

**Oregon State Bar
Meeting of the Board of Governors
Special Open Session Agenda
Friday, May 20, 2011, 11:00 a.m.
Oregon State Bar Center, McKenzie Room**

1. Call to Order

2. Lawyer Referral Service Funding (Johnnie)

A. Guest Speaker, Lish Whitson Inform pp. 2-109

3. CLOSED Session (handout)

A. Executive Session (pursuant to ORS 192.660(1)(f) and (h) handout

4. Good of the Order (Non-action comments, information and notice of need for possible future board action)

1. What is the revenue potential with percentage fees?
2. Wouldn't it be easier and just as effective to raise the panel registration fees?
3. What happens if so many lawyers dislike the new model that they quit the program?
4. How many other statewide and/or mandatory bar LRS's use a percentage fee model? What have some of their experiences been?
5. What if Oregon is just different from other jurisdictions?
6. What's to lose by keeping the status quo?
7. Some Oregon lawyers say they never get fee-generating cases from our LRS. What if that's the case and switching to percentage fees fails to bring in new revenue?
8. Isn't it particularly unfair to "tax" LRS lawyers since they only get low fee generating cases and the program benefits everyone?
9. Won't the ethics rules require clarification?
10. Wouldn't percentage fees greatly increase the amount of administrative work each lawyer has to do?
11. How are confidential settlement amounts handled?
12. What's to stop a lawyer from increasing his/her hourly rate to compensate for the "new" amount owed under a percentage fees revenue model?
13. Won't the public disapprove of the LRS receiving part of the funds collected from the client? Won't percentage fees make the bar look bad?
14. Is there an increased likelihood the bar could face a negligent referral claim?
15. Why shouldn't the OSB just outsource the program or use an online-only software product?

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011

Memo Date: April 11, 2011

Re: BOG Work Session
RIS Business Model

Action Recommended

No action recommended.

Background

I. Background: OSB Lawyer Referral Service

A. History.

The Lawyer Referral Service (LRS) began as a mandatory program in 1971 when restrictions on lawyer advertising made it difficult for potential clients to locate attorneys appropriate to their legal needs and circumstances. From 1971 until 1981 participation in the program was mandatory. In 1981 LRS became a voluntary program supported by registration fees from lawyers electing to participate. The intention was for LRS to become self-sufficient in five years. In 1986 the Board supported a staff recommendation to allow the program to remain subsidized.

B. Purpose.

LRS serves lawyers and the public by referring people who can afford to pay for legal services and need legal assistance to lawyers who have indicated an interest in or willingness to accept such referrals, and by providing ancillary information and alternative referral services. It is the largest and best-known program of the bar's Referral & Information Services (RIS) Department, and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. RIS also offers several other programs that help both the people and the lawyers of Oregon.

- **Modest Means** is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosures and criminal defense.
- **Problem Solvers** is a pro bono program offering legal advice for youth ages 11-17.
- **Lawyer to Lawyer** connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge.

- The **Military Assistance Panel** connects military personnel and their families in Oregon with pro bono legal assistance.
- The **FEMA Panel** is a pro bono program activated whenever FEMA declares a disaster area within Oregon.

C. Operations.

RIS annually processes 65,000-80,000 requests for legal assistance and information; of these, more than 50,000 result in referrals to LRS panel attorneys. Requests are submitted primarily by phone but also by mail and increasingly online. In addition to referrals through the various RIS programs many callers are directed to community resources such as legal aid and other programs within the bar such as the Client Assistance Office. For LRS referrals, the most-requested referrals by practice area are: Family Law, General Litigation, Real Property and Criminal Law (see LRS Referrals by Panel).

Approximately 1,300 bar members participate as LRS panelists, which represents 20% of active members in private practice. The profile of an “average” panelist would be a solo or small-firm lawyer in general practice with more than 16 years of practice experience (see LRS Panelist Charts). Policy issues for referral to the BOG are generally first discussed by the OSB Public Service Advisory Committee, which advises on all RIS programs as well as the bar’s public education programming.

The department’s largest expense is staffing, which represents 88% of total expenses (not including ICA). Revenue for 2010 was approximately \$160,000 and net expense (including ICA) was approximately \$275,000. Projections for 2011 are a higher net expense.

D. Funding.

Currently all program revenue derives from panelist registration fees. Basic registration fees, which entitle a panelist to register for up to 4 substantive-law panels, are tiered based on years of bar admission: \$50 (new member), \$75 (admitted 1-3 years) and \$100 (admitted at least 4 years). Additional panels may be added for \$30 each, and additional fees apply for multiple location registrations and the option to receive communications other than via email.

The current fees were set in 2007 following a review of funding options by the PSAC and BOG committees (see LRS Fees Memo). The BOG has revisited LRS funding on several occasions over the past thirty years, first focusing on panel registration fees (see 1987 LRS Program Evaluation) and later on the possibilities of a percentage-fee model. The first BOG exploration of percentages resulted from a recommendation by the ABA’s Program of Assistance and Review in 1992 (see PAR Report 1992). The BOG also conducted a thorough review in 1998 as part of a partnership proposal with the Multnomah Bar Association (see Oregon State and Local Bar LRS proposal). Each time the decision has been made to retain the current funding model with minor, if any, changes to panel registration fees.

II. Basics of LRS Funding Models

A. Panelist Registration Fees.

Almost all LRS's charge some form of annual registration fee based, for example, on the number of panels or subpanels selected by the panelist lawyer. Some programs, like Oregon's, discount these registration fees for those lawyers that are new to the practice of law. Perhaps the greatest advantage of this model is simplicity. Members are comfortable with the concept, all fees are clear in advance of registration and panelists (unless they request changes) are billed only once per year. The disadvantages are that the revenue potential is limited and even small increases tend to result in panelist attrition.

Oregon's LRS registration fees are decidedly on the low end compared to other programs nationally. Feedback from panelists at a focus group session in 2010 was that LRS is a great value and the bar undercharges for its LRS. While some indicated they would happily pay more than double the current rates, other (primarily new) lawyers thought raising registration fees would prevent them from participation.

LRS fees have also been remarkably stable over the years, with few increases. The last increase was made in 2007, and the fees set at that time are still in place. Following that increase LRS saw a first-year decline in participation that only fully rebounded after three years. Previous increases in registration fees, infrequent as they were, had the same effect.

B. Consultation Fees and Forwarding Fees.

This is a commonly used funding mechanism for referral services, although it has lost favor in recent years. In the "consultation fee model" clients must pay the initial consultation fee to the LRS before receiving a referral. Fees are retained by the LRS, which means panelists do not receive any fees for initial client consultations. In the "forwarding fee" model, panelists collect the consultation fee from clients, then forward all or part of the fee to the referral service.

Many programs have abandoned this method because administrative costs substantially offset the revenue it generates. Consultation fees, which require the LRS to process payments, would increase call length considerably and add considerable accounting work; forwarding fees do the same, placing much of the increased administrative burden on panel members. Other concerns are that potential clients may be discouraged by "up front" fees, panelists who are already providing great value for their consulting services should be able to keep the fees, and requiring a consultation fee limits panelists' flexibility in offering free consultations as a client-development tool. In addition, to remain competitive with the legal marketplace, many LRS programs nationally are reducing or eliminating consultation fees altogether. On the plus side, both of these methods do bring in additional revenue, and the consultation fee model in particular has the benefit of effectively screening callers for ability and willingness to pay for legal services.

C. Percentage Fees.

A percentage fee system is one in which a panelist who accepts a fee-generating case returns to the referral service a portion of the fees collected over a threshold amount, if any. Percentage fee systems in effect spread program costs proportionately, with greater contributions from those panelists who most benefit from their participation. A majority of bar-sponsored LRS programs nationwide have adopted percentage fee plans as the most equitable method of funding a referral program.

1) Legal and Ethical Concerns

Much of the discussion and concern over whether to implement percentage fees in Oregon has centered on whether it would require any changes to any statutes or ethics rules. The statutory questions are whether ORS 9.505 and/or 9.515 prohibit a lawyer referral service from requiring that participating lawyers pay a percentage of legal fees earned by the lawyer. The ethics rules that could impact percentage fees are ORPCs 1.5 (fees), 5.4 (professional independence of a lawyer) and 7.2 (advertising). The Public Service Advisory Committee and bar staff provided background on these issues to the BOG's Access to Justice Committee in 2010 ([see BOG A2J -- Authority for Percentage Fees](#)).

The bar's Legal Ethics Committee, upon a recent request from the BOG to address the rules issues, declined to draft an opinion that Oregon's rules permit percentage fees in connection with LRS, primarily because of the language of ORPC 7.2 ([see Ethics Committee Letter](#)). Previously issued ethics opinions conclude that fee-sharing with a referral service is prohibited by the current rules ([see Formal Opinion No. 2005-168 and Formal Opinion No. 2007-180](#)).

The ABA and many states have issued ethics opinions on this topic or specifically noted the ability of public service lawyer referral programs to utilize this mechanism through bar rules. Background materials from the ABA include articles ([see Franck article](#)) and summary reports ([see Percentage Fee Funding Adopted by State](#)) showing the growth of percentage fees as an LRS funding model.

Should the BOG decide to pursue percentage fee funding, a decision on how to address these issues will need to be made. Very likely, an amendment to ORPC 7.2 would be required so as to expressly permit fee-sharing in lawyer referral cases. That raises another issue: whether the permission should be limited to bar-affiliated programs, to any non-profit service, or to any lawyer referral service. ORS 9.505 is a potential problem, in that it prohibits a "person" from accepting compensation for referring a matter to an attorney. There is some debate and no clear authority on whether the bar is "person" within the meaning of the statute. An obvious solution is to seek an amendment or repeal of the statute in the 2010 legislative session, but it is expected that there would be opposition from the plaintiff's bar. General Counsel is reasonably confident that a legal challenge to the bar's collection of a percentage fee could be defended successfully.

The board would also need to decide how revenue in excess of operational expenses should be spent. Finally, there are several implementation issues to resolve.

2) Implementation Considerations

Determining Percentages and Thresholds: The percentage can be fixed amount for all panels or vary by substantive panel; it can also be graduated levels based upon the total amount collected, e.g., 10% of the first X collected, 15% of any amount collected above X. Most LRS's that have a 15% fee model break even or earn revenue in excess of operational expenses (see Austin CTRLS rules). LRS's that collect 10% sometimes break even but seldom earn revenue beyond expenses (see Maine atty staff manual). Programs that collect 20% or more generally collect revenue in excess of operational expenses (see NV standards and rules).

Member Communications: Programs that have implemented percentage fees report their greatest initial challenge is in communicating the changes to panel members and others. Panel members will need to understand the reasons for the change and, perhaps most importantly, how it may affect them. From preliminary research it appears LRS panelists are most concerned about ease of administration, simplicity of accounting functions and possible implications arising from the bar's regulatory role (i.e., could failure to follow correct LRS procedures have bar disciplinary consequences).

Budgeting: Most LRS's report losing 10-20% of their panelists when percentage fees were first implemented. Panelist attrition, however, is short-lived, with most programs reporting a return to "normal" registration within 2 years. Percentage fee revenue typically takes 3-5 years to reach maturity in revenue terms, and remain highly variable because of the unpredictable nature of fees deriving from personal injury matters.

Infrastructure: The basic database functions required to support a percentage fee system are already in place. Only minor modifications to the current attorney notification and follow-up reporting programs would be required. Additional resources may need to be allocated to handle accounting functions.

III. Other LRS Issues

A. Client Consultation fees. LRS clients pay a maximum of \$35 for an initial consultation with an LRS panelist. There is no set time limit, leaving it up to individuals to control the length and scope of an initial consultation. The PSAC and BOG have periodically considered and rejected changes to the client consultation fees as inconsistent with the program's public service orientation (see P&G re client fees).

B. Subject Matter Panels. These are-of-law panels that require attorneys to meet objectively determinable criteria, e.g., experience or training, as a prerequisite to panel membership. The purpose is to ensure that participating lawyers possess the knowledge and skills necessary to

effectively assist clients in the referred subject matter. Subject Matter Panels are a requirement for certification of an LRS by the ABA (see Model Supreme Court Rules). Sample program guidelines are available from the ABA's website:

<http://apps.americanbar.org/legalservices/lris/clearinghouse/examples.html>. OSB's LRS has adopted subject matter panels for certain complex criminal law, adoption and immigration matters. A subject matter panel for certain employment law matters was added in 2010 on a pilot basis. Current subject matter panel forms are available at the bar's website at <http://www.osbar.org/forms#lrs>

C. Liability for Negligent Referral: Some members may question whether the LRS could face liability for negligent referral under a percentage fee system. The short answer is that an LRS's funding scheme does not appear to effect its potential liability, and to date no LRS has been held liable for negligent referral (see Negligent Referral Liability).

IV. Three Options for OSB LRS

A. Status Quo

LRS remains funded by panel registration fees, although changes in registration fees may be made. Past increases in the registration rate have been small and infrequent, but have still resulted in panelist attrition so that no additional revenue was raised. That said, the fees for Oregon's LRS are very low compared to other programs nationally, and panelists who participated in the 2010 focus groups generally supported raising the registration fees. Focus group members were concerned, however, about the impact of rate increases on new lawyers; PSAC committee members and staff are concerned about attrition in rural areas, where participation is already comparatively low.

Pros:

- Members are accustomed to registration fees so less member/panelist education needed for any change in fee amount.
- Registration fees remain a consistent and predictable source of revenue in the immediate future.
- No changes to Oregon Revised Statutes or Rules of Professional Conduct.

Cons:

- RIS is unlikely to break even and will likely require increased subsidizing from the bar's general fund.
- Loss of opportunity. Private sector internet competition is growing rapidly, and is significantly better funded. The bar's market dominance will decline and be supplanted by private sector competition. Private sector services are able to target potential clients from middle and higher socio-economic strata (internet savvy, middle-class) – a market that the bar is unable to target and is losing right now.

- Costs and expenses will increase over time. Inability to invest in RIS – including increased staffing and technological upgrades – will lead to longer wait-times and an increase in the percentage of abandoned calls.
- Increased registration fees may disadvantage the lawyers least able to afford to participate, and lead to high attrition in rural areas where it is often a challenge to enroll panelists.

B. RIS Implements Percentage Fees with Goal of Departmental Self-Sufficiency.

A percentage fee component would be added to the existing LRS revenue structure with the goal of achieving departmental self-sufficiency. Panelists would remit a percentage of attorneys' fees collected from RIS-referred matters – e.g., X% of all fees collected in excess of \$Y. RIS will track all referrals and issue periodic requests to panelists for open/closed status reports on referred cases. RIS would not collect, nor would panelists remit, any consultation fee charged to potential clients. RIS would thus have two sources of revenue – registration fees and percentage fees.

Pros:

- Maintains low cost, low barrier-to-entry for newer and/or inexperienced panelists.
- Implements an equitable, success-based fee structure. Only those panelists who receive viable cases, on which they are able to collect attorneys' fees, pay anything more than annual registration fee. If no leads are successful; the attorneys' fees earned are not in excess of threshold amounts; and/or the panelist is unable to collect the attorneys' fees billed – the panelist remits no additional fees to RIS.
- RIS should be able to achieve departmental self-sufficiency in 3 to 5 years. Doing so will free up \$330,000 to \$350,000 in general funds currently subsidizing RIS.
- RIS will be able to increase marketing to improve its market position, as lawyers and the public both increasingly utilize internet-based resources to address their needs.
- Aggregated marketing and branding for solo practitioners and small firms. Increasing RIS's marketing ability will provide a valuable member benefit to one of the bar's core constituencies – sole practitioners and small firms. As solo practitioners' and small firms' outsourced marketing firm, RIS will be able to increase and improve marketing on behalf of panelists.
- Greater ability to directly assist in fulfilling the bar's mission "by improving the quality of legal services, and by increasing access to justice." RIS is an integral part of the legal services delivery system. In the business of public service and, at the same time, in the business of providing valuable member benefits, RIS demonstrates to the bar's members, the public, and the judiciary how the bar is fulfilling its access to justice mission: it provides access to justice for low- to moderate-income people in our community.
- Strengthen the bar's brand, improving public perception of the legal profession. RIS is the bar's best-known and most-used service. RIS receives between 65,000

– 80,000 calls per year and accounts for 97% of the email volume in and out of the entire organization.

- Improve the quality of calls/leads for LRS panelists; shore-up erosion of target-market segment. With improved funding, RIS will be able to invest in operations, including marketing and technology, improving client services and, ultimately, panelist satisfaction as the quality of referrals improves.
- Cover increasing departmental costs and expenses. The number of Modest Means Program applications continues to rise and has doubled since 2007. Military Assistance Panel Program referrals have tripled since 2008. Percentage fee revenue will help cover both increasing personnel and direct program costs.

Cons:

- General OSB member and RIS panelist resistance may require a comprehensive educational campaign, potentially including Board of Governors' involvement.
- Possible immediate and significant attrition of panelists, including in rural areas of the state.
- Resentment toward the bar from some panelists required to remit part of their fees to the bar.
- Both registration fees and non-registration revenue will be difficult to predict during the [3- to 5-year] implementation and start-up period.
- While it does not appear that a change to the ORS is necessary, a possible RPC rule change and/or General Counsel Opinion may be prudent.

C. RIS Implements Percentage Fees with Goal to Produce Revenue Beyond Departmental Self-Sufficiency

This is fundamentally the same as Option B except that additional revenue would be produced to improve not only RIS programs but also provide some funding for other public education and access to justice programs. How any additional funds would be spent is a decision for the BOG; members at the LRS focus groups expressed a preference for funding of legal services programs. There are basically two ways to accomplish this goal under a percentage fee model: set the percentage higher or set a very low (or no) threshold on the amount of fees earned that are subject to the percentage fee. Some programs combine both approaches.

Pros:

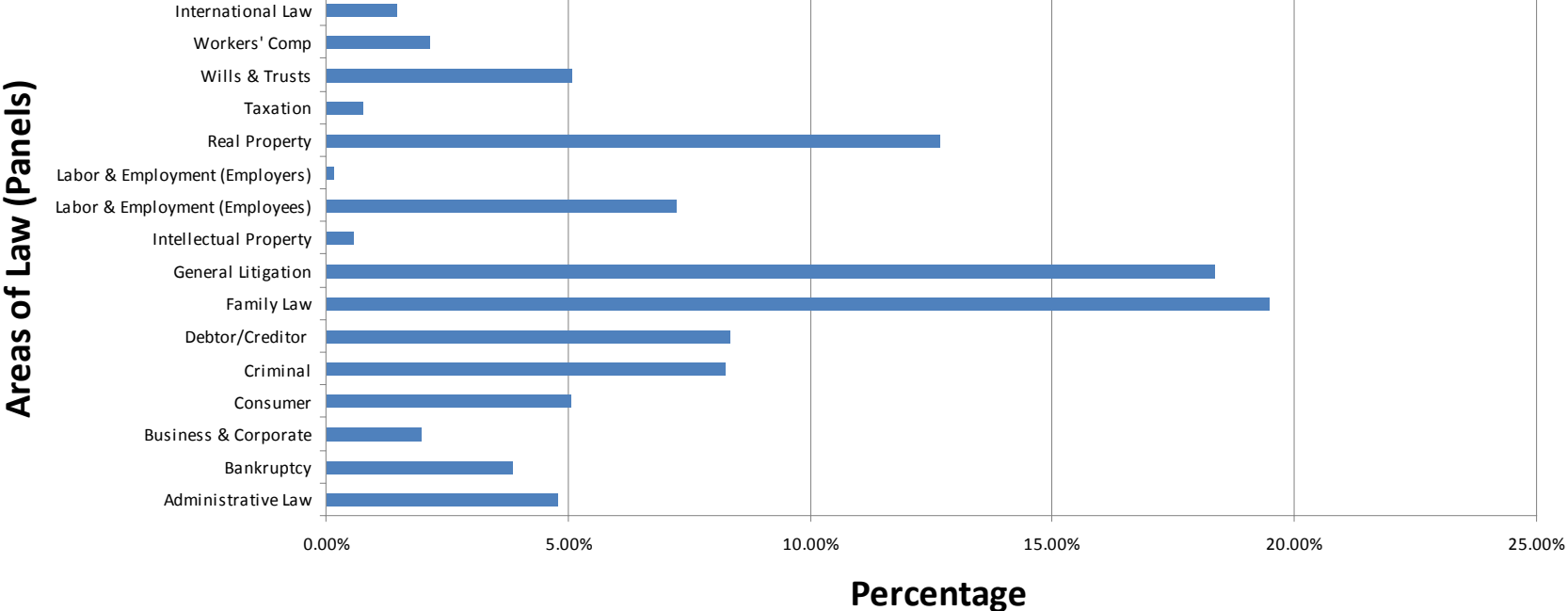
- Everything listed under Option B.
- Additional source of funding for Access to Justice programs, public education efforts, and grants.

Cons:

- Everything listed under Option B.
- RIS panelists may feel it is inequitable to have panelists, and not the entire membership, fund additional Access to Justice programs, public education efforts, and grants.

- RIS panelists may prefer to have a additional funds re-invested in RIS marketing efforts on panelists' behalf.

