

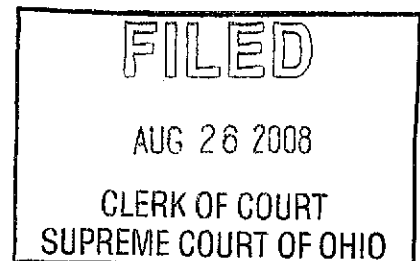
BEFORE THE SUPREME COURT OF OHIO

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| COLUMBUS BAR ASSOCIATION, | : | SUPREME COURT CASE NO. |
| | | 2005-0422 |
| Relator | : | |
| | | Board Case No. UPL 02-10 |
| vs. | : | |
| | | <u>PANEL REPORT</u> |
| AMERICAN FAMILY PREPAID | : | |
| LEGAL CORPORATION, ET AL., | : | (Proposed Resolution, |
| | : | Gov. Bar R. VII, Sec. 5b |
| Respondents | : | regarding respondents Joseph |
| | : | Hamel, Timothy Holmes, Adam |
| | : | Hyers, and Timothy Clouse) |

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law ("Board") on Relator's Complaint filed on November 19, 2002. On or about March 23, 2003, Relator and Respondents entered into a Consent Agreement. In 2005, Relator sought enforcement of the Consent Agreement by the Supreme Court of Ohio, alleging that the Consent Agreement was being violated by the Respondents' continued actions in breach of the Consent Agreement and further engaging in the unauthorized practice of the law. Relator filed a Motion to Enforce the Consent Agreement with the Supreme Court of Ohio.

On or about March 3, 2005, the Supreme Court issued an Interim Cease and Desist Order against Respondents which Order has and continues to remain in effect. The Interim Cease and Desist Order also included a charge to the UPL Board to determine whether "the March 2003 settlement agreement [i.e., consent agreement] has been violated and to file a report with the Court."



On or about April 12, 2005, a formal Order of referral was issued from the Supreme Court of Ohio to the UPL Board for the limited purposes of determining whether the Consent Agreement had been breached and/or violated. Respondents AMERICAN FAMILY PREPAID LEGAL CORPORATION (“AFPLC”), HERITAGE MARKETING INSURANCE SERVICES (“HMISI”), STANLEY NORMAN, JEFFREY NORMAN, HAROLD MILLER, and PAUL CHILES were initially represented by the law firm of Squires, Sanders & Dempsey, LLP. The Individually Named Respondents (as listed in Exhibit A attached to the Order disposing of Motions for Summary Judgment which Order was filed on December 21, 2007, and a copy of which Order and Nunc Pro Tunc Order are attached hereto and incorporated herein as Exhibit 1) were represented by the law firm of Kegler, Brown, Hill & Ritter, LLP.

On April 15, 2005, pursuant to the provisions of Section 7(A)(1) of Rule VII of the Supreme Court Rules for the Government of the Bar, this matter was assigned to the Panel of James L. Ervin, Jr., Chair, C. Lynne Day, Don J. Hunt, and an Alternate.

The Parties submitted a joint settlement agreement to the Panel which referred the settlement agreement to the Ohio Supreme Court for consideration. The Court rejected the settlement agreement in December 2005 and referred the matter back to the Board, and the Panel, for adjudication on the merits.

The Relator retained the law firm of Porter, Wright, Morris & Arthur, LLP, as counsel which law firm filed its Notice of Appearance on behalf of Relator on or about May 26, 2006. (Relator’s former counsel Martin Susec withdrew.)

On or about December 29, 2006, the law firm of Kegler, Brown, Hill & Ritter, LLP, filed a Notice of Withdrawal of Counsel as to the Individually Named Respondents.

On or about June 26, 2007, legal counsel for Respondents AFPLC, HMISI, S. NORMAN, J. NORMAN, H. MILLER, and P. CHILES withdrew its representation. As a result, no Respondents were represented by counsel. On August 17, 2007, a final telephone status conference was held for the benefit of the Individually Named Respondents.

In its Motion to Enforce Consent Agreement, Relator alleged that Respondents continued to violate the terms of the Consent Agreement by engaging in the unauthorized practice of the law. Relator described Respondents' specific acts of:

"1) selling, marketing, and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the 'legal products'); 2) training, monitoring and educating other sales representatives to sell, market or prepare said legal products; 3) giving legal advice relative to said legal products; 4) advising and counseling clients concerning the suitability of said legal products for a client's particular situation; 5) gathering client information for purposes of preparing or determining the suitability for the appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney; 6) preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney; 7) offering legal advice to individuals concerning the execution of said legal products; and 8) engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or no contact with clients." (Consent Agreement).

On September 9, 2005, respondents American Family Prepaid Legal Corporation, Heritage Marketing Insurance Services, Inc., Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller filed a motion for summary judgment, and on September 13, 2005, respondents individual sales and delivery representatives filed a motion for summary judgment. On October 1, 2007, relator filed a motion for summary judgment and memorandum in opposition to respondents' motions for summary judgment.

The Panel issued a separate Report based upon its Order filed on December 21, 2007, addressing the dispositive Motions and responses to the same filed by the parties, a copy of which Order and Nunc Pro Tunc Order are attached hereto and incorporated herein as Exhibit 1.

On March 14, 2008, Relator and Individual Respondents Joseph Hamel, Timothy Holmes and Adam Hyers, submitted a signed Proposed Consent Decree. The panel unanimously voted to approve the Consent Decree between Relator and Individual Respondents Joseph Hamel, Timothy Holmes and Adam Hyers.

On March 17, 2008 Relator and Individual Respondent Timothy Clouse submitted a signed Proposed Consent Decree. The panel unanimously voted to approve the Consent Decree between Relator and Individual Respondent Timothy Clouse.

Per Entry filed on April 25, 2008, as a result of the fact that James L. Ervin, Jr.'s term on the Board of Commissioners formally expired on December 31, 2007, Frank R. DeSantis was assigned to the Panel for the completion of this matter.

II. FINDINGS OF FACT

1. Relator, Columbus Bar Association, is duly authorized to investigate activities which may constitute the unauthorized practice of law within the State of Ohio. (Gov. Bar R. VII, §§ 4 and 5).

2, Individual Respondents, Joseph Hamel, Timothy Holmes, Adam Hyers, and Timothy Clouse (collectively the "Individual Respondents" for purposes of this Report) are not licensed to practice law in Ohio.

3. The Individual Respondents have never been attorneys admitted to practice, granted active status, or certified to practice law in the State of Ohio.

4. The Panel specifically adopts the recitation of facts as set forth in the respective Consent Decrees, as if fully restated herein.

III. CONCLUSIONS OF LAW

1. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Company v. J.C. Penney Company* (1986), 27 Ohio St. 3d 31, 501 N.E.2d 617; *Judd v. City Trust & Saving Bank* (1937), 133 Ohio St. 81, 10 O.O. 95, 12 N.E.2d 288.

2. The unauthorized practice of law is prohibited by Section 4705.01 of the Ohio Revised Code.

3. The Supreme Court has consistently held that the practice of law not only encompasses the drafting and preparation of pleadings filed in the courts of Ohio, it also includes the preparation of legal documents and instruments upon which legal rights are secured or advanced. *Akron Bar Association v. Greene* (1997), 77 Ohio St. 3d 279; *Land Title Abstract & Trust v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650.

4. The unauthorized practice of law also applies to the marketing and sale of products through a network of nonattorney advisors, when advice was given to customers regarding legal effects of documents, and the use of a review attorney occurred after the

execution of a contract. (*Cleveland Bar Assoc. v. Sharp Estate Services, Inc., et al.*, (2005), 107 Ohio St.3d 219; and *Cincinnati Bar Assoc. v. Kathman* (2001), 92 Ohio St.3d 92, 748 N.E.2d 1091.)

5. The marketing of living trusts by nonattorneys also constitutes the unauthorized practice of law. (*Trumbull Cty. Bar Assoc. v. Hanna* (1997), 80 OhioSt.3d 58, 60, 684 N.E.2d 329.)

6. The unauthorized practice of law also applies to a non-attorney rendering legal advice and counsel and preparing legal instruments and contracts by which legal rights are secured. (*Disciplinary Counsel v. Willis*) (2002), 96 Ohio St.3d 142, 772 N.E. 2d 625; *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 28, 193 N.E. 650, 652.)

7. The Individual Respondents are not attorneys nor have they ever been admitted to practice law in Ohio.

8. The Individual Respondents engaged in the unauthorized practice of law by violating the terms of the Consent Agreement as more fully set forth in the Consent Decrees respectively submitted on March 14, 2008, and March 17, 2008.

IV. PANEL RECOMMENDATIONS

1. The Panel approved the proposed Consent Decrees respectively submitted on March 14, 2008, and on March 17, 2008.

2. The Panel finds the Individual Respondents admitted to the material allegations of the Motion to Enforce Consent Agreement through their execution of and as reflected in the Consent Decrees; and that the public is sufficiently protected from future harm as Individual Respondents have agree to cease and desist from the alleged

activities and the agreement resolves the material allegations of unauthorized practice of law raised by the Relator in its Motion to Enforce the Consent Agreement. The Panel further finds that the negotiated imposition of civil penalties of \$2,500.00 against each Individual Respondent demonstrates the Individual Respondents' acknowledgment of the serious nature of the conduct and the civil penalties will act as a sufficient deterrent to similar conduct in the future.

3. The Panel recommends that the Consent Decrees be approved by the Board and filed with the Supreme Court pursuant to Rule VII, §5b(E). (Exhibits 2 and 3.)

4. The Panel further recommends that the Consent Decrees be approved and ordered by the Supreme Court in the form submitted by the parties.

5. The Panel further recommends that a civil penalty of \$2,500.00 be imposed against each Individual Respondent as agreed upon by the parties, and that the Individual Respondents be ordered to deposit their respective penalty with the Clerk of Court ninety (90) days after the Court's approval and entry of the Consent Decrees.

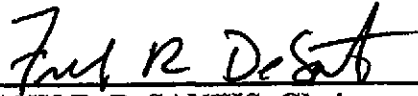
V. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII(5)(b)(D)(1), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered the matter on June 30, 2008. The Board accepted the proposed consent decrees.

The Board recommends that the Supreme Court of Ohio approve the consent decrees in the form submitted by the parties. The Board further recommends that civil penalties in the amount of \$2,500 be imposed against each Individual Respondent as agreed upon by the parties and that the Individual Respondents be ordered to deposit their

respective penalty with the Clerk of the Court within ninety days after the Court's approval and entry of the consent decrees.

**FOR THE BOARD ON THE UNAUTHORIZED
PRACTICE OF LAW**

Handwritten signature of Frank R. DeSantis in black ink, written over a horizontal line.

FRANK R. DeSANTIS, Chair
Board on the Unauthorized Practice of Law

The Supreme Court of Ohio

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

COLUMBUS BAR ASSOCIATION,

Relator,

v.

AMERICAN FAMILY PREPAID
LEGAL CORPORATION, ET AL.,

Respondents.

CASE NO. UPL 02-10



- I. ORDER DENYING RESPONDENTS AMERICAN FAMILY PREPAID LEGAL CORPORATION, HERITAGE MARKETING & INSURANCE SERVICES, INC., STANLEY NORMAN, JEFFREY NORMAN, PAUL CHILES, AND HAROLD MILLER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT
- II. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS PAUL MORRISON AND ERIC PETERSON MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT
- III. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' JEFF ALTON, WILLIAM DOWNS, JOSEPH EHLINGER, LUTHER MACK GORDON, STEVE GROTE, DAVID HELBERT, SAMUEL JACKSON, CHRIS MILLER, JACK RIBLETT, RICHARD ROMPALA, KEN ROYER, VERN SCHMIDT, ALEXANDER SCHLOP, JEROLD SMITH, PATRICIA SOOS, ANTHONY SULLIVAN, AND DENNIS QUINLAN MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR

COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

IV. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' TIMOTHY CLOUSE, JOSEPH HAMEL, TIMOTHY HOLMES, AND ADAM HYERS MOTION FOR SUMMARY JUDGMENT AND DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE DOES EXIST GENUINE ISSUES OF MATERIAL FACT

V. ORDER DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION TO STRIKE MEMORANDUM IN OPPOSITION OF RESPONDENT JEFFREY L. NORMAN AND ORDER DENYING RESPONDENT JEFFREY L. NORMAN'S MOTION TO STRIKE RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

VI. ORDER GRANTING INDIVIDUALLY NAMED RESPONDENT'S DANIEL ROUNDTREE MOTION FOR SUMMARY JUDGMENT

PANEL ORDER

These matters came on before the Panel upon the following Motions: 1) Respondents American Family Prepaid Legal Corporation, Heritage Marketing & Insurance Services, Inc., Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, filed September 9, 2005; 2) Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, filed September 13, 2005; 3) Relator Columbus Bar Associations' Memorandum in Opposition to Respondents' Motion for Summary Judgment, and Relator Columbus Bar Associations'

Motion for Summary Judgment, filed October 1, 2007¹; 4) Respondent Jeffrey Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment, filed October 29, 2007; 5) Respondents Joseph Hamel's and Timothy Homes' Response to Realtor's Motion for Summary Judgment and Reassertion of Said Respondents' Motion for Summary Judgment, filed October 29, 2007; 6) Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment, filed October 29, 2007; 7) Respondent Stanley Norman's Affidavit, filed November 5, 2007; 8) Respondent Paul Morrison's Response to Relator's Motion for Summary Judgment, filed October 30, 2007²; 9) Respondent Eric Peterson's Response to Relator Columbus Bar Association's Motion for Summary Judgment; filed November 1, 2007; 10) Motion to Strike by J. Norman filed November 6, 2007; and 11) Memorandum in Opposition to Motion to Strike filed November 9, 2007 (responses by Relator). All Parties were provided with opportunity to file memorandum in opposition and reply briefs to all original motions.

After careful review of said Motions, all Memoranda in Opposition to the Motions, and all Reply briefs, and exhibits, documents, or other supporting documentation and/or information accompanying any filing made by any respective Party, the Panel hereby enters the following decisions on all Motions.

I. INTRODUCTION

A. Statement of Case

¹ Relator's Memorandum in Opposition and Motion for Summary Judgment are one in the same document. For the purposes of the Panel's decisions, it treats the Relator's pleading as a Motion for Summary Judgment, and all arguments contained therein are in opposition to the Respondents' respective Motions for Summary Judgment filed in September 2005.

² Respondent Paul Morrison's Responsive Pleading was mailed on October 29, 2007. This Panel has, and does as to this sole Respondent, recognized the three-day mail rule. Therefore, the Panel accepts Respondent P. Morrison's filing as timely.

This matter arises before the Panel based upon the claims of Relator Columbus Bar Association ("Relator") against Respondents American Family Prepaid Legal Corporation ("Respondent AFPLC"), Heritage Marketing & Insurance Services, Inc. ("Respondent HMIS"), and Individually Named Respondents³ as to whether all Respondents violated the terms and conditions of a Consent Decree. On or about November 19, 2002, the Relator filed a complaint alleging that some of the Respondents had engaged in the unauthorized practice of law. *See* Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, pg. 5; *see also* Relator's Motion for Summary Judgment, pg. 26. On or about March 23, 2003, Relator and Respondents entered into a Consent Agreement. The Consent Agreement (first paragraph) *alleges* that Respondents engaged in the unauthorized practice of the law by committing the following acts:

1. selling, marketing, and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products");
2. training, monitoring and educating other sales representatives to sell, market or prepare said legal products;
3. giving legal advice relative to said legal products;
4. advising and counseling clients concerning the suitability of said legal products for a client's particular situation;
5. gathering client information for purposes of preparing or determining the suitability for the

³ The names of all Individually Named Respondents are listed in the attached "Exhibit A". Collectively, Respondents AFPLC, HMIS, and all Individually Named Respondents are referred to as "Respondents."

appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney;

6. preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney;

7. offering legal advice to individuals concerning the execution of said legal products; and

8. engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or not contact with clients.

See Consent Agreement, incorporated by reference herein. The Consent Agreement further states that as a term and condition Respondents agree to "refrain from the conduct outlined in the first paragraph of this consent agreement" Id.⁴ The Relator, based upon alleged complaints against Respondents and their alleged conduct, sought enforcement of the Consent Agreement by the Supreme Court of Ohio. On or about April 12, 2005, by Order of the Supreme Court of Ohio, this matter was referred to the UPL Board on the issue as to whether the Consent Agreement had been violated.

1. The Parties

This matter is brought by the Relator, Columbus Bar Association. Respondent American Family Prepaid Legal Corporation ("Respondent AFPLC") is a California based corporation with offices in Ohio that sells memberships, among other activities, in

⁴ The Consent Agreement continues and states that "[respondents] agree to refrain from any other act or practice which violates Rule VII of the Supreme Court Rules for the Government of the Bar." In a prior hearing on the issue of the scope of the Relator's enforcement of the Consent Agreement, and, the scope of review of the Panel, the Panel ruled that the Relator's prosecution of the enforcement of the Consent Agreement was limited to the eight acts, or conduct, outlined in the first paragraph of the Consent Agreement. Therefore, any conduct alleged to be engaged in by Respondents that falls outside of the eight areas delineated by the first paragraph of the Consent Agreement are not reviewed or considered by the Panel in this matter. The Parties should be aware that a second complaint was filed under Case No. 05-02; this matter seeks review by the Panel of the issue whether Respondents have engaged in UPL irrespective of the Consent Agreement.

prepaid legal services plans (the "Plans"). Respondent Heritage Marketing & Insurance Services, Inc. ("Respondent HMISI") is a California based corporation doing business in Ohio that sells insurance products offered through a variety of insurance companies. Additionally, Respondent HMISI contracts with review agents to provide periodic review of the Plans, including the Ohio Plan.

Respondent Jeffery L. Norman ("Respondent J. Norman") and Respondent Stanley Norman ("Respondent S. Norman") each own 50% of Respondent AFPLC, with Respondent J. Norman serving in the position of Chief Executive Officer, and Respondent S. Norman in the position of President. *See* Respondents AFPLC, HMISI, S. Norman, J. Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, pg. 5. Further, Respondent S. Norman is Chief Executive Officer of Respondent HMISI, and Respondent J. Norman is President. Id. Respondent Harold Miller ("Respondent H. Miller") is Respondent AFPLC's office manager. Respondent Paul Chiles ("Respondent P. Chiles") is the state marketing director, and oversees Respondent AFPLC's sales force. Id. Respondent Chiles also oversees Respondent HMISI's contractors who deliver non-legal services offered under the plan. Id.

The Individually Named Respondents, except for Respondents S. Norman, J. Norman, H. Miller, and P. Chiles, are either sales representatives and/or delivery agents of Respondent AFPLC and/or Respondent HMISI. *See* Individual Sales and Delivery Representative Respondents' MSJ, pg. 3.

B. Statement of Facts⁵

On or about September 9, 2005, Respondents AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller (collectively the "Entity Respondents") filed their collective motion for summary judgment. The Entity Respondents argue that they are operating a legal prepaid legal services plan (the "Plan"), and do so with the utilization of the services of a licensed Ohio attorney ("Plan Attorney") who has a contract with Respondent AFPLC to provide such services to the Plan's members. *See* Entity Respondents MSJ, pg. 3. The Plan offers a wide array of services, including, but not limited to, estate planning elder care, Medicaid planning, landlord/tenant, and bankruptcy. *Id.* All of these services are alleged to be provided through and by the Plan Attorney. The Plan is designed to provide legal services to persons who might not otherwise be able to afford or have access to legal counsel. *Id.* at pg. 4. Respondent AFPLC contracts with sales representatives in Ohio to give sales presentations about the Plan. *Id.*

Respondent HMISI sells insurance products, and has independent contractors who are insurance agents licensed with the State of Ohio. *Id.* Respondent HMISI also utilizes delivery agents who deliver documents the Plan Attorney creates for the Plan members. *Id.* at pg. 5. Respondent HMISI also contracts with review agents who periodically review the Plan members' financial documents and their insurance needs. *Id.*

Respondent AFPLC's first contact with potential members in Ohio is through direct mailings. *Id.* When the postage-paid postcards are returned, Respondent AFPLC telephones the individual who returned the cards to set up an appointment for a sales

⁵ The Statement of Facts is based upon the undisputed facts set forth by the Parties in their respective Motions for Summary Judgment.

representative to visit in person and discuss the benefits of the Plan. Id. at pg. 6. The sales representative discusses, and explains, the Plan's benefits with the potential member using the presentation book prepared by Respondent AFPLC. Id. The sales representative evaluates whether the member understands what is being offered and is making a rational decision to purchase the Plan membership. Id. at pg. 7. Further, the sales representative goes through general concepts of probate and methods that can be used to avoid probate. Id. The training materials AFPLC utilizes, and provides to its sales agents, encourage high pressure . . . sales tactics. *See* Relator's MSJ at pg. 6. The training materials instruct the salesperson how to set the stage for his/her sales pitch. Id. at pgs. 6-8.

When a trust is sold, the sales representative has the new client prepare all the paperwork for Respondent AFPLC's non-attorney document drafters to plug into a form trust document, which the Plan attorney will then allegedly review. Id. at pgs. 10-11. No attorney has reviewed the new client/member's information at the time they sign up for Respondent AFPLC's services. Id. at pg. 11.

When Respondent AFPLC's estate planning documents are completed, the Plan attorney, Edward Brueggeman, forwards them to Respondent HMISI for delivery to the Plan member and to oversee their execution. *See* Relator's MSJ at pg. 22. The Respondent HMISI's delivery agents, many of whom are Individually Named Respondents, serve as notary public to the new Plan members who must execute their documents. Id. at pg. 23. Further, the delivery agents may also be insurance agents licensed to sell annuities and other insurance products in Ohio. Id. However, their business cards identify them as "Asset Preservation Specialist". Id. The Respondent

HMISI delivery agents have the new Plan member's financial information when they meet with them to deliver documents. Id. Further, the delivery agents are not paid for their notary services, but, rather, are paid solely on a commission basis from the sale of annuities and other insurance products sold by the Respondent to AFPLC Plan members. Id. The sale of insurance related products may occur annually when the delivery agents conduct periodic reviews of the Respondent AFPLC's Plan members. Id. at pg. 25.

C. Procedural History

This matter arises before the Panel based upon a March 23, 2003, Consent Agreement entered into by and between the Parties. On or about November 19, 2002, the Relator filed a complaint against Respondents with the Supreme Court of Ohio's Board on the Unauthorized Practice of Law ("UPL Board"), pursuant to Rule VII, Section 5, of the Ohio Rules for the Government of the Bar. On or about March 23, 2003, Relator and Respondents entered into a Consent Agreement. In 2005, Relator sought enforcement of the Consent Agreement by the Supreme Court of Ohio, alleging that the Consent Agreement was being violated by the Respondents' continued actions in breach of the Consent Agreement and engaging in the unauthorized practice of the law. A Motion to Enforce was filed with the Supreme Court of Ohio. On or about March 3, 2005, the Supreme Court issued an Interim Cease and Desist Order against Respondents; this Order remains in effect. The Order also included a charge to the UPL Board to determine whether "the March 2003 settlement agreement [i.e., consent agreement] has been violated and to file a report with the Court." See Interim Cease and Desist Order, incorporated by reference herein. On or about April 12, 2005, a formal Order of referral was issued from the Supreme Court of Ohio to the UPL Board for the limited purposes of

determining whether the Consent Agreement had been breached and/or violated. In order to comply with its charge, the UPL Board convened a Panel to determine the issue, and a case schedule was set to allow the Parties to either prosecute or defend their respective positions. Respondents AFPLC, HMIS, S. Norman, J. Norman, H. Miller, and P. Chiles were represented by the law firm of Squires, Sanders & Dempsey, LLP. The Individually Named Respondents were represented by the law firm of Kegler, Brown, Hill & Ritter, LLP.

The Parties engaged in substantive discovery practice (i.e., depositions, written discovery, etc.), which included various hearings and briefings on discovery issues. In September 2005, Respondents filed Motions for Summary Judgment. However, prior to responsive pleading(s) being filed by Relator, the Parties contacted the Panel to advise that they were engaged in settlement negotiations. Sometime in September 2005, the Parties submitted a joint settlement agreement to the Panel for review and consideration. In October 2005, the Panel requested further clarification of specific terms and conditions set forth in the Settlement Agreement. After receiving separate responses to its questions for clarification from the Parties, the Panel, in accordance with UPL Board procedure, referred the settlement agreement to the Supreme Court of Ohio for consideration.⁶ Sometime in December 2005, and after review and consideration, the Court summarily rejected the settlement agreement, and referred the matter back to the Board, and the Panel, for adjudication on the merits. As a result, a new case schedule was set. The Respondents were still represented by their respective legal counsel.

⁶ At the time that the settlement agreement was presented to the Panel, the UPL Board did not have a Rule as to the handling of settlement agreements, and, therefore, was without authority to accept the settlement agreement. Therefore, it was required to refer the settlement agreement to the Supreme Court of Ohio for consideration.

After the Parties engaged in further discovery to prepare for a hearing on the merits, the Relator retained the law firm of Porter, Wright, Morris & Arthur, LLP as counsel, which filed its Notice of Appearance on or about May 26, 2006; Relator's former counsel Martin Susec withdrew. As a result, an amended case schedule was set to allow the new law firm the opportunity to be brought up to speed and to adequately prepare for a hearing; counsel for Respondents agreed to the amended case schedule. The Parties engaged in additional discovery practice. On or about December 29, 2006, the law firm of Kegler, Brown, Hill & Ritter, LLP filed a Notice of Withdrawal of Counsel as to the Individually Named Respondents. Within its Notice, the Kegler Law Firm stated that it had notified its clients of all pending court dates. On or about March 9, 2007, the Parties, by and through their respective counsel, submitted a proposed discovery and litigation schedule. On or about March 15, 2007, notice was mailed to all individually named respondents regarding the proposed discovery and litigation schedule that had been accepted by the Panel. On or about June 26, 2007, legal counsel for Respondents AFPLC, HMIS, S. Norman, J. Norman, H. Miller, and P. Chiles withdrew its representation. As a result, no Respondents were represented by legal counsel.

On or about July 25, 2007, the Panel sent out written notices to all parties that a telephone conference was to be held to discuss the status of the instant matter. On or about August 7, 2007, an additional notice was mailed to all Individually Named Respondents advising that a second telephone status conference was to be held to discuss various issues related to the litigation, including, but not limited to, legal representation, discovery and litigation deadlines, and any miscellaneous matters raised by the Parties. On August 17, 2007, a final telephone status conference was held for the benefit of the

Individually Named Respondents; no counsel entered an appearance for any of the telephone status conferences on behalf of Respondents AFPLC or HMISI. At each status conference the Panel advised the Parties of their right to retain legal counsel, and that if legal counsel was not retained, each party would still be required to comply with the discovery/litigation schedule, and would be required to conduct itself, himself, or herself in accordance with the UPL Board's Rules and Regulations.

In accordance with the Discovery/Litigation Schedule, the following dispositive pleadings have been filed, which are now ripe for review by the Panel:

- a) Respondents American Family Prepaid Legal Corporation, Heritage Marketing & Insurance Services, Inc., Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, filed September 9, 2005;
- b) Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, filed September 13, 2005;
- c) Relator Columbus Bar Associations' Memorandum in Opposition to Respondents' Motion for Summary Judgment, and Relator Columbus Bar Associations' Motion for Summary Judgment, filed October 1, 2007⁷;
- d) Respondent Jeffrey Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment, filed October 29, 2007;
- e) Respondents Joseph Hamel's and Timothy Homes' Response to Realtor's Motion for Summary Judgment and Reassertion of Said Respondents' Motion for Summary Judgment, filed October 29, 2007;
- f) Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment, filed October 29, 2007;
- g) Respondent Stanley Norman's Affidavit, filed November 5, 2007;

⁷ Relator's Memorandum in Opposition and Motion for Summary Judgment are one in the same document. For the purposes of the Panel's decisions, it treats the Relator's pleading as a Motion for Summary Judgment, and all arguments contained therein are in opposition to the Respondents' respective Motions for Summary Judgment filed in September 2005.

h) Respondent Paul Morrison's Response to Relator's Motion for Summary Judgment, filed October 30, 2007 (timely – mailed October 29)

i) Respondent Eric Peterson's Response to Relator Columbus Bar Association's Motion for Summary Judgment; filed November 1, 2007 (timely)

II. STANDARD OF REVIEW

A. SUMMARY JUDGMENT

Ohio Civil Rule 56(C) provides that summary judgment must be granted if:

. . . the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Ohio R. Civ. P. 56(C). In other words, summary judgment must be granted when, after viewing the evidence in the light most favorable to the nonmovant, the record demonstrates: (1) there is no genuine issue as to any material fact, (2) reasonable minds can come to only one conclusion, and (3) the moving party is entitled to judgment as a matter of law. See Royal Plastics, Inc. v. State Auto. Mut. Ins. Co. (Cuyahoga Co. 1994), 99 Ohio App.3d 221; Sedlak v. Solon (Cuyahoga Co. 1995), 104 Ohio App.3d 170; Dresher v. Burt (Ohio 1996), 75 Ohio St.3d 280.

A plaintiff moving for summary judgment discharges its burden by setting forth the basis for its motion and identifying the portions of the record which support its motion. See Vahila v. Hall (Ohio 1997), 77 Ohio St.3d 421. The nonmoving party may not rest on mere allegations in pleadings, but its response must set forth specific facts showing that there is a genuine triable issue. See State ex rel. Mayes v. Holman (Ohio 1996), 76 Ohio St.3d 147. Substantive law determines what facts are material for

purposes of a summary judgment motion. See Kemper v. Builder's Square, Inc. (Montgomery Co. 1996), 109 Ohio App.3d 127.

