

# Lawyer Referral & Information Service Rules

*effective July 1, 2020*

## Virginia Lawyer Referral and Information Service

In order to advance the availability and quality of legal services provided to Virginians, the Virginia State Bar Lawyer Referral and Information Service (VLRS) is established 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.

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

### 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.

### III. ELIGIBILITY

- A. **Eligibility Requirements.** Applicants seeking to be panel members of the VLRS 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<sup>11</sup>:
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.** 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 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 VLRS Qualifications Subcommittee shall have the sole discretion to determine whether a Disciplinary Record in any jurisdiction consisting of a Disbarment, Revocation, or Suspension, imposed at any time, or Public Reprimand or Admonition, imposed within the ten years immediately preceding the application to join the VLRS, shall disqualify a lawyer from participation in the VLRS. If the VLRS Qualifications Subcommittee denies an applicant 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.

**C. 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.

**D. Appeal.** Should the VLRS Qualifications Subcommittee deny panel membership to an applicant pursuant to Rule III.B.2. or pursuant to Rule III.C., 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.

**E. 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. The Rules of Court, Part Six, Section IV, Paragraph 13-30 applies to the review by both the Qualifications Committee and the VLRS Committee of the applicant or panel member's Disciplinary Record and related submissions.

**F. 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 which generates net attorneys' fees of \$500 or more, 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.

## **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. Any records submitted pursuant to a request for information

by the VLRS or an audit are confidential and will not be disclosed except as required by law or court order.

- 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. **Grouping of Panel Members.** Panel members will be grouped by judicial circuit and arranged by geographically convenient areas within such groups.
- C. **Areas of Competency.** Panel members may choose up to 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.
- D. **Conflict of Interest.** Should any referral give rise to a conflict of interest, the 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 conflict of interest 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 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.

### **IX. WITHDRAWAL FROM MEMBERSHIP**

A panel member may withdraw his/her name from VLRS participation by submitting written notice to the VLRS. Withdrawal 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/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.



## **X. SUSPENSION AND TERMINATION OF MEMBERSHIP**

**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 in the disciplinary system or if disciplinary charges have been brought against a panel member. 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 or Suspended. The VLRS Qualifications Subcommittee, subject to appeal to the VLRS Committee, shall have the sole discretion to determine whether a Public Reprimand or Admonition 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.

**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.

The effective date of these Rules shall be July 1, 2020.

Approved by Executive Committee October 25, 2018

Approved by Council October 26, 2018

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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.