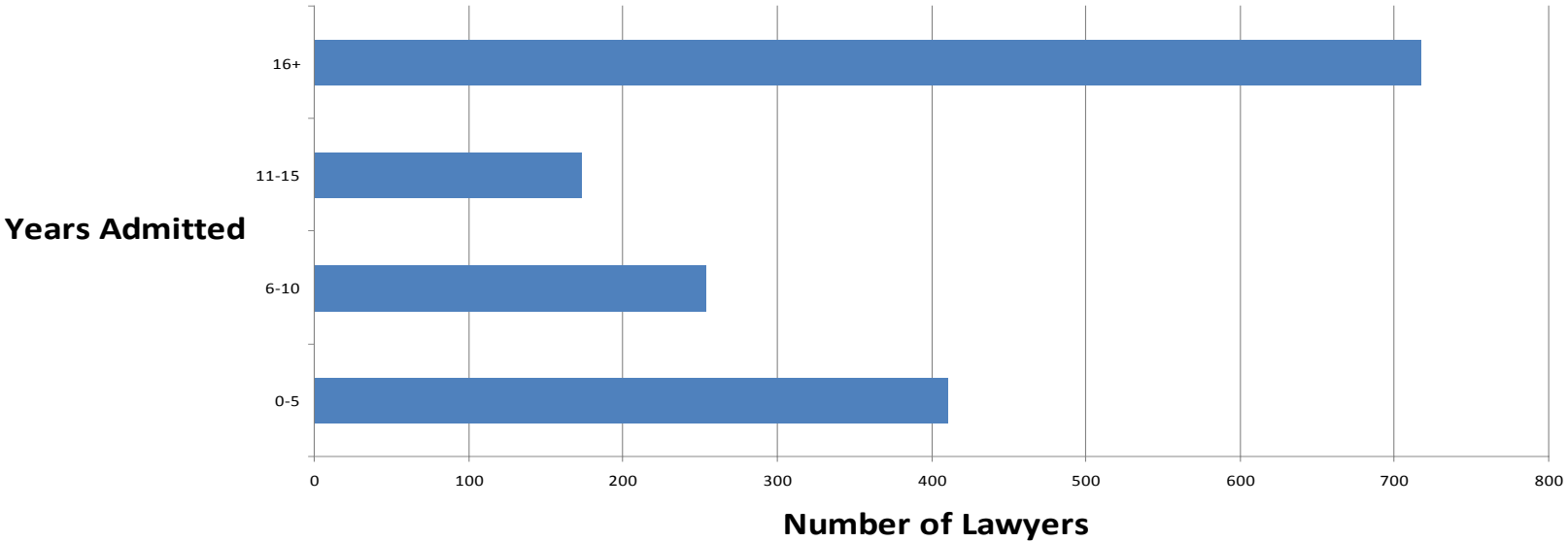
LRS Referrals by Panel



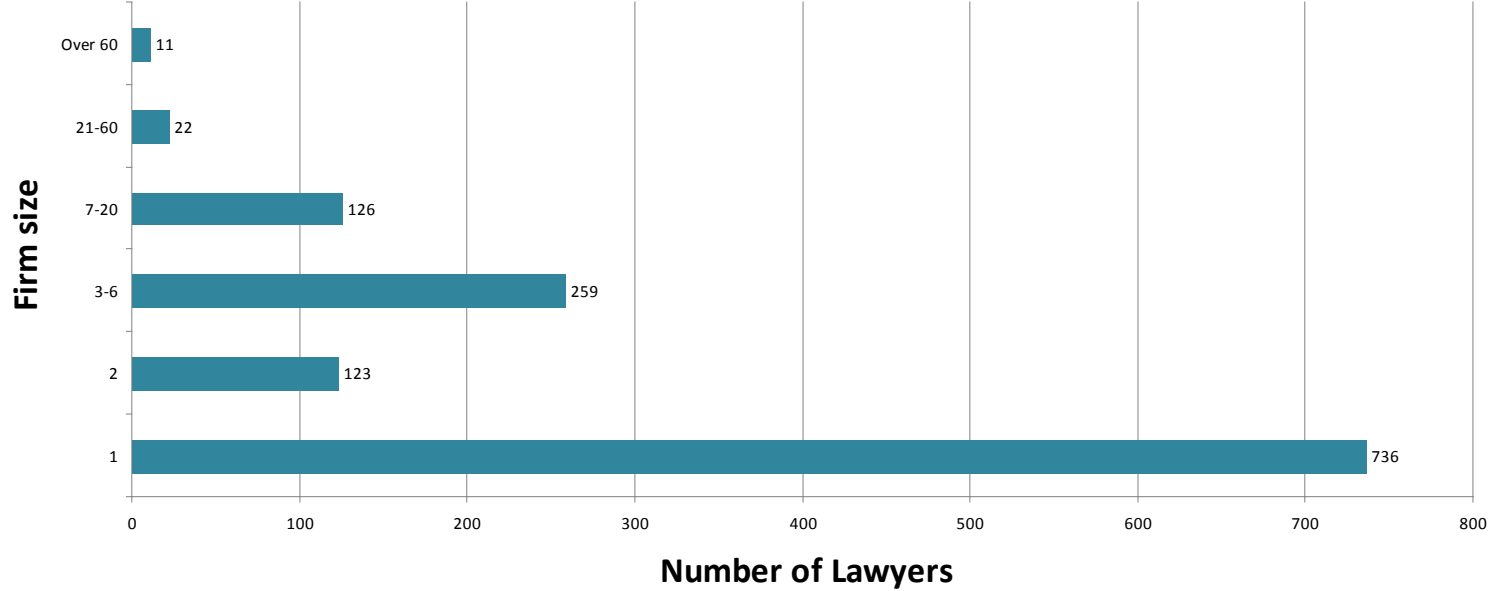
Referrals by type (9.505)

Panel	Percentage of Referrals	No. of Referrals
Administrative Law	4.76%	2137
Bankruptcy	3.84%	1726
Business & Corporate	1.94%	871
Consumer	5.03%	2260
Criminal	8.25%	3703
Debtor/Creditor	8.33%	3740
Family Law	19.47%	8739
9.505 "personal injury or death"	10.32%	4632
Other non-9.505 General Litigation	8.03%	3603
Intellectual Property	0.56%	252
Labor & Employment (Employees)	7.23%	3245
Labor & Employment (Employers)	0.15%	69
Real Property	12.67%	5687
Taxation	0.76%	342
Wills & Trusts	5.08%	2279
Workers' Comp	2.13%	956
International Law	1.45%	653
	100.00%	44894

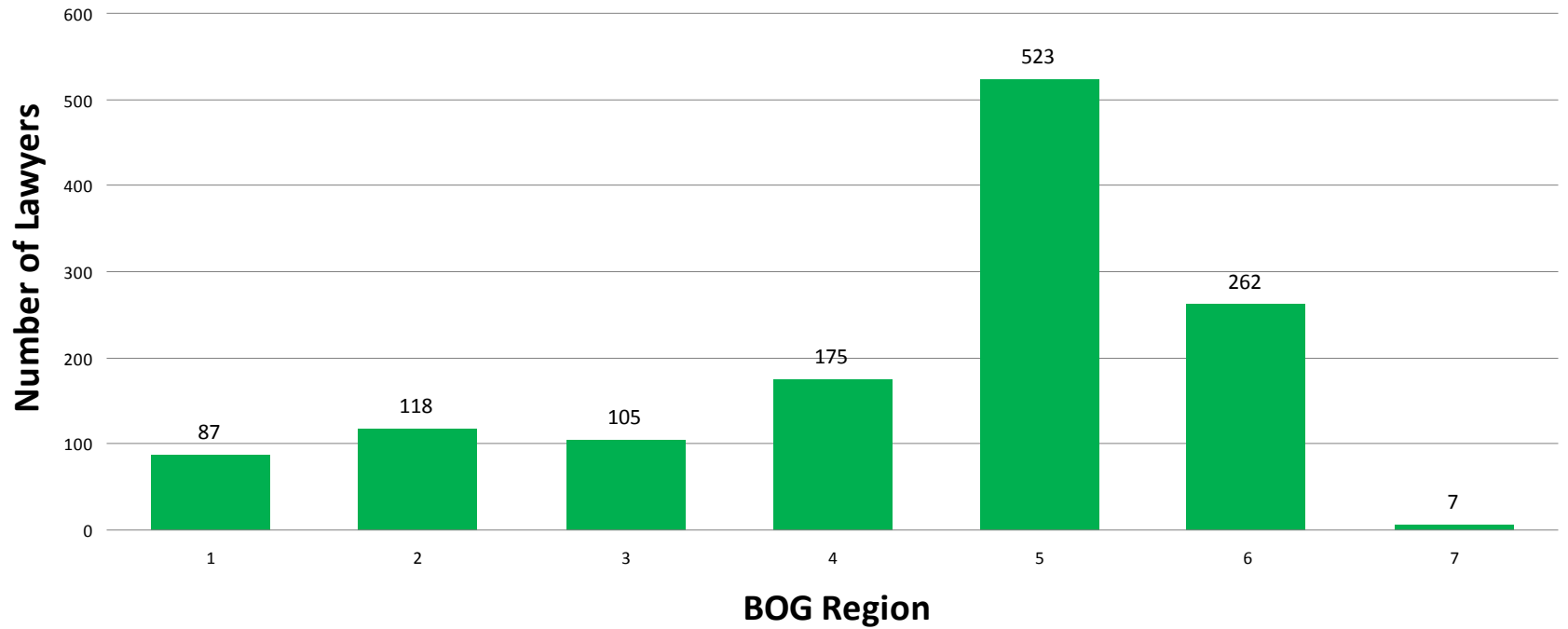
RIS Lawyers by Year Admitted



RIS Lawyers by Firm Size



RIS Lawyers by BOG Region



OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: June 2, 2006
Memo Date: May 17, 2006
From: Public Service Advisory Committee
Staff Liaison Jon Benson, Ext. 419
Re: Proposed LRS fee increase

Action Recommended

The Public Service Advisory (PSA) Committee recommends an increase in the annual fees charged to lawyers participating in the Lawyer Referral Service (LRS), beginning July 1, 2007.

Background

The basic fee for LRS has remained unchanged since 1985. Adjusted for inflation, the \$75 annual registration fee is worth about half of what it was 21 years ago.¹ Additionally, compared to other jurisdictions, the OSB offers significantly lower fees for the LRS program (see attached Exhibit 1 “benchmarking”).

For an annual fee of \$75 (\$55 for “new” lawyers admitted less than 3 years), lawyers can register for up to four (4) panels. Additional panels can be added at a cost of \$25 each. Panels are the general substantive areas of law (i.e., family law, labor & employment law). Within each panel, LRS lawyers may register for as many sub-panels (i.e. child custody, QDRO, discrimination, ADA) as they wish.

Proposed Fee Structure

The PSA Committee recommends the following fee structure:

1. A \$50 annual fee for the first year in which a lawyer is admitted to the OSB. This is a *reduction* from the current lowest rate of \$55 per year. The PSA Committee felt that keeping the initial rate low was an important gesture for new members of the bar.
2. \$75 per year for lawyers admitted three (3) years or less (after the first year \$50 rate).
3. \$100 per year for lawyers admitted more than three (3) years.
4. The price for additional panels (beyond the basic 4) would increase from \$25 to \$30.

The proposed increase in the fee structure would yield \$25,000 to \$30,000 in additional annual revenue, assuming total registration remains at the current level.

¹ According to the U.S. Government’s inflation calculator, \$75 in 1985 had the same purchasing power as \$140.45 in 2006. See <http://data.bls.gov/cgi-bin/cpicalc.pl>

The pros and cons identified with this proposed fee increase are:

Pros:

- Ease of transition with current registration and accounting system
- Easy to justify based on over two decades without increase
- Consistent with current panelist expectations, software, etc.
- Capable of significantly increasing short-term revenue

Cons:

- Lawyer perception of being “nickled and dimed”
- Revenue possibilities more limited than other alternatives

Alternatives to Proposed Fee Structure

In reaching this recommendation, the PSA Committee considered several alternative fee structures. The other fee structures, including relative pros and cons, are:

1) Registration Fees per Panel or Sub-Panel

Charge fees based upon the number of Panels or Sub-Panels for which a lawyer registers. Rather than the current basic structure which allows four (4) Panels and unlimited Sub-Panels, lawyers would be charged for each area of law selected.

The committee rejected this model because it could result in reduced revenue. It is also more likely to diminish coverage in some areas of law and or geographic areas. This model would have also increased costs to sole and small firm practitioners who tend to have a more general practice.

2) Consultation and Forwarding Fees

In one model, the client must pay a fee to the LRS before a referral can be made. The other model requires panelists to collect a consultation fee, the fee is then forwarded to the referral service. Many programs have abandoned this method on finding that the costs of administering forwarding fees substantially offset the new revenue generated.

The committee rejected this model because it would have added administrative and accounting expenses and another layer of bureaucracy. It also would have required lawyers to charge a consultation fee when many currently do not.

3) Percentage Fees

Many other programs around the country utilize a percentage fee structure. Typically, this fee structure involves a modest annual registration fee plus a percentage of the attorney fees charged in the case (see attached Exhibit 1 for some examples). Most

programs that have switched to this structure realize significant increases in revenue within two years.

Currently, a percentage fee model is prohibited by statute (at least as to tort claims). ORS 9.505 & 9.515. It is also prohibited under the Oregon Rules of Professional Conduct. Oregon RPC 5.4(a). Both the statute and the ethics rules would need to be revised to permit this type of fee splitting in Oregon.

The Board of Governors has considered a percentage fee model in the past and declined to implement it.

Conclusion

After weighing the costs and benefits of the various approaches, the PSA committee made the above recommendation. PSA asks the Policy and Governance Committee to review and approve the proposal.

Lawyer Referral Service Program Evaluation

In 1987 as part of the 1988 budget process the Board of Governors requested the Lawyer Referral program to evaluate its current effectiveness and make recommendations regarding the continuation of the program. The Lawyer Referral committee and the OSB staff have examined the issues which affect the program, and tentatively recommend that the program continue in operation, with the following conditions:

1. That the program submit itself to an ABA PAR evaluation on the issues of funding and public service activities.
2. That LRS reinforce its public image by emphasizing a strong marketing/public service campaign, including public service announcements and distribution of posters and business cards throughout the state.
3. That the program be evaluated again in a year to determine if the trend toward program stability is continuing.

BACKGROUND

Introduction to the Program

The Oregon State Bar began operating a Lawyer Referral program in 1971. Participation was mandatory and no membership fee was charged. Then in 1981 the program became voluntary and fee-generating. Attorney pay to participate and the program relies on those fees for most of its operating budget.

Funding

When the program was converted from mandatory to voluntary in 1981, the intention was for LRS to become self-sufficient in five years. However, this was changed in 1986 when the board supported the staff's recommendation that the program would continue to receive a partial subsidy from the general fund. The theory behind the recommendation was the substantial public service functions performed by LRS. In addition to providing referrals to participating attorneys, LRS provides an information and referral service to a variety of callers statewide. Almost half of the calls handled by LRS do not result in referrals.

LRS registration fees have increased as follows since 1981:

1981 - 1982	\$45
1983	55
1984	65
1985 - 1988	75

The revenue from registration fees is approximately equal to the program's expenses except for the overhead/support services charge by the bar. This amount is provided as a partial subsidy. The following is a summary of LRS registration, revenue and expense since 1981. The overhead/indirect cost/support services charge is included as a separate item because it has increased dramatically as OSB accounting procedures have been overhauled. Not included are the carryover and interest income items that were included in previously but are no longer a part of individual program budgets.

<u>Year</u>	<u>Panelists/ Basic Fee</u>	<u>Enrollment Fees</u>	<u>Overhead</u>	<u>Other Expenses</u>	<u>Total Expenses</u>
1981	1660/\$45	\$ 78,135	\$ 2,000	\$ 33,330	\$ 35,330
1982	1740/\$45	81,492	2,500	102,525	105,025
1983	1756/\$55	101,885	2,700	111,605	114,305
1984	1711/\$65	117,045	4,000	114,958	118,958
1985	1450/\$75	115,420	15,000	112,550	127,557
1986	1460/\$75	120,405	19,000	109,490	129,490
1987	1434/\$75	118,080	33,162	109,338	142,500
1988*	1450/\$75	120,000	30,414	126,915	157,329

*Projected

A significant drop in registration occurred in 1985 when the registration fee was increased to \$75. The change seemed to exceed a psychological amount that attorneys were willing to pay for what many considered a public service obligation. In addition, the idea of attorney advertising was growing, and many attorneys were considering other alternatives to the money spent on LRS. The service in most direct competition at that time was the yellow pages.

Over the past few years LRS has found itself in increasing competition with alternative advertising media, including radio, television, newspapers, yellow pages, and other referral services.

Referral Statistics

The same factors that have created competition for attorney participants have also created competition for referral clients. The following is a summary of LRS statistics for the past five years. The summary includes referrals, other calls, and total calls. (Prior to 1983, the program did not keep statistics on non-referral calls.)

<u>YEAR</u>	<u>REFERRALS</u>	<u>OTHER CALLS</u>	<u>TOTAL</u>
1983 - 84	21000	12115	33115
1984 - 85	15769	13867	29636
%INCR/DECREASE	-25%	+14%	-11%
1985 - 86	18770	13168	31938
%INCR/DECREASE	+19%	-5%	+8%
1986 - 87	15762	14476	30238
%INCR/DECREASE	-16%	+10%	-5%
1987 - 88 *	13570	13250	26820
%INCR/DECREASE	-14%	-8%	-11%

*The figures for 1987 - 88 are projections based on the first ten months of the program year.

The percentage increase/decrease figures were determined based on the totals for the prior year only. They could also be calculated based on the cumulative average or compared each year to the first year in which total call statistics were maintained (1983-84).

CUMULATIVE AVERAGE COMPARISON

YEAR	REFERRALS	OTHERS	TOTAL
1983 - 84	21000	12115	33115
PRIOR AVERAGE	N/A	N/A	N/A
%INCR/DECREASE	N/A	N/A	N/A
1984 - 85	15769	13867	29636
PRIOR AVERAGE	21000	12115	33115
%INCR/DECREASE	-25%	+14%	-11%
1985 - 86	18770	13168	31938
PRIOR AVERAGE	18384	12991	31375
%INCR/DECREASE	+2%	+1%	+2%
1986 - 87	15762	14476	30238
PRIOR AVERAGE	18513	13050	31563
%INCR/DECREASE	-15%	+11%	-4%
1987 - 88	13570	13250	26820
PRIOR AVERAGE	17825	13406	31231
%INCR/DECREASE	-24%	-1%	-14%

1983 - 84 BASE YEAR COMPARISON

YEAR	REFERRALS	OTHERS	TOTAL
1983 - 84	21000	12115	33115
1984 - 85	15769	13867	29626
% CHG FROM BASE	-25%	+14%	-11%
1985 - 86	18770	13168	31938
% CHG FROM BASE	-11%	+9%	-4%
1986 - 87	15762	14476	30238
% CHG FROM BASE	-25%	+19%	-9%
1987 - 88	13570	13250	26820
% CHG FROM BASE	-35%	+9%	-19%

This method of comparison probably creates the most realistic picture of the trend in LRS for the past five years. It shows total calls down approximately 20% from the high point in 1983-84. This decrease was anticipated, and is not as dramatic as might have been anticipated. The level of competition for lawyer referral clients has increased dramatically in the past five years as a result of the following:

- The change in the LRS heading in the yellow pages resulting in the placement of the LRS advertisements at the end, rather than the beginning, of the attorney listings.
- The creation of the subject matter listings for attorneys in the yellow pages.
- An increase, in general, in attorney advertising in all media.
- The introduction of private referral services and legal insurance programs to the marketplace.

All of these factors create competition for LRS. By comparison, in 1983, LRS was competing only with the alphabetical attorney listings for referral clients. Nonetheless, LRS has retained a significant portion of the market and continues to provide a valuable service to over 25,000 members of the public.

LRS Operations

From 1971 until 1985 LRS used a manual referral and record keeping system, first with computer printouts, and then 3X5 cards. In 1985, the program was converted to a computerized referral system. The resulting efficiencies have significantly affected the operation of the referral program. Statistics and attorney/client records are kept by the computer instead of being manually maintained and generated by the staff. The referral/rotation system is much more accurate and clients are served more quickly.

When manual records were used, the staff had to go through the following steps for each referral:

1. Solicit information from caller regarding location and nature of legal problem.
2. Put client on hold.
3. Walk to the central records location, manually sort through index cards for the appropriate location and panel to find an attorney satisfying the client's requirements.
4. Pull the card and return to the desk.
5. Locate the attorney in the Panelist notebook. (In 1984 this step was eliminated when the attorney information was printed on the file card by the OSB computer.)
6. Retrieve the caller from "hold" and give the information on the attorney.
7. Record the referral date on the card.
8. Refile the card in the central file.

This procedure was followed from 70 to 100 times a day. With several people dealing with moveable records, it was extremely difficult to maintain the integrity of the attorney rotation. Cards were misfiled and attorneys were overlooked for long periods of time. In addition, clients were required to remain on hold which can increase frustration with the system. When the system

was computerized, all of the referral functions could be performed from the clerk's desk while talking to the client.

Prior to computerization, the referral lines were operated from 9 to 4, with closures for breaks and lunch. In addition, the lines were closed periodically to catch up on paperwork. After computerization, the referral hours were changed to 9 to 5 and the lunchtime closure was eliminated. The reduction in manual recordkeeping also meant that the number of other closures was substantially reduced. (Of course, computerization has not totally eliminated problems because the program is now dependent on the health of the computer.)

Staffing

In 1981, the LRS program had two referral clerks and a full-time supervisor. Depending on conditions, hours of operation were sometimes abbreviated to four days a week. In 1984, several decisions were made that changed the staffing situation. The clerical staff was increased from two to four, the LRS hours of operation were expanded to five days a week, the public relations/advertising functions were transferred to Public Service & Information, and the full-time supervisor position was replaced by a half-time coordinator position to be filled by an attorney.

Staffing changed again in 1985 when the program was computerized. Hours of operation were expanded again and the part-time clerical staff was reduced from four to three. Staffing has continued at this level, with a half-time administrator, two 60% FTE clerks and one 80% FTE clerk, for a total FTE of 2.5.

In addition to making referrals, the LRS clerks also provide clerical support for the program administrator and the Communications Services Division staff. Applicants are now required to have some word processing experience and it is hoped that this additional training will expand the support services provided by the staff.

LRS SERVICES

In the fall of 1987 LRS paid for a survey of LRS clients. Callers were asked if they would be willing to participate in the survey. Those who agreed were later called by an independent research company. The results of the survey demonstrated that the public is still relying on LRS to introduce them to an attorney, even though a number of alternatives are now available.

Of the group surveyed, approximately half looked to LRS first when they needed to find an attorney. The other callers had tried other sources and had failed to locate an attorney or were not satisfied with the attorney they found.

Clients also indicated a high level of satisfaction with the program. A significant majority of the respondents were either very satisfied (70%) or somewhat satisfied (15%) with the program in general. The LRS staff was also rated highly for being helpful, courteous, and well trained. Although fewer than 50% of the respondents indicated that they used the services of the attorney referred by LRS, more than 80% said that they would recommend LRS to

their best friend.

The survey included demographic information about LRS callers. Approximately one-third of the callers did not work outside the home. (This includes homemakers, retired people, and the unemployed.) Eleven percent of the clients surveyed characterized themselves as professionals. The remainder included a wide variety of occupations.

Approximately one-third of the respondents said they made less than \$15,000 per year, while 44% made between \$20,000 and \$50,000 per year. Sixty-four percent of the respondents were women, and 59% were between the ages of 25 and 45.

The complete survey results and a summary memorandum are available for review in conjunction with this report. In general, the survey supports the conclusion that Lawyer Referral has a positive impact on the public. Clients are satisfied with the service and the the referral attorneys. Clients are also still looking to Lawyer Referral even though other alternatives are available.

The staff plans to redo the survey this fall to determine if there are any changes as a result of LRS marketing efforts or other factors such and increased attorney advertising.

CONCLUSIONS

Internal and external conditions affecting the lawyer referral service have change considerable in the past five years. The program no longer holds a monopoly on the lawyer referral business. In addition to private referral services and legal insurance programs, the program also competes with other methods of advertising. This competition affects the number of attorney participants and the number of referrals. However, the increased competition has not eliminated the need for the bar to operate this program. Other advertising methods and private referral programs do not address the problems of the callers for whom a referral is not appropriate. This constitutes approximately half of the members of the public who call the program.

