
BEFORE THE SUPREME COURT OF OHIO

FROM THE BOARD OF COMMISSIONERS ON THE UNAUTHORIZED
PRACTICE OF LAW CASE NO UPL 02-10

COLUMBUS BAR ASSOCIATION,
Relator,

v

AMERICAN FAMILY PREPAID LEGAL CORPORATION, ET AL.,
Respondents

**RESPONDENTS AFPLC, HMISI, AND JEFFERY NORMAN'S OBJECTIONS TO THE
FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF
COMMISSIONERS ON THE UNAUTHORIZED PRACTICE OF LAW
AND BRIEF IN SUPPORT**

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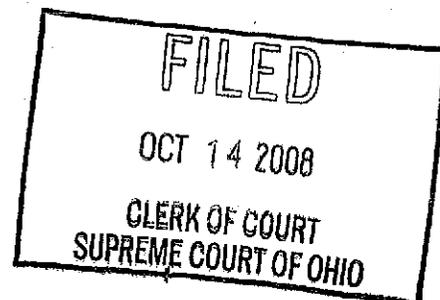


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BEFORE THE OHIO SUPREME COURT

COLUMBUS BAR ASSOCIATION

Realtor

-vs-

American Family Prepaid Legal Corp. Et al.

Respondents

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Case No. 05-422

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Respondents Heritage Marketing and Insurance Services Inc., American Family Prepaid Legal Corp., and Jeffery Norman, by and through counsel, hereby present their Objections to the Findings of Fact, Findings of Law, and Recommendation of the Board of Commissioners on the unauthorized Practice of Law, dated August 26th, 2008. Respondents objections are fully set forth in the Following Brief in Support which is incorporated herein by reference.

BRIEF IN SUPPORT

I. Introduction

On November 19th, 2002, the Columbus Bar Association (“Relator”) filed a Complaint with the Board of Commissioners on the Unauthorized Practice of Law. On or about March 23rd, 2003, Relator and Respondents entered into a Consent Agreement. On or about November 22nd, 2004 Relator filed a motion to enforce settlement agreement with the Board of Commissioners on the Unauthorized Practice of Law, Respondents filed a memorandum in opposition to the motion to enforce the settlement agreement, and on December 22nd, 2004, Relator filed a motion for extension of time to respond which was deemed moot when the Board overruled Relator’s initial motion on December 30th, 2004. On or about March 3rd, 2005 Relator filed a motion for interim cease and desist order and requested a hearing on the preceding motion with the Ohio Supreme Court. On or about March 14th, 2005, Respondents filed memorandums opposing the interim cease and desist order and on or about April 12th, 2005 the Court found in Relator’s favor by granting the cease and desist order and directing the UPL Board to hold a hearing to determine whether the March 2003 settlement agreement was violated. On or about May 27th, 2005, Relator CBA agreed by stipulated order in Federal Court that it would not seek to enforce the April 12th, 2005 Ohio Supreme Court Cease and Desist Order pending resolution of a dispute in Federal Court which was ultimately resolved in favor of the CBA on July 13, 2007. The parties then submitted a joint settlement agreement to the UPL Panel, which referred the proposed agreement to the Ohio Supreme Court for consideration. The Ohio Supreme Court rejected the proposed agreement in December of 2005 and referred the matter back to the Board for adjudication on the merits.

At this juncture, the respondents designated "individual respondents" were represented by the firm of Kegler, Brown, Hill, & Ritter. None of these individual respondents are represented in this Brief. Respondents AFPLC, HMISI, S. NORMAN, J. NORMAN, H. MILLER, and P. CHILES who were represented by Squire, Sanders, & Dempsey LLP. Squire, Sanders, & Dempsey filed a motion for summary judgment and supporting memorandum with The Board of Commissioners on the Unauthorized Practice of Law on behalf of their Clients on or about September 9th, 2005. Kegler, Brown, Hill, & Ritter filed a motion for summary judgment on behalf of "individual respondents" on September 13th, 2005. Relator's counsel Martin Susec then withdrew and was replaced with the firm of Porter, Wright, Morris, & Arthur LLP. A new case schedule was then agreed to and established by the parties.

On or about December 29th, 2006, Kegler, Brown, Hill, & Ritter Withdrew as council for the Individually Named Respondents. On or about June 26th, 2007, Squire, Sanders, & Dempsey Withdrew as council for all six (6) of the above listed Respondents. On August 17th, 2007 a final telephone status conference was held. On October 1, 2007, Relator filed a motion for summary judgement and memorandum in opposition to respondents' motions for summary judgment. Of the Respondents previously represented by Squire, Sanders, & Dempsey, only Jeffery Norman filed a *pro se* brief in opposition to Relator's Motion for Summary Judgement. Additionally, Individual Respondents A. Hyers, J. Hamel, and T. Holmes had responses submitted by counsel. Respondents P. Morrision and E. Peterson also filed responses. On December 21st, 2007 The Board on the Unauthorized Practice of Law granted Summary judgement against all respondents except T. CLOUSE, J. HAMEL, T. HOLMES, and A. MYERS. T. CLOUSE, J. HAMEL, T. HOLMES, and A. HYERS subsequently entered separate consent decrees.

