

RULES OF THE SOUTH CAROLINA BAR LAWYER REFERRAL SERVICE

PREAMBLE: The South Carolina Bar recognizes that there exist within the general public individuals who need assistance finding legal counsel. In order to respond to the needs of those persons, it was the decision of the South Carolina Bar in 1976 that a lawyer referral service be established.

I. THE SERVICE

The Lawyer Referral Service (LRS) is operated from the offices of the South Carolina Bar, utilizing the staff and under general supervision of the Executive Director. The LRS will not charge the public for referrals.

II. OPERATION OF THE SERVICE

- (A) Members will be grouped by county.
- (B) ***Referrals may be made either by telephone or through the online case manager system (CMS).*** If a potential client (hereinafter "client") contacts the LRS by telephone, referrals will be made on rotation in the county requested if there is a member available for that county. A client will not be referred to a member outside the county where he or she is located unless the client either requests or agrees to that arrangement. A client may access the online referral system on the Bar's Web site. If the client selects a county with no member available, the online instructions direct the client to call the office for a referral.
- (C) Each member will accept for initial review any matter that comes within an area in which he or she is willing to handle referrals. Nothing herein shall be construed to obligate a member to accept employment beyond the initial consultation.
- (D) Within a time period deemed reasonable by the Service, subject to modification only in the event of circumstances beyond the client's control, the client will be limited to two separate referrals regarding the same legal issue; ***however, the client may obtain further referrals online, limited only by the number of lawyers available for the client's particular legal need.***
- (E) When a referral is made for an out-of-state client who cannot go to the member's office for an appointment, the client may be directed to forward payment of the consultation fee to the member, either before or simultaneously with presentation of the client's legal matters. If contact with the member is to be made by mail ***or email***, the member will respond accordingly, but is not obligated to spend more time in doing so than would have been spent for an office appointment.
- (F) A client's consultation with a partner or associate of the member will be deemed an acceptance of the referral for initial interview by the member. The member or associate will identify for the client any conflict of interest.
- (G) A member will notify the LRS if there is a period of time of one week or more in which the member will be unavailable for referrals because of vacations exceeding five days, trials or other reasons. Failure to do so may cause the member to lose place in the rotation order on the list.

- (H) Using CMS, each member will update the status of his/her cases at least monthly and remit all percentage fees due the LRS at that time.

III. MEMBERSHIP STANDARDS AND RULES

- (A) Each member will abide by all of the rules of the Service and in no event hold, or claim to hold, the South Carolina Bar or any of its officers, members or employees liable in connection with the operation of the Service or use of the information contained in the application in connection with the activities of the Service.
- (B) Any active lawyer in good standing before the South Carolina Bar may apply for membership if he or she has at least two years of experience in the area of practice for which he or she seeks referrals and has regularly handled matters in the designated practice areas.
- (C) An applicant will be denied registration if he or she has ever been suspended or disbarred for disciplinary reasons from the practice of law in South Carolina, even if reinstated.
- (D) In accepting the registration of an applicant, the Service may require such information and certification as it deems necessary to demonstrate the applicant's qualification to practice and adherence to recognized ethical standards of the profession.
- (E) Each member will carry, and continue to carry, professional liability insurance in the amount of \$100,000 minimum. The member will also send notification by mail or email of changes in insurance coverage to the LRS within five (5) days of the effective date.
- (F) Each member will maintain a business office in which to receive clients within the geographical area served. ***The member may operate a virtual practice if the member can provide a place to meet the client that would maintain proper confidentiality for the client.***
- (G) Each member will grant all clients referred by the LRS an appointment, or will respond in writing, via the postal service, email or telephone as soon as practicable after request is made, subject to the provisions of (III)(F) above.
- (H) Each member will comply with all federal, state and local laws, rules and regulations pertaining to services that are rendered to the public.
- (I) Each member may charge for further services as agreed upon with the client and will set forth in a written fee agreement that includes all matters in which the client is charged fees over the half-hour initial consultation fee and that notifies the client that a portion of the fee is payable to the Service.
- (J) Each member, when retained to handle a matter referred by the LRS, shall maintain responsibility for the matter. The member shall not transfer responsibility or control of any matter referred by the LRS without the knowledge and permission of the Service, unless required by law or court order. Should the member feel it to be in the best interest of the client, the member may ask another lawyer to act or serve as co-counsel on the matter. The member will notify the LRS of the arrangement and remain responsible for the percentage

fees due the service on all lawyers' fees, unless written approval to the contrary is obtained from the LRS.