In addition to satisfying the needs of the non-referral callers, the program provides a significant positive image of the bar and of lawyers, as demonstrated by the level of satisfaction expressed by the callers surveyed. LRS is frequently the first contact people have with the legal system and the staff should continue its efforts to make that first contact a positive experience.

The results of the survey alone do not justify continuing the program, however. The total number of people affected by the program is also significant. In 1986, the LRS staff projected that the total calls would drop to 28,000 in the 1987-88 program year. This projection was off by only 1,200 from the totals now projected through the end of June and listed earlier in this report. The staff has also projected that 1987-88 would represent a stabilization point. The figures should be reviewed again at end of the 1988-89 program year to determine if the projections should be revised. Although the total number of callers has dropped from the high point in 1983-84, the decrease has not been dramatic enough to justify abandoning the program. LRS still reaches more than 25,000 people in a year, not counting those who are

exposed to information about the program through public service announcements and printed information but have not made direct contact. This is the only bar program that involves direct interaction with substantial numbers of non-attorneys.

Because the program is primarily support by membership fees, the bar receives a fairly inexpensive public relations benefit from the program's continued operation.

OTHER RECOMMENDATIONS AND ISSUES

1. Survey of Panelists. This report focuses primarily on the relationship between LRS and the public. It does not address in significant detail the relationship with the participating attorneys. Information from participants could provide assistance in making projections about the continued success of the program. Part of the value of the program is that it does not cause a significant drain on the general fund. If attorney participation decreased dramatically, the effect on the general fund would increase and the program would have to be reevaluated. Therefore, it is recommended that the LRS staff conduct a survey of LRS participants. The funding for such a survey is included in the 1989 LRS budget request.

2. PAR Review. Additional assistance could be received from the ABA LRS review program (PAR). These ABA reviews are conducted by LRS staff people from other states and the program has received positive reports from a number of the programs that have been reviewed. Oregon's referral program is isolated because it is the only one in the state. Information is obtained each year on an informal basis at the ABA LRS conference. However, more substantive assistance and recommendations would result from a formal analysis.

3. Attorney Qualifications. The Board of Governors has raised some concerns about the qualifications of LRS panelists. These issues are being addressed by the LRS committee and are not covered here.

4. 1989 Review. The factors discussed in this report indicate that Lawyer Referral's situation is still volatile and should be monitored to determine if the current projections retain their validity. Therefore, the program should be reviewed again in 1989, preferable at the end of the summer when statistical information will be available, both about total calls and program registration.



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PAR REPORT

FOR

THE OREGON STATE BAR ASSOCIATION

LAWYER REFERRAL SERVICE

PAR Consultants:

**Shell Goar
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Date of Site Visit:

March 20, 1992

Date of Report:

July 22, 1992

The scope of the PAR visit was to assist the Oregon State Bar Association (OSBA) in a general evaluation of nearly all aspects of its Lawyer Referral Service (LRS) operations.

Upon arrival at the OSBA, we met with Rebecca Sweetland, Referral & Information Services (RIS) Administrator; Celene Greene, OSBA Executive Director; and Ann Bartch, OSBA Division Director for Member Services. We later met with Carol Page Kamara, LRS Assistant, and Kate Allen and Susan Jackson, LRS Clerks, who have primary responsibility for answering the lawyer referral phones and making referrals. After lunch we met with LRS Committee members Ronald Somers (Chair), Richard Alway, Ronald Dusek, Margy Lampkin, John Mayfield, Melinda White, and Brad Jonasson.

The Service area encompasses the entire state of Oregon and a population of approximately 3 million. There are approximately 10,000 attorneys in the OSBA, 1,040 of which are LRS panel members. Membership in the OSBA is mandatory, as is liability insurance.

The Service's financial support comes from an annual

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 2

LRS registration fee of either \$55 or \$75, depending upon length of time in practice, which allows the attorney to be a member of four (4) subject categories, or panels, out of a total of fifteen (15) categories designated by the LRS. An attorney may join additional panels for a payment of \$10 per panel. Total revenue generated by the LRS in the last full fiscal year was \$120,000, which covered approximately 60% of the LRS' expenses. The balance of the Service's expenses were subsidized by the OSBA.

A flat consultation fee of \$35 is paid by the client to the panel member, who retains that fee. There is no time limit for this initial consultation. Additionally, this consultation fee is waived where it would conflict with a statute or rule regarding attorneys' fees, and in contingent fee matters.

The present staff consists of the RIS administrator, Ms. Sweetland, and part-time staff members Ms. Kamara, Ms. Allen, and Ms. Jackson. Ms. Sweetland has responsibility for various other programs within the OSBA, including overseeing the Pro Bono program. The LRS is open from 9:00 a.m. to 5:00 p.m., Monday through Friday. The Service has five phone lines, two statewide WATS lines and three local lines for the Portland/Lake Oswego area. The LRS maintains office space within the OSBA offices which, while seemingly adequate to meet the current needs of the LRS, provides little or no room for expansion should the need arise.

The LRS received approximately 44,000 calls in the last statistical year, approximately 18,000 of which resulted in referrals to panel members. Statistics indicate a "no-show" rate of approximately 45%. All referrals are made over the phone on a rotational basis. Upon receiving an inquiry and determining that ongoing legal representation is needed, the staff provides a potential client with the name of an attorney who is on the panel for the area of practice of that client's need. Only the attorney receives written notification of the referral. This form is to be returned within two weeks if the client is a "no-show," which seemingly allows attorneys to assume their prior rotational position. In this regard, the consultants suggest that the return time for this "no-show" form be extended to four weeks to provide the client additional time to make the initial contact.

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 3

The staff does not provide legal advice. However, callers are referred to other governmental or social service agencies when it is determined that ongoing legal representation is not needed.

The consultants believe the Service has an important role to play in the providing of legal services in the State of Oregon, and that this role can be performed in a professional, potentially self-sustaining fashion. To that end, the consultants have identified several means by which this goal can be realized, including enhanced methods of operation, increased revenue generation, increased awareness and support of the Service among OSBA members, and increased efforts to raise the profile of the Service among the general public. These and other recommendations are discussed more fully below.

PURPOSE OF LAWYER REFERRAL

The PAR consultants indicated that it is the position of the American Bar Association's Lawyer Referral and Information Service (LRIS) Standing Committee that referral service programs are primarily a public service. Lawyer referral services should provide a mechanism for matching clients who are in need of legal services, and who are able to pay at least some attorneys' fees, with lawyers interested in and equipped to handle their legal problems. A lawyer referral service program meeting ABA standards assists members of the public by referring them to one or more lawyers who have been pre-screened by the program and who the program has ascertained (1) are members of the Bar in good standing, (2) carry malpractice insurance in a designated amount, and (3) have the requisite experience to competently handle the particular problem for which a client is referred. A referral program which fully meets the ABA standards for a lawyer referral service also provides a wide variety of information to the public that may address their legal problems without referral to an attorney (e.g., providing information about small claims court procedures, Social Security assistance programs, etc.)

ADMINISTRATION

1. Hours of Operation. The LRS currently operates from 9:00 a.m. to 5:00 p.m., Monday through Friday. The consultants recommend that consideration be given to expanding

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 4

these hours to 7:30 a.m. to 6:00 p.m. Services across the country that have expanded their hours to allow the working, middle class consumer to reach them either before or after the normal working day have seen a sharp rise in calls and resulting quality referrals. The consultants would suggest that, given the current fiscal restraints, the LRS initially expand its hours on a staggered basis, e.g. Monday, Wednesday and Friday, 7:30 to 4:00, Tuesday and Thursday, 10:00 to 6:30. Staff hours could be staggered to cover this schedule, assuming security concerns can be adequately satisfied.

Any change in hours should be coordinated with the issuance of a new telephone directory, so that the expanded hours can be accurately reflected in your Yellow Pages ad, the Service's brochures, and on any messages played on a telephone answering device.

2. Staff and Training. A more formalized staff training program for those handling the LRS calls would be useful in ensuring quality referrals to the panel attorneys. Effective training can expand the options open to the caller and reduce the number of misdirected referrals. Because not all calls result in an actual referral, local community agencies from throughout the state should be contacted to assist in advising the staff as to additional resources available to the public. For example, contacts with domestic abuse shelters could provide information on what resources are available to the battered, indigent spouse in various areas of the state. Training is also an excellent form of networking, as those agency directors with whom the LRS shares information are better informed as to the type of service the LRS does, and does not, provide.

A training notebook of suggested scripts, social service agencies, and a brief, basic "checklist" of questions to ask in particular areas of law, should be developed to assist the staff in screening the calls and making more quality referrals. The LRS Committee can be particularly helpful in the staff training process, particularly in instituting a structured, ongoing training program. As a beginning, Committee members could provide a brief overview of each category listed on the LRS application. Committee members and/or panel attorneys could develop the brief, basic "check-list" of questions referenced above to help staff make appropriate referrals.

Although geographic considerations may present some difficulties, Committee and/or panel members could be invited to come to the LRS office to make presentations to the staff on various substantive areas of law. These volunteers should be asked to prepare outlines of the material they intend to cover, with these outlines being incorporated into the proposed training manual. These presentations could be coordinated with LRS Committee meetings, or other OSBA activities which draw panel members to Lake Oswego. If possible, these sessions should be videotaped, in order to be available for future staff training sessions.

Sample training materials are also available from Gwen Austin, PAR Coordinator at the ABA.

3. Screening. Screening is an important function of any lawyer referral service for both the public and the panel attorneys. When calls are effectively screened and appropriately referred, the attorney gets better clients and the callers are happier and better served. When panel attorneys are satisfied about the quality of the referrals they receive, they help the LRS market itself to other potential panel members.

Although the PAR Consultants did not have the opportunity to carefully observe all of the staff's screening techniques, we suggest that the OSBA LRS review its procedures to be sure that adequate information is being obtained from callers regarding the nature of their legal problem(s). Such screening is a benefit to the public, in that callers not in need of legal services can often be referred to a more appropriate resource. While the lawyer referral service is not in a position to give legal advice, it can and should point out alternatives such as small claims court, the attorney general's office, and other governmental and social services agencies which exist to help with a variety of problems. In many instances, it is wise to suggest that the caller try to exhaust other options before contacting an attorney, while leaving the door open for the client to return to the Service for a referral to an attorney should the agency not be able to assist. The United Way or similar charitable organizations, or local county or city offices, may well publish annual guides identifying the numerous agencies which exist within their area, the services they provide, and a contact person within each agency.

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 6

As a reminder, the consultants would highlight the following six important points to remember when speaking to clients:

(a) Courtesy is a must. Remember you represent the OSBA and the legal profession when you answer the telephone. Be professional.

(b) Listen carefully to the caller. What specifically is the problem; are there other aspects of this case that would make a referral in another area of law appropriate? Don't let the caller question your competence. Take control by asking positive questions in a polite and assertive manner.

(c) Try not to talk too long. Remember that most everyone who calls the LRS has a problem of some type and should be dealt with to the best of your ability. However, if you talk too long to one client and lose two others who are on hold, you are only doing one third of your job. Although you should not rush through calls and risk misunderstanding the callers needs, you should always be conscious of calls on hold. Help people effectively but don't overkill. Remember the limitations of the LRS, and if necessary inform the caller of these limitations. You are a referral service, not a legal aid or crisis hotline. On a busy day, more than five minutes on a call is usually too much time.

(d) Do not give personal recommendations. Only make referrals through the LRS computer rotation process. Do not overlook the obvious (e.g. have you gone to the police, do you already have an attorney). If you have a question that you can't answer, ask one of the more experienced staff persons for their opinion. If unable to assist the client, bring the matter up with the Administrator and see if it warrants additional research. Look for ways to improve your ability to assist the public.

(e) Don't play lawyer. Knowing which questions you should try to answer requires good judgement. If you have any questions as to whether or not you are giving the proper information, don't hesitate to put the caller on hold and ask other staff members or consult with the Administrator. You should remember that there is a great danger of seriously

misleading someone with incomplete or partially inaccurate information, particularly when you don't know all the facts surrounding the caller's situation. Ask concrete questions and get hard information. If the facts clearly do not present a legal problem, tell the client why, and if they insist, let them know where they may find a lawyer in the Yellow Pages.

(f) Know which calls are too difficult for you.

Callers in physical harm due to abuse, suicidal callers, or otherwise mentally ill callers are difficult to handle. Immediately notify the Administrator or the Executive Director if you believe there is an imminent danger of harm. Mentally ill callers are often manipulative and angry. If you cannot handle the caller, ask a more senior staff member or the Administrator to handle the call. If the caller is abusive to you or uses inappropriate language, you may terminate the call. However, inform them of your intentions to terminate the call before hanging up.

4. Referral Procedure. The LRS currently has a relatively high "no-show" rate of 45 percent. If this is of serious concern to the LRS Committee, the consultants suggest that consideration be given to modifying the LRS' current procedure of simply providing callers with the name and phone number of an attorney, leaving the responsibility of contacting the attorney with the potential client. Experience has shown that a significant "no-show" rate can be reduced by either (1) immediately transferring the potential client's call to the panel member's office, or (2) making the appointment for the caller with the panel member. While the latter procedure obviously requires significant additional time and effort on the part of LRS staff, callers are more likely to follow-up and keep an appointment that has been scheduled for them, rather than simply being left to their own devices. It should be pointed out that if the Service were to adopt this latter suggestion, it is imperative that the callers be recontacted with an appointment within a relatively brief period of time, e.g. two hours.

5. ABA LRS Workshop. As another suggestion for staff development, we recommend that the OSBA continue to send a representative, ideally the person primarily involved with LRS day-to-day operations, to the ABA LRIS Workshop, held annually in various locations across the country. This year the Workshop

will be held in Washington, D.C., from October 14 to 16. The Workshop provides excellent insurance against staff "burnout" by rekindling excitement for lawyer referral. Additionally, it provides information on current developments, what other services are doing and how they do it, and a forum for developing a network of contacts with other lawyer referral service personnel to whom one can turn in the future for guidance.

BUDGETING AND INCOME GENERATION

While it is the view of the ABA's LRIS Standing Committee that lawyer referral is primarily a public service, the consultants nevertheless strongly encourage the OSBA to view itself as being in the "business of public service." Specifically, experience has shown that a well run lawyer referral service which (1) utilizes an effective publicity campaign targeting the middle income legal consumer, and (2) screens calls to determine that panel member attorneys receive clients with viable legal claims, can be a significant benefit to panel members as well as to the public. To that end, the consultants make the following recommendations.

1. Percentage/Forwarding Fees. The consultants recommend that the LRS Committee consider implementing a percentage fee program. The consultants believe such a program is essential if the LRS is to be self supporting. Such a program would bring a percentage of all fees earned by LRS panel members on referred cases back to the LRS. Lawyer referral programs across the country which have implemented such percentage fee systems have found that they can generate substantial revenue for a service.

The LRS Committee should be aware that any percentage fee arrangement will require significant start-up time. Services which have implemented such programs have generally seen an initial loss of panel members and a time lag of between 18 months and 2 years before any significant revenue comes to the Service. These drawbacks tend to be temporary, however, and 2-3 years after implementing such a percentage fee system, most services find that they are in much better financial shape than they were previously.

Similar systems are in use in nearly half the bar-

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 9

sponsored lawyer referral services in the country. The ABA has generated an ethics ruling which defines such a system as proper, as have most state ethics boards who have reviewed the issue. Alternative types of programs include a flat percentage fee approach (e.g. charging attorneys 10% of 15% of all fees received), or a sliding scale (e.g. charging 5% of the first \$1,000 received, and 10% of all fees thereafter).

Of course, implementation of such a program must be preceded by significant advance notice to panel members. The PAR consultants recommend that as part of the notification process, the LRS undertake an educational program that stresses the fact that the new fee structure will allow for improvements in the service which the LRS provides to participating attorneys. For example, the increased fees could be used, in part, for expanded public relations activities and to increase the size and coverage of the LRS's Yellow Pages advertisements. The periodically published Referral Newsletter provides a perfect vehicle by which this information could be transmitted to panel members.

While some attorneys will undoubtedly leave the Service when a percentage fee system is adopted, an association-wide publicity campaign advising attorneys of the revamped, expanded LRS should bring in new panel members to offset these losses. The Service may also directly target attorneys with expertise in certain areas of law which are underfilled, or in disparate geographic areas, to help maintain a sufficient number and diversity of attorneys to meet client demand.

Obviously, there are drawbacks to implementing a percentage fee system. First, it does require additional staff time to administer and undertake the necessary follow-up. A good follow-up system is critical to a successful percentage fee system. Attorneys must be billed periodically (usually quarterly), and asked to remit fees received to date. (Sample billing forms can be obtained through the ABA).

An additional method of follow-up which has proven effective is to develop a "case status report" for each attorney, listing all ongoing cases. (Samples are available from the ABA.) As referral report forms are returned by panel members, those cases which have been accepted are listed on the report. The PAR consultants recommend that these status reports be sent to the

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 10

panel member periodically, rather than asking the attorney to report his or her fees only at the conclusion of the matter. The LRS Committee will need to anticipate problems and develop procedures to respond to them in advance of the implementation of the proposed fee system. Among the issues the Committee may wish to consider are how to address the failure to return the case status report, disputes with panel attorneys about the fee due, and inaccurate reporting by the attorney regarding the status of a referral.

In order to ensure that the Service receives all fees due from panel members, the consultants would suggest that the LRS utilize client follow-up questionnaires which solicit information directly from the client about (1) client satisfaction with the Service and the panel attorney, (2) payment of the initial consultation fee, and (3) ongoing retention of the panel attorney by the client. Such questionnaires provide valuable information which can be utilized to enhance the operation of the Service. Panel members should be informed of the use of such questionnaires, and that information is gathered regarding the fees which have been paid to the attorney. Any questionnaires which report that an attorney has consulted on (or is handling) a case should be closely monitored. If the attorney fails to report that a case has been opened, or a consultation completed, action on this inconsistency should be taken. For example, a standard letter could be sent asking the panel member to assist in accounting for the discrepancy.

In addition to providing a useful check on the accuracy of the attorney's reports and fees generated, client questionnaires often include glowing praise for the services of the attorney. The Association may want to consider sending copies of such questionnaires to the attorney as a means of acknowledging the valuable services which they have provided.

2. Retention of the Consultation Fee by the LRS.
Many services receive a major portion of their funding by requiring that the initial consultation fee be returned to the service to help defray expenses. This remittance is in addition to the panel registration fee, and may supplement a percentage fee system. Even assuming a significant "no-show" rate, return of this fee to the LRS would clearly result in a marked increase in income over that which the Service currently earns.

The consultants make this recommendation in recognition of the OSBA's fiscal realities. As is the case with most Bar Associations across the country, the OSBA is being asked to do more with less. Naturally, any change in procedure or increase in fees is bound to cause some members to express dissatisfaction. However, if the Service is to become self-supporting, such methods must be examined. Again, it is essential that time be spent educating the members so that the imposition of such a new income generating method is not a surprise to them.

Again, adequate follow-up is essential if collection of the consultation fee is to be a success. Inasmuch as the collection of a high percentage of these fees can have a significant impact on the LRS' revenue, administrative procedures should be in place to allow for suspension or removal of a panel member after 30 to 60 days if the fee is not returned.

The same client questionnaire referred to above with regard to collection of the percentage fee should be utilized to track these consultation fees.

ENHANCEMENT OF IMAGE AND SUPPORT AMONG OSBA MEMBERS

1. LRS Committee. An effective method of strengthening any lawyer referral service is to elicit the general support of members of the sponsoring Bar Association. Support of the Bar's members must begin with the validation of the goals and objectives of the lawyer referral service to better serve (1) the public (prospective and actual clients), (2) the Bar Association (through good public relations with the general public and the media), and (3) individual members of the Bar Association (as attorney panel members receiving fee-generating referrals).

With an eye toward addressing each of the above points, the consultants recommend the following. First, while acknowledging the obvious commitment and concern of present Committee members, the consultants recommend that the OSBA immediately undertake a campaign to further enhance the active involvement of Committee members in the operation of the Service. No better way exists to begin to establish a broad base of

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 12

support for the LRS than to create a Committee from the OSBA that is enthusiastic and willing to assist in promoting the goals of the LRS. The president-elect of the OSBA should serve concurrently as a member of the LRS Committee and as the liaison to the Board of Directors, which should promote a clearer understanding of the LRS at the governing board level.

In addition to being the Service's most vocal supporters, Committee members can serve several other functions. They should be available as a resource for the LRS staff when questions of legal concern arise, and should be willing to donate their time to instruct staff in various areas of the law in order to enhance both the speed and quality of referrals. Additionally, the Committee should play an active role in the review and discipline of panel members. It may be a good idea to appoint a subcommittee of four members, called the "Qualifications Subcommittee," to review applications for panel membership and do the necessary investigative work. This is an important quality control measure and should not be neglected.

Committee members can also be helpful in recruiting panel participants. While mail solicitation from the Bar Association is a viable recruiting method, personal contact from a member of the LRS Committee will be more effective than simply another piece of unsolicited mail. Finally, the Committee should have the responsibility of reviewing the rules of operation for the Service from time to time to determine whether they need to be revised to reflect new program goals.

The consultants note that the Committee has set itself an aggressive set of goals for the 1992-93 fiscal year, as set out in the Spring Referral Newsletter. These include integrating pro bono referrals into the LRS, using the LRS as a referral point for ADR section referrals, attempting to gain approval to add the LRS telephone number to all civil summonses, and increasing public awareness of the LRS. With regard to the latter point, the consultants would strongly encourage the Committee to actively pursue the goal of having the LRS number added to civil summonses. This has been done in other jurisdictions, e.g. Camden County, New Jersey, with remarkable results.

The consultants have one other comment with regard to

integrating pro bono referrals into the LRS. While laudable, the consultants would caution the Committee to remain cognizant of the fact that the primary "market" for a lawyer referral service is the middle income legal consumer. Marketing the LRS to these individuals requires a different approach than that required for reaching individuals who require representation on a pro bono basis. Similarly, in order to attract and maintain panels of sufficient size and diversity, it is essential that the LRS be marketed to OSBA members as a source of quality referrals. This message can become diluted if there is confusion created as to the nature of the pro bono component of the Service. While the consultants would strongly support the establishment of a separate and distinct pro bono panel within the LRS, we simply wish to point out the necessity of creating a discrete structure which provides the maximum benefit to fee paying clients, pro bono clients, and OSBA panel members.

2. Recruiting Panel Attorneys. While current attorney participation in the LRS is a reasonably respectable 10 percent, the consultants nevertheless recommend that the LRS's regular recruiting methods be expanded. In order to be successful, any recruiting campaign must promote the image of the LRS as a source of quality referrals, rather than simply an obligation. The LRS should be marketed as a membership benefit, as it can provide attorneys with fee-generating cases. This should occur as the profile of the Service is raised within the Bar Association. It is also anticipated that this effort to increase panel participation would go hand in hand with efforts to further "market" the Service to the general public, as is more fully discussed below.

