

# LRS and Modest Means Legal Program Description and Guidelines

(Items highlighted in yellow indicates a significant rule change within the last year)

## A. Philosophy and Purpose

The Lawyer Referral Service operates two separate referral programs for the benefit of the public; a full-fee referral service and a Modest Means Legal Program.

1. The Full-Fee Lawyer Referral Service is operated for the benefit of the public. Its goals are:
  - a. To provide the public with an accessible source of referrals to qualified lawyers willing to provide legal information and representation based on the client's needs;
  - b. To supply needed information to persons not knowing if they have a legal problem or not knowing a lawyer to consult;
  - c. To filter out those cases not needing legal services and to provide information about other available social services;
  - d. To inform the callers of when and where to seek legal services and to provide an initial determination of whether such services are necessary or advisable;
  - e. To provide panel members with an additional source of clients and to help them focus their practice on certain areas of law of interest to them.
2. In addition, the Modest Means Legal Program is designed to:
  - a. Remove economic access barriers to legal services for people with modest means through a reduced-fee lawyer referral program;
  - b. Provide an innovative, efficient and systematic approach to the unmet need for legal services;
  - c. Provide a means by which any person meeting the Modest Means Legal Program's financial eligibility guidelines may be referred to a lawyer who is able and interested in rendering legal services;
  - d. Coordinate its activities with the Lawyer Referral Service and the Pro Bono Referral Program of the New Hampshire Bar Association and with other legal services programs within the state having similar purposes.

## B. Supervision

The Delivery of Legal Services Committee of the New Hampshire Bar Association, reporting directly to the Board of Governors, is responsible for the ongoing operation and policies of the Lawyer Referral Service and the Modest Means Legal Program. Subcommittees of the DLS Committee oversee the Programs and shall consist of no fewer than three members. The Committee through its Subcommittee shall review overall policy matters and Program development. It shall formulate and adopt all rules for the conduct and operation of the Programs, subject to the approval of the Board of Governors. Among the Subcommittee's responsibilities are the determination of the compliance by panel members with the Rules and Guidelines of the Lawyer Referral Service and the Modest Means Legal Program. The Subcommittee shall have the authority to remove and/or suspend panelists for cause (as discussed below in §D.3), and/or for consistent or excessive complaints from referral clients. Panel members and LRS applicants have the right to appeal decisions of the Subcommittee to the NHBA Board of Governors. Such other subcommittees as are necessary shall be appointed to assist in the administration of the Programs.

## C. Staff and Duties

1. The Executive Director of the New Hampshire Bar Association and the Associate Executive Director for Legal Services will determine the staffing for the Lawyer Referral Service and the Modest Means Legal Program.
2. Under the supervision of the Associate Executive Director, the staff will provide services to make an initial determination of whether a legal problem exists which requires the services of an attorney and, if appropriate, to determine whether a client is financially eligible for the Modest Means Legal Program.
3. The staff will respond to clients' requests for information about the law and its procedures which, in many cases, can solve clients' problems. This screening process reduces the number of unnecessary referrals which yield no real case, saving both lawyers and the public time and money.
4. The staff will also monitor fees, services and client satisfaction and pursue accountability.

## D. Formation of the Referral Panels

Membership is for one year.