Two final reports of the Board were then filed with the Ohio Supreme Court on or about August 26th, 2008. The first report, filed pursuant to Rule VII § 5(B) of the Rules for the Government of the Bar of the Supreme Court of Ohio, recommended approval of the consent decree entered into by the four above mentioned respondents. The second report recommended the Court issue an order finding the remaining respondents had engaged in UPL, prohibiting them from future UPL, imposing civil penalties ranging from \$10,000 to \$700,000, and providing they reimburse costs and expenses of the board and relator. The Ohio Supreme Court Issued an Order to Show Cause in conjunction with the Board recommendations on September, 12th, 2008, wherein Respondents and Relator may file objections to the findings or recommendations of the Board supported by briefs. Respondents AFPLC, HMISI, and Jeff Norman then retained Andrew R. Bucher of Reinheimer & Reinheimer whom entered appearance as counsel of record and then moved for a continuance contemporaneously with Relator's counsel, both of which were granted.

As requested by this Court's Order to Show Cause, Respondents Jeffery Norman, AFPLC, and HMISI now bring the following objections to the Findings of Fact, Findings of Law, and Recommendations of the Board of Commissioners on the Unauthorized Practice of Law.

II. OBJECTIONS

A. Specific Objections To The Board's Findings Of Fact

1) Respondents do not "sell Trusts" as a part of their business.

In the Final Report of the Board on the Unauthorized Practice of Law, the Panel specifically adopts the "Statement of Facts" as set forth in the order filed on December 21, 2007

(See Final Report at Appendix A-3, p. 7). Respondent respectfully objects to the finding of fact that the Respondents sell trusts (See 12-21-07 Order p. 8 "When a trust is sold"). Prior to that statement, Relator states in the adopted facts that "Entity Respondents argue that they are operating a legal pre-paid services plan" See 12-21-07 Order p. 7. This is indeed what respondents do. AFPLC is an entity which was registered with the Ohio Supreme Court at all relevant times pursuant to DR 2-103(D)(4)(g) of the Code of Professional Responsibility (then in effect) which offers a legal plan. AFPLC's plan is recognized by the American Prepaid Legal Services Institute ("API"), a trade organization affiliated with the American Bar Association ("ABA") (See Exhibit 2 of Respondents' Memorandum in Opposition to Motion to Enforce Settlement Agreement). Respondent's Plan offers its members access to numerous legal services at reduced rates including estate planning, business, landlord/tenant, traffic/automobile, civil lawsuits, federal taxes, financial planning, government benefits, consumer rights, family/domestic, bankruptcy, specialized senior services and elder law (See Exhibit B4 of Relator's Motion to Enforce Settlement Agreement). As a benefit of membership in the Plan, and subject to a suitability determination by a Plan Attorney, estate planning documents may be prepared by the Plan Attorney at no additional cost (See Membership Agreement attached to Relator's Motion To Enforce Settlement Agreement at Exhibit B1). This benefit is similar to other legal services plans offered by companies such as American Express which offers plan members "simple, legally binding Will updated whenever you wish" (See American Express Legal Services Plan promotional materials attached to Individual Respondents' Memorandum in Opposition to Relator's Motion to Enforce Settlement Agreement at Exhibit 3) Respondents, through deposition and affidavit have reiterated ad nauseam that they sell membership to, and

provide a legal plan (*See* Affidavits attached to Individual Respondents Memorandum in Opposition to Relator's Motion to Enforce Settlement Agreement of: Al Schlop, Timothy Clouse, Mark Wagner, and Eric Peterson. *Also See* Jeffery Norman Depo., p. 21; Clouse Depo., p. 32; Roundtree Depo., pp. 29-30; Chiles Depo., p.23; H. Miller Depo., pp.108-109). Moreover, the Plan Attorneys have established that they determine the estate planning needs of member clients through direct contact with the client after the purchase of a legal plan membership (*See* Irwin Depo., pp. 17-18, 20; and Brueggeman Depo., pp 27-30), not after the purchase of a living trust.

This distinction of selling membership to a legal plan and not selling trusts is truly a lynchpin to this litigation and references to the "sale of a trust" have been made time and time again by Relator as the case has progressed. The practice continues through the Board's Final Report which has adopted not only the full "Statement of Facts" from the 12-21-07 Order, but also adopted in its entirety the "Law and Argument" section of the same document. Because of that, this objection will be revisited more fully in Respondents' objections to the Board's conclusions of law.

2) Objection to the statement of fact that Respondents "encourage high pressure . . . sales tactics"

The Statement of Facts adopted from the 12-21-07 Order states on page 8 that "The training materials AFPLC utilizes, and provides to its sales agents, encourage high pressure... sales tactics." Respondents respectfully object to this "statement of fact". It is established by Respondent Jeffery Norman, that immediately following the consent agreement managers were

directed to no longer cover this material (See J. Norman affidavit at ¶ 35 attached to Respondents Memorandum in Opposition to Relators MSJ). Further, the alleged offending passages were subsequently removed from the training materials as evidenced by their absence in AFPLC Training Manual 2005 (See Exhibit 20, attached to Respondents Memorandum in Opposition to Realtors MSJ).

3) Objection to statement of fact that “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.”

Respondent respectfully objects to the above quoted “statement of fact” which originally appeared in Statement of Facts of the 12-21-07 Order and has been adopted by Board via finding of fact 6 (See Final Report p. 7). The initial portion of the statement “When a trust is sold” has already been addressed in objection to statement of fact (1) *supra*. With regard to the rest of the statement, Respondent objects as follows:

a) “all of the paperwork” to generate a trust document was not collected by a sales representative.

