

TITLE 3. PROGRAMS AND SERVICES

Division 5. Providers of Programs and Services

Chapter 3. Lawyer Referral Services

Article 1. Certification

Rule 3.800 Certification required

An individual or organization that refers prospective clients to attorneys must comply with minimum standards and be certified by the State Bar of California as a lawyer referral service unless exempt by law.<sup>1</sup> These rules set forth the minimum standards and certification requirements.

*Rule 3.800 adopted effective January 21, 2014.*

Rule 3.801 Application for certification

- (A) To initiate or continue certification, a lawyer referral service must submit an Application for Certification as a Lawyer Referral Service and a separate application fee for each county in which it operates. The State Bar may waive the separate application requirement for a lawyer referral service operating in more than one county on written request supported by evidence and for good cause.
- (B) Notwithstanding provision (A), a lawyer referral service operating in two or more counties defined by the State Bar as underserved is required to submit only one application and one application fee to initiate or continue certification.
- (C) Every application must include panel membership criteria, including criteria for suspension and removal that provide for written notice and review with an opportunity to respond.
- (D) An application for initial certification may be submitted at any time. An application for continuance of certification must be submitted with the annual report required by Rule 3.828. Within a reasonable time, the State Bar will notify an applicant that certification has been granted or denied or that an application is incomplete or noncompliant.
- (E) An application must be completed in accordance with application instructions and filed with any required fee.

*Rule 3.801 adopted effective January 21, 2014.*

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<sup>1</sup> Business & Professions Code § 6155. See also California Rules of Professional Conduct, Rule 1-600, Legal Service Programs.

### Rule 3.802 Application fees

- (A) Application fees for initial and continued certification, which are set forth in the Schedule of Charges and Deadlines, depend on the number of counties in which a service operates and whether a service is non-profit or for-profit. Application fees may not exceed \$10,000 or one percent of gross annual revenues, whichever is less.<sup>2</sup>
- (B) An application fee not received by the deadline is subject to the late penalty set forth in the Schedule of Charges and Deadlines. If the fee and penalty are not received within thirty days of the deadline, certification may be suspended and the lawyer referral service must cease any activity subject to these rules.
- (C) Fifty percent of an initial application fee is refundable if an applicant submits a written request to withdraw the application within twenty days of submitting it. An application fee is otherwise not refundable.
- (D) An application or late fee for continued certification may be waived or reduced because of demonstrated financial necessity as evidenced by gross annual revenues, panel size, geographic area served, length of time in operation, or the like.

*Rule 3.802 adopted effective January 21, 2014.*

### Rule 3.803 Denial of application

- (A) An application for initial certification that fails to comply with these rules is denied in a written notice explaining the denial.
  - (1) Upon receipt of a notice of denial, an initial applicant may submit a written request for reconsideration within thirty days of the date of the notice. The request must explain why the application was compliant and be supported by any relevant evidence.
  - (2) Within sixty days of receiving a request for reconsideration of denial, the State Bar may grant certification or confirm denial of the initial application. If the denial is confirmed, the applicant may submit a petition for review to the State Bar Court in accordance with its rules.
  - (3) Denial of an application for initial certification does not preclude an applicant from submitting a new application. A new application must be submitted in accordance with application instructions and with the fee set forth in the Schedule of Charges and Deadlines.

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

- (B) An application for continued certification that fails to comply with these rules subjects a lawyer referral service to suspension or revocation pursuant to rule 3.806.

*Rule 3.803 adopted effective January 21, 2014.*

#### Rule 3.804 Issuance of certification

The State Bar may grant certification with or without conditions for two years or a shorter time specified by the State Bar. Certification terminates at the end of the certification period unless renewed in accordance with these rules.

*Rule 3.804 adopted effective January 21, 2014.*

#### Rule 3.805 Audits

Before granting or continuing certification, waiving an application fee, or at any other time, the State Bar may conduct an audit to determine whether a lawyer referral service has complied with these rules. Any audit must be at the expense of the lawyer referral service.

*Rule 3.805 adopted effective January 21, 2014.*

#### Rule 3.806 Suspension or revocation of certification<sup>3</sup>

- (A) The State Bar may suspend or revoke certification of a lawyer referral service for failure to comply with these rules or for other good cause.
- (B) A lawyer referral service is entitled to notice of intention to suspend or revoke certification that states the reasons for the State Bar's action.
- (C) A lawyer referral service may file a written request for review of suspension or revocation of certification within thirty days of receipt of the notice. The request must explain why the action was inappropriate and be supported by any relevant evidence. Failure to request review results in final suspension or revocation of certification.
- (D) The State Bar must respond to a request for review that meets the requirements of these rules within sixty days of filing and give the lawyer referral service an opportunity to support the request. The State Bar may then continue, suspend, or revoke certification with or without conditions as it deems appropriate. The State Bar must provide the lawyer referral service a written statement of the reasons for its determination.

