

# FRANKLIN COUNTY BAR ASSOCIATION

## LAWYER REFERRAL SERVICE

### STATEMENT OF STANDARDS AND RULES

#### I. PREAMBLE

- 1.1 The Franklin County Bar Association, hereinafter referred to as the “FCBA”, recognizes that there exists a substantial segment of the public who has difficulty in obtaining legal services. In order to respond to the needs of those persons, the FCBA established a Lawyer Referral Service, hereinafter referred to as the “LRS”.
- 1.2 The LRS is established and shall be operated for the benefit of the public. It should be readily accessible and its existence should be known to the public to the greatest extent possible.
- 1.3 The prime objective of the FCBA in establishing the LRS is to assist the general public by providing a way by which any person may readily obtain referral information for appropriate legal services.
- 1.4 The long-range objective of the FCBA in establishing the LRS is two-fold:
  - a. to acquaint people in need of legal service with the value of consultation with a lawyer.
  - b. to encourage lawyers to recognize their obligation to provide easily accessible legal services to people in need of such services and to provide such services at a fee affordable by the client, if possible.
- 1.5 Summary Statement of Purpose of LRS:
  - a. to provide a way in which any person may be referred to a lawyer who is able to render and interested in rendering needed legal services.
  - b. to provide information about lawyers and the availability of legal services which shall aid in the selection of a lawyer;
  - c. to inform the public when and where to seek legal services; and
  - d. to provide general and legal information needed by the public.

#### II. COMMITTEE SUPERVISION AND REPORTING

- 2.1 An LRS Committee, hereinafter referred to as the “Committee” shall be charged with the supervision of the LRS as provided in this Statement of Standards and Rules. The Committee shall be subject at all times to the Supervision of the FCBA – Executive Committee and shall report Annually or more often to the Executive Committee.

- 2.2 The Committee shall be composed of no more than six (6) members, one (1) of whom may be a non-lawyer, to be appointed by the Executive Committee. Of the initial five (6) appointees, 3 (3) shall be appointed for a one (1) year term and three (3) for a two (2) year term. A chairperson of the Committee shall be elected by the Committee.  
A Vice Chairperson shall be elected by the Committee.  
\*The appointment terms shall follow the annual dates for terms of the FCBA, (September 1 – August 31). (\*Amended June 5, 1996).
- 2.3 The Committee shall meet at regular intervals during the year to review policy matters and areas of LRS development.
- 2.4 The Committee shall formulate and adopt all rules for the conduct and operation of the LRS, subject to approval of the FCBA.
- 2.5 Any applicant or panel member aggrieved by a decision or action of the Committee may appeal the Committee's decision to the Executive Committee of the Franklin County Bar Association.  
  
\*The Committee shall propose a budget for approval at the Annual Meeting of the FCBA. The fiscal year of the LRS shall coincide with the fiscal year of the FCBA. (September 1 – August 31). (\*Amended June 5, 1996).

### **III. PLAN OF ORGANIZATION**

- 3.1 The LRS shall be operated from the FCBA offices utilizing the part time staff member of the FCBA. The staff person for the FCBA shall serve as Director of the LRS.
- 3.2 A person seeking a lawyer referral may use the telephone number and website maintained at the FCBA headquarters and staffed for initial intake, screening and referral to panel members.
- 3.3 A referral to an LRS panel member shall be made only after:
- a. initial intake and screening by LRS staff; and
  - b. the panel member has been selected on a rotating basis.
- 3.4 Only one LRS panel member's name shall be supplied to a person after initial LRS staff screening. All such persons shall be encouraged to consult with LRS staff if they are not satisfied with either the fee or the choice of attorney after the initial office consultation. In all such cases, up to three additional referrals to LRS panel members shall be made, with the Director and Executive Committee deciding on a case by case basis, when further referrals to panel members are no longer warranted.