B. MOTION TO STRIKE

Ohio Civil Rule 12(F) states in pertinent part that:

Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant immaterial, impertinent or scandalous matter.

Ohio R. Civ. P. 12(F).

Civil Rule 12(F) motions are disfavored and are ordinarily not granted unless the language has *no possible relation to the controversy and is clearly prejudicial*. (emphasis added) Hagins v. Eaton Corp. (March 31, 2004), unreported, Cuyahoga App. No. 64497; Morrow v. South, 540 F. Supp. 1104 (S.D. Ohio, 1992); Lirtzman v. Spiegel, Inc. 493 F. Supp. 1029 (N.D., Illinois, 1980). See also Mirshak v. Joyce (N.D. Illinois, 1987), 652 F. Supp. 359; Mitchell v. Bendix (N.D. Indiana, 1985), 603 F. Supp. 920. The Ohio Supreme Court has held that "[w]hile an insufficient complaint may be subject to a Civ. Rule 12(F) motion to strike, these motions should not be used as a substitute for a Civ. Rule 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. State ex rel. Neff v. Corrigan (1996), 75 Ohio St.3d 12, 661 N.E.2d 170.

III. LAW & ARGUMENT

A. DENYING RESPONDENTS AMERICAN FAMILY PREPAID LEGAL CORPORATION, HERITAGE MARKETING & INSURANCE SERVICES, INC., STANLEY NORMAN, JEFFREY NORMAN, PAUL CHILES, AND HAROLD MILLER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

It should be noted that on or about June 26, 2007, counsel for Respondents AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller formally withdrew its representation via Notice of Withdrawal to the Panel. The Notice of Withdrawal has been formally accepted by the Panel. Since the filing of the Notice of Withdrawal, none of the aforementioned Respondents has been represented by counsel. Prior to withdrawal, counsel for the aforementioned Respondents had filed a Motion for Summary Judgment (dated September 9, 2005), which has been responded to by counsel for Relator. No reply brief has been filed by any of these Respondents; however, the Panel does acknowledge that responsive pleadings have been made by S. Norman and J. Norman in the form of opposition to the Motion for Summary Judgment filed by Relator. Further, J. Norman requests that the Panel affirm the originally filed Motions for Summary Judgment dated September 9, 2005. Because Respondents AFPLC and HMISI are not represented by legal counsel, no Reply brief to the original September 9, 2005 Motion for Summary Judgment has been filed, and no opposition pleading or brief has been filed against Relator's motion for summary judgment. Thus, the Panel is only left with the arguments made in the September 9, 2005 Motion for Summary Judgment as to the position of Respondents AFPLC and HMISI.

It is undisputed that on or about March 23, 2003, Respondent AFPLC entered into the Consent Agreement by execution of the same by its CEO Respondent J. Norman. It is also undisputed that the Consent Agreement speaks for itself, and states that the Respondents, which include Respondent AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller (collectively the "Entity Respondents"), "agree to refrain from the conduct outlined in the first paragraph . . . " to wit: 1) selling, marketing, and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products"); 2) training, monitoring and educating other sales representatives to sell, market or prepare said legal products; 3) giving legal advice relative to said legal products; 4) advising and counseling clients concerning the suitability of said legal products for a client's particular situation; 5) gathering client information for purposes of preparing or determining the suitability for the appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney; 6) preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney; 7) offering legal advice to individuals concerning the execution of said legal products; and 8) engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or not contact with clients.

1. American Family Prepaid Legal Corporation & Heritage Marketing & Insurance Services, Inc.⁸

Former counsel for Respondent AFPLC and Respondent HMISI argues that, in summary, Respondent AFPLC is in the business of providing a prepaid legal plan to Ohio citizens and/or residents, and in so doing, provides access to legal counsel that might not otherwise be available or affordable for its potential client base. See Entity Respondents' MSJ at pgs. 3-4. Moreover, the business operations of Respondent AFPLC do not violate the Consent Agreement. Respondent HMISI sells insurance products, and utilizes its representatives to deliver documents associated with the business of Respondent AFPLC (i.e., delivery of AFPLC Plan documents to AFPLC Plan members). Id. at pgs. 4-5. In support of this position, the Entity Respondents highlight and focus upon parts and pieces of its activities to indicate that it does not engage in conduct that violates the Consent Agreement. While the Entity Respondents argue that their primary focus of the business operations of Respondent AFPLC is the sale of a prepaid legal plan, and the business activities of Respondent HMISI is the sale of insurance products – which might be true, the collective actions of Respondents AFPLC and HMISI are in opposition to those statements. A review of the totality of the operation of Respondent AFPLC and Respondent HMISI based upon all the evidence submitted in this matter indicates to the Panel that the activities of Respondents AFPLC and HMISI do in fact violate the Consent Agreement.

While the Entity Respondents may argue that the business of Respondent AFPLC is to operate a prepaid legal services plan, the name of something does not in fact alter its

⁸ Respondents AFPLC and HMISI at the time of the filing of Relator's Motion for Summary Judgment, and Memorandum in Opposition to Respondent AFPLC's and HMISI's Motion for Summary Judgment, were not represented by legal counsel, and, therefore, no Memorandum in Opposition to Relator's Motion for Summary Judgment, or Reply Brief, was filed.

character. If it walks, talks, operates, conducts itself . . . then it is what it is. In this case, the Panel finds that the operations of Respondents AFPLC and HMISI together constitute the activities of a trust mill. Furthermore, the fact that Respondent AFPLC may be registered with the State of Ohio as a prepaid legal services plan does not alleviate it of any culpability, or liability, for its practices, or the conduct of its employee or representatives (i.e., independent contractors) that it utilizes to carry out its orders, instructions, and tasks in furtherance of its objectives to generate profit and income at the expense of the citizens of the State of Ohio.

The activities of Respondents AFPLC and HMISI are analogous in many respects to the conduct stated in Cleveland Bar Assoc. v. Sharp Estate Services, Inc., et al. (2005) 107 Ohio St.3d 219 and Cincinnati Bar Assoc. v. Kathman (2001), 92 Ohio St.3d 92, 748 N.E.2d 1091. In Sharp Estate, the respondents sold living-trust and estate plan and related documents to Ohio residents. The respondents consisted of one entity, TEP, that prepared and marketed living trust and estate related documents, a second group of persons and entities, Sharp, that serves as sales representatives marketing and selling TEP products. Id. at ¶¶ 2-3. Many of the targeted customers were clearly not in a position to benefit from a living trust or estate plan. Id. at ¶ 3. Sharp nonattorney advisors would tell customers that they needed estate products or living trusts and would recommend certain types of trust or estate plans. Id. at ¶ 6. The Court held that the unauthorized practice of the law was engaged in through the marketing and sale of products through the network of nonattorney advisors, when advice was given to customers regarding legal effects of documents, and the use of a review attorney occurred after the execution of a contract. Id. While the Panel does recognize that the actions of Respondents AFPLC and

HMISI are not identical to those in Sharp Estate, the actions are nonetheless analogous to the conduct engaged in by Respondents AFPLC and HMISI, which are violations of the Consent Agreement, and, more importantly, the spirit of the laws governing the unauthorized practice of the law in Ohio.

The record indicates that Respondent AFPLC, through its sales representatives, promotes the sale of a prepaid legal services for the purpose of selling living trusts and other related estate planning products. See Relator's MSJ at pgs. 11-20. The record further indicates that Respondent AFPLC primarily and predominantly promotes and sells living trusts and trust related products to targeted Ohio citizens. Id. at pgs. 3-4, 6-8 and 11-15. The sale of these trust products and the actions of Respondent AFPLC and its sales representatives, which are in contravention to the prohibitions agreed to by Respondent AFPLC in the Consent Agreement, then allows for Respondent HMISI to exceed the scope of the services it purports to provide, and do more than merely deliver or notarize documents, which is also a breach of the Consent Agreement. Id. at pgs. 8-11.

Respondent HMISI is an integral part of the AFPLC operations. Respondent HMISI generates a profit through the actions of its employees, independent contractors, and/or representatives (i.e., delivery agents), who deliver the trust documents created by Respondent AFPLC. Further, Respondent HMISI through its agents are in possession of the financial information of Plan members, and use that information to sell insurance products; many of the delivery agents, if not all, are licensed insurance agents in Ohio. However, the business cards for Respondent HMISI's agents identifies them as "Asset Preservation Specialist." See Relator's MSJ at pg. 23. When the delivery agent meets

with a Plan member, he/she reviews the instructions that the Plan attorney encloses with the estate planning documents. *See* Entity Respondents' MSJ at pgs. 15-17. The delivery agent may then return annually to discuss the Plan member's financial situation, and if necessary, sell additional insurance products. *Id.* at pg. 17. The delivery agents use the Plan members information, and the execution of the Plan documents, as an inroad to sell the Plan member insurance products. And in some circumstances, contribute, if not facilitate, a Plan member overextending his/her economic resources. *See* Relator's MSJ at pgs. 22-25.

The utilization of a Plan attorney does not alleviate the conduct of Respondent AFPLC or Respondent HMISI regarding their combined action to operate a trust mill, and violates the Consent Agreement. As the Entity Respondents' Motion for Summary Judgment states, prior to March 2005, the Plan attorney, Edward Brueggeman, maintained an office within Respondent AFPLC's suite of offices, used AFPLC employees to prepare documents including, deed transfer paperwork. *See* Entity Respondents' MSJ at pgs. 9-10. Prior to his termination of employment, the Plan attorney was contracted to provide services and training to Respondent HMISI, while at the same time contracted to serve as Plan attorney by Respondent AFPLC. *Id.* at pg. 11. Prior to March 2005, the original estate planning worksheet and assignee spelling checklist, as well as engagement agreement were provided to Mr. Brueggeman in his office in the AFPLC suite of offices. *Id.* It should be noted that the engagement agreement is not executed by Mr. Brueggeman until after the Plan member is signed up. *See* Relator's MSJ at pg. 20. Prior to March 2005, the Plan attorney would send his notes, copies of the estate planning worksheet, and assignee spelling checklist to Respondent AFPLC's

California offices; in short, legal documents were prepared in the offices of Respondent AFPLC by Respondent AFPLC or Respondent HMISI employees. See Entity Respondents' MSJ at pgs. 12-13; see also Relator's MSJ at pg. 20. The Plan attorney's contact with the Plan member occurred well after the Plan member had become a member, and in some instances, after legal information had been taken from the member. See Relator's MSJ at pgs. 21-22.

The evidence before the Panel demonstrates that Respondents AFPLC and HMISI continue to operate and conduct business in a manner in breach of the Consent Agreement. See also Trumbull Cty. Bar Assoc. v. Hanna (1997), 80 Ohio St.3d 58,60, 684 N.E.2d 329, 31 (" . . . this court has repeatedly stated that the marketing of living trusts by nonattorneys is the unauthorized practice of the law."); Disciplinary Counsel v. Willis (2002), 96 OhioSt.3d 142, 772 N.E.2d 625; Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, 28, 193 N.E. 650,652 (" . . . the practice of law 'includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.'). The activities of Respondents AFPLC and HMISI, through its representatives, agents, and employees violate all eight of the prohibitions contained in the 2003 Consent Agreement. Thus, Relator's Motion for Summary Judgment against Respondents AFPLC and HMISI is hereby **GRANTED**.

2. Stanley Norman

The Parties Discovery/Litigation Schedule set a deadline of October 29, 2007 by which time any Respondents can file their responsive pleading (i.e., memorandum in opposition) to the Relator's Motion for Summary Judgment. Due to the wildfires raging in Southern California around the date of October 29, 2007, Respondent S Norman

requested an extension of time to file a response. By way of Order dated October 25, 2007, the Panel granted Respondent S. Norman's motion for an extension, and reset the deadline by which he was to file a responsive pleading to November 2, 2007. Respondent S. Norman did not file a responsive pleading (i.e. Affidavit of Stan Norman) to the Relator's Motion for Summary Judgment until November 5, 2007. Respondent S. Norman's filing was outside of the time prescribed by the Panel, and therefore his filing is deemed untimely and will not be considered for review. Thus, the Panel is only left to review the arguments made on Respondent S. Norman's behalf in the Entity Respondents' Motion for Summary Judgment dated September 9, 2005, and the arguments made by Relator in its Motion for Summary Judgment and Memorandum in Opposition filed on October 1, 2007.

It is undisputed that Respondent S. Norman owns 50% of Respondent AFPLC, and serves as President. *See* Entity Respondents' MSJ at pg. 5. Further, Respondent S. Norman is Chief Executive Officer of Respondent HMISI. *Id.* The Panel has determined that the conduct engaged in by Respondents AFPLC and HMISI collectively constitutes a breach of the Consent Agreement. The issue that is now before the Panel is whether Respondent S. Norman's conduct as CEO and President, respectively, also constitutes a breach of the Consent Agreement. The Panel believes that it does.

Based upon the record, Respondent S. Norman was part-owner, and had significant control and/or authority over the operations and business models of both Respondent AFPLC and Respondent HMISI. *See* Relator's MSJ. In such a capacity, Respondent Norman had knowledge of the Respondent AFPLC's and Respondent HMISI's business practices, including those that occurred after the execution of the 2003

Consent Agreement. As the Panel finds that Respondent AFPLC and Respondent HMISI engaged in conduct in violation of the Consent Agreement, the Panel too finds that Respondent S. Norman engaged in such violations through his oversight, authority, control, and knowledge of the ongoing, operations, activities, and plans of both corporate entities. Therefore, the Panel finds that Relator's Motion for Summary Judgment against Respondent S. Norman individually is hereby **GRANTED**.

3. Jeffrey Norman

It is undisputed that Respondent Jeffery L. Norman ("Respondent J. Norman") owns 50% of Respondent AFPLC, and serves as the corporation's Chief Executive Officer. *See* Entity Respondents' MSJ at pg. 5. Further, Respondent J. Norman is President of Respondent HMISI. *Id.* The issue that is now before the Panel is whether Respondent J. Norman's conduct as CEO and President, respectively, also constitutes a breach of the Consent Agreement. The Panel believes that it does.

Based upon the record, Respondent J. Norman was part-owner, and had significant control and/or authority over the operations and business models of both Respondent AFPLC and Respondent HMISI. *See* Relator's MSJ. In such a capacity, Respondent J. Norman had knowledge of the Respondent AFPLC's and Respondent HMISI's business practices, including those that occurred after the execution of the 2003 Consent Agreement. As the Panel finds that Respondent AFPLC and Respondent HMISI engaged in conduct in violation of the Consent Agreement, the Panel too finds that Respondent J. Norman engaged in such violations through his oversight, authority, control, and knowledge of the ongoing, operations, activities, and plans of both corporate entities.

It should be noted that Respondent J. Norman filed a lengthy response to Relator's Motion for Summary Judgment. See Respondent J. Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment ("Respondent J. Norman's Memo in Opp."). The Panel has carefully reviewed all of Respondent J. Norman's Memo in Opp., as well as all exhibits attached to the same. While the Panel does not find support in Respondent J. Norman's arguments, such that a genuine issue of material fact exists, the Panel believes it is important to address specific issues raised by his filing.

While the Panel is cognizant that Respondent J. Norman is not an attorney licensed to practice law in either Ohio, or any other jurisdiction, and it has been a traditional practice of the UPL Board to give latitude to *pro se* litigants, the Panel can nonetheless obviate itself from Ohio law, which requires that even *pro se* litigants familiarize themselves with the practice and procedures for engaging in litigation (i.e., rules of evidence, rules of civil procedure, form of pleadings, etc.). Further, *pro se* litigants must to the best of their ability be cognizant of the laws (i.e., statutory or common law) that may effect the defense or prosecution of *their* claims. This includes being cognizant of how far their self-representation extends. Such awareness carries over into the area of the unauthorized practice of law.

Ohio law has long held that a nonattorney cannot represent a corporation. Moreover, an officer, shareholder, or owner cannot represent a corporation. And while the Panel is not granting Relator's Motion to Strike, the Panel does agree with Relator that the overriding tone and arguments fostered by Respondent J. Norman in his Memo in Opp. appear to be made on the behalf of, or in defense of, Respondents AFPLC and

HMISI, and in some case other Individually Named Respondents. Respondent J. Norman's conduct in this regard raises the question, but does not confirm, whether he in fact engaged in UPL through the arguments made in his Memo in Opp. Since that issue is not before this Panel, it does not reach a conclusion on the issue. What the Panel does conclude is that Respondent J. Norman's Memo in Opp. does not raise genuine issues of material fact as to his individual conduct.

The Panel's sole charge from the Ohio Supreme Court is to determine whether the 2003 Consent Agreement (or settlement agreement as referred to by the Court's Order) was breached by the conduct of all those who signed it. A Consent Agreement is a binding and lawful contract, and is governed by the laws of contracts. *See* Relator's MSJ at pg. 5. Respondent J. Norman's Memo in Opp. should have been targeted to this issue as it pertained to him individually. The Panel finds that his responsive pleading was not and therefore Relator's Motion for Summary Judgment is hereby **GRANTED**.

A final issue that the Panel feels should be addressed are the accusations made by Respondent J. Norman against Relator's counsel as it pertains to an affidavit presented to attorney Edward Brueggeman for his review and execution. Based upon the Panel's review of the events surrounding this matter, the Panel does not find that Relator's counsel acted either inappropriately or in a manner that would warrant the Panel to take action against Realtor. It is a customary practice in Ohio to utilize affidavits to secure the statement of witnesses. Additionally, the execution of any affidavit is completed after the affiant has had the opportunity to review its written statements and is prepared to attest under oath to the accuracy of those statements. Realtor's counsel's submission of an affidavit to Mr. Brueggeman, and Mr. Brueggeman's right to not execute the same, is in

accordance with the practices and procedures of Ohio law. Mr. Brueggeman's decision to not execute the affidavit presented to him does not raise an issue that this Panel feels warrants action against Relator in this matter, or the striking/dismissal of this action.

4. Paul Chiles

It is undisputed that Respondent Paul Chiles ("Respondent P. Chiles") is the state marketing director, and oversees Respondent AFPLC's sales force. Id. Respondent Chiles also oversees Respondent HMISI's contractors who deliver non-legal services offered under the plan. Id. Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent Chiles' conduct as state marketing director and because of his role in overseeing the contractors/delivery agents' actions, the Panel finds Respondent Chiles violated the Consent Decree. Thus, the Panel **DENIES** Respondent Paul Chiles Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that Respondent P. Chiles failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment had been filed, Respondent P. Chiles could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

5. Harold Miller

It is undisputed that Respondent Harold Miller ("Respondent H. Miller") is Respondent AFPLC's office manager. It is further undisputed that Respondent H. Miller works along side Respondent P. Chiles. *See* Deposition of Respondent H. Miller. Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent Miller's conduct as office manager, and his duties and role related thereto, the Panel finds Respondent Miller violated the Consent Decree. Thus, the Panel **DENIES** Respondent Harold Miller's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that Respondent H. Miller failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment had been filed, Respondent H. Miller could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

B. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS PAUL MORRISON AND ERIC PETERSON MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR

**COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY
JUDGMENT AGAINST INDIVIDUALLY NAMED RESPONDENT
PAUL MORRISON AND ERIC PETERSON AS THERE EXIST NO
GENUINE ISSUES OF MATERIAL FACT**

1. Paul Morrison

It is undisputed that Respondent Paul Morrison ("Respondent P. Morrison") has been employed with Respondent HMISI off and on for six years. See Paul Morrison Responsive Filing ("Morrison Resp."); *see also* Relator's MSJ at pg. 25. It is also undisputed that Respondent P. Morrison served as a delivery agent for Respondent AFPLC through his employment with Respondent HMISI. *Id.* Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent P. Morrison's conduct as a delivery agent, specifically his conduct as it pertains to Betty Hamm,. See Relator's MSJ at pgs. 33-34; *see also* Relator's Reply Brief at pgs. 25-26. The Panel does give consideration to Respondent P. Morrison's statements regarding the Ohio Department of Insurance's ("ODI") investigations, and the results therefrom. However, the Panel does not conclude that the results of that or any ODI investigations addresses the underlying issue before it as to whether the Consent Agreement has been violated. Thus, the Panel **DENIES** Respondent Harold Miller's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

2. Eric Peterson

At the outset, the Panel is troubled by Respondent Eric Peterson's ("Respondent E. Peterson") statement that he was instructed by his attorneys (the Panel assumes this is

Kegler, Brown, Hill & Ritter, LLP) and counsel for Respondent AFPLC that "[he] could return to work" based upon the Interim Cease and Desist Order being lifted. *See* Eric Peterson's Response to Columbus Bar Association's Motion for Summary Judgment ("Peterson Resp.") at pg. 1. If Respondent E. Peterson's statement is true, then such direction by legal counsel raises a myriad of issues. However, Respondent Peterson's affidavit, and his Response, clearly state that he did engage in conduct the Panel has deemed a violation of the Consent Decree through his employment with and for Respondent AFPLC. *See* Peterson Resp. and Peterson Affidavit.

As the Panel has found based upon the breaches by Respondent AFPLC and Respondent HMISI, Respondent Peterson's conduct in furthering the business activities of the Entity Respondents is itself a violation of the Consent Agreement. *Id.*, *see also* Relator's MSJ at pgs. 15-16 and Relator's Reply Brief at pgs. 20-21. Furthermore, based upon the record before the Panel as to Respondent Peterson's conduct as a sales representative, and his duties and role related thereto, the Panel finds Respondent Peterson violated the Consent Decree. Thus, the Panel **DENIES** Respondent Eric Peterson's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

C. **ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' JEFF ALTON, WILLIAM DOWNS, JOSEPH EHLINGER, LUTHER MACK GORDON, STEVE GROTE, DAVID HELBERT, SAMUEL JACKSON, CHRIS MILLER, JACK RIBLETT, RICHARD ROMPALA, KEN ROYER, VERN SCHMIDT, ALEXANDER SCHLOP, JEROLD SMITH, PATRICIA SOOS,**

ANTHONY SULLIVAN, AND DENNIS QUINLAN MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

It is undisputed that the Individually Named Respondents – Jeff Alton, William Downs, Joseph Ehlinger, Luther Mack Gordon, Steve Grote, David Helbert, Samuel Jackson, Chris Miller, Jack Riblett, Richard Rompala, Ken Royer, Vern Schmidt, Alexander Schlop, Jerold Smith, Patricia Soos, Anthony Sullivan, and Dennis Quinlan ("Individually Named Respondents") – are either sales representatives and/or delivery agents working for either Respondent AFPLC or Respondent HMISI, and furthering the business practices of both corporate entities. *See* Relator's MSJ at pgs. 15-20; *see also* Individually Named Respondents' MSJ at pgs. 5-7. As the Panel has found based upon the breaches by Respondent AFPLC and Respondent HMISI, the Individually Named Respondents' conduct in furthering the business activities of the Entity Respondents is itself a violation of the Consent Agreement. *Id.*, *see also* Relator's MSJ and Relator's Reply Brief. Furthermore, based upon the record before the Panel as to the Individually Named Respondents' conduct as a sales representative and/or delivery agents, and their duties and roles related thereto, the Panel finds the Individually Named Respondents violated the Consent Decree. Thus, the Panel **DENIES** the Individually Named Respondents' Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that all of the aforementioned Individually Named Respondents failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment

had been filed, the Individually Named Respondents could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. *Id.*

D. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' TIMOTHY CLOUSE, JOSEPH HAMEL, TIMOTHY HOLMES, AND ADAM HYERS MOTION FOR SUMMARY JUDGMENT AND DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE DOES EXIST GENUINE ISSUES OF MATERIAL FACT

1. Timothy Clouse

At the time that the 2003 Consent Agreement was executed, Respondent Timothy Clouse ("Respondent T. Clouse") did not execute the document. *See* Consent Agreement, incorporated by reference herein; *see also* Individually Named Respondents MSJ at pg. 4. Respondent T. Clouse argues that the reason for the absence of his signature is because he was not affiliated with either Respondent AFPLC or Respondent HMISI. *Id.* In Relator's Motion for Summary Judgment, it argues that Respondent T. Clouse between March 2003 through approximately May 2005 sold at least 149 plans to Ohioans, and, thereby, engaged in conduct in furtherance of the business operations and activities of Respondents AFPLC and HMISI. This conflicting issue raises a genuine issue of material fact whereby the Panel must **DENY** both Respondent T. Clouse's and Relator's motions for summary judgment.

2. Joseph Hamel & Timothy Holmes

It is undisputed that both Respondents Joseph Hamel ("Respondent J. Hamel") and Timothy Homes ("Respondent Holmes") (collectively "Respondents H&H") were delivery agents at all times pertaining to this matter. *See* Respondents H&H's Response to Relator's Motion for Summary Judgment and Reassertion of Respondents' Motion for Summary Judgment ("Response") at pg. 3. In that capacity, Respondents H&H argue that the scope of their activities were limited to notarization and mere delivery of documents. *Id.* at pg. 6. Further, Respondents H&H argue that they are not identified specifically within Relator's MSJ. *Id.* at pgs. 7-8.

Relator's Motion for Summary Judgment makes arguments against all delivery agents, which include Respondent H&H who signed off on the 2003 Consent Agreement. *See* Relator's MSJ at pgs. 22-26; *see also* Relator's Reply Brief at pgs. 23-24. As the Panel has held that the overall activities of Respondents AFPLC and HMISI constitute a breach of the Consent Agreement, and Relator's arguments as to the conduct of the delivery agents is linked to such prohibitive conduct, a genuine issue of material fact arises as to what conduct, if any, was engaged in by Respondents H&H in violation of the 2003 Consent Agreement. Thus, Respondent H&H's and Relator's respective Motions for Summary Judgment are hereby **DENIED**.

3. Adam Hyers

It is undisputed that Respondent Adam Hyers ("Respondent A. Hyers") is an independent contractor for Respondent HMISI. *See* Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment ("Memo Contra") at pg. 2. It is also undisputed that Respondent A. Hyers provides insurance services through Respondent HMISI. *Id.* Respondent Hyers argues that his conduct was focused on the

sale of annuities, which does not require offering legal advice, and delivery or notarization of documents. Id. at pgs. 2-4 and 7.

The Relator counters this contention by its arguments that Respondent Hyers was part of the overall trust mill scheme being perpetrated by Respondents when he delivered or reviewed trust packages to Ohio Plan members. *See* Relator's reply Brief at pg. 24; *see also* Relator's MSJ at pgs. 22-26. Further, Relator contends that Respondent Hyers violated the Consent Agreement through his conduct as evidenced by his interaction and communication with Chester Middleton, Lorene and Charles Kramer, and Eleanor and Judith Luttrell.

The issue as to whether Respondent Hyers engaged in conduct in violation of the Consent Agreement, or, in fact, engaged in conduct limited in scope and not prohibited by the Consent Agreement is undecided. Therefore, a genuine issue of a material fact remains. Thus, Respondent Hyers' and Relator's respective Motions for Summary Judgment are hereby **DENIED**.

E. ORDER DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION TO STRIKE MEMORANDUM IN OPPOSITION OF RESPONDENT JEFFREY L. NORMAN AND ORDER DENYING RESPONDENT JEFFREY L. NORMAN'S MOTION TO STRIKE RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

1. Relator's Motion to Strike Respondent Jeffrey Norman's Memorandum in Opposition and Reply

While the Panel recognizes that Respondent J. Norman's Memo in Opp. raises issues as to whether he has committed the unauthorized practice of law due to his arguments on behalf of several, if not all, respondents to this action, the Panel recognizes that Respondent J. Norman is a *pro se* litigant, and in that regard, affords him some latitude. Moreover, Respondent J. Norman's arguments were related to the subject matter at issue, and deserved review by this Panel. Therefore, the Panel has accepted Respondent J. Norman's Memo in Opp. and will give it the appropriate weight and consideration. Therefore, Relator's Motion to Strike Respondent Jeffrey Norman's Memoranda in Opposition and Reply is hereby **DENIED**.

2. Respondent Jeffrey Norman's Motion to Strike Relator's Motion for Summary Judgment and Relator's Memorandum in Opposition to Respondent's Motion for Summary Judgment

A motion to strike made pursuant to Ohio R. Civ. P. 12(F) must be made timely. The Rule clearly states that [u]pon a motion made by a party **before** responding to a pleading" See Ohio R. Civ. P. 12(F) (emphasis added). Respondent J. Norman's Motion to Strike was made well after the filing of his Memorandum in Opposition to Relator's Motion for Summary Judgment (filed October 29, 2007), and the filing of Relator's Motion for Summary Judgment (filed October 1, 2007). See Respondent J. Norman's Motion to Strike filed November 6, 2007. Additionally, it has long been held in Ohio that matters to be adjudicated should be done so on the merits. The Panel does not find that Relator's motion to enforce the consent decree, and the Supreme Court's Order to the UPL Board to determine whether a violation of the Consent Agreement


has/had occurred, is without merit such that a motion to strike should be granted.

Therefore, the Panel hereby **DENIES** Respondent J. Norman's Motion to Strike.

F. ORDER GRANTING INDIVIDUALLY NAMED RESPONDENT DANIEL ROUNDTREE'S MOTION FOR SUMMARY JUDGMENT

The record indicates that Respondent Daniel Roundtree ("Respondent D. Roundtree") ceased his affiliation with Respondents AFPLC and/or HMISI within days of the execution of the 2003 Consent Agreement. *See* Individually Named Respondents MSJ at pg. 9. The Relator concedes this fact and states that because of it, it dismissed other individually named respondents (i.e., Carolyn Gray, Ron Baker, and Doss Estep. *See* Relator's MSJ at pg. 54). Based upon this concession, the Panel finds that due to Respondent D. Roundtree's limited involvement with the Entity Respondents following the execution of the Consent Agreement, and Relator's concession, tacit or otherwise, to this point, Respondent D. Roundtree's Motion for Summary Judgment is hereby **GRANTED**.

