IN THE MATTER OF
PROPOSED RULES FOR THE
VIRGINIA LAWYER REFERRAL SERVICE
TO COMPRISE PARAGRAPH 23
OF PART SIX, § IV OF THE RULES OF THE
SUPREME COURT OF VIRGINIA

APPENDIX TO PETITION OF THE VIRGINIA STATE BAR

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AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON LAWYER REFERRAL AND INFORMATION SERVICE

PAR REPORT

for

VIRGINIA STATE BAR
LAWYER REFERRAL SERVICE

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I. INTRODUCTION

The American Bar Association Standing Committee on Lawyer Referral and Information Service’s Program of Assistance and Review (PAR) offers consulting assistance to lawyer referral and information services. The PAR program sends ABA-designated consultants with substantial experience in the management of lawyer referral and information services for site consultations with local LRIS programs. The consultants visit a program, review its operations and make specific recommendations, taking into account the needs and resources of the particular service.

The Virginia State Bar (VSB) Lawyer Referral Service (VLRS) requested a PAR visit with the goal of improving service efficiency and enhancing service to residents of Virginia who are seeking legal assistance.

On the morning of September 18, 2017, PAR consultants Charles Klitsch and George Wolff (the PAR consultants) met with VLRS Director Toni B. Dunson and VLRS Intake Specialists Lydia Maddox and Sheree Patterson to review and discuss the operations of the program.
The PAR consultants then met with Ms. Dunson, VSB Deputy Executive Director Renu M. Brennan and VSB VLRS Committee Chair Jack L. Harris to further discuss the state of the program and information included in the PAR questionnaire completed by VSB in advance of the visit.

The visit concluded with a working lunch where the PAR Consultants, Ms. Brennan, Ms. Dunson, Ms. Maddox, Ms. Patterson and Mr. Harris were joined by VSB Executive Director Karen A. Gould. VSB VLRS Committee Vice Chair Eugene M. Elliott, Jr. joined the discussion via conference call.

The PAR Consultants stressed that the VLRS is a business that, to be successful, should focus on providing excellent service to middle income legal consumers throughout Virginia. The PAR Consultants provided VSB leaders with a brief report and recommendations at the working lunch. In this report, these recommendations are discussed in greater detail.

II. THE PURPOSE OF LAWYER REFERRAL

The American Bar Association’s Standing Committee on Lawyer Referral and Information Service stresses that lawyer referral services are, first and foremost, a public service. The goals of LRIS should be the provision of information to the public regarding the legal system and the referral of legal consumers to an attorney appropriate for their specific legal needs. The commitment to public service does not preclude a lawyer referral service from generating revenue sufficient to support itself and, in some cases, support other bar-sponsored public service activities. A well-run and well-financed lawyer referral service that utilizes an effective marketing campaign targeting middle-income legal consumers and follows up with the clients referred through the LRIS and the LRIS panel attorneys benefits everyone involved.

III. THE BUSINESS OF PUBLIC SERVICE

In many respects, an LRIS program is the public face of the sponsoring bar association. It is unlikely that any current program of the sponsoring bar association generates more public contact than LRIS. Even though the LRIS provides a public service, the sponsoring bar association must recognize that it is a business, competing for customers in a crowded legal market. The primary reason lawyers participate in a LRIS is to increase their client base and thus their revenue. While lawyers who join bar association referral services are often willing to accommodate clients who cannot afford substantial legal retainers or whose legal matters will generate only modest fees, they do not intend their participation to be pro bono. Consequently, it is important that the LRIS avoid the perception, by either the public or the legal community, that it is a low income/legal aid program. Perception can be everything and it is important that legal consumers (and attorneys who are themselves a source of referrals) see the LRIS as the way to find a quality attorney and not as a legal aid/low income program.

The recommendations in this report are designed to help increase revenue, improve efficiency, develop an effective marketing program, and improve the quality of the Service for its attorney members and the public. Do not lose sight of the fact that a primary goal is the generation of higher quality referrals.
IV. OVERVIEW OF VSB VLRS AND COMMUNITY SERVED

The operations of the VLRS are guided by the VSB VLRS Committee. This committee consists of twelve members representing a variety of practice fields and geographic areas. On a day-to-day basis, Ms. Dunson runs VLRS under the direction of the VLRS Committee, Ms. Brennan and Ms. Gould.

The VSB VLRS serves 8.4 million Virginians in every city and county in the Commonwealth. Virginia is vast and diverse. At 450 miles, the distance from Arlington in the northeast to Ewing in the southwest is the same as the distance from Arlington to Boston, Massachusetts. Virginians are government workers, tobacco farmers, university professors, hotel workers, military personnel, coal miners, white collar professionals, fishermen and software developers. Ethnic diversity is on the rise, as immigrants are attracted to job opportunities in Virginia's growing economy. Economic success has not been uniformly achieved and Virginia includes some of the wealthiest and poorest counties in the country.

Providing a quality customer experience on a consistent basis to such a diverse audience requires talent and tremendous patience. The PAR consultants had an opportunity to observe Ms. Maddox and Ms. Patterson during intake and were impressed with their knowledge and ability to assist all callers with appropriate information or referrals. Combined, Ms. Dunson, Ms. Maddox and Ms. Patterson have more than fifty years of experience at the VLRS. Their dedication and know-how are key strengths of the VBS VLRS.

The VRIS takes calls Monday through Friday between 9:00 a.m. and 5:00 p.m. In the most recent fiscal year, nearly 18,000 calls were handled by Ms. Dunson, Ms. Maddox and Ms. Patterson and more than 4,300 referrals were made to attorneys throughout the Commonwealth. Callers are asked the nature of their legal problem and depending upon the circumstances, will either be provided with a referral or directed to legal aid or another resource. Intake staff members do not render legal advice to the callers.

If a referral to an attorney is deemed appropriate, intake staff members use an in-house software program to determine whether an attorney in the relevant practice panel is available in a location convenient to the caller. Particularly if the caller is from a rural part of Virginia, there may be some back and forth discussion about the location and availability of an attorney.

The caller is advised that in order to receive a referral, an up-front payment of $35 must be made to the VBS VLRS, which entitles the caller to an initial consultation of up to one half hour in length with the referred attorney. If the caller decides not to proceed with a referral because either the location of the attorney is inconvenient or the caller declines to pay the $35 fee, the caller is directed to lawyers.com to look for legal counsel.

If the caller agrees to pay the $35 fee and is satisfied with the location of the attorney, an intake staff member processes payment of the fee over the telephone. When a payment is made, the caller will receive the contact information for the attorney and is instructed to tell the attorney they were referred through the VLRS. The VLRS then sends correspondence confirming the referral to both the client and the panel attorney.
Approximately 400 attorneys receive referrals through the VLRS. There are three basic requirements for panel membership. Panel attorneys must be in good standing with the VSB, a mandatory bar that is an agency of the Virginia Supreme Court. Panel attorneys must carry professional liability insurance coverage. All attorneys in Virginia are required to report their professional liability insurance status to the VSB and the VLRS checks VSB records to confirm coverage. Finally, panel attorneys must pay an annual enrollment fee of $95.

VLRS has over 200 practice panels and an attorney may choose to receive referrals on up to 35 panels. Panel attorneys do not have to meet experience requirements to receive referrals in the areas of law they choose.

The VLRS does not collect a percentage of the fees charged by the attorney when a referral results in representation. Rather, the only sources of revenue for the VLRS are panel fees and consultation fees collected at intake. The VLRS is not financially self-sustaining. In the most recent fiscal year, the VSB subsidized the cost of maintaining the VLRS in the amount of $56,387. Ms. Brennan confirmed that this is not a recent development and that the VSB has had to subsidize the VLRS for many years.

The VLRS does not survey its clients to determine whether they are satisfied with the service or the attorney to whom they have been referred. However, if a referred client contacts the VLRS with a complaint about a panel attorney, it will investigate the matter and take steps appropriate to the circumstances.

Other than the initial confirmation, VLRS historically has not followed up with the panel attorneys to determine whether representation took place and whether the panel attorneys earned fees for representing referred clients. Consequently, there is no long term data on the success rate of referrals. This is beginning to change as VLRS has begun surveying panel attorneys regarding referred matters. As representation involving litigation may take a few years to reach conclusion, it will take some time before the VLRS has comprehensive, reliable statistics on matters handled by panel attorneys.

The VLRS is promoted among the membership of the VSB through its publications and on its website. VLRS brochures are distributed to targeted offices where people go to obtain legal help. Due to a lack of revenue, however, the VBS is unable to engage in extensive marketing of the VLRS to the public.

V. RECOMMENDATIONS

A. Institute a percentage fee program.

As mentioned at our working lunch, traditionally LRIS programs throughout the United States have derived income from three sources: 1) initial consultation fees paid by the client and returned to the service via the panel member, or collected when the referral is made; 2) panel registration fees; and 3) panel members' remittance of a percentage of fees generated from referrals.
Many LRIS programs are able to meet and exceed their expenses with the income they receive from these three sources. However, almost universally, those programs that are consistently self-sustaining, or which generate excess revenue to support other public service programs of the sponsoring bar association, generate the bulk of their revenue by collecting a percentage of the fees earned by the panel attorney from referrals.

The percentage fee method of generating funds works by taking a small percentage of the fee earned for any matters referred by the lawyer referral service. The structure of a percentage fee schedule varies from place to place. Some LRIS programs set a minimum threshold before the percentage fee applies. For example, the arrangement might be 15% of any fee earned over $500.00. Other LRIS programs have no minimum thresholds before the percentage is applied. For example, the LRIS program may expect payment of 10% of any fee earned on a referred matter.

While the PAR Consultants generally recommend percentage fee formulas which are not overly complicated, so as to avoid confusion and frustration for LRIS panel attorneys, we also point out that many services have been successful in generating significant income by instituting a graduated percentage formula. Under such a formula, cases with fees under a certain amount pay one percentage, while cases with fees over that amount are subject to an increased percentage. For example, an attorney may pay nothing on fees under $200.00, 10% on fees between $200.00 and $10,000.00 and 15% on fees above $10,000.00. With a graduated structure, the higher percentage will generally apply to personal injury and other matters. Attorneys typically pay referral fees to other attorneys for contingent fee cases and the percentage that an LRIS program charges is a bargain by comparison.

According to an ABA study, more than 90 state and local bar-sponsored LRIS programs across the country have instituted percentage fee programs and it is now considered a “best practice” to operate a successful, self-sustaining program.

Instituting a percentage fee program may raise some concerns among leadership of the VSB and participating panel attorneys, which the PAR consultants will address.

A question often asked by bar leaders and panel attorneys is whether payment of a percentage of a fee earned through representation of a referred client is ethical. In Virginia, that question has already been answered. In 2001, the Fairfax Bar Association, facing a deficit in the operation of its LRIS program, submitted a request to the VSB Standing Committee on Legal Ethics asking the Committee to opine whether it is permissible in Virginia for a nonprofit bar association to receive a percentage of fees charged by their panel attorneys in referred matters. In VSB Legal Ethics Opinion 1751, the Committee applied Rule 7.3 of Virginia’s Rules of Professional Conduct to opine that a percentage fee constitutes a “usual and reasonable fee” of a legal referral service within the permissible parameters of the rule. After receiving this opinion, the Fairfax Bar Association instituted a successful percentage fee program.

Some individuals will no doubt want to maintain the status quo. This would be a mistake for the future of the VLRS and VSB. The VLRS has been operating at a deficit for some time. Without its own reliable revenue source, the VLRS lacks flexibility in marketing its services, cannot
systematically upgrade its infrastructure without further subsidy from the VSB, and cannot increase staffing levels commensurate with call volume and in order to maintain a regular schedule of follow-up with members of the public who receive referrals and the attorney panelists (discussed below). Meanwhile, well-financed commercial online services, which lack the public service mission of a bar association, will take a greater and greater share of a market in which the VLRS does not have the funds to compete.

Maintaining the status quo deprives the VLRS of the nimbleness necessary to succeed in an increasingly competitive marketplace. The inevitable decline in business will result in some panel attorneys leaving the VLRS. As panel members leave, the number of geographic areas and practice fields that lack attorneys will increase and the VLRS will have to turn away more potential clients. These potential clients will turn to commercial competitors and the downward spiral will continue. Not implementing percentage fees is an ongoing lost opportunity to make both the VLRS and VSB stronger and more relevant to their members and the community.

Some may suggest that the VSB should simply increase panel registration fees rather than begin a percentage fee program. This is not a viable alternative for several reasons. Setting panel registration fees too high may discourage less experienced attorneys and sole practitioners from participating. Similarly, potential panel members serving rural communities who may not receive the same number of referrals as attorneys in urban areas may not feel that the higher fee is worth the investment. Raising panel fees may cause some current panel members to reduce the number of panels on which they list, leading to shortages of panel attorneys in some practice fields. Finally, the income that could be generated from an increase in panel registration fees simply will not be sufficient to invest in advertising to drive more business to the VLRS.

Some panel attorneys may object to paying a percentage of their fees to the VLRS, arguing that it is an unfair “tax” on fees earned in referred matters. The claim you will hear is that the panel attorney would not have to pay such fees if the client had contacted the attorney directly. However, that has not happened. The client would not have contacted the panel attorney but for the VLRS referral. The referral is business generated for the panel attorney without the panel attorney having to pay a dime in advertising costs. Moreover, the percentage fee a panel attorney pays to the VLRS on a referred case is, as noted above, a bargain compared with the referral fee the same attorney would be expected to pay another attorney who referred the client.

Some panel attorneys may also object to the perceived increase in administrative costs for payment of percentage fees. However, the administrative cost to the panel attorney is minimal. The attorney simply needs to track net fees received on matters referred by the VLRS and then write a check to the VLRS.

Another objection panel members may raise is that confidentiality agreements would prohibit them from paying percentage fees. This issue is easily addressed in the fee agreement between the attorney and the client. Many LRIS programs also have rules requiring the panel attorney to include the LRIS in a confidential settlement agreement as a party who may be informed of the fee earned in the case for purposes of calculating the percentage fee owed.
Historically, the above objections tend to be the leading complaints heard by other LRIS programs when they have implemented a percentage fee system. To help gain the support of all panel attorneys, make sure they realize upfront that to the extent these recommendations are adopted, the income from percentage fees will be for more advertising and marketing of the service to generate more calls and referrals and to make other improvements recommended in this report.

Despite these assurances, LRIS programs that initiate a percentage fee program often see a decline in the number of panel attorneys, as those who are dissatisfied with the new percentage fee system leave LRIS. However, experience has shown that many of these same attorneys return to active LRIS membership when they realize the business they have lost. And, typically, panel attorneys who never leave the LRIS benefit by an increase in the number of referrals because of the decrease in the number of participating panel attorneys. Many new panel attorneys are attracted to the service through increased marketing efforts and these new panel attorneys join without preconceived notions regarding payment of percentage fees.

The American Bar Association has a wealth of information available to bar leaders seeking to institute a percentage fee policy and has supported many associations in their efforts to gain approval for charging percentage fees. Information is available on the ABA website at http://www.americanbar.org/groups/lawyer_referral/resources/clearinghouse/percentagefeefunding.html and through ABA staff.

Implementing a percentage fee program does require additional oversight from program staff. In order to ensure compliance, there must be follow-up with both callers and panel attorneys to verify whether a referral ultimately generated fees or not. In some cases, a caller may have their initial consultation with an attorney and not retain them at that time, but may do so at a later date. In other cases, a client may retain an attorney on a contingency fee basis, so no fees are collected for a period of time that may be quite lengthy. Thus, having short and long-term follow-up procedures in place from the outset is absolutely essential to implementing a successful percentage fee program.

B. **Eliminate the consultation fee in contingent fee matters.**

As noted earlier in this Report, potential clients referred through the VLRS pay a fee of $35.00 to obtain a referral, which entitles the potential client to have up to one half hour consultation with the panel attorney.

The PAR consultants recommend that the VLRS consider dropping this fee for certain kinds of cases. Since it is customary in Virginia for attorneys to offer a free initial consultation in personal injury, products liability, workers compensation and other matters that are traditionally handled on a contingent fee basis, the PAR consultants strongly recommend that the VLRS, as a matter of policy, eliminate the initial consultation fee in contingent fee matters. This approach would allow the VLRS to include “Free Initial Half Hour Consultations” in its marketing materials, making it more competitive with law firms and lawyers who offer (and advertise) such free consultations to attract clients to their offices. To do otherwise puts the VLRS at a substantial competitive disadvantage.
Also, an initial fee, however small, can become a stumbling block for lower income individuals who have a viable claim. Since these are the types of cases most likely to generate substantial attorneys’ fees, and therefore forwarding fees to the VLRS when percentage fees are instituted, it is important not to do anything to dissuade clients with such cases from using the VLRS.

C. Establish subject matter/experience requirements panels.

Many LRIS programs have established subject matter or “experience” panels, where attorneys who wish to be listed in certain specialized areas of practice must meet objective experience requirements that go beyond the general LRIS requirements and a willingness to practice and accept referrals in a particular area. In order to be in compliance with the ABA’s Model Rules (see Recommendation G below) and thus eligible to use the ABA logo and slogan, a referral service must have such panels. Presently, the VSB VLRS permits panel attorneys to self-select participation in its practice panels.

Experience panels provide benefits to the public, the LRIS, and the participating attorney. First, they enhance the ability of the LRIS to match a client with a lawyer who is objectively qualified to handle cases in a particular field of law. Indeed, clients contact a bar-sponsored referral service with an understandable expectation that they will be referred to an attorney with the necessary expertise in the area in which they have a problem. Second, the improved service made possible by experience panels should enhance the image of the bar within the community and assist its marketing efforts. The implementation of experience panels is a powerful tool for promoting the LRIS as a quality public service. Once these panels are in place, the LRIS can use the fact that it has established a higher standard for its participants in its marketing efforts. This is a key differentiator from many for-profit referral services which do little or no verification of subject matter expertise. Third, the establishment of experience panels results in panel members receiving referrals more appropriate to their skills. Thus, an experienced personal injury lawyer receives a complicated product liability matter rather than a simple slip-and-fall.

The decision of which areas of practice are appropriate for experience panels and the creation of panel requirements should be undertaken by your VLRS Committee in consultation with the staff and prominent members experienced in the selected areas of practice. Typically, a requirement is established that the applicant has handled to completion a certain number of cases in the subject area within a certain number of years. Some LRIS programs also require a certification that a certain percentage of the applicant’s practice is in the field in question. It would be counterproductive to make the requirements too burdensome. Panel members may express dissatisfaction with overly stringent requirements that exclude qualified attorneys. Years of practice alone, however, should not, in and of itself, be sufficient to qualify as suitable experience. The ABA staff can provide you with many sets of criteria for a variety of subject areas employed by LRIS programs around the country.

On its panel attorney application, the VSB VLRS lists more than 200 separate panels in 17 practice categories. Applicants are invited to sign up for as many as 35 panels. The PAR consultants recommend limiting the number of practice categories an applicant may choose. A limitation encourages applicants to select those categories in which they are most proficient. When the VLRS establishes experience requirements panels, the PAR consultants recommend establishing such panels within categories, to avoid penalizing experienced attorneys who may
want to handle matters at a variety of levels of complexity. At the same time, having a more general panel within a category for the purpose of referring less complex cases allows younger or otherwise less experienced attorneys to gain experience while providing a much needed service to the public. For example, the VLRS application has one category for Litigation. Within that category, the Medical Malpractice panel could have experience requirements, thus ensuring that a potential client is referred to an attorney with the resources and experience handling such claims. Within the same category, the Slip and Fall panel may have less or no experience requirements, giving younger or less experienced attorneys opportunities to receive referrals and hone their trial skills.

Most services start out by designating three to five practice panels as appropriate for experience requirements and later add more areas of practice as they see fit.

The VSB VLRS has allowed panel members to self-select practice panels, requiring them to sign the following statement: “I regularly practice in the areas indicated in this application and I feel that I am competent to handle most cases in those areas, as stated in the VVLRS rules. By submitting this application, I hereby certify that I will continue to maintain competence in the areas of law I have selected in this application.” This process does not create a valid experience panel, as this statement does not provide for objective and verifiable experience standards. Such statements have some value, however, in that they at least force the applicant to think carefully about his or her qualifications and experience, and have proved helpful in preventing “overreaching.”

Experience panels should not be confused with lawyer specialization. The PAR consultants recognize that the Virginia Supreme Court has not established standards for lawyer specialization. Experience requirements are consumer safeguards as well as aids for intake staff in making the right referral and should be treated as such.

C. Create follow-up procedures with respect to referred callers and panel members.

At present, both the potential client and the panel attorney receive a confirmation from the VLRS when the referral is made. Panel attorneys receive one follow-up notification to determine whether the potential client met with the attorney and whether further services were rendered. Beyond that, no follow-up questionnaire is sent to clients or to panel attorneys. More extensive follow-up is crucial, not least because one of the keys to the success of any lawyer referral percentage fee program, which we discussed above, is to have a procedure in place to communicate with callers who are referred to panel attorneys and with the panel attorneys themselves.

Following up with callers after they are referred serves a number of purposes. First, it allows the LRIS to confirm whether the caller did indeed contact and retain the panel attorney. This allows the LRIS to track the number and practice areas of referrals that result in fee-generating matters, which can help guide the growth of the program and be used in future marketing and panel attorney recruitment efforts. It also allows the LRIS to confirm the fees that the referred client paid the attorney. It is only through such follow-up that a lawyer referral service can ensure that it is receiving the percentage fees to which it is entitled from its panel attorneys. This is not to say that members of the VSB VLRS will not necessarily report their percentage fees properly if
such a program is implemented. However, every lawyer referral service in the country that has had a percentage fee program in place and was not doing follow-up has seen a significant spike in percentage fee income once strict follow-up procedures with clients were instituted.

Second, follow-up with callers also allows LRIS to inquire about the caller’s level of satisfaction with that attorney, and thereby ensure that it is providing the appropriate level of service. This can also serve as an “early warning” system for LRIS of panel attorneys who are having problems that could well affect their practice and, thus, LRIS-referred clients. Getting feedback from callers who have been referred to an attorney can reveal an attorney’s problem with substance abuse or loss of mental acuity. Such information allows LRIS to be proactive in ensuring that the callers it has referred to this attorney are protected and, if appropriate, the attorney is offered help.

Insofar as the panel attorneys are concerned, having a follow-up program with them encourages them to have procedures in place in their offices to ensure that the fees they receive from LRIS referred clients are treated differently than their normal fees (because they owe LRIS a percentage of those fees.) A strict follow-up system serves as a very strong deterrent to panel attorneys taking advantage of the LRIS. Again, this is no indictment of attorneys in the VSB VLRS in particular, but rather simply an acknowledgment of the experience that other comparable lawyer referral services throughout the country have had with their panel members. Indeed, make sure that you inform all of your panel attorneys before the percentage fee program is implemented that follow-up procedures will be utilized and then regularly remind them of this fact. Experience has shown that simply ensuring panel attorneys are aware of such follow-up procedures is enough to improve case reporting and fee yields.

LRIS programs throughout the country use a variety of means to follow up with the callers they refer. These involve a variety of e-mailed or mailed client questionnaires (exemplars are available from the ABA) and, for some services, telephone contact with referred callers. Callers can be told in the initial intake call that they will be receiving a follow-up questionnaire regarding their satisfaction with the referral; they can then opt out of receiving the questionnaire if they wish. Additionally, some services make it a practice not to send questionnaires to callers in areas of potential sensitivity, such as domestic abuse.

It is not necessary that a LRIS survey each and every caller that it refers. Some services do this, while others survey a certain percentage of callers. Regardless of the percentage surveyed, the important thing is that the program is adhered to and, further, that LRIS panel attorneys are aware that referred callers are in fact being surveyed.

It should be noted that all of the LRIS software now available on the market has a follow-up component, making such follow-up both fast and easy for staff to accomplish. As the VSB VLRS has in-house software, this component may need to be developed if current software is retained. With regard to attorney follow-up, one method that is effective is a two-step system, consisting of an “initial referral report” containing notification of the referral and a "case status report" sent periodically to each attorney. The case status report is sent at regular intervals, such as monthly, bi-monthly or quarterly.
Often, attorneys return the referral report appropriately indicating no contact. Only later, after the report has been returned to the bar association, does the client contact and retain the attorney. Nevertheless, the referral was dropped from the follow-up process because of the earlier report. The PAR consultants therefore recommend that there be a secondary layer of follow-up on all referred cases, including those that have been initially reported by the attorney as "no shows." The second report, therefore, helps the service discover cases and capture income that may not otherwise ever be reported. These cases initially reported as "no shows" should be kept on the second report for at least six months, and preferably for one year. The LRIS can advise the attorneys that the report listing all referred cases is being sent periodically “for their convenience.”

D. Develop comprehensive rules and procedures for handling client complaints.

The PAR consultants encourage the VLRS to develop a clear set of rules and procedures for client complaints that do not rise to the level of a potential violation of the Virginia Rules of Professional Conduct. Such complaints, which often relate to a breakdown in communication between the client and the attorney, need to be handled in a manner sensitive to client concerns while at the same time preserving the due process rights of panel attorneys. The PAR consultants recommend drafting rules for the handling of client complaints and procedures for removing panel members in those instances when it is in the best interest of the public and/or the VLRS to do so.