Some suggestions for recruiting panelists include (1) a direct mailing once a year to all attorneys in the OSBA, inviting their participation and extolling the rewards of LRS membership; (2) solicitation of new admittees at a reception held in their honor, with printed information regarding the Service and applications for membership readily available, followed up with a mailing to all new admittees; and (3) publishing testimonials from current panel members regarding profitable referrals received from the Service. Example of such articles from other Bar Association referral services are available from the ABA.

The OSBA membership publication, For The Record, is an

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 14

excellent vehicle for recruiting panelists and for printing articles of special interest regarding LRS participation. One idea that some bar associations use is to reproduce their lawyer referral service application in their newsletter at least once a year. For The Record can also be used to inform your membership of the changes made in the LRS and other income-generating methods under consideration. Examples of such articles are also available from the ABA.

The Service should consider doing a direct, targeted recruitment campaign for new panel members practicing in those areas of the state (e.g. southeast and southern coast) where panel membership is low or non-existent. Such a campaign could involve a direct mailing or a telephone call to attorneys who practice in these areas. The suggested mailing should come from the President, and the calls from OSBA officers or LRS Committee members, as a personal request to join the Service. Additionally, the LRS Committee members may be utilized in a local bar "visitation" program. Each Committee member can target those counties nearest his or her office. A speakers' kit, including information about the LRS, a supply of LRS applications, and a presentation script can be prepared by the LRS staff to assist the Committee member in this outreach. Personal contact is always more effective than a letter.

Incentives are sometimes helpful in attracting new panelists. For example, any incentive which the Service could give present panel members who recruit new panelists might spur their efforts. Fees could also be waived for participants who are newly admitted to the bar. Enclosed with this report is an exemplar of a marketing piece entitled, "Need Some Clients? Let us Help!" which is used by the Wisconsin State Bar Association to attract new attorneys. It should always be kept in mind, however, that the quality of your panel, and whether or not it meets your clients' demands and needs, is more important than the sheer number of participants.

3. Experience Panels. While applicants currently may self-select as many panels as they deem "reasonably within [their] competence," as long as they are willing to pay for them, the PAR consultants strongly recommend that serious consideration be given to establishing experience panels. The benefits of such panels are numerous. First, the LRS can match a client with a

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 15

lawyer who is objectively qualified to handle cases in a particular field of law. This type of matching will enhance the image of the Service within the state. Secondly, the establishment of experience panels will require enhanced screening of clients to determine the nature and difficulty of their legal problems, which will result in panel members receiving more accurate, quality referrals. Finally, the LRS can advertise itself as something more than simply a Yellow Pages listing of lawyers, and thereby more effectively compete for more, and better, referrals with lawyers and firms with larger Yellow Pages ads.

To determine which areas would be appropriate for experience panels, the LRS Committee should review the frequency of requests for referrals in particular areas of practice. In some states, such analysis has helped develop guidelines for experience panels in the areas of family law, criminal law and personal injury litigation. The LRS may wish to review the Experience Panel Manual drafted by the California State Bar's Standing Committee on Lawyer Referral Service, a copy of which may be obtained from the ABA, which explains how a service may implement experience standards for any of its subject matter panels.

While some panel members may initially balk at continued participation in the Service because of their opposition to the Service evaluating their ability to practice law, this problem can be effectively handled if the members of the LRS Committee (1) actively educate members within the legal community, and (2) promote the benefits of the system to both lawyers and the public. There is also the possibility of objections being raised that experience panels will exclude young attorneys who are most in need of referrals to help build their practice. In response to this concern, the Committee may wish to designate certain panels as "open" panels, on which young lawyers can gain experience while providing much needed public service. This should be done in conjunction with an "attorney-to-attorney," or "mentor," referral procedure, whereby a less experienced attorney may be assigned a fee generating case, provided he or she agrees to consult with a more experienced attorney as the case requires. The OSBA's "Lawyer-to-Lawyer" program would be particularly useful in this regard.

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 16

At a minimum, the consultants recommend that attorneys be limited to a maximum number of panels, e.g., four, in recognition of the fact that no one is competent to handle cases in every area of the law.

INCREASED AWARENESS WITH THE GENERAL PUBLIC

The LRS currently utilizes a number of marketing techniques which have been historically successful across the country. Placards which read "WE ARE NOT PERMITTED BY LAW TO GIVE LEGAL ADVICE", then provide the name and phone number of the OSBA's LRS, are already posted in courthouses and, seemingly, other public offices. These placards not only advertise the Service, but save the public employees working in the offices where they are posted time and aggravation, thus making them more sympathetic to the LRS. The LRS also utilizes a well-thought out, high quality brochure to describe the LRS to members of the public. This brochure is apparently distributed primarily at the courts buildings, and other governmental facilities throughout the state.

While lawyer referral service brochures are frequently distributed in the courthouse and community agencies, a large percentage of calls referred from such locations are from people who basically do not have money for legal services and are trying to find low cost or free services to assist them. A better use of the brochures may be to distribute them to employee assistance program (EAP) personnel at large statewide employers, who in turn can give the brochures to their employees who are in need of legal services. Generally, a favorable response is received. The largest Portland/Lake Oswego area employers should be contacted first. Bar Association personnel or Committee members should make appointments to meet face-to-face with EAP directors of these large companies to discuss the benefits of sending employees to the OSBA LRS. Your panel members can also participate in a program to provide speakers at employee lunches and meetings to discuss specific legal topics.

While the OSBA is to be applauded for the content and quality of its current marketing tools, the consultants would recommend that a formalized method be established to ensure that the brochures are adequately stocked at their distribution points. This could take the form of a group of volunteer

attorneys who regularly check the distribution points on a weekly or bi-weekly basis. Alternatively, the LRS could provide personnel who work at the various distribution points with postage-paid return postcards that they could simply drop in the mail when their supply of brochures is exhausted. Once a mechanism for regularly restocking these distribution points is established, the consultants recommend expanding the locations at which the brochures are available to include real estate agency offices, credit unions, military legal offices, senior citizens agencies, etc. The end result of careful distribution will not just be more calls, but more callers who are better informed about the Service and, hopefully, higher quality referrals.

1. Yellow Pages. All studies of LRS advertising effectiveness indicate that Yellow Pages advertising is by far the most effective mechanism for increasing client inquiries. A Yellow Pages ad is the single most important tool for informing the public of the service provided. As lawyer referral services enjoy the benefit of a separate category in the Yellow Pages directory, callers often turn from the complicated maze of numerous attorney offerings to the comfort of a service which offers to help the caller make a choice.

We would suggest a few ways to enhance the current LRS Yellow Pages display ad with a minimum of expense. A bolder outline will attract the attention of those seeking legal assistance. As the LRS is a public service, the ad should always so state. [Note: The same is true of the brochure, which should indicate on its face that the LRS is a public service of the OSBA.] Another proven eye-catcher is the use of quotation marks somewhere in the ad.

The LRS might also want to advertise in its ad "Free Initial Consultations On Personal Injury Cases." With the implementation of a percentage fee program, attracting quality personal injury cases will become extremely important. Advertising free consultations in this limited area would also make the Service more competitive with individual lawyers and firms who similarly advertise. [Note: Again, the brochure should also make reference to the free consultation policy.]

An ad that is easier to spot is bound to generate more calls and therefore more referrals to panel members. These

changes can be made without detracting from the dignity of the advertising, and can be helpful in getting your ad to stand out a little more among the numerous attorney advertisers present in every Yellow Pages directory today. Sample Yellow Pages ads can be obtained from the ABA.

It is also possible to improve Yellow Pages ads with changes that cost money, such as increasing the size and adding color to make the ad more visible. The OSBA may wish to consider these options as resources became available.

2. Press Releases. A good way to get free publicity is through the use of press releases. Any new aspect of the Service, a change in operation, an old aspect not widely known, or statistics, can be released to the newspaper and will hopefully get free attention. Articles on legal issues submitted by the Bar for publication should include a statement at the end telling the reader that the Bar Association has a referral service which can suggest an attorney for further information. Press releases should be short and to the point to induce their publication. This is an area where the OSBA's public relations staff obviously can be particularly helpful.

4. Public Service Announcements. The LRS has used PSAs in the past, and is apparently open to their continued use if the time is available. This should definitely be followed up on.

NOTE: Cable television should not be overlooked in this process, as they are often more willing than other television stations to air public service announcements.

5. Law Day. This day, set aside for the celebration of the legal profession and our system of justice, provides a unique opportunity to both increase public awareness of lawyer referral as a public service and enhance the image of the Bar in general. As part of the OSBA's regular Law Day activities, the LRS should consider offering free consultations, as do many lawyer referral services across the country. This special observance is commonly known as "No Bills" Day. Some services make appointments in advance; some have booths staffed by panel attorneys at public locations; others simply provide every Law Day caller with an appointment for a free consultation, having

checked panel members' availability and willingness to volunteer in advance. Whatever type of arrangement you choose, it is important to send a press release to radio, television and newspapers in advance. The giving of free legal advice always gets media attention.

6. "Ask a Lawyer." Another idea is to have panel attorneys volunteer their time on a regular basis, e.g. once a month, to give free general legal information by telephone from the Bar Association offices. The program can be limited to one particular topic of popular interest, e.g. matrimonial law or landlord/tenant. A press release would be in order publicizing the time, date and hours of the "Ask a Lawyer" program. A similar service, called "Legal Hotline," is offered by the State Bar of Wisconsin, and information on this program is attached. This includes a brief summary of the program, an example of the form used, and suggested areas of law the lawyers will, and will not, discuss. In addition to this program, the State Bar of Wisconsin will soon begin a criminal law hotline. Public defenders, as well as private criminal defense attorneys, will provide simple legal information to pre-screened clients concerning juvenile law, traffic citations, drunk driving, etc. The OSBA LRS may want to consider a similar program.

There are many ways to induce panel participation in the above programs, from certificates of appreciation, discounts on a year's OSBA membership or LRS panel fees, or free tickets to a CLE program or dinner. The positive publicity generated makes such projects worth the effort, while at the same time being a positive experience for panel members as well.

CONCLUSION

The PAR consultants were impressed with the enthusiasm and dedication of the OSBA staff and Committee volunteers. The OSBA's LRS is an efficient, professional operation of which both staff and volunteers may be justifiably proud. The recommendations made in this report are intended to "fine tune" a well operated service and, hopefully, allow the Service to become self-supporting.

The PAR consultants are available anytime by telephone should further questions arise, or if there is a need to clarify

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 20

any part of this report. We thank the OSBA staff and LRS
Committee for the hospitality extended to us during our stay in
beautiful Oregon.

NEED SOME CLIENTS? LET US HELP!

Your office is ready: desk, chairs, plants and filing cabinets are all in place, you have an impressive display of books--but how can you get clients to start knocking at your door? We can help!

This year, the State Bar of Wisconsin is offering new members a free year-long membership to its Lawyer Referral and Information Service (LRIS) program.

The Wisconsin Bar's LRIS program is known nationwide for its quality and services. People throughout Wisconsin call the LRIS hotline to receive information about where they can go to find legal help.

The LRIS staff consists of trained legal counselors who listen to callers' problems and questions. If the callers turn out to be potential clients, they are screened for the area of law that they need, the geographic area of Wisconsin the attorney should come from, and the client's ability to pay an attorney. Then they are referred to an attorney who can handle their case.

You could be that attorney. Whether you are on your own or joining a law firm, you'll want to have your own clients. And the LRIS service is a member benefit--your bar member dues help to pay for the service so it can help you find clients.

So try us out for a year--free! Just return your application stating that you are a new Bar member, fill in the areas of law that you practice, and LRIS will process it immediately. We'll start sending you clients! And remember, after your first year of referrals, you'll still be able to take advantage of LRIS's reduced "new lawyer" annual membership fee of \$35 for another two years.

Think of it. Your own office: desk, chair, plants, filing cabinet, books--and clients. Using LRIS is like having your name listed in every Yellow Pages in Wisconsin. We help you find clients.

Isn't that why you went to law school in the first place?

LAWYER HOTLINE PROGRAM

The Lawyer Hotline Program is a service provided by the Lawyer Referral and Information Service. In its 10 years of service, the Lawyer Hotline has provided a valuable service to the public. The volunteers who contribute to the program answer simple legal questions and help people determine if they should hire a lawyer.

Wisconsin lawyers are asked to volunteer approximately two hours of their time 2 to 3 times per year. Lawyer Referral screens questions called in from members of the public who have a legal concern or problem. Questions are given careful consideration by LRIS so as not to be too complicated, time consuming or questions that could not be found in the Wisconsin Statutes or the reference material which we provide. Attorney volunteers then call the referral clients back at a scheduled time providing them with a few minutes of legal information. Volunteers do not give out their names and they read a disclaimer to each caller before legal advice is given. We have never had a malpractice claim, however we ask that each lawyer who participates have malpractice insurance.

For individual volunteers, Lawyer Hotline is held at the State Bar Center weekly during business hours and Wednesday evenings. However, we encourage small communities and law firms to volunteer for a social and educational evening (or day) with Lawyer Hotline. We will assist you in coordinating the Hotline as well as pay for food and drinks. Only two to four volunteers are needed for this. However, as many as are willing are welcome. Lawyer Hotline gives attorneys a break from their law practice, gives them experience in other areas of law and provides a valuable public service with very little effort. In addition, lawyer hotline contributes to the 25 hour pro bono requirement needed by all Wisconsin lawyers.

HOTLINE RULES

Hotline lawyers do not answer questions involving documents which they cannot see.

No hotline question may involve less than \$20. nor more than \$2000. (small claims limit).

Hotline lawyers do not answer questions involving procedures for courts other than small claims court.
LRIS only discusses matters involving Wisconsin law, not that of other states.

Hotline attorneys give general information to a question that can be answered in 2-3 minutes informally over the phone.

Hotline attorneys answer only questions for which the answers may be looked up easily in the Wisconsin Statutes; they have no access to municipal ordinances, to Federal law, nor to Wisconsin Administrative Code (department regulations).

LRIS staff and Hotline lawyers only discuss a legal matter with the person directly involved in the legal situation.

HOTLINE SUBJECTS

WE DO TAKE:

BANKRUPTCY

Chapter 7 - liquidation
Chapter 13 - personal debt reorganization
Collection (if under \$1000.-small claims amount)
Replevin (if simple and small claims amount)
Small Claims Procedures
Collection of Judgment

CONSUMER - if not referred to Consumer Protection

TRAFFIC (only rarely; e.g., "Can they mail me a ticket?
or, "Is my ticket invalid since it has the wrong
date?")

FAMILY LAW

Adoption
Divorce
Domestic Abuse Restraining Orders (if they won't see
atty.)
Name Change
Power of Attorney (sometimes)

WILLS AND PROBATE

Simple, informal, probate
Witnessing signature of will

LANDLORD/TENANT - if not referred to ATCP
(if simple and if there is no lease)

TORT

Simple, small claims property damage
Harassment restraining order (if they won't see atty.)

NOT HOTLINE

WE DO NOT TAKE:

ALTERNATE SOURCE

ADMINISTRATIVE AGENCIES

Department of Natural Resources
Department of Transportation
Divestment - Title 19
Military/Veterans
Social Security
Social Security Disability
Unemployment Compensation
Workers Compensation

Public Intervenor

Benefit Specialist
Cnty Social Services
Benefit Specialist
LSC for overpayment
LSC, sometimes
Workers Comp Office

AGRICULTURAL LAW

Ag, Trade, Consumer Ptcn

ANTITRUST

Justice

ATTORNEY ETHICS OR CONDUCT

Board of Responsibility

BANKRUPTCY ETC.

Chapter 11
Foreclosure

BUSINESS AND CORPORATIONS

Corporations, Partnerships
Securities

Small Business Develop-
ment Centers
Commnr of Securities or
Securities & Exchange Cmn

COMMERCIAL/CONSUMER

Bank, Credit Union, S & L
Collectn of spouses debt
Contracts
Construction Contracts
FmHA/FHA
Student Loans

Commissioners of These

Justice

LSC, sometimes

CONSTITUTIONAL

Civil Rights
Discrimination

Civil Liberties Union
Equal Rights Div, EEOC,
Local offices, Various
U.S. offices.

Mental Commitment

CRIMES AND FORFEITURES

Public Defender

ENVIRONMENTAL LAW

Public Intervenor, DNR

Legal Assistant

HOTLINE ATTORNEY DATA FORM

Special Time

Name _____

Telephone _____

City/County _____

Date/Time _____

Call back time: Day & Date _____ Time _____

Nature of Question: _____

ACTION TAKEN BY ATTORNEY

Returned call:

Date _____ Time _____

- Disclaimer given
- Not at home
 - Advised as to law.
 - Referred to agency. Name of agency _____
 - Referred back to own attorney.
 - Referred to Lawyer Referral Service. (800-362-9082 or 608-257-4666)

Comments: _____

Signature of Hotline Attorney _____

Oregon State and Local Bar Lawyer Referral Service

Summary

The Oregon State Bar and Multnomah Bar Association propose to convert the OSB Lawyer Referral Service (LRS) into a fee-generating program jointly sponsored by the OSB and Oregon's local bar associations. The new Oregon Lawyer Referral & Information Service (OLRIS) will be administered as a statewide program by the OSB, with all program staff and phone lines housed at the OSB center. Local bars will have responsibility for local support such as member recruitment, marketing to the public, and review of panelist qualifications. The OSB and local bars will share any increased revenues generated by the conversion to a fee-generating referral program, with the OSB's share dedicated to program improvements, and the local bar shares dedicated to public service projects designed to increase access to the justice system.

The primary program enhancements envisioned for the OLRIS are:

- OLRIS will collect a percentage of attorney fees collected by panelists from OLRIS-referred clients, allowing program improvements with no added cost to clients.
- Percentage fee revenue will be apportioned among the state and local bars to support referral service programming and local access to justice projects.
- All panelists will agree to adhere to specific customer service standards, subject to review and possible panel disqualification by the OLRIS Committee.
- Subject matter panels will be created for referral of complex legal matters, with minimum standards for participation by attorney panelists. Qualifications for participation on subject matter panels will be developed by the OLRIS Committee in cooperation with OSB sections and local bars.

The adoption of the proposed cooperative OLRIS program will require amendments of [DR 2-103\(A\) and DR 3-102\(A\)](#) to permit participating lawyers to pay government, bar association or not-for-profit lawyer referral services a portion of any hourly or contingent fees earned on referred cases. It will also require legislation to amend [ORS 9.515](#) to allow the payment of such fees between government, bar association and not-for-profit lawyer referral services and lawyers, consistent with the Code of Professional Responsibility.

Background

The Oregon State Bar has operated an LRS since 1971. The purpose of the LRS is to match people in need of legal services or legal advice with lawyers or agencies that can help them. The OSB LRS is funded primarily through panelist registration fees, but is also substantially subsidized through the Bar's general fund. Although the Bar's Board of Governors supports the current level of general fund subsidies, the total LRS budget includes only limited funds for program improvements and expansion to meet changing client needs. Of particular concern is the current lack of funds to support and market the Modest Means Program for clients in the lower-middle income bracket.

The OSB Lawyer Referral Committee and staff have addressed these issues by proposing conversion of the LRS to a fee-generating program through establishment of a percentage fee funding. The MBA has also proposed starting a tri-county LRS that would collect percentage fees, and that would include minimum experience requirements for panelists. Board members and staff of the OSB and MBA have met several times to discuss how we can best work together to serve client and member needs. Both organizations have agreed that a cooperative venture will best serve the legal needs of the public. Consultants provided by the ABA Program of Assistance and Review have met with representatives from the OSB and MBA to review our initial plans and help resolve policy issues.

Benefits of Cooperative Program

A cooperatively sponsored referral program will best serve the interests of Bar members and people seeking legal help. For members, the program offers greater participation in program standards, ensures a local client focus, and reduces or eliminates the need for general fund subsidies. Members concerned with public protection and how the public perceives the profession will also benefit from OLRIS's emphasis on consumer needs. For the OSB, a cooperative program allows improved relationships with local bars and an opportunity to increase public service programming without administrative costs. For local bars, the program offers funding for local service programs without the expense of establishing a competing referral program.

More importantly, OLRIS will dramatically improve service to the public in need of legal help. OLRIS will continue the customer service benefit of a "one-stop" information source, rather than the possible confusion and call re-routing that would result from competing referral services. The involvement of local bars will strengthen the program's ties to community resources statewide, resulting in better alternative (social service and government program) referrals. Numerous other improvements discussed below will be possible without any added cost to OLRIS clients or the general public.

OLRIS Funding

A majority of bar-sponsored LRS programs nationwide have adopted percentage fee plans as the most equitable method of funding a referral program. A percentage fee system is one in which a panelist who accepts a fee-generating case returns to the referral service a portion of the fees collected over a threshold amount. Percentage fee systems in effect spread program costs proportionately, with greater contributions from those panelists who most benefit from their participation.

OLRIS policies will provide that panelists may not consider potential referral fees in determining client billing, guaranteeing no added cost to the client for obtaining legal help through OLRIS. Setting a threshold under which referral fees are not incurred will ensure that low and no-fee legal services are not penalized.

The switch to a percentage fee system will likely cause some current panelists to leave the service. While this will lead to more referrals for those panelists who remain, it will also reduce program revenue in the short term. Since implementation will bring increased

costs (for new software, client tracking, enhanced marketing, and possible staffing increases), the OLRIS will not be able to sustain a revenue decline. To prevent such a loss, the basic panel registration fees for OLRIS will need to increase over those charged by LRS.

After reviewing reports of successful percentage fee programs and consultation with the ABA, we recommend the following fee structure for the new program:

Annual panel registration fee:	\$50 for the first panel \$25 for each additional panel
OLRIS percentage fee:	10% of non-contingent fees over \$500 15% of contingent fees over \$750
Consultation fee:	\$35 (payable to referral panelist)

Use of Percentage Fee Revenue

The OLRIS fee-sharing system will provide funds for better phone equipment, staff training, and other improvements that will make the program easier to access and more helpful to clients. Improved marketing for both the OLRIS and Modest Means Program will help reduce confusion over how to get legal help. The costs associated with converting to the new program will be covered by the OSB, offset by increased revenue from basic registration fees. It will take two to three years for the percentage fee system to realize significant revenue.

Percentage fee revenue will be shared by the OSB and local bars based on the level of local bar involvement in OLRIS. Local bar participation in panelist recruitment, panelist qualification review, and community resource tracking will entitle the local bar to 5% of referral fees collected in the bar's membership region. If percentage fees are received from a region without a participating bar, 2% of those fees will be placed into an OSB general account earmarked for access to justice projects sponsored by local and specialty bars.

