



David G. Keyko
Committee Chair

George D. Wolff
Executive Director
gwolff@nycbar.org
212.382.6775

Damaris Solis Padilla
Deputy Director
dpadilla@nycbar.org
212.382.6691

July 10, 2020

VIA EMAIL ONLY TO: INFORMATION@IARDC.ORG

Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois
One Prudential Plaza
130 East Randolph Drive
Suite 1500
Chicago, IL 60601-6219

Re: Comments on Draft Intermediary Connecting Services Proposal

Dear Members of the Commission:

We write on behalf of the New York City Bar Association Legal Referral Service Committee (the “City Bar Committee”) to comment on your draft Intermediary Connecting Services Proposal (the “Proposal”). We recognize that the comment period ended on June 28, but we hope you will accept our late comments. We have endeavored to keep them brief.

I. Background

The New York City Bar Association (“City Bar”), since 1946, has operated a lawyer referral service (the “City Bar LRS”). The City Bar Committee is responsible for overseeing the City Bar LRS. The City Bar LRS, which is approved by the American Bar Association (“ABA”), receives approximately 65,000 requests for assistance annually. Those inquiries are made by telephone or over the internet. This

service is widely advertised by the City Bar and the City Bar LRS website includes a great deal of free information about legal issues that are likely to be of interest to those who encounter legal problems. Only approximately 33% of inquiries to the City Bar LRS result in referrals to one of the attorneys who belong to our panels. We offer all of those who contact us the opportunity to talk to one of our referral counselors, all of whom are attorneys, about the inquirer's issues.

For the majority of those who contact us, this results in (i) referrals to a social service or government agency or a legal aid society and/or (ii) some guidance about the inquirer's problems (often that the inquirer does not need to retain or cannot afford to retain a private attorney). If it is appropriate to refer the inquirer to one of our participating attorneys based on the problem identified, we make a referral to members of a panel of experienced attorneys who are screened and qualified to handle such matters. To assure that the panel members are so qualified and in accordance with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Services ("[ABA Model Rules](#)"), the City Bar LRS has established specific criteria for each subject matter panel that must be satisfied by panel member applicants. Each panel member applicant is individually interviewed by peers before being accepted or rejected to participate on any given panel. We also follow up with those to whom we make referrals to find out if they are satisfied with the representation they have received. Based on this information, we remove panel members and/or discuss with the panel members ways to improve their client services.

Those who meet with a panel member may be charged a \$35 fee for the initial consultation, which is paid over to the City Bar LRS. No consultation fee is charged for matters that are routinely handled on a contingency fee basis or where prohibited by statute. Like the majority of lawyer referral services nationwide, the City Bar LRS also receives a percentage of the fees collected as a result of the referral. Nationally, lawyer referral services receive a percentage of those fees that is significantly lower than typical participation or forwarding fees between lawyers, yet the revenue received remains the critical funding mechanism to support legal referral services' assistance to the public. Importantly, panel members are prohibited from passing on any fees owed to the City Bar LRS to clients. A very small percentage of referrals—mostly from contingency fee tort cases—make up the majority of the fees the City Bar LRS collects annually. Like the majority of lawyer referral services nationwide, the City Bar LRS is not run to generate profits for the City Bar; rather, the fees collected cover the costs of operating the City Bar LRS, providing online legal resources and infrastructure, and supporting other City Bar

programs. Indeed, the City Bar LRS's pro bono efforts reach more people than any other pro bono service provided by the City Bar. We believe this is not unusual for Bar Associations.

The ABA Model Rules may be found [here](#). As noted, the City Bar LRS is approved by the ABA because it operates in accordance with the requirements for such services that are part of the ABA Model Rules. The first of those minimum requirements emphasizes that referral services must operate for the public service and provide information in addition to simply making referrals. That requirement states: "A qualified service shall be operated in the public interest and shall provide information regarding government and consumer agencies which may assist the client, as well as provide referrals to lawyers, pro bono programs and other legal service providers. The service may be privately owned so long as the primary purpose is public service." (Summary of Requirements for Lawyer Referral Services Based Upon Model Supreme Court Rules Governing Lawyer Referral Services, adopted by ABA House of Delegates 8/93, at Point 1.)