Simple communication issues, such as a failure to return phone calls, may be handled informally, but noted in the panel attorney record in case a pattern emerges that requires further investigation.

The PAR consultants recommend that complaints involving more complicated issues should be handled in a more formal manner. The VLRS may require that the client submit the complaint in writing, unless the client is unable to do so. In such instances, a mechanism should be in place to accept an oral complaint. The panel attorney should be given an opportunity to respond, also in writing, within a set time period. The client should be given an opportunity to see and have input on the attorney’s response. Such a procedure engenders respect for the VLRS from the client, gives the attorney an opportunity to present his or her side of the story and encourages dialogue between the client and the attorney.

This written exchange, together with the dialogue that frequently follows between client and attorney, is often all that is needed to iron out the dispute and get the attorney client relationship back on track. When that is not the case, further action may be warranted, up to and including suspension or removal of the attorney from the panel. That is the function of the VLRS Committee. An active VLRS Committee, or a subcommittee of the VLRS Committee, can review complaints and decide what action to take that is in the best interest of VLRS and the client, while preserving the due process rights of the panel attorney.
E. Enhance the marketing of VLRS.

The prime target market for any LRIS program is the middle-income consumer. The marketing efforts of the VLRS, limited by budget and stretched by wide geographic bounds, must specifically focus on this group.

In recent years, LRIS programs have seen increased competition from online matching services, which impact every area of practice. Do-it-yourself websites impact legal fields such as will drafting, business formation and lease drafting. Nevertheless, a LRIS has several distinct competitive advantages over the national online services with which the LRIS directly competes. They include:

1. A LRIS offers the personal touch. While online services are impersonal, LRIS allows potential clients to describe their problems to an intake counselor who can put the person at ease, ask the right questions and provide appropriate guidance, which may not necessarily mean that a referral is made. This creates goodwill. This personal touch also creates relationships among the clients, attorneys and LRIS which in turn benefits the clients.

2. A LRIS provides screening to ensure that the caller's issue is properly identified, and that they get to the right place, whether it is an attorney with the matching subject matter expertise, a legal aid service, or a governmental agency. Many online referral services are completely automated, with clients self-identifying the subject matter of their issue and attorneys self-identifying their areas of expertise with no verification, which can result in bad referrals.

3. A LRIS is local. In the course of the conversation, the potential client often learns that the LRIS intake counselor is familiar with an agency the client has encountered, knows that congested freeway where the accident happened or remembers the snowstorm when the client broke an ankle on an un-shoveled sidewalk.

4. A LRIS has quality control measures in place. The LRIS verifies malpractice coverage and that attorneys are in good standing with the state bar, neither of which is done by many online services. If the VSB VLRS follows the recommendations in this report, it will survey every client referred to determine their level of satisfaction with the VLRS and the attorney to whom the client is referred. In addition, the VLRS will have a complaint process through which every client complaint is investigated with the goals of conflict resolution and client satisfaction. The online services rarely, if ever, are able to provide such assurances to the consumer.

5. The VLRS benefits from the VSB brand. The VSB's contacts with the public and well developed reputation creates a feeling of respect and trust that is transferred to the VLRS. (Similarly, the VSB can benefit from the respect and trust engendered by the public's interaction with the VLRS.)
These advantages should not be underestimated. They are the counterbalance to the large marketing budgets at the disposal of online competitors.

The key to effective marketing of the VLRS is not necessarily more advertising, but advertising carefully directed toward a market that can afford to pay legal fees. The VSB is fortunate to have a marketing staff that can work with the VLRS Committee and VLRS staff to design the appropriate advertising program.

One area for particular consideration is the Spanish or other foreign language speaking communities. These populations represent a potentially lucrative market that can be served by the VLRS and its panel members. As the need increases, it is important to design and provide marketing material in the appropriate language. It is recommended that professional assistance be sought in any translation of existing material. The cost to get things done correctly is usually well worth it.

As noted, the VLRS must focus on its target audience, the middle income legal consumer. The message should be consistent in order to develop the VLRS “brand.” Whatever is used in terms of language, type style, etc., should be consistent throughout VLRS advertising.

Local Courts. Some judges and court offices in Virginia tell consumers with whom they interact and who may need legal assistance to contact the VLRS or provide them with the VLRS “Take One” cards. The VLRS should work to cultivate a much closer relationship with the local courts, such that it becomes the “go-to” place for self-represented litigants who ask a court clerk or judge for direction in where to obtain legal representation. The “Take One” card system should be fully developed to include all court offices where members of the public in need of representation may appear. Local courts are one of the top referral sources for some successful lawyer referral services around the country. This is a “win-win” for the LRIS and the local bench.

Attorneys as a source of referrals. The legal community is a rich source of quality referrals. The VLRS should aggressively market the quality of the service it provides to law firms throughout Virginia and solicit the cases that those law firms decline to accept. The recent feature about the VLRS in the Virginia Lawyer is helpful. The PAR Consultants recommend placing advertisements in bar publications recommending that members send the clients they cannot help to the VLRS. Many successful lawyer referral services also distribute durable promotional materials with their contact info, e.g. coasters, pens, USB sticks, etc., to remind local attorneys where to send cases.

Website. To compete with national online services and have the website be a source of leads, it is crucial that the VLRS invest in updating its website to make it easier for consumers to find and contact the program. The PAR consultants have reviewed the VLRS website and have the following recommendations:

1. The VLRS link on the VSB landing page should be more prominent. The Lawyer Directory link is presently higher on the page than the VLRS link. Sometimes a simple “Need a lawyer? Click here.”, or similar image, grabs the viewer’s attention. On a
handheld device, one has to click on “For the Public” and then scroll down (below the fold on an iPhone) to find the VLRS. While real estate on a bar association website is valuable, when the VLRS begins a percentage fee program, significant dollars may be at stake if a potential client is unable to quickly find it on the VSB site.

2. Add content on the benefits of working with the VLRS and VLRS attorneys. The website only minimally addresses problems avoided or problems solved for clients and it does not address in full the benefits of working with the VLRS. This is a big motivating factor for prospective clients who are seeking to engage a lawyer. Adding this language to the website would help motivate potential new clients to contact the VLRS. Language about the advantages of using the VLRS can be found at the beginning of this section on marketing.

3. Add specific practice areas, which will help with search engine optimization. While it is understood that the VLRS can effectively refer a caller in almost any practice area, it would be beneficial for website visitors to find information relevant to the type of matter they are searching for. Ideally, each practice area should have its own page. However, taking into account limited resources, at least one page should list all the different types of legal matters handled by VLRS panel attorneys. At a minimum, the website should include information about personal injury, medical malpractice, products liability, employment law, family law, consumer law, debtor/creditor law, workers' compensation, and Social Security disability.

4. Do not rely on abbreviations such as VLRS. People searching for an attorney online do not know to search for “VLRS.” They will be searching for things like “family law attorney Roanoke,” “personal injury lawyer Norfolk referral,” etc. The website should reflect search terms throughout all copy.

5. Add articles, press releases and other news to the website. The VLRS’s website is competing with national online matching services. These websites are filled with content that answers readers’ questions and addresses their concerns. Demonstrating that VLRS lawyers have depth of knowledge in specific practice areas is half the battle in converting website visitors into callers.

6. Consider investing in paid search engine advertising with a Google marketing expert. You can set any budget amount you want. Even a small targeted investment may yield results because you only pay for people who either visit your website or call your number. While you are working to improve your website, consider trying Google’s click to call program, in which you only pay for people who actually call your program.

Brochures. The VLRS brochures are an essential marketing tool. The PAR consultants recommend that any brochure set forth the purpose of the service, its hours of operation, an overview of the process of lawyer referral, and information on the services that the caller may expect to receive when calling the VLRS. The telephone number and web address should be prominently displayed.
The VLRS must focus on attracting middle-income consumers through targeted distribution of these brochures. The most important question to ask in developing a brochure distribution strategy is, “What are the touch points in the communities we serve when a people are looking for help?”

Besides local courts as described above, LRIS programs often target libraries, senior citizens’ agencies, realtors, banks, union halls, athletic clubs, community groups, churches, mosques, synagogues and human resource departments at businesses and corporations. In a state as diverse as Virginia, touch points for finding legal help will vary from community to community. In some communities, people may go to libraries or the offices of city council members to find help. In other communities, churches or neighborhood associations may serve in that role. Some research among VLRS Committee members and panel attorneys will be helpful in determining where VLRS brochures should be sent to reach the most people. The goal of targeted distribution is not only more calls, but more calls from middle income legal consumers who can afford to pay legal fees.

Press Releases. The PAR consultants recommend that the VLRS develop written press releases and transmit them on a routine basis (monthly or bi-monthly) to television and radio stations as well as newspapers highlighting timely consumer tips or law changes. Many LRIS programs benefit from free publicity in local newspapers and occasionally receive opportunities to record short radio spots that inform the public about the program. This is a wonderful low cost way to get publicity. Consider Spanish or other foreign language media outlets as well.

Special Events. The VLRS should have a presence at every major event held by the VSB. If it is anything like past Annual Meetings, the VSB 80th Annual Meeting tentatively scheduled for June 13-17, 2018, will draw more than 600 legal professionals who are influential in their firms, courts, corporations and communities. The PAR consultants recommend that the VLRS have a table in a prominent location to inform these leaders of the many advantages of sending clients to – or becoming panel attorneys in – the VLRS. The PAR consultants recommend that the VLRS and VSB collaborate to find other events where a VLRS presence would be beneficial.

Social Media. The use of various social media platforms in business has entered the mainstream. As usage among professionals continues to grow, especially in the legal industry, new platforms emerge, some older ones fade away, and still others evolve into something new entirely.

Regardless of the platform, the underlying principles of social media remain constant. Social media offers more direct and open dialogue with target audiences, faster marketplace response and increased efficiency in marketing and client service refinement. These qualities have proven themselves invaluable to business brands, including LRIS programs. In today’s marketing and public relations environment, it is imperative for every LRIS to implement a social media engagement plan.

Fortunately, the VLRS already has an active presence on Facebook and has the resources of the VSB Communications Department to help with other forms of social media. The PAR consultants recommend that the VLRS keep abreast of the ever evolving social media landscape and take advantage of this inexpensive method of outreach.
As advertising dollars become available, the PAR consultants recommend that the VLRS explore advertising opportunities on social media platforms. For example, Facebook allows advertisers to target audiences geographically and demographically. The VLRS could target all Facebook users in the Richmond area listing a relationship status of “It’s complicated” with advertisements focusing on referrals for divorce attorneys. Many such opportunities now exist in a variety of social media.

**Tracking your Marketing Efforts** – Marketing efforts should be evaluated on an ongoing basis. The way to accurately assess your efforts is to track your referral sources. One relatively inexpensive way to track the effectiveness of a marketing campaign is to obtain a dedicated phone number for the campaign that feeds into the VLRS intake line. The telephone provider can then supply a tracking report showing the level of activity for that number.

In addition, VLRS intake staff need to ask every caller: “How did you learn about our Service?” If the software will allow, intake staff can then record the referral sources while making the referral. A report can be generated quantifying these sources. This information can help the VLRS determine where advertising dollars should be allocated.

Similarly, online marketing tools are only as good as they perform. By evaluating Google analytics, the VLRS will be able to track where visitors are coming from, what search terms led them to the website, which pages they are viewing and how to manage content to meet the needs and wants of the target audience.

Statistical reports should be prepared on a regular basis and provided to the VLRS Committee. At the end of the year, the VLRS Committee should thoroughly evaluate dedicated telephone number tracking data, source of referral reports, and Google analytics to assess the success of marketing efforts and then make changes where needed.

**Marketing Assistance from the ABA.** The American Bar Association’s Standing Committee on Lawyer Referral and Information Services maintains a Clearinghouse (http://www.americanbar.org/groups/lawyer_referral/resources/clearinghouse.html) of information gathered from LRIS programs around the country, presentations given at ABA LRIS National Workshops and leading experts in the field of lawyer referral marketing. Information is provided on all of the topics discussed in this report.

**F. Put the “I” in VLRS.**

Much of what the VLRS does is to provide information. You are not merely a lawyer referral service – you are an information service which refers callers to a variety of other service agencies. Many times, people will not qualify for a referral by the VLRS or will need some other information. This is an added service to the community and may win you referrals down the road from callers who were thankful to have been directed to an agency that could solve their problems or from the agencies themselves which may well be happy to have a place to refer individuals in need of attorneys.
Most referral services that provide such information call themselves “Lawyer Referral and Information Services. The VLRS is often a “first call for help” when a person has a legal problem. Letting the public know they can get help with information, as well as referrals, is a public relations advantage that will draw more potential clients to the VLRS.

G. Develop program rules and procedures that strive for compliance with the ABA Model Rules for Operation of an LRIS.

In August of 1993, the ABA’s House of Delegates adopted Model Rules for the Operation of Lawyer Referral and Information Services. These rules provide a comprehensive framework for the operation of lawyer referral services. The commentary that accompanies the rules, while not formally adopted by the House of Delegates, provides information with regard to the background and basis for the necessity of each of the rules. The Model Rules are available on the ABA website at http://www.americanbar.org/groups/lawyer_referral/policy.html

The PAR consultants recommend that compliance with these rules be included in the VSB VLRS’s planning. The recognition provided to a lawyer referral service by ABA approval enables it to stand out as a good source of objective referrals to qualified attorneys.

To summarize the rules, they require: that the service be operated as a public service; that it allow participation by all licensed attorneys in the geographic area; that fees for attorney participation be reasonable; that malpractice insurance be maintained by all participants; that attorneys who participate do not increase their fees by their cost of participation; that referrals not be made to those having an ownership in the service; that clients be surveyed as to their satisfaction and that complaints that involve the terms of the agreement with the panel member be investigated; that procedures be set forth for admission to, suspension from and removal from the service, including an appeal process; and, finally, that the service have subject matter panels and establish minimum requirements for eligibility for those panels.

The VSB VLRS already has some of these features in place. While the PAR consultants recognize that there are concerns that have prompted the request for assistance from the ABA, the consultants were impressed with the staff and bar leaders’ pursuit of a standard of excellence. The recommendations contained in this report will help the VSB VLRS to meet the ABA Model Rule requirements so that they may receive the ABA approval to use the ABA logo and the slogan, “The right call for the right lawyer.” These recommendations will help to increase the program’s visibility and, in turn, “make the phone ring” with more incoming calls for referrals to panel members.

VI. ADDITIONAL ABA ASSISTANCE

For assistance obtaining any of the services, resources or publications listed below, contact William E. Hornsby, Jr., Interim Staff Counsel to the ABA’s LRIS Standing Committee, at 312-988-5761 or will.hornsby@americanbar.org.
A. ABA LRIS National Workshop

The PAR Consultants recommend that the VSB send at least one representative involved with VLRS operations to the ABA LRIS National Workshop, held annually in fall in various locations across the country. The location of the next Workshop will be announced on the ABA Listserv.

The Workshop is an invaluable tool for keeping current on important developments, learning what other LRIS programs do and how they do it, and for developing a network of contacts with other lawyer referral service administrators, a resource for practical assistance when problems arise.

B. ABA Directory of Lawyer Referral Services

Another helpful publication is the directory of all services in the country, and it is compiled annually by the ABA. It is also available from the ABA for a modest fee.

C. ABA Listserv

The ABA offers access to a lawyer referral discussion list via e-mail. The PAR consultants are aware that the VLRS participates in the Listserv, and recommend that the VLRS should continue to do so. The Listserv is a vital source of information for LRIS programs.

D. PAR Follow-up

In addition to the initial PAR visit, the ABA also provides for follow-up. Lawyer referral services requesting a PAR visit are usually contacted sometime after their initial visit to determine how things are progressing, to see if recommendations were implemented, and to offer a follow-up visit if necessary.

Additionally, PAR Consultants Charles Klitsch, 215-238-6326, cklitsch@philabar.org and George Wolff, 212-382-6775, gwolff@nybar.org are available at any time should you have any questions.

VII. CONCLUSION

The PAR consultants were impressed with the hard work and dedication of VSB Executive Director Karen A. Gould, Deputy Executive Director Renu M. Brennan, VLRS Committee Chair Jack L. Harris, VLRS Committee Vice Chair Eugene M. Elliott, Jr., VLRS Director Toni B. Dunson and VLRS Intake Specialists Lydia Maddox and Sheree Patterson. The PAR Consultants extend our thanks to all of you for your hospitality during our visit and your openness to new ideas. It is clear to the PAR Consultants that you have the commitment and desire to increase access to justice for residents of Virginia and expand business for panel attorneys through a high quality lawyer referral and information service.
LRIS: From the Chair

By Stephen Steinberg, Standing Committee on Lawyer Referral and Information Services

It was great seeing everyone at our annual workshop earlier this month, and I was pleased to present the initial results of our first ever comprehensive data study on the collective impact of lawyer referral services nationwide. As suspected, but never proven before with hard data, lawyer referral programs have a dramatic impact on the delivery of legal services and access to justice, including vetted attorneys, alternative legal and community resources, as well as attorney members' business development efforts and retained casework.

Below are some of the findings of the 2017 Lawyer Referral and Information Service Census, which collected information about the operations and characteristics of over half of the LRIS programs
nationwide. The findings contain data on services, referrals, panelists, fees, marketing, revenue, and costs. The hope is that the census will supply program directors, administrators, and bar association leaders with important information to better highlight the enormous impact LRIS programs are having, and provide useful data by which to benchmark your LRIS against comparable programs.

Here are some highlights from the census with over 55 percent of programs nationwide reporting:

- **1,522,796** people contacted lawyer referral services last year via email and phone.
- **522,150** were referred to community based organizations, governmental or social services, and pro bono legal services programs.
- **561,825** were referred to a lawyer.
- Of those referrals, **119,179** people retained LRIS lawyers to provide legal services.

Where survey respondents submitted data for both the number of contacts, and the number of referrals and/or retainers of lawyers, individual program conversion rates were calculated then averaged. This showed that:

- **45 percent of all contacts are referred to a**
lawyer.

- 12 percent of all contacts retain a lawyer.

If they practiced together, collectively LRIS lawyers would be the largest law firm in the world:

- 18,210 lawyers participate.
- 25 percent of all consumers referred retain a lawyer.

The top five subject matter areas include:

1. Family
2. Landlord/Tenant
3. Employment
4. Personal Injury
5. Estate Planning, Probate, and Elder Law

Lawyer referral services continue to develop new ways of providing legal services to underserved populations and fill the justice gap, with sixty programs now offering modest means/reduced fee programs and twenty-nine programs now offering unbundling/discrete task representation.
Close to 90 percent of LRIS programs are at least breaking even on an annual basis, and the vast majority are generating more revenue than costs, which helps support other bar association services, like pro bono and MCLE. The jury is still out on consultation fees, but the bottom line is that there are many successful programs that use consultation fees and many successful programs that eschew such fees. However, the survey results demonstrate definitively that a program must have a percentage fee structure to be financially self-sustaining. Those lawyer referral services with percentage fee programs generate many times more revenue than those services without percentage fee programs, with those revenues going back into bar association operations, often including public service initiatives and pro bono programming.

With respect to marketing, lawyer referral services spend an average of just about $20,000, or about 19 percent of costs and 11 percent of revenue, annually to publicize their existence and value to their communities. The top paid advertising vehicles are print materials, brochures, posters, and paid Google advertising campaigns. Top referral sources are courts, attorneys, legal aid/social services, and of course, the internet.

We hope to provide additional analysis of the survey results in the future—perhaps providing the ability to compare bar associations or lawyer referral services of similar size and scope e.g. distinguishing between local versus state bar administered services.
Going forward, we hope that the number of programs participating in future surveys will grow to further refine the data results while providing useful information to improve programming and build discussion on the elements and benchmarks that support a successful LRIS.

To view more of the census results, click on this link to the ABA Annual Workshop PowerPoint presentation 2017 Annual LRIS National Census.
Report on the 2017 LRIS Census – Valuable Data for Innovation, Productivity and Funding

Steve Steinberg, Chair, ABA Standing Committee on Lawyer Referral and Information Service

Sara Smith, Research and Policy Analyst, ABA Standing Committee on the Delivery of Legal Services
Introduction

This session will for the first time reveal data from the 2017 Lawyer Referral and Information Service Annual Census, which collected information about the operations and characteristics of over half of the LRIS programs nationwide. Presenters will discuss findings on topics such as services, referrals, panelists, fees, marketing, revenue and costs. The hope is that it will enable you to better highlight the enormous impact LRIS programs are having, and provide useful data by which to benchmark yourself against comparable programs.
Only about 55% of all the programs!
Conversion Rates

Average of 45% of calls are referred to a lawyer

Average of 12% of calls retained a lawyer

Average of 25% of referrals retained a lawyer
### Members in Bar

<p>| | |</p>
<table>
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<tr>
<td>Median</td>
<td>1,595</td>
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### Number of Panelists

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<td>Range</td>
<td>10-1200</td>
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<tr>
<td>Median</td>
<td>110</td>
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</table>

Average % Participating in LRIS = 7.9%
Number of FTE Staff

Average = 2.5 / Median = 1.5
Preliminary Data - Subject to Change

Annual Calls per FTE Staff Person

Average = 5,136
Median = 3,997
Annual Referrals per FTE Staff Person

Average = 2,045
Median = 1,392
Types of Additional Services

- MODEST MEANS/REDUCED FEE PROGRAM PANEL: 60
- UNBUNDLING (DISCRETE TASK REPRESENTATION) PANEL: 29
- ALTERNATIVE DISPUTE RESOLUTION: 21
- CALL-IN ADVICE PROGRAM (WEEKLY, BI-MONTHLY, MONTHLY, QUARTERLY): 16
- REQUEST-A-SPEAKER PROGRAM: 16
- PROGRAMS TO HELP SELF-REPRESENTED LITIGANTS AT LOCAL COURTS: 14
- LAWYER-ON-CALL INSTANT TELEPHONE ADVICE: 10
- RADIO/TV SHOW: 7
- EDUCATION COLUMN IN LOCAL MEDIA: 3
### Top Subject Matter Areas

<table>
<thead>
<tr>
<th>Category</th>
<th>Highest</th>
<th>Second Highest</th>
<th>Third Highest</th>
<th>Fourth Highest</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAMILY</td>
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<td>23</td>
<td>7</td>
<td>7</td>
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<tr>
<td>LANDLORD/TENANT</td>
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<tr>
<td>EMPLOYMENT</td>
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<td>PERSONAL INJURY</td>
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<td>12</td>
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<tr>
<td>ESTATE PLANNING/PROBATE/ELDER LAW</td>
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<td>CRIMINAL</td>
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<td>REAL ESTATE</td>
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<td></td>
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<tr>
<td>CONSUMER/DEBT/BANKRUPTCY</td>
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<tr>
<td>CIVIL LITIGATION</td>
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<td>MEDICAL MALPRACTICE</td>
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<td>WORKER'S COMPENSATION</td>
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<td>IMMIGRATION</td>
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<tr>
<td>MILITARY</td>
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</tbody>
</table>
Preliminary Data - Subject to Change

Subject Matter Areas

Greatest Growth
FAMILY LAW

Greatest Decline
PERSONAL INJURY
Subject Matter Growth
Referral Fees

Preliminary Data - Subject to Change
Referral Fee Amounts

Preliminary Data - Subject to Change
Referral Fees and Profitability

Average profit of those that charge a referral fee: $34,752

Average profit of those that *don’t* charge a referral fee: $41,866
Referral Fees and Call Volume

Average number of contacts/year of those that charge a referral fee:
8,966

Average number of contacts/year of those that don't charge a referral fee:
15,164
Preliminary Data - Subject to Change

Percentage Fees

Sum = $13,439,129 / Average Revenue from Percentage Fees = $186,655
Percentage Fees and Profitability

Average profit of those that charge a percentage fee:
$51,355

Average profit of those that don’t charge a percentage fee:
$5,404
Panelist Fees

For Bar Members:
Range: $0-500
Average: $147
Median: $125

For Non-Bar Members:
Range: $50-900
Average: $316
Median: $300

Members vs. Non-Members
Member fee is on average 53.6% of the non-member fee
### Top Paid Marketing Expenditures

<table>
<thead>
<tr>
<th>Service</th>
<th>Average</th>
<th>Highest</th>
<th>Second Highest</th>
<th>Third Highest</th>
<th>Fourth Highest</th>
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</thead>
<tbody>
<tr>
<td>Printed Advertising Materials/Brochures/Posters</td>
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<td>29</td>
<td>19</td>
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<tr>
<td>Google Paid Advertising</td>
<td>30</td>
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<td>9</td>
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<tr>
<td>Yellow Pages</td>
<td>18</td>
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<td>5</td>
<td>7</td>
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<tr>
<td>Magazines/Newsletters</td>
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<td>Newspapers</td>
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<td>5</td>
<td>10</td>
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<tr>
<td>Radio</td>
<td>32</td>
<td>3</td>
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<td>Facebook Paid Advertising</td>
<td>21</td>
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<tr>
<td>Website</td>
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<tr>
<td>Municipal Transportation</td>
<td>5</td>
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<tr>
<td>TV</td>
<td>3</td>
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<tr>
<td>Courthouses</td>
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<tr>
<td>YouTube Paid Advertising</td>
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<tr>
<td>Shopping Malls</td>
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</table>

**Average spent on marketing = $20,965**

**Average % of costs spent on marketing = 19%**

**Average % of revenue spent on marketing = 11.4%**
Preliminary Data - Subject to Change

Top Referral Sources

- COURTS: 20 - 22 - 24
- ATTORNEYS: 35 - 20 - 11
- LEGAL AID/SOCIAL SERVICES: 19 - 21 - 21
- WEB/INTERNET (ORGANIC SEARCH RESULTS, NOT PAID): 14 - 21 - 14
- WORD OF MOUTH (E.G. PAST CLIENTS): 9 - 8 - 16
- GOOGLE PAID ADVERTISING: 5 - 5 - 5 - 4
- YELLOW PAGES: 3 - 4
- PRINTED ADVERTISING MATERIALS/BROCHURES: 2
- SOCIAL MEDIA: 2 - 3
- MAGAZINES: 1
- RADIO: 1
- TV: 1
- FACEBOOK PAID ADVERTISING: 1
- SHOPPING MALLS: 1
- MUNICIPAL TRANSPORTATION: 1
- NEWSPAPERS: 1
- YOUTUBE PAID ADVERTISING: 1

Legend:
- Highest
- Second Highest
- Third Highest
- Fourth Highest
Preliminary Data - Subject to Change

$178,928
Average Revenue

$147,770
Average Costs

$38,509
Average Profit/Loss

Profit/Loss Trend Over Past 3 years

Profit 61%
Loss 39%
June 26, 2018

Comments Sought on Proposed Changes to Virginia Lawyer Referral Service Rules and Fee Structure

Following a 2017 review of the bar’s Virginia Lawyer Referral Service (VLRS) by the American Bar Association, the Special Committee on Lawyer Referral is proposing a number of changes to the service.

