

BERKSHIRE COUNTY BAR ASSOCIATION, INC.
LAWYER REFERRAL SERVICE

STANDARDS AND RULES

I. STATEMENT OF PURPOSE

- 1.1 The Berkshire County Bar Association, Inc. (hereinafter referred to as the “BCBA”) recognizes that there exists a substantial segment of the public that has difficulty in obtaining legal services. In order to respond to the needs of those persons, the BCBA has established a Lawyer Referral Service, hereinafter referred to as the “LRS.”
- 1.2 The purpose of the LRS is:
- a. to provide a way in which any person may be referred to a lawyer who is able and interested in rendering needed legal services;
 - b. to provide information about lawyers and the availability of legal services which shall aid in the selection of a lawyer;
 - c. to inform the public when and where to seek legal services; and
 - d. to provide general and legal information needed by the public.

II. COMMITTEE SUPERVISION AND REPORTING

- 2.1 An LRS Committee (hereinafter referred to as the “committee”) shall be charged with the supervision of the LRS as provided in these Standards and Rules. The committee shall be subject at all times to the supervision of the BCBA Executive Committee and shall report at least annually to the Executive Committee.
- 2.2 The committee shall consist of at least five (5) members of the BCBA, appointed by the President of the BCBA, and shall meet at regular intervals during the year to review overall policy matters and areas of the LRS development.
- 2.3 The committee shall formulate and adopt all rules of the conduct and operation of the LRS, subject to approval of the Executive Committee.
- 2.4 The rules of the LRS shall allow the committee to provide for appeal of any actions taken by the committee.

III. PANEL MEMBERSHIP REQUIREMENTS

- 3.1 An applicant for panel membership must agree:
- a. He or she is a member of the BCBA.
 - b. He or she will grant a free initial consultation of one-half hour. During the first half hour the applicant should inform the client, if possible, the extent of attorney's fees likely to be involved in the case, including hourly rate, retainer fees, and number of hours to conclude the case.
 - c. Any charge for legal services beyond the first half-hour will be as agreed upon with the client and this fee will be fixed as clearly as possible during the initial office consultation. Applicants shall note that written fee agreements are strongly recommended in all cases. SJC Rule 3:05 requires that all contingent fee agreements be in writing.
 - d. He or she will carry minimum professional liability coverage of \$100,000.00/\$300,000.00.
 - e. He or she will grant all clients referred by the LRS an appointment as soon as practicable after request is made by the client or LRS staff.
 - f. He or she will abide by all of the rules of the service, including those regarding fees set forth in Section V of the Standards and Rules and will in no event hold, or claim to hold, the association of any of its officers, members or employees liable in connection with the operation of or use of the information contained in the application in connection with the activities of the LRS.
 - g. He or she will abide by all decisions of the committee with regard to the application procedures and continued eligibility as a member of the LRS.
 - h. He or she will proceed with due diligence on referred client matters and will not neglect any matter referred by the LRS.
- 3.2 Regulations of Panel Membership. The committee will have the authority to examine a prospective panel member's application to determine a panel member's continued eligibility and to adjust panel membership when necessary. The committee may suspend or remove a panel member at any time for good and sufficient cause as determined by a majority of the committee members. Good and sufficient cause may include, but is not limited to:

- a. institution of criminal charges involving moral turpitude, theft, embezzlement or fraudulent appropriation of property;
- b. suspension, disbarment, ethical censure or disciplinary action by the Board of Bar Overseers;
- c. violation of the Canons of Ethics and Disciplinary Rules Regulating the Practice of Law (SJC Rule 3:07);
- d. failure to obtain and maintain as well as provide to the LRS satisfactory evidence of legal malpractice insurance described in Section 3.1d;
- e. failure to pay the annual dues;
- f. failure to forward applicable fees owed the LRS;
- g. failure to maintain the standards of eligibility, qualification, and compliance as set forth in the Standards and Rules;
- h. consistent or excessive complaints from referred persons deemed by the committee to be genuine; and
- i. rejection without cause of an initial interview with a referred client.

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

An attorney who has been denied membership in LRS or has been suspended from the panel will be offered the opportunity to make a written and oral response at a regularly scheduled LRS committee meeting. If the committee declines to grant panel membership or continues in its intention to suspend a panel member, the committee will provide the attorney with a written statement of its reasons within a reasonable period of time.

IV. FEES ASSOCIATED WITH MEMBERSHIP

- 4.1 Each panel member will pay to the Berkshire County Bar Association dues in such amount as the Executive Committee may from time to time establish. In addition to dues, each panel member shall pay referral fees of 15% on any collected net fee (i.e., after deduction for expenses and disbursements actually paid) received by an individual client on a referred matter.

*Bankruptcy Act Public Law 109-8 passed on April 20, 2005: SEC. 326. SHARING OF COMPENSATION. Section 504 of title 11, United States Code, is amended by adding at the end the following: “(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney

referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.”

Any attorney who seeks referrals in the area of mediation agrees not to represent any party to the mediation in any matter arising out of the referral and must qualify as a mediator pursuant to GL c.233, section 23C.

Examples:

1. Fee received is \$2,500.00.
Amount due Berkshire County Bar Association is \$375.00.
2. Fee received is \$2,500.00.
Expenses advanced are \$600.00.
Total received from client is \$3,100.00.
Amount due Berkshire County Bar Association is \$375.00.

- 4.2 In matters where the referred client is an institution, corporation, or other entity, rather than an individual, where the referral is general in nature for multiple matters rather than particularly for one, the panel member shall pay fees as described in Section 4.1, except that the obligation to pay Berkshire County Bar Association will be for all collected net fees for all work performed during the first year of the referral.