1. Membership requirements for the Lawyer Referral Service and the Modest Means Legal Program are:
  - a. A member of the New Hampshire Bar Association who is authorized to practice law in the State of New Hampshire, and who has not been the subject of any professional conduct discipline, suspension, or disbarment within the preceding twelve (12) months is eligible to apply for membership. An applicant may submit an application and request in writing a waiver of this rule to be determined by the LRS Subcommittee. The Subcommittee may at its discretion waive the twelve-month waiting period.
  - b. On the membership application, the attorney shall choose those areas of legal work in which referrals are desired. The attorney may choose no more than five (5) substantive areas of law. The application shall include a certification of competency (see Agreement) for each selected substantive area. Membership on panels identified as "Subject Matter Panels" will require the satisfaction of registration criteria and submission of a separate certification and agreement to adhere to the subject matter panel standards. Upon written request to the LRS, a panel member may ask for a waiver of these standards by demonstrating a substantially equivalent level of training or experience. The waiver request will be reviewed by the Bar's Associate Director of Legal Services, the Coordinator of the LRS program and the LRS Subcommittee of the Delivery of Legal Services Committee. The panel member may request a meeting with those deciding the waiver request. A written decision will be provided, if requested by the panel member. The attorney will also provide a brief description of his or her experience in the areas listed.
  - c. The Subcommittee shall make professional liability insurance, in the minimum amount recommended by the New Hampshire Bar Association, a condition for panel membership. Panel members are required to provide a Certificate of Insurance with the NH Lawyer Referral Service listed as the certificate holder. The attorney shall notify the LRS within ten business days if insurance coverage has been cancelled or will not be renewed.
  - d. The attorney shall notify the LRS within ten (10) business days if public discipline is entered against him/her by the Professional Conduct Committee or a petition for discipline is filed against him/her by the Attorney Discipline Office, or an affirmative finding of misconduct occurs or public discipline is imposed with regard to his/her privileges to practice law by any bar of any state, court, or jurisdiction.
  - e. The attorney shall authorize the Attorney Discipline Office to release to the Legal Services Director, LRS Coordinator, and/or the LRS Subcommittee a record of any and all disciplinary complaints whether pending or completed, private or public, during the current membership year and the two prior calendar years.
  - f. LRS strongly recommends the use of a Fee Agreement letter in all accepted cases.
2. A panel attorney in making application with either program agrees:
  - a. To grant all referred clients an appointment as soon as practicable after the referral;
  - b. To accept any referred client for an interview in those areas of the law with respect to which they have indicated in their applications they are willing and competent;
  - c. To personally conduct the initial interview with each client referred;
  - d. To refer the client back to the Programs if the attorney is unable to provide a consultation and/or representation; No panel member shall transfer a referral to another attorney unless 1) the other attorney is also a panel member and 2) the original attorney notifies LRS of the transfer within ten (10) business days if the panel member is not employed by the same firm. Any violations of this rule constitute grounds for possible suspension or removal from LRS. The panel member will be liable for 10% of any fees recovered by the attorney to whom the transfer was made or his/her successor, if the panel member receives compensation as a result of the referral to the non-LRS panel member. The foregoing prohibition does not preclude a panel member from engaging another attorney as co-counsel if required by the panel member's professional responsibility to the client. A panel member engaging co-counsel will be liable to LRS for 10% of all attorneys' fees recovered by both the panel member and co-counsel. LRS requires that such panel member give written notice of this requirement to co-counsel when the co-counsel relationship is established, as well as notifying LRS within 10 business days. For good cause shown, the LRS Subcommittee can waive all or a portion of the obligations imposed by this rule.

- e. To complete and return case disposition reports and any periodic reports requested by the Programs on all referred matters within the requested time frame;

3. Denial of Panel Membership and Removal or Suspension from the Panels:

- a. In order to provide the public with an accessible source of referrals to qualified lawyers, the Committee, and/or the Subcommittee appointed to oversee the Programs, may deny panel membership or remove or suspend a panel member [at any time for cause] as determined by a majority of the members. Reasons for removal, suspension, or denial of admission to the Panels may include:
  - i. Engaging in unethical or unprofessional conduct;
  - ii. Engaging in conduct inconsistent with the stated mission and goals of the LRS program or detrimental to the interests of the LRS programs and its participating members;
  - iii. Receiving consistent or excessive complaints from referred clients that provide significant reason to believe a member does not meet reasonable standards of courtesy, competence, and ethical behavior; or
  - iv. Substantial or consistent findings of failure to comply with the rules and guidelines of the LRS Program or the Modest Means Legal Program.
- b. The LRS Director has the authority to remove a panel member at any time for being suspended, disbarred or resigning from membership in the NH Bar Association and may temporarily suspend a panel member at his/her discretion until the next scheduled LRS Subcommittee meeting, for the following:
  - i. Returning any false application, certification or report to the Programs,
  - ii. Arrest or charge for any criminal offense.

