calendar year through the service's automated referral system, and how many such referrals were made using purely technological means.
- (D) A referral may not
- (1) discriminate on the basis of race, color, sex, gender, gender identity, gender expression, age, religious creed, national origin, ancestry, sexual orientation, mental or physical disability, medical condition, genetic information, marital status, political affiliation, ~~or~~ military or veteran status, citizenship, primary language, or immigration status;
  - (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;
- or
- (3) be made directly or indirectly by a person employed or otherwise compensated by an attorney or firm to whom the referral is made.

*Rule 3.826 adopted effective January 21, 2014.*

#### Rule 3.827 Records

- (A) A lawyer referral service must maintain and provide to the State Bar upon request current records
  - (1) for each panel member that include
    - (a) name, contact information, and qualifications;

- (b) number and type of referrals, including whether referrals were made using purely technological means; and
    - (c) fees remitted for membership, referrals or consultations, advertising; or any other reason; and
  - (2) for each referral that include
    - (a) the client's name and contact information;
    - (b) type of matter, ~~date of referral~~, and whether each referral was made using purely technological means; and
    - (c) panel member to whom the referral was made; and
  - (3) sufficient to demonstrate compliance with section (C) of Rule 3.826.
- (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 Trustees, or consent of the lawyer referral service.

*Rule 3.827 adopted effective January 2,1 2014.*

### Rule 3.828 Annual report

- (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
    - (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, including information about the proportion of referrals made through an automated referral system;<sup>13</sup> and
  - (3) summarize the annual client survey and any operational changes it prompted.<sup>14</sup>
- (B) Failure to submit an annual report on time suspends certification unless the State Bar extends the report deadline for good cause.

*Rule 3.828 adopted as Rule 3.728 January 7, 2011; renumbered as Rule 3.828 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

---

<sup>13</sup> See Rule 3.826(C).

<sup>14</sup> Rule 3.822(B)(4) and (5).

## Appendix A: Schedule of Charges and Deadlines

### Rule 3.802(A) Application Fee:<sup>15</sup>

#### (1) Non-profit services.

Amount: \$1,000 for a service that operates in one county only. \$500 for the second county in which the service will operate, if any. \$250 for each additional county in which the service will operate, if any. For continued certification and regardless of the number of counties in which the service operates, one percent (1%) of gross revenue up to maximum of \$10,000.

Deadline: Upon filing of application for certification or continued certification.

#### (2) For-profit services.

Amount: \$5,000 for a service that operates in one county only. \$2,500 for the second county in which the service will operate, if any. \$1,250 for each additional county in which the service will operate, if any. For continued certification and regardless of the number of counties in which the service operates, one percent (1%) of gross revenue up to maximum of \$10,000.

Deadline: Upon filing of application for certification or continued certification.

*Rule 3.802(A) amended March 7, 2014, retroactively effective January 21, 2014.*

---

<sup>15</sup> Business & Professions Code § 6155(f)(4) provides that the application fee and renewal fees be determined by a combination of factors including for-profit or non-profit status and that the fees do not exceed \$10,000 or 1 percent of gross annual revenues, whichever is less.