

# DIALOGUE

Fall 2009  
VOL. 13, NO. 4

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### From the Chair...

*By Sheldon Warren*

## Standing Committee on Lawyer Referral and Information Service

I was recently at a large meeting of bar executives, Lawyer Referral and Information Service (LRIS) staff and volunteers at which a suggestion was made by one senior bar executive that the day when lawyer referral and information services should be regulated may have passed. The stated rationale for this suggestion was that, given the proliferation of numerous on-line commercial "referral" services, legitimate, public service oriented referrals services would be better served if these regulations were done away with so they could operate on a "level playing field" with these commercial entities. I had an immediate negative response to this suggestion, which I voiced to those in attendance.

On later reflection, I wondered if my response was merely a reaction to the fact that I had been involved in the drafting of California's LRIS Minimum Standards and enabling legislation, as well as the ABA's Model Rules for the Operation of a Lawyer Referral Service.

Do I still believe that regulation of lawyer referral programs serves the interests of both the public and attorney panel members in the 21st Century?

In considering this question, I think it is important to remember why and how regulations were initially implemented in various jurisdictions. Having had the opportunity to work with LRIS staff and volunteers throughout the country for more than 25 years, I believe the experience in California during the 1980s is fairly representative of what was going on in much of the country.

As I noted in an earlier column, during the early 1980s, bar sponsored lawyer referral services were really the "only game in town" for consumers looking for legal representation. Advertising of legal services on television and radio was in its infancy. Most consumers still looked for lawyers in the

yellow pages and bar sponsored lawyer referral services were listed first by the various yellow pages publishers under the "Attorneys" or "Lawyers" sections of those books.

Unfortunately, unscrupulous individual attorneys and firms, recognizing the opportunity to take advantage of this priority listing, began calling themselves "lawyer referral services." Often, these "services" were nothing more than a separate phone line answered with a unique greeting at a lawyer's office. The operators of these sham services were preying on the public by representing themselves to be something that they were not. They were also preying on attorneys, who were enticed to join these sham operations with unrealistic promises of the number of retained referrals they would receive and who were charged exorbitant fees to "own" one of more zip codes in a particular community. The yellow page publishers soon received complaints about these sham services and demanded that, in order to maintain their priority listing, members of the legitimate lawyer referral service community take action to differentiate themselves from these sham services.

The rise of sham lawyer referral services brought two questions to the fore in California and across the country. First, how could the legitimate lawyer referral service community and interested bar associations ensure that consumers in need of legal assistance were receiving information about legal aid, social service and governmental agencies and, importantly, impartial referrals to attorneys in good standing with the bar and with objective experience in appropriate areas of need? Second, how could attorneys who wished to belong to a lawyer referral service be certain that the service they were joining was legitimate and would provide them with their share of referrals on an equitable, impartial basis?

It was within this context that the lawyer referral service community responded by drafting the "Minimum Standards for a Lawyer Referral Service in California," which were adopted by the California Supreme Court effective January 1, 1997, and California Business and Professions Code section 6155. These regulations established a regulatory framework that provides the public with access to both non-profit bar sponsored lawyer referral services *and* for-profit commercial services, both of which are required to meet the same standards. Further, these regulations ensure that attorneys participating in lawyer referral services will not be taken advantage of by their operators.

Why did these regulations matter more than 20 years ago and why, after thinking about it, do they still matter today? Because, adopting the motto used by law enforcement agencies throughout the country, these regulations "serve and protect the public." Among other things, these regulations require that an LRIS have subject matter panels, so that a consumer receives a referral to an attorney with objective experience in their area of need, and, if there is a problem, that the panel member has professional liability insurance. They require that there be quality control follow-up with the referred consumers to ensure they are receiving the sort

of representation to which they are entitled and, further, to provide an "early warning" for the LRIS of potential problems with their panel attorneys. Perhaps just as important, they provide that an LRIS will refer a consumer to other service agencies if the consumer does not need legal representation.

These regulations also "serve and protect" the attorneys who join an LRIS. They provide that referrals must be made in a fair and impartial manner, preventing the service's operators from giving themselves all the "good" referrals. Additionally, attorneys are protected with a due process mechanism if they have an issue with the service or if a complaint is received from a consumer.

The proliferation of on-line businesses that purport to quickly connect clients with attorneys has created a challenging environment for legitimate, public service oriented lawyer referral and information services. However, I would suggest that abandoning all standards in order to create a so-called "level playing field" with on-line commercial enterprises is not the answer.

If that "level playing field" does not in fact serve the interests of the general public and attorneys, then of what value is it? The test should not be what entity makes the most referrals; rather, the test should be whether consumers and attorneys are being connected in a manner that is mutually beneficial. Public service oriented lawyer referral services throughout the country are showing they can compete and prosper by running their LRIS as a business, i.e. they are in the "business of public service."

Whether they are using Facebook, Twitter or any of the other social media sites, or relying on Google ads or, dare I say it, ads in their local yellow pages, the point is that legitimate lawyer referral services are providing a public service profitably, rather than simply maximizing the profits for their investors. This standard of public service is worthy of continued protection and regulation in the 21st Century.

Finally, it is not too early to get on your calendar the dates for the 2010 ABA LRIS Workshop, which will be held in Portland, Oregon from October 27 through October 30. The LRIS Standing Committee is already putting together the agenda and faculty for that Workshop, which will be held in one of the most vibrant, eclectic cities in the country. I hope to see you there.

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