The changes would add a Paragraph 23 to Part 6, § IV of the Rules of the Supreme Court of Virginia that codifies existing VLRS rules of service, adds to them, and, most significantly, changes the fee structure of the VLRS to a “percentage fee” program.

Read more about the changes and the opportunity for public comment here. Comments are due by July 27, 2018.

Updated: Jun 26, 2018
Virginia Lawyer Referral Service

An agency of the Supreme Court of Virginia

About the Bar | Contact Us | Directions | Job Postings

• VSB Home

Celebrating 40 Years of Service

VA Lawyer Referral Service

• About VLRS
• VLRS for Lawyers
• VLRS for the Public

Virginia State Bar

Virginia Lawyer Referral Service

VLRS Rules

The rules of service of the VLRS are intended to offer consumer protection to the public in its obtainment of legal services.

1. Any active member in good standing with the Virginia State Bar (VSB) may qualify as a VLRS panel member.

2. Panel members will be grouped by judicial circuit and arranged by geographically convenient areas within such groups.

3. Panel members may choose up to 35 areas of the law to list as areas of competency.

4. Panel members agree to the following:
   a. Pre-paid callers will be referred to panel members who then must provide the callers with 30-minutes of legal consultation. An appointment should be granted within three business days of the referral date, or as soon as practicable after a request is made. Immediately following the up to 30-minute initial consultation or
within ten days of the referral notice date, e-mail the completed referral notice back to VLRS indicating the outcome of the consult. Any charges for further service will be as agreed upon between the lawyer and the referral.

b. Panel members will accept an initial interview for any referred caller in the areas of practice preference indicated on the application. Should any referral give rise to a conflict of interest, the lawyer panel member should direct the referred caller to contact VLRS to receive a new referral. A panel member rejecting two consecutive initial referrals for reasons other than those set forth here will be moved to the bottom of referral rotation list. Panel members are not required to accept employment beyond the initial consultation.

c. Panel members must carry professional liability insurance as of the date of the application and for as long as the applicant is a VLRS member and be in good standing with the VSB Member Compliance Department.

d. To follow all of the rules of the service and in no event hold the State Bar or any of its officers, members, or employees liable in connection with the operation of, or use of, the information contained in the application.

Note: Administrative Hold — If a panel member charged with misconduct has been referred to a District Committee, the Disciplinary Board, or any circuit court, or agrees to or is placed under disciplinary terms, the service will not make referrals to that panel member until a) completion of the disciplinary proceedings without limitations having been placed on the panel member’s license to practice law or terms having been imposed, or b) following removal of such limitations and/or successful compliance with the terms imposed. Membership fees are non-refundable regardless of whether the panel member is under administrative hold or suspension.

5. Once accepted for panel membership, it is the responsibility of the attorney (panel member) to notify VLRS of the following:

- Address changes
- Departure from your current firm or office
- Panel selection changes
- Any disciplinary action with the VSB

How do I withdraw from VLRS?

A panel member may withdraw his or her name from VLRS participation five days after submitting written notice to the VLRS. Membership fees are neither refundable nor transferable. At the time of written withdrawal, please also advise the VLRS in writing as to the consultation outcome of all outstanding pre-paid referral notices.

Suspension from VLRS

1. Failure to comply with the rules will result in a written notice of proposed suspension from the VLRS from the chair of the Virginia State Bar Lawyer Referral Committee, or his or her designee. Service is
deemed effective when sent to the member’s e-mail address of record with the VSB, or mailed to the
member’s address of record by certified mail, return receipt requested.

2. Upon notice of proposed suspension or service of suspension, the panel member may submit a written
response within thirty days stating the reasons for noncompliance. The mailing of a notice of suspension to
the panel member at his or her last address of record with the Virginia State Bar constitutes adequate service
for the purposes of these rules.

3. Failure to respond in writing within thirty days of the date of the mailing of the notice of suspension to
the panel member will result in a final action of suspension that will run until such time as the panel member
furnishes evidence of compliance with the rules and regulations of the service.

4. Upon receipt of a response to the notice of proposed suspension by the panel member, the VSB-VLRS
Committee or its designee will review and recommend to the committee the following actions:
   a. Final action of suspension;
   b. Withdrawal of the notice of proposed suspension; or
   c. Conditional participation on the panel.
   Any such action will be by majority vote of the committee at any regularly scheduled meeting or by
   telephone poll or other communication deemed appropriate.

5. Any such action may be appealed within thirty days of the service of the notice of the committee’s action
by written notice of appeal to the chair of the VSB-VLRS Committee giving reasons for appeal of the
committee’s action. Upon receipt of the notice of appeal, the chair of the VSB-VLRS Committee or his or her
designees will convene a three-member panel of current Bar Council members to review the committee’s
action and the written notice of appeal within thirty days of its receipt.

6. If the review panel finds the committee’s action to be supported by substantial evidence, it will notify the
panel member of its decision in writing. If the review panel finds the committee’s action to be unsupported by
substantial evidence, or otherwise finds evidence of compliance with rules and regulations cited for alleged
noncompliance or violation, the review panel will notify the panel member, withdraw the committee’s
decision, and reinstate the panel member.

7. The filing of any notice for appeal by the panel member does not stay the VSB-VLRS Committee’s
action.

8. Complaints from members of the public or attorneys regarding conduct allegedly constituting
noncompliance with disciplinary provisions of the Code of Professional Responsibility will be referred for
such other action as is necessary according to the disciplinary procedures defined by the Code of Virginia and
the Rules of Professional Conduct.

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COMMENTARY ON THE VIRGINIA LAWYER REFERRAL AND INFORMATION SERVICE (VLRS) RULE CHANGES

Last year the VLRS celebrated its 40th anniversary of service to the public, the legal profession, and our system of justice. Over those 40 years, the VLRS became and remains today a valuable bar program which provides the public with a simple mechanism for finding an attorney or other legal resources, and which matches potential legal consumers with an insured lawyer in good standing in their geographical area for a payment of $35 for a 30-minute consultation. Lawyers who participate pay a $95 annual fee to the Virginia State Bar (VSB), a fee that provides access to potential clients and cases, and the opportunity to gain legal and practice-building experience while serving the public. The VLRS also benefits our overburdened courts by assisting the public in navigating the legal system and other public resources.

While the VLRS remains a critical bar service and program, it has been losing money. For several years, including this past year, the VLRS has operated at a deficit, with the FY 2017 deficit at almost $57,000, a situation that the bar cannot sustain indefinitely. Funding for adequate marketing to make the public aware of the service has not been available, and so, not surprisingly, the VLRS has lost and continues to lose participating lawyers.

Accordingly, the Special Committee that oversees the VLRS and bar staff requested an American Bar Association (ABA) review and audit of the VLRS and its operating model, with a goal of improving the service and making it sustainable. The ABA review confirmed the Committee and staff’s belief that the current VLRS fee model, which is limited to the panel member ($95) and consultation ($35) fees, does not provide sufficient income for the VLRS to meet its marketing and technology needs in today’s marketplace.

The review also made it clear that an increase in those fees will not generate sufficient revenue for the VLRS to sustain itself, and critically, for the VLRS to effectively market the service. According to the ABA review and an ABA study, more than 90 state1 and local bar-sponsored lawyer referral and information service (LRIS) programs have instituted percentage fee programs, which are now considered a “best practice” in the operation of a successful, self-sustaining program. Percentage fee programs are an equitable source of funding by which those attorneys who benefit financially from referrals return a portion of the income generated to the LRIS. The percentage fee thus spreads costs proportionately, with greater contributions from the lawyers who receive the greatest benefits from case referrals. The percentage fee model also improves the quality of referrals, thus benefitting participating lawyers, many of whom are solo and small-firm practitioners. The VLRS proposes and plans to reinvest the percentage fees remitted into VLRS operations and marketing to improve the VLRS internet market position.

Maintaining the status quo is simply not a viable option for the VLRS, and there is no available alternative to moving to adopting a percentage fee program. Failure to implement a percentage fee model will ultimately lead to the program becoming unviable and closing.

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1 Based on ABA data as of 2016 and additional review, it appears that 17 states including South Carolina, Florida, Alabama, Texas, Oregon, Michigan, and Wisconsin take percentage fees.
fee structure will deprive the VLRS of a reliable revenue source and the ability to upgrade technology and marketing efforts to 21st century standards to better serve the public and support our justice system.

The VLRS Rule revisions seek to improve the quality and efficiency of the VLRS for the public and panel members (higher quality referrals) and to increase the service’s revenues to a level allowing the service to effectively make the public aware of its unique services in today’s marketplace. Because the revisions are extensive, please refer to the original Rules of Service, which address certain basic eligibility requirements, rules of operation, and rules regarding withdrawal and suspension from the VLRS.

After the ABA review and detailed study of other bars’ LRIS Rules, the VLRS Committee recommends that the VLRS Rules become Part Six, Section IV, Paragraph 23 of the Rules of the Supreme Court of Virginia and that they be revised as follows:

1. **Institute a percentage fee program.** Rule Amendment V. Fees.

2. **Eliminate the consultation fee in contingent fee matters.** Rule Amendment V.A. Fees. Consultation Fee.

3. **Establish subject matter/experience requirements panels.** Rule Amendment IV. Special Subject Matter Panel Qualifications.

4. **Create follow-up procedures with respect to referred callers and panel members.** Rule Amendment VI. Reporting and Remittance Requirements – Conditions of Panel Membership.

5. **Develop comprehensive rules and procedures for handling client complaints.** Rule VIII. Complaints against Panel Members.

6. **Develop program rules and procedures that more fully comply with the ABA Model Rules for Operation of an LRIS.**
   The revisions strengthen procedures for the admission, suspension, or termination of a panel member, per Legal Ethics Opinion (LEO) 1750, Advertising Issues:

   “In order to qualify as a lawyer referral service for purposes of these rules, the service must: be operated in the public interest for the purpose of providing information to assist the clients; be open to all licensed lawyers in the geographical area served who meet the requirements of the service; require members to maintain malpractice insurance or provide proof of financial responsibility; maintain procedures for the admission, suspension, or removal of a lawyer from any panel; and may not make any fee-generating referral to any lawyer who has an ownership interest in the service, or to that lawyer’s law firm.”
SPECIFIC CHANGES/COMPARISON OF VLRS RULES AND REVISIONS

I. PURPOSE

II. ADMINISTRATION AND GOVERNANCE OF THE VLRS/POWERS AND DUTIES OF THE SPECIAL COMMITTEE ON LAWYER REFERRAL

III. ELIGIBILITY

IV. SPECIAL SUBJECT MATTER PANEL QUALIFICATIONS

V. FEES

VI. REPORTING AND REMITTANCE REQUIREMENTS—CONDITIONS OF PANEL MEMBERSHIP

VII. OPERATION OF THE PANEL

VIII. COMPLAINTS AGAINST PANEL MEMBERS

IX. WITHDRAWAL FROM MEMBERSHIP

X. SUSPENSION AND TERMINATION OF MEMBERSHIP

XI. QUALITY CONTROL

XII. MARKETING AND PUBLIC RELATIONS

XIII. AMENDMENTS

I. PURPOSE

Adds a “Purpose” section and expands first statement of former VLRS Rules from “offering consumer protection to the public in the obtainment of legal services” to clarify that the VLRS is operated as a public service, the goals of which are (1) to provide the public with information regarding and resources about the legal system and (2) refer legal consumers who can afford legal services to attorneys appropriate for the consumers’ specific legal needs.

II. ADMINISTRATION AND GOVERNANCE OF THE VLRS/POWERS AND DUTIES OF THE SPECIAL COMMITTEE ON LAWYER REFERRAL

Defines the roles of the VLRS staff, for daily operations (subsection A); VLRS Committee, for general oversight, rules, policies (subsection B); and creates a VLRS Qualifications Subcommittee to add a layer of review for strengthened eligibility and suspension processes and determinations (subsection C).

III. ELIGIBILITY

A. Eligibility Requirements

1. Active, In Good Standing. Incorporates existing Rule 1 (any active member in good standing may qualify as a VLRS panel member) as part of Rule III.A.1. Defines “in good standing” and cross-references the Rules of Court, Part Six, Section IV, Paragraph 3 definition of Active Member.
2. **Malpractice Insurance.** Incorporates existing Rule 4.c. that a panel member must carry and maintain professional liability insurance in an amount not less than $100,000 per occurrence and $300,000 aggregate as of the date of the application and for as long as the lawyer remains a panel member.

3. **Adherence to VLRS Rules, Indemnification.** Expands Rule 4.d. to add indemnity and duty to defend language.

B. **Restrictions based on Pending Discipline and Disciplinary History.** Adds restrictions disqualifying attorneys with disciplinary history consistent with the restrictions in the VSB Disciplinary System and tracks the Rules of the Supreme Court, Part Six, Section IV, Paragraph 13 limitations on service in the disciplinary system.

C. **Duty to Notify VLRS of Disciplinary Actions and Change in Status.** Adds provision requiring panel member to notify VLRS within thirty (30) days if:
   1. disciplined by another jurisdiction or court or convicted of a crime, as defined at Part Six, Section IV, Paragraph 13-1;
   2. under investigation for misconduct, or
   3. named as a defendant in a suit filed by a client or former client.

Any of the foregoing may trigger suspension consistent with Rule X.

D. **VLRS Qualifications Subcommittee Discretion to Deny Membership.** Adds a layer of review with the new VLRS Qualifications Subcommittee, which has discretion to deny panel membership for good cause, including that the panel member’s admission would not be in the best interests of the VLRS, VSB, or public. The VLRS Qualifications Subcommittee must notify the applicant in writing of the reason(s) for denial within thirty (30) days of the decision to deny membership.

E. **Appeal.** Creates appeal process for discretionary denial of membership.

F. **Confidentiality.** Provides that the VLRS staff and Committee will keep confidential information obtained by the Qualifications Subcommittee and the VLRS Committee in their eligibility and suspension reviews of applicants.

G. **Notification Attorney.** Adds provision requesting VLRS applicant to identify an attorney to inform VLRS if the applicant becomes unable to fill his/her responsibilities as a VLRS member (panel member).
IV. SPECIAL SUBJECT MATTER PANEL QUALIFICATIONS
Revision permits establishment of subject matter panels but does not yet identify the subject matter of those particular panels.

V. FEES
Defines and distinguishes between fees charged by the VLRS to callers and panel members and adds requirement that the VLRS will now, consistent with 80% of other lawyer referral services, impose a percentage fee (proposed to be 15%) of the net fees (total fees remaining after deduction of out-of-pocket costs) collected on VLRS referrals. The income to the VLRS will be used to operate and market the VLRS and, if there is a surplus in those funds, on the recommendation of staff and with the approval of the VLRS Committee and VSB Council, that surplus may be applied to support other activities of the VLRS or to reduce panel member membership fees.

A. Consultation Fee. Fee paid to VLRS for thirty (30) minute consult will be waived in contingency fee cases. States that all other attorneys' fees beyond the consultation fee are to be negotiated by the attorney (panel member) and client.

B. Annual Membership Fee. Annual fee to be set by the VLRS Committee and submitted with the membership application and renewal. Fee may be discounted or prorated at the VLRS staff's discretion.

C. Percentage Fee. Panel member will remit fifteen percent (15%) of net fees collected to the VLRS, minus any consultation fee. Rationale and use of income generated addressed above.

D. Duty to Refer Back to VLRS: Duty to Remit Percentage Fee to VLRS. Panel members should refer back to the VLRS any matter the panel member cannot handle. A panel member should not transfer a matter to avoid paying a percentage fee to the VLRS, and a panel member is still responsible to pay the VLRS the percentage fee if he/she violates this provision.

E. No Increase in Fees to Compensate for VLRS Payments. Panel members must not increase attorneys' fees to the client to compensate for the payments to the VLRS.

F. VLRS Income. Any income generated to the VLRS will be reinvested in the VLRS.

VI. REPORTING AND REMITTANCE REQUIREMENTS – CONDITIONS OF PANEL MEMBERSHIP
This entire section is new and specifies panel members' reporting and remittance obligations.
A. **Routine Reporting Requirements.** Within thirty (30) days, panel members must notify the VLRS of changes to contact information, firm or membership status, panel selection changes, any disciplinary actions against them, and inability to accept referrals for a period of fifteen (15) days or more.

B. **Reporting on VLRS Referred Cases.** Within thirty (30) days of the referral, the panel member must report to the VLRS whether or not he/she will represent the client. Panel members must also respond promptly, and preferably, via e-mail, to VLRS requests for information; however, no reporting obligations will require a member to violate his/her duty under the Virginia Rules of Professional Conduct (RPC) 1.6.

C. **Remittance of Percentage Fee Due VLRS.** A panel member shall remit to the VLRS a remittance within thirty (30) days of the funds’ availability for distribution.

D. **Failure to Timely Report or Remit/Suspension from VLRS.** Failure to comply with reporting and remittance requirements may result in suspension from the VLRS with ten (10) business days written notice.

E. **Panel Member Duty to Notify Client of VLRS/Consent to Release Information to VLRS.** The panel member must notify the client that the VLRS may contact the client or audit the file to determine fees paid, and the panel member must include the VLRS among those who have a right to know about any settlement, to the extent necessary to allow the VLRS to determine the portion of percentage fees owed the VLRS. The panel member will provide the VLRS a written statement showing the remittance if the matter is a contingent fee matter which requires such statement pursuant to Virginia RPC 1.5(c).

F. **VLRS Audit.** Panel members must keep records of VLRS referred clients’ fees and expenses for five (5) years from the conclusion of the representation(s) and permit the VLRS, to the extent permitted by the Virginia Rules of Professional Conduct, to audit the records within ten (10) business days of a request from VLRS. If the audit reveals a shortfall, the panel member shall remit the shortfall to the VLRS within thirty (30) days.

G. **Mediation/Arbitration to Resolve Percentage Fee Dispute.** Disputes between panel members and the VLRS regarding fees owed the VLRS will be resolved by binding mediation or arbitration consistent with the Virginia mediation and arbitration statutes.
H. **Continuing Duty to Remit Percentage Fee.** A panel member’s duty to remit the percentage fees owed to the VLRS remains whether or not the member complies with the Rules and/or is suspended from the VLRS.

VII. **OPERATION OF THE PANEL**
This section is consistent with existing VLRS rules, with a reduction in areas of competency from thirty-five (35) to ten (10).

A. **Referrals.** Referrals will be made on a rotating basis within geographical areas and fields of law. Panel members agree to provide a thirty-minute consultation within three (3) days of the referral or as soon as practicable. Panel members will return a referral notice to VLRS staff within ten (10) days of the consultation. VLRS staff will send surveys to callers and share and use the information with the VLRS Committee, VSB, and Supreme Court of Virginia, as necessary.

B. **Grouping of Panel Members.** Panel members will be grouped by judicial circuit and arranged geographically within the circuit.

C. **Areas of Competency.** Panel members may select ten (10) (vs. thirty-five (35) currently) areas of competency, consistent with RPC 1.1. Panel members agree to accept an initial interview in their areas of competency. Panel members are not required to accept employment beyond the initial consultation.

D. **Conflict of Interest.** Panel members should refer back to the VLRS any potential conflict of interest. If a panel member rejects two (2) consecutive referrals for reasons other than a conflict of interest, he/she will be moved to the bottom of the referral rotation list.

E. **Notification of and Authorization Required to Transfer VLRS Matters.** Panel members shall not transfer VLRS referred cases without notifying the VLRS, unless required by law or court order.

F. **Fee Dispute Resolution.** If the client agrees, panel members shall submit fee disputes with clients over VLRS referred matters to the VSB Fee Dispute Resolution Program (FDRP).

VIII. **COMPLAINTS AGAINST PANEL MEMBERS**
This new section clarifies the handling of various complaints.

VLRS staff will monitor complaints concerning panel members’ service and address as appropriate within the VLRS Committee. Panel members agree to respond to VLRS inquiries within ten (10) business days and to cooperate in the investigation of
complaints. Repeated complaints may be referred to the VLRS Qualifications Subcommittee. Panel members agree not to threaten or to commence libel, slander, interference with contractual relations or similar legal actions against the VSB, its staff, and the VLRS committee. Complaints which rise to the level of ethical misconduct will be referred to the VSB Professional Regulation Department, and fee disputes will be referred to the FDRP.

IX. WITHDRAWAL FROM MEMBERSHIP
This new section clarifies that withdrawal from the VLRS shall be in writing, and withdrawal does not relieve the panel member of obligations incurred to VLRS referred clients or to the VLRS (handling pending cases in accordance with the Virginia RPC and standard practices, and paying fees and completing reports).

X. SUSPENSION AND TERMINATION OF MEMBERSHIP
This section has been revised and detailed to clarify the bases and consequences of summary suspension and suspension for good cause; the consequences of suspension; and the rights of panel members to request a review and to appeal, as set forth in detail.

A. Summary Suspension and Termination/Removal of Disciplinary Action. A panel member shall be summarily suspended from the VLRS if a Misconduct complaint is referred for investigation to a disciplinary District Committee, as defined at the Rules of Court, Part Six, Section IV, Paragraph 13-1. If Misconduct is not found, and the complaint is dismissed, the panel member shall be reinstated in VLRS. If Misconduct is found, and the panel member receives any sanction other than a De Minimis Dismissal or Dismissal for Exceptional Circumstances, the panel member shall be removed from VLRS. The VLRS Qualifications Subcommittee, subject to appeal by the VLRS Committee, shall have the sole discretion to determine whether a De Minimis Dismissal or Dismissal for Exceptional Circumstances disqualifies the panel member from VLRS participation.

B. Summary Suspension for Failure to Maintain Insurance. A panel member shall be summarily suspended for failure to timely submit proof of malpractice insurance.

C. Suspension for Good Cause. The VLRS staff may immediately suspend or remove a panel member for good cause including falsification of VLRS application materials or VLRS reports, failure to timely deliver reports or remit fees to the VLRS, failure to respond to VLRS inquiries about client complaints, failure to permit the VLRS to inspect records, failure to maintain eligibility or qualifications, failure to handle VLRS cases with competence and diligence, rudeness or inappropriate conduct to VLRS clients or staff, and violation of the VLRS Rules.
D. **Notice to Panel Member.** Within five (5) days of the suspension, the VLRS staff shall notify the panel member in writing of the suspension and the reason(s) for the suspension.

E. **Terms of Suspension.** A suspended panel member is not relieved of pending obligations to the VLRS, including fee remittance and submission of reports. A suspended panel member will not receive referrals.

F. **Reinstatement.** VLRS staff may reinstate members after they pay fees, submit reports, or submit proof of insurance.

G. **Notice of Appeal from Suspension.** Within thirty (30) days of suspension, a panel member has a right to submit a written request for an informal hearing before the Qualifications Subcommittee.

H. **Automatic Termination or Removal.** If the panel member does not appeal the suspension, he/she will be removed from the VLRS.

I. **Qualifications Subcommittee Review.** The Qualifications Subcommittee will render a written decision within thirty (30) days of the request for hearing, unless the panel member consents to an extension of time. The panel member may make a written or oral response to the Qualifications Subcommittee.