Sales representatives collected only limited information to be delivered to the Plan Attorney’s office. AFPLC does not permit its sales representatives to collect any information related to beneficiaries, trustees, or the distribution of the estate. AFPLC representatives only collect the name, address, telephone number, date of birth, status of marriage, information on children, and types of assets (*see* Brueggeman Depo., p. 65.). Since the first week of November, 2004, the representatives leave pages blank regarding information such as identification of

trustee, successor trustee, power of attorney, guardian, and issues related to the distribution of the estate (*See Bruggman Depo.*, pp. 65, 66). The data on these pages is collected by the Plan Attorney during their initial consultation with the plan member (*See Bruggman Depo.*, pp. 65, 66). While it is true that the representatives previously filled out the two pages of the estate planning worksheet that are labeled “**Law Office Use Only**”, after the CBA claimed that this mere collection of data constituted the practice of law, AFPLC amended its practices so that sales representatives no longer collected this data (*See Miller Depo.*, pp. 49-50, *Ball Depo.*, p. 68). Interestingly, the Relator failed to prohibit Respondents from collecting information of this nature at the time of the original consent agreement, even despite having knowledge (via previous disclosures) that it was being collected. Moreover, in further efforts to comply with what conduct the CBA considered was UPL, the pages that had previously been labeled “**Law Office Use Only**” were wholly removed from AFPLC materials in January of 2007. *See J. Norman affidavit* at ¶13 attached to Pro Se Response to Relator’s MSJ; *see also* “Application Worksheet” attached as Exhibit 18 to Pro Se Response to Relator’s MSJ.

b) AFPLC’s non-attorney document drafters did not merely plug information collected by non-attorneys into a form trust document for the “alleged” review of the Plan Attorney.

Edward Brueggeman is the primary Plan Attorney for AFPLC in the State of Ohio (*See Brueggeman Depo.*, p.13-14). In March of 2004 he hired Cynthia Irwin to aid in providing legal services to the members of the Plan (*See Irwin Depo.*, p. 9). At all times relevant to the case at hand, the worksheets containing the information gathered by the sales representatives were given to Attorney Brueggeman, not to non-attorney document drafters (*see Brueggeman Depo.*, pp. 26-

27 and 33-34). Upon receipt of the worksheets, the plan member would be contacted by one of the abovementioned Plan Attorneys. During this contact, the Plan Attorney would conduct an in-depth interview to collect additional information from the plan member and to facilitate legal analysis regarding the member's legal interests, wants, needs, and what legal devices may already have been established for the member prior to contact with AFPLC. During this interview the Plan Attorney would then discuss the applicable legal principals and devices that could be utilized for the member as the Plan Attorney sees appropriate (*See Irwin Depo.*, pp. 17-18, 20; and *Brucggeman Depo.*, pp. 27-34).

Following the consultations with the Plan Attorney, if the attorney determined that the member was in need of legal documents and acquired the acquiescence of the member (*See Brueggeman Depo.*, pp 31, 34; *Irwin Depo.*, p. 38) the Plan Attorney then provides the information they have amassed to support staff with direction as to what documents need to be completed. The Plan Attorneys utilize the assistance of their in-house paralegal to prepare the first draft these documents (*see Brueggeman Depo.*, p. 32; *Irwin Depo.*, p. 22, *Volbert Depo.*, p. 11). Prior to hiring the paralegal, the Plan Attorneys would utilize employees at American Family's office in California in the same manner that the in-house paralegal was later used (*see Brucggman Depo.*, pp. 35-36 and *J. Norman Depo.*, pp. 47-54).

Upon completion of the draft of the document as directed by Plan Attorney Brueggeman, it was provided to him for review. Mr. Brueggeman reviewed *all* estate planning documents and signed off on them prior to them leaving his office. *See Brueggeman Depo.*, pp. 32, 35; *Irwin Depo.*, p. 22; *Volbert Depo.*, p. 18.

4) Objection to statement of fact, “Further, the delivery agents may also be insurance agents licensed to sell annuities and other insurance products in Ohio. However, their business cards identify them as “Asset Preservation Specialist”.

Respondent respectfully objects to the above quoted statement of fact which originally appeared in Statement of Facts of the 12-21-07 Order and has been adopted by Board via finding of fact 6 (*See* Final Report p. 7). Respondent objects to this finding of fact to provide further clarification. Unmentioned by the Report of the panel is the fact that the heading of the delivery agents’ cards read: **“HERITAGE MARKETING AND INSURANCE SERVICES”** (bolded and all caps in original) (*see* Shank Exhibit #21 “Heritage Agent Business Card). Then, in significantly smaller, non-bolded, non-all-caps type, “asset preservation specialist” is listed under the agent’s name *Id.* The other items included on the card are the address of the office and a phone number and none of this additional font is of the size or character of the heading *Id.* Clearly, in viewing all the written material on the card, there is no mystery that the agent passing it out works for an insurance company.

B. Specific Objections To The Board’s Conclusions Of Law

1) Objection to Conclusion of Law that the activities of Respondents AFPLC and HMISI are analogous to the Conduct in *Cleveland Bar Assoc. V. Sharp Estate Services* (“Sharp”) and *Cincinnati Bar Assoc. V Kathman* (“Kathhman”)

Respondent respectfully objects to the above conclusion of law which originally appeared in Section (A)(1) of the 12-21-07 Order and has been adopted by Board via Conclusion of Law 9 (*See* Final report p. 8). Respondents also wish to preface this section by bringing to the attention of The Court that the Board Chair whom overruled Relator’s “Motion to Enforce Settlement

Agreement” on December 30, 2004 also served as Chair for *Sharp*.

a) The activities of Respondents AFPLC and HMISI are distinctly different than the conduct of respondents in *Sharp*.

