

Explanation of Proposed Amendments to Supreme Court Rule 730

Proposed amendments to Supreme Court Rule 730 would create a registration and regulatory framework, and would divide the Rule into four distinct parts: (1) Applicability; (2) Registration and Reporting; (3) Removal of an Intermediary Connecting Service From The Roll; and (4) Discipline of an Intermediary Connecting Service.

I. Proposed Rule Scope and Registration Requirements

Scope of the Rule

Currently, Rule 730 only applies to group legal services, and it does not provide the Court or the ARDC with any registration, investigative or regulatory power over those services. The proposed framework seeks to encompass all for-profit services that connect lawyers to clients. The scope of “intermediary connecting service” would include prepaid or group legal services plans. Accordingly, Rule 730 is an appropriate Rule by which to implement the registration and regulatory components of the proposed framework.

The proposal recognizes the beneficial contributions and longstanding positive view of bar associations and their referral services. Accordingly, proposed amendments to Rule 730 would completely exempt bar associations and legal aid organizations from the rule’s requirements. Those services would not need to register or comply with the regulatory framework, and they would not be subject to the proposed amendments to Rule 7.2. Even though the Rule exempts bar associations and legal aid organizations, those services may still wish to comply with the requirements of Rule 730 to remain competitive in the lawyer-client connecting marketplace.

The Employee Retirement Income Security Act of 1974 preempts state regulations of employee welfare benefit plans. *See Feinstein v. Attorney General*, 366 N.Y.S.2d 613, 618, 326 N.E.2d 288, 292 (1975) (“Federal statute may, perhaps, pre-empt the regulation of union prepaid legal services plans, *qua* plans, but does not reach the professional licensure and regulation of lawyers, *qua* lawyers, who would render legal services under the plans.”); accord *Matter of UAW Legal Servs. Plan*, 416 N.Y.S.2d 133, 134, 69 A.D.2d 995, (App.Div. 1979). Because the ARDC cannot discipline prepaid and group legal services plans that are provided as an employee welfare benefit plan pursuant to ERISA, the proposal would only require those plans to register annually. Also, the proposal would not require those plans to pay any fee to satisfy the registration requirements, nor would the proposal require those plans to adhere to the compliance or disciplinary provisions.

Registration and Access to Justice

Intermediary connecting services must register to operate their services to connect Illinois lawyers to potential clients for the performance of legal services in Illinois. The registration requirements are meant to encourage legitimate connecting services.

Intermediary connecting services must also register annually. As part of the annual registration, a service must pay a registration fee and provide a copy of the service's financial records for the prior year, showing the total revenue generated from its connecting fees. The initial and annual registration fees would be used by the ARDC to fund its expenses to administer the rule.

To help address access to justice issues, the ARDC requests that the Court require a registered connecting service to remit to the ARDC 0.25% of its total revenue of the prior year that was generated from its connecting fees. At the Court's direction, the ARDC would then transfer those funds access to justice entities or programs that the Court designates.

Denying a Service's Registration

Because one objective of the proposed framework is to discourage unscrupulous services, proposed amendments to Rule 730 would provide a mechanism for the ARDC to deny a service's registration, either during the initial or annual registration phases. This would go beyond denial of a registration application as incomplete. Instead, the ARDC would have the ability to investigate the registration application or annual registration documents. If the ARDC determines that there is missing information or false statements, that the service does not meet the definition of "intermediary connecting service," or that the service otherwise does not satisfy the registration requirements, the Administrator could deny the service's registration. The ARDC would inform the agent of the service of the denial and allow the service to file amended documents. Alternatively, the service could seek review in the Court upon the service's motion.

Similarly, proposed provisions would provide the Administrator with the ability to refuse to register an intermediary connecting service if an owner or other similar individual who was responsible for the affairs of the service was associated with a disciplined intermediary connecting service in a similar role or capacity. Thus, if a service's registration was revoked because it engaged in deceptive marketing practices or required its participating lawyers to violate the Rules of Professional Conduct, the Administrator could refuse to register a subsequent intermediary connecting service owned by the same individual as the prior, disciplined service.

