

APPLICATION FOR MEMBERSHIP LAWYER REFERRAL SERVICE

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I. POLICY

It is the policy of the Fairfax Bar Association Lawyer Referral Service (FBA LRS) to provide a well-rounded, proficient and practical referral system for legal services in the Northern Virginia area. The FBA LRS is sponsored by the Fairfax Bar Association and is responsible to the Board of Directors of the Association. The LRS Committee is responsible for addressing issues and concerns that arise from the operation of the service. The FBA LRS is a COMMUNITY SERVICE PROJECT OF THE LEGAL PROFESSION and its primary aim is to serve and benefit the public.

II. PURPOSE

The purpose of the FBA LRS is to make legal counseling and representation more available to the public by providing the public with referrals to members of the Bar. Referrals are made consistent with relevant circumstances, such as the type and degree of difficulty of the legal problem presented by a client, his or her spoken language, geographical convenience and ability to pay for the desired services. The FBA LRS will make an initial determination as to whether or not it can provide an appropriate referral; and, if not, the FBA LRS will provide general information and referral to consumer, governmental or other agencies as indicated by the needs of the client.

III. MEMBERSHIP

A. ELIGIBILITY & RULES

In consideration for membership in the FBA LRS, the applicant agrees to meet all of the following requirements and to agree to all of the following:

1. Be admitted to practice law in the Commonwealth of Virginia and be a member in good standing with the Virginia State Bar with the following exception: *If you are ONLY joining the Fair Labor Standards Act and/or Family & Medical Leave Act Panel, you may do so if you are not licensed in the Commonwealth of Virginia but are licensed in the District of Columbia and/or the State of Maryland with the provision that you meet all applicable FBA LRS regulations in your licensing jurisdiction (e.g. be in good standing), provide current copies of professional liability insurance and your bar license card, and otherwise meet all FBA LRS requirements.*
2. Be currently engaged in the practice of law and have no other full-time occupation, nor be involved in any activity that would present a conflict of interest or cause inordinate inaccessibility to a client during normal business hours;
3. If licensed in the Commonwealth of Virginia, meet the annual minimum Virginia State Bar requirements for continuing legal education;
4. Meet the FBA LRS requirements for membership to any Subject Matter Panel;
5. Maintain a law office separate and distinct from any other business or residence, which office is clearly identifiable to the public as such;
6. Maintain in force and effect professional liability insurance in the minimum amounts of \$100,000/\$300,000 and furnish the FBA LRS with a copy of the declarations page of the policy;
7. Disclose the following as part of the initial Membership Application process:
 - a. any past discipline imposed,
 - b. any pending suit(s) for legal malpractice or other private civil action alleging attorney misconduct,
 - c. any pending inquiries or complaints,
 - d. any reported disciplinary proceedings,
 - e. any criminal indictment or any criminal conviction involving a crime of moral turpitude (e.g., but not limited to, lying, cheating and/or stealing).

Subsequent to FBA LRS membership, notify the service within fifteen (15) working days of any reprimand, suspension or probation thereof, or disbarment by the Virginia State Bar or any other licensing agency. Failure to disclose this information, suspension from the practice of law by the licensing agency or, in the event the member is no longer licensed or able to practice law in the Commonwealth of Virginia or for the FLSA/FMLA panel the

District of Columbia and/or the State of Maryland, constitute grounds for rejection or termination from the FBA LRS. Further, the member shall not accept any referrals from the service during any period of time when criminal charges are pending against the member;

8. Use written retainer/representation agreements with the client;
9. Either personally be available or have a staff member who is authorized to make appointments be available to accept calls from the FBA LRS. Failure to comply with this requirement will result in the panel member being passed over for that particular referral; however, the panel member will remain at the top of the rotation list. It is the responsibility of the FBA LRS to set the appointment between the attorney and client. The attorney shall not contact the client prior to the appointment for the purpose of discussing legal issues. The attorney shall obtain the express approval of a majority of the FBA LRS Committee in order to deviate from this procedure;
10. The attorney shall annually update the information submitted to the FBA LRS and shall reaffirm by Membership Renewal Application his/her agreement to the rules and regulations promulgated by the Service, as they exist on the date of the attorney's initial application, and as amended from time to time. The attorney will return the Membership Renewal Application along with any applicable fees and required insurance documentation to the FBA LRS by August 1 of the applicable fiscal year. If the Membership Renewal Application package is not received by August 1, the attorney shall be removed from FBA LRS membership. The attorney shall notify the Service within fifteen (15) days of the effective date, by fax or mail, of changes in address, telephone or fax number;
11. Indemnify, defend and hold harmless the FBA LRS, the FBA and their officers, directors, members and employees from LRS, the FBA and their officers, directors, members and employees from any and all claims, demands, actions, liability or loss which may arise from, or be incurred as a result of any and all referrals of clients, or lack thereof, or use of the information contained in the application, to the member through the FBA LRS and attributed to allegations or claims of professional malpractice;
12. Pay an annual membership fee and execute the membership application and agreement;

