



# The State Bar of California

II.D. Lawyer Referral  
Service Rule Amendments  
09-17-21 CTJG Meeting  
Open Session

**DATE:** September 7, 2021

**TO:** Closing the Justice Gap Working Group (CTJG)

**FROM:** Merri Baldwin and John Lund

**SUBJECT:** Certified Lawyer Referral Service Rules and Statutes

This memorandum sets forth a report, as requested by the Chair at the April 9, 2021 CTJG meeting, that addresses the following four questions:

- (1) Scope of assignment: What has the CTJG been asked to advise on?
- (2) What is the status quo (current rules and/or statutes and how they operate)?
- (3) What are possible options for change, and what are the recognized advantages/disadvantages?
- (4) What steps should we take (request presentations, conduct interviews, review studies, etc.) to reach a fully informed recommendation?

Working Group members are asked to:

1. Review the background memo and any provided resources;
2. Be prepared to ask any questions about this rule revision task; and
3. Consider submitting input on item #3 above – What are the possible options for change and what are the advantages and disadvantages of such change?

## SCOPE OF THE ASSIGNMENT: WHAT HAS THE CTJG BEEN ASKED TO ADVISE ON?

This assignment originates from the Task Force on Access Through Innovation of Legal Services ([ATILS](#)) [Final Report and Recommendations](#). ATILS Recommendation No. 6 stated:

Consider Authorizing a Study of Potential Amendments to the Certified Lawyer Referral Service Rules and Statutes, and Amendments to Relevant Rules of Professional Conduct to Ensure that Together 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

In establishing the CTJG, the State Bar Board of Trustees approved a [charter](#) which states, in part: “The working group will develop specific recommendations regarding the following . . . Lawyer Referral Service statutes and rules. In developing recommendations, the working group will determine whether and to what extent the existing statutes and rules inhibit innovation and access to legal services.”

## **WHAT IS THE STATUS QUO (CURRENT RULES AND/OR STATUTES AND HOW THEY OPERATE)?**

Legal referral services have long been recognized as playing an important role in providing access to lawyers.

For people who do not have frequent contact with the legal system, even understanding the basics can seem overwhelming when they are attempting to sort out what they need to do. Many times, an individual may just want to understand a legal document they are sent – or a document that appears to be a legal document, but is not. Some people are not even sure they have a legal problem and just want to ask basic questions to assure themselves they do not need an attorney for a particular matter. Others are aware they have a legal problem, but do not know attorneys, are distrustful or intimidated by them, or have no one to encourage them to connect with attorneys when they need assistance. All of these people – and they number in the millions in the U.S. on any given day – can get the help they need if connected to an appropriate attorney.”

[New York County Lawyers Association For-Profit Legal Services Providers Final Report](#), 2020.

Non-profit legal referral and information services (often referred to as “LRISs”) are operated by bar associations and similar groups across the country, and operate through a variety of means, including traditional intake services conducted by staff or volunteers. These non-profit LRSs often charge lawyers an administrative fee, and/or a percentage of any recovery obtained for the client in a contingency fee case. These services operate geographically, within the jurisdiction or area served by the sponsoring bar association.

In California, LRSs and attorneys’ participation in those services are governed by both the Professional Rules as well as statute. Cal. Rule of Prof. Conduct 5.4(e) states that lawyers may not accept referrals, or otherwise participate in, a lawyer referral service “unless it complies with the Minimum Standards for Lawyer Referral Services” established by the Board of Trustees of the State Bar. Cal. Rule of Prof. Conduct 7.2(b) provides that 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,” with five exceptions. One of the exceptions is that a lawyer may “pay the usual charges of . . . a qualified lawyer referral service established, sponsored and operated in accordance with the State Bar of California’s Minimum Standards for Lawyer Referral Service in California.”

California Business and Professions Code section 6155(a) states that a lawyer referral service is an individual or entity that operates “for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys.”

[California Business and Professions Code section 6155](#) and [6156](#) provide that an individual or organization that refers prospective clients to attorneys must be certified by the State Bar as a lawyer referral service (LRS) and must comply with the minimum standards set forth in the [Rules of the State Bar \(Title 3, Div. 5, Ch. 3, Lawyer Referral Services\)](#). Such minimum standards include requirements for governing committees, attorney panel membership, attorney malpractice insurance, staff to evaluate and process requests for legal assistance, appropriate technology and safeguards to ensure accurate referrals, cost control, a complaint process, and that LRSs serve their communities and seek to improve the quality and affordability of legal services. A violation or threatened violation of section 6155 may be enjoined by any person. Any person or entity in potential or actual violation of section 6155 is liable for civil penalties under section 6156.