In *Sharp*, the court determined that the various respondents were engaged in the unauthorized practice of law for a variety of reasons. In the Order of the Board they determined that the respondents in *Sharp* engaged in UPL for the following reasons: There were 2 groups at work in *Sharp*: “The Estate Plan” “TEP” whom produced and sold legal documents and Sharp’s group which marketed and sold TEP products. Sharp’s advisors would recommend certain legal documents, Sharp’s advisors gave advice regarding the legal effect of documents, and the use of a review attorney occurred after the contract was executed (*See* Final Report (III)(A)(1) at p. 18).

i) Role of the non-attorneys in *Sharp* distinguished from Respondents.

A more thorough reading of *Sharp* reveals however, that the conclusions adopted by the Board do not hit the mark in this case. The Court found that the non-attorney advisors in *Sharp* committed UPL for a number of reasons. One, it was deemed that UPL was committed when the advisors told customers that they needed a trust or estate plan (*Sharp* at para 6). Two, it was deemed that UPL was committed when they recommended specific types of trusts or estate plans (*Id*). And three, it was deemed that UPL was committed when they advised their customers of the legal effect of their choices. The Court then found that TEP, a legal document sales company, and its president, Abts, engaged in UPL because they marketed and sold their products through a network of non-attorney advisors who did so in the offending manner just detailed *supra. Id*.

In looking at the offending conduct of the non-attorney advisors in *Sharp* as opposed to

the conduct of the sales representatives in the current case, a distinct contrast can be seen. The sales representatives of AFPLC did not tell potential plan members that they were in need of a trust or in need of an estate plan as the non-attorney advisers in *Sharp* did. Sales Agents did discuss general principals related to areas of law such as estate planning with potential plan members, this however, is not the unauthorized practice of law (See Office of Disciplinary Counsel v Palmer (Ohio Bd. Of Comm'rs on UPL 2001)) (the publication of "general advice on legal matters" is not the unauthorized practice of law because it is missing "one key element of the practice of law" namely, "the tailoring of that advice to the needs of a specific person".) The only thing that the sales representatives gave in depth interactive attention to was the sale of a legal plan (see Roundtree Depo. Pp. 29-30; Clouse Depo., p. 32; J. Norman Depo., p.21; P. Chiles depo., p 23; and H. Miller Depo., pp. 108-109).

Moving on to the other instances of offending conduct by the non-attorney advisers in *Sharp*, the *Sharp* advisers would not only recommend specific types of trusts or estate plans but they would then advise the potential client on the specific legal consequences of their choices (See *Sharp* at ¶ 6). In referencing *Green v Huntington Bank of Columbus*, 212 N.E.2d 585, 588 (1965) (Quoting *Oregon State Bar v Miller*, 385 P.2d 181 (Ore. 1961)) the Court states "When lawyers use their educated ability to apply an area of the law to solve a specific problem of a client, they are exercising professional judgement", and thus practicing law. This is what the non-attorney advisers were doing in *Sharp*, making recommendations as to what specific legal instruments they believe should be purchased and then further advising on the specific legal effect of additional choices made by the purchasers. It is this type of conduct that manifests UPL, when the "missing key element" of the practice of law is brought to the forefront by the specific

advising and tailoring of legal advice to the unique situation of the purchaser. This is indeed a critical moment in determining if UPL has occurred. It is the contention of Respondents that this advising and tailoring did not occur. This is evidenced by the testimony of Plan Attorney Brueggeman that he directs the sales representatives to avoid this, "If someone gets into an area that sounds like or becomes questions concerning law, call. Call the office, Call me, if they have my cell phone, and we'll get the answers." Brueggeman Depo. P. 75. Further American Family forbids the sales representatives from answering any legal questions during in home consultations (see Clouse Depo. P. 87). Brueggeman further states, "Again I remind them, if there are particular questions that the client is concerned with, make a note about it. Assume I'm stupid. Put it on the front of the questionnaire. I want it called out if there is something on the client's mind." Brueggeman Depo., at 87. Clearly this demonstrates that the Plan Attorney is to make any decisions or answer any questions, and this takes judgement away from the sales representatives and reserves the "missing key element" for the attorney so *he, the attorney* is practicing law and not the representatives.

Additionally, numerous admonishments against UPL by Respondents AFPLC, HMISI, and Jeffery Norman were made time and time again. The contracts which Sales Representatives signed upon beginning their relationship with AFPLC were inundated with clauses that the representatives not commit UPL and were bound to follow the guidelines and directions set forth by AFPLC. Included in this contract were clauses that directed representatives to not solicit legal questions or requests for legal services, to direct such inquiries to the Plan Attorneys, to maintain confidentiality of documents, to not engage in UPL and by further explanation to not give any advice tailored to a member's specific circumstances, to follow all instructions and guidelines of

the Plan Attorney, that giving legal advice was cause for termination, to utilize the presentation book according to company regulation, and to not represent themselves as “experts”. See Norman affidavit, ¶ 14; Independent Contractor Agreement - Representative, attached to J. Norman Memp in Opposition to Relator’s SJM. However this was not the full extent of respondent’s actions.