B. ANNUAL MEMBERSHIP FEE

The FBA LRS fiscal year is July 1, 20X1 through June 30, 20X2. Payment of the FBA LRS Membership Fee shall be as follows:

1. For FBA members, the full fee of \$150 shall be due for Applications received prior to January 1, 20X2. A half-year fee of \$75 shall be due for Applications received on or after January 1, 20X2.
2. For non-FBA members, the full fee of \$350 shall be due for Applications received prior to January 1, 20X2. A half-year fee of \$175 shall be due for Applications received on or after January 1, 20X2.

C. CLIENT REFERRAL FEES

1. An initial consultation fee of \$40 is to be collected from the referred client for a standard referral and an initial consultation fee of \$20 is to be collected from the referred client for a Modest Means referral. See pages 5 & 6 of this application for information regarding the Modest Means Panel. The initial consultation, whether by telephone or in person, shall last for a maximum of one-half hour unless terminated earlier by client.
2. The attorney named in the referral confirmation letter that is faxed or emailed to the referred attorney shall personally conduct the initial consultation with each referred client at the appointed time in the member's office. If the FBA LRS sets up a telephone consultation, the attorney shall be accessible at his office telephone number on the designated appointment day and time scheduled so that the client is able to reach the referred attorney.
3. **Per the Virginia State Bar Legal Ethics Opinion 1751, an attorney's bill to a potential or actual client referred by the FBA LRS may not exceed the total cost, including legal fees and expenses, that the client would be required to pay if the FBA LRS had not referred the client. The attorney agrees to execute with all FBA LRS referred clients who retain said attorney an "Acknowledgement of Understanding" which sets forth the above, as well as disclosing information that the attorney is required to supply to the FBA LRS. This "Acknowledgement of Understanding" will be faxed to the attorney along with each referral confirmation letter. Please note that with FLSA/FMLA Panel referrals, an additional Department of Labor Confidentiality Agreement will be faxed to the attorney at the time the appointment is scheduled and, if the attorney is retained for the FLSA/FMLA matter, the attorney will also receive a Department of Labor Tracking Requirements Form that is to be completed and returned to the FBA LRS upon resolution of the FLSA/FMLA matter.**

4. The FBA LRS will collect the fee for all consultations that will occur by telephone by obtaining either VISA or MasterCard information from the client. The FBA LRS will attempt to collect the fee for all in-office consultations by credit card, but if unable to do so, it is the attorney's responsibility to collect the fee **before** the start of the meeting, unless the FBA LRS waives the fee. If the client desires to pay for this initial consultation in the attorney's office with either a VISA or MasterCard, the attorney or designate will contact the FBA LRS immediately so that such credit card information may be verified and submitted for approval.
5. The member shall establish a fee agreement at the beginning of the initial consultation with the client if additional compensation is to be sought for any consultation or other services beyond the initial one-half hour. The attorney is, of course, free to extend the consultation time beyond the initial one-half hour time period at no additional cost to the client at his discretion.
6. Each member shall promptly remit the initial consultation fee along with a completed copy of the confirmation letter indicating the status of each client referred to him/her. These shall be returned to the FBA LRS within 30 days of the referral date. Failure to do so will result in the attorney being placed on inactive status and losing his/her rotation privileges. The panel member shall track all FBA LRS referrals beyond the initial 30-day reporting period and notify the FBA LRS of any changes in status.