The OSB will use percentage fee revenue to maintain the OLRIS infrastructure and support legal access programs for lower-income Oregonians. Local bar revenue must be dedicated toward local access to justice projects. Examples of public service projects funded by other bar-sponsored referral programs include:

- Weekly hotlines where lawyers answer simple legal questions over the phone
- Phone advice programs for pro se litigants
- People's Law School presentations
- Sponsorship of CASA volunteer training programs
- Donations to domestic violence and legal services programs

General Panelist Requirements

LRS policies now require only that panelists be active OSB members in good standing who: 1) are not the subject of a formal disciplinary prosecution, 2) carry malpractice coverage through the Professional Liability Fund, and 3) agree only to undertake representation reasonably within the panelist's competence. The new OLRIS will retain these requirements for all panelists. In addition, panelists will agree to 1) adhere to new customer service standards adapted from the Professionalism Commission's Client Bill of Rights, and 2) comply with all OLRIS policies and procedures, subject to review and possible removal by the OLRIS committee.

The Client Bill of Rights addresses the most common complaints clients make about lawyers, stressing general rules of professional conduct already agreed upon by national, state, and local bar associations. Among the commitments stated in the Bill of Rights are:

- 1) To advise of the availability of alternative dispute resolution
- 2) To advise clients against pursuing cases without merit
- 3) To demonstrate that lawyers work to solve problems
- 4) To discuss fee arrangements thoroughly at the beginning of representation
- 5) To support activities that educate the public about the legal process and legal system

These and other customer service standards will be incorporated into the panelist agreement for registration with all OLRIS panels. Specific provisions may include requirements to return staff and client phone calls within a reasonable time period, and to include an explanation of services in all client billings.

The new program will also include formal removal procedures for panelists who fail to comply with program policy. The OLRIS Committee will have authority to suspend, remove, or require specific remedial action from, panelists who fail to comply with OLRIS policies. The program director will be able to temporarily suspend non-compliant panelists, subject to review by the OLRIS Committee. The ability to enforce panelist standards will enhance the program's credibility, ensuring that the occasional panelist who fails to provide good customer service does not damage the reputation of OLRIS and the profession at large.

Subject Matter Panels

The OSB LRS does not rate or recommend attorneys, and offers no endorsement of any particular panelist's abilities or experience. This policy is based on member preferences and a strong historical distrust of any Bar policy that appear to endorse practice specialties. The public, however, likely expects that any referral made by the state bar carries some implied recommendation. Given that the primary purpose of the Bar is to serve the public, and that the MBA strongly supports minimum standards for panelists, the OLRIS contemplates creation of "subject matter" panels for limited practice areas.

Based on the experience of LRS, as well as other programs outlined for us by the ABA, we recommend instituting subject matter panels for the following areas of law:

- Criminal Defense – Felony and Capital charges
- Family Law – contested custody/real property/family business
- General Litigation - Legal Malpractice, Medical Malpractice, Wrongful Death
- Wills & Trusts - Estates over \$???

The OLRIS Committee will work with the appropriate OSB Sections to develop panelist standards and related client screening procedures. Panelist standards will include both experience and education standards, with an option for any panelist to petition the Committee to establish eligibility through any equivalent combination of knowledge and experience.

Applicants for subject matter panels will submit a written application to the OLRIS director. OLRIS staff will review panelist applications for prima facie compliance with all general eligibility rules and qualifications for the requested subject matter panels, and will approve applications that clearly meet the standards set for each panel. All applications that raise questions as to a panelists qualifications will be referred to the OLRIS Committee. A panelist qualification subcommittee of the OLRIS Committee, in cooperation with local bars, will review all questioned applications to make a final determination of the applicant’s eligibility. The OLRIS Committee will also review any applicant challenges to the program director’s qualification decisions.

VI. Timeline for Program Conversion

Final proposal from OSB LRIS Committee and MBA Board	10-31-98
Review by other local bar presidents	11-06-98
Submission to OSB Board of Governors	11-14-98
Referral database conversion	03-01-99
HOD Resolution to amend DR 3-102	07-01-99

OREGON STATE BAR

Access to Justice Committee Agenda

Meeting Date: February 18, 2010
Memo Date: February 11, 2010
From: Kay Pulju, Ext. 402
Re: Authority for percentage fees

Action Recommended

Request that General Counsel prepare a recommendation to the Policy & Governance Committee on amendments to the Oregon Rules of Professional Conduct to explicitly allow fee-sharing between the OSB Lawyer Referral Service and its panelists.

Background

The OSB has considered the option of percentage fee funding for its Lawyer Referral Service (LRS) several times over the past 20 years. The basic concept calls for attorneys who receive fees over a certain threshold amount from LRS clients to remit a percentage of those fees to the LRS. This commonly used method of LRS funding allows many bar-sponsored LRS programs nationwide to be self-supporting and, in many cases, generate revenue for access to justice projects. Earlier explorations of this model for Oregon have stalled over concerns that such a model would require a statutory change to explicitly allow payment of such fees.

Members of the OSB Public Service Advisory Committee and bar staff met on January 29, 2010, to discuss percentage fee funding for the OSB's LRS. Lish Whitson, former chair of the ABA's Standing Committee on Lawyer Referral & Information Services, attended the meeting as a special guest to facilitate the discussion. The group focused on what, if any, statutory or ethical rules might need to be addressed before implementation of any percentage fee proposal in Oregon. The committee reviewed in advance a July 13, 1998, BOG Agenda Memo (attached) drafted by former OSB General Counsel George Riemer. In that memo Riemer advised amending one statutory provision and two disciplinary rules.

The committee first discussed whether ORS 9.505ⁱ and/or 9.515ⁱⁱ prohibit a lawyer referral service from requiring that participating lawyers pay a percentage of legal fees earned by the lawyer. The consensus was that neither provision on its face prohibits LRS percentage fees because, among other reasons, LRS is not a "person" for purposes of ORS 9.505, and not an "attorney" for purposes of ORS 9.515. The committee next turned to the Oregon Rules of Professional Conduct (ORCPs) for further instruction.

The committee reviewed various provisions of the ORPCs, including Rules 1.5 (fees)ⁱⁱⁱ, 5.4 (professional independence of a lawyer)^{iv} and 7.2 (advertising)^v. Each of these rules could be amended to explicitly allow percentage fees, and different states have taken different approaches to address the issue. For example, Washington allows percentage fees through rule 1.5^{vi} while Hawaii, the most recent state to adopt percentage fees, amended 7.2^{vii}. Although the committee has no preference as to which rule should be changed, it is worth noting that Oregon's current rule 7.2 already contains language about sharing fees with lawyer referral services and other organizations. Moreover, a recent ethics opinion^{viii} cites to federal code provisions that specifically carve-out fee-sharing with public service referral programs – as opposed to private third parties -- as a legitimate exception to general prohibitions against fee-sharing.

The committee concluded that this funding proposal appears to be a viable option and that future action should be pursued. Although it is not entirely free from doubt, the committee agreed that the proposal does not appear to conflict with the Oregon Revised Statutes. Rather, the committee, staff and ABA advisor recommend pursuing a rule change to the Oregon Rules of Professional Conduct to specifically allow percentage fee funding for the OSB's LRS and, if desired, other non-profit referral services.

ⁱ **9.505 Payment for referring claims resulting from personal injury or death.** No person shall offer or promise payment of money or other consideration, or accept any offer or promise of payment of money or other consideration, nor shall any person pay or accept money or other consideration, for referring to an attorney any claim for damage resulting from personal injury or death. [1961 c.561 §1].

ⁱⁱ **9.515 Referral of claims, suits or actions between attorneys; division of fees.** (1) Nothing contained in ORS 9.505 shall prevent referral of claims, suits or actions between attorneys.

(2) The provisions of ORS 9.505 shall not prohibit the referral of claims, suits or actions between attorneys or the dividing of fees for legal services with another lawyer consistent with the rules of professional conduct adopted pursuant to ORS 9.490. [1961 c.561 §§2,3; 1989 c.1052 §10].

ⁱⁱⁱ **RULE 1.5 FEES**

(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(c) A lawyer shall not enter into an arrangement for, charge or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or

(2) a contingent fee for representing a defendant in a criminal case.

(d) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the client gives informed consent to the fact that there will be a division of fees, and

(2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.

(e) Paragraph (d) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement, or payments to a selling lawyer for the sale of a law practice pursuant to Rule 1.17.

Adopted 01/01/05.

^{iv} RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Adopted 01/01/05.

^v RULE 7.2 ADVERTISING

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

- (1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;
- (2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;
- (3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and
- (4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

Adopted 01/01/05.

^{vi} Washington -- RPC Rule 1.5 Fees

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(e) A division of a fee between lawyers who are not in the same firm may be made only if:

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- 2) the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or of one of the county bar associations of this state.

^{vii} Hawaii -- Rule 7.2 Advertising.

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(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

- (1) pay the reasonable costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a not-for-profit lawyer referral service or qualified legal assistance organization, which charges, in addition to any referral fee, may include a fee calculated as a percentage of legal fees earned by the lawyer to whom the service or organization has referred a matter, provided that any such percentage fee shall be used only to pay the reasonable operating expenses of the service or organization and to fund public service activities of the service or organization, including the delivery of pro bono legal services; and
- (3) pay for a law practice in accordance with Rule 1.17.

^{viii} See Formal Opinion No. 2007-180, p. 524 and fn. 5.

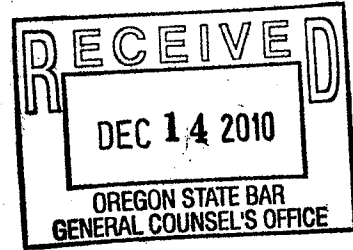
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Admitted in Oregon



December 13, 2010

Kathleen A. Evans
President
OREGON STATE BAR
P.O. Box 231935
Tigard, Oregon 97281-1935

Re: OSB Lawyer Referral Services Percentage Fee Sharing

Dear Ms. Evans:

This is in response to a request by the OSB Board of Governors ("BOG") that the OSB Ethics Committee ("LEC") review a proposal that the OSB Lawyer Referral Service ("LRS") require percentage fee sharing from participating lawyers and, if appropriate, that the Committee issue a Formal Ethics Opinion that such percentage fee splitting does not violate Oregon Law or the Oregon Rules of Professional Conduct ("RPCs"). For the reasons discussed below, the LEC cannot issue such an opinion.

Percentage fee sharing by the LRS has been considered several times. A July 13, 1998, BOG Agenda Memo by former OSB General Counsel George Riemer ("Riemer Memo") (Exhibit A) responded to requests from the OSB Lawyer Referral & Modest Means Committee and the Multnomah County Bar Association for changes to the *former* Oregon Code of Professional Responsibility ("the Code") to permit the OSB and other not-for-profit lawyer referral services to share in a portion of fees received on successful referrals. The Riemer Memo advised the BOG that: (i) amendments needed to be made to the Code (specifically DR 2-103(A) and DR 3-102(A)) to permit participating lawyers to pay governments, bar associations, and not-for-profit lawyer referral services a portion of hourly or contingent fees earned in referral cases; and (ii) an amendment needed to be made to ORS 9.515 to allow payment of such fees. Neither course of action was taken.

More recently, a February 18, 2010, Memo from the OSB Access to Justice Committee ("ATJC Memo") (Exhibit B) requested that the OSB General Counsel prepare a recommendation to amend the RPCs to explicitly allow percentage fee sharing between the LRS and its participating attorneys. The ATJC Memo concluded: (i) that percentage fee sharing does not conflict with Oregon Revised Statutes (conflicting with the Riemer Memo's conclusion that ORS 9.515 must be amended to permit percentage fee sharing between attorneys and governments, bar associations or not-for-profit lawyer referral services);

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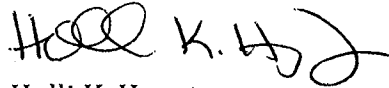
Kathleen A. Evans
December 13, 2010
Page 2

and (ii) that RPC 1.5 (Fees), RPC 5.4 (Professional Independence of a Lawyer), and/or RPC 7.2 (Advertising) should be amended to explicitly allow percentage fee sharing for the LRS and, if desired, other non-profit referral services. It was subsequently suggested that a Formal Ethics Opinion from the LEC might eliminate the need for RPC changes if the LEC concluded that the language of the existing rules was broad enough to allow for percentage fee referral payments.

After a nine-month review, the LEC has concluded that existing rules do not allow it to write an opinion authorizing lawyers to participate in a percentage fee referral model.

If the LEC may be of any further assistance, please do not hesitate to contact us again.

Sincerely,



Holli K. Houston
OSB Legal Ethics Committee, Chair

HKH:tjs

Enclosures

cc: Helen Hierschbiel, OSB General Counsel (via US Mail)
Sylvia Stevens, OSB Executive Director (via electronic mail)
OSB Legal Ethics Committee (via electronic mail)

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FORMAL OPINION NO. 2005-168
Lawyer-Owned Lawyer Referral Service

Facts:

Lawyer wishes to open a for-profit lawyer referral service available to the public. The service will be called “XYZ Lawyer Referral Service.” Lawyer will be the sole owner of XYZ, which Lawyer plans to incorporate as an independent entity. Lawyer plans to advertise the service in the local media.

Lawyer intends to operate XYZ Lawyer Referral Service out of Lawyer’s own law office. Lawyer and Lawyer’s legal secretary will screen incoming calls to determine the issues raised by the callers. Lawyer has established several “panels” by substantive area to handle the matters referred. On occasion, however, Lawyer may provide legal advice directly to callers as well as through XYZ Lawyer Referral Service. Lawyers to whom work is referred are expected to remit 15% of the fees generated on referred work to XYZ Lawyer Referral Service, up to a maximum of \$5,000 per referral.

Questions:

1. May Lawyer have an ownership interest in a for-profit lawyer referral service?
2. May Lawyer participate in the management of a for-profit lawyer referral service?
3. May a lawyer referral service provide legal advice to callers in the course of “screening” their inquiries?
4. May a lawyer referral service split fees with the lawyers to whom it refers work?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.
3. No.
4. No.

Discussion:

1. *Lawyer Ownership of For-Profit Lawyer Referral Service.*

Oregon permits for-profit lawyer referral services. Oregon RPC 7.2(c) provides:

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

Nevertheless, the referral service must not practice law and must not otherwise assist the lawyer-owner in violations of the Oregon RPCs. *See, e.g.,* OSB Formal Ethics Op Nos 2005-10 (lawyer permitted to operate real estate firm and title insurance company), 2005-101 (lawyer and psychologist could form domestic relations mediation service), 2005-107 (lawyer may join nonlawyer in preparing and marketing audiotapes and videotapes on law-related subjects), 2005-137 (lawyer could participate in joint venture with nonlawyer to offer interactive, online legal information service). *But see* OSB Formal Ethics Op Nos 2005-10, 2005-106, 2005-108 (lawyer cannot use other businesses for improper in-person solicitation of legal work or misrepresent nature of services provided).

2. *Lawyer Management of For-Profit Lawyer Referral Service.*

A lawyer-owner may provide general management and administration of a referral service. *See* OSB Formal Ethics Op No 2005-138 (legal aid service could provide general administration over associated referral service). This would include, for example, hiring and supervising operations management for the referral service. Similarly, the lawyer-owner may operate the referral service at the same physical premises as the lawyer's law practice. *See* OSB Formal Ethics Op No 2005-2 (lawyer may share office space with other businesses).

Even in these circumstances, however, a lawyer-owner should take precautions to avoid participating in the actual “screening” of incoming inquiries in light of the risk that a caller (1) might impart confidential information to the lawyer and thereby create potential conflicts with the lawyer’s other clients or (2) would form the reasonable belief that the lawyer had become the caller’s lawyer. *See* OEC 503(1)(a) (*client* means a person “who consults a lawyer with a view to obtaining professional legal services from the lawyer” for purposes of the lawyer-client privilege); OSB Formal Ethics Op Nos 2005-100 (preliminary discussions with an eye toward potential employment of a lawyer are protected by the lawyer-client privilege), 2005-138; *In re Weidner*, 310 Or 757, 770–771, 801 P2d 828 (1990) (outlining “reasonable expectations of the client” test for determining whether lawyer-client relationship has been formed).

At the other end of the spectrum is *In re Fellows*, 9 DB Rptr 197, 199–200 (1995). The disciplined lawyer in *Fellows* operated a referral service called “Case Evaluation & Referral Service” that was not an independent business but was merely an assumed business name for the lawyer. Such conduct violates both Oregon RPC 7.1 and Oregon RPC 8.4(a)(3). In addition, the operation of a lawyer-owned referral service in this manner would constitute doing business with a client within the meaning of Oregon RPC 1.8(a).

3. *Legal Advice by the Referral Service to Callers.*

Because a referral service itself is not licensed to practice law, it may not provide legal advice to the public. ORS 9.160 (only those licensed to practice law may provide legal advice to third parties). Similarly, a lawyer may not assist a nonlawyer in the unlawful practice of law. Oregon RPC 5.5(a). Consequently, a lawyer may not assist a referral service in its delivering legal advice to the public either. OSB Formal Ethics Op No 2005-87.

4. *Fee-Splitting Between the Referral Service and Participating Lawyers.*

Oregon RPC 5.4(a) prohibits lawyers from sharing fees with nonlawyers outside very narrowly defined exceptions not relevant to the question presented here. Because a referral service itself is not licensed to practice law, lawyers participating in such a service may not split their fees with the service.

Oregon RPC 7.2(a) provides:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

Lawyers may therefore pay the marketing charges associated with participating in lawyer referral services. *See also* OSB Formal Ethics Op No 2005-73 (acceptance of referrals). Payments made to a lawyer referral service, therefore, must be limited to marketing charges only and must not include a fee-split.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.28 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§3, 10 (2003); and ABA Model Rule 7.3(d).

FORMAL OPINION NO. 2007-180

Internet Advertising: Payment of Referral Fees

Facts:

Lawyer wants to participate in a nationwide Internet-based lawyer referral service and has received solicitations from companies offering this service. Customers who use the referral service are not charged. Some providers will charge Lawyer through various mechanisms.

The referral service will not be involved in the lawyer-client relationship. A referred consumer is under no obligation to work with a lawyer to whom the consumer is referred. The referral service will inform consumers that participating lawyers are active members in good standing with the Oregon State Bar who carry malpractice insurance. Consumers may also be informed that participating lawyers may have paid a fee to be listed in the directory. Furthermore, consumers will be informed that lawyers have written their own directory information and that a consumer should question, investigate, and evaluate the lawyer's qualifications before he or she hires a lawyer.

Questions:

1. May Lawyer participate in an Internet-based referral service?
2. May Lawyer ethically pay a fee to be listed in a directory of lawyers?
3. May Lawyer ethically pay a fee based on lawyer's being retained by a referred client?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.
3. No.

Discussion:

Internet-based advertising is governed by the same rules as other advertising. The questions presented here raise issues relating to both advertising and recommending a lawyer's services. Advertising and recommendation are distinguished as follows: "When services are

advertised, the nonlawyer does not physically assist in linking up lawyer and client once the advertising material has been disseminated. When a lawyer's services are recommended, the nonlawyer intermediary is relied upon to forge the actual attorney and client link." *Former OSB Formal Ethics Op No 1991-112* (discussing *former DR 2-101* and *former DR 2-103*).¹

Lawyers are permitted to communicate information about their services as long as the communication does not misrepresent a material fact and is not otherwise misleading. Oregon RPC 7.1(a)(1)–(2). Internet-based communication is available to consumers outside the states where Lawyer is licensed. Therefore, Lawyer must ensure that nothing in the advertisement implies that Lawyer may represent consumers beyond the scope of Lawyer's licenses. A lawyer who allows his or her name to be included in a directory must ensure that the organizers of the directory do not promote the lawyer by any means that involve false or misleading communications about the lawyer or his or her firm. RPC 7.2(b). For instance, if the directory lists only one type of practitioner, it may not include any statement that the lawyer is a specialist or limits his or her practice to that area unless that is in fact the case. RPC 7.1(a)(4). If the advertising creates an impression that Lawyer is the only practitioner in a specific geographic area who offers services for a particular practice area, when that is not the case, that representation would be misleading and therefore prohibited. Lawyer is responsible for content that Lawyer did not create to the extent that Lawyer knows about that content. Lawyer therefore cannot participate in advertising, including the home page of the advertising site and pages that are directly linked or closely related to the home page and that are created by the advertising company, if the content on those pages violates the Oregon RPCs. Lawyer is not responsible for the content of other lawyers' pages.

¹ See also *Bates v. State Bar of Arizona*, 433 US 350, 97 S Ct 2691, 53 L Ed2d 810 (1977) (upholding a state's right to prohibit false and misleading advertising); *Ohralik v. Ohio State Bar Assn.*, 436 US 447, 98 S Ct 1912, 56 L Ed2d 444 (1978) (upholding a state's right to discipline lawyer personally soliciting a client under circumstances creating undue pressure on prospective client).

Oregon RPC 7.1(d) permits a lawyer to pay others to disseminate information about the lawyer's services, subject to the limitations of RPC 7.2. That latter rule, in turn, allows a lawyer to pay the cost of advertisements and to hire others to assist with or advise about marketing the lawyer's services. RPC 7.2(a). RPC 7.2(a) provides:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

At the same time, Oregon RPC 5.4(a) prohibits a lawyer from sharing legal fees with a nonlawyer (except in limited circumstances that are not relevant to the questions presented here). RPC 5.4(a) provides:

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

This rule "prohibits a lawyer from giving a non-lawyer a share of a legal fee in exchange for services related to the obtaining or performance of legal work." *In re Griffith*, 304 Or 575, 611, 748 P2d 86 (1987) (interpreting former DR 3-102, which is now RPC 5.4(a)). In the context of advertising, Oregon RPC 5.4 thus precludes a lawyer from paying someone, or a related third party, who advertises or otherwise disseminates information about the lawyer's services based on the number of referrals, retained clients, or revenue generated from the advertisements. By contrast, paying a fixed annual or other set periodic fee not related to any particular work derived from a directory listing

violates neither RPC 5.4(a) nor RPC 7.2(a). A charge to Lawyer based on the number of hits or clicks on Lawyer's advertising, and that is not based on actual referrals or retained clients, would also be permissible.

Oregon RPC 7.2(c) permits a lawyer or law firm to be recommended by a referral service or other similar plan, service, or organization as long as (1) the operation of the plan does not result in the lawyer or the lawyer's firm violating the rules relating to professional independence² or unauthorized practice of law;³ (2) the client is the recipient of the legal services; (3) the plan does not impose any restriction on the lawyer's exercise of professional judgment; and (4) the plan does not engage in direct contact with prospective clients that would be improper if done by the lawyer.⁴ If a third-party provider were to collect specific information from a consumer, analyze that information to determine what type of lawyer or which specific lawyer is needed, and refer the consumer based on that analysis, it would constitute the unauthorized practice of law and is prohibited. OSB Formal Ethics Op No 2005-168.