### **IV. PANEL MEMBERSHIP REQUIREMENTS**

- 4.1 Any member of the Massachusetts Bar in good standing and in active practice who has never been disciplined for professional misconduct (except as disclosed to the Committee), and who carries professional liability insurance with a minimum coverage of \$100,000/\$300,000, may qualify as a panel member, subject to approval of the Committee.
- 4.2 Applications for membership shall be grouped based on areas of practice and placed in a rotating file system in alphabetical order

within such group and maintained on a day to day basis by LRS staff.

- 4.3 An applicant, in filing his application as provided, agrees that:
- a. he or she is a member of the FCBA;
  - b. he or she will speak with each referred party either by phone or in person to determine whether he or she will take the case and, if so, what his or her fee will be, how he or she will bill for services, and what the scope of his or her representation will be;
  - c. any charge for additional legal services shall be as agreed upon with the client and in keeping with the stated objectives of the Service; this fee shall be fixed as clearly as possible during the initial office consultation;
  - d. he or she agrees to comply with all applicable ethical and professional requirements and standards regarding fee disputes;
  - e. he or she shall carry minimum professional liability coverage of \$100,000/\$300,000;
  - f. he or she shall grant all clients referred by the Service an appointment as soon as practicable after request is made by the client or LRS staff;
  - g. he or she shall abide by all of the rules of the Service and shall in no event hold, or claim to hold, the Association or any of its officers, members or employee liable in connection with the operation of or use of the information contained in the application in connection with the activities of the LRS;
  - h. he or she shall abide by all decisions of the Committee with regard to application procedures and continued eligibility as a member of the LRS; and
  - i. he or she shall proceed with due diligence on and shall not neglect any matter referred by the LRS.
- 4.4 Regulations of Panel Membership. The Committee shall have the authority to examine a prospective panel member's application to determine a panel member's continuing eligibility and to adjust panel membership when necessary. The Committee may deny panel membership or remove or suspend a panel member at any time for good cause as determined by a majority of the Committee members; good cause shall include but not be limited to:
- a. institution of criminal charges involving moral turpitude, theft, embezzlement or fraudulent appropriation of property;
  - b. suspension, disbarment, ethical censure or resignation from the practice of law;
  - c. failure to obtain, maintain and report to the LRS legal malpractice insurance described in Section 4.3 e;

- d. failure to pay the annual dues;
- e. failure to forward contributions owed the LRS;
- f. failure to timely return reports to the LRS as required in Section 8.7 b;
- g. failure to maintain the standards of eligibility, qualifications, and compliances as set forth in the Statement of Standards and Rules;
- h. consistent or excessive complaints from referred persons; and

If the LRS denies membership, removes or suspends an attorney, the Committee shall convey their reasons to the attorney.

An attorney who has been denied membership, removed or suspended from the panel shall be offered the opportunity to make a written or oral response at the next regular scheduled LRS meeting. If the Committee still fails to grant panel membership or refuses to change its intentions to remove or suspend a panel member, the Committee shall provide the attorney with a written statement of its reasons within thirty (30) days of the meeting.

Upon receipt of the thirty (30) day letter or lapse of thirty (30) days from the LRS meeting as previously outlined, the aggrieved attorney may appeal the action of LRS to the Executive Committee of the Franklin County Bar Association as set forth in Paragraph 2.5 of these Standards.

## **V. FEE FOR MEMBERSHIP**

- 5.1 Each panel member of the LRS shall pay to the LRS a non-refundable fee in such amount as the Committee may from time to time establish for each year of his or her membership. Such fees may be fixed at a lesser rate for newer members of the Bar than for older. Any panel member who becomes sixty (60) days delinquent in the payment of the annual dues shall be suspended from the panel, but shall be reinstated if payment is made within the current year. In addition, each panel member shall remit ten percent (10%) of each fee over \$100 received from matters referred to him or her within 30 days of a request for payment by the LRS. LRS membership is conditioned upon membership in the FCBA.

## **VI. WITHDRAWAL FROM MEMBERSHIP**

- 6.1 A panel member may at any time withdraw his or her name from participation in the LRS upon five (5) days written notice to the Committee addressed to the FCBA.

## **VII. OPERATION OF THE PANEL**

- 7.1 Referrals shall be made in rotation based on the date of receipt of the

application. In cases where more than one application is received on the same date, the order shall be alphabetical.