Respondents offered extensive training and education to the Sales Representatives so that UPL could be avoided. Training consisted of an initial two day session and then subsequent follow up sessions. See Norman affidavit, ¶ 15; Chiles Depo., p. 21. Further, they were admonished to follow the presentation book provided by AFPLC. See Am Fam Training Manual, attached as Exhibit 20 to J. Norman Memo in Opposition to Relator’s MSJ, pp. 15-17, 31-33; Chiles Depo., p.32-33. Upon the conclusion of the two day training representatives not only revisited the concept of UPL, but were required to be tested on that specific issue. See UPL Quiz - Representative, attached as exhibit 21 to J. Norman Memo in Opp to Relator’s MSJ. All of this drastically distinguished the present case from *Sharp*.

ii) role of the Attorney in *Sharp* distinguished from Respondents

The next critical area of *Sharp* is the role of the attorney in that allegedly analogous case as opposed to the case at hand. First and foremost, in reading the adopted Conclusions of Law from the 12-21-07 Order and in reading Conclusion of Law 4 in the Final Report, it would appear that the timing of when a lawyer makes contact with a client is one of the most critical steps to this analysis. After closer review it is apparent that the timing of the attorney contact in *Sharp* was only addressed with respect to if it could remedy the UPL which had already occurred See *Sharp* at ¶ 6 “... the use of a review attorney after the execution of a contract to create a living

trust or estate plan does not cure the UPL violation.” Hence, the primary focus is that if UPL has already been committed by the non-attorney, then introduction of an attorney at a later juncture will not cure that prior UPL. Merely introducing an attorney into a situation is not an affirmative factor creating a UPL violation. The UPL committed by the non-attorney advisors has been addressed *supra* and distinguished from the activities of Respondent’s sales representatives.

The next major criticism of *Sharp* is that the purchase agreement did not require attorney approval. This too distinguished *Sharp* from Respondent’s case. In the present case the engagement agreement with the attorney is not signed by the Plan Attorney until after he has had an opportunity to speak with the potential plan member and assess the members legal needs. See Depo of E. Brueggeman (also Clouse 69-71 and miller 33-38).

In *Sharp* the attorney would take information gathered by the non-attorney advisors (who were committing UPL) and entered the information into a software program to create a trust and the attorney did this, “usually without first having contact with the customer” *Sharp* at ¶ 4. In contrast, the AFPLC Plan Attorneys both state that they conduct in-depth client interviews where the needs of the clients are assessed, legal judgement is used, recommendations are made, and an agreement is reached as to what legal work the attorneys are going to provide for the plan members (See Irwin Depo., pp. 17-18, 20; and Brueggeman Depo., pp. 27-34). This is in stark contrast and vastly different from the facts of *Sharp*.

In *Sharp*, the court determined that TEP produced the legal documents and then sent them directly to agents for delivery to individual purchaser. This clearly displayed the absence of necessary supervision and control that an attorney must exert over his support staff. This is because TEP did not act as support staff for Sharp. Their role could not be characterized as that

of support staff, they acted in a near independent nature, and the Court properly came to the determination that TEP and Abts engaged in UPL when, “they prepared legal documents” (*Sharp* at ¶ 6). As detailed *supra*, the involvement of AFPLC Plan Attorneys prior to document production was in-depth and proper. After the Plan Attorney and the Client came to the determination of what legal documents were to be prepared, if any, then the Plan Attorney would transmit this information to the AFPLC office in California where they were directed to follow the Plan Attorneys instructions (*See* J. Norman Depo., p. 49-52; *also see* K. Brown affidavit and R. Klein affidavit attached to Pro Se Memo in Opposition to Relator’s MSJ as Exhibits L & M). Upon completion of the draft of the document as directed by Plan Attorney Brueggeman, it was provided to him for review. Mr. Brueggeman reviewed *all* estate planning documents and signed off on them prior to them leaving his office *See* Brueggeman Depo., pp. 32, 35; Irwin Depo., p. 22; Volbert Depo., p. 18. In this manner, the AFPLC employees who aided the Plan Attorney in document production were truly support staff acting within the attorney’s direction and control unlike TEP. Further, after the CBA Motion to Enforce was overruled in December of 2004 and prior to the filing of the March 3rd, 2005 Motion to Cease and Desist in this court, the Plan Attorneys relocated to another office location and hired in-house staff to provide the services that AFPLC’s employees once offered. Moreover, this was done in response to concerns raised by Relator. *See* Brueggeman Depo., p. 7-12. These practices of AFPLC and their Plan Attorneys are drastically different than those of TEP and Sharp.

The above mentioned deposition testimony of the Plan Attorneys also directly conflicts with the allegations in *Sharp* that attorneys were only “tangentially involved in the transactions” and “they rarely came in contact with customers” *Sharp* at ¶ 9. Clearly the Attorneys in the

current case always had significant contact with the clients which far exceeded mere tangential contact.

iii) The sale of legal documents in *Sharp* distinguished from the Legal Plan which was offered by Respondents.

In the comparison of *Sharp* to Respondents' case, the Law and Argument section adopted by the Panel states, "The record further indicated that Respondent AFPLC primarily and predominantly promotes and sells living trusts and trust related products to Ohio citizens." At this point respondent renews the objection contained in section (A)(1) as if fully restated herein.