IV. FEES

(A) **Annual Membership Fees:** Each member of the Service shall pay to the South Carolina Bar a non-refundable annual membership of \$50 for each county the member selects for referrals. The fiscal year begins July 1 of each year, and there will be no fee adjustment for membership application made after this date. The membership fee will be used to defray the costs of the operation of the LRS. Renewing members may pay annual fees by check or credit card through CMS.

(B) **Consultation Fees:** When appropriate, a person seeking a lawyer will be referred to a member of the LRS on a rotation basis. The member agrees to charge no more than \$50 for an initial half hour consultation, ***subject to the provisions of IV(B)(1) below. This rate is approved and subject to change by the South Carolina Bar Board of Governors.***

1. ***Exceptions:***

a. ***Members are not required to charge a consultation fee and may waive any consultation fee in his/her discretion.***

b. ***A consultation fee may not be charged for the following areas of practice:***

- i. ***Tort matters typically handled on a contingency fee basis;***
- ii. ***Social Security (SSD and SSI);***
- iii. ***Workers' Compensation.***

(C) **Percentage Fees:**

1. In consideration for membership in the LRS, an applicant, in filing the application, agrees to make an additional payment to the LRS of ten percent (10%) of the collected net legal fee (excluding itemized costs and expenses ***and the first \$250, which includes the consultation fee, if charged***), payable immediately upon receipt of payment by or on behalf of the client, and in any event no later than thirty (30) days from receipt of any fee paid by the LRS client.

2. The obligation to pay percentage fees applies as follows:

- a. ***To any legal matters discussed during the initial consultation and /or establishment of attorney-client relationship, whether accepted by the member or another lawyer in the member's firm, whether or not the other lawyer is a member of the LRS; and***

- b. *To any percentage fees recovered as a result of any and all actions or proceedings arising out of the same set of facts or circumstances that were the basis for the original referral. (e.g., if a client initially seeks a referral for an automobile accident matter and it becomes clear thereafter that the client's family members or friends have a third party claim arising out of the same accident, the member would owe the LRS the percentage fee when the member obtains the case through the original client.)*
- c. *The obligation to pay percentage fees does not apply to separate, unrelated legal matters for which the client may seek counsel subsequent to the initial establishment of an attorney-client relationship. (e.g., if the client seeks a referral for drafting a will and discusses a recent auto accident during the initial consultation, the auto accident lawyer's fees would be subject to the percentage fee requirement. However, if the subject of the auto accident arises at a time subsequent to the initial consultation, the automobile accident fees would not be subject to the percentage fee requirement.)*

(D) **Excess Fees:** A member may not charge an LRS-referred client fees for legal services in excess of the fees charged for similar work done for the member's other clients because of the obligation of the member to remit to the LRS the percentage of the member's collected net fee.

(E) **Association of Other Counsel:** If a member associates other counsel, the member remains responsible for ensuring that the full percentage fee is remitted at the conclusion of the case. The percentage fee is calculated on the full net fee regardless of the portion due the member.

V. AREAS OF COMPETENCY

All applicants shall certify that they comply with the requirements of these rules and are competent in the areas in which referrals are desired. Rule 1.1, SCACR, provides that "a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

VI. AREAS OF PRACTICE

- (A) The Executive Director *or his/her designee* will identify the practice areas that may be selected, endeavoring to be comprehensive enough in delineation of practice areas to be helpful to potential clients, while limiting the number of choices available to avoid confusion.
- (B) Applicants shall select the areas of practice they want to receive referrals. No applicant may select all areas. The Executive Director *or his/her designee* may

seek input from the sections and committees of the Bar in arriving at standards for various areas of practice and may require certification of competency based upon such standards. The Executive Director or *his/her designee* may determine the maximum number of areas that may be selected.