Other requirements include: (i) the service must be open for membership to all registered lawyers in the geographic area where the service operates (*Id.* at Point 2), (ii) the panel members must have malpractice insurance or be able to provide appropriate assurance that the attorney is financially responsible (*Id.* at Point 3), (iii) the charges paid to referral service cannot result in the client paying more for the legal services (*Id.* at Point 4), (iv) the referral service must periodically conduct client satisfaction surveys (*Id.* at Point 6), (v) the attorneys to whom referrals are to be made must be vetted, which may often include peer reviews (*Id.* at Point 7), and (vi) the referral service must have subject matter panels (*Id.* at Point 9).

II. Comments

We commend you for making a distinction between Bar Association lawyer referral services and other intermediary connecting services. We think it is appropriate that non-bar-association services may not charge a percentage fee because they clearly will not be providing the same types of services as Bar Association lawyer referral services, which require percentage fees to operate their pro bono services. Those pro bono services, in most cases, will represent the majority of what a Bar Association lawyer referral service does.

New York recently extended the attorney client privilege to communications with lawyer referral services and we think your proposal to do so is well taken.

Finally, we agree with your plan to oversee the operations of the other intermediary connecting services.

We do, however, wish to encourage you to consider making changes to your Proposal. It is our view that permitting for-profit referral services is not simply a matter of ensuring proper lawyer advertising and that the referral service does not interfere with the attorney-client relationship once it is established—although we do think that such matters are significant. Here are our proposed changes:

First, we think it is appropriate to make a distinction between intermediate connecting services, that are no more than on-line directories, and those that actually perform referral services. To the extent that the service is no more than an automated listing of attorneys who have paid to be listed on the service and have not been vetted in any way, we think that the service should make this clear and should be labeled a “directory” and not be permitted to suggest that it is providing referral services.

Second, to be entitled to be described as a referral service, we believe that the service must employ a vetting process to ensure that the lawyers receiving referrals are qualified to perform the matters being referred to them. The vetting should include peer reviews, the establishment of reasonable criteria to be entitled to receive referrals and to be listed as having certain “concentrations,” verification of the information and descriptions provided by the applicant, and client satisfaction surveys to weed out the lawyers who are not qualified. We do not think on-line ratings are sufficient for this purpose, although we see nothing wrong with including that information among the pieces of information provided to prospective clients. We note that these ratings can be manipulated and that lawyers can hire third-parties to improve their ratings, including, in some cases, representatives of the service that lists the ratings. We also do not think that participation in a referral service can simply be based upon the fact that an attorney is prepared to pay the listing costs and referral charges.

Third, we recommend that you emphasize that intermediary connecting services that will operate as referral services should demonstrate they are acting in the public interest. This showing should include evidence that the service does not refer matters to participating lawyers when the assistance of a lawyer is not warranted or cost-effective, and that the service is providing information about government and

consumer agencies which may assist the client, as well as pro bono programs. We recognize that the for-profit intermediary connecting services are unlikely to employ attorney referral counselors, like the City Bar LRS, who will provide individualized information, but we think it is important that a referral service provide this kind of information in order to call itself something more than just a “directory.” “Referral services” that have, as their goal, referring every matter to a participating lawyer are not acting in the public interest. We do not believe that offering this additional information and taking steps to determine whether a client really needs a referral to a private lawyer will be expensive.

Fourth, we think that to be considered more than a directory a service must be open to all attorneys in a geographic area who meet the criteria established by the service. We also believe that the number of referrals made to an attorney must not correlate to the amount the attorney pays to the referral service.

Finally, we think that intermediary connecting services that hold themselves out as being more than a directory should require participating attorneys to have malpractice insurance, or, at the very least, make disclosure, at the time of the referral, that an attorney does not have such insurance.

We would be pleased to discuss our concerns with you at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Keyko', with a stylized flourish at the end.

David G. Keyko

Chair, Joint Committee on Legal Referral Service

david.keyko@pillsburylaw.com