Respondents would like to highlight the differences between "selling living trusts and trust related products" as the non-attorney advisors in *Sharp* did with "the sale of membership in a legal plan" that the AFPLC sales representatives offered. The emphasis which is given to the timing of when an attorney enters the picture in *Sharp* is moot in regard to a legal plan. If an attorney was the first person to contact a potential plan member for solicitation of membership the attorney would run afoul of the restraints on direct solicitation by attorneys which are imposed by both the Rules of Professional Conduct and the Code of Professional Conduct *see* Conduct Rule 7.3; DR 2-104(A); DR 2-101(F); DR 2-101(H). Thus, if timing is indeed one of the empirical indicators of UPL when providing a legal plan, as relator has contended it is, then either every Legal Plan operating in Ohio is committing UPL when a new member joins or, every Ohio attorney connected to a legal plan operating in the manner defined by the CBA to not commit UPL must be violating his ethical duties by directly soliciting new plan members.

Also, revisiting *Sharp*, the non-attorney advisors were unabashedly selling legal documents, this was their stated goal. In comparison, the sales representatives for AFPLC never

intended to sell anything other than membership to a legal plan. This was stated on the materials that were signed by the potential plan members and is reinforced by the deposition testimony of the sales representatives cited *supra*. Plan members did not contract with Plan Attorneys at the time they joined the plan, this was done later when the Plan Attorney would sign the engagement agreement after they conducted an initial consultation with the plan member *See* Relator's MSJ at p. 20.

iv) There are no activities in *Sharp* analogous to HMISI or its agents.

Respondent HMISI is a California based corporation doing business in Ohio that sells insurance products offered through a variety of companies. Additionally, HMISI delivers non-legal services offered under the Plan (*See* 12-21-07 Order section (1)(A) "Statement of Case"). Relator states that activities of HMISI are analogous to those in *Sharp* however, realtor then fails to describe any specific conduct of HMISI, or its agents that are similar to those of any party in *Sharp*. It is alleged that HMISI agents review instructions that the Plan Attorney encloses with the estate planning document (see adopted 12-21-07 Order referencing Respondent's MSJ at p. 15-17). While this is true, it fails to state how this conduct constitutes UPL. The contract between the Plan Attorney and HMISI requires that HMISI and its agents maintain confidentiality of the documents. The Plan Attorney also meets with the delivery agents to review how they should perform their delivery and notarization services. Holmes Depo., pp. 21-21; Chiles Depo., pp. 49-51 . The pages referenced in Respondent's MSJ also indicate that HMISI agents also sometimes sell insurance products (which they are licensed to do). None of this conduct is analogous to that in *Sharp*.

b) The activities of Respondents AFPLC and HMISI, are distinctly different than the conduct of respondents in *Kathman*.

Kathman is very similar to *Sharp* in that it involves TEP and its companion corporation the Estate Preservation Group (“EPG”). The major difference in *Kathman* is that it concerns an action against the attorney who was associated with these entities. The court concluded that *Kathman* impermissibly operated under a trade name in violation of DR 2-102(B), impermissibly shared fees with non-attorneys in violation of DR 3-102(A), and impermissibly aided non-attorneys in the unauthorized practice of law in violation of DR 2-101(A). Only the third violation is potentially relevant to the case at hand.

The Court deemed that Attorney Kathman violated his ethical duties contained in DR 2-101(A) when he, “became affiliated with a group of non-attorneys who marketed and sold trusts to the public, and did little more than summarily approve of the product they were selling” (*Kathman* at 98). The Court then went further and stated, “Respondent did little more than advise the clients that he was entitled to a fee and then direct The Estate Plan to draft the living trust documents. Respondent did not see the final trust documents, did not execute the documents with the client, and certainly did not render the type of advice or counsel that a lawyer is ethically bound to render.” *Id.* Apart from estate planning documents being involved and an attorney being involved, little else is analogous to the case at hand.

As already detailed *supra* Plan Attorneys did extensive client interviews so that they could best advise and counsel Plan members. This is in stark contrast to being a “review attorney” who “rubber stamps” the UPL of non-attorneys. The Plan Attorneys executed engagement agreements after they had opportunity to interview, evaluate, and advise plan

members. In *Kathman* non-attorney advisors executed a Retainer for Legal Services on behalf of the attorney prior to the client ever speaking to the attorney. Kathman issued checks to a “paralegal” whom he did not direct or supervise and he never even reviewed the work. As detailed *supra* no support staff ever went unchecked in the present case and always operated under the direction of the Plan Attorneys. The Plan Attorneys in the present case would review all documents prior to them being released to the Plan Members. In *Kathman*, the attorney never even saw the finished documents.

There is mention of an agent whom delivered and executed documents in *Kathman*, much like Respondent HMISI’s agents would deliver and execute documents in the present case. However, *Kathamn* fails to deem this particular conduct UPL (only the attorney was disciplined) and further, there is no indication of instruction or guidance given to the agents by the attorney in *Kathman*. This is most likely due to the fact that Kathman never even saw the finished documents therefore he could not properly direct or control the agents. In the present case, the contract between the Plan Attorney and HMISI requires that HMISI and its agents maintain confidentiality of the documents. The Plan Attorney also meets with the delivery agents to review how they should perform their delivery and notarization services. *See* Holmes Depo., pp. 21-21; Chiles Depo., pp. 49-51. When the delivery agent arrives, he introduces himself as working for Heritage. *See* Roundtree Depo., p. 13; Holem’s Depo., p. 25). Further, the delivery agent specifically says he or she is not an attorney and is a licensed insurance agent. *See* Holmes Depo., p. 25. After introduction, the HMISI delivery agent reviews with the plan member the instructions that the Plan Attorney enclosed in the estate planning organizer regarding the execution of the documents and, if the Plan Attorney deemed it applicable, instructions regarding