J. **Appeal to VLRS Committee.** Within thirty (30) days of the decision, a panel member may appeal the Qualifications Subcommittee’s decision by filing a written notice of appeal to the VLRS Committee.

K. **VLRS Committee Review.** The vote of a majority of the VLRS Committee members present and voting is required to overrule the subcommittee’s decision, and the committee’s decision is final. Members of the subcommittee may not vote with the committee, but may otherwise participate. The appeal shall be granted or denied within thirty (30) days receipt of the notice of appeal, unless the panel member consents to an extension of time.

XI. **QUALITY CONTROL**
This provision requires monitoring of public and member satisfaction, by staff and the committee, consistent with VLRS practice.

XII. **MARKETING AND PUBLIC RELATIONS**
The VLRS Committee and staff will consult to market and publicize the VLRS. The VLRS staff will report on VLRS marketing efforts to the VLRS Committee, which will annually review and make recommendations as necessary.
XIII. AMENDMENTS
The VLRS Committee may, from time to time by majority vote, recommend amendments to these VLRS Rules.
23. **Virginia Lawyer Referral and Information Service.**

In order to advance the availability and quality of legal services provided to Virginians, Council may establish a Virginia State Bar Lawyer Referral and Information Service (VLRS) to provide Virginians in need of legal assistance with (1) information about the legal system and other resources, including referrals to government agencies, legal aid, or other appropriate programs and services, and (2) lawyer referrals to those individuals who can afford an attorney. The VLRS shall be open to all licensed lawyers in Virginia who meet the requirements specified in the Rules of the VLRS.

**VLRS Rules The Rules of the Virginia State Bar Lawyer Referral & Information Service (VLRS)**

The rules of service of the VLRS are intended to offer consumer protection to the public in its obtaining of legal services.

I. **PURPOSE**

The Virginia State Bar Lawyer Referral & Information Service (VLRS) operates as a public service to Virginians by providing individuals in need of legal help with information about the legal system and other resources as appropriate, and by referring individuals who can afford a lawyer to an insured lawyer who meets the individual’s specified legal needs and who has agreed to abide by these VLRS Rules.

II. **ADMINISTRATION AND GOVERNANCE OF THE VLRS/POWERS AND DUTIES OF THE VIRGINIA STATE BAR SPECIAL COMMITTEE ON LAWYER REFERRAL**

A. **VLRS Operations.** The VLRS is operated from the offices of the Virginia State Bar (VSB). VSB staff under the general supervision of the VSB Deputy Executive Director (“VLRS staff”) is responsible for VLRS operations in accordance with these Rules.

B. **VLRS Committee.** The VSB Special Committee on Lawyer Referral (VLRS Committee) has general supervisory authority over the administration of these Rules, subject to oversight by Council and the Supreme Court of Virginia. The VLRS Committee will meet at regular intervals during the year to review these Rules, VLRS performance and operations, marketing efforts, and areas of VLRS development. The VLRS Committee may recommend changes to the VLRS Rules including qualifications for membership, fees, and areas of practice. The VLRS staff will report regularly to the VLRS Committee on operations, policies, marketing efforts, eligibility and appeals, and matters covered by these Rules. VLRS staff has discretion to waive and suspend these Rules for good cause, subject to the VLRS Committee’s review at its next regularly scheduled meeting. A majority of the VLRS Committee constitutes a quorum.
C. **VLRS Qualifications Subcommittee.** The Chair of the VLRS Committee shall appoint a Qualifications Subcommittee consisting of at least three (3) VLRS Committee members. A majority of the Subcommittee constitutes a quorum.

1. Any active member in good standing with the Virginia State Bar (VSB) may qualify as a VLRS panel member.

III. **ELIGIBILITY**

A. **Eligibility Requirements.** Applicants who seek to be members of the VLRS (panel members) must satisfy and maintain the following requirements to participate in the VLRS. An applicant shall be denied admission, and a panel member shall be suspended from the VLRS, for failure to maintain the following eligibility requirements:

1. **Active, In Good Standing.** An applicant must be (and if selected as a panel member must remain) an Active member of the VSB, as defined at the Rules of Court, Part Six, Section IV, Paragraph 3. "In good standing" means that the lawyer's license is not currently Suspended or Revoked, as defined at the Rules of Court, Part Six, Section IV, Paragraph 13-1.

2. **Malpractice Insurance.** Panel members agree to the following:
   a. Panel members must carry professional liability insurance as of the date of the application and for as long as the applicant is a VLRS member and be in good standing with the VSB Member Compliance Department. The applicant must maintain in force and effect professional liability insurance in an amount not less than $100,000 per occurrence and $300,000 aggregate as of the date of the application and for as long as the lawyer is a panel member. The applicant must provide the VLRS a current copy of the insurance policy certificate, the declarations page of the policy, or other evidence satisfactory to the VLRS that such coverage is in force and effect. The panel member shall annually provide the VLRS with proof of insurance coverage. Prior to the expiration date of the insurance policy, the panel member shall notify the VLRS of the renewal of professional liability coverage, accompanied by a copy of the declarations page of the renewal policy or other evidence satisfactory to the VLRS that such coverage has been renewed. Each panel member shall promptly notify the VLRS if his/her professional liability insurance coverage is terminated or decreased. Expiration of a panel member's professional liability insurance will automatically suspend that panel member from the VLRS, until the renewal information is submitted and approved.

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1 Capitalized terms in Rule III, Eligibility A-G below are defined at the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-1.
3. **Adherence to VLRS Rules. Indemnification.** Panel members agree to the following:
   d. To follow all of the rules of the service and in no event hold the State Bar or any of its officers, members, or employees liable in connection with the operation of, or use of, the information contained in the application. Panel members must follow all VLRS Rules and indemnify, defend, and hold harmless the VSB, its officers, members, agents, and employees from and against any and all claims, expenses, attorney fees and costs, demands, actions, liability, or loss arising from (1) the negligence or intentional conduct of a panel member, and (2) the operation, policies, or Rules of the VLRS, including, but not limited to, referrals or non-referrals of persons, denial or suspension of membership in the VLRS, the provision of information about the panel member to any person or client, and/or the use of information contained in the VLRS application.

B. **Restrictions based on Pending Discipline and Disciplinary History.**

1. The applicant must not have any disciplinary proceedings pending.

2. The applicant must not have:
   a. ever been convicted in any jurisdiction of a Crime;
   b. ever committed any criminal act that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a lawyer;
   c. a Disciplinary Record in any jurisdiction consisting of a Disbarment, Revocation, Suspension imposed at any time or Public Reprimand imposed within the ten years immediately preceding the application to join the VLRS; or
   d. a Disciplinary Record in any jurisdiction consisting of Private Discipline, except for a *De Minimis* Dismissal or a Dismissal for Exceptional Circumstances, or an Admonition imposed within the five years immediately preceding the application to join the VLRS.

The VLRS Committee shall have the sole discretion to determine whether a *De Minimis* Dismissal or a Dismissal for Exceptional Circumstances shall disqualify a lawyer from participation in the VLRS.

C. **Duty to Notify VLRS of Disciplinary Actions and Change in Status.** Once accepted for panel membership, it is the responsibility of the attorney (panel member) to notify VLRS of the following: . . . . Any disciplinary action with the VSB A panel member shall give notice to VLRS within thirty (30) days if (i) he/she has been disciplined by any jurisdiction or court or convicted of a Crime: (ii) he/she is currently under investigation concerning any allegation of professional misconduct or
wrongdoing; or (iii) he/she is a defendant in any lawsuit filed by a client or former client. The VLRS may suspend the panel member consistent with Rule X.

Suspension and Termination of Membership.

D. **VLRS Qualifications Subcommittee Discretion to Deny Membership.**
Notwithstanding the provisions of Rule III A and B., any applicant may be denied admission to panel membership if the VLRS Qualifications Subcommittee, in its sole discretion, determines that good cause exists to deny admission, including that the applicant’s admission to panel membership would not be in the best interests of the VLRS, VSB, or public. If the VLRS Qualifications Subcommittee denies an applicant VLRS panel membership pursuant to this provision, the VLRS Qualifications Subcommittee shall notify the applicant in writing of the reason(s) for the denial within thirty (30) days of the decision to deny membership.

E. **Appeal.** Should the VLRS Qualifications Subcommittee deny panel membership to an applicant pursuant to Rule III.B. based on a De Minimis Dismissal or Dismissal for Exceptional Circumstances or pursuant to Rule III.D., the applicant may, within ten (10) days of receipt of the decision denying panel membership, submit a written notice of appeal to the VLRS Committee. The appeal shall be heard within thirty (30) days of receipt of the applicant’s request for hearing. The VLRS Committee may take whatever action it deems appropriate in light of the facts, the written evidence provided by the applicant, and any other circumstances of the particular appeal the VLRS Committee deems relevant. The vote of the majority of the VLRS Committee members present and voting shall be required to overrule the findings of the VLRS Qualifications Subcommittee. Members of the Qualifications Subcommittee may not vote but may otherwise participate in the appeal. The decision of the VLRS Committee shall be final.

F. **Confidentiality.** The VSB staff and VLRS Committee members shall keep confidential any information gained or obtained by the Qualifications Subcommittee or the VLRS Committee in the discharge of their duties pursuant to Sections III, Eligibility or X. Suspension and Termination of Membership, except as required by law or court order.

G. **Notification Attorney.** An applicant should list an attorney on his/her application who will notify the VLRS when he/she becomes aware that the panel member is incapacitated, dies, or is otherwise unable to fulfill the panel membership responsibilities.

IV. **SPECIAL SUBJECT MATTER PANEL QUALIFICATIONS**

The VLRS Committee shall establish and maintain subject matter panels in the practice areas it deems appropriate and as necessary to effectively and efficiently serve the public’s needs. Registration for special subject matter panels requires a separate form and affirmation and may require proof of experience in particular practice areas.
including having been attorney-of-record and having done a substantial amount of work on cases.

V. FEES

A. Consultation Fee. The VLRS Committee shall set a consultation fee for the first thirty (30) minutes, as necessary to effectively and efficiently serve the public’s needs and the operation costs. All other attorneys’ fees beyond the initial consultation must be negotiated between the panel member and client in accordance with the Virginia Rules of Professional Conduct. The consultation fee is not subject to the percentage fee provision. Unless otherwise prohibited by law, the consultation fee shall be waived for all contingent fee matters.

B. Annual Membership Fee. The VLRS Committee shall set the annual fee to join or renew as a VLRS panel member as appropriate and necessary to effectively and efficiently serve the public’s needs and the operation costs. The annual fee shall be submitted with the application for initial membership or membership renewal. The annual fee may be discounted or prorated at the VLRS staff’s discretion.

C. Percentage Fee. The panel member agrees to remit to the VLRS fifteen percent (15%) of all net fees collected by the panel member on any VLRS referral, except that the panel member shall keep the consultation fee, if any. Net fees are defined as the total fees remaining after deduction of out-of-pocket costs.

If the VLRS refers a potential client or clients to a panel member and additional individuals who are associated with the same event or incident (e.g., multiple accident victims, plaintiffs or defendants) also retain the same panel member to represent them with regard to the same event or incident, the remittance due the VLRS by the panel member will be based on a percentage of all fees earned and collected as a result of the multiple-client representation.

If a VLRS matter closes and sometime later the client contacts the panel member on an unrelated matter, no remittance is due the VLRS on the new, unrelated matter.

D. Duty to Refer Back to VLRS; Duty to Remit Percentage Fee to VLRS. If a panel member cannot handle a matter, he/she shall refer the caller back to the VLRS. Panel members shall not transfer or assign matters to avoid paying the percentage fee to VLRS. A panel member shall promptly pay fees due VLRS to VLRS and may be removed if he/she fails to pay VLRS the percentage fee when it is due. Any panel member who violates this provision is still responsible to pay VLRS a percentage of all fees earned in the matter.

E. No Increase in Fees to Compensate for VLRS Payments. Panel members are prohibited from increasing legal fees to VLRS referred clients to compensate for the required payments to the VLRS.
F. **VLRS Income.** The income generated by the VLRS shall be applied to support the programmatic public services of the VLRS.

5. Once accepted for panel membership, it is the responsibility of the attorney (panel member) to notify VLRS of the following:

- Address changes
- Departure from your current firm or office
- Panel selection changes
- Any disciplinary action with the VSB

VI. **REPORTING AND REMITTANCE REQUIREMENTS – CONDITIONS OF PANEL MEMBERSHIP**

A. **Routine Reporting Requirements.** Within thirty (30) days, in addition to the items referenced at III.C., a panel member must timely notify VLRS of the following:

1. Address, telephone, and e-mail changes.
2. Changes in membership status.
3. Departure from current firm or office.
4. Panel selection changes.
5. Any disciplinary action with the VSB or any bar to which the panel member is admitted, and/or the
6. Inability to accept referrals for a period of time fifteen (15) days or more due to vacation, leave of absence, heavy caseload, or any other reason.

B. **Reporting on VLRS Referred Cases.** Within thirty (30) days of the VLRS referral, the panel member must report to the VLRS whether or not the panel member will represent the client. Panel members must respond promptly, and preferably via e-mail, to VLRS requests for information regarding the status of the case and the status of fees billed and/or collected, including the amount of fees due and owing the VLRS. Nothing herein will require any panel member to violate Virginia Rule of Professional Conduct 1.6.

C. **Remittance of Percentage Fee Due VLRS.** A panel member shall pay the VLRS a remittance within thirty (30) days of the availability of the funds for distribution.

D. **Failure to Timely Report or Remit/Suspension from VLRS.** The panel member must timely comply with all reporting and payment requirements. The failure to comply with these requirements, including the failure to timely remit the initial and monthly reports, follow up forms, or percentage fees, and the failure to timely or accurately respond to VLRS inquiries regarding the status of cases and payments may result in panel member suspension, with ten (10) business days written notice, until
all reports are received and remittances are paid in full. While suspended, the panel member will be deemed inactive and ineligible to receive referrals.

E. Panel Member Duty to Notify Client of VLRS/Consent to Release Information to VLRS. The VLRS may contact clients to determine fees paid to panel members. A panel member must notify a client at the outset of representation that a portion of the fees are payable to VLRS and that information about attorneys’ fees and expenses paid or received by the panel member may be released and reported to the VLRS. The panel member must notify the client that the VLRS is entitled to (a) know the outcome of any legal representation, (b) know the fees received by the panel member and any other attorney with whom the panel member associates in the course of representation of the client, and (c) audit the file to check for fees paid. Upon the settlement of any such action, the panel member is obligated to include the VLRS with those who have a right to know about a settlement, to the extent necessary to allow the VLRS to have knowledge of the terms of the settlement, including all attorneys’ fees paid in the case, whether paid directly by another party or by settlement proceeds, so that the VLRS may determine the portion of the panel member’s fees to which the VLRS is entitled. If the matter is a contingent fee matter which requires a written statement showing the remittance to the client pursuant to Virginia Rule of Professional Conduct 1.5(c), the panel member will provide the statement to the VLRS.

F. VLRS Audit. The VLRS may require a panel member to verify that correct remittances have been paid. The panel member must keep records of fees and expenses of all VLRS referred clients for five (5) years from the conclusion of the representation for each client. These records shall include, but not be limited to, referral notices, fee agreements, if any, billing and payment records, settlement agreements, releases, and distribution sheets. Upon request from the VLRS, and to the extent permitted by the Virginia Rules of Professional Conduct, within ten (10) business days of the date of the request, the panel member shall make available for review or audit all records relating to the VLRS matters handled by the panel member. If the audit reveals a shortfall to the VLRS, the panel member shall pay all fees due and owing the VLRS within thirty (30) days. Nothing herein will require any panel member to violate Virginia Rule of Professional Conduct 1.6.

G. Mediation/Arbitration to Resolve Percentage Fee Dispute. Any dispute regarding percentage fees owed VLRS shall be resolved first by mediation, pursuant to the Virginia mediation statutes, Va. Code Sections 8.01-581.21-581.26, if the parties agree, and any issues not resolved by mediation shall be resolved by binding arbitration or the Uniform Arbitration Act, Va. Code Sections 8.01-581.01-581.16. The parties shall attempt to agree upon an arbitrator within fifteen (15) calendar days, and if they fail to do so, the moving party shall file a petition with the Circuit Court of the City of Richmond to appoint an arbitrator. All mediations and arbitrations under this provision shall be held in Richmond, Virginia.
H. Continuing Duty to Remit Percentage Fee. A panel member's obligation to pay remittances owed to the VLRS continues regardless of whether the panel member is in breach of or fails to comply with these Rules or is no longer eligible to participate in the VLRS, is removed from, or leaves the VLRS.

VII. OPERATION OF THE PANEL

A. Referrals. Referrals will be made on a rotating basis, within fields of law and geographical areas. Matters requiring fluency in a foreign language will, to the extent possible, be referred to an attorney having fluency in that language. The panel member agrees to provide the referral a thirty-minute (30-minute) consultation within three (3) business days of the referral date, or as soon as practicable after a request is made. After processing a referral, VLRS staff will send a referral notice to the panel member, which must be returned to the VLRS within ten (10) days of the consultation. VLRS staff will also send follow-up surveys to VLRS callers. VLRS staff will send pertinent information from the surveys to panel members and, if necessary, to the VLRS Committee, VSB, or Supreme Court of Virginia, as may be appropriate.

B. 2. Grouping of Panel Members. Panel members will be grouped by judicial circuit and arranged by geographically convenient areas within such groups.

C. 3. Areas of Competency. Panel members may choose up to 35 ten (10) areas of the law to list as areas of competency, in accordance with Virginia Rule of Professional Conduct 1.1. Panel members are cautioned against selecting areas of practice in which they are not actively engaged. Panel members will accept an initial interview for any referred caller in the areas of competency. Panel members are not required to accept employment beyond the initial consultation.

4. Panel members agree to the following:

a. Pre-paid callers will be referred to panel members who then must provide the callers with 30–minute consultation. An appointment should be granted within three business days of the referral date, or as soon as practicable after a request is made. Immediately following the up to 30-minute initial consultation or within ten days of the referral notice date, a call to the completed referral notice back to VLRS indicating the outcome of the consultation. Any charges for further service will be agreed upon between the lawyer and the referral.

b. Panel members will accept an initial interview for any referred caller in the areas of practice preference indicated on the application.

D. Conflict of Interest. Should any referral give rise to a conflict of interest, the lawyer panel member should direct the referred caller to contact VLRS to receive a new referral. A panel member rejecting two consecutive initial referrals for reasons
other than those set forth here a conflict of interest will be moved to the bottom of referral rotation list. Panel members are not required to accept employment beyond the initial consultation.

E. Notification of and Authorization Required to Transfer VLRS Matters. Panel members shall not transfer responsibility or control of any VLRS referred matter without notifying the VLRS, unless required by law or court order.

F. Fee Dispute Resolution. Panel members shall submit any fee dispute between the panel member and a client referred by the VLRS, if the client so elects, to mediation or arbitration by the VSB Fee Dispute Resolution Program (FDRP).

VIII. COMPLAINTS AGAINST PANEL MEMBERS

VLRS staff shall monitor complaints concerning the service provided by panel members. Complaints, which rise to the level of potential ethical misconduct, will be referred to the VSB Professional Regulation Department. Complaints regarding fee disputes, which do not rise to the level of ethical misconduct, will be referred to the VSB Fee Dispute Resolution Program. Issues, which do not rise to the level of ethical misconduct, may be handled informally but noted in the panel member record for a pattern which may require investigation by VLRS staff. VLRS staff must report serious and/or repeated complaints against panel members to the VLRS Committee, which may result in removal from VLRS. All panel members agree to cooperate with the VLRS staff and VLRS Committee in the event of any client complaints. In the event that a client files a complaint against a panel member, subject to Virginia Rule of Professional Conduct 1.6, the panel member agrees to file a written response, including appropriate documentation, with the VLRS within ten (10) business days of receipt of the complaint. Failure to respond to the VLRS within ten (10) business days of receipt of the client complaint will result in immediate suspension from VLRS. If the VLRS receives repeated written complaints against a panel member or for good cause, the VLRS may require the panel member to address the complaints before the Qualifications Subcommittee. A panel member shall not commence or threaten to commence any libel, slander, interference with contractual relations or similar action against the VSB, its officers, directors, members, agents, or employees, or the VLRS Committee or its members based upon a complaint or inquiry made to VLRS.

How do I withdraw from VLRS?

IX. WITHDRAWAL FROM MEMBERSHIP

A panel member may withdraw his/her name from VLRS participation five days after submitting written notice to the VLRS. Withdrawal does not relieve the panel member of his/her obligations in accordance with the Virginia Rules of Professional Conduct and standard practices. Any pending case(s) or obligation(s) incurred during VLRS panel membership: (2) complete reports on all referrals; (3) pay
any fees due the VLRS; and/or (4) satisfy any other obligations to the VLRS in a timely manner and pursuant to these Rules. Membership fees are neither refundable nor transferable. At the time of written withdrawal, please also advise the VLRS in writing as to the consultation outcome of all outstanding pre-paid referral notices.

Note: Administrative Hold. If a panel member charged with misconduct has been referred to a District Committee, the Disciplinary Board, or any circuit court, or agrees to or is placed under disciplinary terms, the service will not make referrals to that panel member until a) completion of the disciplinary proceedings without limitations having been placed on the panel member’s license to practice law or terms having been imposed, or b) following removal of such limitations and/or successful compliance with the terms imposed. Membership fees are non-refundable regardless of whether the panel member is under administrative hold or suspension.

Suspension from VLRS

X. SUSPENSION AND TERMINATION OF MEMBERSHIP

1. Failure to comply with the rules will result in a written notice of proposed suspension from the VLRS from the chair of the Virginia State Bar Lawyer Referral Committee, or his or her designee. Service is deemed effective when sent to the member’s e-mail address of record with the VSB, or mailed to the member’s address of record by certified mail, return receipt requested.

2. Upon notice of proposed suspension or service of suspension, the panel member may submit a written response within thirty days stating the reasons for noncompliance. The mailing of a notice of suspension to the panel member at his or her last address of record with the Virginia State Bar constitutes adequate service for the purposes of these rules.

3. Failure to respond in writing within thirty days of the date of the mailing of the notice of suspension to the panel member will result in a final action of suspension that will run until such time as the panel member furnishes evidence of compliance with the rules and regulations of the service.

4. Upon receipt of a response to the notice of proposed suspension by the panel member, the VSB VLRS Committee or its designee will review and recommend to the committee the following actions:
   a. Final action of suspension;
   b. Withdrawal of the notice of proposed suspension; or
   c. Conditional participation on the panel.

Any such action will be by majority vote of the committee at any regularly scheduled meeting or by telephone poll or other communication deemed appropriate.
5. Any such action may be appealed within thirty days of the service of the notice of the committee’s action by written notice of appeal to the chair of the VSB VLRS Committee giving reasons for appeal of the committee’s action. Upon receipt of the notice of appeal, the chair of the VSB VLRS Committee or his or her designee will convene a three-member panel of current Bar Council members to review the committee’s action and the written notice of appeal within thirty days of its receipt.

6. If the review panel finds the committee’s action to be supported by substantial evidence, it will notify the panel member of its decision in writing. If the review panel finds the committee’s action to be unsupported by substantial evidence, or otherwise finds evidence of noncompliance with rules and regulations cited for alleged noncompliance or violation, the review panel will notify the panel member, withdraw the committee’s decision, and reinstate the panel member.

7. The filing of any notice for appeal by the panel member does not stay the VSB VLRS Committee’s action.

8. Complaints from members of the public or attorneys regarding conduct allegedly constituting noncompliance with disciplinary provisions of the Code of Professional Responsibility will be referred for such other action as is necessary according to the disciplinary procedures defined by the Code of Virginia and the Rules of Professional Conduct.

A. Summary Suspension and Termination/Removal for Disciplinary Action. A panel member shall be summarily suspended from the VLRS if a complaint alleging misconduct by the panel member has been referred for investigation to a District Committee, the Disciplinary Board, or any circuit court. If the complaint against the panel member is dismissed, and no discipline is imposed, the panel member will be reinstated in VLRS. Consistent with Rule III, a panel member shall be terminated or removed from membership from the VLRS if his/her license to practice law is revoked, suspended, or if he/she receives a public reprimand, admonition, or private discipline, except for a De Minimis Dismissal or a Dismissal for Exceptional Circumstances. The VLRS Qualifications Subcommittee, subject to appeal to the VLRS Committee set forth below, shall have the sole discretion to determine whether a De Minimis Dismissal or a Dismissal for Exceptional Circumstances shall disqualify a lawyer from participation in the VLRS.

B. Summary Suspension for Failure to Maintain Insurance. A panel member shall be summarily suspended from VLRS if the panel member fails to timely submit evidence of malpractice insurance.