To become certified, an LRS must apply for certification to the State Bar that establishes compliance with the minimum standards and identifies each county in which the LRS operates. (State Bar Rules 3.800, 3.801(A)). The application must include panel membership criteria and be filed with the appropriate fee. (State Bar Rules 3.801(B), 3.802). Certification may be granted with or without conditions for two years or a shorter time as specified by the State Bar. Certification terminates at the end of the certification period unless it is renewed. (State Bar Rule 3.804).

In brief, some of the minimum standards for an LRS include:

- Have a governing committee of at least three members, a majority of whom must be active licensees of the State Bar. No more than half of the members of the governing committee may receive referrals from the LRS (State Bar Rule 3.822(A)).
- The governing must, among other things: establish criteria for subject matter and general panel membership; establish and assess compliance with the referral procedures required by the State Bar Rules; annually survey a random sample of at least ten percent of the clients served to determine client satisfaction with service and fees; meet at least quarterly (State Bar Rule 3.822(B)).
- Have at least twenty attorney members, ten of whom must be from separate and independent law firms. (State Bar Rule 3.823(B)).
- Have panels of attorney members qualified to provide legal services to the public that are organized by subject matter (this may include a general panel). Each panel must have at least four members. (State Bar Rule 3.823(A) & (B)).
- Only an active licensee of the State Bar practicing in the community served by the LRS may be a member of the service. A panel member attorney may take a referral from any of the counties in which the service operates, if: (1) the attorney agrees to travel to each county as reasonably necessary to perform legal services; and, (2) either maintains a place of business in that county or be able to offer an otherwise suitable location or method of performance of such services. Remote services may be provided if they are adequate to meet a client’s needs. (State Bar Rule 3.824).

- Establish experience and other substantial and objective criteria necessary to serve on a subject matter panel (no minimum requirements are set forth in the rules). Certification as a legal specialist qualifies an attorney to serve on a panel that deals with the area of certification (provided the attorney meets other criteria for panel membership). (State Bar Rule 3.824).
- Require each panel member attorney to possess errors and omissions insurance in an amount of not less than \$100,000 per occurrence and \$300,000 aggregate, per year. (Bus. & Prof. Code § 6155(f)(6)).
- If the LRS makes any referrals using “purely technological means,” the LRS must establish quality control and assurances measures for at least 12 months following the implementation of any automated referral system that makes reasonable efforts to follow up within two business days of each automated referral to evaluate whether the client’s needs were met and allow for electronic feedback from clients. (State Bar Rule 3.826(C)(1)).
- Maintain certain records for each panel member and each referral. (State Bar Rule 3.827).
- Serve its community and improve the quality and affordability of legal services by establishing services for persons of limited means, such as a modest means panel, a limited scope panel, a flat fee panel, providing a free referral for a 30-minute consultation by an attorney panel member, or providing services on a sliding fee scale or payment schedule. (Bus. & Prof. Code § 6155(f) and State Bar Rule 3.820(C)(3)).

As additional factual background, currently there are 41 certified LRSs in California, 7 of which are for-profit. (These are listed on the State Bar website by geographic area in which they are certified to operate. <https://www.calbar.ca.gov/Public/Need-Legal-Help/Using-a-Certified-Lawyer-Referral-Service/Certified-Lawyer-Referral-Services-Directory>.)

For some years, lawyer matching services began to operate in California and other states, using electronic means of providing information about lawyers in response to consumer requests, sometimes providing the equivalent of an electronic directory and sometimes providing more specific referrals. In 2019, [Jackson v. LegalMatch.com](#), 42 Cal. App. 5th 760 (2109) was decided, which held that LegalMatch, an online lawyer matching service that had operated in California for a number of years, was a referral service subject to regulation by the State Bar. That decision defined “a referral as the act of directing a potential client to an attorney.” *Id.* at 773. Following that decision, the State Bar initiated disciplinary investigations of numerous lawyers who had participated in LegalMatch, and sued LegalMatch in Superior Court for engaging in uncertified lawyer referral activity. In September 2020, LegalMatch became a certified LRS.