A lawyer cannot control where people choose to access the Internet, just as a lawyer does not know where a client will use a traditional telephone directory. Solicitation of clients and payment for referrals in personal injury or wrongful death cases is prohibited by ORS 9.500 and 9.505. Lawyers are also prohibited from soliciting "business at factories, mills, hospitals or other places . . . for the purpose of obtaining business on account of personal injuries to any person or for the purpose of bringing damage suits on account of personal injuries." ORS 9.510. This statute must be read in conjunction with constitutional limitations on the restriction of free speech and does not bar all Internet-based advertising on these issues. OSB Formal Ethics Op No 2005-127.

² Oregon RPC 5.4.

³ Oregon RPC 5.5, ORS 9.160, and ORS 9.500–9.520.

⁴ Oregon RPC 7.3.

Substantive law may also limit Lawyer's ability to pay a referral fee.⁵ Here, the referral fee would be paid to a private third party rather than a "public service referral program," and it thus appears that the U.S. Bankruptcy Code's general prohibition against fee-sharing applies.

Approved by Board of Governors, November 2007.

⁵ See, e.g., 11 USC §503(b)(4), which governs the allowance of attorney fees in bankruptcy cases; §504(a) and (b), which prohibit a lawyer from agreeing to the sharing of compensation or reimbursement with another person; and §504(c), which creates an exception to the §504(a) and (b) restrictions for fee-sharing "with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals."

Percentage Fees: Available *and* Ethical

by Michael Franck

Lawyer referral and information services are not immune from economic reality. They too must cope with the twin pressures of less generous sources of income and escalating expenses. The traditional funding sources of sponsor subsidy plus client and panelist fees are increasingly inadequate. Additional income must be generated if referral and information service components are to maintain the quality standards essential to properly serving the public.

The most equitable source of additional funding for the service is obviously the lawyer who benefits financially from its operation. Why shouldn't that lawyer's contribution be directly proportionate to the monies earned as the result of a referral? Many services have forgone this potential source of funding because they regard it as fee-splitting, which is prohibited by the ethical standards of the profession. Careful analysis of that concern suggests that it is misplaced.

The long-standing prohibition against fee-splitting reflects the concern that a third party sharing in a legal fee would interfere in the lawyer-client relationship, by seeking to influence the lawyer to conduct the representation with an eye toward maximizing the fee to be earned, rather than to benefit the client. This concern first manifested itself in prohibitions against nonlawyer solicitation of claims in exchange for a percentage of the lawyer's fee (see *Mequire v. Corwine*, 101 U.S. 108 (1879)) and in prohibitions against the practice of law by corporations (see *In re Cooperative Co.*, 198 N.Y. 479 (1910)).

The prohibition against lawyers paying laypersons for soliciting cases was incorporated in the original Canons of Professional Ethics adopted by the American Bar Association in 1908. Other forms of fee-sharing with nonlawyers were originally prohibited only by statutes and case law. In 1928, the American Bar Association adopted Canon 34 of the Canons of Judicial Ethics which prohibited the sharing of legal fees

entirely, except with another lawyer based upon a division of service or responsibility. But, as Gilbert and Sullivan's *Little Buttercup* remind us in *H.M.S. Pinafore*, things are seldom what they seem.

In 1956, the ABA Committee on Professional Ethics issued an opinion as to whether a referral service sponsored by a local bar association could require those lawyers utilizing the service to assist in its financing, either by a flat fee or sliding-scale charge based on the fees derived by the lawyers from the cases referred to them. The Committee opined that registrants could be required to contribute to the expense of operation the referral service by a reasonable registration charge or by a reasonable percentage of fees they collected. The latter appeared to clearly be a division of legal fees with a nonlawyer. Nevertheless, the Committee concluded the arrangement would not constitute a violation of Canon 34.

The Ethics Committee gave absolutely no reason for its conclusion that the proposed percentage fee conformed to the existing Canon provision. We can only speculate that the Committee was determined not to impede the then-recent development of the lawyer referral service by the application of an ethical standard which had not anticipated that means of providing legal services to the public.

In 1969, the ABA Canons of Ethics were replaced by the ABA Model Code of Professional Responsibility. The Code retained the prohibition against a lawyer or law firm sharing legal fees with a nonlawyer, with exceptions only for death benefits payable to the estate of a deceased lawyer, compensation for services rendered prior to death payable to the estate of a lawyer, and the inclusion of nonlawyer employees in a firm retirement plan, even though the plan may be based on a profit-sharing arrangement (DR 3-102(A)). However, the Code also incorporated the lawyer referral service exception first sanctioned in Opinion 291. DR –103(B) prohibited the giving of compensation by a lawyer to a person or organization for having recommended or secured the lawyer's employment, or as a reward for having made a recommendation resulting in the lawyer's employment by a client, except that the lawyer was permitted to pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D). That subsection permitted the lawyer to

be recommended by, among others, a lawyer referral service operated, sponsored, or approved by a bar association. The percentage fee now had formal Code sanction.

In 1970, a law firm unsuccessfully sought a declaratory judgment that its agreement to pay one-third of an attorney fee of almost \$48,000 in a medical malpractice case referred by the lawyer referral service of a local bar association violated public policy against fee-splitting and was unenforceable. In *Emmons, Williams, Mires & Leech v. State Bar of California*, 6 Cal. App. 3d 565 (1970), the California Court of Appeals, citing criteria for the operation of a lawyer referral service adopted by the State Bar of California which had been premised on standards promulgated by the American Bar Association, as well as the Opinion 291 of the ABA Committee on Professional Ethics, held that the percentage fee did not violate the public policy underlying the prohibitions against fee-splitting and was, therefore, enforceable.

The court summarized the dangers to be avoided by the fee-splitting prohibition as competitive solicitation, potential control by the layperson interested in personal profit rather than the client's fate, and the lay intermediary's tendency to select the most generous, not the most competent, attorney. The court concluded that none of these dangers or disadvantages characterizes a local bar association's referral service. "The bar association seeks not individual profit but the fulfillment of public and professional objectives. It has a legitimate, nonprofit interest in making legal services more readily available to the public. When conducted within the framework conceived for such facilities, its reference service presents no risk of collision with the objectives of the Canons of fee-splitting and lay interposition." The lower court decision requiring the law firm to pay the referral service a percentage of the fee it had earned as the result of the referral was upheld.

Although the *Emmons* decision was not predicated upon the specific provisions of the Code of Professional Responsibility but upon similar regulations adopted by the State Bar of California, it is fully consistent with the philosophy underlying the parallel Code provisions.

The Code was replaced in 1982 by the ABA Model Rules of Professional Conduct. Model Rule 5.4(a), which prohibits a lawyer or law firm from sharing legal fees with a nonlawyer, is identical to DR 3-102(A) of the Model Code. Model Rule 7.2(c) generally prohibits a lawyer from giving anything of value to a person for recommending the lawyer's services. One express exception is that the lawyer may pay the usual charges of a not-for-profit lawyer referral service or legal service organization. The term "usual charges" incorporated the various methods for compensation lawyer referral services then in existence and included flat enrollment charges as well as percentage fees. The Model Code requirement that the referral service be sponsored by a bar association was dropped from the Model Rules. That change reflected significant doubt as to the constitutionality of lawyer ethical standards which advantaged referral service mechanisms sponsored by bar associations over similar services established by not-for-profit organizations to further ideological goals arguably protected by the First Amendment against discriminatory limitations applicable to them and not to others. Even the Model Rule exception, limited to not-for-profit organizations, may be subject to constitutional challenge.

The percentage fee is now a well-established method of funding lawyer referral services (see generally the ethics opinion set forth in the *ABA/BNA Lawyers' Manual on Professional Conduct* 41:804. The files of the ABA Standing Committee on Lawyer Referral and Information Service indicate that more than forty percent of the referral services in existence are so funded in whole or in part.

The size of the percentage fees charged varies greatly. They range up to one-third, the percentage fee at issue and enforced in the *Emmons* case, *supra*.

Although no specific limitation on the size of the referral fee charged by a referral service has been expressly formulated, it seems obvious that some standard of reasonableness must apply. The outside limits of that standard may be defined as the point at which a further deduction from the fee left to the lawyer handling

the matter may well affect the quality of the representation by adversely affecting the enthusiasm the lawyer brings to the matter and the ultimate result the lawyer seeks to achieve.

The purpose for which the proceeds of the referral fee charged by the service are used also raises ethical concerns. The lawyer referral concept was developed to further the profession's obligation to make legal services widely available. Consequently, it would not be appropriate to use the income generated to subsidize the normal operating expenses of the bar association or other sponsor of the referral service. Those proceeds should be devoted to funding the reasonable operating expenses of the service. Any balance remaining should fund public service activities of the service or its sponsoring organization, including the delivery of pro bono legal services.

State Bar LRIS Collects Percentage Fee?

Percentage Fees Model Used Within State (local or state bar)

Alabama	Yes			Yes	
Alaska		No			No
Arizona			No State Bar LRIS		
Arkansas	Yes			Yes	
California			No State Bar LRIS	Yes	
Colorado			No State Bar LRIS	Yes	
Connecticut			No State Bar LRIS	Yes	
Delaware		No			
Florida	Yes			Yes	
Georgia		No		Yes	No
Hawaii	Yes			Yes	
Idaho		No			No
Illinois	Yes			Yes	
Indiana			No State Bar LRIS	Yes	
Iowa	Yes			Yes	
Kansas	Yes			Yes	
Kentucky			No State Bar LRIS	Yes	
Louisiana	Yes			Yes	
Maine	Yes			Yes	
Maryland			No State Bar LRIS	Yes	
Massachusetts	Yes			Yes	
Michigan	Yes			Yes	
Minnesota		No		Yes	No
Mississippi			No State Bar LRIS		
Missouri	Yes			Yes	
Montana	Yes			Yes	
Nebraska		No			No
Nevada	Yes			Yes	
New Hampshire	Yes			Yes	
New Jersey			No State Bar LRIS		
New Mexico	Yes			Yes	
New York	Yes			Yes	
North Carolina		No		Yes	No
North Dakota		No			No
Ohio			No State Bar LRIS	Yes	
Oklahoma			No State Bar LRIS	Yes	
Oregon		No			No
Pennsylvania		No		Yes	No
Rhode Island	Yes			Yes	
South Carolina	Yes			Yes	
South Dakota			?		
Tennessee			No State Bar LRIS	Yes	
Texas	Yes			Yes	
Utah		No			No
Vermont	Yes			Yes	
Virginia			No State Bar LRIS	Yes	
Washington			No State Bar LRIS	Yes	
West Virginia		No			No
Wisconsin	Yes			Yes	
Wyoming		No			No
District of Columbia	Yes			Yes	
TOTAL	23	13	15	39	12
PERCENTAGE	45%	25%	29%	76%	24%

Total 51

51

Lawyer Referral Service

of CENTRAL TEXAS



DESCRIPTION AND RULES OF OPERATION

1. History and Purpose

The Lawyer Referral Service of Central Texas (LRS) is organized and operates to provide a public service by which any person may readily obtain legal services at an affordable fee, or referral information for appropriate legal service, or both.

LRS is a non-profit organization created by the Austin Bar Association (formerly Travis County Bar Association) in 1966 to assist individuals who do not have counsel and who are seeking help with a legal problem. Persons contacting contact LRS are either referred to a lawyer who has indicated that he or she is qualified to handle the legal problem presented or referred to community service organization. It is the responsibility of the Bar, and the professional responsibility of every lawyer, to make legal services available to all persons. In many ways, LRS serves as a clearinghouse for the entire legal community in the greater Austin area. Further objectives of LRS are:

- To acquaint people in need of legal services with the value of consultation with an attorney;
- To aid in the selection of a lawyer by providing information about lawyers and the availability of legal services;
- To provide general legal information needed by the public; and
- To encourage lawyers to recognize their obligation to provide affordable legal services to persons in need of such services.

2. How Does It Work?

One of the hallmarks of the referral service is screening. Referrals are made from information gathered during the screening process based on legal need, geographic area, and language spoken. The attorney next on the rotating list will receive the referral. The attorney's record will then be rotated to the bottom of the referral list of that particular area of the law. If a panel member is not available for calls or consultations (vacations, seminars, etc.) please contact the LRS office to be placed on temporary hold.

The client is given the name and telephone number of one panel member and is then transferred directly to the lawyer's office to arrange an appointment (unless the caller requests otherwise). Generally, the caller will receive one referral per phone call. The exception, when the caller will receive two referrals, is when they are calling from out of town or if they request two names. If two referrals are given, no call transfer is made.

The client is also advised:

- to inform the panel member's office that this is a Lawyer Referral Service referral;
- that they are entitled to a half-hour consultation with the panel member for no more than \$20;
- that fees involved in representation should be discussed with the attorney.

Following the referral, a referral confirmation notice will be sent to the panel member and a comprehensive status report will be sent monthly. The Lawyer Referral Service will also send a survey to clients to follow-up on the service provided to the client by the LRS and the panel member.

3. How to Join

Complete an application including the Member Information Sheet, Subject Matter Applications, pay member dues, and provide a copy of the declaration page of the professional liability insurance policy. **Contact Jeannie Rollo at 472-1311 to schedule an appointment.**

LRS MEMBERSHIP RULES

I. Membership Criteria

Membership is extended to all Travis, Hays, Bastrop and Williamson County attorneys licensed to practice law and members in good standing with the State of Texas, who are engaged in the full-time, private practice of law.

Members must maintain an office in the county(ies) that LRS serves. The office is one in which the attorney maintains a full time practice of law. The Director, with the advice and consent of the LRS Board of Trustees, will have discretion to evaluate the type of practice and how that affects the attorney's ability to serve the geographical area. The LRS Board has final discretion in allowing exceptions. Office space must be completely separate from living space with a separate entrance. For home offices that do not have a separate entrance and meeting space, all attorney/client meetings must take place in a courthouse, law library, law office conference room, or other similar setting to insure safety, privacy, and professionalism.

Panel members must carry profession liability insurance with limits not less than \$100,000 per claim and \$300,000 aggregate. Panel members must attach a copy of the declaration page of the policy to the application for membership. LRS will notify the panel member when the policy has expired and LRS will place the attorney on inactive status until current insurance information has been received. Panel members have the affirmative duty to notify LRS of renewal, cancellation, or other changes to the insurance policy, and should authorize the insurance carrier to supply LRS with any information concerning the policy.

Panel members must possess legal ability and competency to handle legal issues in the categories they have designated for referrals. Panel members must demonstrate personal reliability and integrity and comply with all rules of the Lawyer Referral Service of Central Texas.

II. Membership Dues (non refundable/non prorated)

Annual membership fees are: (membership year is July 1 through June 30 effective of 2/2/09/new dues structure will be put in place July 1, 2010.)

- a. \$200.00 if licensed more than 3 years.
- b. \$175.00 if licensed 1 to 3 years.
- c. \$150.00 if licensed less than 1 year.

To encourage participating in a local bar association, new LRS panel members, joining for the first time, will receive a \$50 discount on LRS dues when they also join the bar association (effective 3/3/2009).

III. Consultation Fees

Referral clients will be informed about the initial consultation fee and that further services and fees will be decided upon privately. Please refer the referral client back to the referral service if representation is denied. If a panel member plans to exceed thirty minutes and charge for the time that exceeds thirty minutes, make certain the referred client understands all fees prior to the start of the consultation. Panel members must have in place written fee agreements.

Panel members must collect a \$20.00 consultation fee from the client at the first appointment. The charge is for consultation only. Please use discretion in giving advice over the phone. Please collect the initial consultation fee immediately before meeting with the client. Checks should be made payable to the Lawyer Referral Service. Please do not forward cash to LRS.

For personal injury (including workers comp), bankruptcy, mediation, and social security disability cases, the attorney must remit the \$20.00 referral fee to LRS on all cases if the panel member has been retained and receives a fee. Please do not charge this fee to the client. This fee applies regardless of whether the case generates more than \$400.00. The status reports will reflect "retained, no consult fee" until the consult fee has been paid.

IV. Fee Agreements

Compensation for additional time or services beyond the initial one-half hour consultation must be agreed to between the panel member and the client before the client is charged any fee beyond the \$20.00. Please be sure the client understands that additional fees may apply upon the expiration of the initial thirty-minute consultation. All participating panel members *must* have written fee agreements with clients who retain them through the LRS referral. Please contact the LRS office for sample fee agreements.

V. Percentage Fees

The combined fees and expenses charged a referred client should not exceed the total charges that the client would have incurred had no referral service been involved.

Panel members are required to pay the Lawyer Referral Service a 15% referral fee on each LRS case that generates a fee of \$400.00 or more. This formula is based on all fees received. For example: On a \$1,000.00 legal fee, the referral fee would be \$90.00, i.e., 15% of \$600.00.

If the referred lawyer and the client enter into an agreement whereby the referred lawyer will provide legal services to the client for which the client will pay a fee, then percentage fees will be due the LRS upon payment of the fees by the client. No percentage fee is due on the first \$400 in fees paid by the client, in other words, there is a \$400 deductible. For all fees earned thereafter, fifteen percent (15%) is due the LRS. After collection of the first \$400 in fees, the referred lawyer shall remit 15% of all fees paid to the lawyer (whether the client has paid in response to a bill or whether the attorney has billed against funds held in trust) to the LRS on the next status report cycle, even if the attorney anticipates that additional fees will be paid in the future by the client.

If the referred lawyer fails to remit the appropriate percentage fee to the LRS within the next status report cycle, the Director shall notify the lawyer requesting immediate remittance of the appropriate percentage fee to the LRS. At the same time, the Director shall remove the lawyer's name from the referral panels until the percentage fees are paid. A \$25 reinstatement fee may apply if the panel member has failed to update status reports beyond the second reporting cycle and has been suspended.

When fees are returned with a status report, please indicate whether the amount is a percentage fee or consultation fee and for which client the monies will be applied.

The following must occur for LRS to close and process a final status on a referred case:

- Please indicate on the status report all fees received, the date fees were paid, and **submit the final client billing or settlement statement with the status report.**
- LRS must receive all fees within 30 days from the receipt of fees.
- If the referred lawyer fails to remit the appropriate percentage fee to the LRS within 30 days of closure of a referred matter, the Director shall contact the panel member, requesting immediate payment of the appropriate percentage fee to the LRS.
- If the member is delinquent, the Director shall remove the lawyer's name from the referral panels until the percentage fee is paid. If the lawyer fails to respond within 15 days of the receipt of the notification sent by the Director, the Director will present the matter to the Collections Committee for submission to collection, pursuant to LRS Section VII of the LRS Membership Rules. At the discretion of the Director and/or Committee, the Board of Trustees of the Lawyer Referral Service of Central Texas may be notified when a panel member has failed to remit the appropriate forms and/or funds to LRS. The Board of Trustees of the LRS of Central Texas may also take whatever action is deemed appropriate, including initiating collection actions and imposing a collection penalty in addition to fees due LRS.
- After the third suspension for failure to pay fees due LRS the panel member is subject to removal from LRS.

If LRS refers a caller who puts other people in touch with LRS attorney for the *same case*, LRS is entitled to 15% of fees from all related cases. However, if the LRS referred case closes and some time later the client re-contacts the attorney on another matter, LRS will not require the 15% fee on the matter unrelated to the LRS referral.

If a LRS panel member cannot handle an LRS referral, the client must be referred back to the LRS for another referral. **Under no circumstance should panel member refer an LRS caller to a non-LRS attorney or broker a referral.** Please contact the LRS with any questions. There is an ongoing obligation to remit percentage fees to LRS. If LRS member decides to share the LRS referral with another attorney, LRS must still receive 15% of *all* fees generated (including those paid to attorney brought in on case). There shall be no brokering of clients or cases referred by LRS.

LRS is entitled to (a) know the outcome of any legal representation, (b) the fees received, and (c) to audit the file to determine if it has received the appropriate amounts. Upon the settlement of any such action, the attorney shall be obligated to include LRS with those who have a right to know about a settlement, to the extent necessary to allow LRS to have knowledge of the terms of the settlement, including all fees paid in the case, whether paid directly by another party, or by settlement proceeds, so that LRS may determine the portion of the fees to which it is entitled.

VI. Subject Matter Panel Application

Members must submit Subject Matter Applications to participate in the many panels. Some applications require proof of experience in particular practice areas. All membership information may be found at www.AustinLRS.org.

VII. Fee Disputes/Audits

Fee disputes arising between LRS and member attorneys that cannot be resolved through intervention by the Executive Director, the Collection Committee, or the Board of Trustees, are subject to collection procedures by LRS.

In an effort to facilitate collection efforts, LRS may require the panel member allow LRS or its agent to examine and audit members' financial or accounting records and the legal files with regard to referred clients. The audit may include, but is not limited to, chart of accounts, general account records, court filing records, calendars, appointment records, time sheets, docket sheets, engagement letters, fee agreements, and contracts with LRS clients.

VIII. Referral Forms

Daily referral confirmation reports will be emailed to the attorney's office when a referral is made. Please retain the forms or return them with payment to LRS.

Comprehensive status reports will be faxed (soon to be posted on the LRS website [www.AustinLRS.org]) once a month listing all pending or open cases. Failure to return the forms within thirty days will be grounds for suspension from the rotation. A \$25 reinstatement fee may apply to suspended panel members whose reports are over 60 days late. Reports will be considered delinquent until completed and fees paid. When fees are paid, please indicate whether the amounts are percentage fees or consultation fees. Please indicate on the status report all attorneys' fees received.

IX. Follow-up

LRS sends follow-up surveys asking if clients consulted with the panel member, amounts of fees paid, and if they were satisfied with how their matter was handled. Any pertinent information will be forwarded to panel members, and, if deemed necessary by the Director of the LRS, to the Board of Trustees. LRS routinely monitors referrals by checking court dockets, legal notices, etc.

MATCH PROGRAM PANEL

The Match Program is a reduced fee program through which LRS matches low to modest income clients with attorneys willing to handle their case at the reduced rate of \$75.00 per hour (maximum). The Match Program is currently available for family law matters, guardianship cases, and drafting of simple wills. Your decision to join the Match Program will help meet the profession's responsibility of providing legal services to all low income Central Texans who qualify. Ask the LRS office for more information. To encourage involvement in this program, LRS provides professional liability insurance coverage for participating Match attorneys who take only Match referrals. The insurance covers Match cases only. If you participate in the Match Program ONLY, your membership dues will be waived the first year. If you join both LRS and Match, you must pay full LRS membership dues and carry malpractice insurance.

LAWYER OF THE DAY

As part of a "24 hour service," criminal law panel members can participate after 5pm and holidays as "on call" attorneys to receive emergency and jail calls. You are permitted to handle all cases in which you are qualified under LRS guidelines. You are entitled to fees for any service performed and obligated by the terms of your agreement with LRS to contribute the first \$20.00 consultation fee to LRS. If you are interested, please call 472-1311 for further information.