SO ORDERED.


JAMES L. ERVIN, JR., PANEL CHAIR
C. LYNNE DAY, PANEL MEMBER
DON J. HUNT, PANEL MEMBER
Board on the Unauthorized Practice of the Law

**BEFORE THE BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW OF
THE SUPREME COURT OF OHIO**

COLUMBUS BAR ASSOCIATION,

Relator,

v.

Case No. UPL02-10

**AMERICAN FAMILY PREPAID LEGAL
CORPORATION, et al.,**

Respondents.

CONSENT AGREEMENT

This matter came on before the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio on or about November 19, 2002 upon the filing of a Complaint by Relator, the Columbus Bar Association ("Relator"). Relator alleges that Respondents American Family Prepaid Legal Corporation ("AFPLC"), Heritage Marketing and Insurance Services ("Heritage Marketing"), Stanley Norman, Jeffrey Norman, Harold Miller, Paul Chiles, Linda Ball, Joseph Hamel, Samuel Jackson, Eric Peterson, several John and Jane Doe representatives of AFPLC and Heritage Marketing, and assignees or their successors in interest (referred to collectively herein as "Respondents") engaged in the unauthorized practice of law by: (1) selling, marketing and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products"); (2) training, monitoring and educating other sales representatives to sell, market or prepare said legal products; (3) giving legal advice

relative to said legal products; (4) advising and counseling clients concerning the suitability of said legal products for a client's particular situation; (5) gathering client information for purposes of preparing or determining the suitability of the appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney; (6) preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney; (7) offering legal advice to individuals concerning the execution of said legal products; and (8) engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or no contact with clients.

Now, in consideration of the forbearance on the part of the Relator from proceeding with this unauthorized practice of law action against Respondents, including a dismissal of the above-referenced Complaint, Respondents agree as follows:

1. Respondents agree and stipulate that they have received and read the rules of the Ohio Supreme Court pertaining to the unauthorized practice of law, agree to refrain from the conduct outlined in the first paragraph of this consent agreement, and agree to refrain from any other act or practice which violates Rule VII of the Supreme Court Rules for the Government of the Bar.
2. Respondents stipulate and agree that they may have unintentionally violated the Supreme Court Rules regarding the unauthorized practice of law in the course of marketing and sale of the AFPLC's Prepaid Legal Plans and Heritage Marketing's financial services. Respondents further stipulate and agree that to the extent they engaged in the conduct

referenced in the first paragraph of this consent agreement, then they engaged in the unauthorized practice of law, and agree to immediately cease and desist from such conduct. Nothing in this consent agreement should be construed to suggest that Respondents are prohibited from conducting lawful business in Ohio.

3. Respondents additionally agree, within 30 days of the execution of this Consent Agreement, to forward to Relator a list containing the names and addresses of all Ohio members. Except as required by law, Relator will not voluntarily disseminate information from the list to anyone not a party to this case unless such disclosure is in furtherance of this case or any related proceedings brought by Relator. Respondents will also forward within 30 days of the execution of this Consent Agreement to all Ohio members a copy of this Consent Agreement along with the cover letter attached hereto and incorporated herein as Exhibit A. Simultaneous with sending such letters, Respondents agree that they will forward an affidavit to Relator's attention affirming that such letters had been sent.
4. As detailed within Exhibit A, Respondents agree that, upon request by any Ohio member, within thirty (30) days of the request, they will return all personal and financial information to the member and AFPLC, Jeffrey Norman and Stanley Norman shall be jointly and severally liable for reimbursing the member for any reasonable attorney's fees incurred by the member in having an independent attorney review the member's current plan documents, and/or prepare any supplemental or corrective legal

documents necessary to fulfill their estate planning needs at the time the documents were originally prepared. This liability, however, shall be capped at Nine Hundred and Thirty Five Dollars (\$935.00) per member up to a total maximum reimbursement to all members of Four Hundred Thousand Dollars (\$400,000.00). Eligibility for such reimbursement shall expire within eighteen (18) months from the date of the mailing of Exhibit A. All parties agree that any licensed attorney of the member's choice may conduct the legal review. Upon request, Relator shall also be entitled to a full accounting by Respondents of all attorney expenses paid pursuant to this paragraph, including the member name, address, date and the amount of expenses paid for each claim.

5. Last, AFPLC agrees, upon execution of this Consent Agreement, to fully reimburse Relator for all direct costs and expenses related to the underlying cause of action according to the attached schedule.

Failure to perform or otherwise abide by any term of this Consent Agreement by any party named herein shall be considered a material breach of the agreement upon which the aggrieved party may pursue all underlying claims by re-opening the present case and/or initiating a new cause of action in a court of competent jurisdiction. Furthermore, all parties stipulate that this Consent Agreement is admissible in any subsequent court proceeding in the event that further allegations of the unauthorized practice of law by Respondents are brought to Relator's attention. Nothing in this

agreement shall be construed in any way to limit the legal rights of any member of
AFPLC.

AGREED:

American Family Prepaid Legal
Corporation

Jeffrey Z. Norman
By:

3-25-03
Date

Heritage Marketing and Insurance
Services

Jeffrey Z. Norman
By:

3-25-03
Date

Stanley Norman
Stanley Norman

3-25-03
Date

Jeffrey Z. Norman
Jeffrey Norman

3-25-03
Date

Harold Miller
Harold Miller

3-17-03
Date

Paul Chiles
Paul Chiles

3-17-03
Date

Joseph Hamel
Joseph Hamel

3-17-03
Date

Eric Peterson
Eric Peterson

03.24.03
Date

ATTACHED

(all other Sales and Delivery Representatives)

Christopher J. Weber
Geoffrey Stern

Date
4.01.03
Date

Christopher J. Weber (0059270)
Geoffrey Stern (0013119)
KEGLER, BROWN, HILL & RITTER
A Legal Professional Association
65 E. State Street, Suite 1800
Columbus, Ohio 43215
(614) 462-5400
Counsel for Respondents

For the Columbus Bar Association:

Martin D. Susac
Martin D. Susac (0066566)

4-11-03
Date

Jill Snitcher McQuain *attys per phone authority*
Jill Snitcher McQuain ()

4-11-03
Date

Carrie E. Glaeden *attys per phone authority*
Carrie E. Glaeden (0042330)

4-11-03
Date

D. Allan Asbury *attys per phone authority*
D. Allan Asbury, Chairman of
The Columbus Bar Association
Unauthorized Practice of Law Committee

4-11-03
Date


Luther Mack Gordon


3-17-03


Chie Miller

Dennis Quinlan


Dennis Quinlan

3/17/03


Alexander Scholz

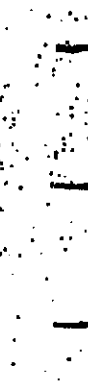
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Patricia Soos


4-4-03


Anthony Sullivan

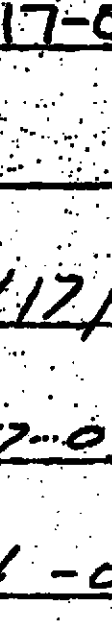
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Ron Baker

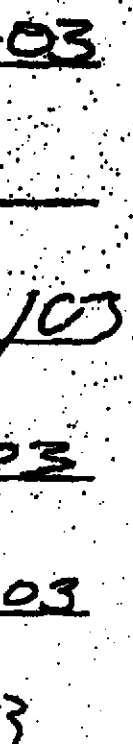
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Tim Holmes

3-24-03


Paul Morrison

3/24/03

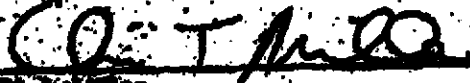

Vern Schmidt

3/24/03


Carolyn Gray

3/24/03


Luther Mack Gordon



3-17-03

Chris M. O.



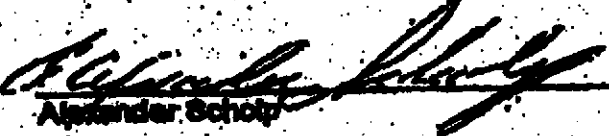
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Dennis O'Connell



3/17/03

Daniel Roundtree



3-17-03

Alexander Scholt

Patricia Soos



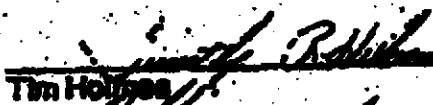
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Anthony Sullivan



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Ron Baker



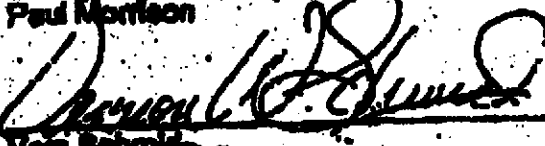
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Tim Holmes



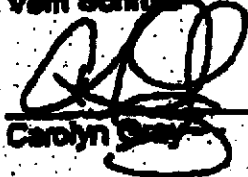
3/24/03

Paul Morrison



3/24/03

Vern Schmidt



3/24/03

Carolyn Gray

Date

Jeff Allen
Jeff Allen

3/17/03

William Downs
William Downs

3-24-2003

Doris Estep
Doris Estep

Steve Grotz
Steve Grotz

3/26/03

no longer with the company
Frank Messina

Jack Riblett
Jack Riblett

3/17/03

Ken Royer
Ken Royer

4/7/03

Jerrold Smith
Jerrold Smith

3/17/03

Kelji Steb
Kelji Steb

3/17/03

no longer with the company
Tim Clouse

Joseph Ehlinger
Joseph Ehlinger

3-17-03

David Herbert
David Herbert

3-24-03

[Signature]
Alan [Name]

3-24-03

Richard Rompala
Richard Rompala

4-7-03

March 6, 2003

Ohio Members of the American Family Legal Plan

Dear Ohio Members of the American Family Legal Plan:

The purpose of this letter is to inform you that a settlement has been reached between the Columbus Bar Association Committee on the Unauthorized Practice of Law ("UPL Committee"), American Family Prepaid Legal Corporation ("AFPLC"), Heritage Marketing and Insurance Services ("Heritage Marketing"), and the sales and delivery representatives of AFPLC and Heritage Marketing. A copy of the consent agreement is enclosed for your information.

On November 19, 2002, the UPL Committee filed a Complaint before the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio against AFPLC, Heritage Marketing and their representatives alleging that we violated Ohio's Supreme Court Rules relating to the unauthorized practice of law in marketing and selling our services. The Columbus Bar Association has called into question the validity of the estate planning advice rendered to you and the legal effect of the documents prepared for you. Although we deny these claims, in order to resolve the matter, we entered into a consent agreement whereby we, in exchange for the Columbus Bar Association's dismissal of its action, agreed not to engage in conduct that would constitute the unauthorized practice of law. As part of the settlement, the Columbus Bar Association has asked us to clarify our relationship with you.

When you originally signed up to be a member of the Legal Plan, we advised you that the sales representative to whom you gave your personal and financial information, the AFPLC employees who may have prepared your legal documents, and the delivery representative who delivered your legal documents were not attorneys. At no time were any of these representatives or AFPLC employees authorized to act as your attorney or provide you with legal advice.

Nonetheless, if you have concerns regarding the effect or validity of any documents provided by the plan, you may always contact your own independent (non-plan) attorney. We have agreed within the attached consent agreement that we would reimburse you for any reasonable attorney's fees incurred by you in having an independent attorney review your current plan documents, and/or prepare any supplemental or corrective legal documents necessary to fulfill your estate planning needs at the time the documents were originally prepared. This liability, however, shall be capped at Nine Hundred and Thirty Five Dollars (\$935.00) per member, up to a total maximum reimbursement to all members of Four Hundred Thousand Dollars (\$400,000.00). Eligibility for such reimbursement shall expire within eighteen (18)

months from the date of this mailing. Simply take this letter and the attached agreement to any non-plan attorney of your choice. Upon our receipt of an invoice or a good-faith estimate from the non-plan attorney for reviewing, modifying, and/or supplementing your existing plan documents, AFPLC will then provide you with payment of the non-plan attorney's services. Additionally, upon notifying our office, you also have the right to have your file, including all of your personal and financial information, returned.

Notwithstanding this detailed disclosure, AFPLC intends to fully honor your membership agreement. AFPLC and Heritage Marketing are contractually committed to keeping your personal and financial information confidential. Furthermore, AFPLC will continue to offer you the benefits of your plan.

If you have any questions or concerns regarding these matters, please feel free to contact AFPLC at the number above. AFPLC is very pleased to have you as a member of its Legal Plan and values you as a plan participant.

Very truly yours,

Stanley Norman
American Family Prepaid Legal Corporation
and Heritage Marketing and Insurance Services Corporation

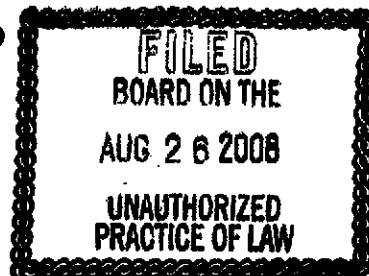
Jeffrey Norman
American Family Prepaid Legal Corporation

RELATOR'S EVIDENCE OF COSTS AND EXPENSES

| Date | Amount | Description |
|---------------|-------------------------|-------------------------------------------------------------------------------------------------------|
| 9/6/02 | \$450.50 | Court reporting services: Deposition of Andrew M. Fishman |
| 7/22/02 | \$1,135.60 | Court reporting services: Depositions of Joseph Hamel, Eric Peterson, Joe Jackson, and Andrew Fishman |
| 8/22/02 | \$56.80 | Service of Process: Subpoena for Andrew M. Fishman |
| 11/4/02 | \$41.71 | Copies: Kinkos |
| 11/14/02 | \$481.50 | Court reporting services: Deposition of Harold Miller |
| 12/17/02 | \$193.40 | Court reporting services: Deposition of Linda Ball |
| 1/8/03 | \$80.30 | Deposition Transcript: Andrew M. Fishman (7/22/02) |
| TOTAL: | <u>\$2439.71</u> | |

The Supreme Court of Ohio

BEFORE A PANEL OF
THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
OF
THE SUPREME COURT OF OHIO



COLUMBUS BAR ASSOCIATION, :

Relator, :

v. :

AMERICAN FAMILY PREPAID
LEGAL CORPORATION, ET. AL., :

Respondents. :

CASE NO. UPL 02-10

ORDER NUNC PRO TUNC

The Order filed by the Panel on December 21, 2007, contains a clerical error with respect to the denial of Respondent Paul Morrison's Motion for Summary Judgment, which incorrectly referred to Respondent Harold Miller.

The last sentence in Section III(B)(1) is corrected to read as follows:

Thus, the Panel **DENIES** Respondent Paul Morrison's Motion for Summary Judgment and **GRANTS** Relator's Motion for Summary Judgment.

Respondent Harold Miller's Motion for Summary Judgment was denied in Section III(A)(5). All other provisions of the December 21, 2007 Order remain the same.

IT IS SO ORDERED.

FOR THE BOARD ON THE UNAUTHORIZED
PRACTICE OF LAW



C. Lynne Day, Panel Chair

**BEFORE THE BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW
OF THE SUPREME COURT OF OHIO**

Columbus Bar Association,

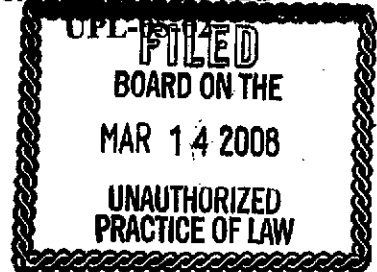
Relator,

v.

American Family Prepaid Legal
Corporation, et al.

Respondents.

Case No.: UPL 02-10 and



**CONSENT DECREE BETWEEN THE COLUMBUS BAR ASSOCIATION
AND INDIVIDUAL RESPONDENTS JOSEPH HAMEL,
TIMOTHY HOLMES AND ADAM HYERS, ONLY**

**(SUBJECT TO APPROVAL BY THE BOARD OF
COMMISSIONERS ON THE UNAUTHORIZED
PRACTICE OF LAW PRIOR TO EXECUTION)**

This Consent Decree is entered into effective this 14th day of March, 2008,
by and among the Columbus Bar Association and all of its successors, affiliates and related entities
(hereinafter collectively referred to as the "CBA"), and Joseph Hamel ("Hamel"), Timothy Holmes
("Holmes"), and Adam Hyers ("Hyers"), (collectively referred to as "Individual Respondents").

WHEREAS, Individual Respondents are not and have never been attorneys admitted to
practice, granted active status, or certified to practice law in the State of Ohio pursuant to Rules I,
II, III, IV or V of the Supreme Court of Ohio Rules for the Government of the Bar;

WHEREAS, on or about November 19, 2002, the CBA filed a Complaint before the Board
of Commissioners on the Unauthorized Practice of Law ("UPL Board") in Case No. UPL 02-10

against American Family Prepaid Legal Corp. (“AFPLC”), Heritage Marketing and Insurance Services (“Heritage”), Stanley Norman, Jeffrey Norman, Harold Miller, Linda Ball, Paul Chiles, Individual Respondent Joseph Hamel, Individual Respondent Samuel Jackson, Individual Respondent Eric Peterson and several John and Jane Does (“Respondents”) alleging that they had engaged in the unauthorized practice of law by marketing, offering and selling prepaid legal plan memberships that included living trusts, wills, powers of attorney, living wills, related estate planning and other legal documents, insurance products and annuities to Ohio residents;

WHEREAS, on or about April 2003, the CBA and the Respondents in the case, including Individual Respondents Holmes, Hamel and Hyers, entered into a Consent Agreement (“2003 Consent Agreement”), in which Respondents stipulated that they “may have unintentionally violated the Supreme Court Rules regarding the unauthorized practice of law in the course of marketing and sale of the AFPLC’s Prepaid Legal Plans and Heritage Marketing’s financial services” and agreed to “immediately cease and desist from such conduct.” Pursuant to the 2003 Consent Agreement, Respondents also agreed not to engage in eight specifically enumerated activities. A copy of the 2003 Consent Agreement is attached hereto as Exhibit A and incorporated by reference herein.

WHEREAS, on or about March 3, 2005, the CBA then filed a Motion to Enforce the Settlement Agreement and a Motion for an Interim Cease and Desist Order with the Supreme Court of Ohio because the CBA received numerous complaints that Respondents, including the Individual Respondents, were continuing to engage in the marketing and selling of legal and insurance products and other activities in the State of Ohio substantially identical to those they had engaged in before entering the 2003 Consent Agreement.

WHEREAS, on or about April 12, 2005, the Supreme Court of Ohio granted the CBA's Motion for an Interim Cease and Desist Order and ordered the UPL Board to hold a hearing on whether the 2003 Consent Agreement has been violated;

WHEREAS, on or about June 10, 2005, the CBA filed a second Complaint before the UPL Board against Respondents, several of their officers, employees, sales representatives and delivery agents, and Jane and John Does, including but not limited to Hamel, Holmes and Hyers claiming that they had again engaged in the unauthorized practice of law ("Case No. UPL 05-02");

WHEREAS, on or about September 15, 2005, the Panel of the Board on the Unauthorized Practice of Law ordered Case No. UPL 05-02 held in abeyance pending a formal hearing in Case No. UPL 02-10;

WHEREAS, on or about December 21, 2007, the Panel of the Board on the Unauthorized Practice of Law entered a decision on the CBA's and the Respondents' respective motions for summary judgment in Case No. UPL 02-10. A copy of the Panel's decision is attached hereto as Exhibit B and incorporated by reference herein. In pertinent part, the Panel held as follows:

- a. The activities of the operation of Respondents AFPLC and Heritage do in fact violate the 2003 Consent Agreement.
- b. The operations of Respondents AFPLC and Heritage together constitute the activities of a trust mill.
- c. The conduct engaged in by Respondents AFPLC and Heritage violate the spirit of the laws governing the unauthorized practice of law in Ohio.
- d. The activities of Respondents AFPLC and Heritage through its representatives, agents and employees violate all eight of the prohibitions contained in the 2003 Consent Agreement.

e. Respondents Stanley Norman and Jeffrey Norman, individually and as owners and officers of Respondents AFPLC and Heritage engaged in conduct in violation of the 2003 Consent Agreement through their oversight, authority, control, and knowledge of the ongoing operations, activities and plans of Respondents AFPLC and Heritage.

f. Respondents Paul Chiles, Harold Miller, Paul Morrison, Eric Peterson, Jeff Alton, William Downs, Joseph Ehlinger, Luther Mack Gordon, Steve Grote, David Helbert, Samuel Jackson, Chris Miller, Jack Riblett, Richard Rompala, Ken Royer, Vern Schmidt, Alexander Scholp, Jerold Smith, Patricia Soos, Anthony Sullivan and Dennis Quinlan breached the 2003 Consent Agreement based upon their conduct in furthering the business activities of Respondents AFPLC and Heritage.

WHEREAS, the Panel held in its December 21, 2007 Order that there is a genuine issue of material fact as to whether Hamel, Holmes and Hyers breached the 2003 Consent Agreement and denied the CBA's motion for summary judgment regarding these three Individual Respondents and also denied these Individual Respondents' motion for summary judgment.¹

WHEREAS, Joseph Hamel served as a delivery agent for Respondent AFPLC through his employment relationship with Respondent Heritage from February 2001 to January 2006, and his conduct furthered the business operations and activities of Respondents AFPLC and Heritage.

WHEREAS, Timothy Holmes began working for Respondents Jeffrey Norman and Stanley Norman in March 2000, served as a sales agent for Respondent AFPLC from March 2000 to September 2000 and January 2001 to February 2002, served as a "financial review agent" for Respondent AFPLC through his employment relationship with Respondent Heritage from March

¹ The Panel also held that there is a genuine issue of material fact as to whether Timothy Clouse ("Clouse") breached the 2003 Consent Agreement because he did not execute the 2003 Consent Agreement. However, the CBA obtained files from AFPLC indicating that Clouse sold at least 149 living trusts before and after the 2003 Consent Decree was executed.

2002 to December 2002 and May 2005 to September 10, 2007 and served as a delivery agent for Respondent AFPLC through his employment relationship with Respondent Heritage from January 2003 to April 2005, and his conduct furthered the business operations and activities of Respondents AFPLC and Heritage.

WHEREAS, Adam Hyers began working for Respondents Jeffrey Norman and Stanley Norman in late 1999, sold pre-paid legal plans for them from late 1999 until early 2000 and served as a delivery agent for Respondent AFPLC through his relationship with Respondent Heritage from February 2000 to January 2006, and his conduct furthered the business operations and activities of Respondents AFPLC and Heritage.

WHEREAS, Individual Respondents Holmes, Hamel and Hyers admit that they may have unintentionally violated the 2003 Consent Agreement and the Supreme Court Rules regarding the unauthorized practice of law in the course of furthering the business operations and activities of Respondents AFPLC and Heritage by selling Heritage's financial services to individuals who purchased AFPLC's prepaid legal plans and/or living trusts after April 2003;

NOW, THEREFORE, upon the consent of the parties affixed hereto, IT IS HEREBY ORDERED AND DECREED as follows:

1. The following words shall have the following meanings:
 - a. "Individual Respondents" shall include Joseph Hamel, Timothy Holmes, and Adam Hyers.
 - b. "Plan Member" shall include any Ohio consumer who purchased a prepaid legal plan membership or estate planning documents from:
 - i) Respondent AFPLC;
 - ii) Respondent AFPLC's employees, agents and independent contractors;

- iii) Respondent AFPLC's predecessors, successors and affiliates;
or
- iv) Attorney Andrew Fishman, deceased, his former employees, agents and independent contractors, including but not limited to Hamel, Holmes and Hyers.

"Plan Member" shall also include clients of Attorney Andrew Fishman, deceased, whose files may have been transferred to another Plan Attorney or whose files are maintained by any successor, affiliate or related entities of Jeffrey Norman and/or Stanley Norman. Such entities include, but are not limited to, Quest Financial and Insurance Services; National Association of Family Benefits, Inc.; Legal Maintenance Organization of America; National Estate Planning, Inc.; and National Group Services, Inc.

- c. "Plan Attorney" shall include any Ohio licensed attorney or law firm providing services to Ohioans who contracts or contracted to provide legal services in Ohio to any Plan Member through Respondents AFPLC and/or Heritage including, but not limited to, Edward Brueggeman, Cynthia Irwin, James Popil, John Donahue and Stephen Ramadan;
- d. "Estate planning documents" shall include, trusts, living trusts, wills, pour over wills, advance health directives (e.g., living wills), powers-of-attorney, whether durable or springing, health care powers-of-attorney, asset transfer documents of any kind if used with the intent to plan an estate, certificates of trust and the like; and
- e. "Plan Members' family member" shall be limited to the spouse and children of the Plan Member.

2. Individual Respondents shall not engage in the unauthorized practice of law by providing legal advice to any Ohio resident.

3. Individual Respondents shall not market, offer or sell prepaid legal service plan memberships, or any other similar service or arrangement, estate planning documents or other legal documents in the State of Ohio.

4. Individual Respondents may carry out their contractual obligations with respect to existing Plan Members upon the Plan Members' request, only. Individual Respondents shall not initiate any contact with any Plan Member or the Plan Members' family member for the purpose of marketing, offering or selling insurance products and/or annuities. If contacted by a Plan member, Individual Respondents shall not provide legal advice or engage in conduct prohibited in Paragraphs 5, 6 and 7 herein.

5. Individual Respondents shall not knowingly market, offer or sell life insurance products and/or-annuities to any:

- (a) Plan Member;
- (b) Plan Members' family member;
- (c) Former and current clients or customers of Respondents AFPLC, Heritage, Jeffrey Norman or Stanley Norman and these Respondents' successors, affiliates or related entities;
- (d) Former and current clients or customers of any other Respondent who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage;
- (e) Former and current clients or customers of any sales agent, insurance agent, delivery agent or employee of Respondents AFPLC or Heritage who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage;
- (f) Former and current clients or customers of Edward Brueggeman, Andrew Fishman, deceased, or any other Plan Attorney who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage; or

- (g) Former and current clients or customers of any entity owned, operated, managed, controlled by or affiliated with Jeffrey Norman, Stanley Norman, Michelle Norman, Mildred Glickman, Rebecca Klein, any Respondent or any Plan Attorney who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage. Such entities include, but are not limited to, Quest Financial and Insurance Services; National Association of Family Benefits, Inc.; Legal Maintenance Organization of America; National Estate Planning, Inc.; and National Group Services, Inc.

6. Individual Respondents shall not explain to an Ohio citizen the terms and effects of trust documents or give any legal advice whatsoever regarding the same.

7. Individual Respondents shall not engage in any activity or conduct that furthers the business operations and activities of Respondents AFPLC, Heritage, Jeffrey Norman, Stanley Norman, any other Respondent, or any Plan Attorney. In addition, Individual Respondents shall not engage in any activity or conduct that furthers the business operations and activities of any entity that is owned, operated, managed, controlled by or affiliated with Jeffrey Norman, Stanley Norman, Michelle Norman, Mildred Glickman, Rebecca Klein, any other Respondent, or any Plan Attorney. Such entities include but are not limited to, Quest Financial and Insurance Services; National Association of Family Benefits, Inc.; Legal Maintenance Organization of America; National Estate Planning, Inc.; and National Group Services, Inc.

8. It is the intent of the parties that this Consent Decree ("2008 Consent Decree") resolve all currently existing claims between them, including those specified in the Pleadings of UPL 02-10, UPL 05-02 and all other alleged UPL violations for conduct which occurred up to and including the effective date of the 2008 Consent Decree.

9. Individual Respondents agree that as a result of the CBA's claims against them in Case No. UPL 02-10 and Case No. UPL 05-02, and all alleged UPL violations to date, they will each pay \$2,500.00 to the Supreme Court of Ohio, to be paid on or before December 31, 2008.

10. This Consent Decree (“2008 Consent Decree”) shall be a Consent Decree within the meaning of Rule VII of the Supreme Court of Ohio Rules for the Government of the Bar.

11. Individual Respondents agree to a liquidated damages provision in the 2008 Consent Decree. Respondents shall pay the Supreme Court of Ohio an additional \$1,000.00 for each instance of breach of any of the provisions contained in the 2008 Consent Decree. Any liquidated damages payable hereunder shall be in addition to any restitution for any such breach of the 2008 Consent Agreement as the Court may order.

12. Individual Respondents agree that their financial obligations in the 2008 Consent Decree (\$2,500.00 plus any liquidated damages) are non-dischargeable in bankruptcy.

13. The Supreme Court of Ohio and the Board of Commissioners on the Unauthorized Practice of Law shall retain jurisdiction over the Individual Respondents for the purposes of enforcing any of the provisions of the 2008 Consent Decree. The 2008 Consent Decree is the final judgment of the Supreme Court of Ohio and is enforceable through contempt proceedings before the Court.

14. Individual Respondents are subject to the long-arm jurisdiction of Ohio Courts pursuant to Ohio Revised Code §2307.382.

15. Each Individual Respondent will be dismissed with prejudice from the UPL cases (UPL 02-10 and UPL 05-02) when his financial obligations set forth in Paragraph 9 are satisfied under the 2008 Consent Decree.

16. Nothing contained in the 2008 Consent Decree shall be construed as an admission of liability by Individual Respondents.