The LRS Director or LRS Coordinator may suspend a Panel member for:

- iii. Failing to obtain, maintain and report to the Programs their legal malpractice insurance;
  - iv. Failure to pay percentage fees or executing a payment plan within 75 days of invoice;
  - v. Substantial failure(s) to provide information, render any reports or otherwise abide by the administrative rules of the Programs.
- d. An attorney who has been removed or suspended from or denied panel membership will have thirty days to make a written response to or request a meeting with the Subcommittee. If the Subcommittee then fails to reinstate or admit the member, the Subcommittee will provide the attorney with a written statement of the reasons and notify the member of the right to appeal the decision within thirty days of the notice to the Board of Governors. Suspension or removal from LRS does not absolve the attorney from the continuing obligation to remit percentage fees on the total net collected legal fees to LRS, when collected on all referred cases, regardless of date of collection.
  - e. Complaints against a panel member will be handled by the LRS Coordinator and/or Legal Services Director on a case-by-case manner. Upon receipt of a written complaint by an LRS referred client, the panel member will be notified in writing with a request to respond within 30 days (if client gives authorization). If the matter involves a fee dispute, the panel member agrees to participate in mediation through the Bar's Dispute Resolution Committee. Information regarding client complaints may be forwarded to the LRS Subcommittee for further review.
  - f. The Subcommittee may suspend a panel member for a term not to exceed two (2) years. A panel member seeking reinstatement shall apply to the Subcommittee, requesting same, and, at the discretion of the Subcommittee, provide satisfactory proofs that the reasons that led to the suspension will not re-occur in the future. The Subcommittee may reinstate a panel member on a provisional basis for a set term to ensure that the panel member will remain in compliance with program rules in the future.
  - g. Panel members and LRS applicants have the right to appeal decisions of the Subcommittee to the NHBA Board of Governors.

#### 4. Withdrawal from the Panel:

Any panel member may at any time withdraw his or her name from participation in the Programs upon written notice. Such withdrawal does not entitle panel members to any refund and does not absolve member from forwarding monies owed to the LRS.

### **E. Operation of the Panel and Referral Procedures**

1. Panel members will be listed according to the county and community in which they maintain their principal office.
2. Procedures will be maintained to assure that each referral is made on a rotating basis (based on the last referral received) and in a fair and impartial manner to all panel members. Procedures shall be designed to respond to all known circumstances of the client, including the subject of the legal problem presented, geographical convenience of the client and language needs.
3. No referral shall be made based on race, sex, age, religion or national origin.
4. The client–applicant shall be informed of the LRS/MM procedures which may include but are not necessarily limited to: the initial service fee, future fee arrangements between the client and panel members, the method of selecting a lawyer, including the signed certification of competency (see Agreement) made by attorneys and/or the minimum experience criteria met by the attorneys on Subject Matter Panels.
5. Staff is not required to refer a client more than three (3) times with respect to a single case.
6. During the course of interviewing and screening the prospective client, the referral staff will take every precaution to assure the prospective client of a referral in which there is no conflict of interest. However, should any referral give rise to a conflict of interest, the attorney will contact and cooperate with the Programs in assisting the prospective client in obtaining new counsel.
7. A panel member has no obligation to accept employment beyond the initial consultation.
8. The prospective client, to the extent feasible, shall be informed of the rules of the Programs applicable to the client’s case, including, but not limited to, information about the initial consultation and fee arrangements.

### **F. Records and Reports**

1. The panel attorney will complete and return a bi-monthly report stating the disposition of each referral within thirty (30) days of receipt of report. In addition, each panel attorney shall promptly complete and return such other referral updates as may be requested from time to time by the referral staff. LRS reserves the right to contact the client if needed to determine the outcome of the referral. Nothing herein will require any attorney to violate the attorney–client privilege.
2. The Programs will keep on file a confidential record of all referrals and reports of participating attorneys which will be subject to inspection and examination only by the Programs’ staff and the Subcommittee.
3. The Programs shall keep statistics on the number of referrals, the number of each type of case, the number of clients from various sources and such other items as are necessary to evaluate the efficiency and effectiveness of the Programs.
4. The Programs will keep on file the client evaluation form which will be sent as deemed necessary to clients and panel members of the LRS/MM Programs. These evaluation forms will be subject to inspection and examination only by the Programs’ staff and the Subcommittee.

### **G. Individual Program Requirements – Costs and Fees**

Panel members may receive referrals through either or both programs, but are not required to participate in both:

1. The Full-Fee Referral Program - Panel Members agree:
  - a. to payment of an annual, non–refundable membership fee as determined by the Subcommittee and approved by the Board of Governors.
  - b. to provide the initial half–hour consultation for an optional charge, not to exceed \$25.00. Clients must be informed in advance whether a consultation fee will be charged.