MENTOR PROGRAM

The Lawyer Referral Service offers a mentoring program, particularly for attorneys participating in the family law matters through the Match Program. If you agree to mentor, your name will be given to your protégé needing a consultation on a legal matter. Mentors will not be of record, nor be required to hold lengthy meetings with protégé. Mentors should be willing to accept occasional phone calls and offer information or support on difficult cases.

LAWFON

LawFON (Lawyer Friends of Non-profits) is a program where legal work is provided to qualifying non-profits at a reduced rate \$70.00 per hour. The non-profit will also receive a one-hour consultation for \$20, payable to LRS. If you are interested in providing this service, please contact LRS for more information.

LEGALLINE

On the first Tuesday of each month, attorney volunteers take calls from the public to give brief legal advice and assistance. All calls remain anonymous. If more in-depth legal advice is needed, the attorney volunteers refer callers to other agencies or to LRS for a referral. Please volunteer for this worthwhile service.

**DISCIPLINARY PROCEDURES
SUSPENSION AND TERMINATION OF MEMBERSHIP**

- I. Membership in the Lawyer Referral Service of Central Texas, Inc. is a privilege extended to those attorneys who meet the stated qualifications and agree to comply with LRS regulations. Those qualifications include the requirements that you:
- a. Be a member in good standing of the State Bar of Texas;
 - b. Engage in the full-time, private practice of law;
 - c. Maintain suitable office for receiving clients. Office space must be completely separate from living space with separate entrance and in a commercially zoned area;
 - d. Posses legal ability and competency to handle legal issues in the categories designated for referrals; and
 - e. Demonstrate personal reliability and integrity.
- II. The attorney has an affirmative duty to inform LRS within five (5) days if he/she receives a public or private reprimand, is placed on probation, suspended, or disbarred by the State Bar of Texas, is charged by information or complaint with a misdemeanor offense that constitutes a crime of moral turpitude, or is indicted on felony charges. The LRS conducts a check of disciplinary records of all panel members on a weekly basis.
- III. The Director is empowered to suspend any attorney member indefinitely for one or more of the following violations:
- a. Failure to return referral slips and/or fees with thirty (30) days of the date of the referral;
 - b. Failure to update LRS membership materials;
 - c. Failure to provide proof that professional liability insurance is in force and effect;
 - d. Failure to remit fees owed LRS;
 - e. Failure to respond to LRS inquiries regarding delinquent fees or client complaints, or
 - f. Failure to notify LRS of any public or private reprimand as outlined in section II above.

The Director will send written notice, via postal or electronic mail, of the suspension to the attorney at his/her last known address on or before the date the suspension commences. The attorney's status shall not be jeopardized by such action except that the referrals will not be made during this suspension. If the attorney has not cured the violation within sixty-two (62) days to the satisfaction of the Director, he/she will be subject to termination from the panel. If an attorney is terminated for refusal to pay fees due to LRS, his/her firm will be considered liable to LRS for the fees.

Any member whose membership is suspended or terminated under Section I, II, or III of the Disciplinary Procedures will not be allowed to renew his/her membership until the violation causing the suspension or termination has been cured. Any member who has been terminated will have to present his/her application to the Board of Trustees for readmittance to the panel.

- IV. The Director is empowered to suspend any attorney for a period not to exceed sixty-two (62) days for any good cause including but not limited to the following violations:
- a. Any public or private reprimand, probation, suspension or disbarment from the State Bar of Texas;
 - b. Any indictment for any felony or charged by information or complaint with a misdemeanor offense that constitutes a crime of moral turpitude;
 - c. Filing of formal criminal charges involving moral turpitude;
 - d. Litigation relating to suspension or disbarment from the State Bar of Texas;
 - e. Failure to meet or maintain the qualifications for membership in LRS established by the Board of Trustees;
 - f. Engaging in conduct harmful or injurious to the goals, reputation, or interest of LRS, including:
 - g. Giving the client the impression that persons referred by LRS are entitled to less consideration than other clients;
 - i. Consistent unavailability to referred clients;
 - ii. Consistent refusal to make or keep appointments with referred clients;

- iii. Rudeness to clients;
- iv. Repeated fee disputes with clients; or
- v. Consistent or excessive complaints from referred clients.

The Director will send written notice, via postal or electronic mail, of the suspension to the attorney at his/her last known address on or before the date the suspension commences. The letter will include specific reference to the nature of the violation, the date of the suspension, and notice that failure to cure the violation to the satisfaction of the Director within the time period stated will result in termination of the attorney's membership in LRS. The attorney's status shall not be jeopardized by such action except that referrals will not be made during the suspension.

If, within sixty-two (62) days of the date the suspension commences, the attorney does not cure the violation to the satisfaction of the Director, the Director will terminate the attorney's membership. The Director will send written notice of this action restating the nature of the violation.

- V. Administrative termination may be appealed by written request to the Director. The Director will designate the date of the next Board of Trustees' meeting as the hearing date and will notify the attorney and all members of the Board of Trustees of the date and nature of the hearing. At the meeting, the attorney may be present with or without counsel. It shall be the burden of the attorney to prove by a preponderance of the evidence that he/she is not guilty of the violation stated in the termination notice. The attorney will be expected to respond to questions by the Board of Trustees; the failure to cooperate may be a factor in the Board's decision. A simple majority vote by Board members (assuming a quorum is present) shall determine whether the attorney will be reinstated. This decision shall be final without a right of appeal.

Revised: June 5, 2009



Use of the ABA Lawyer Referral and Information Service logo indicates that this lawyer referral program has been reviewed by the ABA and meets the specific public service standards established by the ABA. ABA approved lawyer referral programs:

- Agree to establish and maintain objective experience criteria for their panel attorneys,
- Provide a mechanism for client feedback and resolving client complaints
- Do not limit the number of attorneys who may join the Lawyer Referral and Information Service, provided that they meet the objective requirements for panel membership,
- Require and verify that all panel attorneys carry legal malpractice insurance.

Use of the logo indicates that this program meets ABA standards for lawyer referral services. **The ABA does not review the qualifications of the individual lawyers who participate in the service. For more details on the ABA standards, visit www.abanet.org/legalservices/lrsrules.html.**

LRIS Referrals, Reports, and Agreements

A Member Support Staff Handbook

2009-2010

Index

Attorney-to-Attorney Referrals.....	6
Absences	13
Call back time	7
Client feedback.....	12
Complaints	12
Confirmation number	7
Contact information.....	13
Experience panel applications	9
Identifying LRIS clients.....	9
Initial consultation	7
Percentage fees	11
Proof of Insurance	9
Purpose of LRIS	3
Referral fee.....	8
Referral	
back to service	8
outside service.....	8
within your firm.....	9
Reports	
Attorney Confirmation.....	10
Quarterly Report and Remittal	11
Updates	10
Report Schedule	14
Sanctions	12

Report Schedule

Application & Agreement and Panel Change Form	once a year	anniversary month
Proof of Insurance	once a year	policy anniversary
Attorney Confirmation	at referral	30 days from date
Record Updates	roughly every 2 months, with due date established with reference to holiday calendar, etc, noted on forms, always 30 days or slightly longer	
Quarterly Rpt. & Remittal	four times per year, roughly every 3 months, with an attempt to stagger with holidays and Update due dates, noted on forms	

The Purpose of the Service

The Lawyer Referral & Information Service is a special program offered by the Maine State Bar Association to:

- ✓ **serve the public with information and access to legal services;**
- ✓ **provide member attorneys with opportunities for clients and good PR;**
- ✓ **promote a positive image of the legal profession; and**
- ✓ **express the Association's commitment to professional excellence.**

LRIS is not intended to offer lawyer services to people who can't afford them; on the other hand, it is not just a way to capture paying clients. More callers are assisted by the service with information or direction to more appropriate resources than are actually referred to an attorney. With dues and remittals, your attorney is helping to support this aspect of the public service provided by LRIS staff, as well as our capacity to make referrals. And when we make those referrals we want them to be helpful to the clients and worthwhile for our members, and to reflect well on the Bar Association in every way. To make it all work, we have Standards & Rules.

Our rules deal with how to handle referrals, make reports, and remit fees. Your attorney has signed an agreement to meet our standards and follow our rules, and will need your alert assistance to keep that agreement.

This handbook is intended to help you help your attorney gain the most from membership in the Lawyer Referral & Information Service.

What Else?

Stay in touch!

Call us when you have questions...and we'll do the same.

➡ Let Us Know About Absences, Illnesses, and Full Schedules

Sick? Vacation? In court for the next 3 weeks? It's ok — just tell us! If your attorney is not going to be available for more than a couple of days, please let us know. Remember, your attorney has an agreement to call each LRIS referral back within 3 days of his/her first call to your office. Not receiving a timely call back could damage their legal position, and it is bad public relations for your firm and our service. Call us ahead of time: we will put your attorney out of rotation for as long as you request. That way our service will meet customer expectations, you won't have to deal with an upset caller, and your attorney will remain in compliance and in rotation.

➡ Changes in Contact Information

We have found through experience that communications via e-mail can fail utterly if you or the staff who handles your paperwork have changed your e-mail addresses without telling us. Please let us know of ALL contact information changes as soon as possible – e-mail, telephone, fax, address, firm changes, etc. It will save us all time, confusion, and frustration.

To contact LRIS:

Director

Penny Hilton 622-7523, ext. 223 philton@mainebar.org

Administrative Assistant

Rachel MacArthur 622-7523, ext. 222 rmacarthur@mainebar.org

LRIS FAX 623-0083

Mailing Address

Lawyer Referral & Information Service
P O Box 788
Augusta ME 04332-0788

Client Feedback

We solicit client feedback in the form of a Client Survey when a referred case is reported closed by your office, as a means of verifying status reports, and as a way to measure client satisfaction with our service. We enter the results from every returned survey into the computer records pertaining to the attorney, put a paper copy into the attorney's file, and mail a copy to the attorney. We may follow up with a phone call if we feel the respondent's remarks warrant more attention. Only written complaints are considered. If we receive three or more complaints about an attorney within a year, we notify the attorney that the complaints will be considered by the LRIS oversight committee at its next meeting. Similarly, if within two years we receive three or more complaints noting the same *kind* of issue – failure to return calls, for example, or rudeness, or apparent incompetence – we will notify the attorney and bring the complaints to the committee's attention. The committee may ask for an explanation, or may choose to suspend or expel the attorney. The LRIS **Standards and Rules** document describes the process for appealing such a decision.

Complaints regarding alleged malpractice or disputes regarding fees are directed to the Maine Board of Overseers of the Bar. While we do not arbitrate in these matters, repeated complaints will be reported to the committee.

LRIS Sanctions

Temporary Placement Out of Rotation

Delinquent/incomplete report returns
Expired Proof of Insurance
Unpaid Annual Dues

LRIS Committee Consideration for Suspension

3 or more complaints in a year
3 or more complaints about the same issue in 2 years
Referral out of service
Withholding of percentage fees
Consistent failure to comply with LRIS rules

Expulsion

Maine Board of Bar Overseers sanction
Failure to maintain required liability insurance
Unresolved issues related to suspension

Final Sanctions are imposed by the MSBA Board of Governors - see Standards & Rules document.

Table of Contents

The Purpose of LRIS	3
Attorney-to-Attorney Referrals	6
When Our Caller Calls Your Office	7
Confirmation Number	
Referred Attorney	
Call-back Period	
Charges	
When Your Attorney Cannot Assist	
Paperwork	9
Application and Proof of Insurance	
Referral Reporting	
Attorney Confirmation Form	
Record Update	
Quarterly Report and Remittal	
Calculating Percentage Fees	
Client Feedback	12
LRIS Sanctions	12
What Else?.....	13
Absences, Illnesses and Full Schedules	
Contact Information	
Schedule of Reports	14
Index	15

We get many calls from attorneys, many from out of state, who need direction to attorneys who can help them with legal matters in Maine. Sometimes they are calling on behalf of themselves, sometimes on behalf of their clients. Sometimes they will call your office personally, and sometimes their clients will be the ones who call. As a professional courtesy, we do not charge these attorneys the regular Client Referral Fee. However, we will only make one referral at a time, as we found we were not getting accurate reports back from attorneys when multiple referrals were made.

THESE ARE STILL LRIS REFERRALS.

We fax you the regular Attorney Confirmation Form, with the same contact information, panel indications, and brief description of the issue. If the attorney is calling on behalf of a client, please note that the client's name will be included in the description.

And

LRIS REPORTING and REMITTAL AGREEMENTS APPLY

Whatever the fee-splitting or payment arrangement your attorney makes with the LRIS-referred attorney, 10% of the fees collected by your attorney for that case in excess of \$200 must be remitted to our service.

The Lawyer Referral & Information Service is in a unique position to connect your attorney with attorneys not already connected to a Maine network, networking that can directly and indirectly bring paying cases to your office for years to come. And it works both ways: your attorney can also get free referrals to other LRIS attorneys.

The percentage remittal to our service is a small and fair fee to pay to keep this service running for the benefit of all.

Please report and remit accurately.

➔ Quarterly Report and Remittal

This report is for LRIS referrals your office previously reported as Retained or Retained on Contingency. It is our reminder to you to send in the percentage remittals as you receive client payments, and to let us know when cases are closed. It is very important that these reports be accurate, and that you return them on time, even when there is no payment to make or no status change to report. *Even if the status is unchanged, you must enter a status code for each case listed.* As with the Record Update, we enter your responses into our data base, and if no status is entered for even one of the referrals listed, your attorney will appear on the list of delinquent reports when the 30-day return report is run, which will put your attorney out of rotation.

➔ Calculating Percentage Fees

LRIS collects percentage fees of 10% calculated on collected fees for service your attorney receives from each referred client above a specific threshold, excluding court costs and expenses. For referrals made before October 1, 2005, the threshold is \$150. For referrals made after October 1, 2005, the threshold is \$200. Examples:

Referral #2004122500001 (made December 25, 2004) brings in \$2,115 of which \$75 are court fees.	\$2,115	
	- 150	
	- 75	
	\$1,890	10 % to LRIS = \$189

The same financial outcome of Referral #200512250001 (made December 25, 2005) results in a smaller fee to LRIS.

	\$2,115	
	- 200	
	- 75	
	\$1,840	10 % to LRIS = \$184

The \$150 or \$200 deduction is made only once with each client account. Referral fees for several cases may be paid together in one check. **Please make sure to indicate on the form, however, how much should be associated with each referral number, and check your addition.**

Referral Reporting

All of the forms below are due within 30 days of their date.

➔ Attorney Confirmation Form

This is the form we fax or mail to you soon after we make a referral to your attorney, usually within 24 hours. It is intended to alert you to the call, to inform you of the basics of the issue, and to show the panels we used that pulled your attorney's name up in our referral search. It is the first report you need to return to us for each referral, and should be returned within 30 days, by fax or mail. Please be as accurate as you can in selecting the report responses, and include additional notes whenever necessary.

➔ Record Updates

The Quarterly R&R's (p.11) include only those referrals for which you have actually been retained or taken on a contingency bases. If you have sent back a report that states conclusively that contact with a referral was minimal - Telephone Conference Only, Services Under Threshold, Referred Back, etc - that referral will not show up on future reports.

The remaining referrals we track by means of reports we call "Updates." These are the referrals that show in our data as "reportless" - where we have heard nothing from you since sending the referral out; "Possible Services" - where you have reported that you may possibly take a case, depending upon (though you don't have to specify) receiving a retainer, or doing more research, or waiting to see how something related develops.; and "CNC - No Contact."

Your office, quite reasonably, may assume someone who hasn't called within several weeks, won't, and will return the report to us saying so. But we have learned that while most callers will call the attorneys we refer them to within minutes of speaking with us, others, for one reason or another, will wait weeks and even months. For this reason, we follow up on each of these referrals for two - three months after our original referral before dropping them off our report. We understand that it can be annoying to have to report "No Contact" more than once - but delayed or deferred follow-through comes with the territory, and we hope you will accommodate our needs with good humor.

When Our Caller Calls Your Office

➔ Note the LRIS caller's Confirmation Number.

While we have used confirmation or "call" numbers on paperwork to identify our referrals to member attorneys since our service began, it is only in the last year that we began instructing callers to give their confirmation number to you the first time they call. We made this change because so many callers were forgetting to identify themselves as LRIS referrals. This number is your cue that our rules with regard to call-back time, personal attention, attorney feedback regarding inappropriate referrals, timely reporting, and percentage fees will all apply.

➔ Direct LRIS callers ONLY to the attorney to whom they have been referred.

Your attorney has certified with us that the panels indicated on this year's application are areas in which s/he has experience and will accept referrals. S/he has also specifically agreed to conduct the first consultation *personally* with every LRIS caller we send.

This means that even if you usually refer people with one kind of legal need to one person in the office, and people with another kind of legal need to someone else, LRIS callers MUST be directed *only* to the attorney to whom we have referred them. Our selection process uses a database that includes all of the areas of law for which your attorney has told us s/he would like to receive referrals. We use our best judgment in selecting the panels we use for our referral search, based on the information the caller gives us. If your attorney shows up in a search, it means that s/he told us to put her/him on those specific panels. Attorneys may drop or add panels to their LRIS registry at any time. Please notify us so we can make our data reflect her/his current choices, and avoid making inappropriate referrals.

➔ Make sure your attorney calls back within 3 business days.

Our guarantee to all LRIS callers is a return call from the referred attorney within 3 business days. Your attorney is aware of this guarantee, and has agreed to comply.

8 ➔ **Do not charge an LRIS referral for the first half-hour of consultation with your attorney.**

We know that some of our members routinely provide a first consultation at no charge, while others charge immediately. LRIS clients pay our service a \$25 administrative fee for providing an appropriate referral, and additional referrals, if needed. Your office does not collect this fee. We guarantee that this payment to us covers the first half-hour of their consultation with your attorney, and that your office will not charge for that time. You should know that we do not refer to it as a “free” half-hour, and that we advise them to discuss fees at that time. In our intake, on our website, and in the paperwork they receive from us, we emphasize that they should not expect to “solve their legal problems” in a half-hour, and that attorneys are ethically bound to know the facts and give them due consideration before offering advice. We emphasize that they should be prepared to pay for any service or consultation that extends past a half-hour. Please note that with the exception of that first half-hour, our callers should not be treated differently than those who access you through other means. If your attorney routinely consults for *more* than a half-hour without charge, this same practice should extend to LRIS referrals.

➔ **If your attorney cannot assist, s/he MUST refer LRIS referrals back to our office for referral to another LRIS attorney.**

We understand that it is common practice within the profession to give people the names of other attorneys to consult when, for whatever reason, your attorney can't assist them. **With LRIS referrals, however, your attorney has agreed to depart from this standard practice and refer LRIS callers back to the LRIS office instead.** This is essential to the success of our service in terms of both financial viability and professional credibility. And remember, if we made an inappropriate referral, we want to know. We tell callers that if your attorney cannot assist, they should call us back for another referral. Callers do let us know when attorneys have directed them elsewhere, and it is grounds for suspending your attorney from the service.

Please note that we are committed to providing ethical, professional service to every caller. We will never refer a caller inappropriately for the sake of keeping them in the service. If your attorney has some specific advice about how to redirect the referral, or feels strongly that the caller has needs that only a specific attorney or firm can meet, s/he must discuss this with the LRIS Director. The Director has the authority to permit out-of-service referrals on a case-by-case basis.

9 ➔ **After the initial consultation, your attorney MAY refer an LRIS client to another non-LRIS member attorney in your firm.**

Let us know. However, the original LRIS member attorney to whom we referred the caller will still be considered responsible for the case, and all the reporting and service obligations that pertain. All LRIS correspondence will continue to be with the original attorney.

➔ **Open LRIS Cases MUST be identified within your casefile with the LRIS Letter of Obligation.**

If your attorney is retained by an LRIS client, you must immediately include some version of the Letter of Obligation in the file you open for that client. This is so the case will always be clearly identified as coming from LRIS. This became particularly important in recent years when there was an up-tick in attorneys travelling to other firms or leaving the practice of law. Once an LRIS case, always an LRIS case, with the attendant obligations.

LRIS Paperwork

➔ **Application and Proof of Insurance**

If you are reading this, your attorney has already accomplished the major step of applying and being accepted to our service. There are a couple of follow-up steps that you will want to anticipate:

Anniversary Update of Proof of Insurance – The ABA has advised us to pull member attorneys out of rotation immediately on the end date of the proof of insurance we have on file. There is now no grace period for getting proof of renewal to us. As soon as you receive the new policy for the year, send POI (the page noting amount, date, and who is covered) to us, so we can reinstate your attorney.

Experience Panel Applications – Attorneys now have to meet additional requirements to participate in certain LRIS panel areas. If your attorney is interested in participating an experience panel - currently Family Law, Employment Law, Medical Malpractice, Civil Rights, Social Security Law, or Alternative Dispute Resolution - panels, please note that they can join at any time during the year as soon as they can present documentation of meeting the criteria. There is no extra cost to participate in Experience Panels.

STATEMENT OF STANDARDS AND RULES

LAWYER REFERRAL & INFORMATION SERVICE (LRIS)



A PUBLIC SERVICE OF THE
STATE BAR OF NEVADA
www.nvbar.org

Frequently Asked Questions

I. Who can become a member of LRIS?

Any attorney licensed in Nevada who is and remains in good standing with the Nevada State Bar and has proof of Errors & Omissions Insurance.

II. What are the costs to me?

You pay a \$50 annual fee and 20% of net fees collected from your client. You keep the initial consultation fee of \$45.

III. When do I pay?

You remit fees to LRIS as payments are received.

IV. How are clients/attorneys selected?

The staff selects attorneys on a rotational basis, based upon the area of law needed, geographical location and foreign language requirements.

V. How am I advised of potential clients?

LRIS will send you confirmation letters for each client referred to you daily, which you will return to LRIS indicating the status of each referral. Additionally, you may receive weekly, monthly and quarterly reports to ensure that all cases have the appropriate disposition.

VI. What are the benefits of the service?

LRIS advertises statewide in the Yellow Pages, and through other means. Brochures are available to the public at statewide locations. In addition, you receive \$45 for the initial consultation fee (*except for in contingency cases*) and LRIS builds your client base.

VII. What if I decide not to represent the client?

Simply refer the client back to LRIS. Clients may not be transferred to other attorneys without prior approval from the Service.

ARTICLE ONE

Purpose

The purpose of the Lawyer Referral & Information Service (LRIS) is to assist members of the general public in need of legal assistance by providing information and referrals to attorney members in good standing with the State Bar of Nevada.

ARTICLE TWO

Organization

Section 1. Rules of Operation

These Rules shall be called the Rules of Operation of the Lawyer Referral & Information Service, sponsored by the State Bar of Nevada.

Section 2. Terms

As used herein the term "Committee" means the State Bar of Nevada Lawyer Referral & Information Service Committee; the term "Panel members" means attorneys participating in the Lawyer Referral & Information Service; the term "Client" means clients requesting legal referrals from the Lawyer Referral & Information Service; the term "Service" or "LRIS" means the State Bar of Nevada Lawyer Referral & Information Service; the term "Executive Director" means the Executive Director of the State Bar of Nevada.