17. CBA and Individual Respondents each represent and warrant that they have the full power and authority to enter into the 2008 Consent Decree and to perform all the obligations and

duties set forth herein. Each signatory to the 2008 Consent Decree who signs on behalf of a party represents that he or she has the authority to sign on behalf of that party.

18. CBA and Individual Respondents are each represented by counsel with respect to this Consent Decree and all matters covered by it, and each has been fully advised by said counsel regarding their rights and obligations with respect to the execution of the 2008 Consent Decree. CBA and Individual Respondents each authorize and direct their respective attorneys to execute such papers and to take such other action as is necessary and appropriate to effectuate the terms of the 2008 Consent Decree.

19. The 2008 Consent Decree may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed an original.

20. The laws of the State of Ohio shall govern the enforcement of the 2008 Consent Decree.

WHEREFORE, and intending to be legally bound, the parties hereto consent to the Court's entry of the 2008 Consent Decree.


Respectfully submitted,

ON BEHALF OF RELATORS

By Joyce D. Edelman
Joyce D. Edelman (0023111)
Porter, Wright, Morris & Arthur, LLP
41 South High Street
Columbus, OH 43215
(614) 227-2083
(614) 227-2100 (fax)

Counsel for Relator Columbus Bar Association

Subscribed and sworn to before me on this 14th day of March, 2008.

Barbe Iverson
Notary Public

BARBE IVERSON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCT 31, 2012

Bruce Campbell
Bruce Campbell

3/14/08
Date

Subscribed and sworn to before me on this 14th day of March, 2008.

Rachelle P. White
Notary Public



RACHELLE P. WHITE
Notary Public, State of Ohio
My Commission Expires 02-14-11

ON BEHALF OF INDIVIDUAL
RESPONDENT ADAM HYERS

By _____
James P. Tyack, Esq.
Tyack, Blackmore & Liston Co., LPA
536 S. High Street
Columbus, OH 43215

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Adam Hyers

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Bruce Campbell

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

ON BEHALF OF INDIVIDUAL
RESPONDENT ADAM HYERS

By [Signature]
James P. Tyack, Esq.
Tyack, Blackmore & Liston Co., LPA
536 S. High Street
Columbus, OH 43215

Subscribed and sworn to before me on this 13th day of March, 2008.



TINA R. BALL
Notary Public, State of Ohio
My Commission Expires 04-15-08

[Signature]
Adam Hyers

Tina R. Ball
Notary Public

3-13-08
Date

Subscribed and sworn to before me on this 13th day of March, 2008.



TINA R. BALL
Notary Public, State of Ohio
My Commission Expires 04-15-08

Tina R. Ball
Notary Public

ON BEHALF OF INDIVIDUAL
RESPONDENTS JOE HAMEL AND
TIMOTHY HOLMES

By *Christopher J. Moore*
Christopher J. Moore
Moore & Scribeer
3700 Massillon Road, Suite 380
Uniontown, OH 44685

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Joseph Hamel

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Timothy R. Holmes
Timothy Holmes

March 13, 2008
Date

Subscribed and sworn to before me on this *13th* day of *March*, 2008.

Deborah G. Klein
Notary Public

IT IS SO ORDERED.




Ohio Supreme Court Justice

ON BEHALF OF INDIVIDUAL
RESPONDENTS JOE HAMEL AND
TIMOTHY HOLMES

By _____
Christopher J. Moore
Moore & Scribner
3700 Massillon Road, Suite 380
Uniontown, OH 44685

Subscribed and sworn to before me on this _____ day of _____, 2008.

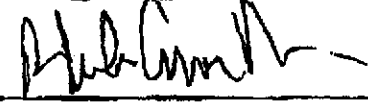


Joseph Hamel

Notary Public
3-13-08

Date

Subscribed and sworn to before me on this 13 day of March, 2008.



BLAKE OWEN 092 Notary Public
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C

Timothy Holmes

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

IT IS SO ORDERED.

Ohio Supreme Court Justice

**BEFORE THE BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW OF
THE SUPREME COURT OF OHIO**

COLUMBUS BAR ASSOCIATION, :

Relator, :

v. :

Case No. UPL02-10

**AMERICAN FAMILY PREPAID LEGAL
CORPORATION, et al.,** :

Respondents, :

CONSENT AGREEMENT

This matter came on before the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio on or about November 19, 2002 upon the filing of a Complaint by Relator, the Columbus Bar Association ("Relator"). Relator alleges that Respondents American Family Prepaid Legal Corporation ("AFPLC"), Heritage Marketing and Insurance Services ("Heritage Marketing"), Stanley Norman, Jeffrey Norman, Harold Miller, Paul Chiles, Linda Ball, Joseph Hamel, Samuel Jackson, Eric Peterson, several John and Jane Doe representatives of AFPLC and Heritage Marketing, and assignees or their successors in interest (referred to collectively herein as "Respondents") engaged in the unauthorized practice of law by: (1) selling, marketing and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products"); (2) training, monitoring and educating other sales representatives to sell, market or prepare said legal products; (3) giving legal advice

relative to said legal products; (4) advising and counseling clients concerning the suitability of said legal products for a client's particular situation; (5) gathering client information for purposes of preparing or determining the suitability of the appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney; (6) preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney; (7) offering legal advice to individuals concerning the execution of said legal products; and (8) engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or no contact with clients.

Now, in consideration of the forbearance on the part of the Relator from proceeding with this unauthorized practice of law action against Respondents, including a dismissal of the above-referenced Complaint, Respondents agree as follows:

1. Respondents agree and stipulate that they have received and read the rules of the Ohio Supreme Court pertaining to the unauthorized practice of law, agree to refrain from the conduct outlined in the first paragraph of this consent agreement, and agree to refrain from any other act or practice which violates Rule VII of the Supreme Court Rules for the Government of the Bar.
2. Respondents stipulate and agree that they may have unintentionally violated the Supreme Court Rules regarding the unauthorized practice of law in the course of marketing and sale of the AFPLC's Prepaid Legal Plans and Heritage Marketing's financial services. Respondents further stipulate and agree that to the extent they engaged in the conduct

referenced in the first paragraph of this consent agreement, then they engaged in the unauthorized practice of law, and agree to immediately cease and desist from such conduct. Nothing in this consent agreement should be construed to suggest that Respondents are prohibited from conducting lawful business in Ohio.

3. Respondents additionally agree, within 30 days of the execution of this Consent Agreement, to forward to Relator a list containing the names and addresses of all Ohio members. Except as required by law, Relator will not voluntarily disseminate information from the list to anyone not a party to this case unless such disclosure is in furtherance of this case or any related proceedings brought by Relator. Respondents will also forward within 30 days of the execution of this Consent Agreement to all Ohio members a copy of this Consent Agreement along with the cover letter attached hereto and incorporated herein as Exhibit A. Simultaneous with sending such letters, Respondents agree that they will forward an affidavit to Relator's attention affirming that such letters had been sent.
4. As detailed within Exhibit A, Respondents agree that, upon request by any Ohio member, within thirty (30) days of the request, they will return all personal and financial information to the member and AFPLC, Jeffrey Norman and Stanley Norman shall be jointly and severally liable for reimbursing the member for any reasonable attorney's fees incurred by the member in having an independent attorney review the member's current plan documents, and/or prepare any supplemental or corrective legal

documents necessary to fulfill their estate planning needs at the time the documents were originally prepared. This liability, however, shall be capped at Nine Hundred and Thirty Five Dollars (\$935.00) per member up to a total maximum reimbursement to all members of Four Hundred Thousand Dollars (\$400,000.00). Eligibility for such reimbursement shall expire within eighteen (18) months from the date of the mailing of Exhibit A. All parties agree that any licensed attorney of the member's choice may conduct the legal review. Upon request, Relator shall also be entitled to a full accounting by Respondents of all attorney expenses paid pursuant to this paragraph, including the member name, address, date and the amount of expenses paid for each claim.

5. Last, AFPLC agrees, upon execution of this Consent Agreement, to fully reimburse Relator for all direct costs and expenses related to the underlying cause of action according to the attached schedule.

Failure to perform or otherwise abide by any term of this Consent Agreement by any party named herein shall be considered a material breach of the agreement upon which the aggrieved party may pursue all underlying claims by re-opening the present case and/or initiating a new cause of action in a court of competent jurisdiction. Furthermore, all parties stipulate that this Consent Agreement is admissible in any subsequent court proceeding in the event that further allegations of the unauthorized practice of law by Respondents are brought to Relator's attention. Nothing in this

agreement shall be construed in any way to limit the legal rights of any member of AFPLC.

AGREED:

American Family Prepaid Legal Corporation

By: Jeffrey F. Norman

3-25-03
Date

Heritage Marketing and Insurance Services

By: Jeffrey F. Norman

3-25-03
Date

Stanley Norman
Stanley Norman

3-25-03
Date

Jeffrey F. Norman
Jeffrey Norman

3-25-03
Date

Harold Miller
Harold Miller

3-17-03
Date

Paul Chiles
Paul Chiles

3-17-03
Date

Joseph Hamel
Joseph Hamel

3-17-03
Date

Eric Peterson
Eric Peterson

03 24 03
Date

ATTACHED

(all other Sales and Delivery Representatives)

Christopher J. Weber
Geoffrey Stern

Date

4-01-03
Date

Christopher J. Weber (0059270)
Geoffrey Stern (0013119)
KEGLER, BROWN, HILL & RITTER
A Legal Professional Association
65 E. State Street, Suite 1800
Columbus, Ohio 43215
(614) 462-5400
Counsel for Respondents

For the Columbus Bar Association:

Martin D. Susec
Martin D. Susec (0066566)

4-11-03
Date

Bill Snitcher McQuain *MS per phone authority*
Bill Snitcher McQuain ()

4-11-03
Date

Carrie E. Glaeden *MS per phone authority*
Carrie E. Glaeden (0042330)

4-11-03
Date

D. Allan Asbury *MS per phone authority*
D. Allan Asbury, Chairman of
The Columbus Bar Association
Unauthorized Practice of Law Committee

4-11-03
Date


Luther Mack Gordon


Chris Miller

Dennis Quinlan


Daniel Roundtree


Alexander Scholz


Patricia Soos


Anthony Sullivan


Ron Baker


Tim Holmes


Paul Morrison


Vern Schmid


Carolyn Gray

3-17-03

3/17/03

3-17-03

4-4-03

3-17-03

3-24-03

3-24-03

3/24/03

3/24/03

3/24/03


Luther Mack Gordon


Chris Miller


Dennis Quinn


Daniel Roundtree


Alexander Scholz

Patricia Soos


Anthony Sullivan


Ron Baker


Tim Holmes


Paul Morrison


Vern Schmidt


Carolyn Gray

3-17-03

4/8/2003

3/17/03

3-17-03

3-17-03

3-24-03

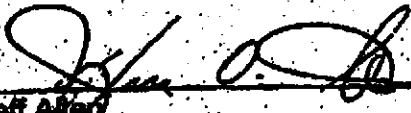
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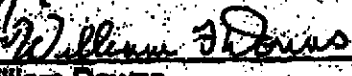
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3/24/03

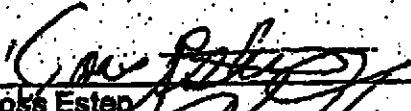
Date

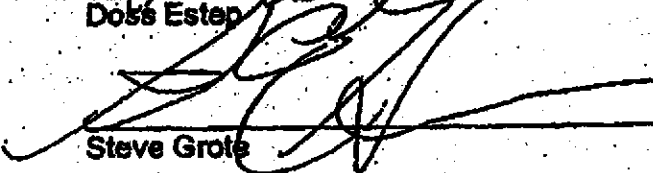

Jeff Allen

3/17/03


William Downs


3-24-2003


Doss Estep

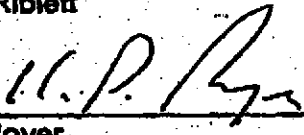

Steve Grote

3/21/03

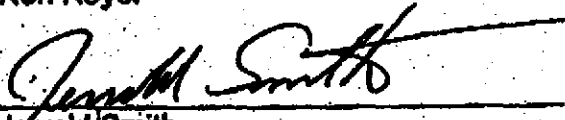
no longer with the company
Frank Messina


Jack Riblett

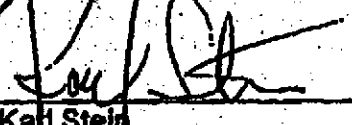
3/17/03


Ken Royer

4/7/03

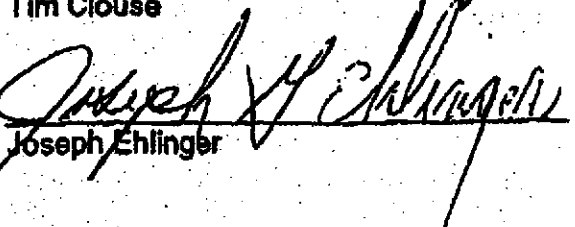

Jerrold Smith

3/17/03


Kafi Stein

3/17/03

no longer with the company
Tim Clouse


Joseph Ehlinger

3-17-03

David Helbert
David Helbert

3-24-03

Adam Hiers
Adam Hiers

3-24-03

Richard C. Rompala
Richard Rompala

4-7-03

EXHIBIT A

March 6, 2003

Ohio Members of the American Family Legal Plan

Dear Ohio Members of the American Family Legal Plan:

The purpose of this letter is to inform you that a settlement has been reached between the Columbus Bar Association Committee on the Unauthorized Practice of Law ("UPL Committee"), American Family Prepaid Legal Corporation ("AFPLC"), Heritage Marketing and Insurance Services ("Heritage Marketing"), and the sales and delivery representatives of AFPLC and Heritage Marketing. A copy of the consent agreement is enclosed for your information.

On November 19, 2002, the UPL Committee filed a Complaint before the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio against AFPLC, Heritage Marketing and their representatives alleging that we violated Ohio's Supreme Court Rules relating to the unauthorized practice of law in marketing and selling our services. The Columbus Bar Association has called into question the validity of the estate planning advice rendered to you and the legal effect of the documents prepared for you. Although we deny these claims, in order to resolve the matter, we entered into a consent agreement whereby we, in exchange for the Columbus Bar Association's dismissal of its action, agreed not to engage in conduct that would constitute the unauthorized practice of law. As part of the settlement, the Columbus Bar Association has asked us to clarify our relationship with you.

When you originally signed up to be a member of the Legal Plan, we advised you that the sales representative to whom you gave your personal and financial information, the AFPLC employees who may have prepared your legal documents, and the delivery representative who delivered your legal documents were not attorneys. At no time were any of these representatives or AFPLC employees authorized to act as your attorney or provide you with legal advice.

Nonetheless, if you have concerns regarding the effect or validity of any documents provided by the plan, you may always contact your own independent (non-plan) attorney. We have agreed within the attached consent agreement that we would reimburse you for any reasonable attorney's fees incurred by you in having an independent attorney review your current plan documents, and/or prepare any supplemental or corrective legal documents necessary to fulfill your estate planning needs at the time the documents were originally prepared. This liability, however, shall be capped at Nine Hundred and Thirty Five Dollars (\$935.00) per member, up to a total maximum reimbursement to all members of Four Hundred Thousand Dollars (\$400,000.00). Eligibility for such reimbursement shall expire within eighteen (18)

months from the date of this mailing. Simply take this letter and the attached agreement to any non-plan attorney of your choice. Upon our receipt of an invoice or a good-faith estimate from the non-plan attorney for reviewing, modifying, and/or supplementing your existing plan documents, AFPLC will then provide you with payment of the non-plan attorney's services. Additionally, upon notifying our office, you also have the right to have your file, including all of your personal and financial information, returned.

Notwithstanding this detailed disclosure, AFPLC intends to fully honor your membership agreement. AFPLC and Heritage Marketing are contractually committed to keeping your personal and financial information confidential. Furthermore, AFPLC will continue to offer you the benefits of your plan.

If you have any questions or concerns regarding these matters, please feel free to contact AFPLC at the number above. AFPLC is very pleased to have you as a member of its Legal Plan and values you as a plan participant.

Very truly yours,

Stanley Norman
American Family Prepaid Legal Corporation
and Heritage Marketing and Insurance Services Corporation

Jeffrey Norman
American Family Prepaid Legal Corporation

RELATOR'S EVIDENCE OF COSTS AND EXPENSES

| <u>Date</u> | <u>Amount</u> | <u>Description</u> |
|---------------|-------------------------|-------------------------------------------------------------------------------------------------------|
| 9/8/02 | \$450.50 | Court reporting services: Deposition of Andrew M. Fishman |
| 7/22/02 | \$1,135.50 | Court reporting services: Depositions of Joseph Hamel, Eric Peterson, Joe Jackson, and Andrew Fishman |
| 8/22/02 | \$56.80 | Service of Process: Subpoena for Andrew M. Fishman |
| 11/4/02 | \$41.71 | Copies: Kinkos |
| 11/14/02 | \$481.50 | Court reporting services: Deposition of Harold Miller |
| 12/17/02 | \$193.40 | Court reporting services: Deposition of Linda Ball |
| 1/8/03 | \$80.30 | Deposition Transcript: Andrew M. Fishman (7/22/02) |
| TOTAL: | <u>\$2439.71</u> | |

The Supreme Court of Ohio

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

COLUMBUS BAR ASSOCIATION, :

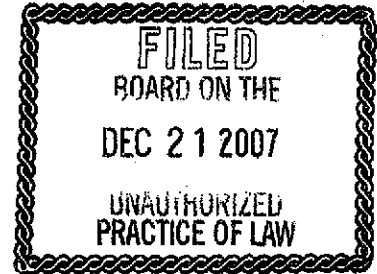
CASE NO. UPL 02-10

Relator, :

v. :

AMERICAN FAMILY PREPAID
LEGAL CORPORATION, ET AL., :

Respondents. :



- I. ORDER DENYING RESPONDENTS AMERICAN FAMILY PREPAID LEGAL CORPORATION, HERITAGE MARKETING & INSURANCE SERVICES, INC., STANLEY NORMAN, JEFFREY NORMAN, PAUL CHILES, AND HAROLD MILLER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

- II. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS PAUL MORRISON AND ERIC PETERSON MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

- III. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' JEFF ALTON, WILLIAM DOWNS, JOSEPH EHLINGER, LUTHER MACK GORDON, STEVE GROTE, DAVID HELBERT, SAMUEL JACKSON, CHRIS MILLER, JACK RIBLETT, RICHARD ROMPALA, KEN ROYER, VERN SCHMIDT, ALEXANDER SCHLOP, JEROLD SMITH, PATRICIA SOOS, ANTHONY SULLIVAN, AND DENNIS QUINLAN MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR

COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

IV. **ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' TIMOTHY CLOUSE, JOSEPH HAMEL, TIMOTHY HOLMES, AND ADAM HYERS MOTION FOR SUMMARY JUDGMENT AND DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE DOES EXIST GENUINE ISSUES OF MATERIAL FACT**

V. **ORDER DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION TO STRIKE MEMORANDUM IN OPPOSITION OF RESPONDENT JEFFREY L. NORMAN AND ORDER DENYING RESPONDENT JEFFREY L. NORMAN'S MOTION TO STRIKE RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT**

VI. **ORDER GRANTING INDIVIDUALLY NAMED RESPONDENT'S DANIEL ROUNDTREE MOTION FOR SUMMARY JUDGMENT**

PANEL ORDER

These matters came on before the Panel upon the following Motions: 1) Respondents American Family Prepaid Legal Corporation, Heritage Marketing & Insurance Services, Inc., Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, filed September 9, 2005; 2) Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, filed September 13, 2005; 3) Relator Columbus Bar Associations' Memorandum in Opposition to Respondents' Motion for Summary Judgment, and Relator Columbus Bar Associations'

Motion for Summary Judgment, filed October 1, 2007¹; 4) Respondent Jeffrey Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment, filed October 29, 2007; 5) Respondents Joseph Hamel's and Timothy Homes' Response to Realtor's Motion for Summary Judgment and Reassertion of Said Respondents' Motion for Summary Judgment, filed October 29, 2007; 6) Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment, filed October 29, 2007; 7) Respondent Stanley Norman's Affidavit, filed November 5, 2007; 8) Respondent Paul Morrison's Response to Relator's Motion for Summary Judgment, filed October 30, 2007²; 9) Respondent Eric Peterson's Response to Relator Columbus Bar Association's Motion for Summary Judgment; filed November 1, 2007; 10) Motion to Strike by J. Norman filed November 6, 2007; and 11) Memorandum in Opposition to Motion to Strike filed November 9, 2007 (responses by Relator). All Parties were provided with opportunity to file memorandum in opposition and reply briefs to all original motions.

After careful review of said Motions, all Memoranda in Opposition to the Motions, and all Reply briefs, and exhibits, documents, or other supporting documentation and/or information accompanying any filing made by any respective Party, the Panel hereby enters the following decisions on all Motions.

I. INTRODUCTION

A. Statement of Case

¹ Relator's Memorandum in Opposition and Motion for Summary Judgment are one in the same document. For the purposes of the Panel's decisions, it treats the Relator's pleading as a Motion for Summary Judgment, and all arguments contained therein are in opposition to the Respondents' respective Motions for Summary Judgment filed in September 2005.

² Respondent Paul Morrison's Responsive Pleading was mailed on October 29, 2007. This Panel has, and does as to this sole Respondent, recognized the three-day mail rule. Therefore, the Panel accepts Respondent P. Morrison's filing as timely.

This matter arises before the Panel based upon the claims of Relator Columbus Bar Association ("Relator") against Respondents American Family Prepaid Legal Corporation ("Respondent AFPLC"), Heritage Marketing & Insurance Services, Inc. ("Respondent HMIS"), and Individually Named Respondents³ as to whether all Respondents violated the terms and conditions of a Consent Decree. On or about November 19, 2002, the Relator filed a complaint alleging that some of the Respondents had engaged in the unauthorized practice of law. *See* Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, pg. 5; *see also* Relator's Motion for Summary Judgment, pg. 26. On or about March 23, 2003, Relator and Respondents entered into a Consent Agreement. The Consent Agreement (first paragraph) *alleges* that Respondents engaged in the unauthorized practice of the law by committing the following acts:

1. selling, marketing, and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products");
2. training, monitoring and educating other sales representatives to sell, market or prepare said legal products;
3. giving legal advice relative to said legal products;
4. advising and counseling clients concerning the suitability of said legal products for a client's particular situation;
5. gathering client information for purposes of preparing or determining the suitability for the

³ The names of all Individually Named Respondents are listed in the attached "Exhibit A". Collectively, Respondents AFPLC, HMIS, and all Individually Named Respondents are referred to as "Respondents."

appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney;

6. preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney;

7. offering legal advice to individuals concerning the execution of said legal products; and

8. engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or not contact with clients.

See Consent Agreement, incorporated by reference herein. The Consent Agreement further states that as a term and condition Respondents agree to "refrain from the conduct outlined in the first paragraph of this consent agreement" Id.⁴ The Relator, based upon alleged complaints against Respondents and their alleged conduct, sought enforcement of the Consent Agreement by the Supreme Court of Ohio. On or about April 12, 2005, by Order of the Supreme Court of Ohio, this matter was referred to the UPL Board on the issue as to whether the Consent Agreement had been violated.

1. The Parties

This matter is brought by the Relator, Columbus Bar Association. Respondent American Family Prepaid Legal Corporation ("Respondent AFPLC") is a California based corporation with offices in Ohio that sells memberships, among other activities, in

⁴ The Consent Agreement continues and states that "[respondents] agree to refrain from any other act or practice which violates Rule VII of the Supreme Court Rules for the Government of the Bar." In a prior hearing on the issue of the scope of the Relator's enforcement of the Consent Agreement, and, the scope of review of the Panel, the Panel ruled that the Relator's prosecution of the enforcement of the Consent Agreement was limited to the eight acts, or conduct, outlined in the first paragraph of the Consent Agreement. Therefore, any conduct alleged to be engaged in by Respondents that falls outside of the eight areas delineated by the first paragraph of the Consent Agreement are not reviewed or considered by the Panel **in this matter**. The Parties should be aware that a second complaint was filed under Case No. 05-02; this matter seeks review by the Panel of the issue whether Respondents have engaged in UPL irrespective of the Consent Agreement.

prepaid legal services plans (the "Plans"). Respondent Heritage Marketing & Insurance Services, Inc. ("Respondent HMISI") is a California based corporation doing business in Ohio that sells insurance products offered through a variety of insurance companies. Additionally, Respondent HMISI contracts with review agents to provide periodic review of the Plans, including the Ohio Plan.

Respondent Jeffery L. Norman ("Respondent J. Norman") and Respondent Stanley Norman ("Respondent S. Norman") each own 50% of Respondent AFPLC, with Respondent J. Norman serving in the position of Chief Executive Officer, and Respondent S. Norman in the position of President. *See* Respondents AFPLC, HMISI, S. Norman, J. Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, pg. 5. Further, Respondent S. Norman is Chief Executive Officer of Respondent HMISI, and Respondent J. Norman is President. Id. Respondent Harold Miller ("Respondent H. Miller") is Respondent AFPLC's office manager. Respondent Paul Chiles ("Respondent P. Chiles") is the state marketing director, and oversees Respondent AFPLC's sales force. Id. Respondent Chiles also oversees Respondent HMISI's contractors who deliver non-legal services offered under the plan. Id.

The Individually Named Respondents, except for Respondents S. Norman, J. Norman, H. Miller, and P. Chiles, are either sales representatives and/or delivery agents of Respondent AFPLC and/or Respondent HMISI. *See* Individual Sales and Delivery Representative Respondents' MSJ, pg. 3.

B. Statement of Facts⁵

On or about September 9, 2005, Respondents AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller (collectively the "Entity Respondents") filed their collective motion for summary judgment. The Entity Respondents argue that they are operating a legal prepaid legal services plan (the "Plan"), and do so with the utilization of the services of a licensed Ohio attorney ("Plan Attorney") who has a contract with Respondent AFPLC to provide such services to the Plan's members. *See* Entity Respondents MSJ, pg. 3. The Plan offers a wide array of services, including, but not limited to, estate planning elder care, Medicaid planning, landlord/tenant, and bankruptcy. *Id.* All of these services are alleged to be provided through and by the Plan Attorney. The Plan is designed to provide legal services to persons who might not otherwise be able to afford or have access to legal counsel. *Id.* at pg. 4. Respondent AFPLC contracts with sales representatives in Ohio to give sales presentations about the Plan. *Id.*

Respondent HMISI sells insurance products, and has independent contractors who are insurance agents licensed with the State of Ohio. *Id.* Respondent HMISI also utilizes delivery agents who deliver documents the Plan Attorney creates for the Plan members. *Id.* at pg. 5. Respondent HMISI also contracts with review agents who periodically review the Plan members' financial documents and their insurance needs. *Id.*

Respondent AFPLC's first contact with potential members in Ohio is through direct mailings. *Id.* When the postage-paid postcards are returned, Respondent AFPLC telephones the individual who returned the cards to set up an appointment for a sales

⁵ The Statement of Facts is based upon the undisputed facts set forth by the Parties in their respective Motions for Summary Judgment.

representative to visit in person and discuss the benefits of the Plan. Id. at pg. 6. The sales representative discusses, and explains, the Plan's benefits with the potential member using the presentation book prepared by Respondent AFPLC. Id. The sales representative evaluates whether the member understands what is being offered and is making a rational decision to purchase the Plan membership. Id. at pg. 7. Further, the sales representative goes through general concepts of probate and methods that can be used to avoid probate. Id. The training materials AFPLC utilizes, and provides to its sales agents, encourage high pressure . . . sales tactics. *See* Relator's MSJ at pg. 6. The training materials instruct the salesperson how to set the stage for his/her sales pitch. Id. at pgs. 6-8.

When a trust is sold, the sales representative has the new client prepare all the paperwork for Respondent AFPLC's non-attorney document drafters to plug into a form trust document, which the Plan attorney will then allegedly review. Id. at pgs. 10-11. No attorney has reviewed the new client/member's information at the time they sign up for Respondent AFPLC's services. Id. at pg. 11.

When Respondent AFPLC's estate planning documents are completed, the Plan attorney, Edward Brueggeman, forwards them to Respondent HMISI for delivery to the Plan member and to oversee their execution. *See* Relator's MSJ at pg. 22. The Respondent HMISI's delivery agents, many of whom are Individually Named Respondents, serve as notary public to the new Plan members who must execute their documents. Id. at pg. 23. Further, the delivery agents may also be insurance agents licensed to sell annuities and other insurance products in Ohio. Id. However, their business cards identify them as "Asset Preservation Specialist". Id. The Respondent

HMISI delivery agents have the new Plan member's financial information when they meet with them to deliver documents. Id. Further, the delivery agents are not paid for their notary services, but, rather, are paid solely on a commission basis from the sale of annuities and other insurance products sold by the Respondent to AFPLC Plan members. Id. The sale of insurance related products may occur annually when the delivery agents conduct periodic reviews of the Respondent AFPLC's Plan members. Id. at pg. 25.