the funding of any trust. *See* Gray Depo., p. 12, Holmes Depo., pp. 12-16, 26) If the plan member has any questions during the home delivery regarding the meaning of the documents or indicates a desire to change the documents, the HMISI agent tells the member that they should call the Plan Attorney to answer any questions, and the agent may facilitate a call to the Plan Attorney at that time. *See* Brueggeman Depo., p. 99). No agent in *Kathman* could have possibly been under the direction or control of Attorney Kathman like HMISI agents were directed and controlled by the Plan Attorney because Attorney Kathman never even saw the finished documents. No additional safeguards, procedures, or disclosures were mentioned in regard to the delivery persons in *Kathman*.

In *Kathman* the attorney worked in conjunction with TEP, an organization whose stated purpose was the sale of legal documents. This is not true in the present case, Respondents in the present case sell memberships to a legal plan. At this point respondent renews the objection contained in section (A)(1) as if fully restated herein.

2) Respondents Respectfully Objects to Conclusion of Law that Maintaining The Status of a “Prepaid Legal Services Plan” Does Not Alter The Character Of The Business

In adopting the Law and Argument section of the 12-21-07 Order the Panel adopted the conclusion of law that,

“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 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 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 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.”

12-21-07 panel order §(III)(A)(1) at ¶2. Respondents respectfully object to the conclusion, “that the name of something does not in fact alter its character”. Quite to the contrary, the fact that a corporation is registered as a prepaid legal services plan with the State of Ohio alters its character by changing the permissible scope of that corporation’s operations. Under the Ohio Rules of Professional Conduct which currently establish the Ethical Rules for Ohio lawyers, there are specific provisions and comments for prepaid legal service plans (in accordance with the prior Code of Professional Responsibility previously in effect). The most notable rights granted to legal service plans are that they may make live, direct, in person contact with individuals to inform them of this alternative avenue of procuring legal services (See Ohio Rule of Prof. Conduct 7.3, also see comment 8 to 7.3) and that they may associate themselves with lawyers, even to the extent of accepting fees from lawyers to refer them work (Ohio Rules of Prof. Conduct 7.2(b)(2) and comment 6 to 7.2). No other corporations are of this character in the eyes of the State of Ohio.

Because of these rules, the first contact initiated by the sales representatives, for the purpose of informing the public about their legal plan is permissible. It logically follows that to inform individuals about what is offered by a particular legal plan, the sales representative must have some discussions with members of the public about general areas of law and general

principals of law. This is exactly what the Sales Representatives of AFPLC did when they were conducting business.

In regard to the remainder of the statement “block quoted” above, the Panel supports the “it is what it is” statement that Respondents operate a “trust mill” by alleging that Respondents’ practices are analogous to *Sharp* and *Kathman*. In referencing previous objections, it is clear that the actions of Respondents are significantly distinguishable from the offending actions in the “analogous” cases.

3) Objection to Conclusion of Law 8.

Respondents respectfully object to the conclusion that they engaged in UPL by violating the terms of the 2003 consent agreement (*See* Consent Agreement attached at Appendix Tab P to Respondents’ MSJ). In the consent agreement signed by Respondents in 2003, the Respondents do not admit liability. What is present in the agreement is the conduct that the CBA considered to be UPL. The CBA had extensive knowledge of the AFPLC business model at the time of the agreement due to previous disclosures. This included knowledge of conduct they did not first object to until late 2004 and did not include as prohibited conduct in the 2003 Agreement. The Agreement provided that Respondents could continue to conduct lawful business, so they did. They engaged in the lawful business of making legal services available to those who may not otherwise be able to afford those services through a registered prepaid legal plan. The consent agreement is essentially two sets of requirements, both will now be addressed.

The first portion of the consent agreement provides the activities that the CBA considered to be UPL and prohibited Respondents from engaging in those activities, namely:

“To engage 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 the 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 service of an Ohio attorney to conduct only cursory reviews of said legal products with little or no contact with clients.”

Id at ¶ 1. Respondents first point of contention is that all eight provisions create restrictions regarding the “legal products” as defined in item (1). Respondents do not sell, prepare, advise about, give opinions as to a particular member’s suitability, prepare, or offer advice concerning execution of “legal products”. Respondents operate a prepaid legal services plan which provides access to attorneys. Further, respondents next point of contention is that Plan Attorneys do not conduct mere “cursory reviews of said legal products with little or no contact with clients.” Both of these points of contention have been fully addressed with great detail in the previous sections of this document, therefore respondent respectfully directs the Court to those arguments.

The second section of the consent agreement essentially lays out a series of tasks which Respondents must complete. First, forward the CBA a list of names and addresses of AFPLC’s Ohio plan members as of the date of the consent agreement. Next, forward all Ohio plan members a copy of the consent agreement with an agreed upon cover letter. Return the Member’s personal and financial information and inform plan members that they may have an independent attorney review the work of AFPLC’s plan attorneys and to reimburse each plan member up to

\$935 for this review. Finally, reimburse the CBA for its direct costs and expenses. Relator initially put the issue of reimbursement at issue, but that was proven to be complied with. *See* Affidavit of Greg Shbest at Appendix Tab Q of Respondents' MSJ. No other terms of this portion of the agreement appear to be at issue.