VII. WITHDRAWAL/SUSPENSION FROM MEMBERSHIP

- (A) A member at any time may withdraw his/her name from participation in the LRS upon written notice to the Lawyer Referral Service Director, addressed to the South Carolina Bar Lawyer Referral Service, Post Office Box 608, Columbia, SC 29202. ***Withdrawal does not relieve the member of his/her obligation to complete reports on all referrals, pay any fees due to the LRS and satisfy any other obligations to the LRS in a timely manner and pursuant to the agreement between the lawyer and the LRS and to these rules.***
- (B) A member who voluntarily withdraws or is suspended under the provisions of Section VIII shall not be entitled to a refund of the enrollment fee; shall not be relieved of the duty to dispose of, in accordance with standard practices, any pending case or obligation incurred during membership; and shall not be relieved of any obligation to pay the percentage fee for cases referred prior to withdrawal or suspension.

VIII. SANCTIONS

- (A) An applicant shall be denied registration or an LRS member shall be suspended from the LRS if the applicant or member has:
1. ***willfully failed to***
 - a. ***pay to the LRS any fees due***
 - b. ***timely render any reports after reasonable notice***
 - c. ***or otherwise abide by the rules of the LRS.***

A member who is suspended from active membership in the LRS is subject to a \$50 administrative reinstatement fee for failure to abide by the terms of these rules;
 2. signed an application or other certification or submitted a report to the LRS, which has been found to be untrue in any material respect;
 3. resigned from the practice of law in South Carolina;
 4. ever been suspended or disbarred for disciplinary reasons from the practice of law in South Carolina, even if reinstated;
 5. consistently or excessively been unjustifiably unavailable to referred clients;
 6. consistently or excessively refused to make or keep appointments with referred clients;
 7. consistently or excessively had complaints lodged against him or her with the LRS or the South Carolina Bar's Resolution of Fee Disputes Board by referred clients; or

8. failed to provide adequate proof of insurance.
- (B) Notwithstanding the foregoing, if at any time the LRS Director receives notice or information giving him or her reasonable grounds to believe that a panel member does not meet the required standards of responsibility, capability, character and integrity, the LRS Director may suspend the LRS member from participation, with the concurrence of the Public Services Director or Executive Director.
- (C) When a member receives a referral for a person he does not intend to represent, he may not refer the person to any other lawyer without the express approval of the LRS Director. A violation may be a basis for suspension or removal from panel membership.
- (D) ***The LRS has a duty to report a lawyer who is believed to lack the honesty or capability to conduct his/her practice. Accordingly,*** a member or former member of the LRS, who has willfully failed or refused to remit a fee due the LRS or respond to reasonable efforts by staff to collect the fee, shall be reported to the Office of Disciplinary Counsel. Reasonable efforts shall include written notice to the member.
- (E) Appeals may be made to the South Carolina Bar Board of Governors and must be in writing.

VIII. ACKNOWLEDGMENT AND REPORT OF REFERRALS

The LRS member will respond to a referral report forwarded by the LRS within thirty days after each referral by logging on to the online CMS program and designating the status of the case or by written notice, including email, to the LRS Director. The report will state whether representation will be undertaken on behalf of the caller, the representation was rejected, or the caller or online applicant never contacted the member. A panel member shall maintain a record of all LRS referrals beyond the initial reporting period and notify the LRS of any change in disposition. Nothing herein will require any member to violate the lawyer-client privilege.

IX. RECORDS AND REVIEW

- (A) The LRS may make regular and consistent attempts to obtain information that will enable the LRS to discover: 1) if referred callers contacted the lawyer's office, 2) if the callers were satisfied with the lawyer's handling of the case, and 3) if all monies owed to the LRS have been paid.
- (B) The LRS will keep a confidential record of all referrals for a minimum of two years. The records will be subject to examination and inspection by the Executive Director ***or his/her designee***, the lawyer to whom a referral was made, the Board of Governors of the South Carolina Bar and the Commission on Lawyer Conduct.

X. PUBLICITY

The Executive Director will have general discretion to determine how to publicize the LRS in order to fulfill its objectives consistent with the Rules of Professional Conduct.

XI. OVERSIGHT

The Board of Governors shall review the program's performance. On recommendation of appropriate staff, the Board may adjust all provisions set forth herein, including qualifications for membership in the LRS, consultation fees, areas of practice, county registration fees, percentage of remittance and threshold before the percentage applies.

XII. FUNDS

All monies received by the LRS shall be used in its operation and promotion to the extent practicable. Surplus funds, at the discretion of the Board, may be applied to support delivery of civil legal services to indigents, support law related education programs, support other public service activities of the Bar and be invested in capital improvements.

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