C. Procedural History

This matter arises before the Panel based upon a March 23, 2003, Consent Agreement entered into by and between the Parties. On or about November 19, 2002, the Relator filed a complaint against Respondents with the Supreme Court of Ohio's Board on the Unauthorized Practice of Law ("UPL Board"), pursuant to Rule VII, Section 5, of the Ohio Rules for the Government of the Bar. On or about March 23, 2003, Relator and Respondents entered into a Consent Agreement. In 2005, Relator sought enforcement of the Consent Agreement by the Supreme Court of Ohio, alleging that the Consent Agreement was being violated by the Respondents' continued actions in breach of the Consent Agreement and engaging in the unauthorized practice of the law. A Motion to Enforce was filed with the Supreme Court of Ohio. On or about March 3, 2005, the Supreme Court issued an Interim Cease and Desist Order against Respondents; this Order remains in effect. The Order also included a charge to the UPL Board to determine whether "the March 2003 settlement agreement [i.e., consent agreement] has been violated and to file a report with the Court." *See* Interim Cease and Desist Order, incorporated by reference herein. On or about April 12, 2005, a formal Order of referral was issued from the Supreme Court of Ohio to the UPL Board for the limited purposes of

determining whether the Consent Agreement had been breached and/or violated. In order to comply with its charge, the UPL Board convened a Panel to determine the issue, and a case schedule was set to allow the Parties to either prosecute or defend their respective positions. Respondents AFPLC, HMIS, S. Norman, J. Norman, H. Miller, and P. Chiles were represented by the law firm of Squires, Sanders & Dempsey, LLP. The Individually Named Respondents were represented by the law firm of Kegler, Brown, Hill & Ritter, LLP.

The Parties engaged in substantive discovery practice (i.e., depositions, written discovery, etc.), which included various hearings and briefings on discovery issues. In September 2005, Respondents filed Motions for Summary Judgment. However, prior to responsive pleading(s) being filed by Relator, the Parties contacted the Panel to advise that they were engaged in settlement negotiations. Sometime in September 2005, the Parties submitted a joint settlement agreement to the Panel for review and consideration. In October 2005, the Panel requested further clarification of specific terms and conditions set forth in the Settlement Agreement. After receiving separate responses to its questions for clarification from the Parties, the Panel, in accordance with UPL Board procedure, referred the settlement agreement to the Supreme Court of Ohio for consideration.⁶ Sometime in December 2005, and after review and consideration, the Court summarily rejected the settlement agreement, and referred the matter back to the Board, and the Panel, for adjudication on the merits. As a result, a new case schedule was set. The Respondents were still represented by their respective legal counsel.

⁶ At the time that the settlement agreement was presented to the Panel, the UPL Board did not have a Rule as to the handling of settlement agreements, and, therefore, was without authority to accept the settlement agreement. Therefore, it was required to refer the settlement agreement to the Supreme Court of Ohio for consideration.

After the Parties engaged in further discovery to prepare for a hearing on the merits, the Relator retained the law firm of Porter, Wright, Morris & Arthur, LLP as counsel, which filed its Notice of Appearance on or about May 26, 2006; Relator's former counsel Martin Susec withdrew. As a result, an amended case schedule was set to allow the new law firm the opportunity to be brought up to speed and to adequately prepare for a hearing; counsel for Respondents agreed to the amended case schedule. The Parties engaged in additional discovery practice. On or about December 29, 2006, the law firm of Kegler, Brown, Hill & Ritter, LLP filed a Notice of Withdrawal of Counsel as to the Individually Named Respondents. Within its Notice, the Kegler Law Firm stated that it had notified its clients of all pending court dates. On or about March 9, 2007, the Parties, by and through their respective counsel, submitted a proposed discovery and litigation schedule. On or about March 15, 2007, notice was mailed to all individually named respondents regarding the proposed discovery and litigation schedule that had been accepted by the Panel. On or about June 26, 2007, legal counsel for Respondents AFPLC, HMIS, S. Norman, J. Norman, H. Miller, and P. Chiles withdrew its representation. As a result, no Respondents were represented by legal counsel.

On or about July 25, 2007, the Panel sent out written notices to all parties that a telephone conference was to be held to discuss the status of the instant matter. On or about August 7, 2007, an additional notice was mailed to all Individually Named Respondents advising that a second telephone status conference was to be held to discuss various issues related to the litigation, including, but not limited to, legal representation, discovery and litigation deadlines, and any miscellaneous matters raised by the Parties. On August 17, 2007, a final telephone status conference was held for the benefit of the

Individually Named Respondents; no counsel entered an appearance for any of the telephone status conferences on behalf of Respondents AFPLC or HMISI. At each status conference the Panel advised the Parties of their right to retain legal counsel, and that if legal counsel was not retained, each party would still be required to comply with the discovery/litigation schedule, and would be required to conduct itself, himself, or herself in accordance with the UPL Board's Rules and Regulations.

In accordance with the Discovery/Litigation Schedule, the following dispositive pleadings have been filed, which are now ripe for review by the Panel:

- a) Respondents American Family Prepaid Legal Corporation, Heritage Marketing & Insurance Services, Inc., Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, filed September 9, 2005;
- b) Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, filed September 13, 2005;
- c) Relator Columbus Bar Associations' Memorandum in Opposition to Respondents' Motion for Summary Judgment, and Relator Columbus Bar Associations' Motion for Summary Judgment, filed October 1, 2007⁷;
- d) Respondent Jeffrey Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment, filed October 29, 2007;
- e) Respondents Joseph Hamel's and Timothy Homes' Response to Realtor's Motion for Summary Judgment and Reassertion of Said Respondents' Motion for Summary Judgment, filed October 29, 2007;
- f) Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment, filed October 29, 2007;
- g) Respondent Stanley Norman's Affidavit, filed November 5, 2007;

⁷ Relator's Memorandum in Opposition and Motion for Summary Judgment are one in the same document. For the purposes of the Panel's decisions, it treats the Relator's pleading as a Motion for Summary Judgment, and all arguments contained therein are in opposition to the Respondents' respective Motions for Summary Judgment filed in September 2005.

h) Respondent Paul Morrison's Response to Relator's Motion for Summary Judgment, filed October 30, 2007 (timely – mailed October 29)

i) Respondent Eric Peterson's Response to Relator Columbus Bar Association's Motion for Summary Judgment; filed November 1, 2007 (timely)

II. STANDARD OF REVIEW

A. SUMMARY JUDGMENT

Ohio Civil Rule 56(C) provides that summary judgment must be granted if:

. . . the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Ohio R. Civ. P. 56(C). In other words, summary judgment must be granted when, after viewing the evidence in the light most favorable to the nonmovant, the record demonstrates: (1) there is no genuine issue as to any material fact, (2) reasonable minds can come to only one conclusion, and (3) the moving party is entitled to judgment as a matter of law. See Royal Plastics, Inc. v. State Auto. Mut. Ins. Co. (Cuyahoga Co. 1994), 99 Ohio App.3d 221; Sedlak v. Solon (Cuyahoga Co. 1995), 104 Ohio App.3d 170; Dresher v. Burt (Ohio 1996), 75 Ohio St.3d 280.

A plaintiff moving for summary judgment discharges its burden by setting forth the basis for its motion and identifying the portions of the record which support its motion. See Vahila v. Hall (Ohio 1997), 77 Ohio St.3d 421. The nonmoving party may not rest on mere allegations in pleadings, but its response must set forth specific facts showing that there is a genuine triable issue. See State ex rel. Mayes v. Holman (Ohio 1996), 76 Ohio St.3d 147. Substantive law determines what facts are material for

purposes of a summary judgment motion. See Kemper v. Builder's Square, Inc. (Montgomery Co. 1996), 109 Ohio App.3d 127.

B. MOTION TO STRIKE

Ohio Civil Rule 12(F) states in pertinent part that:

Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant immaterial, impertinent or scandalous matter.

Ohio R. Civ. P. 12(F).

Civil Rule 12(F) motions are disfavored and are ordinarily not granted unless the language has *no possible relation to the controversy and is clearly prejudicial*. (emphasis added) Hagins v. Eaton Corp. (March 31, 2004), unreported, Cuyahoga App. No. 64497; Morrow v. South, 540 F. Supp. 1104 (S.D. Ohio, 1992); Lirtzman v. Spiegel, Inc. 493 F. Supp. 1029 (N.D., Illinois, 1980). See also Mirshak v. Joyce (N.D. Illinois, 1987), 652 F. Supp. 359; Mitchell v. Bendix (N.D. Indiana, 1985), 603 F. Supp. 920. The Ohio Supreme Court has held that "[w]hile an insufficient complaint may be subject to a Civ. Rule 12(F) motion to strike, these motions should not be used as a substitute for a Civ. Rule 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. State ex rel. Neff v. Corrigan (1996), 75 Ohio St.3d 12, 661 N.E.2d 170.

III. LAW & ARGUMENT

A. DENYING RESPONDENTS AMERICAN FAMILY PREPAID LEGAL CORPORATION, HERITAGE MARKETING & INSURANCE SERVICES, INC., STANLEY NORMAN, JEFFREY NORMAN, PAUL CHILES, AND HAROLD MILLER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

It should be noted that on or about June 26, 2007, counsel for Respondents AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller formally withdrew its representation via Notice of Withdrawal to the Panel. The Notice of Withdrawal has been formally accepted by the Panel. Since the filing of the Notice of Withdrawal, none of the aforementioned Respondents has been represented by counsel. Prior to withdrawal, counsel for the aforementioned Respondents had filed a Motion for Summary Judgment (dated September 9, 2005), which has been responded to by counsel for Relator. No reply brief has been filed by any of these Respondents; however, the Panel does acknowledge that responsive pleadings have been made by S. Norman and J. Norman in the form of opposition to the Motion for Summary Judgment filed by Relator. Further, J. Norman requests that the Panel affirm the originally filed Motions for Summary Judgment dated September 9, 2005. Because Respondents AFPLC and HMISI are not represented by legal counsel, no Reply brief to the original September 9, 2005 Motion for Summary Judgment has been filed, and no opposition pleading or brief has been filed against Relator's motion for summary judgment. Thus, the Panel is only left with the arguments made in the September 9, 2005 Motion for Summary Judgment as to the position of Respondents AFPLC and HMISI.

It is undisputed that on or about March 23, 2003, Respondent AFPLC entered into the Consent Agreement by execution of the same by its CEO Respondent J. Norman. It is also undisputed that the Consent Agreement speaks for itself, and states that the Respondents, which include Respondent AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller (collectively the "Entity Respondents"), "agree to refrain from the conduct outlined in the first paragraph . . . " to wit: 1) selling, marketing, and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products"); 2) training, monitoring and educating other sales representatives to sell, market or prepare said legal products; 3) giving legal advice relative to said legal products; 4) advising and counseling clients concerning the suitability of said legal products for a client's particular situation; 5) gathering client information for purposes of preparing or determining the suitability for the appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney; 6) preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney; 7) offering legal advice to individuals concerning the execution of said legal products; and 8) engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or not contact with clients.

1. American Family Prepaid Legal Corporation & Heritage Marketing & Insurance Services, Inc.⁸

Former counsel for Respondent AFPLC and Respondent HMISI argues that, in summary, Respondent AFPLC is in the business of providing a prepaid legal plan to Ohio citizens and/or residents, and in so doing, provides access to legal counsel that might not otherwise be available or affordable for its potential client base. *See* Entity Respondents' MSJ at pgs. 3-4. Moreover, the business operations of Respondent AFPLC do not violate the Consent Agreement. Respondent HMISI sells insurance products, and utilizes its representatives to deliver documents associated with the business of Respondent AFPLC (i.e., delivery of AFPLC Plan documents to AFPLC Plan members). *Id.* at pgs. 4-5. In support of this position, the Entity Respondents highlight and focus upon parts and pieces of its activities to indicate that it does not engage in conduct that violates the Consent Agreement. While the Entity Respondents argue that their primary focus of the business operations of Respondent AFPLC is the sale of a prepaid legal plan, and the business activities of Respondent HMISI is the sale of insurance products – which might be true, the collective actions of Respondents AFPLC and HMISI are in opposition to those statements. A review of the totality of the operation of Respondent AFPLC and Respondent HMISI based upon all the evidence submitted in this matter indicates to the Panel that the activities of Respondents AFPLC and HMISI do in fact violate the Consent Agreement.

While the Entity Respondents may argue that the business of Respondent AFPLC is to operate a prepaid legal services plan, the name of something does not in fact alter its

⁸ Respondents AFPLC and HMISI at the time of the filing of Relator's Motion for Summary Judgment, and Memorandum in Opposition to Respondent AFPLC's and HMISI's Motion for Summary Judgment, were not represented by legal counsel, and, therefore, no Memorandum in Opposition to Relator's Motion for Summary Judgment, or Reply Brief, was filed.

character. If it walks, talks, operates, conducts itself . . . then it is what it is. In this case, the Panel finds that the operations of Respondents AFPLC and HMISI together constitute the activities of a trust mill. Furthermore, the fact that Respondent AFPLC may be registered with the State of Ohio as a prepaid legal services plan does not alleviate it of any culpability, or liability, for its practices, or the conduct of its employee or representatives (i.e., independent contractors) that it utilizes to carry out its orders, instructions, and tasks in furtherance of its objectives to generate profit and income at the expense of the citizens of the State of Ohio.

The activities of Respondents AFPLC and HMISI are analogous in many respects to the conduct stated in Cleveland Bar Assoc. v. Sharp Estate Services, Inc., et al. (2005) 107 Ohio St.3d 219 and Cincinnati Bar Assoc. v. Kathman (2001), 92 Ohio St.3d 92, 748 N.E.2d 1091. In Sharp Estate, the respondents sold living-trust and estate plan and related documents to Ohio residents. The respondents consisted of one entity, TEP, that prepared and marketed living trust and estate related documents, a second group of persons and entities, Sharp, that serves as sales representatives marketing and selling TEP products. Id. at ¶¶ 2-3. Many of the targeted customers were clearly not in a position to benefit from a living trust or estate plan. Id. at ¶ 3. Sharp nonattorney advisors would tell customers that they needed estate products or living trusts and would recommend certain types of trust or estate plans. Id. at ¶ 6. The Court held that the unauthorized practice of the law was engaged in through the marketing and sale of products through the network of nonattorney advisors, when advice was given to customers regarding legal effects of documents, and the use of a review attorney occurred after the execution of a contract. Id. While the Panel does recognize that the actions of Respondents AFPLC and

HMISI are not identical to those in Sharp Estate, the actions are nonetheless analogous to the conduct engaged in by Respondents AFPLC and HMISI, which are violations of the Consent Agreement, and, more importantly, the spirit of the laws governing the unauthorized practice of the law in Ohio.

The record indicates that Respondent AFPLC, through its sales representatives, promotes the sale of a prepaid legal services for the purpose of selling living trusts and other related estate planning products. *See* Relator's MSJ at pgs. 11-20. The record further indicates that Respondent AFPLC primarily and predominantly promotes and sells living trusts and trust related products to targeted Ohio citizens. *Id.* at pgs. 3-4, 6-8 and 11-15. The sale of these trust products and the actions of Respondent AFPLC and its sales representatives, which are in contravention to the prohibitions agreed to by Respondent AFPLC in the Consent Agreement, then allows for Respondent HMISI to exceed the scope of the services it purports to provide, and do more than merely deliver or notarize documents, which is also a breach of the Consent Agreement. *Id.* at pgs. 8-11.

Respondent HMISI is an integral part of the AFPLC operations. Respondent HMISI generates a profit through the actions of its employees, independent contractors, and/or representatives (i.e., delivery agents), who deliver the trust documents created by Respondent AFPLC. Further, Respondent HMISI through its agents are in possession of the financial information of Plan members, and use that information to sell insurance products; many of the delivery agents, if not all, are licensed insurance agents in Ohio. However, the business cards for Respondent HMISI's agents identifies them as "Asset Preservation Specialist." *See* Relator's MSJ at pg. 23. When the delivery agent meets

with a Plan member, he/she reviews the instructions that the Plan attorney encloses with the estate planning documents. *See* Entity Respondents' MSJ at pgs. 15-17. The delivery agent may then return annually to discuss the Plan member's financial situation, and if necessary, sell additional insurance products. *Id.* at pg. 17. The delivery agents use the Plan members information, and the execution of the Plan documents, as an inroad to sell the Plan member insurance products. And in some circumstances, contribute, if not facilitate, a Plan member overextending his/her economic resources. *See* Relator's MSJ at pgs. 22-25.

The utilization of a Plan attorney does not alleviate the conduct of Respondent AFPLC or Respondent HMISI regarding their combined action to operate a trust mill, and violates the Consent Agreement. As the Entity Respondents' Motion for Summary Judgment states, prior to March 2005, the Plan attorney, Edward Brueggeman, maintained an office within Respondent AFPLC's suite of offices, used AFPLC employees to prepare documents including, deed transfer paperwork. *See* Entity Respondents' MSJ at pgs. 9-10. Prior to his termination of employment, the Plan attorney was contracted to provide services and training to Respondent HMISI, while at the same time contracted to serve as Plan attorney by Respondent AFPLC. *Id.* at pg. 11. Prior to March 2005, the original estate planning worksheet and assignee spelling checklist, as well as engagement agreement were provided to Mr. Brueggeman in his office in the AFPLC suite of offices. *Id.* It should be noted that the engagement agreement is not executed by Mr. Brueggeman until after the Plan member is signed up. *See* Relator's MSJ at pg. 20. Prior to March 2005, the Plan attorney would send his notes, copies of the estate planning worksheet, and assignee spelling checklist to Respondent AFPLC's

California offices; in short, legal documents were prepared in the offices of Respondent AFPLC by Respondent AFPLC or Respondent HMISI employees. *See* Entity Respondents' MSJ at pgs. 12-13; *see also* Relator's MSJ at pg. 20. The Plan attorney's contact with the Plan member occurred well after the Plan member had become a member, and in some instances, after legal information had been taken from the member. *See* Relator's MSJ at pgs. 21-22.

The evidence before the Panel demonstrates that Respondents AFPLC and HMISI continue to operate and conduct business in a manner in breach of the Consent Agreement. *See also* Trumbull Cty. Bar Assoc. v. Hanna (1997), 80 Ohio St.3d 58,60, 684 N.E.2d 329, 31 (" . . . this court has repeatedly stated that the marketing of living trusts by nonattorneys is the unauthorized practice of the law."); Disciplinary Counsel v. Willis (2002), 96 OhioSt.3d 142, 772 N.E.2d 625; Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, 28, 193 N.E. 650,652 (" . . . the practice of law 'includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured."). The activities of Respondents AFPLC and HMISI, through its representatives, agents, and employees violate all eight of the prohibitions contained in the 2003 Consent Agreement. Thus, Relator's Motion for Summary Judgment against Respondents AFPLC and HMISI is hereby **GRANTED**.

2. Stanley Norman

The Parties Discovery/Litigation Schedule set a deadline of October 29, 2007 by which time any Respondents can file their responsive pleading (i.e., memorandum in opposition) to the Relator's Motion for Summary Judgment. Due to the wildfires raging in Southern California around the date of October 29, 2007, Respondent S Norman

requested an extension of time to file a response. By way of Order dated October 25, 2007, the Panel granted Respondent S. Norman's motion for an extension, and reset the deadline by which he was to file a responsive pleading to November 2, 2007. Respondent S. Norman did not file a responsive pleading (i.e. Affidavit of Stan Norman) to the Relator's Motion for Summary Judgment until November 5, 2007. Respondent S. Norman's filing was outside of the time prescribed by the Panel, and therefore his filing is deemed untimely and will not be considered for review. Thus, the Panel is only left to review the arguments made on Respondent S. Norman's behalf in the Entity Respondents' Motion for Summary Judgment dated September 9, 2005, and the arguments made by Relator in its Motion for Summary Judgment and Memorandum in Opposition filed on October 1, 2007.

It is undisputed that Respondent S. Norman owns 50% of Respondent AFPLC, and serves as President. *See* Entity Respondents' MSJ at pg. 5. Further, Respondent S. Norman is Chief Executive Officer of Respondent HMISI. *Id.* The Panel has determined that the conduct engaged in by Respondents AFPLC and HMISI collectively constitutes a breach of the Consent Agreement. The issue that is now before the Panel is whether Respondent S. Norman's conduct as CEO and President, respectively, also constitutes a breach of the Consent Agreement. The Panel believes that it does.

Based upon the record, Respondent S. Norman was part-owner, and had significant control and/or authority over the operations and business models of both Respondent AFPLC and Respondent HMISI. *See* Relator's MSJ. In such a capacity, Respondent Norman had knowledge of the Respondent AFPLC's and Respondent HMISI's business practices, including those that occurred after the execution of the 2003

Consent Agreement. As the Panel finds that Respondent AFPLC and Respondent HMISI engaged in conduct in violation of the Consent Agreement, the Panel too finds that Respondent S. Norman engaged in such violations through his oversight, authority, control, and knowledge of the ongoing, operations, activities, and plans of both corporate entities. Therefore, the Panel finds that Relator's Motion for Summary Judgment against Respondent S. Norman individually is hereby **GRANTED**.

3. Jeffrey Norman

It is undisputed that Respondent Jeffery L. Norman ("Respondent J. Norman") owns 50% of Respondent AFPLC, and serves as the corporation's Chief Executive Officer. See Entity Respondents' MSJ at pg. 5. Further, Respondent J. Norman is President of Respondent HMISI. Id. The issue that is now before the Panel is whether Respondent J. Norman's conduct as CEO and President, respectively, also constitutes a breach of the Consent Agreement. The Panel believes that it does.

Based upon the record, Respondent J. Norman was part-owner, and had significant control and/or authority over the operations and business models of both Respondent AFPLC and Respondent HMISI. See Relator's MSJ. In such a capacity, Respondent J. Norman had knowledge of the Respondent AFPLC's and Respondent HMISI's business practices, including those that occurred after the execution of the 2003 Consent Agreement. As the Panel finds that Respondent AFPLC and Respondent HMISI engaged in conduct in violation of the Consent Agreement, the Panel too finds that Respondent J. Norman engaged in such violations through his oversight, authority, control, and knowledge of the ongoing, operations, activities, and plans of both corporate entities.

It should be noted that Respondent J. Norman filed a lengthy response to Relator's Motion for Summary Judgment. See Respondent J. Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment ("Respondent J. Norman's Memo in Opp."). The Panel has carefully reviewed all of Respondent J. Norman's Memo in Opp., as well as all exhibits attached to the same. While the Panel does not find support in Respondent J. Norman's arguments, such that a genuine issue of material fact exists, the Panel believes it is important to address specific issues raised by his filing.

While the Panel is cognizant that Respondent J. Norman is not an attorney licensed to practice law in either Ohio, or any other jurisdiction, and it has been a traditional practice of the UPL Board to give latitude to *pro se* litigants, the Panel can nonetheless obviate itself from Ohio law, which requires that even *pro se* litigants familiarize themselves with the practice and procedures for engaging in litigation (i.e., rules of evidence, rules of civil procedure, form of pleadings, etc.). Further, *pro se* litigants must to the best of their ability be cognizant of the laws (i.e., statutory or common law) that may effect the defense or prosecution of *their* claims. This includes being cognizant of how far their self-representation extends. Such awareness carries over into the area of the unauthorized practice of law.

Ohio law has long held that a nonattorney cannot represent a corporation. Moreover, an officer, shareholder, or owner cannot represent a corporation. And while the Panel is not granting Relator's Motion to Strike, the Panel does agree with Relator that the overriding tone and arguments fostered by Respondent J. Norman in his Memo in Opp. appear to be made on the behalf of, or in defense of, Respondents AFPLC and

HMISI, and in some case other Individually Named Respondents. Respondent J. Norman's conduct in this regard raises the question, but does not confirm, whether he in fact engaged in UPL through the arguments made in his Memo in Opp. Since that issue is not before this Panel, it does not reach a conclusion on the issue. What the Panel does conclude is that Respondent J. Norman's Memo in Opp. does not raise genuine issues of material fact as to his individual conduct.

The Panel's sole charge from the Ohio Supreme Court is to determine whether the 2003 Consent Agreement (or settlement agreement as referred to by the Court's Order) was breached by the conduct of all those who signed it. A Consent Agreement is a binding and lawful contract, and is governed by the laws of contracts. *See Relator's MSJ at pg. 5.* Respondent J. Norman's Memo in Opp. should have been targeted to this issue as it pertained to him individually. The Panel finds that his responsive pleading was not and therefore Relator's Motion for Summary Judgment is hereby **GRANTED**.

A final issue that the Panel feels should be addressed are the accusations made by Respondent J. Norman against Relator's counsel as it pertains to an affidavit presented to attorney Edward Brueggeman for his review and execution. Based upon the Panel's review of the events surrounding this matter, the Panel does not find that Relator's counsel acted either inappropriately or in a manner that would warrant the Panel to take action against Realtor. It is a customary practice in Ohio to utilize affidavits to secure the statement of witnesses. Additionally, the execution of any affidavit is completed after the affiant has had the opportunity to review its written statements and is prepared to attest under oath to the accuracy of those statements. Realtor's counsel's submission of an affidavit to Mr. Brueggeman, and Mr. Brueggeman's right to not execute the same, is in

accordance with the practices and procedures of Ohio law. Mr. Brueggeman's decision to not execute the affidavit presented to him does not raise an issue that this Panel feels warrants action against Relator in this matter, or the striking/dismissal of this action.

4. Paul Chiles

It is undisputed that Respondent Paul Chiles ("Respondent P. Chiles") is the state marketing director, and oversees Respondent AFPLC's sales force. Id. Respondent Chiles also oversees Respondent HMISI's contractors who deliver non-legal services offered under the plan. Id. Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent Chiles' conduct as state marketing director and because of his role in overseeing the contractors/delivery agents' actions, the Panel finds Respondent Chiles violated the Consent Decree. Thus, the Panel **DENIES** Respondent Paul Chiles Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that Respondent P. Chiles failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment had been filed, Respondent P. Chiles could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

5. Harold Miller

It is undisputed that Respondent Harold Miller ("Respondent H. Miller") is Respondent AFPLC's office manager. It is further undisputed that Respondent H. Miller works along side Respondent P. Chiles. See Deposition of Respondent H. Miller. Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent Miller's conduct as office manager, and his duties and role related thereto, the Panel finds Respondent Miller violated the Consent Decree. Thus, the Panel **DENIES** Respondent Harold Miller's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that Respondent H. Miller failed to file a Memorandum in Opposition to the Relator's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment had been filed, Respondent H. Miller could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. See Ohio R. Civ. P. 56(E); see also, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

B. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS PAUL MORRISON AND ERIC PETERSON MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR

**COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY
JUDGMENT AGAINST INDIVIDUALLY NAMED RESPONDENT
PAUL MORRISON AND ERIC PETERSON AS THERE EXIST NO
GENUINE ISSUES OF MATERIAL FACT**

1. Paul Morrison

It is undisputed that Respondent Paul Morrison ("Respondent P. Morrison") has been employed with Respondent HMISI off and on for six years. *See* Paul Morrison Responsive Filing ("Morrison Resp."); *see also* Relator's MSJ at pg. 25. It is also undisputed that Respondent P. Morrison served as a delivery agent for Respondent AFPLC through his employment with Respondent HMISI. *Id.* Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent P. Morrison's conduct as a delivery agent, specifically his conduct as it pertains to Betty Hamm,. *See* Relator's MSJ at pgs. 33-34; *see also* Relator's Reply Brief at pgs. 25-26. The Panel does give consideration to Respondent P. Morrison's statements regarding the Ohio Department of Insurance's ("ODI") investigations, and the results therefrom. However, the Panel does not conclude that the results of that or any ODI investigations addresses the underlying issue before it as to whether the Consent Agreement has been violated. Thus, the Panel **DENIES** Respondent Harold Miller's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

2. Eric Peterson

At the outset, the Panel is troubled by Respondent Eric Peterson's ("Respondent E. Peterson") statement that he was instructed by his attorneys (the Panel assumes this is

Kegler, Brown, Hill & Ritter, LLP) and counsel for Respondent AFPLC that "[he] could return to work" based upon the Interim Cease and Desist Order being lifted. See Eric Peterson's Response to Columbus Bar Association's Motion for Summary Judgment ("Peterson Resp.") at pg. 1. If Respondent E. Peterson's statement is true, then such direction by legal counsel raises a myriad of issues. However, Respondent Peterson's affidavit, and his Response, clearly state that he did engage in conduct the Panel has deemed a violation of the Consent Decree through his employment with and for Respondent AFPLC. See Peterson Resp. and Peterson Affidavit.