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2 The capitalized terms used in X.A. are as defined at the Rules of Court, Part Six, Section IV, Paragraph 13-1.
C. **Suspension for Good Cause.** The VLRS staff has the power to immediately suspend or remove a panel member for good cause, which includes, but is not limited to:
   1. Falsification of any material statement made to qualify for the VLRS or in any report to the VLRS;
   2. Failure to deliver timely reports or remittances of fees to the VLRS;
   3. Failure to permit the VLRS to inspect records pursuant to these Rules;
   4. Failure to maintain eligibility and qualifications under these Rules;
   5. Failure to handle VLRS cases with competence and diligence;
   6. Failure to respond to the VLRS inquiries about client complaints as set forth at Rule VIII;
   7. Repeated rudeness/inappropriate conduct to VLRS clients and/or staff; and
   8. Violation of these Rules.

D. **Notice to Panel Member.** Within five (5) days of the suspension, the VLRS staff shall notify the panel member in writing of the suspension and the reason(s) for the suspension.

E. **Terms of Suspension.** A panel member who is suspended from the VLRS shall not receive referrals. Suspension from VLRS does not relieve the panel member of his/her obligations to (1) dispose of, in accordance with the Virginia Rules of Professional Conduct and standard practices, any pending case(s) or obligation(s) incurred during VLRS panel membership; (2) complete reports on all referrals; (3) pay any fees due the VLRS; and (4) satisfy any other obligations to the VLRS in a timely manner and pursuant to these Rules.

F. **Reinstatement.** VLRS staff may reinstate any panel member suspended for nonpayment of fees or failure to submit reports or for failure to submit proof of insurance, after payment of all fees and submission of all reports and proof of insurance.

G. **Notice of Appeal from Suspension.** Within thirty (30) days of suspension, the panel member has the right to submit a written request to the VLRS for an informal hearing before the Qualifications Subcommittee.

H. **Automatic Termination or Removal.** If the panel member fails to appeal the suspension, the panel member shall be removed from the VLRS.

I. **Qualifications Subcommittee Review.**

   1. Upon the timely filing of a notice of appeal, the matter shall be referred to the Qualifications Subcommittee for a decision as to whether a panel member shall be removed from VLRS.
2. A panel member who has filed a timely notice of appeal shall be given the opportunity to make a written or oral response to the Qualifications Subcommittee.

3. The Qualifications Subcommittee shall render a written decision in any such matter within thirty (30) days of the panel member’s filing of written request for a hearing, unless the panel member consents to an extension of time.

J. **Appeal to VLRS Committee.** A panel member may appeal the decision of the Qualifications Subcommittee by filing a written notice of appeal to the VLRS Committee within thirty (30) days of receipt of a written decision from the Qualifications Subcommittee.

K. **VLRS Committee Review.**

1. All appeals from the Qualifications Subcommittee shall be reviewed and decided by the VLRS Committee.
2. The vote of the majority of the VLRS Committee members present and voting shall be required to overrule the Qualifications Subcommittee’s decision.
3. Members of the Qualifications Subcommittee may not vote but may otherwise participate in the appeal process.
4. The appeal shall be granted or denied within thirty (30) days of receipt of the notice of appeal unless the panel member consents to an extension of time.
5. The decision of the VLRS Committee shall be final.

XI. **QUALITY CONTROL**

The VLRS shall monitor public and member satisfaction with the VLRS through formal and informal methods including surveys and calls to panel members and clients. The VLRS sends follow-up surveys to all clients to inquire whether the client consulted with the panel member, the amount of fees paid, and whether they were satisfied with the VLRS process. Any pertinent information will be forwarded to panel members, and as necessary, shared with the VLRS Committee. The VLRS may monitor referrals by checking court dockets, legal notices, etc. The VLRS staff will actively seek to improve both the quality of referrals and the quality of the VLRS through consultation with panel members, peer agencies, ABA resources, and other community support and information resources.

XII. **MARKETING AND PUBLIC RELATIONS**

The VLRS will be marketed and publicized by such means and to such extent as determined by VLRS staff in consultation with the VLRS Committee. In its regular reports to the Committee, the VLRS staff shall report on its marketing efforts, and the
VLRS Committee shall review the same annually and make recommendations as necessary.

XIII. AMENDMENTS

The VLRS Committee may, by majority vote, recommend amendments to these Rules at any time.

As recommended by the Virginia State Bar Special Committee on the Virginia Lawyer Referral Service for approval on May 18, 2018.
Bar moves to revamp lawyer referral

By: Peter Vieth  July 5, 2018

Lawyers who participate in the Virginia State Bar’s lawyer referral service will have to pay the bar 15 percent of their fees for referred cases under a proposed new program.

The recommended revamp of the bar’s 40-year-old referral system is aimed at reversing a revenue decline that threatens the existence of the service, according to bar officials.

The proposal is up for comment through July 27.

Percentage fee model

The referral service now collects $95 a year from about 375 participating lawyers and $35 from clients for a 30-minute consultation. VSB budget documents indicate the lawyer referral service brought in about $160,000 in revenue in the last fiscal year, but the program’s deficit is nearly $57,000, the bar said.

"While the VLRS remains a critical bar service and program, it has been losing money," reads a commentary from the VSB’s Special Committee on Lawyer Referral.

Jack Harris joined that committee as chair in April and realized that it was "time to find out what’s going on and what you need to do to turn it around."

The panel promptly asked for an audit by the American Bar Association, according to Harris, who has led Virginia legal aid organizations and the Virginia Trial Lawyers Association.

Other states’ bar organizations funded in the same manner as Virginia, with annual fees from attorneys, were not able to generate enough income to pay for staff and "contemporary marketing," Harris said.

The bar organizations that simply raised fees for consultation and participation did not generate enough money to do "the kind of marketing you need today," Harris said.

"There is a model that works – the percentage fee model," Harris said.

"Maintaining the status quo is simply not a viable option for the VLRS, and there is no available alternative to moving to adopting a percentage fee program," the panel wrote in a commentary.

More than 90 state- and local bar-sponsored lawyer referral and information services programs have instituted percentage fee programs, according to a VSB commentary on the restructuring proposal, citing an ABA review and an ABA study. The percentage fee is now considered a "best practice" in the operation of a successful, self-funding program, the bar said.

The percentage fee "spreads costs proportionally, with greater contributions from the lawyers who received the greatest benefits from case referrals," the commentary said.

The VSB service plans to reinvest the percentage fees into its operations and marketing. The hope is to generate higher quality referrals for the participating lawyers.

Also proposed:

• Eliminating the consultation fee in contingent fee matters
• Establishing subject matter/experience requirement panels
• Creating follow up procedures with respect to referred callers and panel members
• Developing comprehensive rules and procedures for handling client complaints, and
• Developing program rules and procedures that more fully comply with an ABA model.

Access to justice

Reform of the lawyer referral system implicates access to justice issues now under examination by panels named by the VSB and by the Supreme Court of Virginia. Harris said he met with legal aid lawyers in May and came away impressed with how critical the lawyer referral program is to them.

"In many respects, the lawyer referral service is the face of the bar," Harris said. "It's really important in terms of how the bar is regarded by the community."

“Our hope is that people, even if unhappy with the step of going to a fee system, will look at it closely, give it an opportunity,” Harris said.

The bar recently launched a web-based portal allowing online payments and referrals for potential clients, making the service available 24 hours a day.

Harris praised the institutional knowledge of the bar staff.

"They know their stuff in a way that's irreplaceable," Harris said. "That's another reason it's so critical we not cut our strength," he added.

Concern about fee split

The proposed change might not be popular with lawyer participants, said Henrico County attorney K. Matthew Long. He said a 15-percent fee-sharing plan might lead lawyers like him to drop the service.

Up until now, the program has worked well for him, he said.

"My experience has been nothing but positive. I've gotten some great clients out of it," Long said.

Long is wary of a system where he would have to account to the VLRS for its 15 percent of his fee at the end of a case. Under the current system, his involvement with the bar is done after the client is referred. Many clients come in for just the one-time consultation covered by their $35 fee.

“I'd have to seriously consider whether or not I'd stay with the program,” Long said.

Comments should be submitted by July 27 to publiccomment@vsb.org.

Tagged with: VIRGINIA STATE BAR NEWS

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https://valawyersweekly.com/2018/07/05/bar-moves-to-revamp-lawyer-referral/ 10/31/2018
From: David A. McKelvey <dmckelvey@crandalllaw.com>
Sent: Wednesday, June 27, 2018 3:25 PM
To: publiccomment
Subject: VLRS Rule Changes

As a committee member, I want to endorse these rules in their entirety. They will hopefully make us self sufficient and improve the quality of services. The changes were all the result of the ABA Audit and represent best practices.

Sincerely,

D. Adam McKelvey, Esq.
Crandall & Katt
366 Elm Ave, SW
Roanoke, VA 24016
(540) 342-2000 (p)
(540)345-3527 (f)
dmckelvey@crandalllaw.com
Here is my comment on the proposed amendments. Absolutely NOT!!! These amendments favor VLRS only. I am absolutely opposed to the additional 15% of the fee charge, and the additional annual membership fee. VLRS already gets the referral fee. To that end lawyers are on the risk of liability associated with even the consult, which they are not getting paid for. Charging lawyers the 15% of the fee on top of it would do nothing more than force the attorney to charge the client more and line the pocket of the VLRS.
Dear VSB,

I have just reviewed the proposed changes to the VLRS. Specifically, I am referring to the VLRS attempting to charge a 15% referral cost on all legal fees, combined with a prohibition against charging enhanced fees to offset the VLRS charge.

I am a divorce and family law attorney in Newport News, Virginia. My cases are primarily in the "Peninsula" (Hampton/Newport News/York County) area of Virginia. In recent years, many local attorneys have suffered financially. The local area has too many attorneys, which leads to steep fee/price competition. The criminal law attorneys are pinched by the public defenders offices, which has resulted in these attorneys entering into unfamiliar areas of law, including family law (more competition). The local JAG offices and some local Court clerks are secretly practicing divorce law on an out-of-court basis (more competition). This has all occurred within a local economy that has never truly recovered from the 2009 economic recession. This has resulted in fewer clients and smaller fees per client. Today, legal fees are often insufficient to cover office overhead. Just to keep the office open, I (age 58) have had to drop all health care coverage. My personal income (office-revenue minus office-overhead) in recent years has been less than ten thousand ($10K) dollars per year. You have my permission to confer with VSB ethics counselor James McCauley to confirm the validity of my statements.

The expectation that the VLRS attorney will provide 15% of his legal fees will be a financial burden which may make it impractical to maintain the office and result a great deal of time dealing with VLRS bookkeeping. There is also the matter of enforcement. If I tell the VLRS that I completed a separation agreement (PSA) for $75 or a divorce for $220 (fee/price competition), will the VLRS believe me? Will the VLRS ask a divorce client, who can not distinguish between a legal fee and a court cost, how much did he pay me? If the client comes back for additional legal services, will the additional legal services also be subject to a 15% VLRS tax?

Respectfully, many at the VSB have lost contact with VSB members. Large firms, with a lot of contingency-fee work, may have no problem paying a 15% "tax"; however, starving-solo practitioners, who are receiving $75 for a separation agreement or $200-300 for a divorce, can not afford to reduce their incomes even further.

I urge the VSB and the VLRS to REJECT the proposal that attorneys compensate VLRS with 15% of all legal fees.

Harry H. Heyson III
Attorney at Law/VSB 27067
(757) 595-1155
Participation in the program will not be worth the added administrative burden, or keep costs down for the client.

Don Burks
Don Burks P.C.
30 Crossing Lane Suite 205
Lexington, VA 24450
Phone: 540.463.1080
Fax: 540.463.1082
Holloman, Asha

From: Edward Gross <law@gross.com>
Sent: Wednesday, June 27, 2018 4:58 PM
To: publiccomment
Subject: Comments on proposed VLRS rule and fee changes

Our law firm opposes the new VLRS rules and fee changes:

1. A 15% percentage fee is very high. It essentially means that we have to raise our overall fees, have a very thin margin for the VLRS referrals to our law firm, or we have to lose money. The Fairfax Bar Association Referral Service charges 10% but they refer many more quality cases to us. Unfortunately, the VLRS sends us few cases and only a small fraction of the referrals retain our firm. After paying our VLRS annual fees, giving our time for free consultations and then paying a 15% fee, it may not be worth continuing with the VLRS.

2. Making it a “net” percentage does not help. Our expenses are built into our fees with the exception of out-of-pocket costs, such as filing fees and court reporter costs.

3. I do not understand what is meant by: “except that the panel member shall keep the consultation fee” The initial consultation fee is not paid to us. VLRS collects a referral fee and we give the consultation for free.

4. I object to “Duty to Refer Back to VLRS; Duty to Remit Percentage Fee to VLRS. If a panel member cannot handle a matter, he/she shall refer the caller back to the VLRS.” Why should we not refer someone to an attorney that we know can handle the case? Isn’t that part of providing a competent consultation?

5. I object to: “Panel Member Duty to Notify Client of VLRS/Consent to Release Information to VLRS.” This section requires us to include a lot of troubling language into our retainer agreements and makes the attorney appear untrustworthy. A client may feel that we are not ethical if the Virginia Bar does not trust us to pay the fees required. Clients may also object to the Virginia Bar reviewing confidential details of their case. Furthermore, we try to keep our retainer agreement simple, so it does not appear to have a lot of legalese.

I hope the fees and rules will not be passed as written.

Edward Gross
Attorney at Law
Managing Partner
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To Whom It May Concern:

On review of the new rules regarding VLRS, I have concerns about the suggested fee structure/percentage fee structure. I understand more money is necessary for the program, and can agree to increase the membership fee, but 15% out of fees is significant for certain practice areas. Additionally, I have a concern that fee sharing in bankruptcy matters may be a violation of bankruptcy court rules.

For most cases my office receives from VLRS, we get bankruptcy matters and the occasional immigration matter. Bankruptcy fees are already on the low side for the amount of work necessary (usually between $1,000 to $2,000 for a case). A typical Chapter 7 petition takes at least 3-4 hours to prepare (after meeting with the client for an hour for the consultation and then meeting with the client to sign the documents for a total of 5-6 hours). Additionally, we must attend a Meeting of Creditors that is an hour. This leaves at least 6 hours of work, if the case is very basic. This does not account for commuting time getting to the hearing at or near the bankruptcy court. Additionally, we are taking call, letters, and emails from creditors to let them know the client has retained us and plans to file bankruptcy. The margins are already low on bankruptcy cases, and I would be sure many attorneys would not sign up for bankruptcy cases if you took a percentage of our meager fees away.

Additionally, in bankruptcy, all fees must be disclosed as dictated by federal rules -- including if fees were shared. Fee sharing is not permitted with non-lawyers in bankruptcy. Additionally, fees must be earned through work on the case. Referral fees for bankruptcy matters are not permitted. This would complicate the situation for any bankruptcy related cases.

If you wanted to consider the 15%, I believe it would be best used for contingency fee cases. Agreeing to give the organization money when referred a substantial case makes sense. Referral fees are common in those type of cases. Or put a minimum threshold for cases, for example, all fees over $4,000.00 must be shared.

Thank you,
Ashley

---

Ashley F. Morgan, Esq.
Ashley F. Morgan Law, PC
722 Grant St, Suite G
Herndon, VA 20170
Tel: (703) 880-4881
Fax: (571) 376-5891
Holloman, Asha

From: Andy Patzig <andy@patziglaw.com>
Sent: Wednesday, June 27, 2018 6:23 PM
To: publiccomment
Subject: Proposed | addition to the Rules of the Supreme Court of Virginia Part 6, § IV

As an attorney who participates in the VLRS, I find it insulting to the attorneys who already pay a fee to participate in the VLRS. I participate because the people calling through VLRS usually seek low cost legal representation and I am willing to provide discounted fees to them if needed. The idea that I should give VLRS a percentage of the income I receive from those referrals would mean that I no longer participate which results in at least one attorney who will no longer be offering discounted legal services to those underrepresented residents who may need the service the most.

Regards,
Andy Patzig

Law Office of W. Andrew Patzig, PLC.
2006 Old Greenbrier Rd., #7
Chesapeake, VA 23320
Phone: 757-942-5717
Fax: 757-951-1292
Whose idea was this and why is it necessary? Were there problems that made someone propose this?

Please note my objection to it.

While I have insurance and comply with the current rules, why on earth would you put even more obligations and regulations on lawyers, especially solo practice attorneys doing the best they can to practice law AND run a small business?

I already spend about half my day practicing law and the other half on books and taxes and compliance issues and other things that hurt my business.

I have not had a raise or real vacation in 6 years.

Proposed | addition to the Rules of the Supreme Court of Virginia Part 6, § IV concerning the VLRS. Comments due by July 27, 2018.

Thank you for your consideration.

Cary

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Attorney at Law
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Holloman, Asha

From: Neill Wente <neill.wente@gmail.com>
Sent: Wednesday, June 27, 2018 8:48 PM
To: publiccomment
Subject: Proposed changes to VLRS fee structure

TO: Karen A. Gould

RE: Proposed rules change to VLRS fee structure

I have been a panel member for the last 2 years. I am retained on a misdemeanor/traffic offence once every other month or so. To my knowledge, all of these clients have been completely satisfied. This is not a significant source of income for me. It is almost a public service as much as anything, IMO. I would absolutely positively quit my membership instantly if the new fee structure is implemented. Not worth the headache, and if I did get a bigger case from the service, it wouldn’t be worth paying 15% for the referral. As of now, I likely won’t renew unless I am certain this bad idea has been firmly rejected.

Sincerely,
Neill Wente
Hi,

I am a northern Virginia attorney. I think I get 3 referrals a year from VLRS. I pay at least twice the VLRS fee to the Fairfax Bar referral service, and I get closer to 20 referrals a year from them.

So, first, I'd have to ask that when you look into marketing, please be sure to look into marketing in the entire Commonwealth.

The Fairfax Bar also charges a % of the fee for the referral, 10%. Y'all are talking about charging 15%. Given the number of cases I get each year for my $95 (which apparently is subject to increase), the extra 5% might be enough to talk me out of signing up. I didn't see any discussion of raising the $35 fee. Up here, where I realize we are all used to paying a lot of money for everything, the fee is $40.

Another thing the Fairfax Bar has, which I've not seen (or perhaps overlooked, that's certainly possible) in your service, is a "low bono" panel. I have agreed to take cases for not more than $150/hr. I have several such matters. For those cases, there is no % due from the attorney, and the client pays only $20 for the referral. I would be willing to sign up for those cases through VLRS, as well.

There was also a notice to the client about a possible audit of the fee due. I hope that VLRS would provide the form, and not put that burden on the attorney to draft it.

Thank you for your attention,
Elana E. Strom  
The Law Office of Elana E. Strom, PLLC  
10511 Judicial Drive, Suite 110  
Fairfax, VA 22030  
Telephone: 571-441-2830  
Facsimile Telecopier: 571-441-2833

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Subject: Proposed VLRS Rule Changes

Dear Ms. Gould:

I believe that the proposed Rule changes, while apparently perceived as being necessary, will not be effective to improve the operation of our Service and, if implemented, will have the opposite effect.

As I am a great supporter of our Service and the concept of lawyer referral services in general, over the years I have made serious efforts to keep abreast of developments and trends influencing this area of the business side of the practice of law.

The first point I want to make is that it appears calls are down to referral services all over the country in the last couple of years. The reason for this is obvious and well-known to referral service administrators: the increasing prevalence of lawyer advertising on the internet. People seeking legal assistance are less likely to call or email a referral service when they can so easily reach out to lawyers advertising their services online. Implementing the proposed rule changes will not significantly increase the number of calls to the Service. Those numbers will continue to decline before leveling off.

One of the purported benefits of the proposed rule changes is that the quality of referrals will be improved. This assertion is not understood. What evidence is there that the quality and/or value of the problems that people call us about will somehow be enhanced because of our internal rule changes?

The most significant change, of course, would be the imposition of the percentage fee program, whereby the attorney panel members will remit a percentage of the fees they earn to the Service. While this practice has been implemented by a number of bar associations around the country, and it certainly has increased revenues, one immediate consequence (not widely publicized) has been an immediate decline in the number of attorneys willing to join or remain on the service panels.

Since the decision in Goldberg v. Virginia State Bar in the 1970’s lawyers’ fee schedules have been declared unlawful. Lawyers set their fees on an individual, or at most a law firm, basis. The new rules would mandate that the attorney not increase his or her fee for a particular matter even though a percentage of it is being lost due to institutional fees-splitting. A very ethical attorney will comply with that mandate and absorb the loss. Unfortunately, some will not and there is no way of effectively ascertaining whether a particular lawyer is guilty of that noncompliance. The ABA is claiming that 15% is a reasonable figure. It is doubtful that the majority of attorneys would agree with that assertion. I believe that to retain a healthy number of attorneys on a referral service panel, no more than 5 or 10% of the fee obtained should be remitted, and I submit that most bar association that have adopted this practice are “charging” no more than 10%.

Eliminating the consultation fee in contingent fee matters is actually a good idea, in theory. The practical problem is how do the LRS staff people determine what is a contingent fee matter? Personal injury claims certainly are, collection cases may be, but other types of civil actions are more likely to be subject to some form of hybrid arrangement between attorney and client.

Subject matter/experience requirements sub-panels don’t make sense for our Bar, in my opinion. Unlike California, and a number of other states, we do not have attorney specialization. To establish a system where only people on the sub-panel can receive referrals in a particular type of case imposes a form of back-door specialization without widespread agreement as to standards and requirements. Again, this will diminish the number of attorneys willing to participate in providing advice and assistance to members of the public, which is our overriding objective. Additionally, it is likely that the Service will be the subject of more frequent complaints, as it will be deemed to be “holding out” sub-panel members as having a degree of ability and expertise not possessed by lawyers and other panel members generally.

What are the benefits of complying with the ABA Model Rules for Operation of a Lawyer Referral Service? We would get to put the ABA logo on our VLRS.
letterhead, which means nothing to the vast majority of consumers of legal services anyway.

Finally, creating follow-up procedures with respect to referred callers and panel members will unquestionably require more staff time, which means more staff positions to be filled, with a concomitant increase in the expenses of operating the Service.

What are some steps that could be taken to increase our Service’s income without instituting all these proposed Rules? Our annual panel membership fee could be increased somewhat. Additionally, the number of areas of law for which the member “signs up” could be reduced from the present number, with an additional “sign-up” fee added for each area of law above that reduced number. Perhaps of greater effect, funds could be diverted from other presently more profitable areas of the VSB to keep our LRS functioning well, as it has, and continuing to provide this most important and valuable service to the general public.

Sincerely,

Roy Tesler (a long-time Panel Member)

Roy Tesler, Esq.
Tesler & Werblood
Attorneys At Law
113 Rowell Court
Falls Church, VA 22046
703-534-9300

I am using the Free version of SPAMfighter.
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Do you have a slow PC? Try a free scan!
As a solo practitioner, I do not like the 15% fee remittance in the new rules. I think it has the potential to present a hardship to small practices, especially solo practices where income is relatively low and there is no administrative help. As it is, we already pay an annual fee for use of this service. Out of that annual fee, I only get maybe one or two paying clients. I already forego at least a partial fee for the prepaid consultation. Even though the consultation is only a half hour, sometimes the scheduling of the consultation costs more in real time than in billable time. While I feel that, currently, the cost is worth it because I have been able to recoup the relatively low fee with the work I have gotten from it, the 15% remittance would add to that cost, both in terms of actual money paid, and in terms of time spent that I cannot charge.

In terms of actual cost, I will simply say that 15% for a solo practitioner struggling to make a profit hurts that person’s bottom line more than for a larger practice that is healthily growing.

In terms of more time spent: As a solo practitioner who cannot afford to hire an administrative professional to assist with accounting and billing, I have to do all of these things myself. Having to calculate a 15% remittance deduction from my fees and send it to the Bar would add to the time I have to spend on administrative tasks — time that could be spent in billing clients and building up my practice.

While I am just one solo practitioner who handles a handful of the cases presented to the VLRS, my guess is that I am not the only person who is in this situation. There are likely several solo practitioners attempting to use the VLRS as a tool to build up their practices and who would suffer from having to pay 15% of their profits from these cases to the VLRS. I think the VLRS risks losing the participation of small practices and solo practitioners with the addition of the 15% remittance requirement.

For these reasons, I do not think the Rules should be changed to add the 15% fee remittance requirement to the VLRS.
Holloman, Asha

From: rob Turner <vaattorneyrobbturner111@gmail.com>
Sent: Friday, June 29, 2018 11:40 AM
To: publiccomment

I am opposed to any rule that will require an attorney to ever have to remit to VLRS any money for anything particularly a percentage of any fee collected. It would be a bookkeeping nightmare for the lawyer and the service. Currently the client pays VLRS and the attorney pays to be on the list. I think the program should be better managed and overhead should be cut. If I have to collect and remit fees I may not continue to participate.

Thanks Rob Turner
From: Alanna Williams [mailto:awilliams@awilliamsfamilylaw.com]  
Sent: Thursday, June 28, 2018 8:24 AM  
To: VLRS  
Subject: RE: Comments Sought on Changes to VLRS

if the VSB is going to charge a percentage of earned fees, I recommend dropping that to 10% rather than 15%. Also, members should be notified of what those fees are going to be used for.