D. PERCENTAGE FEES

In addition to the initial consultation fee, each member shall remit a percentage fee to the FBA LRS when, as the result of a referral, the attorney has been retained, hired for additional services or otherwise earns and receives a fee either from the referred client or as a result of the FBA LRS referral, based on the following schedule:

1. No percentage fees are due on any Modest Means cases.
2. No percentage fees are due for cases in which the total legal/attorney(s) fees are \$1 - \$499.
3. If a referral generates total legal/attorney(s) fees of \$500 or more, remit ten (10) percent of the total legal/attorney(s) fees, including ten (10) percent of the first \$1 - \$499 of legal/attorney(s) fees.
4. The panel member will forward the applicable LRS percentage fee to the FBA LRS within 30 days of receipt of fees earned as a result of the LRS referral. The members/Status/Accounting Report shall also be returned to LRS within 30 days of its receipt. The FBA LRS reserves the right to request supporting documentation for all Case Status/Accounting reports submitted, and the panel member agrees to provide such documentation.
5. The panel member will notify the client at the outset of representation that a portion of the fees may be payable to the FBA LRS and that the FBA LRS is entitled to know the amount of fees received. Upon the settlement of any such action, the attorney shall be obligated to include the FBA LRS with those who have a right to know about a settlement, to the extent necessary to allow the FBA LRS to have knowledge of attorney(s) or other fees paid in the case whether paid directly or by another party or by settlement proceeds, so that the FBA LRS may determine the portion of the attorney's or other fees to which it is entitled.
6. Client Survey Letters, which ask the FBA LRS clients specific questions to determine their satisfaction with the service provided by both the FBA LRS and its member attorneys, are sent to clients who agree in advance to receive such communications. These letters also request information from the client regarding fees paid to the attorney. The attorney agrees to cooperate with the FBA LRS with regard to these Client Survey Letters in the event of discrepancies between the records of the attorney and those of the client.
7. The attorney shall maintain responsibility and control of each matter referred and shall not transfer responsibility or control of any matter referred by the FBA LRS without the knowledge and permission of the FBA LRS, unless required by law or court order. The foregoing shall not prevent a panel member who is associated with a firm or group from having aspects of the matter handled by another attorney in the firm or group under the panel member's supervision, provided that the panel member retains responsibility.
8. When the FBA LRS has made a referral to a panel member, the panel member may not recommend or refer another attorney who is not a member of the FBA LRS to the client. If a panel member refers the client or matter to another LRS attorney, it is the responsibility of the referring attorney to provide the FBA LRS with the name(s) of the attorney(s). If a panel member is unable to assist a referred client for any legitimate reason, the attorney should refer the client back to the FBA LRS first so that another referral can be made. If the FBA LRS is unable to make a new referral to the client, then the panel member to whom the matter was initially referred will be free to refer the client to a non-panel member without obligation to the FBA LRS. Legitimate reasons include but are not limited to conflicts of interest and the referred client's legal matter not being within the area of the attorney's expertise.
9. If the referred attorney does not rejoin the FBA LRS, he/she is still responsible for any amounts due the FBA LRS. If the referred attorney is associated with a law firm/practice (firm #1) and leaves that law firm/practice, the attorney or law firm (firm #1) keeping the attorney's LRS referred case(s) is responsible for any amounts due the FBA LRS. If the attorney takes the LRS referred case(s) with him/her to another law firm (firm #2), it is the referred attorney's responsibility to ensure payment of any amounts due the FBA LRS and to submit a new Membership Certification with Firm #2 Managing Partner's signature. A panel member who transfers, in whole or in part, responsibility of any

matter referred by the LRS to a non-panel attorney(s) in violation of paragraph 8 shall be contractually liable for any fees owed and remain liable for collection and/or payment of any fees owed LRS.

E. DEFINITIONS

1. The term "attorney(s)" refers to any FBA LRS panel member, as well as any other attorney who represents a client obtained as the result of a FBA LRS referral, even if the panel member inappropriately referred the client to a non-panel attorney.
2. The term "legal/attorney(s) fees" refers to any sum received from either an FBA LRS referred client or as a result of a FBA LRS referral by a FBA LRS panel member or any other attorney who represents a client obtained as the result of a FBA LRS referral. This sum excludes all direct expenses of the case (e.g., court filing fees, copying or reproduction charges directly related to the case, etc.), which expenses may be paid separately by the client. Overhead and other indirect expenses of the attorney(s), (e.g., rent, staff salaries, utilities, legal subscriptions, etc.), shall not reduce such sum. For example:
 - a. Attorney is retained as the result of a FBA LRS referral. The retainer agreement between the attorney and client states that the attorney's fee is \$400 and that is the total amount of attorney's fees collected. *No percentage fees are due LRS*
 - b. The collected attorney's fee is \$600. *The attorney would remit \$60 to LRS.*
 - c. The aggregate attorney(s) fee is used to calculate amounts owed to LRS. For example, if a fee agreement is first made for an amount less than \$500, but fees are later negotiated for an amount greater than \$500, percentage fees would then be due LRS.
 - d. *Fees are due and payable to the LRS as they are earned and received and/or taken into income.*
3. The term "referral" refers to the initial matter referred *as well as any other matter which arises out of the subject matter of the original referral. For example:*
 - a. Client is referred to an attorney in the area of "Estate Planning." Client completes initial consultation with attorney and subsequently hires attorney to draft a Will and a Trust. *Attorney would owe percentage fees to the FBA LRS for these matters.*
 - b. Client is referred to an attorney in the area of "Criminal Law – Traffic." Client retains attorney for this matter and subsequently retains the same attorney to represent him/her in a Divorce. *The attorney would be responsible to the FBA LRS for percentage fees on the Traffic matter, but not on the Divorce matter.*