As the Panel has found based upon the breaches by Respondent AFPLC and Respondent HMISI, Respondent Peterson's conduct in furthering the business activities of the Entity Respondents is itself a violation of the Consent Agreement. *Id.*, see also Relator's MSJ at pgs. 15-16 and Relator's Reply Brief at pgs. 20-21. Furthermore, based upon the record before the Panel as to Respondent Peterson's conduct as a sales representative, and his duties and role related thereto, the Panel finds Respondent Peterson violated the Consent Decree. Thus, the Panel **DENIES** Respondent Eric Peterson's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

- C. **ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' JEFF ALTON, WILLIAM DOWNS, JOSEPH EHLINGER, LUTHER MACK GORDON, STEVE GROTE, DAVID HELBERT, SAMUEL JACKSON, CHRIS MILLER, JACK RIBLETT, RICHARD ROMPALA, KEN ROYER, VERN SCHMIDT, ALEXANDER SCHLOP, JEROLD SMITH, PATRICIA SOOS.**

**ANTHONY SULLIVAN, AND DENNIS QUINLAN MOTION FOR
SUMMARY JUDGMENT AND GRANTING RELATOR
COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY
JUDGMENT AGAINST THE SAME AS THERE EXIST NO
GENUINE ISSUES OF MATERIAL FACT**

It is undisputed that the Individually Named Respondents – Jeff Alton, William Downs, Joseph Ehlinger, Luther Mack Gordon, Steve Grote, David Helbert, Samuel Jackson, Chris Miller, Jack Riblett, Richard Rompala, Ken Royer, Vern Schmidt, Alexander Schlop, Jerold Smith, Patricia Soos, Anthony Sullivan, and Dennis Quinlan ("Individually Named Respondents") – are either sales representatives and/or delivery agents working for either Respondent AFPLC or Respondent HMISI, and furthering the business practices of both corporate entities. *See* Relator's MSJ at pgs. 15-20; *see also* Individually Named Respondents' MSJ at pgs. 5-7. As the Panel has found based upon the breaches by Respondent AFPLC and Respondent HMISI, the Individually Named Respondents' conduct in furthering the business activities of the Entity Respondents is itself a violation of the Consent Agreement. *Id.*, *see also* Relator's MSJ and Relator's Reply Brief. Furthermore, based upon the record before the Panel as to the Individually Named Respondents' conduct as a sales representative and/or delivery agents, and their duties and roles related thereto, the Panel finds the Individually Named Respondents violated the Consent Decree. Thus, the Panel **DENIES** the Individually Named Respondents' Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that all of the aforementioned Individually Named Respondents failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment

had been filed, the Individually Named Respondents could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

D. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' TIMOTHY CLOUSE, JOSEPH HAMEL, TIMOTHY HOLMES, AND ADAM HYERS MOTION FOR SUMMARY JUDGMENT AND DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE DOES EXIST GENUINE ISSUES OF MATERIAL FACT

1. Timothy Clouse

At the time that the 2003 Consent Agreement was executed, Respondent Timothy Clouse ("Respondent T. Clouse") did not execute the document. *See* Consent Agreement, incorporated by reference herein; *see also* Individually Named Respondents MSJ at pg. 4. Respondent T. Clouse argues that the reason for the absence of his signature is because he was not affiliated with either Respondent AFPLC or Respondent HMISI. Id. In Relator's Motion for Summary Judgment, it argues that Respondent T. Clouse between March 2003 through approximately May 2005 sold at least 149 plans to Ohioans, and, thereby, engaged in conduct in furtherance of the business operations and activities of Respondents AFPLC and HMISI. This conflicting issue raises a genuine issue of material fact whereby the Panel must **DENY** both Respondent T. Clouse's and Relator's motions for summary judgment.

2. Joseph Hamel & Timothy Holmes

It is undisputed that both Respondents Joseph Hamel ("Respondent J. Hamel") and Timothy Homes ("Respondent Holmes") (collectively "Respondents H&H") were delivery agents at all times pertaining to this matter. *See* Respondents H&H's Response to Relator's Motion for Summary Judgment and Reassertion of Respondents' Motion for Summary Judgment ("Response") at pg. 3. In that capacity, Respondents H&H argue that the scope of their activities were limited to notarization and mere delivery of documents. Id. at pg. 6. Further, Respondents H&H argue that they are not identified specifically within Relator's MSJ. Id. at pgs. 7-8.

Relator's Motion for Summary Judgment makes arguments against all delivery agents, which include Respondent H&H who signed off on the 2003 Consent Agreement. *See* Relator's MSJ at pgs. 22-26; *see also* Relator's Reply Brief at pgs. 23-24. As the Panel has held that the overall activities of Respondents AFPLC and HMISI constitute a breach of the Consent Agreement, and Relator's arguments as to the conduct of the delivery agents is linked to such prohibitive conduct, a genuine issue of material fact arises as to what conduct, if any, was engaged in by Respondents H&H in violation of the 2003 Consent Agreement. Thus, Respondent H&H's and Relator's respective Motions for Summary Judgment are hereby **DENIED**.

3. Adam Hyers

It is undisputed that Respondent Adam Hyers ("Respondent A. Hyers") is an independent contractor for Respondent HMISI. *See* Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment ("Memo Contra") at pg. 2. It is also undisputed that Respondent A. Hyers provides insurance services through Respondent HMISI. Id. Respondent Hyers argues that his conduct was focused on the

sale of annuities, which does not require offering legal advice, and delivery or notarization of documents. Id. at pgs. 2-4 and 7.

The Relator counters this contention by its arguments that Respondent Hyers was part of the overall trust mill scheme being perpetrated by Respondents when he delivered or reviewed trust packages to Ohio Plan members. *See* Relator's reply Brief at pg. 24; *see also* Relator's MSJ at pgs. 22-26. Further, Relator contends that Respondent Hyers violated the Consent Agreement through his conduct as evidenced by his interaction and communication with Chester Middleton, Lorene and Charles Kramer, and Eleanor and Judith Luttrell.

The issue as to whether Respondent Hyers engaged in conduct in violation of the Consent Agreement, or, in fact, engaged in conduct limited in scope and not prohibited by the Consent Agreement is undecided. Therefore, a genuine issue of a material fact remains. Thus, Respondent Hyers' and Relator's respective Motions for Summary Judgment are hereby **DENIED**.

E. **ORDER DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION TO STRIKE MEMORANDUM IN OPPOSITION OF RESPONDENT JEFFREY L. NORMAN AND ORDER DENYING RESPONDENT JEFFREY L. NORMAN'S MOTION TO STRIKE RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT**

1. Relator's Motion to Strike Respondent Jeffrey Norman's Memorandum in Opposition and Reply

While the Panel recognizes that Respondent J. Norman's Memo in Opp. raises issues as to whether he has committed the unauthorized practice of law due to his arguments on behalf of several, if not all, respondents to this action, the Panel recognizes that Respondent J. Norman is a *pro se* litigant, and in that regard, affords him some latitude. Moreover, Respondent J. Norman's arguments were related to the subject matter at issue, and deserved review by this Panel. Therefore, the Panel has accepted Respondent J. Norman's Memo in Opp. and will give it the appropriate weight and consideration. Therefore, Relator's Motion to Strike Respondent Jeffrey Norman's Memoranda in Opposition and Reply is hereby **DENIED**.

2. Respondent Jeffrey Norman's Motion to Strike Relator's Motion for Summary Judgment and Relator's Memorandum in Opposition to Respondent's Motion for Summary Judgment


A motion to strike made pursuant to Ohio R. Civ. P. 12(F) must be made timely. The Rule clearly states that [u]pon a motion made by a party **before** responding to a pleading" See Ohio R. Civ. P. 12(F) (emphasis added). Respondent J. Norman's Motion to Strike was made well after the filing of his Memorandum in Opposition to Relator's Motion for Summary Judgment (filed October 29, 2007), and the filing of Relator's Motion for Summary Judgment (filed October 1, 2007). See Respondent J. Norman's Motion to Strike filed November 6, 2007. Additionally, it has long been held in Ohio that matters to be adjudicated should be done so on the merits. The Panel does not find that Relator's motion to enforce the consent decree, and the Supreme Court's Order to the UPL Board to determine whether a violation of the Consent Agreement

has/had occurred, is without merit such that a motion to strike should be granted. Therefore, the Panel hereby **DENIES** Respondent J. Norman's Motion to Strike.

F. ORDER GRANTING INDIVIDUALLY NAMED RESPONDENT DANIEL ROUNDTREE'S MOTION FOR SUMMARY JUDGMENT

The record indicates that Respondent Daniel Roundtree ("Respondent D. Roundtree") ceased his affiliation with Respondents AFPLC and/or HMISI within days of the execution of the 2003 Consent Agreement. See Individually Named Respondents MSJ at pg. 9. The Relator concedes this fact and states that because of it, it dismissed other individually named respondents (i.e., Carolyn Gray, Ron Baker, and Doss Estep. See Relator's MSJ at pg. 54). Based upon this concession, the Panel finds that due to Respondent D. Roundtree's limited involvement with the Entity Respondents following the execution of the Consent Agreement, and Relator's concession, tacit or otherwise, to this point, Respondent D. Roundtree's Motion for Summary Judgment is hereby **GRANTED**.

SO ORDERED.


JAMES L. ERVIN, JR., PANEL CHAIR
C. LYNNE DAY, PANEL MEMBER
DON J. HUNT, PANEL MEMBER
Board on the Unauthorized Practice of the Law

**BEFORE THE BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW
OF THE SUPREME COURT OF OHIO**

Columbus Bar Association,

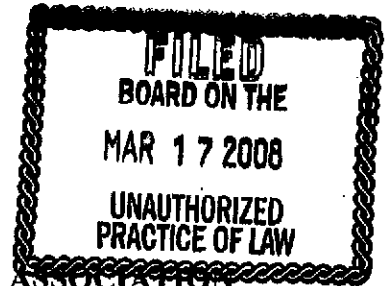
Relator,

v.

**American Family Prepaid Legal
Corporation, et al.**

Respondents.

Case No.: UPL 02-10 and
UPL-05-02



**CONSENT DECREE BETWEEN THE COLUMBUS BAR ASSOCIATION
AND INDIVIDUAL RESPONDENT TIMOTHY CLOUSE, ONLY**

**(SUBJECT TO APPROVAL BY THE BOARD OF
COMMISSIONERS ON THE UNAUTHORIZED
PRACTICE OF LAW PRIOR TO EXECUTION)**

This Consent Decree is entered into effective this 17th day of March, 2008,
by and among the Columbus Bar Association and all of its successors, affiliates and related entities
(hereinafter collectively referred to as the "CBA"), and Timothy Clouse, (referred to as "Individual
Respondent").

WHEREAS, Individual Respondent is not and has never been an attorney admitted to
practice, granted active status, or certified to practice law in the State of Ohio pursuant to Rules I,
II, III, IV or V of the Supreme Court of Ohio Rules for the Government of the Bar;

WHEREAS, on or about November 19, 2002, the CBA filed a Complaint before the Board
of Commissioners on the Unauthorized Practice of Law ("UPL Board") in Case No. UPL 02-10
against American Family Prepaid Legal Corp. ("AFPLC"), Heritage Marketing and Insurance

Services (“Heritage”), Stanley Norman, Jeffrey Norman, Harold Miller, Linda Ball, Paul Chiles, Individual Respondent Joseph Hamel, Individual Respondent Samuel Jackson, Individual Respondent Eric Peterson and several John and Jane Does (“Respondents”) alleging that they had engaged in the unauthorized practice of law by marketing, offering and selling prepaid legal plan memberships that included living trusts, wills, powers of attorney, living wills, related estate planning and other legal documents, insurance products and annuities to Ohio residents;

WHEREAS, on or about April 2003, the CBA and the Respondents in the case entered into a Consent Agreement (“2003 Consent Agreement”), in which Respondents stipulated that they “may have unintentionally violated the Supreme Court Rules regarding the unauthorized practice of law in the course of marketing and sale of the AFPLC’s Prepaid Legal Plans and Heritage Marketing’s financial services” and agreed to “immediately cease and desist from such conduct.” Pursuant to the 2003 Consent Agreement, Respondents also agreed not to engage in eight specifically enumerated activities. A copy of the 2003 Consent Agreement is attached hereto as Exhibit A and incorporated by reference herein.

WHEREAS, on or about March 3, 2005, the CBA then filed a Motion to Enforce the Settlement Agreement and a Motion for an Interim Cease and Desist Order with the Supreme Court of Ohio because the CBA received numerous complaints that Respondents were continuing to engage in the marketing and selling of legal and insurance products and other activities in the State of Ohio substantially identical to those they had engaged in before entering the 2003 Consent Agreement.

WHEREAS, on or about April 12, 2005, the Supreme Court of Ohio granted the CBA’s Motion for an Interim Cease and Desist Order and ordered the UPL Board to hold a hearing on whether the 2003 Consent Agreement has been violated;

WHEREAS, on or about June 10, 2005, the CBA filed a second Complaint before the UPL Board against Respondents, several of their officers, employees, sales representatives and delivery agents, and Jane and John Does claiming that they had again engaged in the unauthorized practice of law (“Case No. UPL 05-02”);

WHEREAS, on or about September 15, 2005, the Panel of the Board on the Unauthorized Practice of Law ordered Case No. UPL 05-02 held in abeyance pending a formal hearing in Case No. UPL 02-10;

WHEREAS, on or about December 21, 2007, the Panel of the Board on the Unauthorized Practice of Law entered a decision on the CBA’s and the Respondents’ respective motions for summary judgment in Case No. UPL 02-10. A copy of the Panel’s decision is attached hereto as Exhibit B and incorporated by reference herein. In pertinent part, the Panel held as follows:

- a. The activities of the operation of Respondents AFPLC and Heritage do in fact violate the 2003 Consent Agreement.
- b. The operations of Respondents AFPLC and Heritage together constitute the activities of a trust mill.
- c. The conduct engaged in by Respondents AFPLC and Heritage violate the spirit of the laws governing the unauthorized practice of law in Ohio.
- d. The activities of Respondents AFPLC and Heritage through its representatives, agents and employees violate all eight of the prohibitions contained in the 2003 Consent Agreement.
- e. Respondents Stanley Norman and Jeffrey Norman, individually and as owners and officers of Respondents AFPLC and Heritage engaged in conduct in violation of

the 2003 Consent Agreement through their oversight, authority, control, and knowledge of the ongoing operations, activities and plans of Respondents AFPLC and Heritage.

f. Respondents Paul Chiles, Harold Miller, Paul Morrison, Eric Peterson, Jeff Alton, William Downs, Joseph Ehlinger, Luther Mack Gordon, Steve Grote, David Helbert, Samuel Jackson, Chris Miller, Jack Riblett, Richard Rompala, Ken Royer, Vern Schmidt, Alexander Scholp, Jerold Smith, Patricia Soos, Anthony Sullivan and Dennis Quinlan breached the 2003 Consent Agreement based upon their conduct in furthering the business activities of Respondents AFPLC and Heritage.

WHEREAS, the Panel also held that there is a genuine issue of material fact as to whether Individual Respondent Timothy Clouse (“Clouse”) breached the 2003 Consent Agreement and denied the CBA’s motion for summary judgment regarding Clouse and also denied Clouse’s motion for summary judgment. While it appears that Clouse did not execute the 2003 Consent Agreement, the CBA obtained files from Respondent AFPLC indicating that Clouse sold at least 149 living trusts before and after the 2003 Consent Decree was executed.¹

WHEREAS, Individual Respondent Clouse served as a sales agent for Respondent AFPLC on and off from May 2002 to July 2007, and his conduct furthered the business operations and activities of Respondents AFPLC and Heritage.

WHEREAS, Individual Respondent Clouse admits that he may have unintentionally violated the restrictions set forth in the 2003 Consent Agreement and the Supreme Court Rules regarding the unauthorized practice of law in the course of furthering the business operations and

¹ The Panel held in its December 21, 2007 Order that there is a genuine issue of material fact as to whether Joseph Hamel, Timothy Holmes and Adam Hyers breached the 2003 Consent Agreement and denied the CBA’s motion for summary judgment regarding these three Individual Respondents and also denied these Individual Respondents’ motion for summary judgment.

activities of Respondents AFPLC and Heritage by marketing and selling AFPLC's prepaid legal plans and trusts after April 2003.

NOW, THEREFORE, upon the consent of the parties affixed hereto, IT IS HEREBY ORDERED AND DECREED as follows:

1. The following words shall have the following meanings:
 - a. "Individual Respondent" shall include Timothy Clouse.
 - b. "Plan Member" shall include any Ohio consumer who purchased a prepaid legal plan membership or estate planning documents from:
 - i) Respondent AFPLC;
 - ii) Respondent AFPLC's employees, agents and independent contractors;
 - iii) Respondent AFPLC's predecessors, successors and affiliates; or
 - iv) Attorney Andrew Fishman, deceased, his former employees, agents and independent contractors, including but not limited to Hamel, Holmes and Hyers.

"Plan Member" shall also include clients of Attorney Andrew Fishman, deceased, whose files may have been transferred to another Plan Attorney or whose files are maintained by any successor, affiliate or related entities of Jeffrey Norman and/or Stanley Norman. Such entities include, but are not limited to, Quest Financial and Insurance Services; National Association of Family Benefits, Inc.; Legal Maintenance Organization of America; National Estate Planning, Inc.; and National Group Services, Inc.

- c. "Plan Attorney" shall include any Ohio licensed attorney or law firm providing services to Ohioans who contracts or contracted to provide legal

services in Ohio to any Plan Member through Respondents AFPLC and/or Heritage including, but not limited to, Edward Brueggeman, Cynthia Irwin, James Popil, John Donahue and Stephen Ramadan;

- d. "Estate planning documents" shall include, trusts, living trusts, wills, pour over wills, advance health directives (e.g., living wills), powers-of-attorney, whether durable or springing, health care powers-of-attorney, asset transfer documents of any kind if used with the intent to plan an estate, certificates of trust and the like; and
- e. "Plan Members' family member" shall be limited to the spouse and children of the Plan Member.

2. Individual Respondent shall not engage in the unauthorized practice of law by providing legal advice to any Ohio resident.

3. Individual Respondent shall not market, offer or sell prepaid legal service plan memberships, or any other similar service or arrangement, estate planning documents or other legal documents in the State of Ohio.

4. Individual Respondent may carry out his contractual obligations with respect to existing Plan Members upon the Plan Members' request, only. Individual Respondent shall not initiate any contact with any Plan Member or the Plan Members' family member for the purpose of marketing, offering or selling prepaid legal plans, estate planning services, insurance products and/or annuities. If contacted by a Plan member, Individual Respondent shall not provide legal advice or engage in conduct prohibited in Paragraphs 5, 6 and 7 herein.

5. Individual Respondent shall not knowingly market, offer or sell life insurance products and/or annuities to any:

- (a) Plan Member;
- (b) Plan Members' family member;
- (c) Former and current clients or customers of Respondents AFPLC, Heritage, Jeffrey Norman or Stanley Norman and these Respondents' successors, affiliates or related entities;
- (d) Former and current clients or customers of any other Respondent who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage;
- (e) Former and current clients or customers of any sales agent, insurance agent, delivery agent or employee of Respondents AFPLC or Heritage who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage;
- (f) Former and current clients or customers of Edward Brueggeman, Andrew Fishman, deceased, or any other Plan Attorney who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage; or
- (g) Former and current clients or customers of any entity owned, operated, managed, controlled by or affiliated with Jeffrey Norman, Stanley Norman, Michelle Norman, Mildred Glickman, Rebecca Klein, any Respondent or any Plan Attorney who acquired said clients through affiliation or employment with Respondents AFPLC or Heritage. Such entities include, but are not limited to, Quest Financial and Insurance Services; National Association of Family Benefits, Inc.; Legal Maintenance Organization of America; National Estate Planning, Inc.; and National Group Services, Inc.

6. Individual Respondent shall not explain to an Ohio citizen the terms and effects of trust documents or give any legal advice whatsoever regarding the same.

7. Individual Respondent shall not engage in any activity or conduct that furthers the business operations and activities of Respondents AFPLC, Heritage, Jeffrey Norman, Stanley Norman, any other Respondent, or any Plan Attorney. In addition, Individual Respondent shall not engage in any activity or conduct that furthers the business operations and activities of any entity

that is owned, operated, managed, controlled by or affiliated with Jeffrey Norman, Stanley Norman, Michelle Norman, Mildred Glickman, Rebecca Klein, any other Respondent, or any Plan Attorney. Such entities include but are not limited to, Quest Financial and Insurance Services; National Association of Family Benefits, Inc.; Legal Maintenance Organization of America; National Estate Planning, Inc.; and National Group Services, Inc.

8. It is the intent of the parties that this Consent Decree ("2008 Consent Decree") resolve all currently existing claims between them, including those specified in the Pleadings of UPL 02-10, UPL 05-02 and all other alleged UPL violations for conduct which occurred up to and including the effective date of the 2008 Consent Decree.

9. Individual Respondent agrees that as a result of the CBA's claims against him in Case No. UPL 02-10 and Case No. UPL 05-02, and all alleged UPL violations to date, he will pay \$2,500.00 to the Supreme Court of Ohio, to be paid on or before December 31, 2008.

10. This Consent Decree ("2008 Consent Decree") shall be a Consent Decree within the meaning of Rule VII of the Supreme Court of Ohio Rules for the Government of the Bar.

11. Individual Respondent agrees to a liquidated damages provision in the 2008 Consent Decree. Individual Respondent shall pay the Supreme Court of Ohio an additional \$1,000.00 for each instance of breach of any of the provisions contained in the 2008 Consent Decree. Any liquidated damages payable hereunder shall be in addition to any restitution for any such breach of the 2008 Consent Agreement as the Court may order.

12. Individual Respondent agrees that his financial obligations in the 2008 Consent Decree (\$2,500.00 plus any liquidated damages) are non-dischargeable in bankruptcy.

13. The Supreme Court of Ohio and the Board of Commissioners on the Unauthorized Practice of Law shall retain jurisdiction over the Individual Respondent for the purposes of

enforcing any of the provisions of the 2008 Consent Decree. The 2008 Consent Decree is the final judgment of the Supreme Court of Ohio and is enforceable through contempt proceedings before the Court.

14. Individual Respondent is subject to the long-arm jurisdiction of Ohio Courts pursuant to Ohio Revised Code §2307.382.

15. Individual Respondent will be dismissed with prejudice from the UPL cases (UPL 02-10 and UPL 05-02) when his financial obligations set forth in Paragraph 9 are satisfied under the 2008 Consent Decree.

16. Nothing contained in the 2008 Consent Decree shall be construed as an admission of liability by Individual Respondent.

17. CBA and Individual Respondent each represent and warrant that they have the full power and authority to enter into the 2008 Consent Decree and to perform all the obligations and duties set forth herein. Each signatory to the 2008 Consent Decree who signs on behalf of a party represents that he or she has the authority to sign on behalf of that party.

18. The 2008 Consent Decree may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed an original.

19. The laws of the State of Ohio shall govern the enforcement of the 2008 Consent Decree.

WHEREFORE, and intending to be legally bound, the parties hereto consent to the Court's entry of the 2008 Consent Decree.

Respectfully submitted,

ON BEHALF OF RELATORS

By Joyce D. Edelman
Joyce D. Edelman (0023111)
Porter, Wright, Morris & Arthur, LLP
41 South High Street
Columbus, OH 43215
(614) 227-2083
(614) 227-2100 (fax)

Counsel for Relator Columbus Bar Association

Subscribed and sworn to before me on this 14th day of March, 2008.



BARBE IVERSON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCT. 31, 2012

Barbe Iverson
Notary Public

Bruce Campbell

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Timothy Clouse

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

WHEREFORE, and intending to be legally bound, the parties hereto consent to the Court's entry of the 2008 Consent Decree.

Respectfully submitted,

ON BEHALF OF RELATORS

By _____
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41 South High Street
Columbus, OH 43215
(614) 227-2083
(614) 227-2100 (fax)

Counsel for Relator Columbus Bar Association

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Bruce Campbell
Bruce Campbell

3/14/08
Date

Subscribed and sworn to before me on this 14th day of March, 2008.



RACHELLE P. WHITE
Notary Public, State of Ohio
My Commission Expires 02-14-11

Rachelle P. White
Notary Public

Timothy Clouse

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

WHEREFORE, and intending to be legally bound, the parties hereto consent to the Court's entry of the 2008 Consent Decree.

Respectfully submitted,

ON BEHALF OF RELATORS

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(614) 227-2100 (fax)

Counsel for Relator Columbus Bar Association

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Bruce Campbell

Date

Subscribed and sworn to before me on this _____ day of _____, 2008.

Notary Public

Timothy Clouse
Timothy Clouse #RS702594

March 12, 2008
Date

Subscribed and sworn to before me on this 12 day of March, 2008.



JANE M. KOCH
Notary Public, State of Ohio
My Commission Expires 6-18-2012

Jane M Koch
Notary Public

IT IS SO ORDERED.

Ohio Supreme Court Justice

**BEFORE THE BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW OF
THE SUPREME COURT OF OHIO.**

COLUMBUS BAR ASSOCIATION,

Relator,

v.

Case No. UPL02-10

**AMERICAN FAMILY PREPAID LEGAL
CORPORATION, et al.,**

Respondents,

CONSENT AGREEMENT

This matter came on before the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio on or about November 19, 2002 upon the filing of a Complaint by Relator, the Columbus Bar Association ("Relator"). Relator alleges that Respondents American Family Prepaid Legal Corporation ("AFPLC"), Heritage Marketing and Insurance Services ("Heritage Marketing"), Stanley Norman, Jeffrey Norman, Harold Miller, Paul Chiles, Linda Ball, Joseph Hamel, Samuel Jackson, Eric Peterson, several John and Jane Doe representatives of AFPLC and Heritage Marketing, and assignees or their successors in interest (referred to collectively herein as "Respondents") engaged in the unauthorized practice of law by: (1) selling, marketing and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products"); (2) training, monitoring and educating other sales representatives to sell, market or prepare said legal products; (3) giving legal advice

relative to said legal products; (4) advising and counseling clients concerning the suitability of said legal products for a client's particular situation; (5) gathering client information for purposes of preparing or determining the suitability of the appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney; (6) preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney; (7) offering legal advice to individuals concerning the execution of said legal products; and (8) engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or no contact with clients.

Now, in consideration of the forbearance on the part of the Relator from proceeding with this unauthorized practice of law action against Respondents, including a dismissal of the above-referenced Complaint, Respondents agree as follows:

1. Respondents agree and stipulate that they have received and read the rules of the Ohio Supreme Court pertaining to the unauthorized practice of law, agree to refrain from the conduct outlined in the first paragraph of this consent agreement, and agree to refrain from any other act or practice which violates Rule VII of the Supreme Court Rules for the Government of the Bar.
2. Respondents stipulate and agree that they may have unintentionally violated the Supreme Court Rules regarding the unauthorized practice of law in the course of marketing and sale of the AFPLC's Prepaid Legal Plans and Heritage Marketing's financial services. Respondents further stipulate and agree that to the extent they engaged in the conduct

referenced in the first paragraph of this consent agreement, then they engaged in the unauthorized practice of law, and agree to immediately cease and desist from such conduct. Nothing in this consent agreement should be construed to suggest that Respondents are prohibited from conducting lawful business in Ohio.

3. Respondents additionally agree, within 30 days of the execution of this Consent Agreement, to forward to Relator a list containing the names and addresses of all Ohio members. Except as required by law, Relator will not voluntarily disseminate information from the list to anyone not a party to this case unless such disclosure is in furtherance of this case or any related proceedings brought by Relator. Respondents will also forward within 30 days of the execution of this Consent Agreement to all Ohio members a copy of this Consent Agreement along with the cover letter attached hereto and incorporated herein as Exhibit A. Simultaneous with sending such letters, Respondents agree that they will forward an affidavit to Relator's attention affirming that such letters had been sent.
4. As detailed within Exhibit A, Respondents agree that, upon request by any Ohio member, within thirty (30) days of the request, they will return all personal and financial information to the member and AFPLC, Jeffrey Norman and Stanley Norman shall be jointly and severally liable for reimbursing the member for any reasonable attorney's fees incurred by the member in having an independent attorney review the member's current plan documents, and/or prepare any supplemental or corrective legal

documents necessary to fulfill their estate planning needs at the time the documents were originally prepared. This liability, however, shall be capped at Nine Hundred and Thirty Five Dollars (\$935.00) per member up to a total maximum reimbursement to all members of Four Hundred Thousand Dollars (\$400,000.00). Eligibility for such reimbursement shall expire within eighteen (18) months from the date of the mailing of Exhibit A. All parties agree that any licensed attorney of the member's choice may conduct the legal review. Upon request, Relator shall also be entitled to a full accounting by Respondents of all attorney expenses paid pursuant to this paragraph, including the member name, address, date and the amount of expenses paid for each claim.

5. Last, AFPLC agrees, upon execution of this Consent Agreement, to fully reimburse Relator for all direct costs and expenses related to the underlying cause of action according to the attached schedule.

Failure to perform or otherwise abide by any term of this Consent Agreement by any party named herein shall be considered a material breach of the agreement upon which the aggrieved party may pursue all underlying claims by re-opening the present case and/or initiating a new cause of action in a court of competent jurisdiction. Furthermore, all parties stipulate that this Consent Agreement is admissible in any subsequent court proceeding in the event that further allegations of the unauthorized practice of law by Respondents are brought to Relator's attention. Nothing in this

agreement shall be construed in any way to limit the legal rights of any member of
AFPLC.