- c. to remit 10% of the total net collected legal fees to LRS when collected on all cases that generate legal fees beyond the initial \$25 consultation fee. (If no more than \$25 is collected, no percentage fees are due to LRS.) ("Net collected legal fees" means the total legal fees collected minus out-of-pocket expenses paid by the attorney.) In addition, a remittance fee is due for any other matter which involves the same subject matter as the initial referral.
  - d. to bill the LRS client based upon the customary fee in the client's type of case so that the ultimate fee will not be any greater than if the client had directly contacted the attorney;
2. The Modest Means Legal Program – Panel Members agree:
- a. no membership fee will be due to receive referrals through the Modest Means Legal Program.
  - b. not to charge clients referred through the Program more than the amount determined by the client's gross household income according to a pre-determined sliding fee scale, based on 250%, 300% or 325% of the federal poverty level.
  - c. to charge no more than the reduced pre-determined hourly rate for the initial consultation fee (optional).
  - d. no percentage fees are due on any cases referred through the Modest Means Legal Program and accepted by the Panel Member at the pre-determined reduced rate. If a case is accepted at a rate higher than the pre-determined hourly rate, the Panel Member will notify LRS immediately so the case may be transferred to the Full-Fee program if the rate charged exceeds \$125 per hour.
  - e. To further the goals of the Modest Means Legal Program, it is strongly recommended BUT NOT REQUIRED that panel members use written fee agreements and:
    - i) charge no more than TWELVE HUNDRED DOLLARS (\$1,200.00) as an initial retainer fee (*recommended but not required*). An attorney may, however, in addition to the retainer fee, require a client to advance non-waivable costs and fees;
    - ii) file a motion for a waiver of court fees and sheriff's costs per the provisions of RSA 499:18-b; and,
    - iii) provide regular and frequent bills itemizing fees and costs incurred to be sent to each Modest Means Legal Program client.

## H. Modest Means Legal Program Financial Eligibility Guidelines Summary

The following is a summary of the guidelines which will be used by staff of the Modest Means Legal Program of the New Hampshire Bar Association in determining whether an applicant is eligible for the reduced fee component of the program.

1. Purpose: The primary purpose of the financial eligibility program guidelines is to ensure that the Modest Means Legal Program provides services in accordance with its philosophy and purpose. (See §A. 2.)
2. Maximum Income:
  - a. Subject to the Programs' priorities, individuals are financially eligible for assistance if their income and assets do not exceed the listed maximum eligibility levels. A copy of those levels will be provided with each referral.
  - b. A person otherwise eligible may nevertheless be found ineligible if he or she meets any of certain specified disqualifying factors, i.e. private legal assistance which the person can afford is available.
3. Asset Ceiling: The guidelines state that when an applicant has liquid assets in excess of those listed, he or she shall be considered ineligible for Modest Means Legal Program assistance. Liquid assets and non-liquid assets are defined in the complete Financial Eligibility Guidelines and the Director is given the discretion to both exclude certain items as liquid assets and to waive the liquid asset ceilings in certain situations.
4. Household Size: Financial eligibility determinations are based on household size. All residents are members of the household, and their incomes are included if they pool their resources with the other residents and function together as an economic unit.
5. Group Representation: Group representation on a reduced fee referral basis may be provided only if the group is primarily composed of eligible persons and provides information showing it lacks practical means of obtaining funds to retain private counsel at a full fee.

6. Type of Case: Referral services may not be provided in criminal, fee-generating, or court-appointment cases as defined in the guidelines, except as noted:
  - a. Criminal cases: Referral services may only be provided when the applicant does not qualify for court-appointed counsel and yet is eligible under the reduced fee guidelines.
  - b. Fee-generating cases: Assistance in obtaining representation in fee-generating cases will be provided only when the applicant cannot find a lawyer who will consider the case without payment of a consultation fee, or recovery of damages is only ancillary to an action for equitable or other non-pecuniary relief.
  - c. Court-appointment cases: No person shall be assisted who has a legal right, under federal or state law, to representation by appointed counsel compensated by the state unless representation is obtained pursuant to a statute or court rule or practice of equal applicability to all attorneys in the jurisdiction or unless representation is essential to secure a right to court-appointed counsel.