II. Proposed Compliance Requirements

As part of the initial and annual registration process, an intermediary connecting service must certify that it complies with certain enumerated requirements. These proposed requirements are designed to prevent nonlawyer control over, or interference with, a lawyer's judgment or representation of a client. Aside from the prohibition against engaging in the unauthorized practice of law or engaging in deceptive conduct, most of the proposed requirements, in general, fall into one of three categories: (1) recommendations and referrals; (2) disclosures; and (3) influence or control. Additional proposed amendments would utilize the current regulatory mechanism for attorneys to investigate possible violations of the compliance provisions and to discipline intermediary connecting services for any violation.

To encourage innovation, intermediary connecting services would be permitted to decide how potential clients select a lawyer or legal service, which types of legal matters to offer, or the cost of an offered legal service. However, to protect the public and the legal profession, connecting services cannot refer or recommend an attorney, cannot interfere with or control the attorney or the representation, and cannot request or require the lawyer to violate the Rules of Professional Conduct. Thus, a connecting service would not be able to force a participating lawyer to accept a connection no matter the fee or legal area, if that would cause the connecting service to interfere with the lawyer's judgment or cause the lawyer to violate the Rules of Professional Conduct.

Although intermediary connecting services would not be permitted to recommend or refer a lawyer to a potential client, the connecting services could still offer a list of lawyers generated from a user-defined search. Still, the potential client would have to be the one who ultimately chooses the lawyer. Also, connecting services would have to connect a potential client to a participating lawyer based upon the lawyer's identified connection criteria. The criteria could include area of law, geographical area, fee range, and whether the lawyer would be willing to be connected with a potential client for criteria for which no other lawyer is listed.

Similarly, proposed provisions would permit ratings, reviews, and promotional statements pertaining to the participating lawyers. But, intermediary connecting services would have to disclose whether a lawyer has paid a fee in connection to the ratings, reviews, or promotions. Intermediary connecting services would also have to make their rating criteria publicly available and readily accessible. Further, the connecting services would have to provide a description of their rating and review methods and disclose whether the lawyers have an opportunity to dispute the ratings and reviews.

Proposed requirements also address a participating lawyer's fee and an intermediary connecting service's potential control over the lawyer's fee. To clarify that the proposed framework does not permit fee-splitting, intermediary connecting services would not be permitted to list, charge, or collect a fee that is calculated or expressed as a percentage of the lawyer's actual or anticipated legal fee. Nor could the services restrict a lawyer's receipt or access to legal fees, or attempt to claw back a lawyer's earned legal fees. Importantly, the type and receipt of a lawyer's fee would still be governed by the Rules of Professional Conduct. An intermediary connecting service, therefore, would not be able to hold a lawyer's fee that a potential client has paid for the lawyer's services, and it would not be able to restrict the lawyer's receipt of the legal fee based upon the client's satisfaction or other conditions.

Further, aside from the disclosure requirements pertaining to ratings, reviews, rankings, and comparative advertising, intermediary connecting services would be required to disclose to potential clients that additional information about a participating lawyer, including whether the lawyer has malpractice insurance, can be found at the ARDC's website. While the Court does not require Illinois lawyers to maintain malpractice insurance, it does require lawyers to disclose whether they have it. Intermediary connecting services and participating lawyers could take advantage of this disclosure requirement by informing potential clients when a lawyer has malpractice insurance. Potential clients, though, should still be aware of whether a lawyer has malpractice coverage, especially if the service or a participating lawyer does not provide this

disclosure. By viewing a lawyer's ARDC listing, a potential client could learn if the lawyer has malpractice insurance. The potential client could also learn the status of disciplinary history of the lawyer. A further benefit of this disclosure requirement is that the ARDC would have an expanded public presence.

III. Proposed Procedures to Address the Failure to Register

To further protect the public and the integrity of the legal profession, proposed amendments to Rule 730 would make use of the current attorney registration mechanism to remove registered intermediary connecting services from the roll for their failure to follow the reporting or annual registration requirements. If a service does not pay the annual fee or does not remit the required access to justice fees, the service would be removed from the roll until it corrects any deficiency.