Very truly yours,

Alanna C. E. Williams  
Certified Fellow  
American Academy of Matrimonial Lawyers

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From: Virginia State Bar <vlrs@vsb.org>  
Sent: Wednesday, June 27, 2018 2:30 PM  
To: Alanna Williams <awilliams@awilliamsfamilylaw.com>  
Subject: Comments Sought on Changes to VLRS
Thank you for this information. I would have to decline being a member of the VLRS if these changes went into effect.

K. Matthew Long, Esq.
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The percentage fee of $15 seems high. Without the benefit of any analysis in the proposal, it intuitively seems that 15% would generate far more than the annual losses of the VLRS. I think that any percentage should be determined with regard to the shortfall. I did not see any justification for the size of the fee. Further, any such fee should be reviewed annually and adjusted annually.

Milton Babirak
Shareholder
BABIRAK CARR
47539 Coldspring Place
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Attorneys and Counselors At Law

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The same as been adopted by a number of local layers referral services in Virginia, with mixed success. The problem from a public perception, would be that the VLRS/VSB would be viewed as a money making machine. But nothing is foolproof, and it is to be expected.

However, of even greater concern is the problem of matching clients with lawyers who lack a niche in their need areas. While there are layers who will anything that come sin through the door, this does not serve them, the client or the VLRS. That needs to be addressed. Some sort of criteria has to be established. I have seen lawyers take referrals in areas of the law, that they have never handled one case. This is not productive.

The other problem is that of clients. There are some who seek what the law does not provide for. Referring them to an attorney only creates unrealistic expectations and is a perfect storm for headaches for all parties concerned.

In closing, the ABA’s recommendations are not new, and could have been obtained for free from other existing sources. But be what it may, the current situation is not tenable and a new look should be given to the program.

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Holloman, Asha

From: Matt Long <MLong@btclawva.com>
Sent: Thursday, July 05, 2018 2:11 PM
To: publiccomment
Subject: Proposed Changes to VSB Referral Service.

I have really enjoyed my experience with the VSB Referral Service. Lydia and Toni have both been a pleasure to work with, and most of the folks I meet with are pleasant and remember me even if they don’t hire me for that occasion.

With that said, I would have to seriously think about whether or not I want to continue if these changes are implemented. Like many lawyers now, I am on 100% commission, not salary. I enjoy this as I like the challenge of networking and establishing a good client base with unlimited income potential. 100% commission does not really lend itself to a 15% fee split with a third party. I don’t think the economics would work. Of course if I was on a salary I wouldn’t care, and if I owned my own law firm perhaps I could write off that as a cost of doing business, but for the thousands of lawyers on commission plans now...it will create an issue.

Thank you, and please let me know if you have any questions.

K. Matthew Long, Esq.
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How many attys participate in VLRS?
I remember when the membership stabilized at about 500. Very difficult to get members to join. We thought that the problem was lack of clients, so access to VLRS was made easier and the access fee was kept low, and the administrative chore of returning status forms was ended.

What is the estimate of additional income, how was it calculated?

Does VLRS operate at a loss? In the mid '80s, a deficit was considered the cost of providing a public service.

I get about 10 clients a year, but have no records.
I did get a worker's comp client, the settlement of her case earned a $21K fee. About 12 years ago.

Also, my recent Linda Jones case which went to the Court of Appeals and the Supreme Court, was from VLRS.

Robert L. Flax, Esquire
ROBERT L. FLAX, P.C.
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Richmond, VA 23221-3028
804-355-8425 phone
804-355-9179 fax
Email: robertflax@flaxlegal.com
Website: www.flaxlegal.com
Dear Ms. Gould:

I have a question regarding implementation of the remittance. Is remittance only for the first task undertaken for the client, or all tasks completed for the client during representation? In other words, if several documents are prepared for a client during the course of representation, is the contingent fee remittance only for the first task, or for all tasks, even if the representation will not completed for several years? What if the client agrees for only one task to be undertaken at the time of referral, but afterwards the clients consents to proceeding with other tasks during the course of representation?

In patent practice, a client may hire an attorney to conduct a patent search, may optionally file a patent application based on the results of the search, and then the attorney may represent the client before the patent office (patent prosecution) to obtain a patent for the client. This process may entail several years.

Best regards,

James E. Ruland, Esq.
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From: H. Van Smith <hvansmith@smithstrong.com>
Sent: Sunday, July 15, 2018 12:01 PM
To: publiccomment
Subject: VLRS Comment

Re: VLRS Revamp

To Whom it May Concern:

Our firm of 6 attorneys have served as attorney-members of the VLRS service as a community resource. I have turned away higher paying private consults, at times, to serve the VLRS client referral program, in the spirit of giving back.

I believe that the application fee should simply be raised, perhaps to even $195 per year, instead of the current $95. And the consult fee, in turn, raised as well, perhaps from $35 to $59.

Raising the application and consult fee to cover the $57,000 deficit is the simplest path to solvency.

The additional accounting, reporting, and burden on both the private attorney and bar would lead to unintended consequences—simply increasing the cost of service on the clients the VLRS is designed to help. It would lead still other firms, like mine, to simply walk away from the service altogether.

Please consider simply raising the application and consult fee.

In doing so, as I’ve proposed, there would be a surplus, without additional administrative hassle.

Further, rather than focus on digital marketing and ad-buys for the VLRS, simply promote good client testimonials from happy users and promote awards for good service by VLRS attorney-members that are promoted in local media outlets.

My best,

Van Smith

--

H. Van Smith
Attorney & Counselor at Law

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Greetings:

I strongly oppose any suggestion that lawyers taking referrals share any percentage of any fee earned by licensed Virginia lawyers. The opposition to this absurd proposal that appears to be a knee jerk reaction to a modest deficit is for the following reasons:

1-First, the Bar claims a $57,000 deficit exists. 15 percent of one case referral can make up that deficit. Also, the proposed fee sharing appears to violate ethical rules for sharing fees where the party did no work on the case. The Virginia State Bar should not profit from sitting back and doing no work on cases where the lawyer takes all the risk and incurs all the expense on referred cases.

2-Second, the majority of consultations involve cases where there is no viable cause of action and the referral is seeking a third or forth opinion. It is interesting that the bar is prepared to take the cream off of the top of successful cases, but not share in the expense of conducting these consultations where no monetary gain is realized.

At its core, the proposal is wildly unrealistic and smacks in the face of reality. The reality is that there is a minor deficit that can be made up through charting increased fees to participate in the program. For these reasons, the suggestion of Jack Harris should be summarily rejected as it is not only unethical, it is an attempt by the State to overreach any authority vested in it to impose this kind of tax on profits realized by lawyers with extreme overhead expenses.

Sincerely,

Geoffrey S. Burke
Holloman, Asha

From: karl.scv@mindspring.com
Sent: Wednesday, July 18, 2018 11:12 AM
To: publiccomment
Subject: Addition to the Rules of the Supreme Court of Virginia Part 6, § IV Concerning the VLRS

Dear Karen:

I strongly endorse the proposed addition to Part 6, § IV of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS). VLRS fulfills an important part of the VSB mission and serves as an essential access to legal services/access to justice resource by connecting people of all income levels with attorneys/legal information. It is essential, in this time of tightening budgets, that VLRS be self-sustaining. Asking panel members to pay 15% of fees collected to VLRS does not seem to be particularly onerous as it is consistent with the fee structure of other lawyer referral services across the country and certainly would offset much of the expense of providing this service. On the other hand, the loss of this service would be devastating to many Virginians – especially those modest means individuals who exceed legal aid and non-profit legal service organization eligibility requirements and turn to VLRS for assistance. VLRS helps to meet their need for legal information, guidance, and, in many instances, representation. Additionally, I also support other proposed changes that will protect the interests of clients/customers and increase and improve the viability and visibility of VLRS.

Thank you for your consideration.

Sincerely,

Karl A. Doss

Karl A. Doss
Deputy Director
Legal Services Corporation of Virginia
919 E. Main Street, Ste. 619
Richmond, VA 23219-2620
(804) 782-9438
(804) 648-3917 (fax)
July 23, 2018

Karen Gould, Executive Director  
Virginia State Bar  
1111 East Main Street, Suite #700  
Richmond, VA. 23219

Re: VSB Lawyer Referral Service

Dear Ms. Gould:

As a legal aid attorney in Virginia for the past 37 years, and a new member of the VSB Special Committee on Access to Legal Services, I am both bewildered and disappointed by the proposal to revise the VSB Lawyer Referral Service to require participating lawyers to pay the bar 15% of their fees for referred cases.

The referral service provides a vital service for more than one million Virginians who are above the 125% of poverty limit for free legal aid, yet cannot afford even 30 minutes of a typical attorney consultation, which easily could cost well in excess of $125-$175.

Lawyers who currently participate in lawyer referral get no compensation for the 30 minutes of consultation which they donate to the person referred to them. In fact, they must pay for the privilege of doing free work by having to spend $95 per year to be part of the service. With a disincentive such as this, it comes as no surprise that – as reported by Virginia Lawyers’ Weekly on July 9, 2018 – the VSB Lawyer Referral Service currently has only about 375 participating lawyers. This is a mere 1.1% of the 32,792 active members in good standing.

The proposal to require participating lawyers to pay the bar 15% of their fees for referred cases will further discourage attorneys and effectively end the service. It is hard to understand why the VSB’s Special Committee on Lawyer Referral would believe that charging participating attorneys more money would encourage or result in greater participation. The reverse clearly will happen.

I am sensitive to the fact that even though the referral service brought in about $160,000 in revenue, it incurred a deficit of nearly $75,000 in the last fiscal year. However, I am unaware of any requirement that the service must be self-funded, and if such a requirement exists, it ought
to be changed. Providing low-cost access to a 30 minute consultation with an attorney should not be the financial responsibility of a few hundred attorneys who pay $95 a year to work for free. Rather, it is the responsibility of the entire bar.

The $235,000 annual cost of lawyer referral could be financed by adding $10 annually to the bar dues of each active member in good standing. This would remove the current disincentive of the $95 fee from the attorney, as well as the current disincentive of the $35 fee from the client (which the proposal modifies slightly by waiving the $35 fee in contingent fee cases). Removing the cost of the service to the participants, and spreading those costs among the entire bar, would be a step in the right direction. Piling on more fees is a huge step in the wrong direction.

Thank you for your attention to these comments.

Sincerely,

Martin Wegbreit

Martin Wegbreit (Direct – 804-200-6045)
Director of Litigation
Holloman, Asha

From: mark.lscv@mindspring.com
Sent: Monday, July 23, 2018 1:06 PM
To: publiccomment
Subject: Comment on Proposed change to Rule Part 6, section IV, VLRS

I would like to voice my support for the proposed changes to Rule Part 6, section IV concerning the Virginia Lawyer Referral Service. It is clear that the VLRS is an important service for Virginians seeking legal representation and that in its current structure, cannot continue to sustain itself, financially. Here in legal aid, the VLRS is our most important referral for Virginians seeking legal assistance. We reject thousands of applicants every year due to their failure to qualify for legal aid services and refer them to VLRS. Certainly, one of the major components of the VSB’s mission is to further access to justice for all Virginians. This is accomplished in many ways, two of which are the VSB’s support of legal aid services and the lawyer referral service. The proposed changes would simply create a self-sustaining funding mechanism that follows what most states already do and is the preferred model of the ABA. We in legal aid have had the opportunity of meeting with the VLRS staff and wholeheartedly support these changes. Thank you.

Mark D. Braley, Executive Director
Legal Services Corporation of Virginia
919 E. Main St., Ste. 615
Richmond, VA 23219
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804-873-3915 (Cell)
mark.lscv@mindspring.com
www.lscv.org
I support the changes recommended by the VLRS Committee. I have been a legal aid attorney since 1987 and I have sent hundreds of people to VLRS when they do not qualify for legal aid. I have no idea what we would do without this service. We owe it to the public to maintain the financial health of this program which “provides the public with a simple mechanism for finding an attorney or other legal resources, and which matches potential legal consumers with an insured lawyer in good standing in their geographical area.”

VPLC
James W. (Jay) Speer
Executive Director
Attorney at Law
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Holloman, Asha

From: Salaam Bhatti <salaam@vplc.org>
Sent: Monday, July 23, 2018 3:52 PM
To: publiccomment
Subject: proposed rule addition to the Rules of the Supreme Court of Virginia Part 6, § IV concerning the VLRS.

I support the rule change. This has worked in a lot of bar associations throughout the country, it makes sense to implement it here as well.

Salaam Bhatti
Public Benefits Attorney
Virginia Hunger Solutions, Director

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Holloman, Asha

From: David Beidler <David@lasrv.org>
Sent: Monday, July 23, 2018 4:10 PM
To: publiccomment
Subject: Comment to Proposed Rule of the Supreme Court regarding VLRS

Dear Karen:

I am pleased to support the proposed amendment to Part 6,
Dear Karen:

I am pleased to support the proposed amendment to Part 6, Section IV of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral Service. Referrals of clients to attorneys through VLRS has been, for decades, an important resource for us at The Legal Aid Society of Roanoke Valley. There are so many people with genuine legal problems seeking our services that we cannot help because the applicant is not qualified for our services or because the legal matter is beyond our scope of expertise.

The Virginia Lawyer Referral Service is a valuable resource for Virginia citizens in need of legal help. I fully support the proposed addition to Part 6, Section IV of the Rules.

David Beidler, Esq., General Counsel  
The Legal Aid Society of Roanoke Valley  
132 Campbell Ave. SW, Suite 200  
Roanoke, VA 24011
Karen A. Gould, Executive Director  
Virginia State Bar  
c/o publiccomment@vsb.org

Re: Proposed Revisions to Part 6, §IV of the Rules of the Supreme Court of Virginia regarding the Virginia Lawyer Referral Service

Dear Karen:

I am submitting these comments on the proposed revisions to Part 6, §IV of the Rules of the Supreme Court of Virginia regarding proposed changes in the operation of the Virginia Lawyer Referral Service (VLRS), from my perspective as a legal aid attorney and executive director for several decades. The VLRS performs a valuable role across Virginia in helping Virginians, particularly those with limited means, obtain some measure of access to justice. We have routinely referred hundreds, sometimes thousands, of folks annually to VLRS when we determined that we could not provide them with legal assistance ourselves for various reasons, whether financial eligibility, type of legal problem, or conflict. If not for the VLRS, we would rarely have any other referral options available for our rejected applicants.

Accordingly, the continued viability of the VLRS is important to us, to the ability of Virginians to have fuller access to justice. The proposed revisions to the operations of the VLRS seem reasonable and appropriate, and they appear to be the only viable option in order to sustain the VLRS' operations for the long-term. For these reasons, and for those stated more fully in the proposed Rule's commentary, I support the proposed revisions.

With kindest regards, I remain

Yours truly,

John E. Whitfield  
Executive Director
Addition to the Rules of the Supreme Court of Virginia Part 6, § IV concerning the VLRS

Please accept this communication in support of the proposed addition to the Rules of The Supreme Court of Virginia Part 6, § IV concerning the VLRS. At Southwest Virginia Legal Aid, we are committed to programs that promote access to justice. Because the efforts of the VLRS have contributed to that commitment, I offer my support for the proposed addition to the Rules.

Respectfully submitted,

Joseph R. Carico
Deputy Director
SWVA Legal Aid
Dear Ms. Gould:

I strongly endorse the proposed amendments to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS) of the Virginia State Bar (VSB). VLRS fulfills an important portion of the VSB mission “to advance the availability and quality of legal services provided to the people of Virginia.” At this time, VLRS is not self-sustaining; it has not been so for several years. The proposed amendments resulted from a review and audit by the American Bar Association (ABA) and are in accordance with best practices followed around the country for successful, self-sustaining programs. The percentage fee model in which panel members remit 15% of fees collected to the VLRS would ensure that this essential service would continue to be available to all Virginians. VLRS meets the needs of many, especially those who, despite meeting legal aid income eligibility requirements, may not be able to retain a legal aid attorney due to diminishing legal aid resources. It also serves the needs of those of modest means who exceed legal aid eligibility requirements. VLRS provides legal information, guidance, and, in many instances, actual legal representation to those who might not otherwise be able to afford such services.

Thank you for your consideration.

Sincerely,

Susheela Varky

Susheela Varky
Director, Center for Family Advocacy
Staff Attorney, Domestic and Sexual Violence

Virginia Poverty Law Center
919 E. Main Street, Suite 610
Richmond, VA 23219
Most citizens and lawyers in Virginia would agree that the Virginia State Bar should provide a means to assist the general public to obtain legal services from its members. The VSB has done this for forty years through the Virginia Lawyers Referral Service. The vast majority of other state bars also provide a form of such services.

As a member of the Virginia Lawyers Referral Service Committee for three years, several issues have become apparent. The VLRS operations produced deficits for 2014-15 of $49,621.22, 2015-16 $45,861.52 and 2016-17 $54,988.92. A similar deficit is expected for 2017-18. The VSB 2018-19 budget projects a deficit of over $90,000.00. The committee’s research revealed that ours is not a unique situation, we are just late to find a remedy. Eighty percent of other state and local bar referral services charge a percentage of the fees collected by the attorney.

The VLRS Committee sought the assistance of the American Bar Association. To no surprise the ABA has a specific committee addressing management of referral services, because so many other states and localities have experienced similar deficits. The ABA sent a Peer Assessment Review team to study the VLRS operational model. The VLRS relies on funds from lawyers who want to offer their services paying $95.00 per year and clients paying $35.00 for a 30 minute consultation with the attorney. That operating model produces the deficits recited above. Raising either fee or both has to be so substantial that it is self-defeating – too much to attract the client – too much for the lawyers to pay, when they are complaining about the quality of cases they receive.

The operating model which has a proven success with 80% of state and local bar referral services is the percentage fee model. The percentage fee model assesses a straight percentage fee which collects more money from larger recoveries that are better able to pay. It is a more equitable system. Among attorneys referring cases to other attorneys, the traditional referral fee has been one-third. The proposed VLRS fee is only 15%.

Based on the experience of other state and local bar associations, including the referral service operated by the Fairfax Bar, the percentage fee model operates with a positive cash flow. The percentage fee system generates funds to advertise the referral service increasing the quality of cases. It supports an online presence where a substantial portion of the public conduct much of their business.

In short the present operating model used by the VLRS will not work and should not continue to be subsidized from VSB member dues. We must move to a percentage fee model. The amendments to the VLRS Rules are necessitated to allow the VLRS to change to the percentage fee operating model. I believe this is the only way the VSB will be able to provide a viable lawyers referral service going forward. The good news is that we will be adopting a plan that has been successful in many other states. Their experience has been that they are able to provide more lawyers with higher quality referrals and ultimately serve the public with better access to legal services.

Respectfully submitted,
Gene Elliott
Vice-chair, VLRS Committee

Eugene M. Elliott, Jr., Esquire
Professional Arts Bldg. Suite 202
30 Franklin Road
Roanoke, Virginia 24011
Telephone: (540) 981-0164
Fax: (540) 982-5660
Karen Gould  
Executive Director  
Virginia State Bar  
1111 East Main Street, Ste. 700  
Richmond, VA 23219

Re: Comments on Proposed Additions to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS)

Dear Karen:

I am writing to briefly respond to a letter submitted by CVLAS Director of Litigation Martin Wegbreit dated July 23, 2018 that opposed the proposed revisions to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS). Because Marty’s comments were submitted on CVLAS letterhead, there were concerns that some people reviewing the comments might be mistakenly believe that he was speaking for the entire legal aid community, or even his office, and that Virginia legal aid programs opposed the changes. We do not and I feel it is necessary to respond.

1. Representatives of the VLRS Committee and VSB staff, including Jack Harris, Renu Brennan, Toni Dunson, and Crista Gantz met with the legal aid project directors at our March 2018 statewide planning meeting for a discussion on how VLRS and legal aid can more effectively work together. During the VLRS presentation, we were advised about the financial challenges facing the program and the need to consider implementing a percentage fee structure to sustain it. After considerable discussion and consideration, the program directors unanimously endorsed changing the current fee structure.

2. Because legal aid programs are sending thousands of clients to lawyer referral services, with the VLRS being the only statewide program, we recognize that VLRS is a vitally important resource and partner in providing legal services to low income and modest-means Virginians. Therefore, it is critical that VLRS become self-sustaining. We further understand that bar dues will not be increased to support the program and that implementation of a fee percentage model, which has proven successful for other lawyer referral services, will allow VLRS to
continue to operate. On the other hand, if the current proposal is rejected and VLRS is eliminated, where will individuals who are financially or otherwise ineligible for the services of legal aid and other nonprofit legal service providers go for legal information, advice and assistance?

3. This week, the legal aid project directors were asked to provide feedback on the proposed changes to VLRS and once again they endorsed the proposed changes to the VLRS rules. In fact, many of them have submitted or will submit comments by e-mail expressing their personal support.

Accordingly, the legal aid project directors, including Stephen Dickinson from CVLAS, have authorized LSCV to speak on behalf of the entire Virginia legal aid system in our support for the proposed changes to the rules concerning the Virginia Lawyer Referral Service. Of course, individual legal aid lawyers are free to express their support of /opposition to the changes; however, we wanted to clarify any potential confusion about the "official" position of the state's legal aid programs.

Please contact me if you have any questions or need additional information. Thank you for your consideration.

Sincerely,

Karl A. Doss

Karl A. Doss
Deputy Director
Legal Services Corporation of Virginia

Cc: Mark D. Braley
I support the proposed revisions to Part Six, Section Four of the Rules of the Supreme Court of Virginia, concerning the Virginia Lawyer Referral and Information Service (VLRS).
Although I have concerns about skimming 15% off the top—I’m afraid this will discourage attorneys from participating, and would prefer that the participation fee be lower, like 5-10%--I’m glad that the system will receive more support.
Holloman, Asha

From: Joanna L. Suyes <jsuyes@marksandharrison.com>
Sent: Wednesday, July 25, 2018 3:13 PM
To: publiccomment
Subject: comment in favor of the restructuring of VLRS

Dear Karen:

I write to offer comments in favor of the proposed restructuring of funding of the Virginia Lawyer Referral Service. The VLRS is a valuable service to the public and the profession, and the recommended changes will strengthen the program by bringing more attorneys to it and enabling more members of the public to use it.

Currently, if a person calls my firm with a matter we don't handle, and we are unable to provide the name of a lawyer who does handle the issue they're having, we refer the person to the VLRS. That alone has value to the public and increases access to justice, one of the stated missions of the bar.

Changing the fee structure will bring both clients and attorneys to the program. Not only have states who adopted a similar funding structure experienced increased participation by both clients and lawyers, but eliminating the sign-up fees on both sides will cause more people to participate. Eliminating the $35 fee for clients will cause more clients to be able to afford to use the service, and eliminating the $95 sign-up fee will cause more lawyers to decide to use the service. I stopped paying the $95 fee because I felt like I was paying money into a hole. It's counterintuitive, I know, but I would rather pay a referral fee at the end of a good case, than $95 for a string of cases I don't take. Furthermore, lawyers who complain about having to pay referral fees back to the bar apparently have not thought it through all the way. I practice Social Security Disability law, and SSA fees are capped by statute at $6,000.00. I don't like having to pay a referral fee to another lawyer, but better that I have to pay $900 (15%) to another lawyer and pocket the remaining $5,100.00 than to get zero because I never had the case to start with.

The VLRS is a value to the client and the profession because it puts people with lawyers who can help them and it helps lawyers find clients. It will do this even better when signing up for the service becomes free. Many more clients and attorneys will join. Attorneys who don't want to pay a referral fee still have options. They can decline the case, lose the case, or continue to get cases the old-fashioned way by not joining at all.

Sometimes we refer clients to the lawyer referral service when we're not sure what they really need. The VLRS is equipped to give people advice when it turns out they really don't need a lawyer. Sentencing the VLRS to death because of failure to change the funding structure would be a sad day for the Commonwealth and its people.

Thanks for hearing my comments,

Joanna

Joanna L. Suyes | Attorney
Main: 804-282-0999 | Toll Free: 800-283-2202
Fax: 804-288-1330
www.marksandharrison.com
jsuyes@marksandharrison.com

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To Whom It May Concern:

I support proposed revisions to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS). I believe it's extremely important to have resources for middle income people who can't afford to hire attorneys, but may not qualify for legal aid.

Sincerely,

Carol S. McElhinney
511 Ridgeley Lane
Richmond, VA 23229
Dear Ms. Gould:

With the caveat noted below, I support the proposed amendments to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VRLS) of the Virginia State Bar (VSB).

VRLS fulfills an important portion of the VS B mission "to advance the availability and quality of legal services provided to the people of Virginia." At this time, VRLS is not self-sustaining; it has not been so for several years. The proposed amendments resulted from a review and audit by the American Bar Association (ABA) and are in accordance with best practices followed around the country for successful, self-sustaining programs. The percentage fee model in which panel members remit 15% of fees collected to the VRLS would ensure that this essential service would continue to be available to all Virginians. VRLS meets the needs of many, especially those who, despite meeting legal aid income eligibility requirements, may not be able to retain a legal aid attorney due to diminishing legal aid resources, other legal aid capacity issues, and conflicts. It also serves the needs of those of modest means who exceed legal aid eligibility requirements but are nonetheless unable to afford the services of a private attorney. VRLS provides legal information, guidance, and, in many instances, actual legal representation to those who might not otherwise be able to afford such services.

