STATE OF WISCONSIN   SUPREME COURT OF WISCONSIN

In the Matter of the Petition to Amend Supreme Court Rule 10.05(4)(m)1.	MEMORANDUM IN SUPPORT OF PETITION 19- ___

The State Bar of Wisconsin petitions the Wisconsin Supreme Court to amend Supreme Court Rule 10.05(4)(m) related to assistance programs established by the State Bar of Wisconsin. The State Bar Board of Governors approved the filing of this petition by a vote greater than two-thirds on April 12, 2019.

SCR 10.05(4)(m)

SCR 10.05(4) enumerates the various functions of the Board of Governors. SCR 10.05(4)(m)1., entitled "Establishment," authorizes the Board of Governors to establish assistance programs. It also authorizes the Board of Governors to establish committees and to hire staff as reasonably necessary to provide assistance. SCR 10.05(4)(m)2. provides for privileges and immunity with regard to those assistance programs; and SCR 10.05(4)(m)3. provides for confidentiality with regard to those assistance programs.

SCR 10.05(4)(m)1., in its current form, states:

> (m) 1. Establishment. The board of governors may provide assistance programs, including assistance in law office management, and assistance to judges, lawyers, law students, and their families in coping with alcoholism and other addictions, mental illness, physical disability, and other problems related to or affecting the practice of law. The board may establish committees, hire staff, and obtain volunteers as reasonably necessary to provide assistance. The board shall establish policies consistent with the purposes of the state bar and in furtherance of the public interest in the competence and integrity of the legal profession.

The State Bar of Wisconsin seeks to amend SCR 10.05(4)(m)1. by adding the lawyer referral assistance program to the assistance programs specifically included in the rule. The assistance programs specifically identified in the current rule are not exclusive: they are merely identified as being included in the assistance programs that the Board of Governors may provide. The proposed amendment clarifies that the lawyer referral assistance program is an assistance program within the meaning of SCR 10.05(4)(m)1. and is entitled to the same protections as other assistance programs provided by the Board of Governors.

ABA Resolution 106 and Report

In 2016, the American Bar Association House of Delegates adopted Resolution 106 urging courts and legislative bodies to adopt rules or enact legislation to establish an evidentiary privilege for lawyer referral services and their clients ("LRS clients") for confidential communications between an LRS client and a lawyer referral service, when an LRS client

consults a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice from a lawyer. The resolution and its supporting report are attached to this memorandum as Appendix A.

In its report in support of the Resolution, the Standing Committee on Lawyer Referral and Information Service stated:

> The lack of a clear privilege threatens the open communication necessary for lawyer referral services to effectively triage the legal issues involved and match LRS clients with appropriate lawyers, government agencies, non-profit programs or organizations, or other resources. LRS clients' trust and confidence in lawyer referral services might well quickly evaporate following publicized accounts of successful discovery requests to lawyer referral services. Discouraging or impeding the free and candid communications between lawyer referral services and LRS clients will materially harm the ability of lawyer referral services to help hundreds of thousands of people in need of legal assistance. Without open communication – including the exchange of information that might prompt lawyer referral service personnel to advise or warn an LRS client about fast-approaching deadlines and other crucial aspects of the case – LRS clients may prejudice their legal rights or suffer other serious harm.

The State Bar of Wisconsin's Lawyer Referral and Information Service (LRIS)

The State Bar of Wisconsin's Lawyer Referral and Information Service (LRIS) acts both as a public service helping clients find legal resources and as a moderately priced marketing tool for attorneys to help them grow their practices.

LRIS staff members respond to more than 20,000 calls each year. None of the LRIS staff, including the program manager, is an attorney. Although LRIS also provides an online do-it-yourself delivery mechanism for attorney referrals, the service's statistics show that clients who are referred following a conversation with a LRIS staff member are far more likely to engage the services of an attorney.

Each caller to LRIS has a story to tell about his or her legal problem. The LRIS staff member engages the caller in conversation to gather information and to help the LRIS staff member find the best possible resource to address the caller's legal problem. That legal problem, by its nature, creates stress for the caller, and the caller often shares details without any prompting from LRIS staff.

The confidentiality which LRIS promises callers as a matter of program policy does not protect those callers from outside entities seeking information revealed in the course of the referral process. Providing both confidentiality and privilege to LRIS callers will allow callers to share the information needed to assist them in finding the best possible resource without the fear of exposure to adverse parties. Therefore, consistent with ABA Resolution 106 the State Bar of Wisconsin respectfully requests that the Supreme Court grant its petition to amend SCR

10.05(4)(m)1. to add the lawyer referral assistance program to the assistance programs specifically included in the rule. Insuring confidentiality, establishing a privilege, and providing immunity would encourage candid communications between the lawyer referral service staff members and the callers, and promote trust and confidence in the lawyer referral service.

Respectfully submitted this ___ day of _____, 2019.

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