F. COMMITMENT TO CLIENTS

Panel members shall treat all referred clients with respect and courtesy. Client telephone calls will be returned promptly and clients shall be kept informed of the status and progress of their case(s). Panel members will at all times handle client matters competently and diligently, in accordance with the highest standards of the profession and will exhibit the highest degree of ethical conduct in accordance with the Virginia Rules of Professional Responsibility or the applicable rules for their licensing jurisdiction.

IV. SUSPENSION AND REMOVAL

Upon failure to uphold any FBA LRS rule(s), the member will be notified of the violation(s) in writing by the LRS Director and his/her FBA LRS membership may be removed, without refund of dues. The LRS Director, in conjunction with the LRS Committee, will make the initial determination that a violation requiring suspension has occurred.

A. MANDATORY SUSPENSION

A member is automatically suspended upon:

1. Disbarment or suspension from the practice of law.
2. Conviction of a crime of moral turpitude (for example, but not limited to, lying, cheating, dishonesty and/or stealing).
3. A finding by the Virginia State Bar or other applicable licensing agency/jurisdiction of a violation of the Code of Professional Responsibility.

A member shall also be suspended from the FBA LRS for as long as a member fails, after ten days written notice, to do any of the following:

1. Pay the annual membership fee.
2. Pay the initial consultation fee, unless waived.
3. Pay the applicable percentage fee.
4. Furnish proof of continued professional liability insurance coverage.

B. DISCRETIONARY SUSPENSION

These violations include, but are not limited to:

1. Failure to handle referred cases with professional competence and diligence.
2. Making a material misstatement on or failure to submit any required FBA LRS report.
3. Repeated discourtesy to referred clients or FBA LRS staff.
4. Consistent unjustified unavailability to referred clients.
5. Consistent refusal to make or keep appointments with referred clients.
6. Consistent or excessive complaints from referred clients.
7. Failure to respond to or cooperate in the resolution of a client's complaint.
8. Failure to promptly return a client's telephone calls.

C. RULES AND PROCEDURES FOR SUSPENSION

1. If a member feels he/she has been unjustly removed for any matter *other than* a dispute regarding the amount of percentage fee to be remitted to the FBA LRS, the member may appeal in writing to the FBA LRS Committee within 30 days of receiving written notification of the suspension.
2. After receiving a written appeal, the FBA LRS Committee shall allow the panel member to be present at the Committee's next monthly meeting for the purpose of presenting an oral argument. This oral argument, which shall not exceed 10 minutes, will allow the panel member to present his position with regard to the allegations resulting in suspension.
3. The Committee will then, by a majority vote of the Committee members in attendance, decide whether or not it believes that the conduct of the panel member warrants suspension or other sanctions. If the FBA LRS Committee finds that the panel member's removal from membership is warranted, it shall then refer the matter and the Committee's recommendation to the FBA Board of Directors. The panel member will have an opportunity to both submit a written statement to the FBA Board of Directors and also appear before the Board in order to present an oral argument, not to exceed 10 minutes. The FBA Board of Directors' decision shall be final.
4. Unresolved disputes between a member and the FBA LRS regarding the amount of percentage fee to be remitted to the FBA LRS shall be automatically referred to the FBA Board of Directors. The panel member will have an opportunity to both submit a written statement to the FBA Board of Director and also appear before the Board in order to present an oral argument, not to exceed 10 minutes. The FBA Board of Directors' decision shall be final.
5. The panel member waives his/her right to a trial by jury regarding any such fee dispute that may develop between the member and the FBA LRS.