AGREED:

**American Family Prepaid Legal
Corporation**

By: Jeffrey F. Norman

3-25-03
Date

**Heritage Marketing and Insurance
Services**

By: Jeffrey F. Norman

3-25-03
Date

Stanley Norman
Stanley Norman

3-25-03
Date

Jeffrey F. Norman
Jeffrey Norman

3-25-03
Date

Harold Miller
Harold Miller

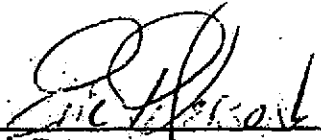
3-17-03
Date

Paul Chiles
Paul Chiles

3-17-03
Date

Joseph Hamel
Joseph Hamel

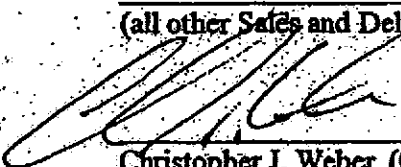

3-17-03
Date


Eric Peterson

03.24.03
Date

ATTACHED

(all other Sales and Delivery Representatives)

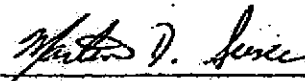



Date

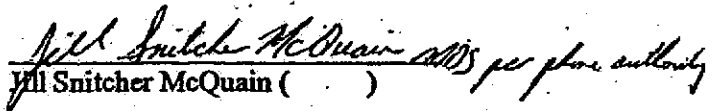
4.01.03
Date

Christopher J. Weber (0059270)
Geoffrey Stern (0013119)
KEGLER, BROWN, HILL & RITTER
A Legal Professional Association
65 E. State Street, Suite 1800
Columbus, Ohio 43215
(614) 462-5400
Counsel for Respondents

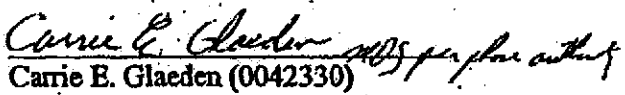
For the Columbus Bar Association:


Martin D. Susac (0066566)

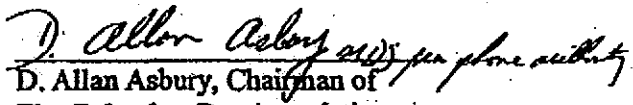
4-11-03
Date


Jill Snitcher McQuain ()

4-11-03
Date


Carrie E. Glaeden (0042330)

4-11-03
Date


D. Allan Asbury, Chairman of
The Columbus Bar Association
Unauthorized Practice of Law Committee

4-11-03
Date


Luther Mack Gordon


Chris Miller

3-17-03

Dennis Quinlan


Daniell Roundtree

3/17/03


Alexander Scholz


Patricia Soos

4-4-03


Anthony Sullivan

3-17-03


Ron Baker

3-24-03


Tim Holmes

3-24-03


Paul Morrison

3/24/03


Vern Schmid

3/24/03


Carolyn Gray

3/24/03


Luther Mack Gordon


Chris Miller


Dennis Ourlan


Daniel Roundtree


Alexander Scholp

Patricia Soos


Anthony Sullivan


Ron Baker


Tim Holmes


Paul Morrison


Vern Schmidt


Carolyn Gray

3-17-03

4/8/2003

3/17/03

3-17-03

3-17-03

3-24-03

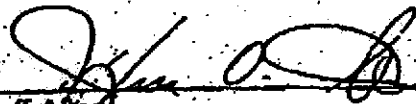
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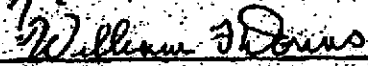
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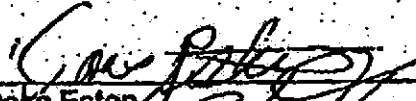
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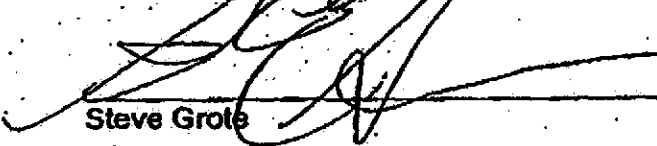

Jeff Allen

3/17/03


William Downs

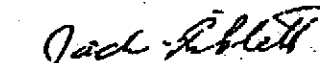
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Doss Ester

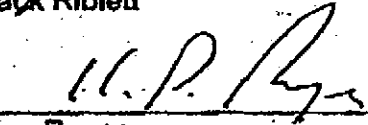

Steve Grote

3/21/03


no longer with the company
Frank Messina


Jack Riblett

3/17/03


Ken Royer

4/7/03

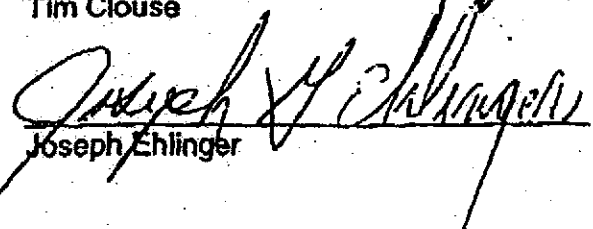

Jerrold Smith

3/17/03


Kafi Stein

3/17/03

no longer with the company
Tim Clouse


Joseph Ehlinger

3-17-03

David Helbert
David Helbert

3-24-03

Adam Hyers
Adam Hyers

3-24-03

Richard Rompala
Richard Rompala

4-7-03

EXHIBIT A

March 6, 2003

Ohio Members of the American Family Legal Plan

Dear Ohio Members of the American Family Legal Plan:

The purpose of this letter is to inform you that a settlement has been reached between the Columbus Bar Association Committee on the Unauthorized Practice of Law ("UPL Committee"), American Family Prepaid Legal Corporation ("AFPLC"), Heritage Marketing and Insurance Services ("Heritage Marketing"), and the sales and delivery representatives of AFPLC and Heritage Marketing. A copy of the consent agreement is enclosed for your information.

On November 19, 2002, the UPL Committee filed a Complaint before the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio against AFPLC, Heritage Marketing and their representatives alleging that we violated Ohio's Supreme Court Rules relating to the unauthorized practice of law in marketing and selling our services. The Columbus Bar Association has called into question the validity of the estate planning advice rendered to you and the legal effect of the documents prepared for you. Although we deny these claims, in order to resolve the matter, we entered into a consent agreement whereby we, in exchange for the Columbus Bar Association's dismissal of its action, agreed not to engage in conduct that would constitute the unauthorized practice of law. As part of the settlement, the Columbus Bar Association has asked us to clarify our relationship with you.

When you originally signed up to be a member of the Legal Plan, we advised you that the sales representative to whom you gave your personal and financial information, the AFPLC employees who may have prepared your legal documents, and the delivery representative who delivered your legal documents were not attorneys. At no time were any of these representatives or AFPLC employees authorized to act as your attorney or provide you with legal advice.

Nonetheless, if you have concerns regarding the effect or validity of any documents provided by the plan, you may always contact your own independent (non-plan) attorney. We have agreed within the attached consent agreement that we would reimburse you for any reasonable attorney's fees incurred by you in having an independent attorney review your current plan documents, and/or prepare any supplemental or corrective legal documents necessary to fulfill your estate planning needs at the time the documents were originally prepared. This liability, however, shall be capped at Nine Hundred and Thirty Five Dollars (\$935.00) per member, up to a total maximum reimbursement to all members of Four Hundred Thousand Dollars (\$400,000.00). Eligibility for such reimbursement shall expire within eighteen (18)

months from the date of this mailing. Simply take this letter and the attached agreement to any non-plan attorney of your choice. Upon our receipt of an invoice or a good-faith estimate from the non-plan attorney for reviewing, modifying, and/or supplementing your existing plan documents, AFPLC will then provide you with payment of the non-plan attorney's services. Additionally, upon notifying our office, you also have the right to have your file, including all of your personal and financial information, returned.

Notwithstanding this detailed disclosure, AFPLC intends to fully honor your membership agreement. AFPLC and Heritage Marketing are contractually committed to keeping your personal and financial information confidential. Furthermore, AFPLC will continue to offer you the benefits of your plan.

If you have any questions or concerns regarding these matters, please feel free to contact AFPLC at the number above. AFPLC is very pleased to have you as a member of its Legal Plan and values you as a plan participant.

Very truly yours,

Stanley Norman
American Family Prepaid Legal Corporation
and Heritage Marketing and Insurance Services Corporation

Jeffrey Norman
American Family Prepaid Legal Corporation

RELATOR'S EVIDENCE OF COSTS AND EXPENSES

| <u>Date</u> | <u>Amount</u> | <u>Description</u> |
|---------------|------------------|-------------------------------------------------------------------------------------------------------|
| 9/6/02 | \$450.50 | Court reporting services: Deposition of Andrew M. Fishman |
| 7/22/02 | \$1,135.50 | Court reporting services: Depositions of Joseph Hamel, Eric Peterson, Joe Jackson, and Andrew Fishman |
| 8/22/02 | \$56.80 | Service of Process: Subpoena for Andrew M. Fishman |
| 11/4/02 | \$41.71 | Copies: Kinkos |
| 11/14/02 | \$481.50 | Court reporting services: Deposition of Harold Miller |
| 12/17/02 | \$193.40 | Court reporting services: Deposition of Linda Ball |
| 1/6/03 | \$80.30 | Deposition Transcript: Andrew M. Fishman (7/22/02) |
| TOTAL: | <u>\$2439.71</u> | |

The Supreme Court of Ohio

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

COLUMBUS BAR ASSOCIATION,

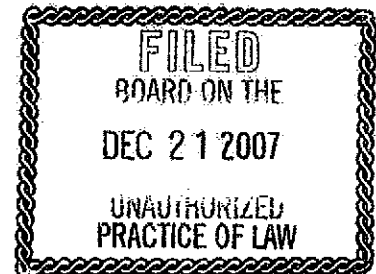
Relator,

v.

AMERICAN FAMILY PREPAID
LEGAL CORPORATION, ET AL.,

Respondents.

CASE NO. UPL 02-10



- I. ORDER DENYING RESPONDENTS AMERICAN FAMILY PREPAID LEGAL CORPORATION, HERITAGE MARKETING & INSURANCE SERVICES, INC., STANLEY NORMAN, JEFFREY NORMAN, PAUL CHILES, AND HAROLD MILLER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

- II. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS PAUL MORRISON AND ERIC PETERSON MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

- III. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' JEFF ALTON, WILLIAM DOWNS, JOSEPH EHLINGER, LUTHER MACK GORDON, STEVE GROTE, DAVID HELBERT, SAMUEL JACKSON, CHRIS MILLER, JACK RIBLETT, RICHARD ROMPALA, KEN ROYER, VERN SCHMIDT, ALEXANDER SCHLOP, JEROLD SMITH, PATRICIA SOOS, ANTHONY SULLIVAN, AND DENNIS QUINLAN MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR

COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

IV. **ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' TIMOTHY CLOUSE, JOSEPH HAMEL, TIMOTHY HOLMES, AND ADAM HYERS MOTION FOR SUMMARY JUDGMENT AND DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE DOES EXIST GENUINE ISSUES OF MATERIAL FACT**

V. **ORDER DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION TO STRIKE MEMORANDUM IN OPPOSITION OF RESPONDENT JEFFREY L. NORMAN AND ORDER DENYING RESPONDENT JEFFREY L. NORMAN'S MOTION TO STRIKE RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT**

VI. **ORDER GRANTING INDIVIDUALLY NAMED RESPONDENT'S DANIEL ROUNDTREE MOTION FOR SUMMARY JUDGMENT**

PANEL ORDER

These matters came on before the Panel upon the following Motions: 1) Respondents American Family Prepaid Legal Corporation, Heritage Marketing & Insurance Services, Inc., Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, filed September 9, 2005; 2) Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, filed September 13, 2005; 3) Relator Columbus Bar Associations' Memorandum in Opposition to Respondents' Motion for Summary Judgment, and Relator Columbus Bar Associations'

Motion for Summary Judgment, filed October 1, 2007¹; 4) Respondent Jeffrey Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment, filed October 29, 2007; 5) Respondents Joseph Hamel's and Timothy Homes' Response to Realtor's Motion for Summary Judgment and Reassertion of Said Respondents' Motion for Summary Judgment, filed October 29, 2007; 6) Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment, filed October 29, 2007; 7) Respondent Stanley Norman's Affidavit, filed November 5, 2007; 8) Respondent Paul Morrison's Response to Relator's Motion for Summary Judgment, filed October 30, 2007²; 9) Respondent Eric Peterson's Response to Relator Columbus Bar Association's Motion for Summary Judgment; filed November 1, 2007; 10) Motion to Strike by J. Norman filed November 6, 2007; and 11) Memorandum in Opposition to Motion to Strike filed November 9, 2007 (responses by Relator). All Parties were provided with opportunity to file memorandum in opposition and reply briefs to all original motions.

After careful review of said Motions, all Memoranda in Opposition to the Motions, and all Reply briefs, and exhibits, documents, or other supporting documentation and/or information accompanying any filing made by any respective Party, the Panel hereby enters the following decisions on all Motions.

I. INTRODUCTION

A. Statement of Case

¹ Relator's Memorandum in Opposition and Motion for Summary Judgment are one in the same document. For the purposes of the Panel's decisions, it treats the Relator's pleading as a Motion for Summary Judgment, and all arguments contained therein are in opposition to the Respondents' respective Motions for Summary Judgment filed in September 2005.

² Respondent Paul Morrison's Responsive Pleading was mailed on October 29, 2007. This Panel has, and does as to this sole Respondent, recognized the three-day mail rule. Therefore, the Panel accepts Respondent P. Morrison's filing as timely.

This matter arises before the Panel based upon the claims of Relator Columbus Bar Association ("Relator") against Respondents American Family Prepaid Legal Corporation ("Respondent AFPLC"), Heritage Marketing & Insurance Services, Inc. ("Respondent HMIS"), and Individually Named Respondents³ as to whether all Respondents violated the terms and conditions of a Consent Decree. On or about November 19, 2002, the Relator filed a complaint alleging that some of the Respondents had engaged in the unauthorized practice of law. *See* Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, pg. 5; *see also* Relator's Motion for Summary Judgment, pg. 26. On or about March 23, 2003, Relator and Respondents entered into a Consent Agreement. The Consent Agreement (first paragraph) *alleges* that Respondents engaged in the unauthorized practice of the law by committing the following acts:

1. selling, marketing, and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products");
2. training, monitoring and educating other sales representatives to sell, market or prepare said legal products;
3. giving legal advice relative to said legal products;
4. advising and counseling clients concerning the suitability of said legal products for a client's particular situation;
5. gathering client information for purposes of preparing or determining the suitability for the

³ The names of all Individually Named Respondents are listed in the attached "Exhibit A". Collectively, Respondents AFPLC, HMIS, and all Individually Named Respondents are referred to as "Respondents."

appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney;

6. preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney;

7. offering legal advice to individuals concerning the execution of said legal products; and

8. engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or not contact with clients.

See Consent Agreement, incorporated by reference herein. The Consent Agreement further states that as a term and condition Respondents agree to "refrain from the conduct outlined in the first paragraph of this consent agreement" Id.⁴ The Relator, based upon alleged complaints against Respondents and their alleged conduct, sought enforcement of the Consent Agreement by the Supreme Court of Ohio. On or about April 12, 2005, by Order of the Supreme Court of Ohio, this matter was referred to the UPL Board on the issue as to whether the Consent Agreement had been violated.

1. The Parties

This matter is brought by the Relator, Columbus Bar Association. Respondent American Family Prepaid Legal Corporation ("Respondent AFPLC") is a California based corporation with offices in Ohio that sells memberships, among other activities, in

⁴ The Consent Agreement continues and states that "[respondents] agree to refrain from any other act or practice which violates Rule VII of the Supreme Court Rules for the Government of the Bar." In a prior hearing on the issue of the scope of the Relator's enforcement of the Consent Agreement, and, the scope of review of the Panel, the Panel ruled that the Relator's prosecution of the enforcement of the Consent Agreement was limited to the eight acts, or conduct, outlined in the first paragraph of the Consent Agreement. Therefore, any conduct alleged to be engaged in by Respondents that falls outside of the eight areas delineated by the first paragraph of the Consent Agreement are not reviewed or considered by the Panel in this matter. The Parties should be aware that a second complaint was filed under Case No. 05-02; this matter seeks review by the Panel of the issue whether Respondents have engaged in UPL irrespective of the Consent Agreement.

prepaid legal services plans (the "Plans"). Respondent Heritage Marketing & Insurance Services, Inc. ("Respondent HMISI") is a California based corporation doing business in Ohio that sells insurance products offered through a variety of insurance companies. Additionally, Respondent HMISI contracts with review agents to provide periodic review of the Plans, including the Ohio Plan.

Respondent Jeffery L. Norman ("Respondent J. Norman") and Respondent Stanley Norman ("Respondent S. Norman") each own 50% of Respondent AFPLC, with Respondent J. Norman serving in the position of Chief Executive Officer, and Respondent S. Norman in the position of President. *See* Respondents AFPLC, HMISI, S. Norman, J. Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, pg. 5. Further, Respondent S. Norman is Chief Executive Officer of Respondent HMISI, and Respondent J. Norman is President. *Id.* Respondent Harold Miller ("Respondent H. Miller") is Respondent AFPLC's office manager. Respondent Paul Chiles ("Respondent P. Chiles") is the state marketing director, and oversees Respondent AFPLC's sales force. *Id.* Respondent Chiles also oversees Respondent HMISI's contractors who deliver non-legal services offered under the plan. *Id.*

The Individually Named Respondents, except for Respondents S. Norman, J. Norman, H. Miller, and P. Chiles, are either sales representatives and/or delivery agents of Respondent AFPLC and/or Respondent HMISI. *See* Individual Sales and Delivery Representative Respondents' MSJ, pg. 3.

B. Statement of Facts⁵

On or about September 9, 2005, Respondents AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller (collectively the "Entity Respondents") filed their collective motion for summary judgment. The Entity Respondents argue that they are operating a legal prepaid legal services plan (the "Plan"), and do so with the utilization of the services of a licensed Ohio attorney ("Plan Attorney") who has a contract with Respondent AFPLC to provide such services to the Plan's members. *See* Entity Respondents MSJ, pg. 3. The Plan offers a wide array of services, including, but not limited to, estate planning elder care, Medicaid planning, landlord/tenant, and bankruptcy. *Id.* All of these services are alleged to be provided through and by the Plan Attorney. The Plan is designed to provide legal services to persons who might not otherwise be able to afford or have access to legal counsel. *Id.* at pg. 4. Respondent AFPLC contracts with sales representatives in Ohio to give sales presentations about the Plan. *Id.*

Respondent HMISI sells insurance products, and has independent contractors who are insurance agents licensed with the State of Ohio. *Id.* Respondent HMISI also utilizes delivery agents who deliver documents the Plan Attorney creates for the Plan members. *Id.* at pg. 5. Respondent HMISI also contracts with review agents who periodically review the Plan members' financial documents and their insurance needs. *Id.*

Respondent AFPLC's first contact with potential members in Ohio is through direct mailings. *Id.* When the postage-paid postcards are returned, Respondent AFPLC telephones the individual who returned the cards to set up an appointment for a sales

⁵ The Statement of Facts is based upon the undisputed facts set forth by the Parties in their respective Motions for Summary Judgment.

representative to visit in person and discuss the benefits of the Plan. Id. at pg. 6. The sales representative discusses, and explains, the Plan's benefits with the potential member using the presentation book prepared by Respondent AFPLC. Id. The sales representative evaluates whether the member understands what is being offered and is making a rational decision to purchase the Plan membership. Id. at pg. 7. Further, the sales representative goes through general concepts of probate and methods that can be used to avoid probate. Id. The training materials AFPLC utilizes, and provides to its sales agents, encourage high pressure . . . sales tactics. *See Relator's MSJ* at pg. 6. The training materials instruct the salesperson how to set the stage for his/her sales pitch. Id. at pgs. 6-8.

When a trust is sold, the sales representative has the new client prepare all the paperwork for Respondent AFPLC's non-attorney document drafters to plug into a form trust document, which the Plan attorney will then allegedly review. Id. at pgs. 10-11. No attorney has reviewed the new client/member's information at the time they sign up for Respondent AFPLC's services. Id. at pg. 11.

When Respondent AFPLC's estate planning documents are completed, the Plan attorney, Edward Brueggeman, forwards them to Respondent HMISI for delivery to the Plan member and to oversee their execution. *See Relator's MSJ* at pg. 22. The Respondent HMISI's delivery agents, many of whom are Individually Named Respondents, serve as notary public to the new Plan members who must execute their documents. Id. at pg. 23. Further, the delivery agents may also be insurance agents licensed to sell annuities and other insurance products in Ohio. Id. However, their business cards identify them as "Asset Preservation Specialist". Id. The Respondent

HMISI delivery agents have the new Plan member's financial information when they meet with them to deliver documents. Id. Further, the delivery agents are not paid for their notary services, but, rather, are paid solely on a commission basis from the sale of annuities and other insurance products sold by the Respondent to AFPLC Plan members. Id. The sale of insurance related products may occur annually when the delivery agents conduct periodic reviews of the Respondent AFPLC's Plan members. Id. at pg. 25.

C. Procedural History

This matter arises before the Panel based upon a March 23, 2003, Consent Agreement entered into by and between the Parties. On or about November 19, 2002, the Relator filed a complaint against Respondents with the Supreme Court of Ohio's Board on the Unauthorized Practice of Law ("UPL Board"), pursuant to Rule VII, Section 5, of the Ohio Rules for the Government of the Bar. On or about March 23, 2003, Relator and Respondents entered into a Consent Agreement. In 2005, Relator sought enforcement of the Consent Agreement by the Supreme Court of Ohio, alleging that the Consent Agreement was being violated by the Respondents' continued actions in breach of the Consent Agreement and engaging in the unauthorized practice of the law. A Motion to Enforce was filed with the Supreme Court of Ohio. On or about March 3, 2005, the Supreme Court issued an Interim Cease and Desist Order against Respondents; this Order remains in effect. The Order also included a charge to the UPL Board to determine whether "the March 2003 settlement agreement [i.e., consent agreement] has been violated and to file a report with the Court." *See* Interim Cease and Desist Order, incorporated by reference herein. On or about April 12, 2005, a formal Order of referral was issued from the Supreme Court of Ohio to the UPL Board for the limited purposes of

determining whether the Consent Agreement had been breached and/or violated. In order to comply with its charge, the UPL Board convened a Panel to determine the issue, and a case schedule was set to allow the Parties to either prosecute or defend their respective positions. Respondents AFPLC, HMIS, S. Norman, J. Norman, H. Miller, and P. Chiles were represented by the law firm of Squires, Sanders & Dempsey, LLP. The Individually Named Respondents were represented by the law firm of Kegler, Brown, Hill & Ritter, LLP.

The Parties engaged in substantive discovery practice (i.e., depositions, written discovery, etc.), which included various hearings and briefings on discovery issues. In September 2005, Respondents filed Motions for Summary Judgment. However, prior to responsive pleading(s) being filed by Relator, the Parties contacted the Panel to advise that they were engaged in settlement negotiations. Sometime in September 2005, the Parties submitted a joint settlement agreement to the Panel for review and consideration. In October 2005, the Panel requested further clarification of specific terms and conditions set forth in the Settlement Agreement. After receiving separate responses to its questions for clarification from the Parties, the Panel, in accordance with UPL Board procedure, referred the settlement agreement to the Supreme Court of Ohio for consideration.⁶ Sometime in December 2005, and after review and consideration, the Court summarily rejected the settlement agreement, and referred the matter back to the Board, and the Panel, for adjudication on the merits. As a result, a new case schedule was set. The Respondents were still represented by their respective legal counsel.

⁶ At the time that the settlement agreement was presented to the Panel, the UPL Board did not have a Rule as to the handling of settlement agreements, and, therefore, was without authority to accept the settlement agreement. Therefore, it was required to refer the settlement agreement to the Supreme Court of Ohio for consideration.

After the Parties engaged in further discovery to prepare for a hearing on the merits, the Relator retained the law firm of Porter, Wright, Morris & Arthur, LLP as counsel, which filed its Notice of Appearance on or about May 26, 2006; Relator's former counsel Martin Susec withdrew. As a result, an amended case schedule was set to allow the new law firm the opportunity to be brought up to speed and to adequately prepare for a hearing; counsel for Respondents agreed to the amended case schedule. The Parties engaged in additional discovery practice. On or about December 29, 2006, the law firm of Kegler, Brown, Hill & Ritter, LLP filed a Notice of Withdrawal of Counsel as to the Individually Named Respondents. Within its Notice, the Kegler Law Firm stated that it had notified its clients of all pending court dates. On or about March 9, 2007, the Parties, by and through their respective counsel, submitted a proposed discovery and litigation schedule. On or about March 15, 2007, notice was mailed to all individually named respondents regarding the proposed discovery and litigation schedule that had been accepted by the Panel. On or about June 26, 2007, legal counsel for Respondents AFPLC, HMIS, S. Norman, J. Norman, H. Miller, and P. Chiles withdrew its representation. As a result, no Respondents were represented by legal counsel.

On or about July 25, 2007, the Panel sent out written notices to all parties that a telephone conference was to be held to discuss the status of the instant matter. On or about August 7, 2007, an additional notice was mailed to all Individually Named Respondents advising that a second telephone status conference was to be held to discuss various issues related to the litigation, including, but not limited to, legal representation, discovery and litigation deadlines, and any miscellaneous matters raised by the Parties. On August 17, 2007, a final telephone status conference was held for the benefit of the

Individually Named Respondents; no counsel entered an appearance for any of the telephone status conferences on behalf of Respondents AFPLC or HMISI. At each status conference the Panel advised the Parties of their right to retain legal counsel, and that if legal counsel was not retained, each party would still be required to comply with the discovery/litigation schedule, and would be required to conduct itself, himself, or herself in accordance with the UPL Board's Rules and Regulations.

In accordance with the Discovery/Litigation Schedule, the following dispositive pleadings have been filed, which are now ripe for review by the Panel:

- a) Respondents American Family Prepaid Legal Corporation, Heritage Marketing & Insurance Services, Inc., Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller's Motion for Summary Judgment, filed September 9, 2005;
- b) Individual Sales and Delivery Representative Respondents' Motion for Summary Judgment, filed September 13, 2005;
- c) Relator Columbus Bar Associations' Memorandum in Opposition to Respondents' Motion for Summary Judgment, and Relator Columbus Bar Associations' Motion for Summary Judgment, filed October 1, 2007⁷;
- d) Respondent Jeffrey Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment, filed October 29, 2007;
- e) Respondents Joseph Hamel's and Timothy Homes' Response to Realtor's Motion for Summary Judgment and Reassertion of Said Respondents' Motion for Summary Judgment, filed October 29, 2007;
- f) Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment, filed October 29, 2007;
- g) Respondent Stanley Norman's Affidavit, filed November 5, 2007;

⁷ Relator's Memorandum in Opposition and Motion for Summary Judgment are one in the same document. For the purposes of the Panel's decisions, it treats the Relator's pleading as a Motion for Summary Judgment, and all arguments contained therein are in opposition to the Respondents' respective Motions for Summary Judgment filed in September 2005.

h) Respondent Paul Morrison's Response to Relator's Motion for Summary Judgment, filed October 30, 2007 (timely – mailed October 29)

i) Respondent Eric Peterson's Response to Relator Columbus Bar Association's Motion for Summary Judgment; filed November 1, 2007 (timely)

II. STANDARD OF REVIEW

A. SUMMARY JUDGMENT

Ohio Civil Rule 56(C) provides that summary judgment must be granted if:

. . . the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Ohio R. Civ. P. 56(C). In other words, summary judgment must be granted when, after viewing the evidence in the light most favorable to the nonmovant, the record demonstrates: (1) there is no genuine issue as to any material fact, (2) reasonable minds can come to only one conclusion, and (3) the moving party is entitled to judgment as a matter of law. See Royal Plastics, Inc. v. State Auto. Mut. Ins. Co. (Cuyahoga Co. 1994), 99 Ohio App.3d 221; Sedlak v. Solon (Cuyahoga Co. 1995), 104 Ohio App.3d 170; Dresher v. Burt (Ohio 1996), 75 Ohio St.3d 280.

A plaintiff moving for summary judgment discharges its burden by setting forth the basis for its motion and identifying the portions of the record which support its motion. See Vahila v. Hall (Ohio 1997), 77 Ohio St.3d 421. The nonmoving party may not rest on mere allegations in pleadings, but its response must set forth specific facts showing that there is a genuine triable issue. See State ex rel. Mayes v. Holman (Ohio 1996), 76 Ohio St.3d 147. Substantive law determines what facts are material for

purposes of a summary judgment motion. See Kemper v. Builder's Square, Inc. (Montgomery Co. 1996), 109 Ohio App.3d 127.

B. MOTION TO STRIKE

Ohio Civil Rule 12(F) states in pertinent part that:

Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant immaterial, impertinent or scandalous matter.

Ohio R. Civ. P. 12(F).

Civil Rule 12(F) motions are disfavored and are ordinarily not granted unless the language has *no possible relation* to the controversy and is *clearly prejudicial*. (emphasis added) Hagins v. Eaton Corp. (March 31, 2004), unreported, Cuyahoga App. No. 64497; Morrow v. South, 540 F. Supp. 1104 (S.D. Ohio, 1992); Lirtzman v. Spiegel, Inc. 493 F. Supp. 1029 (N.D., Illinois, 1980). See also Mirshak v. Joyce (N.D. Illinois, 1987), 652 F. Supp. 359; Mitchell v. Bendix (N.D. Indiana, 1985), 603 F. Supp. 920. The Ohio Supreme Court has held that "[w]hile an insufficient complaint may be subject to a Civ. Rule 12(F) motion to strike, these motions should not be used as a substitute for a Civ. Rule 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. State ex rel. Neff v. Corrigan (1996), 75 Ohio St.3d 12, 661 N.E.2d 170.

III. LAW & ARGUMENT

A. DENYING RESPONDENTS AMERICAN FAMILY PREPAID LEGAL CORPORATION, HERITAGE MARKETING & INSURANCE SERVICES, INC., STANLEY NORMAN, JEFFREY NORMAN, PAUL CHILES, AND HAROLD MILLER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE EXIST NO GENUINE ISSUES OF MATERIAL FACT

It should be noted that on or about June 26, 2007, counsel for Respondents AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller formally withdrew its representation via Notice of Withdrawal to the Panel. The Notice of Withdrawal has been formally accepted by the Panel. Since the filing of the Notice of Withdrawal, none of the aforementioned Respondents has been represented by counsel. Prior to withdrawal, counsel for the aforementioned Respondents had filed a Motion for Summary Judgment (dated September 9, 2005), which has been responded to by counsel for Relator. No reply brief has been filed by any of these Respondents; however, the Panel does acknowledge that responsive pleadings have been made by S. Norman and J. Norman in the form of opposition to the Motion for Summary Judgment filed by Relator. Further, J. Norman requests that the Panel affirm the originally filed Motions for Summary Judgment dated September 9, 2005. Because Respondents AFPLC and HMISI are not represented by legal counsel, no Reply brief to the original September 9, 2005 Motion for Summary Judgment has been filed, and no opposition pleading or brief has been filed against Relator's motion for summary judgment. Thus, the Panel is only left with the arguments made in the September 9, 2005 Motion for Summary Judgment as to the position of Respondents AFPLC and HMISI.