- 7.2 If the LRS ascertains that a person being interviewed is presently represented by a lawyer, no referral shall be made until he or she has satisfied the LRS that he or she has properly terminated retention of such lawyer and the attorney-client relationship.
- 7.3 A panel member shall communicate with any referral in those substantive areas indicated in the attorney's annual application, except for cause. After communicating with a referral, if the attorney does not accept the case, the attorney shall:
- a. advise the LRS that the referral has not been accepted; and
  - b. advise the referred client to re-contact the LRS.

Nothing herein shall be construed to obligate a panel member to communicate with the referral beyond the initial communication.

- 7.4 A panel member rejecting initial referrals without cause may be removed from the panel by the Committee.

#### **VIII. REFERRAL SERVICE PROCEDURES**

- 8.1 Procedures shall be maintained to assure that referrals are made in a fair and impartial manner to all panel members. Such procedures should be designed so as to respond to all circumstances of the client, including the subject of the legal problem presented, geographical preferences, language needs and ability to pay for desired services.
- 8.2 No referral shall be made on the basis of race, sex, age, religion, national origin, or sexual orientation.
- 8.3 Each client-applicant shall be interviewed by the LRS staff member. The interview may be conducted by telephone, and where appropriate at the LRS offices.
- 8.4 The LRS staff interviewer should ascertain whether the client-applicant has a problem appropriate for referral. If so, the procedures of the LRS should assure that representation is obtained. If the client-applicant does not have a legal problem, the LRS interviewer shall attempt to direct the client-applicant to a source which can provide help, whether it be a human service, social service, or other appropriate agency or source.
- 8.5 The client-applicant, whenever feasible, shall be informed of the LRS rules applicable in his or her case, including information about:
- a. the extent of legal services which shall be rendered in the initial consultation; \
  - b. the method of selecting a lawyer;
  - c. the competency representation made by attorneys;
  - d. the percentage fee remittance LRS is entitled to; and

- e. contacting the LRS staff concerning any complaints against the lawyer.

8.6 Except as otherwise provided in Section 7.3, a panel member is not permitted to refuse representation and must accept any case referred (which is of the kind contemplated in the area in which he or she is registered) unless he or she is unable to do so for ethical or personal reasons. If the panel member decides that special services are required and does not feel qualified to render such services, the client should be so informed and provided the alternative of calling back the LRS for an additional attorney or with the client's consent, accepting the referring attorney's recommendation of a new lawyer. The new lawyer, in such instances, must maintain the minimum professional liability insurance as required of LRS members in Section 4.1. The fee remittance due in such instances shall be based on ten percent (10%) of the referral fee collected by the panel member unless the case is referred to another panel member and then the fee shall be ten percent (10%) of the total fee collected.

8.7 The LRS should make regular and consistent attempts to follow up in a reasonable number of cases in order to obtain information which shall enable the LRS to find out:

- a. whether appointments have been kept;
- b. whether the referral client was satisfied with the panel member's handling of the case; and
- c. similar information.

Information obtained by such follow-up procedures should be used to make such alterations in the operation of the LRS as may appear desirable to the Committee from time to time. At a minimum, the LRS shall keep records showing:

- a. the number of client-applicants interviewed who are not referred to a lawyer and the reasons for non-referral or referral to other agencies;
- b. a panel member's completion and return of referral reports, including initial thirty (30) day and final reports. Failure to return reports within the time specified by the LRS reporting form shall justify the LRS in removing a panel member's name from the panel; nothing herein shall require any attorney to violate the attorney-client privilege or any provision of the Canons of Ethics and Disciplinary Rules Regulating the Practice Of Law (SJC Rule 3:07);
- c. the names of the client-applicants referred to a lawyer and, in each such case:
  - (1) the nature of legal question involved;
  - (2) the lawyer to whom referred;

- (3) the date when referred, and
  - (4) whenever possible, the disposition of the referral and whether the client-applicant was satisfied with the legal services rendered.
- d. all applications for registration submitted by lawyers and the action taken thereon; and
  - e. the number of matters referred to each panel member.
- 8.8 The LRS shall file its annual report with the FCBA and make the report available to the state and federal bar associations as those associations may request.