## **WHAT ARE THE POSSIBLE OPTIONS FOR CHANGE, AND WHAT ARE THE RECOGNIZED ADVANTAGES AND DISADVANTAGES?**

In recent years, there has been increasing attention given to a number of studies that have examined the possible use of technology and technological means to provide increased access to lawyers, including the possibility of for-profit legal referral services. These reports as well as ethics opinions from a number of jurisdictions have identified limitations imposed by

professional rules as inhibiting the growth and development of such programs, as well as lawyers' reluctance to participate for fear of disciplinary action. At the same time, studies demonstrate the potential benefit for unemployed or underemployed lawyers of participating in referral services.

Although all fifty states have developed a regulatory scheme for lawyer referral activity, there is "wide variation" among state regulations. Not all states directly regulate lawyer referral programs as the majority approach is to define how an attorney may participate in a lawyer referral service program through a rule of professional conduct, typically rule 7.2 concerning attorney advertising, and regulate improper lawyer referral activity through attorney discipline.<sup>1</sup> By regulating attorney participation, there is indirect regulation of the programs themselves. The American Bar Association Standing Committee on Lawyer Referral and Information Service prepared a report titled [The Regulation of Lawyer Referral Services: A Preliminary State-By-State Review](#) that helpfully provides a synopsis of the various approaches lawyer referral service regulation nationwide. A number of states have either changed their professional rules or are considering changes to allow for-expanded profit referral services, while ensuring consumer protection.

California is in the minority of jurisdictions in that it goes beyond regulating only an attorney's participation in a lawyer referral service and sets forth requirements and duties for the lawyer referral service program itself, as described above. According to the ABA Standing Committee's report, California is one of only two jurisdictions that have statutory provisions addressing lawyer referral services.<sup>2</sup> Thus, any approach to effect change in the regulation of lawyer referral services in California needs to focus on amending the Business and Professions Code and/or the State Bar Rules, as well as any changes that may be needed to the Rules of Professional Conduct.

Possible options to consider include:

- (1) Recommending amending Bus. & Prof. Code § 6155(h)(2) to exclude attorney matching services from the definition of LRS in order to increase consumer access to attorneys. One possible way to do this would be to amend the language to state lawyer referral activity requires the use of discretionary decision making when determining which attorneys to be recommend to a particular client. If this recommendation were made, consideration should be given to what disclosures such matching services should be required to provide to the client and any other consumer protections that should be

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<sup>1</sup> On August 20, 2020, the American Bar Association amended their advertising and solicitation rules of professional conduct. Currently, ABA Model Rule 7.2(b)(2) states:

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

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service;

<sup>2</sup> Texas is the other jurisdiction that regulates lawyer referral services through statute. See, [Texas LRS Quality Assurance Act](#).

required. This approach may require a corresponding edit to Bus. & Prof. Code § 6155(c), see (4), below.

- (2) Revise/simplify the LRS rules imposing special requirements on LRS programs that make referrals “using purely technological means.” (See, State Bar Rule 3.826(C).)
- (3) Proposing amendments to the State Bar Rules to remove restrictions that lawyers who participate in LRSs in a particular geographic area have a physical presence in that area, provided that the participating lawyer must be able to demonstrate appropriate means to deliver services to clients there.
- (4) Clarify and/or broaden Bus. & Prof. Code § 6155(c) regarding activities that are not treated as subject to LRS regulation.
- (5) Subject to the final action by the State Bar and regulatory partners on the issue of a new paraprofessional licensee program, broaden the scope of regulated LRS activity to cover these future licensees.
- (6) Clarify and broaden the existing requirement for separate ongoing activities to provide access for limited means clients. (See, Bus. & Prof. Code § 6155(f)(5) and State Bar Rule 3.820(C).)
- (7) As an alternative, adopt some or all of these changes within the Sandbox in order to collect data on performance, consumer protection and benefits before recommending changes to the rules and statutes.

## **WHAT STEPS SHOULD WE TAKE (REQUEST PRESENTATIONS, CONDUCT INTERVIEWS, REVIEW STUDIES, ETC.) TO REACH A FULLY INFORMED RECOMMENDATION?**

We will obtain and review additional available data from other states. We will also identify speakers who can address the increased access to legal services that LRSs can provide to consumers, as well as tools available for consumer protection.