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How to Comply With New ABA Standards

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Now that the ABA has developed a logo and slogan that it will make available to all lawyer referral and information services that meet ABA standards, the next question for many services is: "What do we have to do to meet these standards?"

It is understandable that some services are concerned about being in full compliance with the ABA rules. However, coming into compliance does not have to be a difficult task. In fact, the goal of the ABA Standing Committee on Lawyer Referral and Information Service and staff is to assist individual services in making compliance easier.

Here is the Committee's four-part answer to the question of compliance:

- 1) carefully review the standards to understand what they require;
- 2) work with your committees and boards to modify your service's rules and regulations as may be necessary;
- 3) note that many changes can be made administratively, without going

through boards and committees;

4) take advantage of the assistance that the ABA staff in Chicago and individual committee members can provide.

An Overview of the Standards

The ABA passed its LRIS Standards almost two years ago. At first, some LRIS directors found them to be intimidating. As these directors examined the standards more closely, however, many were surprised to find that their services were already in compliance with these rules to a large extent. Recognizing that the ABA rules had to apply to all lawyer referral and information services across-the-board—eg., big and small, urban and rural, local and statewide, and yes, non-profit and profit-making—we tried to draft standards that all programs could attain.

The standards begin with one overriding requirement: the service "shall be operated in the public interest..." (Rule II). This principle, also included in the ABA's 1984 statement of standards, provides the context for all of the other rules: the purpose of lawyer referral is to serve the public. This is one standard that almost all experienced LRIS's will have no trouble meeting; they have been operating for the benefit of the public for years.

Subject Matter Panels

LRIS directors are perhaps more concerned about their programs' ability to

comply with what is commonly called "experience panels" than with any other element of the ABA standards. We do not, however, use the term "experience panels." Instead, we prefer to call them "subject matter panels." The reason for our preference is that what is most important is that the referred lawyer has a solid working knowledge of the referred case's subject matter, not necessarily that the attorney has X or Y years of experience. While the idea of establishing "subject matter panels" may seem

daunting at first, we believe that it can be accomplished in almost all LRIS's with little difficulty.

Two rules discuss subject-matter panels, Rules IV and X. The purpose of Rule IV actually is to address the requirement of "open panels," discussed below. Rule IV provides that services should make their panels open to all lawyers who "meet rea-

sonable objectively determinable experience requirements," and refers to

(Continued on page 6)



LAWYER REFERRAL

**THE RIGHT CALL
FOR THE
RIGHT LAWYER**

INSIDE...

A Word from the Chair	2
Improving Client Services	3
From Red to Black	4
Comprehensive Legal Needs Study ...	5

need to get out to the public and get [lawyer referral] out from underneath it's basket. We are a very effective way of providing access to our legal system."

The ABA undertook the CLNS as a foundation for developing future policy on the delivery of legal services by the organized bar. We believe that the policies developed from the data in the CLNS will be promoted for many years as a basis for prioritizing staff and monetary resources, both within the ABA and at the state and local bar level. It is, therefore, extremely important that questionable conclusions unsupported by actual data not be established and memorialized through the policy development process.

This should not become an issue of funding allocation between programs serving the legal needs of the poor and those addressing moderate income cli-

ents. Those bar leaders with successful lawyer referral programs know that these programs are increasingly self-sufficient and many are so profitable that they are providing funding for low-income and pro bono programs within the bar.

Dru Ramey, Executive Director of the Bar Association of San Francisco, also stated at the CLNS hearings that "There have been times when [lawyer referral] has, in fact, been able to give as much as \$60,000 to our Volunteer Legal Services Program in one year because people use lawyer referral services."

The real question for those in the position to establish policy regarding access to and the delivery of legal services is how best to communicate information on the legal system and on the many different resources available to consumers (eg., community agencies, small claims court mediation and litigation).

How can the services be improved or expanded? How can we better communicate these services to the public? What are the issues facing access to moderate income clients? What part can lawyer referral play as an effective means of access? Given the almost certain reduction in funding from the Legal Services Corporation, should the role of economically viable lawyer referral programs expand to include referrals to programs that serve the poor?

The real challenge that the results of the Comprehensive Legal Needs Study highlights is the call for better communication within the moderate income community and within the bar itself.

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ABA STANDARDS

(Continued from page 1)

Rule X to define further what that means.

Does this indicate that each and every service has to develop a complex and comprehensive set of experience requirements for each and every different type of law? A close look at Rule X shows that the answer is "not necessarily."

Rule X simply states that "a qualified service shall establish specific subject matter panels...eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria." Here's what the Commentary to Rule X points out:

[T]he goal is to ensure...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.'

As the Commentary emphasizes, the purpose of this rule is not to develop elite panels of super-qualified lawyers, but rather to emphasize *the public interest purpose* of lawyer referral. It encourages all qualified LRIS's to send their clients to lawyers who have a working knowledge of the case's subject matter.