I note one area of concern regarding the proposed amendments, that is, Section III(8)(2)(a), which provides in pertinent part that, "The applicant must not have ever been convicted in any jurisdiction of a Crime [sic]." First, I do not believe that a definition for "crime" appears in this section or elsewhere in the Rules, and I would support adding a definition for the sake of clarity. For example, would conviction of a traffic infraction or adjudication of juvenile delinquency constitute a "crime" for purposes of this section? Second, and of much greater concern to me, is the overarching premise that an attorney would be denied membership in the VRLS program merely on the basis of a criminal conviction. An attorney practicing for twenty years is hardly an inappropriate candidate for membership in the VRLS program because he or she was convicted fifteen years ago of, for example, public intoxication, but has since then demonstrated exemplary and ethical performance in his or her practice. It makes little sense to me that we would establish a higher bar to entry to membership in the VRLS than we would establish for entry to membership in the Virginia State Bar.

If the committee retains Section III(8)(2)(a), I would suggest amending Section III(E), which currently provides for an appeal for those attorneys denied membership based on a de minimis dismissal or dismissal for exceptional circumstances. I would recommend that Section III(E) be expanded to allow for an appeal when membership is denied for any reason, not just the two reasons delineated above.

Thank you for your consideration of my comments.

Sincerely,

Janice Craft

Janice L. Craft, Esq.
(pronouns: she/her)
Virginia Sexual and Domestic Violence Action Alliance
Project for the Empowerment of Survivors
This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.
I support proposed revisions to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS).

Christie Marra
Director, The ACES Justice Project of the Virginia Legal Aid Community
Advocating for fair Credit, Employment opportunities, and safe, affordable Shelter
Virginia Poverty Law Center, Inc.
919 East Main Street, Suite 610
Richmond, VA 23219
(804) 615-8150 (cell)
Holloman, Asha

From: Davis Creef <davis@vplc.org>
Sent: Thursday, July 26, 2018 1:37 PM
To: publiccomment
Subject: Public comment re: Virginia Lawyer Referral Service

Dear Ms. Gould:

I strongly endorse the proposed amendments to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VRLS) of the Virginia State Bar (VSB). VRLS fulfills an important portion of the VSB mission “to advance the availability and quality of legal services provided to the people of Virginia.” At this time, VRLS is not self-sustaining; it has not been so for several years. The proposed amendments resulted from a review and audit by the American Bar Association (ABA) and are in accordance with best practices followed around the country for successful, self-sustaining programs. The percentage fee model in which panel members remit 15% of fees collected to the VRLS would ensure that this essential service would continue to be available to all Virginians. VRLS meets the needs of many, especially those who, despite meeting legal aid income eligibility requirements, may not be able to retain a legal aid attorney due to diminishing legal aid resources. It also serves the needs of those of modest means who exceed legal aid eligibility requirements. In my work, I make regular referrals to the Service to those who do not qualify for legal aid but still struggle financially. Further, many of the people I refer are seeking assistance in areas that are not covered by their local legal aid office.

Thank you for your time.

Take care,

Davis Creef
Staff Attorney

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Holloman, Asha

From: Ann Voss <ann@vplc.org>
Sent: Thursday, July 26, 2018 2:18 PM
To: publiccomment
Subject: SUPPORT of amendments to Part 6, Section 4 of the Rules of the Supreme Court of VA re: VLRS

I support proposed revisions to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS).

VLRS fulfills an important part of the VSB mission and serves as an essential access to legal services/access to justice resource by connecting people of all income levels with attorneys/legal information. In fact, many people who are otherwise ineligible for representation/services by legal aid and other nonprofit legal service organizations are directed to VLRS for assistance. The loss of this service could be devastating to these individuals.

Ann Voss
Office Manager

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Find us on Facebook and Twitter
Re. the proposed changes to VLRS:
I am not a present panel member but have been in the past. I often considered the consultations a public service since only a certain few led to paying clients (although some did). I disagree with the part of the proposal which requires percentage of fees earned. I believe it will be difficult to monitor and enforce, and a barrier to attorney participation. I suggest a higher consultation fee and a higher attorney enrollment fee. I also respectfully submit that if the program operates at a loss it be considered a public service subsidized by the Bar dues.
Thank you for considering my input.
Lois N. Manes
I support proposed revisions to Part Six, Section Four of the Rules of the Supreme Court of Virginia concerning the Virginia Lawyer Referral and Information Service (VLRS). VLRS provides an essential service to Virginians seeking legal assistance. The proposal presents a very reasonable strategy to sustain it.

Jill

Jill A. Hanken
Health Attorney

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www.vplc.org
www.valegalaid.org: Virginia's site for free legal information for low-income people.
Find us on Facebook: https://www.facebook.com/VaPovLawCtr and on Twitter: @VPLC
I have been a participant in the VLRS service for a great number of years. I received several referrals over that time. Some were good, some were not.

In recent years, I have limited my practice primarily to tax controversy, so the number of referrals has gone down. But, I still get an occasional referral with the most recent one earlier this month. Overall, my experience has been good.

I have also told people to call the service when they contact me with a problem outside my practice area and I do not know someone personally to whom I can refer them.

If a percentage fee model needs to be implemented to keep the service alive, then I am in favor of it.

However, I do have some comments on and questions about the proposed rule changes.

Section III A 2 — Malpractice Insurance — the sentence stating: “Prior to the expiration date of the insurance policy, the panel member shall notify the VLRS of the renewal of the professional liability coverage, accompanied by a copy of the declarations page of the renewal policy or other evidence satisfactory to the VLRS that such coverage has been renewed.” [emphasis added]

Comment: It has been my experience that getting a declaration page for the new policy prior to the end date of the old policy is frequently a problem. So, some grace period could be added. In addition, some guidance on the type of other satisfactory evidence would be helpful, although not likely to be an actual part of the rules.

Section V — Fees
Part A. Consultation Fee: — “Consultation fee shall waived for all contingent fee matters.” – Who decides what is a contingent Fee matter? There will have to be a list of such matters so the person at VLRS making the referral would know whether or not to charge a fee to the client.

Part c. Percentage Fee. How was the percentage determined? How does this compare with percentages from other referral services? I am a member of the Fairfax Bar Lawyer Referral Service, and that fee is 10%.

Part C. Percentage Fee. — “...except the panel member shall keep the consultation fee, if any.” —So, this means the panel member is permitted to charge (and keep) a fee for the initial consultation so long as that fee is “discounted” to give the client 30 minutes under the VLRS rules?

Section VII C — Areas of Competency — Comment only — Over the many years I have participated in the panel, I have had three or four occasions when the person was referred to me based on what he told the screener. But when I questioned the person further, the real issue was not in my practice area. How are those cases to be handled? I referred them back to VLRS with some specific guidance on how to re-state their problem. Would this be counted as rejecting a referral for reason other than conflict of interest? (See Section D.)
The commentary also says, "The percentage fee model also improves the quality of referrals." What does this mean and how is this "benefit" correlated to the fee?

Elden Sodowsky
Sodowsky Law Firm, PC
12500 Fair Lakes Cir Ste 100
Fairfax, VA 22033
703.968.8000
July 27, 2018

Karen Gould, Executive Director
Virginia State Bar
1111 East Main Street
Richmond, VA 23219

Re: Proposed changes to Virginia Lawyer Referral Service

Ms. Gould:

Please accept this letter as my support of the proposed changes to the Virginia Lawyer Referral Service (VLRS) adding Paragraph 23 to Part 6, §IV of the Rules of the Supreme Court of Virginia.

As the Executive Director of Central Virginia Legal Aid Society, I know firsthand that legal aid only has a small part of the capacity needed to serve low income Virginians. We at CVLAS refer ineligible applicants daily to the VLRS. It is one of the only options remaining to people who do not qualify for legal services and who cannot afford an attorney.

My understanding is that the VLRS will cease to exist without a new source of revenue. It is also my understanding that more than 80% of state and local lawyer referral services in the country have now moved to a percentage fee funding model. That is because the old model of a consultation fee and panel member fee does not produce sufficient revenue to allow services to market effectively in today's social media and internet based market.

While I personally believe that it would be best if the VLRS should be free to the clients who use it and the attorneys that volunteer their time for it, I accept that this is not practical. Absent some outside source of funding, the VLRS must fund itself and the proposed changes seem to be the only way to do this.

If the proposal is approved by Bar Council and the Virginia Supreme Court, I believe, the VLRS will have the funds to market competitively, the number of calls it receives will increase, the number of referrals it makes to panel members will increase, the numbers of panel members will increase, and most importantly, the number of clients whose legal needs are met will increase.
Virginia State Bar
July 27, 2018
Page 2.

This model has been proven across the country, including right here in Virginia with the Fairfax Bar Legal Referral Service.

I strongly encourage bar council to support these proposals. Please do not hesitate to contact me regarding this letter.

Thank you very much,

Stephen Dickinson
Executive Director
Please include this comment with the other comments we have received. Mr. Bequai also submitted a comment within the time period.

Thanks,
Renu

From: attyabeg@aol.com <attyabeg@aol.com>
Sent: Tuesday, August 21, 2018 7:55 AM
To: Brennan, Renu <brennan@vsb.org>
Cc: attyabeg@aol.com
Subject: VSB/LRS Fee Splitting Proposal

Having chaired the Fairfax County Bar Association’s LRS in the past, and having been involved with the VSB/LRS for a number of years, the above is not a luxury; rather, a necessity if the VSB/LRS is to survive. Opposition to it comes from mixed sources. Some view it as a competitor; others on philosophic grounds, and so on. However, the VSB/LRS is the face of the VSB for many Virginians. Without it, the VSB is an unknown quantity. There only when they file a Bar Complaint.

In closing, if we do not adopt with the times, the VSB/LRS will be no more. The membership simply can’t afford to subsidize it, because a handful of individuals are reluctant to adapt to the 21st century. Change is unpleasant for us all, but in this case it is a necessity. I strongly urge that we embark on change. We have no other options. Thank you.

August Bequai, Esq.
1800 Old Meadow Road, Suite 115
McLean, VA 22102-1809
Tel.: (703) 893-4806
The Virginia State Bar

Professional Guidelines

Proposed addition to the Rules of the Supreme Court of Virginia Part 6, § IV concerning the VLRS. Pending consideration by Bar Council at its October 26, 2018 meeting.

The Virginia State Bar’s Special Committee on Lawyer Referral (“Committee”) seeks a proposed addition to Part 6, §IV of the Rules of the Supreme Court of Virginia. The changes would add a Paragraph 23 concerning the Virginia Lawyer Referral Service (VLRS). At its August 9, 2018 meeting, the Committee considered the comments received and voted to release this rule to Council for consideration at its meeting on October 26, 2018.

In 2017, the Committee requested an American Bar Association (ABA) review and audit of the VLRS and its operating model, with a goal of improving the service and making it sustainable. The proposed rule seeks to implement recommendations from the ABA report.

Read further commentary about the proposed rule here (pdf)

The rule proposes to codify existing VLRS rules of service, add to them, and change the fee structure of the VLRS to a “percentage fee” program.

See the proposed rule here (pdf)

The proposed rule may also be inspected at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

Updated: August 24, 2018

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http://www.vsb.org/pro-guidelines/index.php/rule_changes/item/rule_addition_VLRS
On life support

Bar leaders: fee percentage is only hope for lawyer referral

By: Peter Vieth August 20, 2018

Despite opposition from about a dozen participating lawyers, leaders of the oversight panel for the Virginia Lawyer Referral Service say they plan to move ahead with a proposal to charge a percentage of lawyers’ fees on referred cases.

Some lawyers seem likely to drop out of the program, but Virginia State Bar leaders say the change is essential to reviving the struggling service that matches potential clients with lawyers looking for new cases.

The proposal to charge 15 percent of a lawyer’s fee for cases referred through the Lawyer Referral program is headed for consideration by the VSB Council and then to the Supreme Court of Virginia, which has the final say.

Committee approves

Despite sharply worded criticism from some attorneys, Jack L. Harris, chair of the VSB Special Committee on Lawyer Referral, said the panel plans to press ahead.

"We ... are confident that what we propose is a very mainstream and proven program design that will provide the resources essential to reaching the many Virginians who need these services," Harris said Aug. 13, after a VLRS committee meeting.

The change "will significantly increase our callers, which will lead to more referrals to our lawyer panel members, then to an increase in the number of panel members, and ultimately to better service for the public," he said in an email.

Of 39 responses to a VSB request for comments, only about 12 directly opposed the fee percentage proposal. Nineteen endorsed the committee's revamped program and another eight expressed various concerns. One lawyer expressing concerns had earlier registered unqualified opposition.

Deal breaker

Some lawyers used forceful language. "Absolutely NOT!!" wrote J. Terry Osborne of King William. "Charging lawyers ... 15% of the fee on top of [the membership fee] would do nothing more than force the attorney to charge the client and line the pocket of the VLRS," Osborne wrote.

"I would absolutely positively quit my membership instantly," said Neil Wente of Lexington.

"It would lead ... firms, like mine, to simply walk away from the service altogether," wrote H. Van Smith of Richmond.

Some lawyers said finances were already tight for small-office practitioners.

"Starving" solo practitioners, "receiving $75 for a separation agreement or $200-300 for a divorce, cannot afford to reduce their incomes even further," wrote Harry H. Heyson III of Newport News.

Herndon's Ashley F. Morgan said a 15-percent referral fee could poison the water for bankruptcy referrals: "The margins are already low on bankruptcy cases, and I would be sure many attorneys would not sign up for bankruptcy cases if you took a percentage of our meager fees away."

But committee vice-chair Eugene M. Elliott Jr. of Roanoke urged a broader perspective. He said he counted only 14 letters of opposition.
"It seemed to me a very minimal negative reaction," Elliott said. Harris noted there are about 32,000 practicing lawyers in Virginia. About 400 participate in the VLRS.

**Percentage debated**

Some lawyers questioned the 15-percent number.

"I do not see any justification for the size of the fee," said Milton E. Babirack of Sterling. Fairfax lawyer Alanna Williams recommended dropping the proposed percentage to 10 rather than 15 percent. But Harris stood by the 15-percent assessment.

"I think the 15-percent number is very important. I think lawyer referral as it exists now is in a sense on life support," Harris said, explaining the program is not attracting the number of calls it could with proper marketing.

"Because we're not getting the calls, we're referring less to the panel members. Now, there are fewer panel members. To us, it's been made clear by the ABA and by others that 15 percent is the number that works," Harris said.

Harris referred to an American Bar Association study requested by the VSB. The primary goal is higher quality referrals, the ABA report said. Declining revenue means the VSB cannot do extensive marketing.

A separate national ABA study reported more than 90 state and local bar-sponsored referral programs have instituted percentage fee requirements. It is now considered a "best practice" for a self-sustaining program, the ABA said.

"When you look at the responses, only six people suggested it be adjusted, either downward or periodically," Elliott said.

"We can't go halfway. We've got to go in a way we expect to succeed," Harris added.

**Legal aid support**

Most of the comments endorsing the lawyer referral changes came from lawyers associated with legal aid offices around Virginia.

"Here in legal aid, the VLRS is our most important referral for Virginians seeking legal assistance," said Mark D. Braley, executive director of the Legal Services Corp. of Virginia. "We reject thousands of applicants every year due to their failure to qualify for legal aid services and refer them to VLRS," he said.

Executive Director Jay Speer of the Virginia Poverty Law Center said he has sent hundreds of people to VLRS when they did not qualify for legal aid.

"I have no idea what we would do without this service," Speer said.

"Lawyer referral is a linchpin to access-to-justice here in Virginia," Harris said. "We heard from the legal aid community that this is a critical service for them and their clients. We plan to do what it takes to keep the program alive and strengthen it," Harris said.

**Swallow hard**

Harris expects the fee proposal to make it to the high court for consideration.

"I believe the leadership of the bar will embrace it, swallow hard, and adopt it," Harris said. "If we don’t, I don’t know how lawyer referral is going to operate. It's clearly sliding downhill as it is," Harris said.

Elliott pointed to rising VLRS deficits, now covered by bar dues. For the past four years, deficits have ranged from about $46,000 to nearly $55,000. With advertising plans, the current VSB budget projects a deficit of more than $90,000.

Research showed Virginia is not in a unique situation. "[W]e are just late to find a remedy," Elliott wrote in his message of support. The present model "should not continue to be subsidized from VSB member dues." Elliott added. "We just can't keep going in this direction, particularly when there's a demonstrable alternative."
He said 80 percent of lawyer referral services across the country operate on a percentage fee basis.

As for those lawyers who say they will have to quit the program if the percentage fee requirement is implemented, the ABA says they may come back.

"[E]xperience has shown that many of these same attorneys return to active ... membership when they realize the business they have lost," the ABA report said. Typically, lawyers who stick with the service enjoy a boost in referrals because of the drop-outs, the ABA said.

Harris said the proposal for a revamped lawyer referral service is likely to go before the VSB executive committee in September and to the Bar Council in October.

In the meantime, the VLRS program could become more user-friendly.

Harris said the committee decided to establish a subcommittee to recommend software to promote clarity and ease of use for panel members from case referral through closure and reporting.

"That software is out there and the committee and staff intend to make panel service as transparent and easy to use as possible," Harris said.

Tagged with: LAWYER REFERRALS VIRGINIA STATE BAR NEWS

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https://valawyersweekly.com/2018/08/20/on-life-support/
Brennan, Renu

From: attyabeq@aol.com
Sent: Thursday, October 18, 2018 8:06 PM
To: Gould, Karen
Cc: attyabeq@aol.com; Brennan, Renu
Subject: Proposal to Amend Rules of the Sup. Ct. Va Part 6, Sect.IV Re VLRS ("Proposal")

Dear Ms. Gould,

While I had previously written in support of the above, I have since reviewed the many comments from members of the VSB regarding the same, and now, more than ever, I am convinced that the proposal should be adopted. In support I note as follows:

1. The many arguments in opposition to the Proposal, while valid, are borne out of frustration with a diminishing and changing legal market, and have no nexus to the VLRS or the Proposal. The latter cannot be faulted because the law schools-(traditional cash cows for universities)-have been pumping out lawyers, like widgets, into the marketplace. Neither is the latter to be faulted because clients are increasingly turning to ADR and sectors of Virginia have yet to bounce back from the economic debacles of 2007-8. My heart goes out to them; especially to the younger generation of lawyers who are saddled with gargantuan student loans, but their ire is ill placed.

2. I am well aware of the workings of the Fairfax Bar Association’s LRS, and I its Committee years. But comparing the VLRS to it, is not fair. The former serves the third wealthiest county in the United States; while the latter serves the entire state of Virginia; which caters to the needs of more than 600,000 disabled Virginians and many thousands more who live below the poverty line. This is not, however, to negate the important role that it and the other local LRSs serve in Virginia., but merely to note that comparing the VLRS to them in efficiency, quality of client referrals, etc., is not appropriate.

3. I have been involved with the VLRS for many years, and have served on its Committee. I am well aware of its pluses and minuses; of the efforts of those that run it, and the important access to gives to many from the poorer areas of Virginia; the disabled and rural Virginians who have no contact or access to local legal services. It is also the face of the VSB for millions of Virginians. These do not read the VSB publications nor partake in VSB debates, and only a handful understand the workings of the VSB and its components. It is also a governmental agency; with a mandate to serve the millions of Virginians that have little or no contact with the legal profession.

In closing, the VRLS is the VSB's public face for Virginians of all ages, classes, races and more. It serves them all equally. While it is not Mother Theresa, yet it does help the VSB carry out its mandate to the citizenry of the state. The attacks geared at the Proposal are borne more out of fear and serious concern with the declining status and role of the profession; than having any concrete nexus to the Proposal. The Proposal would, in fact, invigorate the VLRS; helping it serve both the public and the profession better. For these and other related reasons, I strongly urge that the Proposal be enacted. Thank you.

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Virginia
Formal and Informal Opinions

Virginia Legal Ethics Opinion 1751
Referral Service Operated Through Local Bar and Receiving a Percentage of Attorney's Fee Rather Than a Flat Fee

You have presented a hypothetical situation in which a local bar association operates a lawyer referral service. Both organizations are nonprofit. Lawyers who participate in the program pay a set fee once a year. Individuals referred to any attorney by the service pay a one-time fee which is used for expenses of the service. Recently, the referral service has operated with a deficit. Therefore, the local bar association has been re-evaluating the operation of the referral service. It is considering a "percentage fee" structure that would require participating attorneys to pay the service a specified percentage from funds collected from individuals referred to the participating attorney by the referral service.

Under the facts you have presented, you have asked the committee to opine as to whether the percentage fee system described is permissible in Virginia for a nonprofit organization. If such a system is permissible, you have asked the committee to address whether:

1. there are certain types of cases to which this structure should not be applied;

2. it is permissible to collect a percentage when the fee is a) contingent; b) flat; or c) hourly; and

3. there should be a maximum percentage or maximum dollar amount that can be collected.

The appropriate and controlling rules relative to your inquiry are:

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, partner, or associate 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 undertakes to complete unfinished legal business of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer that portion of the total compensation that fairly represents the services rendered by the deceased, disabled or disappeared lawyer; and

(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.

RULE 7.3 Direct Contact With Prospective Clients And Recommendation Of Professional Employment

(d) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that the lawyer may pay for public communications permitted by Rule 7.1 and the usual and reasonable fees or dues charged by a lawyer referral service and any qualified legal services plan or contract of legal services insurance as authorized by law, provided that such communications of the service or plan are in accordance with the standards of this Rule or Rule 7.1, as appropriate.

The central issue raised by your inquiry is whether a lawyer referral service run by a local bar association can charge participating attorneys a percentage of the funds collected by the attorneys from their clients. Analysis of this issue involves the interplay between two competing concerns addressed in Virginia's Rules
of Professional Conduct: increasing the availability of legal services versus preserving the independence of legal judgement.

The first of these concerns, that of fostering the access of the public to legal services, is reflected in Comment 7 to Rule 7.3, which states:

The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

A provision in the rules reflecting the spirit of that comment is Rule 7.3 (d). While creating a general prohibition against attorneys paying others for solicitation of clients, that provision specifically carves out an exception for "the usual and reasonable fees or dues charged by a lawyer referral service." In interpreting Rule 7.3's identical predecessor (former Disciplinary Rule 2-103), this committee has repeatedly confirmed the propriety of a lawyer referral service charging the participating attorneys a fee for receiving the referrals. See, LEOs 407, 738, 1348.

Competing with this principle is a second concern found in Virginia's Rules of Professional Conduct: preserving the independence of an attorney's judgment. A pertinent provision aimed at that preservation is Rule 5.4(a), which prohibits an attorney from sharing his fee with a nonlawyer, except in three enumerated instances that do not apply in the referral service context. Comment One to that rule states explicitly that the purpose of this prohibition is to "protect the lawyer's professional independence of judgment." In line with that purpose, this committee has previously prohibited fee-splitting with nonattorneys in a number of contexts. See, e.g., LEOs 1329 (prohibiting an attorney from sharing portion of fee with a title agency for document preparation), 1438 (prohibiting a firm from sharing firm profits with an advertising agency.)

The question becomes: which of these two important principles should determine the outcome of the analysis of the central issue in this inquiry; that is, should the payment by attorneys of a percentage of their legal fees to the legal referral service be viewed under Rule 7.3 (d) as a "usual and reasonable fee" of a legal referral service or as an impermissible fee-split with a nonattorney under Rule 5.4(a)? A number of other states and the ABA have considered this issue. The ABA and most of those states have concluded that a percentage fee is permissible as the usual fee of a legal referral service. See, e.g., ABA Formal Ethics Op. (1956), ABA Informal Ethics Op. 1076 (1968), Kentucky Ethics Op. E-288 (1984), Ohio Ethics Op. 92-1, Arkansas Bar Op. 95-01, Alabama Ethics Op. 95-08; but see, Illinois Ethics Op. 506 (1975). Review of that body of opinions indicates a strong support by the various bars for increasing public access to legal services. While a lawyer referral service may indeed benefit the participating attorneys as a source of potential clients, the service also provides a simple means for members of the public unfamiliar with particular attorneys to identify legal counsel suited to their needs. One court reviewing the above-described tension between support for legal referral services and preserving the independence of legal judgment noted that, "[a] bar association [operating a referral service] seeks not individual profit but the fulfillment of public and professional objectives. It has legitimate, nonprofit interest in making legal services more readily available to the public." Emmons, Williams, Mires, and Lech v. State Bar of California, 6 Cal. App. 3d. 555, 574 (1970).

The Emmons court, in ruling that a percentage fee would be permissible in this context, highlighted that with a local bar association's referral service, there is "no risk of collision with the objectives of the [prohibition against] fee-splitting and lay interposition." id.