Examples where all fees received from services rendered during the first year are subject to Rule 4.1 referral fees:

1. A Labor Union is referred to member for general representation of union and its members.
2. A Collection Agency is referred for handling collections.
3. A Condominium Association is referred for general services.
4. A Real Estate Investment Company is referred for closings.

Examples of instances where Rule 4.2 does not apply:

1. A Labor Union is referred for handling of a complaint by an employee member for failure to adequately represent the Union in a grievance. Future work on other matters is not subject to referral fees.
2. A Collection Agency is referred for collection case against a debtor. Work on other collections is not subject to a referral fees.
3. A Condominium Association is referred for defense of a claim by an owner for breach of the Association By-Laws. Future work on other claims is not

subject to referral fees.

4. Real Estate Investment Company referred for one closing. No further referral fees are required on other closings.
- 4.3 A client referred to an LRS panel member may not be charged a fee for legal services in excess of the fees charged for similar work done for the attorney's other clients. The fees charged to a client referred by the LRS shall not be increased by reason of the obligation of the panel member to remit the fee specified in Rule 4.1 of the Standards and Rules.
- 4.4 The referral fees under Rules 4.1 and 4.2 of the Standards and Rules shall not be paid out of the panel member's client fund accounts or IOLTA accounts. Payments shall be made out of the panel member's business account.

V. WITHDRAWAL FROM MEMBERSHIP

- 5.1 A panel member may at any time withdraw his or her name from participation in the LRS upon five (5) days written notice to the committee. In such circumstances the panel member must discharge his or her obligations to those clients who have previously been referred and must remit any fees due the LRS on previously referred cases. If after withdrawal there is an on-going matter, the attorney is still obligated to follow the Standards and Rules.

VI. OPERATION OF THE PANEL

- 6.1 Referrals shall be made in rotation based on the date of receipt of the panel member's application. In cases where more than one application is received on the same date, the order shall be alphabetical.
- 6.2 Except for good cause, a panel member shall not refuse any referral for initial interview in the substantive areas chosen on the application. Cause may include ethical or personal reasons. If a member has cause to refuse the initial interview, he or she shall (a) advise the LRS that the referral has not been accepted, and (b) advise the referred client to re-contact the LRS. The initial interview, if appropriate, may be conducted by telephone. Nothing herein will be construed to obligate a panel member to accept employment beyond the initial consultation.

VII. REFERRAL SERVICE PROCEDURES

- 7.1 Procedures shall be maintained to assure that referrals are made in a fair and impartial manner to all members. Such procedures should be designed so as to respond to all circumstances of the client, including the subject of the legal problem presented and the caller's language needs.

- 7.2 No referral shall be made on the basis of race, sex, age, religion, national origin, or other discriminatory criteria.
- 7.3 If the panel lawyer decides he or she cannot continue representation of the referred client, he or she shall so inform the client and (a) advise the client to contact the LRS for a new referral or (b) refer the client to another attorney who agrees to pay referral fees to the LRS in accordance with these rules. The panel member shall give notice of the referral to the LRS. If for any reason the panel lawyer was unaware that the client was referred by the LRS, and has already referred the client to another attorney, when the panel lawyer becomes aware of the LRS referral he or she shall give notice of the referral to the LRS.
- 7.4 The LRS may make regular and consistent attempted to obtain information which will enable the LRS to find out whether the client contacted the lawyer's office and whether the referred client was satisfied. This information may be obtained by sending 30-day notices and such other notices and client surveys as the committee may determine. Information obtained by such follow-up procedures will be used to make such alterations in the operation of the LRS as the committee may from time to time determine. The LRS will keep records showing:
- a. the number of client-callers interviewed who are not referred to a lawyer;
 - b. a panel member's completion and return of referral reports, including initial 30-day and other notice reports. Failure to return reports in a timely manner will justify the LRS in removing a panel member's name from the panel.

Nothing herein will require an attorney to violate the attorney-client privilege or any provision in the Canons of Ethics and Disciplinary Rules Regulating the Practice of Law (SJC Rule 3:07);

- c. the names and addresses of the client-callers referred to a lawyer, in each such case:
 - (1) the nature of the legal question involved,
 - (2) the lawyer to whom referred,
 - (3) the date when referred,
 - (4) the date when initial 30-day referral notice was sent,
 - (5) the method of hearing about the LRS program,
 - (6) whenever possible, the disposition of the referral, and,

- (7) whether the client-caller was satisfied with the legal services rendered via the client survey;
- d. all applications for membership submitted by lawyers;
- e. the amounts of all fee remittances; and,
- f. the number of matters referred to each panel member.

VIII. AREAS OF COMPETENCY AND REFERRAL PANELS

- 8.1 All LRS applicants shall indicate on the LRS Application letter only those areas in which referrals are desired. An applicant may only list areas in which the applicant has had experience and is competent.

The Massachusetts Supreme Court Rule 3:07 Canons of Ethics and Disciplinary Rules Regulation the Practice of Law, DR 6-101 states “a lawyer shall not: (1) handle a legal matter which he knows or should know that he is not competent to handle, without associating with a lawyer who is competent to handle it, (2) handle a legal matter without preparation adequate in the circumstances, and (3) neglect a legal matter entrusted to him.” Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which he or she practices, (2) performs the techniques of such practice with skill, (3) manages such practice efficiently, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client’s attention, (5) properly prepares and carries through the matter undertaken, and (6) is intellectually, emotionally, and physically capable.

- 8.2 An attorney may designate up to five (5) of the substantive areas of law in the Lawyer Referral Service Application letter in which to receive referrals. The substantive areas may be modified from time to time by the committee without prior approval of the Executive Committee or Bar Association.