Section 3. Administration

The Service shall be operated in accordance with these Rules and any amendments thereto as may be adopted in the future by the Board of Governors of the State Bar of Nevada. The Service shall be administered by the Board of Governors of the State Bar of Nevada.

Section 4. Management

The Service will be managed by the Executive Director who, together with other designated personnel selected and supervised by the Executive Director, shall be subject to the approval and continuing jurisdiction of the Board of Governors. The Executive Director or designee shall make periodic reports to the Committee as requested by the Chair of the Committee. The Executive Director or designee shall keep such records as are required by the Committee or the Board of Governors.

ARTICLE THREE

Administration

Section 1. Attorney Eligibility

Any attorney member with the State Bar of Nevada in good standing as defined in these Rules and engaged in the active practice of law in the state of Nevada may apply for registration with the Service by submitting a completed application, resume, proof of errors and omissions insurance with minimum coverage of \$250,000 per claim, with \$500,000 aggregate limits, and by paying the non-refundable, annual registration fee of \$50.00. Additionally, prospective attorneys agree to pay any fees due, render any reports upon request and otherwise abide by the rules of the Service.

Section 2. Fiscal Year

The fiscal year for the Service shall run from April 1 through March 31 of each calendar year. Failure of panel members to renew their membership on or before March 31 of each year shall result in an automatic suspension as set forth in Article 3, Section 5. After suspension, re-registration of these panel members shall occur pursuant to Article 3, Section 1, of these rules.

Section 3. Panel Areas

The Committee shall establish subject matter panels in the areas of law it deems appropriate. Referrals generally shall be made in rotation subject to such exceptions warranted by the special geographical, linguistic or other considerations of the client.

Section 4. Disclaimers

The Service will send a confirmation/disclaimer letter to each client referred at the address given. The disclaimer will state "A referral to an attorney, who has indicated a willingness to accept referrals in a particular area of law, does not mean that the State Bar of Nevada Lawyer Referral & Information Service or any other agency or board has certified such lawyer as a specialist or expert. This does not mean that such attorney is more qualified than any other."

Section 5. Suspension or Removal of Panel Members; Appeal process

Panel members may be suspended or removed upon failure of a member to do any of the following:

- [a] pay the annual registration fee,
- [b] maintain the required errors and omissions insurance,
- [c] maintain good standing as defined in Article Three, Section 6 of these rules,

- [d] forward all referral fees when due,
- [e] submit all required reports, or for
- [f] falsifying any material statement made in application to the Service or in any required report, or for
- [g] good cause, including but not limited to violations of Supreme Court Rules or any provision of these Rules, or in the sole discretion of the Committee.

The Committee may suspend or remove a member for any action or inaction which, in the reasonable discretion of the Committee, warrants suspension or removal. If a panel member attorney feels as though they have been unjustly removed, the member may appeal in writing to the Nevada Lawyer Referral and Information Service within 30 days of the suspension or removal. All suspensions, removals or disciplinary matters shall be forwarded to and handled by the appropriate State Bar of Nevada department. For example, a suspension from the service because of a violation of the Nevada Supreme Court Rules shall be referred to the State Bar of Nevada Lawyer Discipline department.

Section 6. Good Standing Defined

An attorney who has been admitted to practice law in the State of Nevada by the Nevada Supreme Court shall be considered in good standing unless one or more of the following events shall occur:

- [a] Suspension – pursuant to Nevada Supreme Court Rule 98,
- [b] Disbarment, Suspension, or Temporary Restraining Order imposed by the Nevada Supreme Court Rule 102,
- [c] A recommendation of disbarment or suspension pursuant to Nevada Supreme Court Rule 105 (2)(D),
- [d] Suspension pursuant to Nevada Supreme Court Rule 111(1), or
- [e] Suspension pursuant to Nevada Supreme Court Rule 117.

Section 7. Withdrawal from Service

Any panel member may withdraw from the Service at any time, although said panel member shall remain liable for all fees generated from any and all LRIS referrals, and, additionally, shall remain responsible for completing and submitting all reports on LRIS referrals as requested.

Section 8. Fee Structure

All panel members must render professional services to clients referred by the Service within the following fee structure:

- [a] Initial consultation – the maximum initial consultation fee is \$45, except that the initial consultation fee is waived for contingency fee cases (Worker’s Comp, Negligence, Social Security matters and some Insurance law matters);
- [b] The fee schedule is subject to the following qualifications:
 1. Consultation fees specified in [a] above do not include preparation of any legal documents (consultation fees are retained by the attorney);

2. All compensation for further services will be subject to agreement between attorney and client;
3. Disputes as to fees, at the request of client, shall be submitted to the Fee Dispute Committee of the State Bar of Nevada.

Section 9. Refer Back Procedures

Clients referred by the Service to panel members are to receive their initial consultation by the panel member referred only. If in the opinion of the panel member, the client needs further legal services which the panel member is unable to provide, the panel member shall do one of the following: (1) refer the client back to the Service, or (2) notify the Service that the client is being referred to any other attorney who is a panel member of the Service. Panel members may not refer any case received from the Service to any other attorney or firm without first notifying the Service. Panel members who refer a referred client to, or associate with, new counsel must do so with the Lawyer Referral Service's written consent. In all cases, the initial panel member shall remain liable to the LRIS for 20% of all fees collected (see section 13, *infra*) in the matter until written consent from the LRIS is sent to both attorneys involved and consent is then received from the transferee attorney at the LRIS offices.

Section 10. Panel Member's Record Keeping Obligations

Each panel member shall keep a record of the name of each client referred through the Service, the date of the referral, the general nature of the matter referred, and the total fee received. Upon receipt of a fee or portion thereof or upon disposition of the matter, the attorney shall report to the Service on the matter. Said report shall include pro rata payment of any fees collected. Panel members shall execute a Disbursement Agreement (to be provided by the Service) with the referred client at the conclusion of each full contingency fee case that fully explains the allocation of the case's fees and costs. A copy of this agreement may be requested by the Service at any time. In addition, the Committee also reserves the right to demand an accounting of any case referred as well as a complete audit of that matter. Further, the Committee may request information from clients relating to referrals to panel members. It is the responsibility of panel members to notify the Lawyer Referral Service if there is a period of time of one week or more in which the attorney will be unavailable for referrals because of vacations, caseload or any other reasons.

Section 11. Ethical Considerations

Each panel member shall be guided, governed and bound by the Nevada Supreme Court Rules, the Rules of Professional Conduct governing attorney conduct, and by these Rules of Operation. Any discovered ethical violations, including failure to abide by these Rules of Operation, will be promptly reported by the Committee to the Discipline Department of the State Bar of Nevada, and may further result in suspension of the attorney/panel member by the LRIS. **In all cases, panel member attorneys shall not contact 'prospective LRIS referred clients' before said client shall have first made contact with or have attempted to make first contact with the panel member attorney (see Nevada Supreme Court Rule 197).**

Section 12. Membership in the State Bar of Nevada LRS

No lawyer shall be registered in the Service unless the lawyer (a) is a member in good standing of the State Bar of Nevada, as defined in these Rules, engaged in the active practice of the law in the State of Nevada; (b) has not at any time during the preceding five (5) years prior to application either been under suspension from practice or disbarment by the State Bar of Nevada or any other bar, or serving a sentence or been on probation for a crime involving moral turpitude; (c) maintains errors and omission insurance, in the minimum of \$250,000 per claim, with \$500,000 aggregate limits, (d) waives liability and agrees to indemnify and hold harmless the State Bar of Nevada and its members (and the Committee and its agents) from any claims, demands, actions, liability or loss which may arise from, or be incurred as a result of, the operation of the Service or referrals, of clients to him or her through the Service, or the use of information contained in the registration form. Furthermore, the attorney must read the Rules of Operation and must agree to follow them as a condition precedent to participation in the service.

Section 13. Percentage Fee Basis

Each panel member agrees to pay to the Service twenty percent (20%) of all net fees received by the panel member from any referral made by the Service, **except that the panel member shall keep the initial consultation charge.** Net fees are defined as the total fees remaining after deduction of out-of-pocket costs. Subsequent to accepting a referral, regardless of panel description and so long as it arose out of the same transaction or occurrence, the panel member and the law firm of the panel member shall remain responsible for all percentage fees due the Service. Any dispute regarding percentage fees owed to the Service will be resolved by binding arbitration.

ARTICLE FOUR

Amendments

Section 1. Amendment Procedures.

These Rules may be amended or repealed by a majority vote of the Committee subject to final approval by the Board of Governors of the State Bar of Nevada.

I _____, do hereby declare:
I am an attorney in good standing with the State Bar of Nevada and will abide by the Rules of the Supreme Court of Nevada, the Rules of Professional Conduct governing attorney conduct, and the Rules of Operations of Lawyer Referral & Information Service (LRIS).

I hereby indemnify and hold harmless the State Bar of Nevada and its members (and the Committee and its agents), from any and all claims, demands, actions, liability or loss which may arise from or be incurred as a result of the operation of the Service or referrals of clients to me through the Service, or the use of information contained in the registration form; and agree that the information contained in the registration form may be furnished to referred clients.

I have and shall maintain in force a Lawyer's Professional Liability Insurance policy with a minimum coverage of \$250,000 per claim with \$500,000 aggregate limits.

I warrant that I have not at any time during the preceding five (5) years prior to application either been under suspension from practice, other than for non-payment of State Bar dues from a state other than Nevada, or disbarment by the State Bar of Nevada or any other state bar, or serving a sentence or been on probation for a crime involving moral turpitude.

Attorney Signature

Date

Your signature indicates that you have read the Statement of Standards and Rules in its entirety, and that you agree to all of the terms and conditions contained therein.

Also please make a copy to keep for your records and future reference.

It is the responsibility of the attorney to notify the Lawyer Referral & Information Service of any of the following:

- Address changes
- Association with any attorney outside of the service
 - Departure from your current firm or office
 - Panel selection changes
- Any disciplinary actions pending with the State Bar
- If you will not be accepting referrals for any specific length of time beyond one week

Please make a copy to keep for your records and future reference.

Thank you for your participation in the Lawyer Referral & Information Service.

OREGON STATE BAR

BOG Policy & Governance Committee

Meeting Date: January 6, 2001
Memo Date: January 5, 2001
From: Kay Pulju, Communications, Ext. 402
Re: Percentage fee funding for the Lawyer Referral Service

Action Recommended

Reconsider pursuing the DR and statutory amendments necessary to allow the OSB Lawyer Referral Service (LRS) to implement a percentage fee system.

Background

In October of 1998 the BOG considered a proposal from the LRS Committee and the Multnomah Bar Association that contemplated numerous changes to LRS operations. A key recommendation from that proposal was to make LRS self-supporting (and potentially profitable) through implementation of a percentage fee system. In percentage fee systems, panelists agree to return to the referral service a small percentage of attorney fees collected from LRS clients over a threshold amount.

In declining to pursue the percentage fee proposal, the BOG cited three concerns: 1) the need to amend two disciplinary rules, 2) the apparent necessity for legislative action in the tort claims area, and 3) possible negative reactions from bar members who participate in LRS. While these issues remain, the BOG may wish to reconsider whether the potential benefits now outweigh the difficulties and risks of implementing a percentage fee program.

The materials previously considered by the BOG are attached. The main benefits of pursuing a percentage fee system are summarized below.

1. Equitable new source of revenue. A majority of bar-sponsored LRS programs nationwide use percentage fee systems, having determined that they are the most equitable means of funding their programs. Unlike any other bar revenue source, percentage fees are paid only by those members who use the LRS program, and are paid in direct proportion to the financial benefit each member receives from the program. No member would pay a significant sum unless that member received significant fees from an LRS-referred client.
2. Additional funds for public service programs. Most LRS programs that charge percentage fees bring significant revenue to their sponsoring bar associations. The revenue is generally used in two ways: to support and enhance LRS and Modest Means programming, and to support other access to justice and public service programming.

Based on the experiences of programs similar to the OSB's, \$350,000 is a fair estimate of the annual income percentage fees would bring within three years of implementation. This amount could finance significant customer service improvements in LRS, which is the OSB program most valued by the public. Program enhancements are needed, but not affordable through the bar's general fund. In time LRS revenue could support other access programs of the state and local bars.

3. Support for the bar's legislative initiatives. This year the bar's legislative priority is to gain funds for access to justice. The legislative amendment needed to allow percentage fee funding for the LRS complements the work of the "Lindauer Group" by demonstrating how Oregon lawyers expect to contribute additional funds to access programs.

Attachments:

- BOG agenda memo, 11-2-98
- Percentage Fees: Available and Ethical, ABA Lawyer Referral Network (1993)
- Some Habits of Highly Effective Lawyer Referral Programs, ABA Dialogue (2000)
- Agreement for Lawyer Referral Service Membership, Columbus Bar Association
- Profile 2000: Characteristics of Lawyer Referral & Information Services, ABA (1999)

Model Supreme Court Rules Governing Lawyer Referral & Information Service

Introduction

Lawyer referral services have been in operation in this country for more than 50 years, and were first established in response to requests by middle income persons for assistance in obtaining appropriate legal counsel. Lawyer Referral and Information Services are designed to assist persons who are able to pay normal attorney fees but whose ability to locate appropriate legal representation is frustrated by a lack of experience with the legal system, a lack of information about the type of service needed, or a fear of the potential costs of seeing a lawyer. Lawyer referral programs offer two important services to the public. First, they help the client determine if the problem is truly of a legal nature by screening inquiries and referring the client to other service agencies when appropriate. The second, and perhaps more important, function of a lawyer referral service is to provide the client with an unbiased referral to an attorney who has experience in the area of law appropriate to the client's needs. The public has come to equate the function of lawyer referral programs with consumer-oriented assistance, and expects that the loyalty of the program will lie with the consumer, and only secondarily with the participating attorney.

In 1989, following a long review process by state and local bar association and lawyer referral experts from both the public and private sector, the American Bar Association adopted Model Rules for the operation of public service lawyer referral programs. The overriding concern of the Model Rules is consumer protection.

The aspirational standards used previously at the state and local level were simply not sufficient to ensure the public service orientation of some private, for-profit services; strong and enforceable regulations were needed to achieve minimal standards for all lawyer referral services. However, while the Rules must be strong to be effective, we have been mindful of the need to allow legitimate public service-oriented attorneys and providers to operate without undue interference. In drafting the Model Rules, we have done our best to balance these considerations. These Rules are designed to provide a level playing field for all programs, whether private or bar-sponsored. Each state is urged to examine its rules, decisions and opinions in order to utilize the Model Rules in a manner consistent with its own law.

These Model Rules have also been drafted in legislative form, for states where lawyers are regulated by the Legislature.

SUMMARY OF REQUIREMENTS FOR LAWYER REFERRAL SERVICES BASED UPON "MODEL SUPREME COURT RULES

GOVERNING LAWYER REFERRAL SERVICES"

ADOPTED BY ABA HOUSE OF DELEGATES 8/93

1. A qualified service shall be operated in the public interest and shall provide information regarding government and consumer agencies which may assist the client, as well as provide referrals to lawyers, pro bono programs and other legal service providers. The service may be privately owned so long as the primary purpose is public service.
2. Membership in the service should be open to all licensed attorneys in the geographical area served who meet the requirements of the service outline below. Charges for membership in the service must be reasonable. Membership may not be restricted by the particular geographical areas or subject areas.
3. The service must require its members to maintain malpractice insurance or to provide proof of financial responsibility.
4. The combined fees and expenses charged to a client by a service and the lawyer to whom the client is referred shall not exceed the combined fees and expenses the client would have incurred if no referral service were employed.
5. No fee generating referral may be made to any lawyer who has an ownership in, who operates, or who is employed by the service, or to their law firm. Referrals may be made to lawyers who are members of the board or governing committee of the service so long as they do not receive any preferential treatment.
6. The service must periodically survey client satisfaction with its operations and shall investigate and take appropriate action regarding any complaints against panelists, the service or its employees. The survey may be by mail or by phone and need not involve every client.
7. The service must establish procedures for the admission, suspension or removal of a lawyer from any panel. The procedures must be clearly articulated in the service's materials. The procedure may include peer review, but other procedures are permissible. The procedure must include an appeal process.
8. Subject to the rules of the service's jurisdiction, the service may, in addition to a referral fee, receive a percentage of the fee earned by the lawyer to whom a referral is made. Any such fees received may be used only for the reasonable operating expenses of the service or the fund public service activities of the service or its sponsoring organization.
9. The service must establish subject matter panels and establish minimum requirements for eligibility. The number of subject panels necessary will vary from service to service depending upon the needs of the community served. Requirements for eligibility should include sufficient experience to ensure that the lawyer is qualified in the field of practice. The service should require proof of compliance with the requirements so established, which may include certification in affidavit or affirmation form.

[excerpt: Model Rule X]

A qualified service shall establish specific subject matter panels, and may establish moderate and no fee panels, foreign language panels, alternative dispute resolution panels and other special panels which respond to the referral needs of the consumer public, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria.

Commentary

This requirement is similar to one contained in the ABA's Minimum Quality Standards.

The California legislation required the establishment of specific panels "representing different areas of law and limited to attorneys who meet reasonable participation requirements ..." (see Minimum Standards for a Lawyer Referral Service in California, Rule 7.2). The New York State Bar Association's Proposed Minimum Standards are similar to the California legislation. (See Proposed Minimum Standards, Section 6.2, contained in "Report of the Special Committee on Lawyer Referral Services Regulations," New York State Bar Association, June 1990.)

The importance of establishing meaningful experience requirements cannot be underestimated. It is inappropriate for a service to simply refer a caller to the next lawyer on the list without determining that the lawyer is qualified in the field of practice in which legal services are needed. Since the public relies on services to provide qualified legal representation which improves on what the consumer can obtain by lot, it is incumbent upon these services to ensure that their attorneys have substantially more qualifications than mere bar membership.

"Experience" is not intended to mean "expertise" or "specialization," nor should it be defined merely by length of time in practice. See ABA Statement of Standards section 5.2, Comment. Rather, the goal is to ensure, in the words of this Comment, that both the subject matter panels and the qualification standards shall "meet the needs and reasonable expectations of the community served." In meeting these needs, "consideration should also be given to the panel member's experience with particular kinds of cases," and to "requiring a certain amount of recent actual experience."

DIALOGUE

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Is our LRIS liable?

by Sheree Swetin

Are lawyer referral programs liable for the referrals they make? Can a referral client successfully sue an LRIS for negligent referral? Legal malpractice? What is the bar's liability to the client if the attorney's insurance is canceled? Lawyer referral programs must consider several types of professional liability that could result from their daily activities.

Legal Referrals

Many professional groups refer clients to their members. Negligent referral liability can arise when the lawyer referral service promises or implies that certain standards or criteria exist when in fact, they do not. A lawyer referral program also can be negligent by inaccurately communicating panel attorney qualifications, or by not verifying that attorneys meet the criteria promised to the client. Liability also can exist when the LRIS indicates to the public that the program offers a higher standard of referral, when it in fact does little or nothing to ensure quality referrals.

Legal Malpractice

On rare occasions, lawyer referral programs have been sued for legal malpractice. In such instances, the client often names the LRIS, with the panel member, as an additional defendant, especially if the plaintiff needs a deep pocket because the panel member has insufficient insurance limits.

This is a difficult claim to pursue, because most lawyer referral programs do not establish a lawyer/client relationship or provide legal advice, which are elements of a legal malpractice claim. If your program provides legal advice through lawyer-interviewers or through call-in hotlines, you should look into adding, to your bar's errors and omissions policy, legal malpractice protection for volunteers.

Vicarious Liability

Finally, the lawyer referral program can be found to be vicariously liable for legal malpractice claims if its panel members fail to keep their insurance policies in force. Most lawyer referral programs promote the fact that all of their panel members carry legal malpractice insurance.

Is the lawyer referral service liable for malpractice damages if the panel member cancels his or her insurance or fails to make premium payments? At least one program in California has paid money to settle such a claim. Even if the program is not liable for legal malpractice damages, do we have an obligation to notify clients if the panel member drops insurance coverage? Unfortunately, the law is not clear on the answer to this question.

Claims Against LRIS Programs

Only four claims against lawyer referral programs have been reported to the ABA in the past fifteen years. All were dismissed prior to trial. In the complaint filed against the Chicago Bar Association, the plaintiff alleged that the bar was negligent and breached its duty of reasonable care because the referred lawyer was not an expert in the specific area of law and did not have adequate malpractice insurance. The plaintiff argued:

- the LRIS was liable for negligent representation under the "voluntary undertaking" doctrine
- the LRIS was liable as a referring lawyer under the rules of professional conduct.

The court, however, granted the Chicago Bar Association's motion to dismiss. It ruled that the lawyer referral service could not be held liable for the legal malpractice that the referral attorney committed. In addition, the court held that the lawyer referral service is not a "lawyer" and was not subject to the rules of professional conduct that govern the division of fees and professional responsibilities between lawyers. According to the court, "the mere taking of a referral fee as a referring agency

rather than as a referring lawyer will not suffice to make [the referral service] an insurer or otherwise vicariously accountable for the actions of the attorney to whom the matter is referred."

While this decision does not govern courts in other jurisdictions, it may well prove persuasive and may well indicate what another court would decide if faced with a similar case.

Precautions

Lawyer referral programs can take simple precautions to reduce their chances of being successfully sued for negligent referral or malpractice. First, consumers expect more from a bar-sponsored lawyer referral service than they do when looking for an attorney in the yellow pages. Indeed, LRISs pride themselves on providing a public service, and as a result, they must establish some sort of panel qualifications to meet the public's expectations.

Second, a program should not imply panel member standards or criteria that it does not verify. If you say "experienced," then verify experience. If you say "has malpractice insurance," then verify coverage.

Third, consider adding a statement to your attorney referral form that states *"All lawyer referral members must have in force a malpractice insurance policy with minimum limits of \$_____ to accept referrals. You must notify us immediately upon receipt of this referral if your malpractice insurance has lapsed so that we may refer the client to another LRS member."*

Finally, establish rules for reviewing client complaints and removing panel members who do not meet the service's standards. Do not allow today's client complaints to turn into tomorrow's liability claims. Liability claims against lawyer referral programs are always a threat, even though they are, thankfully, few and far between. Lawyer referral directors should be aware of the potential for liability, and they must clearly and honestly communicate to clients the services that the LRIS and its panel members provide. Ultimately, these common-sense precautions will protect the LRIS, the sponsoring bar, and most importantly, the client.

Sheree Swetin is the Staff Director of the ABA Standing Committee on Lawyers' Professional Liability and the Standing Committee on Lawyer Referral and Information Service. If you would like a copy of the Chicago Bar Association decision reported in this article, contact Sheree Swetin at 312/988-5755, or by e-mail at sswetin@staff.abanet.org