It is undisputed that on or about March 23, 2003, Respondent AFPLC entered into the Consent Agreement by execution of the same by its CEO Respondent J. Norman. It is also undisputed that the Consent Agreement speaks for itself, and states that the Respondents, which include Respondent AFPLC, HMISI, S. Norman, J. Norman, P. Chiles, and H. Miller (collectively the "Entity Respondents"), "agree to refrain from the conduct outlined in the first paragraph . . . " to wit: 1) selling, marketing, and/or preparing wills, living wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as the "legal products"); 2) training, monitoring and educating other sales representatives to sell, market or prepare said legal products; 3) giving legal advice relative to said legal products; 4) advising and counseling clients concerning the suitability of said legal products for a client's particular situation; 5) gathering client information for purposes of preparing or determining the suitability for the appropriate legal products for a client's particular situation without acting under the direct supervision and control of the client's attorney; 6) preparing said legal products for a client particular to the client's situation without acting under the express direction and control of the client's attorney; 7) offering legal advice to individuals concerning the execution of said legal products; and 8) engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or not contact with clients.

1. American Family Prepaid Legal Corporation & Heritage Marketing & Insurance Services, Inc.⁸

Former counsel for Respondent AFPLC and Respondent HMISI argues that, in summary, Respondent AFPLC is in the business of providing a prepaid legal plan to Ohio citizens and/or residents, and in so doing, provides access to legal counsel that might not otherwise be available or affordable for its potential client base. See Entity Respondents' MSJ at pgs. 3-4. Moreover, the business operations of Respondent AFPLC do not violate the Consent Agreement. Respondent HMISI sells insurance products, and utilizes its representatives to deliver documents associated with the business of Respondent AFPLC (i.e., delivery of AFPLC Plan documents to AFPLC Plan members). *Id.* at pgs. 4-5. In support of this position, the Entity Respondents highlight and focus upon parts and pieces of its activities to indicate that it does not engage in conduct that violates the Consent Agreement. While the Entity Respondents argue that their primary focus of the business operations of Respondent AFPLC is the sale of a prepaid legal plan, and the business activities of Respondent HMISI is the sale of insurance products – which might be true, the collective actions of Respondents AFPLC and HMISI are in opposition to those statements. A review of the totality of the operation of Respondent AFPLC and Respondent HMISI based upon all the evidence submitted in this matter indicates to the Panel that the activities of Respondents AFPLC and HMISI do in fact violate the Consent Agreement.

While the Entity Respondents may argue that the business of Respondent AFPLC is to operate a prepaid legal services plan, the name of something does not in fact alter its

⁸ Respondents AFPLC and HMISI at the time of the filing of Relator's Motion for Summary Judgment, and Memorandum in Opposition to Respondent AFPLC's and HMISI's Motion for Summary Judgment, were not represented by legal counsel, and, therefore, no Memorandum in Opposition to Relator's Motion for Summary Judgment, or Reply Brief, was filed.

character. If it walks, talks, operates, conducts itself . . . then it is what it is. In this case, the Panel finds that the operations of Respondents AFPLC and HMISI together constitute the activities of a trust mill. Furthermore, the fact that Respondent AFPLC may be registered with the State of Ohio as a prepaid legal services plan does not alleviate it of any culpability, or liability, for its practices, or the conduct of its employee or representatives (i.e., independent contractors) that it utilizes to carry out its orders, instructions, and tasks in furtherance of its objectives to generate profit and income at the expense of the citizens of the State of Ohio.

The activities of Respondents AFPLC and HMISI are analogous in many respects to the conduct stated in Cleveland Bar Assoc. v. Sharp Estate Services, Inc., et al. (2005) 107 Ohio St.3d 219 and Cincinnati Bar Assoc. v. Kathman (2001), 92 Ohio St.3d 92, 748 N.E.2d 1091. In Sharp Estate, the respondents sold living-trust and estate plan and related documents to Ohio residents. The respondents consisted of one entity, TEP, that prepared and marketed living trust and estate related documents, a second group of persons and entities, Sharp, that serves as sales representatives marketing and selling TEP products. Id. at ¶¶ 2-3. Many of the targeted customers were clearly not in a position to benefit from a living trust or estate plan. Id. at ¶ 3. Sharp nonattorney advisors would tell customers that they needed estate products or living trusts and would recommend certain types of trust or estate plans. Id. at ¶ 6. The Court held that the unauthorized practice of the law was engaged in through the marketing and sale of products through the network of nonattorney advisors, when advice was given to customers regarding legal effects of documents, and the use of a review attorney occurred after the execution of a contract. Id. While the Panel does recognize that the actions of Respondents AFPLC and

HMISI are not identical to those in Sharp Estate, the actions are nonetheless analogous to the conduct engaged in by Respondents AFPLC and HMISI, which are violations of the Consent Agreement, and, more importantly, the spirit of the laws governing the unauthorized practice of the law in Ohio.

The record indicates that Respondent AFPLC, through its sales representatives, promotes the sale of a prepaid legal services for the purpose of selling living trusts and other related estate planning products. *See* Relator's MSJ at pgs. 11-20. The record further indicates that Respondent AFPLC primarily and predominantly promotes and sells living trusts and trust related products to targeted Ohio citizens. *Id.* at pgs. 3-4, 6-8 and 11-15. The sale of these trust products and the actions of Respondent AFPLC and its sales representatives, which are in contravention to the prohibitions agreed to by Respondent AFPLC in the Consent Agreement, then allows for Respondent HMISI to exceed the scope of the services it purports to provide, and do more than merely deliver or notarize documents, which is also a breach of the Consent Agreement. *Id.* at pgs. 8-11.

Respondent HMISI is an integral part of the AFPLC operations. Respondent HMISI generates a profit through the actions of its employees, independent contractors, and/or representatives (i.e., delivery agents), who deliver the trust documents created by Respondent AFPLC. Further, Respondent HMISI through its agents are in possession of the financial information of Plan members, and use that information to sell insurance products; many of the delivery agents, if not all, are licensed insurance agents in Ohio. However, the business cards for Respondent HMISI's agents identifies them as "Asset Preservation Specialist." *See* Relator's MSJ at pg. 23. When the delivery agent meets

with a Plan member, he/she reviews the instructions that the Plan attorney encloses with the estate planning documents. *See* Entity Respondents' MSJ at pgs. 15-17. The delivery agent may then return annually to discuss the Plan member's financial situation, and if necessary, sell additional insurance products. *Id.* at pg. 17. The delivery agents use the Plan members information, and the execution of the Plan documents, as an inroad to sell the Plan member insurance products. And in some circumstances, contribute, if not facilitate, a Plan member overextending his/her economic resources. *See* Relator's MSJ at pgs. 22-25.

The utilization of a Plan attorney does not alleviate the conduct of Respondent AFPLC or Respondent HMISI regarding their combined action to operate a trust mill, and violates the Consent Agreement. As the Entity Respondents' Motion for Summary Judgment states, prior to March 2005, the Plan attorney, Edward Brueggeman, maintained an office within Respondent AFPLC's suite of offices, used AFPLC employees to prepare documents including, deed transfer paperwork. *See* Entity Respondents' MSJ at pgs. 9-10. Prior to his termination of employment, the Plan attorney was contracted to provide services and training to Respondent HMISI, while at the same time contracted to serve as Plan attorney by Respondent AFPLC. *Id.* at pg. 11. Prior to March 2005, the original estate planning worksheet and assignee spelling checklist, as well as engagement agreement were provided to Mr. Brueggeman in his office in the AFPLC suite of offices. *Id.* It should be noted that the engagement agreement is not executed by Mr. Brueggeman until after the Plan member is signed up. *See* Relator's MSJ at pg. 20. Prior to March 2005, the Plan attorney would send his notes, copies of the estate planning worksheet, and assignee spelling checklist to Respondent AFPLC's

California offices; in short, legal documents were prepared in the offices of Respondent AFPLC by Respondent AFPLC or Respondent HMISI employees. *See* Entity Respondents' MSJ at pgs. 12-13; *see also* Relator's MSJ at pg. 20. The Plan attorney's contact with the Plan member occurred well after the Plan member had become a member, and in some instances, after legal information had been taken from the member. *See* Relator's MSJ at pgs. 21-22.

The evidence before the Panel demonstrates that Respondents AFPLC and HMISI continue to operate and conduct business in a manner in breach of the Consent Agreement. *See also* Trumbull Cty. Bar Assoc. v. Hanna (1997), 80 Ohio St.3d 58,60, 684 N.E.2d 329, 31 (" . . . this court has repeatedly stated that the marketing of living trusts by nonattorneys is the unauthorized practice of the law."); Disciplinary Counsel v. Willis (2002), 96 OhioSt.3d 142, 772 N.E.2d 625; Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, 28, 193 N.E. 650,652 (" . . . the practice of law 'includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.'"). The activities of Respondents AFPLC and HMISI, through its representatives, agents, and employees violate all eight of the prohibitions contained in the 2003 Consent Agreement. Thus, Relator's Motion for Summary Judgment against Respondents AFPLC and HMISI is hereby **GRANTED**.

2. Stanley Norman

The Parties Discovery/Litigation Schedule set a deadline of October 29, 2007 by which time any Respondents can file their responsive pleading (i.e., memorandum in opposition) to the Relator's Motion for Summary Judgment. Due to the wildfires raging in Southern California around the date of October 29, 2007, Respondent S Norman

requested an extension of time to file a response. By way of Order dated October 25, 2007, the Panel granted Respondent S. Norman's motion for an extension, and reset the deadline by which he was to file a responsive pleading to November 2, 2007. Respondent S. Norman did not file a responsive pleading (i.e. Affidavit of Stan Norman) to the Realtor's Motion for Summary Judgment until November 5, 2007. Respondent S. Norman's filing was outside of the time prescribed by the Panel, and therefore his filing is deemed untimely and will not be considered for review. Thus, the Panel is only left to review the arguments made on Respondent S. Norman's behalf in the Entity Respondents' Motion for Summary Judgment dated September 9, 2005, and the arguments made by Relator in its Motion for Summary Judgment and Memorandum in Opposition filed on October 1, 2007.

It is undisputed that Respondent S. Norman owns 50% of Respondent AFPLC, and serves as President. *See* Entity Respondents' MSJ at pg. 5. Further, Respondent S. Norman is Chief Executive Officer of Respondent HMISI. *Id.* The Panel has determined that the conduct engaged in by Respondents AFPLC and HMISI collectively constitutes a breach of the Consent Agreement. The issue that is now before the Panel is whether Respondent S. Norman's conduct as CEO and President, respectively, also constitutes a breach of the Consent Agreement. The Panel believes that it does.

Based upon the record, Respondent S. Norman was part-owner, and had significant control and/or authority over the operations and business models of both Respondent AFPLC and Respondent HMISI. *See* Relator's MSJ. In such a capacity, Respondent Norman had knowledge of the Respondent AFPLC's and Respondent HMISI's business practices, including those that occurred after the execution of the 2003

Consent Agreement. As the Panel finds that Respondent AFPLC and Respondent HMISI engaged in conduct in violation of the Consent Agreement, the Panel too finds that Respondent S. Norman engaged in such violations through his oversight, authority, control, and knowledge of the ongoing, operations, activities, and plans of both corporate entities. Therefore, the Panel finds that Relator's Motion for Summary Judgment against Respondent S. Norman individually is hereby **GRANTED**.

3. Jeffrey Norman

It is undisputed that Respondent Jeffery L. Norman ("Respondent J. Norman") owns 50% of Respondent AFPLC, and serves as the corporation's Chief Executive Officer. *See* Entity Respondents' MSJ at pg. 5. Further, Respondent J. Norman is President of Respondent HMISI. *Id.* The issue that is now before the Panel is whether Respondent J. Norman's conduct as CEO and President, respectively, also constitutes a breach of the Consent Agreement. The Panel believes that it does.

Based upon the record, Respondent J. Norman was part-owner, and had significant control and/or authority over the operations and business models of both Respondent AFPLC and Respondent HMISI. *See* Relator's MSJ. In such a capacity, Respondent J. Norman had knowledge of the Respondent AFPLC's and Respondent HMISI's business practices, including those that occurred after the execution of the 2003 Consent Agreement. As the Panel finds that Respondent AFPLC and Respondent HMISI engaged in conduct in violation of the Consent Agreement, the Panel too finds that Respondent J. Norman engaged in such violations through his oversight, authority, control, and knowledge of the ongoing, operations, activities, and plans of both corporate entities.

It should be noted that Respondent J. Norman filed a lengthy response to Relator's Motion for Summary Judgment. See Respondent J. Norman's Memorandum in Opposition to Relator's Motion for Summary Judgment and in Support of Respondent's Motion for Summary Judgment ("Respondent J. Norman's Memo in Opp."). The Panel has carefully reviewed all of Respondent J. Norman's Memo in Opp., as well as all exhibits attached to the same. While the Panel does not find support in Respondent J. Norman's arguments, such that a genuine issue of material fact exists, the Panel believes it is important to address specific issues raised by his filing.

While the Panel is cognizant that Respondent J. Norman is not an attorney licensed to practice law in either Ohio, or any other jurisdiction, and it has been a traditional practice of the UPL Board to give latitude to *pro se* litigants, the Panel can nonetheless obviate itself from Ohio law, which requires that even *pro se* litigants familiarize themselves with the practice and procedures for engaging in litigation (i.e., rules of evidence, rules of civil procedure, form of pleadings, etc.). Further, *pro se* litigants must to the best of their ability be cognizant of the laws (i.e., statutory or common law) that may effect the defense or prosecution of *their* claims. This includes being cognizant of how far their self-representation extends. Such awareness carries over into the area of the unauthorized practice of law.

Ohio law has long held that a nonattorney cannot represent a corporation. Moreover, an officer, shareholder, or owner cannot represent a corporation. And while the Panel is not granting Relator's Motion to Strike, the Panel does agree with Relator that the overriding tone and arguments fostered by Respondent J. Norman in his Memo in Opp. appear to be made on the behalf of, or in defense of, Respondents AFPLC and

HMISI, and in some case other Individually Named Respondents. Respondent J. Norman's conduct in this regard raises the question, but does not confirm, whether he in fact engaged in UPL through the arguments made in his Memo in Opp. Since that issue is not before this Panel, it does not reach a conclusion on the issue. What the Panel does conclude is that Respondent J. Norman's Memo in Opp. does not raise genuine issues of material fact as to his individual conduct.

The Panel's sole charge from the Ohio Supreme Court is to determine whether the 2003 Consent Agreement (or settlement agreement as referred to by the Court's Order) was breached by the conduct of all those who signed it. A Consent Agreement is a binding and lawful contract, and is governed by the laws of contracts. *See* Relator's MSJ at pg. 5. Respondent J. Norman's Memo in Opp. should have been targeted to this issue as it pertained to him individually. The Panel finds that his responsive pleading was not and therefore Relator's Motion for Summary Judgment is hereby **GRANTED**.

A final issue that the Panel feels should be addressed are the accusations made by Respondent J. Norman against Relator's counsel as it pertains to an affidavit presented to attorney Edward Brueggeman for his review and execution. Based upon the Panel's review of the events surrounding this matter, the Panel does not find that Relator's counsel acted either inappropriately or in a manner that would warrant the Panel to take action against Realtor. It is a customary practice in Ohio to utilize affidavits to secure the statement of witnesses. Additionally, the execution of any affidavit is completed after the affiant has had the opportunity to review its written statements and is prepared to attest under oath to the accuracy of those statements. Realtor's counsel's submission of an affidavit to Mr. Brueggeman, and Mr. Brueggeman's right to not execute the same, is in

accordance with the practices and procedures of Ohio law. Mr. Brueggeman's decision to not execute the affidavit presented to him does not raise an issue that this Panel feels warrants action against Relator in this matter, or the striking/dismissal of this action.

4. Paul Chiles

It is undisputed that Respondent Paul Chiles ("Respondent P. Chiles") is the state marketing director, and oversees Respondent AFPLC's sales force. Id. Respondent Chiles also oversees Respondent HMISI's contractors who deliver non-legal services offered under the plan. Id. Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent Chiles' conduct as state marketing director and because of his role in overseeing the contractors/delivery agents' actions, the Panel finds Respondent Chiles violated the Consent Decree. Thus, the Panel **DENIES** Respondent Paul Chiles Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that Respondent P. Chiles failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment had been filed, Respondent P. Chiles could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

5. Harold Miller

It is undisputed that Respondent Harold Miller ("Respondent H. Miller") is Respondent AFPLC's office manager. It is further undisputed that Respondent H. Miller works along side Respondent P. Chiles. *See* Deposition of Respondent H. Miller. Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent Miller's conduct as office manager, and his duties and role related thereto, the Panel finds Respondent Miller violated the Consent Decree. Thus, the Panel **DENIES** Respondent Harold Miller's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that Respondent H. Miller failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment had been filed, Respondent H. Miller could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

B. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS PAUL MORRISON AND ERIC PETERSON MOTION FOR SUMMARY JUDGMENT AND GRANTING RELATOR

**COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY
JUDGMENT AGAINST INDIVIDUALLY NAMED RESPONDENT
PAUL MORRISON AND ERIC PETERSON AS THERE EXIST NO
GENUINE ISSUES OF MATERIAL FACT**

1. Paul Morrison

It is undisputed that Respondent Paul Morrison ("Respondent P. Morrison") has been employed with Respondent HMISI off and on for six years. *See* Paul Morrison Responsive Filing ("Morrison Resp."); *see also* Relator's MSJ at pg. 25. It is also undisputed that Respondent P. Morrison served as a delivery agent for Respondent AFPLC through his employment with Respondent HMISI. *Id.* Based upon the Panel's findings that Respondent AFPLC and Respondent HMISI violated the Consent Agreement through their conduct, and based upon the record before the Panel as to Respondent P. Morrison's conduct as a delivery agent, specifically his conduct as it pertains to Betty Hamm,. *See* Relator's MSJ at pgs. 33-34; *see also* Relator's Reply Brief at pgs. 25-26. The Panel does give consideration to Respondent P. Morrison's statements regarding the Ohio Department of Insurance's ("ODI") investigations, and the results therefrom. However, the Panel does not conclude that the results of that or any ODI investigations addresses the underlying issue before it as to whether the Consent Agreement has been violated. Thus, the Panel **DENIES** Respondent Harold Miller's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

2. Eric Peterson

At the outset, the Panel is troubled by Respondent Eric Peterson's ("Respondent E. Peterson") statement that he was instructed by his attorneys (the Panel assumes this is

Kegler, Brown, Hill & Ritter, LLP) and counsel for Respondent AFPLC that "[he] could return to work" based upon the Interim Cease and Desist Order being lifted. *See* Eric Peterson's Response to Columbus Bar Association's Motion for Summary Judgment ("Peterson Resp.") at pg. 1. If Respondent E. Peterson's statement is true, then such direction by legal counsel raises a myriad of issues. However, Respondent Peterson's affidavit, and his Response, clearly state that he did engage in conduct the Panel has deemed a violation of the Consent Decree through his employment with and for Respondent AFPLC. *See* Peterson Resp. and Peterson Affidavit.

As the Panel has found based upon the breaches by Respondent AFPLC and Respondent HMISI, Respondent Peterson's conduct in furthering the business activities of the Entity Respondents is itself a violation of the Consent Agreement. *Id.*, *see also* Relator's MSJ at pgs. 15-16 and Relator's Reply Brief at pgs. 20-21. Furthermore, based upon the record before the Panel as to Respondent Peterson's conduct as a sales representative, and his duties and role related thereto, the Panel finds Respondent Peterson violated the Consent Decree. Thus, the Panel **DENIES** Respondent Eric Peterson's Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

C. **ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' JEFF ALTON, WILLIAM DOWNS, JOSEPH EHLINGER, LUTHER MACK GORDON, STEVE GROTE, DAVID HELBERT, SAMUEL JACKSON, CHRIS MILLER, JACK RIBLETT, RICHARD ROMPALA, KEN ROYER, VERN SCHMIDT, ALEXANDER SCHLOP, JEROLD SMITH, PATRICIA SOOS,**

**ANTHONY SULLIVAN, AND DENNIS QUINLAN MOTION FOR
SUMMARY JUDGMENT AND GRANTING RELATOR
COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY
JUDGMENT AGAINST THE SAME AS THERE EXIST NO
GENUINE ISSUES OF MATERIAL FACT**

It is undisputed that the Individually Named Respondents – Jeff Alton, William Downs, Joseph Ehlinger, Luther Mack Gordon, Steve Grote, David Helbert, Samuel Jackson, Chris Miller, Jack Riblett, Richard Rompala, Ken Royer, Vern Schmidt, Alexander Schlop, Jerold Smith, Patricia Soos, Anthony Sullivan, and Dennis Quinlan ("Individually Named Respondents") – are either sales representatives and/or delivery agents working for either Respondent AFPLC or Respondent HMISI, and furthering the business practices of both corporate entities. *See* Relator's MSJ at pgs. 15-20; *see also* Individually Named Respondents' MSJ at pgs. 5-7. As the Panel has found based upon the breaches by Respondent AFPLC and Respondent HMISI, the Individually Named Respondents' conduct in furthering the business activities of the Entity Respondents is itself a violation of the Consent Agreement. *Id.*, *see also* Relator's MSJ and Relator's Reply Brief. Furthermore, based upon the record before the Panel as to the Individually Named Respondents' conduct as a sales representative and/or delivery agents, and their duties and roles related thereto, the Panel finds the Individually Named Respondents violated the Consent Decree. Thus, the Panel **DENIES** the Individually Named Respondents' Motion for Summary Judgment, and **GRANTS** Relator's Motion for Summary Judgment.

It should also be noted that all of the aforementioned Individually Named Respondents failed to file a Memorandum in Opposition to the Realtor's Motion for Summary Judgment. Although the September 9, 2005 Motion for Summary Judgment

had been filed, the Individually Named Respondents could have responded to Relator's Motion for Summary Judgment. By failing to respond, coupled with the Panel's denial of the September 9, 2005 Motion for Summary Judgment, the Panel is only left with the arguments of Relator. *See* Ohio R. Civ. P. 56(E); *see also*, Relator's MSJ at pg. 20. As a result, it is appropriate to grant summary judgment in Relator's favor. Id.

D. ORDER DENYING INDIVIDUALLY NAMED RESPONDENTS' TIMOTHY CLOUSE, JOSEPH HAMEL, TIMOTHY HOLMES, AND ADAM HYERS MOTION FOR SUMMARY JUDGMENT AND DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AGAINST THE SAME AS THERE DOES EXIST GENUINE ISSUES OF MATERIAL FACT

1. Timothy Clouse

At the time that the 2003 Consent Agreement was executed, Respondent Timothy Clouse ("Respondent T. Clouse") did not execute the document. *See* Consent Agreement, incorporated by reference herein; *see also* Individually Named Respondents MSJ at pg. 4. Respondent T. Clouse argues that the reason for the absence of his signature is because he was not affiliated with either Respondent AFPLC or Respondent HMISI. Id. In Relator's Motion for Summary Judgment, it argues that Respondent T. Clouse between March 2003 through approximately May 2005 sold at least 149 plans to Ohioans, and, thereby, engaged in conduct in furtherance of the business operations and activities of Respondents AFPLC and HMISI. This conflicting issue raises a genuine issue of material fact whereby the Panel must DENY both Respondent T. Clouse's and Relator's motions for summary judgment.

2. Joseph Hamel & Timothy Holmes

It is undisputed that both Respondents Joseph Hamel ("Respondent J. Hamel") and Timothy Homes ("Respondent Holmes") (collectively "Respondents H&H") were delivery agents at all times pertaining to this matter. *See* Respondents H&H's Response to Relator's Motion for Summary Judgment and Reassertion of Respondents' Motion for Summary Judgment ("Response") at pg. 3. In that capacity, Respondents H&H argue that the scope of their activities were limited to notarization and mere delivery of documents. *Id.* at pg. 6. Further, Respondents H&H argue that they are not identified specifically within Relator's MSJ. *Id.* at pgs. 7-8.

Relator's Motion for Summary Judgment makes arguments against all delivery agents, which include Respondent H&H who signed off on the 2003 Consent Agreement. *See* Relator's MSJ at pgs. 22-26; *see also* Relator's Reply Brief at pgs. 23-24. As the Panel has held that the overall activities of Respondents AFPLC and HMISI constitute a breach of the Consent Agreement, and Relator's arguments as to the conduct of the delivery agents is linked to such prohibitive conduct, a genuine issue of material fact arises as to what conduct, if any, was engaged in by Respondents H&H in violation of the 2003 Consent Agreement. Thus, Respondent H&H's and Relator's respective Motions for Summary Judgment are hereby **DENIED**.

3. Adam Hyers

It is undisputed that Respondent Adam Hyers ("Respondent A. Hyers") is an independent contractor for Respondent HMISI. *See* Respondent Adam Hyers' Memorandum Contra Relator's Motion for Summary Judgment ("Memo Contra") at pg. 2. It is also undisputed that Respondent A. Hyers provides insurance services through Respondent HMISI. *Id.* Respondent Hyers argues that his conduct was focused on the

sale of annuities, which does not require offering legal advice, and delivery or notarization of documents. *Id.* at pgs. 2-4 and 7.

The Relator counters this contention by its arguments that Respondent Hyers was part of the overall trust mill scheme being perpetrated by Respondents when he delivered or reviewed trust packages to Ohio Plan members. See Relator's reply Brief at pg. 24; *see also* Relator's MSJ at pgs. 22-26. Further, Relator contends that Respondent Hyers violated the Consent Agreement through his conduct as evidenced by his interaction and communication with Chester Middleton, Lorene and Charles Kramer, and Eleanor and Judith Luttrell.

The issue as to whether Respondent Hyers engaged in conduct in violation of the Consent Agreement, or, in fact, engaged in conduct limited in scope and not prohibited by the Consent Agreement is undecided. Therefore, a genuine issue of a material fact remains. Thus, Respondent Hyers' and Relator's respective Motions for Summary Judgment are hereby **DENIED**.

E. **ORDER DENYING RELATOR COLUMBUS BAR ASSOCIATION'S MOTION TO STRIKE MEMORANDUM IN OPPOSITION OF RESPONDENT JEFFREY L. NORMAN AND ORDER DENYING RESPONDENT JEFFREY L. NORMAN'S MOTION TO STRIKE RELATOR COLUMBUS BAR ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT**

1. Relator's Motion to Strike Respondent Jeffrey Norman's Memorandum in Opposition and Reply

While the Panel recognizes that Respondent J. Norman's Memo in Opp. raises issues as to whether he has committed the unauthorized practice of law due to his arguments on behalf of several, if not all, respondents to this action, the Panel recognizes that Respondent J. Norman is a *pro se* litigant, and in that regard, affords him some latitude. Moreover, Respondent J. Norman's arguments were related to the subject matter at issue, and deserved review by this Panel. Therefore, the Panel has accepted Respondent J. Norman's Memo in Opp. and will give it the appropriate weight and consideration. Therefore, Relator's Motion to Strike Respondent Jeffrey Norman's Memoranda in Opposition and Reply is hereby **DENIED**.

2. Respondent Jeffrey Norman's Motion to Strike Relator's Motion for Summary Judgment and Relator's Memorandum in Opposition to Respondent's Motion for Summary Judgment

A motion to strike made pursuant to Ohio R. Civ. P. 12(F) must be made timely. The Rule clearly states that [u]pon a motion made by a party **before** responding to a pleading" *See* Ohio R. Civ. P. 12(F) (emphasis added). Respondent J. Norman's Motion to Strike was made well after the filing of his Memorandum in Opposition to Relator's Motion for Summary Judgment (filed October 29, 2007), and the filing of Relator's Motion for Summary Judgment (filed October 1, 2007). *See* Respondent J. Norman's Motion to Strike filed November 6, 2007. Additionally, it has long been held in Ohio that matters to be adjudicated should be done so on the merits. The Panel does not find that Relator's motion to enforce the consent decree, and the Supreme Court's Order to the UPL Board to determine whether a violation of the Consent Agreement


has/had occurred, is without merit such that a motion to strike should be granted.

Therefore, the Panel hereby **DENIES** Respondent J. Norman's Motion to Strike.

F. ORDER GRANTING INDIVIDUALLY NAMED RESPONDENT DANIEL ROUNDTREE'S MOTION FOR SUMMARY JUDGMENT

The record indicates that Respondent Daniel Roundtree ("Respondent D. Roundtree") ceased his affiliation with Respondents AFPLC and/or HMISI within days of the execution of the 2003 Consent Agreement. *See* Individually Named Respondents MSJ at pg. 9. The Relator concedes this fact and states that because of it, it dismissed other individually named respondents (i.e., Carolyn Gray, Ron Baker, and Doss Estep. *See* Relator's MSJ at pg. 54). Based upon this concession, the Panel finds that due to Respondent D. Roundtree's limited involvement with the Entity Respondents following the execution of the Consent Agreement, and Relator's concession, tacit or otherwise, to this point, Respondent D. Roundtree's Motion for Summary Judgment is hereby **GRANTED**.

SO ORDERED.


JAMES L. ERVIN, JR., PANEL CHAIR
C. LYNNE DAY, PANEL MEMBER
DON J. HUNT, PANEL MEMBER
Board on the Unauthorized Practice of the Law

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 26th day of August, 2008:

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