## **IX PUBLICITY**

- 9.1 The LRS shall be publicized by such means and to such extent as may be determined by the Committee and as shall fulfill its objective in a manner not inconsistent with Supreme Judicial Court Rule 3:07.
- 9.2 No publicity about the service shall identify a particular lawyer participating in it. This, however, shall not prohibit a participating lawyer from acting as a spokesperson for the LRS if so authorized by the Committee.
- 9.3 The LRS shall make specific arrangements with legal aid programs, criminal justice agencies, hospitals, jails, courts, employers and other public and private agencies and institutions in the area served by the LRS to assure the use of the LRS by persons inquiring through such agencies and institutions.

## **X. AREAS OF COMPETENCY AND REFERRAL PANELS**

- 10.1 All LRS applicants shall indicate on the LRS Preference Listing up to Seven\* areas in which referrals are desired and only in which an applicant has had experience and is competent. In listing such a substantive area, an applicant represents that he or she has had experience and is competent in that area.

The ABA. Model Rules of Professional Conduct, Client-Lawyer Relationship Rule 1.1 "Competency" states "a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Legal competence is measured by the extent to which an attorney:

- a. is specifically knowledgeable about the fields of law in which he or she practices;
- b. performs the techniques of such practice with skill;
- c. manages such practice efficiently;
- d. identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client's attention;

- e. properly prepares and carries through the matter undertaken;  
and
  - f. is intellectually, emotionally, and physically capable.
- 10.2 The substantive categories of the Lawyer Referral Service Application and the Application itself, may be modified from time to time by the Committee without prior approval of the Executive Committee or Bar Association.
- 10.3 The LRS shall establish such number and variety of panels as the Committee determines shall best enable the LRS to make referrals in a manner which is responsive to individual client needs.
- 10.4 The LRS may establish panels representing different fields of law, at the very least preference panels wherein the lawyer simply states his preference for referrals in particular fields of law without a showing of experience, special education or training. Preferably, however, some experience, special education or training, as prescribed by the LRS should be required for participation on such panels and if the Committee undertakes to evaluate the same, rather than rely upon the lawyer's affidavit of compliance, there should be procedures for:
- a. determining the qualifications for membership on the panel, which qualifications shall not be based solely upon years in practice, but also upon experience and special education or training.
  - b. reviewing the qualifications of a member to remain on or to be removed from the panel; and
  - c. appealing decisions to deny registration on the panel or to suspend or remove a member from the panel.
- 10.5 The LRS may establish other separate panels, including, but not limited to:
- a. no fee for indigents panel;
  - b. reduced fee panel for referral of persons of modest or moderate means;
  - c. an in court referral panel;
  - d. an inmate assistance panel;
  - e. legal services for the aged panel; and
  - f. a lawyer to lawyer consultation panel.

The LRS may also establish panels or subpanels so as to:

- a. facilitate referrals to a lawyer in the geographical vicinity of the



person requesting the referral; and

- b. accommodate non-English language requirements.

Participation and recruitment efforts should not be limited or restricted to LRS members in such panels. The FCBA membership should be encouraged to participate when appropriate procedures are developed.

#### **XI. CLIENT FEES**

- 11.1 An LRS referred client is entitled to communicate with an attorney as required by Paragraph No. 4.3(b), except for cause determined by the attorney.

During the communication the attorney should inform the client (if possible) whether the attorney **is** willing to represent the client and, if so, what the attorney's fee is likely to be (including hourly rate, retainer fees, and number of hours to conclude the case) and what the scope of the attorney's representation would be.

If the attorney agrees to represent the client, and if the client agrees to retain the attorney, the Attorneys shall prepare a written fee agreement **for** the client as required by the rules of professional conduct in Massachusetts.

- 11.2 If a fee dispute arises on an LRS referral Section 4.3 d. shall apply.

\*Amended 4/28/2020