V. PRACTICE AREAS FORM

A. RULES

Panel members may choose a maximum of six (6) out of the eighteen (18) major numbered categories on the practice areas form located on page 8 of the application. Any and all of the sub-categories located beneath a major numbered category may be selected. A check placed in the first column indicates that the panel member will accept regular fee referrals. A check placed in the second column indicates that the panel member will accept reduced fee Modest Means referrals.

B. MODEST MEANS PANEL

In an effort to provide legal assistance to those individuals who do not qualify for legal services under the federal guidelines for poverty and cannot afford the regular legal fees of an attorney, the FBA LRS in cooperation with Legal Services of Northern Virginia (LSNV) has created a Modest Means attorney panel. Attorneys who volunteer to sign up to accept these cases agree not to exceed fees of \$150.00 per hour once retained and the client will be charged \$20.00 for the initial one-half hour consultation with the participating attorney. Only those clients who meet the criteria set by the FBA LRS and screened by LSNV will be allowed to take advantage of this service.

Those applicants with total family incomes above the LSNV limits and not exceeding 300 percent of the federal poverty guidelines can be referred to the Modest Means Panel as long as those applicants also meet the applicable LSNV assets criteria. LSNV assigns clients a case number that identifies that the client has been screened for eligibility. The FBA LRS then refers the eligible client to an attorney on the Modest Means Panel.

By checking the second column on the Practice Areas Form (see page 8 of the application), the panel member agrees to participate on the Modest Means Panel. A separate, additional rotation list is reserve for these cases. The panel member may choose to accept both reduced and regular rate referrals in the same categories. Note that a panel member's rotation on the regular rate category panel will not be jeopardized in any way by accepting both reduced and regular rate referrals. *The Modest Means Panel provides an opportunity for the panel member to increase his/her number of referrals while providing a valuable public service to those individuals who might otherwise not have their legal needs met.*

C. SUBJECT MATTER PANELS:

- 1. BANKRUPTCY**
- 2. CRIMINAL LAW**
- 3. FAMILY LAW**
- 4. DOL FLSA & DOL FMLA**

In order for the FBA LRS to be certified by the American Bar Association (ABA), it is necessary for the Service to create and maintain a subject matter panel in at least one area. An LRS Task Force initially selected the Bankruptcy Panel to meet the ABA requirements for subject matter panels. The purpose behind creating such a panel is to provide something to the legal consumer that cannot be obtained by simply picking a name from the Yellow Pages or Internet Directory. The goal of the Subject Matter Panel is to refer each client to a lawyer who has demonstrated some objective knowledge in the area of law required for that referral. Further, the FBA LRS believes that it can better market its service to the public by having the authority to use the ABA seal which states that the LRS meets ABA standards for lawyer referral services. In order to continue to provide a higher level of service to the public, the FBA LRS created a Criminal Law Subject Matter Panel for implementation beginning July 1, 2004, a Family Law Subject Matter Panel for implementation beginning July 1, 2007 and two Department of Labor Subject Matter Panels (FLSA & FMLA) beginning Dec. 13, 2010.

To apply to participate on the Bankruptcy Subject Matter Panel, please complete the attached form entitled *CERTIFICATION OF BANKRUPTCY PANEL MEMBERS* that is found on page 24 of the application. Please note that all requirements must be met in order to participate on the Bankruptcy Subject Matter Panel.

To apply to participate on the Criminal Law Subject Matter Panel, please complete the attached *APPLICATION FOR CRIMINAL LAW PANEL* (pages 11-14) with reference to the *CRIMINAL PRACTICE LRIS REQUIREMENTS* (pages 15-18). Please note that for each section (e.g. State, Federal, etc.) an applicant will qualify for referrals to all cases below or equal to his/her highest qualification level.

To apply to participate on the Family Law Subject Matter Panel, please complete the attached *APPLICATION FOR FAMILY LAW PANEL* (pages 19-20) with reference to the *FAMILY LAW PRACTICE LRIS REQUIREMENTS* (pages 21-23).

To apply to participate on the Department of Labor Fair Labor Standards Act (FLSA) and/or Family and Medical Leave Act (FMLA) Subject Matter Panel, please complete the attached *APPLICATION FOR EMPLOYMENT LAW PANELS WAGE & HOUR/FAIR LABOR STANDARDS ACT (FLSA) FAMILY AND MEDICAL LEAVE ACT (FMLA)* (pages 25 & 26)