In other words, we need to establish some method to avoid sending a contested custody dispute to a lawyer who has never handled a domestic relations case. Otherwise, how is the LRIS providing a better referral than what clients could get by thumbing through the yellow pages?

But how can even the smallest LRIS or the most widely spread-out statewide program comply with the subject matter panel requirement? The answer is: by tailoring its panels to meet its particular community's needs. All LRIS's, in all communities, have lawyers who can meet these "subject matter" standards, since the goal is to *meet the needs of the*

particular community served.

In New York City or Los Angeles, where the pool of available lawyers is very large, that may mean extensive qualifications for dozens of different subject matter panels and sub-panels. But in Rural County, USA, this same definition may mean threshold "working knowledge" qualifications in the few major areas where most referrals occur—eg., domestic relations or will-drafting. There are no communities with LRIS's that have no lawyers with a working knowledge of these subjects.

Specialized referral services that serve populations with specific legal needs, such as battered spouses, AIDS patients or people who have potential police brutality cases, may be made up of only one or two subject matter panels.

Many LRIS's will find that instituting subject matter panels and qualifications standards will require the assistance and approval of the program's committee or of the parent organization's board of directors. We encourage LRIS person-

nel to explain to these committee and board members that the purpose of the panels is not to refer clients to lawyers with *expertise* but rather to attorneys with practical *working knowledge*. In addition, we hope that boards and committees will see both the public service advantage to these subject matter panels and the marketing advantage to a service that can say it is in compliance with ABA standards. We hope that you will agree with us that instituting subject-matter panels is an opportunity, not an obstacle.

The Requirements of Rule IV

In addition to its reference to experience requirements, Rule IV contains two other requirements that have attracted some attention: "open panels" and required malpractice insurance.

Most LRIS's have found strong advantages in leaving panels open to all lawyers who meet geographical and experience qualifications. The size of these panels tends to be self-regulating. In other words, when panel members receive several referrals, word gets around and more lawyers join. When the panel results in very few referrals, lawyers often drop out and an increase in referrals per attorney occurs. By keeping the panels open, the qualifying LRIS ensures its objectivity and fairness in the legal community—no "playing of favorites" here—and the public is assured of a wide selection of qualified attorneys.

The drafters of the standards considered the insurance provision (or proof of equivalent financial responsibility) an absolute requirement from the very first draft. This requirement, in fact, was part of the 1984 ABA standards. The reason that the ABA took this position again goes back to the overriding public interest purpose of lawyer referral and information services. Understanding that protection against errors is an important part of the services that they provide, most LRIS's have such insurance requirements for all of their lawyers. For those that do not, some insurance carriers

offer special limited policies covering only referral service cases for lawyers who do not otherwise have insurance. Some states' malpractice carriers have been willing to negotiate for these limited policies.

Referral Service Fees

Rules V, VI, and IX set forth certain regulations regarding LRIS fees. Significant among these is Rule V's requirement that nothing that the service or the referred attorney charges may result in an increased expense to the client. Again, this embodies the spirit of public service.

While there is no way that any LRIS

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can monitor the bills of every lawyer in each case, there are other ways to assure compliance with Rule V. One way is to require lawyers to sign an agreement to abide by this requirement, among others, as a condition of panel membership or to incorporate this requirement into the rules or bylaws. Many LRIS's have their lawyers sign such agreements under penalty of perjury.

Administration

Rules VII, VIII, XI and XII deal, respectively, with client satisfaction, attorneys' panel admission and suspension, administrative structure and reporting requirements. The intent of these rules is not to require an inflexible set of standards, but to require some standards that address each of these

points. As with subject matter panels, the complexity of the solutions that a particular LRIS fashions may depend on its size, scope, budget and available staff time.

The consumer-oriented nature of a referral service means that attention to client satisfaction and client complaints is of critical importance. Again, lawyers may be required to cooperate with such efforts by having them agree to the service's standards on a pre-panel admission agreement form. The ABA staff and committee members can suggest various ways to implement these programs.

A referral service should be answerable to a regulatory agency, and it should provide reports to such an entity. In many states, these entities already exist on a statewide or at least on a local level. However, the ABA recognizes that it may be beyond the power of an individual LRIS to create such an entity where none exists. However, it is not beyond the power of each referral service to begin keeping systematic records of how its service conducts business.

One final note: Rule XIV would make the disclosure of information to a lawyer referral service a privileged lawyer-client communication. We understand, however, that implementation of this rule generally will be left in the hands of a particular state's legislature or highest court.

Getting Help

We believe that adherence to the ABA standards will result in greater assistance to the public. It is the purpose of the ABA Standing Committee on Lawyer Referral and Information Services to provide assistance to all services that are attempting to comply with ABA policies and standards. Moreover, we have written materials that can assist in this effort. Please let us know what we can do to help.

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