This committee finds the Emmons' court's distinction between fee-splitting with a nonattorney as opposed to the fee charged by a nonprofit referral service to be a sound one. The concern in Comment One to Rule 5.4 (a) is not triggered by the referral service in this inquiry; nothing about a lawyer referral program of the local bar association suggests that the participating attorney's independent judgment would be in jeopardy. Accordingly, this committee opines that the appropriate provision in the rules to apply to this lawyer referral service is Rule 7.3 rather than Rule 5.4. The language of Rule 7.3 does not prescribe the character of a
referral service's fee beyond that it be "usual and reasonable." The committee sees no detail in the service outlined in this inquiry that would violate that standard. Therefore, the committee finds that the lawyer referral program of the local bar association may properly impose a percentage fee upon the participating attorneys.

Your inquiry also asks whether the use of a percentage fee would be inappropriate in particular kinds of cases, based on types of case or types of attorney/client fee arrangement. Resolution of that question should be based on the standard set by Rule 7.3 that the referral service's fee be "usual and reasonable." Without more detail, it is hard for this committee to make the factual determination entailed in applying that standard. However, this committee does opine that for any such fee to meet that standard, the attorneys must not pass on the service's fee to the clients as an addition to their usual fee in a sum that would exceed a reasonable fee charged to any client as such a practice would violate Rule 1.5(a)'s general requirement that all legal fees be reasonable.

Your inquiry also asks whether there are any other parameters, such as a maximum permissible percentage, that may be charged. As for a maximum percentage, Rule 7.3 provides no such bright line limit; the reasonableness of the fee charged would have to be determined on a totality of circumstances not available to this committee. The committee does note that a fee structure that covers no more than the expenses of administration of the service would likely be within the "reasonable" standard. As for other parameters, the committee declines to address parameters not specifically described in the inquiry.

To the limited extent that this opinion conflicts with LEO 1348, that opinion is, in pertinent part, superseded.

Committee Opinion
May 7, 2001
VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 20th day of April 2018.

On March 2, 2018 came the Virginia State Bar, by Doris Henderson Causey, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, pursuant to the Rules for Integration of the Virginia State Bar, Part Six, Section IV, ¶ 10-4, and filed a Petition requesting consideration of Legal Ethics Opinion No. 1750.

Whereas it appears to the Court that the Virginia State Bar has complied with the procedural due process and notice requirements of the aforementioned Rule designed to ensure adequate review and protection of the public interest, upon due consideration of all material submitted to the Court, it is ordered that Legal Ethics Opinion No. 1750 be approved as follows, effective immediately:

LEGAL ETHICS OPINION 1750. LAWYER ADVERTISING AND SOLICITATION.

The Standing Committee on Lawyer Advertising and Solicitation reviewed all of its previous opinions, and issued a compendium opinion March 20, 2001, summarizing many of the existing advertising opinions and incorporating previously issued legal ethics opinions on the subject of lawyer advertising. The Committee updated this opinion in 2005 and 2008 to reflect rule amendments and lawyer advertising amendments that had been adopted since 2001. The Standing Committee on Legal Ethics is now further updating the opinion to incorporate the significant rule changes effective July 1, 2017.

Some of the issues addressed in this opinion include: use of actors; use of the phrase “no recovery, no fee;” laudatory statements by third parties; use of specific or cumulative case results; participation in a lawyer referral service; communications involving listing of inclusion in publications such as The Best Lawyers in America; and the use of the terms “Specialist” or “Specializing In.” The prohibition in Rule 7.1 concerning advertising which is false or misleading applies to all public communications and includes communications over the internet.

In order to provide all members of the Bar with better access to the advertising opinions, this compendium opinion, issued by the Standing Committee on Lawyer Advertising and Solicitation, will be published as a Legal Ethics Opinion. See Rules of the Supreme Court of
Virginia, Part 6, Section IV, Paragraph 10; Virginia State Bar Bylaws, Article VII, Section 5.

**Opinion**

The appropriate and controlling rules of professional conduct relevant to the questions raised are Rules 7.1 and 7.3(d):

**RULE 7.1 Communications Concerning A Lawyer's Services.**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

**RULE 7.3 Solicitation of Clients.**

* * *

(d) A lawyer shall not compensate, give, or promise anything of value to a person who is not an employee or lawyer in the same law firm for recommending the lawyer's services except that a lawyer may:

* * *

(2) pay the usual charges of a legal service plan or not-for-profit qualified lawyer referral service.

**A. Use of Actors in Lawyer Advertising.**

The Committee considered the issue of whether a television advertisement is misleading when an attorney or law firm uses an actor to portray an attorney associated with the law firm without disclosing that fact in the advertisement.

The Committee is of the opinion that failing to disclose that the actor is not truly an employee or member of the law firm, when the language used implies otherwise, is misleading. For example, some advertisements feature actors who use first person references to themselves as
lawyers or as members of the law firm being advertised. When the advertisement implies that an actor is actually a lawyer or client of the law firm, a disclosure that the actor is not associated with the firm, or that the depiction is a dramatization, is necessary to prevent the advertisement from being misleading.¹ See also LAO-0101.

B. Use of “No Recovery, No Fee.”

The Committee considered whether the language “no recovery, no fee” or language of similar import contained in advertising or other public communication soliciting claims for cases in which contingent fees are permissible was false or misleading pursuant to Rule 7.1, under circumstances in which the advertising or public communication did not also include an explanation that the client was obligated to pay litigation expenses and court costs, regardless of whether any recovery was obtained.

The Committee determined that use of the explicit phrase “no recovery, no fee” in the solicitation of contingent fee cases is misleading when there is no additional explanation that litigation expenses and court costs would be payable regardless of outcome because the public generally may not distinguish the differences between the terms “fee” and “costs.” See Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 652-3 (1985) (finding that “[t]he State’s position that it is deceptive to employ advertising that refers to contingent-fee arrangements without mentioning the client’s liability for costs is reasonable enough to support a requirement that information regarding the client’s liability for costs be disclosed”). The statement “no recovery, no fee” is misleading in light of the fact that a client is or may be liable for costs even if there is no recovery. See Rule 1.8(e). The statement is improper unless a suitable disclaimer is added.

Also, the Committee considered the propriety of such phrases as “we guarantee to win, or you don’t pay,” “we are paid only if you collect,” “no charge unless we win,” or other language not making explicit reference to a legal “fee.” Language of this type that does not make explicit reference to a “fee” is false and misleading in violation of Rule 7.1 since the language includes the implication that the client will not be required to pay either expenses or attorney’s fees if there

¹There may also be legal requirements to disclose compensation given in exchange for endorsements or testimonials in advertising. These requirements are beyond the purview of the Committee. See, e.g., Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR Part 255.
is no recovery, but does not disclose the circumstances in which the client will be obligated to
reimburse the attorney for any litigation expenses and court costs advanced, regardless of
outcome. See also Rule 1.8(e). See also LAO-0102.

C. Firm Names and Offices.

The question arises whether and under what circumstances attorneys may
advertise using a corporate, trade, or fictitious name which is not the name or names
of the firm, the attorney, or the attorneys in the firm. Comments 5 and 6 to Rule 7.1
allow a firm to use a trade or fictitious name as long as it is not misleading. For
example, a firm may use the name or names of lawyers associated with the firm or a
predecessor of the firm, or the name of a member of the firm who is deceased or
retired from the practice of law. It is misleading to use the name of a lawyer not
associated with the firm or a predecessor of the firm, or the name of a nonlawyer.
The firm name also may only state or imply a partnership between lawyers when that
is the fact. A firm may not call itself “Smith and Jones” unless Smith and Jones are
actually associated as partners in the firm.

It is also misleading under Rule 7.1 for an attorney or attorneys to advertise
using a corporate, trade or fictitious name unless the attorney or attorneys actually
practice under such name. Use of a name which is not the name used in the practice
is misleading as to the identity, responsibility, and status of those using such name.
The usage of a corporate, trade, or fictitious name should include, among other
things, displaying such name on the letterhead, business cards, and office sign.
Furthermore, the usage of such name shall comply with applicable laws, including
Sections 13.1-542 et seq. or Sections 59.1-69 et seq. of the Code of Virginia.

It is also potentially misleading under Rule 7.1 for a lawyer to advertise the
use of a non-exclusive office space, including an executive office rental, if that is not
actually an office where the lawyer provides legal services. See LEO 1872, which
cautions that:

[A] lawyer may not list alternative or rented office spaces in public
communications for the purpose of misleading prospective clients into
believing that the lawyer has a more geographically diverse practice and/or more firm resources than is actually the case.

D. Advising That an Attorney Must Be Consulted.

The question arises whether it is permissible for an advertisement to state that an individual injured in an automobile accident must consult an attorney before speaking to any representative of an insurance company. While it may make good sense for an individual involved in an accident with an injury to consult with an attorney before speaking with a representative from an insurance company, there is no legal requirement for this. Since the proposed advertisement makes an explicitly false statement, to wit, that an individual “will have to consult an attorney,” the proposed advertisement would be in violation of Rule 7.1. See also LAO-0104.

E. Participation in Lawyer Referral Services.

Attorneys may advertise participation in lawyer referral services and joint marketing arrangements so long as the advertising is not false or misleading. See Rule 7.1. Lawyers may pay the “usual charges” of a legal service plan or not-for-profit lawyer referral service. See Rule 7.3(d) and LEO 1751. The Committee is concerned that some advertising concerning lawyer referral services and joint marketing arrangements are misleading. As noted in LEO 910, statements which violate the Rules of Professional Conduct and which are used in advertisements by lawyer referral services would create automatic rules violations by the participating attorneys. The following practices of lawyer referral services are misleading:

1. Implying in advertising that a lawyer is selected for participation in a Lawyer Referral Service based on quality of services or some other process of independent endorsement when in fact no bona fide quality judgment has been objectively made;
2. Stating or implying that the Lawyer Referral Service contains all of the lawyers or law firms eligible to participate in the Service by the objective criteria of the Service when in fact the Service is closed to some lawyers or law firms who meet the objective criteria;
3. Stating or implying that there are a substantial number of attorneys or firms participating in the Service when in fact all calls in a geographic area will be directed to one or two attorneys or firms;
4. Using the name of a Lawyer Referral Service or joint marketing arrangement in a way
which misleads the public as to the true identity of the advertiser; or

5. Advertising participation in a Lawyer Referral Service which is not a true, qualifying Lawyer Referral Service as defined in this opinion, based on the American Bar Association Model Supreme Court Rules Governing Lawyer Referral Services.¹

In order to qualify as a lawyer referral service for purposes of these rules, the service must: be operated in the public interest for the purpose of providing information to assist the clients; be open to all licensed lawyers in the geographical area served who meet the requirements of the service; require members to maintain malpractice insurance or provide proof of financial responsibility; maintain procedures for the admission, suspension, or removal of a lawyer from any panel; and not make any fee-generating referral to any lawyer who has an ownership interest in the service, or to that lawyer's law firm. See also LAO-0105 and LEOs 910, 1014, and 1175.

F. Advertising Specific or Cumulative Case Results/Jury Verdicts/Comparative Statements.

The Committee considered the question of whether it is misleading to the public for an attorney to advertise results obtained in a specific case or to advertise cumulative results obtained in more than one specific case, e.g., "We've collected millions for thousands," or "We've collected $30 million in 1996."

The Committee determined that it can be misleading to the public for an attorney to advertise specific case results, whether individually or cumulatively, for two reasons:

1. The results obtained in specific cases depend on a variety of factors, and any advertisement of the results obtained in a specific case or cases that does not include all factors can be misleading. This is true, in part, because it is generally impossible to know all factors that have influenced a specific result or an accumulation of specific results.

2. Each legal matter consists of circumstances that are peculiar or unique to the specific case, and the result obtained under one set of circumstances may not provide useful information to the public as a predictor of the result likely to be obtained in a case that necessarily involves different circumstances.

An example will illustrate why information describing a specific case result or a blanket statement of cumulative results may be entirely accurate, but nonetheless misleading. An attorney

¹Available at www.americanbar.org/groups/lawyer_referral/policy.html
could accurately cite in advertising a verdict of one million dollars, yet the public would be misled if the verdict were obtained under circumstances in which the offer prior to trial had been two million dollars. The same advertisement would be similarly misleading if the one million dollar verdict were obtained against an uncollectible defendant, under circumstances in which the case was lost as to a collectible co-defendant who had made a substantial offer prior to trial. More importantly, since no member of the public is likely to have a case in which the circumstances precisely duplicate the advertised verdict, the report of a specific case result may mislead the consumer “if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client’s case.” Rule 7.1, Comment 2.

The 2017 amendments to Rule 7.1 shifted the focus from a mandatory disclaimer with a number of technical requirements for language and placement to an assessment of whether a particular statement is misleading, and if so, whether there is a disclaimer or additional information that would put the statement in the proper context and avoid any misleading implications. Rule 7.1 no longer requires a specific disclaimer to precede any statement of case results, although Comment 2 does clarify that the inclusion of “an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.”

For example, the above statement of a “one million dollar verdict” obtained after a two million dollar settlement offer was refused would need to include the full context in order not to be misleading. Nor would the boilerplate disclaimer language previously required by Rule 7.1 be sufficient to avoid the misleading implication – the communication would have to state the fact that a two million dollar settlement offer was made prior to the trial in which the one million dollar verdict was obtained. Another example of a misleading statement of case results would be a statement that a lawyer obtained an $8 million jury verdict in a medical malpractice case, when the court reduced the award to the statutory cap of $2.25 million. A lawyer advertising such a result must include the fact that the award was reduced by the court.

On the other hand, a lawyer who advertises that she has obtained pre-trial dismissal of criminal charges after prevailing on a motion to suppress evidence, when that is a complete and
true statement of what happened in the case, may do so without including any disclaimer or limiting language. Similarly, a lawyer may truthfully advertise that he obtained a $5 million settlement following a three-day mediation.

The Committee has repeatedly opined that the use of claims such as “the best lawyers,” “the biggest earnings,” and “the most experienced” are self-laudatory and amount to comparative statements that cannot be factually substantiated, in violation of Rule 7.1. See also Comment 2 to Rule 7.1. This Committee continues to adhere to the belief expressed in Comment 2 that statements that use extravagant or self-laudatory words that cannot be factually substantiated are designed to and in fact mislead laypersons to whom they are directed and, as such, undermine public confidence in our legal system. See also LEOs 1229 and 1443.

G. Statements by Third Parties.

The Committee addressed whether a lawyer can circumvent the prohibition against comparative statements with the use of client testimonials. For example, a lawyer’s television advertisement shows a former client making statements about the client’s satisfaction and about the quality of the lawyer’s services, using statements to the effect that the lawyer is “the best” and will get you “quick results.”

Rule 7.1 prohibits statements comparing attorneys’ services, unless the comparison can be factually substantiated. See Comment 2 to Rule 7.1. The Committee has previously opined that a lawyer’s advertising of specific case results may be misleading, if the communication does not include an appropriate disclaimer or other context for the case results. Thus, an attorney has clear guidance as to the impropriety of making certain statements in his advertising. Rule 8.4(a) states that an attorney shall not violate a disciplinary rule through the actions of another. Moreover, the language of the restriction in Rule 7.1 makes no qualification as to the maker of the regulated statements. To the contrary, the rule’s requirements are directed at any statements contained in the communication. Thus, there is no support in Virginia’s Rules of Professional Conduct for affording greater leeway to advertising statements made by clients than to those made by attorneys. The standard is the same in both instances. Applying that standard to this hypothetical, the client’s statements make a comparison (“the best”) that cannot be factually substantiated. If such improper statements are contained in the lawyer’s advertisement, the lawyer would be in
violation of Rule 7.1.

In further clarification, even statements of opinion by clients that contain comparative statements are not appropriate. This Committee adopts the mixed approach of Philadelphia Ethics Opinion 91-17; while prohibiting testimonials regarding results and/or comparisons, it does allow "soft endorsements." Examples of "soft endorsements" from the Philadelphia opinion include statements such as "the lawyer always returned phone calls" and "the attorney always appeared concerned."

In sum, the requirements for lawyer advertising are all intended for the protection of the public. The restrictions on advertising content are carefully chosen to avoid misleading the public as they make the important choice of whom to select for legal representation. This Committee will not erode that protection where non-lawyers or their statements appear in the advertisements. Such a distinction would violate both the language of the pertinent rule and the spirit behind it. See also LAO-0113.

H. Communications Involving Listing in Publications such as The Best Lawyers in America.

The Committee addressed this issue and stated that a lawyer may advertise the fact he/she is listed in a publication such as The Best Lawyers in America, or a similar publication, and include additional statements, claims or characterizations based upon the lawyer’s inclusion in such a publication, provided such statements, claims or characterizations do not violate Rule 7.1. If, for some reason, the lawyer is delisted by a publication, the statement in the advertisement must accurately state the year(s) or edition(s) in which the lawyer was listed.

Further, the lawyer may not ethically communicate to the public credentials that are not legitimate, such as one that is not based upon objective criteria or a legitimate peer review process, but is available to any lawyer who is willing to pay a fee. Such a communication is misleading to the public and therefore prohibited.

Similarly, statements that explain, and do not exaggerate the meaning or significance of professional credentials, in laymen’s terms are permissible. For example, if the lawyer is communicating his "A.V." rating by Martindale-Hubbell, the lawyer may properly include a description that states that "A.V." represents "the highest rating" that particular service assigns. Also, if the lawyer is recognized and listed in the book The Best Lawyers in America, that lawyer
may properly note he is among those lawyers “whom other lawyers have called the best.” The lawyer should be mindful to exercise discretion when communicating this information, that it be objective and not misleading. For example, although the lawyer may properly characterize inclusion in the book *The Best Lawyers in America*, he cannot properly characterize that inclusion into statements such as “since I am included in the book, that means I am the best lawyer in America,” nor can the lawyer impute any such endorsement to others in the law firm not so recognized.

The Committee’s decision includes objective and factual statements and claims of such inclusions and warns that descriptive characterizations and other qualitative statements must meet the requirements of Rule 7.1. *See also* LAO-0114.

I. Use of “Specialist” or “Specializing In.”

Rule 7.1 permits a lawyer to hold herself out as limiting or concentrating the lawyer’s practice in a particular area or field of law as long as that is a true and accurate statement.

Comment 4 to Rule 7.1 (formerly comment 1 to Rule 7.4) provides that a lawyer can generally state that she is a “specialist,” practices a “specialty,” or “specializes in” particular fields, as long as the statement is not false or misleading in violation of Rule 7.1. The 2017 amendments to the Rules removed the longstanding requirement that a lawyer who claims to be certified as a specialist include a disclaimer stating that no certifying organization has been recognized by the Supreme Court of Virginia. Instead, the lawyer is required to identify the name of the organization that purportedly conferred the certification, so that a prospective client or other member of the public can verify the validity of the certification and the criteria for conferring the certification. Any claim of certification as a specialist is still subject to the requirement that it is not false or misleading – the certifying organization must undertake some bona fide evaluation of lawyers rather than just awarding the certification to anyone who pays a required fee or joins an organization.

J. Use of “Expert” and “Expertise.”

Rule 7.1 prohibits a lawyer from using or participating in the use of any form of public communication which contains a false or misleading statement or claim. The Committee opines that a lawyer’s use of the words “expert” or “expertise” in public communications, if the claim
cannot be factually substantiated, amounts to a misleading comparative statement and is therefore prohibited. See Comment 2 to Rule 7.1. See also LEOs 1292, 1406 and 1425.

Committee Opinion
March 20, 2001

Committee Revised Opinion
April 4, 2006

Committee Revised Opinion
December 18, 2008

Supreme Court Approved
April 20, 2018

A Copy,

Teste:

[Signature]
Clerk
III. ELIGIBILITY

A. Eligibility Requirements. Applicants who seek to be members of the VLRS (panel members) must satisfy and maintain the following requirements to participate in the VLRS. An applicant shall be denied admission, and a panel member shall be suspended from the VLRS, for failure to maintain the following eligibility requirements:

1. Active, In Good Standing. An applicant must be (and if selected as a panel member must remain) an Active member of the VSB, as defined at the Rules of Court, Part Six, Section IV, Paragraph 3. “In good standing” means that the lawyer’s license is not currently Suspended or Revoked, as defined at the Rules of Court, Part Six, Section IV, Paragraph 13-1.

2. Malpractice Insurance. Panel members agree to the following: a. Panel members must carry professional liability insurance as of the date of the application and for as long as the applicant is a VLRS member and be in good standing with the VSB Member Compliance Department. The applicant must maintain in force and effect professional liability insurance in an amount not less than $100,000 per occurrence and $300,000 aggregate as of the date of the application and for as long as the lawyer is a panel member. The applicant must provide the VLRS a current copy of the insurance policy certificate, the declarations page of the policy, or other evidence satisfactory to the VLRS that such coverage is in force and effect. The panel member shall annually provide the VLRS with proof of insurance coverage. Prior to the expiration date of the insurance policy, the panel member shall notify the VLRS of the renewal of professional liability coverage, accompanied by a copy of the declarations page of the renewal policy or other evidence satisfactory to the VLRS that such coverage has been renewed. Each panel member shall promptly notify the VLRS if his/her professional liability insurance coverage is terminated or decreased. Expiration of a panel member’s professional liability insurance will automatically suspend that panel member from the VLRS, until the renewal information is submitted and approved.

3. Adherence to VLRS Rules. Indemnification. Panel members agree to the following: d. To follow all of the rules of the service and in no event hold the

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1 Capitalized terms in Rule III, Eligibility A-G below are defined at the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-1.
State Bar or any of its officers, members, or employees liable in connection with the operation of, or use of, the information contained in the application. Panel members must follow all VLRS Rules and indemnify, defend, and hold harmless the VSB, its officers, members, agents, and employees from and against any and all loss, expense, and liability including the cost of defense and reasonable attorneys’ fees which may arise from or be related to the panel member’s gross negligence or intentional conduct relating to his/her participation in the VLRS.

B. Restrictions based on Pending Discipline and Disciplinary History.

1. The applicant must not have any disciplinary proceedings pending.

2. The applicant must not have:
   a. ever been convicted in any jurisdiction of a Crime;
   b. ever committed any criminal act that reflects adversely on the applicant’s honesty, trustworthiness, or fitness as a lawyer;
   c. a Disciplinary Record in any jurisdiction consisting of a Disbarment, Revocation, Suspension imposed at any time or Public Reprimand imposed within the ten years immediately preceding the application to join the VLRS; or
   d. a Disciplinary Record in any jurisdiction, imposed within the five years immediately preceding the application to join the VLRS, consisting of Private Discipline or an Admonition, except for a De Minimis Dismissal or a Dismissal for Exceptional Circumstances, or an Admonition imposed within the five years immediately preceding the application to join the VLRS.

The VLRS Committee shall have the sole discretion to determine whether a De Minimis Dismissal or a Dismissal for Exceptional Circumstances shall disqualify a lawyer from participation in the VLRS.

C. Duty to Notify VLRS of Disciplinary Actions and Change in Status. 5. Once accepted for panel membership, it is the responsibility of the attorney (panel member) to notify VLRS of the following: . . . Any disciplinary action with the VSB . . . A panel member shall give notice to VLRS within thirty (30) days if (i) he/she has been disciplined by any jurisdiction or court or convicted of a Crime; (ii) he/she is currently under investigation concerning any allegation of professional misconduct or wrongdoing; or (iii) he/she is a defendant in any lawsuit filed by a client or former client. The VLRS may suspend the panel member consistent with Rule X. Suspension and Termination of Membership.
D. **VLRS Qualifications Subcommittee Discretion to Deny Membership.** Notwithstanding the provisions of Rule III.A and B., any applicant may be denied admission to panel membership if the VLRS Qualifications Subcommittee, in its sole discretion, determines that good cause exists to deny admission, including that the applicant’s admission to panel membership would not be in the best interests of the VLRS, VSB, or public. If the VLRS Qualifications Subcommittee denies an applicant VLRS panel admission pursuant to this provision, the VLRS Qualifications Subcommittee shall notify the applicant in writing of the reason(s) for the denial within thirty (30) days of the decision to deny membership.

E. **Appeal.** Should the VLRS Qualifications Subcommittee deny panel membership to an applicant pursuant to Rule III.B. based on a De Minimis Dismissal or Dismissal for Exceptional Circumstances or pursuant to Rule III.D., the applicant may, within ten (10) days of receipt of the decision denying panel membership, submit a written notice of appeal to the VLRS Committee. The appeal shall be heard within thirty (30) days of receipt of the applicant’s request for hearing. The VLRS Committee may take whatever action it deems appropriate in light of the facts, the written evidence provided by the applicant, and any other circumstances of the particular appeal the VLRS Committee deems relevant. The vote of the majority of the VLRS Committee members present and voting shall be required to overrule the findings of the VLRS Qualifications Subcommittee. Members of the Qualifications Subcommittee may not vote but may otherwise participate in the appeal. The decision of the VLRS Committee shall be final.

F. **Confidentiality.** The VSB staff and VLRS Committee members shall keep confidential any information gained or obtained by the Qualifications Subcommittee or the VLRS Committee in the discharge of their duties pursuant to Sections III. Eligibility or X. Suspension and Termination of Membership, except as required by law or court order.

G. **Notification Attorney.** An applicant should list an attorney on his/her application who will notify the VLRS when he/she becomes aware that the panel member is incapacitated, dies, or is otherwise unable to fulfill the panel membership responsibilities.