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

- (E) Within thirty days of receipt of the notice of suspension or revocation, the lawyer referral service may submit a petition for review to the State Bar Court in accordance with its rules. Certification is suspended or revoked for failure to submit a timely petition for review of suspension or revocation.
- (F) Pending review of a denial to continue certification, certification remains in effect unless the State Bar suspends or revokes it.
- (G) When suspension or revocation of certification is final, a lawyer referral service must immediately cease any activity subject to these rules, and the State Bar must notify every panel member of the lawyer referral service that certification has been suspended or revoked.

*Rule 3.806 adopted effective January 21, 2014.*

#### Rule 3.807 Complaints about a lawyer referral service

- (A) The State Bar must review a complaint about a lawyer referral service submitted pursuant to these rules<sup>4</sup> within a reasonable time and
  - (1) if the complaint demonstrates an apparent violation of these rules or other authority provide the service written notice of the complaint and an opportunity to respond; and
  - (2) provide written notice to the complainant regarding what action, if any, it deems appropriate.
- (B) A complaint and investigations related to it are the property of the State Bar and remain confidential until final suspension or revocation of certification or a proceeding is initiated in State Bar Court, whichever is earlier.

*Rule 3.807 adopted effective January 21, 2014.*

#### Rule 3.808 Notice

In these rules, a notice or other document is deemed received the fifth day after being sent by first-class mail or upon actual receipt when delivered otherwise.

*Rule 3.808 adopted effective January 21, 2014.*

### Article 2. Minimum standards for lawyer referral services

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

A lawyer referral service must

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

- (A) have a governing committee; one or more panels of attorneys to provide legal services; and a staff to evaluate and process requests for legal assistance;
- (B) encourage widespread attorney membership;<sup>5</sup>
- (C) serve its community and improve the quality and affordability of legal services by
  - (1) assisting those in need of legal services to find a qualified, insured attorney or other appropriate legal services, including dispute resolution;
  - (2) providing the public with general information about appropriate legal services; and
  - (3) establishing services for persons of limited means unless it demonstrates that doing so is unreasonable or impractical given the community needs; its financial resources, staff size, or panel membership; the fees charged by its panel members; or the availability of pro bono or other legal services for persons of limited means;
- (D) charge no fee or combination of fees that increase a client's cost beyond that normally charged for legal services or that decrease the quantity or quality of services otherwise available to the client;<sup>6</sup>
- (E) tell each client how to submit a complaint about the service or one of its panel members and inform the client that an unresolved complaint may be submitted to the State Bar, provided it is in writing and supported by factual information that demonstrates a violation of these rules or other applicable authority;
- (F) if non-profit use its income only to pay reasonable operating expenses and to fund its pro bono, legal services, and other public service programs;
- (G) fully cooperate with any State Bar audit;<sup>7</sup>
- (H) provide each panel member a copy of these rules; and
- (I) at all times comply with these rules and applicable law.

*Rule 3.820 adopted effective January 21, 2014.*

#### Rule 3.821 Ownership<sup>8</sup>

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

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

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

<sup>8</sup> Business & Professions Code § 6155(b).

A lawyer referral service owned or operated by a bar association is deemed to be owned or operated by its governing committee. An attorney may not directly or indirectly own or operate a lawyer referral service if the attorney individually or jointly receives more than twenty percent of the referrals of the lawyer referral service.

*Rule 3.821 adopted effective January 21, 2014.*

#### Rule 3.822 Governing committee

- (A) A lawyer referral service must be supervised by a governing committee of three or more members. A majority of the governing committee must be active members of the State Bar. No more than half the members of the governing committee may receive referrals from the lawyer referral service.
- (B) The governing committee must
  - (1) establish criteria for subject matter and general panel membership and use the criteria to evaluate panel members at least once every two years;
  - (2) establish and assess compliance with the referral procedures required by these rules;<sup>9</sup>
  - (3) review and submit the annual report required by these rules;<sup>10</sup>
  - (4) annually survey a random sample of at least ten percent of the clients of the service to determine client satisfaction with services and fees;
  - (5) on the basis of the annual survey, make any operational changes it deems necessary; and
  - (6) meet at least quarterly.

*Rule 3.822 adopted effective January 21, 2014.*

#### Rule 3.823 Panels

- (A) A lawyer referral service must establish panels of attorney members qualified to provide legal services to the public. The panels must be organized by subject matter but may include a general panel. A lawyer referral service is encouraged to establish moderate and no-fee panels and other special panels that respond to the needs of the public.
- (B) At least twenty attorney members, ten of whom are from separate and independent law firms, are required for all lawyer referral services, and each

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<sup>9</sup> Rule 3.826.

<sup>10</sup> Rule 3.828.

panel must have at least four members. The State Bar may waive these minimum requirements if a lawyer referral service operates in an underserved county or provides written evidence that the size of the community or the number of its attorneys warrants a lesser number.

- (C) A lawyer referral service must require that each panel member
- (1) have errors and omissions insurance in the amounts set forth in the Schedule of Charges and Deadlines and provide proof of insurance to the State Bar upon request;<sup>11</sup>
  - (2) not receive referrals evaluated and processed by a lawyer referral service staff member employed or otherwise compensated by the panel attorney;
  - (3) agree in writing to submit any fee dispute to mandatory arbitration compliant with statute or State Bar requirements upon election of a client referred by the lawyer referral service.<sup>12</sup>
- (D) A lawyer referral service may disclose a panel member's past performance when the information is accurate, complete, and not misleading.

*Rule 3.823 adopted effective January 21, 2014.*

#### Rule 3.824 Eligibility for membership

- (A) Only an active member of the State Bar practicing in the community served by the lawyer referral service may be a member of the service. To serve on a subject matter panel, such a member must meet the experience and other substantial and objective criteria of the lawyer referral service. Certification as a legal specialist qualifies an attorney to serve on a panel that deals with the area of certification, provided the attorney meets other criteria for panel membership.
- (B) Panel membership may not be contingent upon membership in a sponsoring entity.

*Rule 3.824 adopted effective January 21, 2014.*

#### Rule 3.825 Panel membership fees

- (A) Panel membership fees must be reasonable, encourage widespread panel membership, and otherwise comply with these rules and applicable law.<sup>13</sup>

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

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

<sup>13</sup> Business & Professions Code § 6155(f)(1). See Rule 3.820(B).

- (B) Panel membership fees may not in any way be based on or guarantee contacts, calls, cases, referrals, or clients.
- (C) Panel members who are not members of a sponsoring entity may be required to pay a nominal charge for administrative services.

*Rule 3.825 adopted effective January 21, 2014.*

#### Rule 3.826 Referrals

- (A) The governing committee of a lawyer referral service must establish fair and impartial procedures to assure that referrals are allocated equitably to panel members and respond insofar as possible to clients' legal needs and other circumstances, such as geographic convenience and language issues.
- (B) All referrals in a geographical area may not be made to a single attorney or law firm. The State Bar may deny certification or recertification for failure to make referrals fairly and impartially to panel members or to maintain current and complete records of referrals.
- (C) A referral may not
  - (1) discriminate on the basis of race, color, sex, age, religious creed, national origin, ancestry, sexual orientation, disability, medical condition, marital status, political affiliation, or veteran status;
  - (2) violate restrictions against unlawful solicitation and false and misleading advertising or otherwise violate the Rules of Professional Conduct or law applicable to a member of the State Bar;
  - (3) be made directly or indirectly by a person employed or otherwise compensated by an attorney or firm to whom the referral is made; or
  - (4) be made exclusively by technological means without staff evaluation of client needs and panel members' qualifications.<sup>14</sup>

*Rule 3.826 adopted effective January 21, 2014.*

#### Rule 3.827 Records

- (A) A lawyer referral service must maintain and provide to the State Bar upon request current records for
  - (1) each panel member that include

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



- (a) name, contact information, and qualifications;
  - (b) number and type of referrals; and
  - (c) fees remitted for membership, referrals or consultations, advertising; or any other reason; and
- (2) each referral that include
- (a) the client's name and contact information;
  - (b) type of matter and date of referral; and
  - (c) panel member to whom the referral was made.
- (B) Any record in the possession of the State Bar pertaining to a lawyer referral service is the property of the State Bar and confidential unless authorized for disclosure by these rules, order of the Board of Trustees, or consent of the lawyer referral service.

*Rule 3.827 adopted effective January 21, 2014.*

#### Rule 3.828 Annual report

- (A) The governing committee of a lawyer referral service must submit an annual report of its activities and those of the lawyer referral service. The report must at a minimum
- (1) provide a detailed accounting of
    - (a) all sources and amounts of income, expenses, and reserves during the reporting period;
    - (b) the disposition of any reserves or surpluses derived from activities of the service during the reporting period and the immediately preceding reporting period;
  - (2) include statistics derived from the records the service is required to maintain; and
  - (3) summarize the annual client survey and any operational changes it prompted.<sup>15</sup>
- (B) Failure to submit an annual report on time suspends certification unless the State Bar extends the report deadline for good cause.

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<sup>15</sup> Rule 3.822(B)(4) and (5).

*Rule 3.828 adopted effective January 21, 2014.*

**Rule 3.829 Publicity**

- (A) Publicity, which includes advertising or any other kind of promotional material, must
  - (1) indicate that the purpose of the lawyer referral service is to serve its community and improve the quality and affordability of legal services as required by these rules;<sup>16</sup> and
  - (2) acknowledge any sponsorship by the lawyer referral service; identify the counties in which the service operates; and provide the State Bar certification number or certification mark.
- (B) Any publicity by a lawyer referral service must comply with the California Rules of Professional Conduct and any other legal requirements.
- (C) A copy of any publicity
  - (1) must be submitted with an application for certification or recertification; and
  - (2) may be required with the annual report.<sup>17</sup>

*Rule 3.829 adopted effective January 21, 2014.*

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<sup>16</sup> See Rule 3.820(B).

<sup>17</sup> Rule 3.828.