C. The Unauthorized Practice Of Law Determination Necessarily Includes a Balancing of Public Interests

In the case of *Cleveland Bar Association v. Comp. Management* (2004), 104 Ohio St.3d 168, 818 N.E.2d 1181 the Ohio Supreme Court rejected the recommendation submitted to them by The Board of Commissioners of the Unauthorized Practice of Law. The Board in that case did indeed find that Comp. Management had engaged in the unauthorized practice of law. This Court then essentially agreed with the Board's finding of UPL. However, this Court then rejected the Board's recommendation based on its own assessment of what public policy should dictate.

Indeed, this is another case where even if this Court comes to the same determination as the Board regarding UPL, its finding as to penalty should differ from that of the Board. This determination, based upon balancing the public's interest in obtaining affordable, comprehensive, and necessary legal services against protecting the public from the unauthorized practice of law. Further, another policy determination must be weighed against protection of the public as well. Should the Court impose such lofty penalties as the Board recommends, then this will shake the very foundation of prepaid legal service plans in the State of Ohio which too will result in harm to those members of the public either not aware of or not able to afford the legal services they require.

1) Balancing the public's interest in access to competent and inexpensive legal service vs. protection of the public.

In regard to the first issue of public policy, it was detailed through deposition testimony that the services of the Plan Attorneys in this matter were not only extensive but also of high quality. Both Plan Attorneys Brueggman and Irwin were deposed during the course of this matter and great insight was given into the high standard of legal service they provided. They were not the proverbial "rubber stamps" that previous "review attorneys" have been proven to be in other matters before this Court. To the contrary, even in examining only the manner in which they handled Relator's hot button issue of estate planning services, they did so with the integrity, professionalism, diligence, and objective viewpoint that is demanded of a lawyer. They did not serve two masters as attorney Kathman did, approving everything for the sake of profit. If they found during their initial consultation that a plan member would not gain substantial benefit from the services offered by the Legal Plan, they would inform the client of this. Further, they would advise and assist the client in obtaining a full refund of their membership fee. *See Bruggeman Depo.*, pp. 30-31, 43, 50, 90; *Irwin Depo.* P 30-31. In addition to this it is clear that the attorney consultations often covered a myriad of legal topics for the new members which, according to the terms of the Plan, they could revisit with the Plan Attorneys not only at a later time, but as many times as they wanted with no additional charges. These two Plan Attorneys combined have more than 62 years legal experience in a variety of matters, additionally, as of October 11, 2008, neither has any Discipline and Sanction History according to the Supreme Court of Ohio Attorney Directory. In the course of their depositions they discuss a plethora of areas in which they have experience such as: juvenile law, elder law, insurance law, traffic law, criminal law,

medicaid, real property law, personal property law, personal injury, probate, wills, powers of attorney, estate planning, and yes, trusts. Having experienced counsel available for consultation at no additional charge through a prepaid legal plan is clearly a great benefit to the public.

2) Balancing the protection of the public vs. the chilling effect this may have on legal service plans.

The other basis for policy consideration is the effect that a penalty of the magnitude recommended by the Board could have upon all legal plans currently working in or prospectively considering entry into Ohio. Opposing counsel is sure to point out that AFPLC is not your run of the mill legal plan due to it and Jeffery Norman's prior connection with disciplined attorney Andrew Fishman. They will certainly contend that any operation associated with Mr. Norman is a proverbial bad penny that just keeps turning up to prey upon the citizens of Ohio. However, the precautions and care taken to provide a legitimate legal service plan, both prior to and during the course of this extensive litigation suggest otherwise.

This can first be evidenced in the Deposition of Plan Attorney Edward Brueggman. Not only does Attorney Brueggman admit that he was familiar with Mr. Fishman's situation (*See Brueggeman Depo.*, p 126), he indicates that he believed a legitimate legal service plan was being offered in a proper manner. Mr. Brueggman stated, "I thought that the clients can be and need good service, and I thought that there has to be a legitimate way, a good way to make sure these services are delivered to these people, and wanted to be assured that before I got involved, that competent ethics counsel had passed on the business model that they intended to follow."

Then Attorney Brueggeman indicates that the model was reviewed by counsel. *Id* at p. 127.

Additional indications that Respondents desired to operate AFPLC in a proper and ethically sound manner can be further displayed. In November of 2004, prior to any notice that the CBA would be filing further complaints regarding Respondents, they ceased having sales representatives collect some of the information later objected to (*See* Norman Affidavit at ¶ 39 attached to J. Norman memo in opposition to MSJ and Exhibit 16 - Estate Planning Worksheet 11 04 attached to the same). In February of 2005, Respondents entered into a new contract with Plan Attorney Brueggeman whereby they would no longer provide any document preparation services for the plan attorney *See* Brueggeman Depo., p. 18; Brown affidavit, p. 3; Klein affidavit, p.3; Exhibit 28 - Brueggeman - American Family Agreement attached to J. Norman memo in opposition to relator's MSJ. To reinforce that this was being done in good faith it must be noted that in February of 2005 Respondents believed that they were operating in full compliance with the settlement agreement, this feeling was bolstered by the UPL board overruling Relators motion to enforce settlement agreement on December 30, 2004. On March 1, 2005 Respondents Plan Attorney was moved into a totally independent office with staff that was exclusively his own. Brueggeman Depo., pp. 7-11. To reinforce that this was done in good faith it must be noted that this move was *prior* to the March 3rd, 2005 motion to cease and desist filed with this Court by Relator. In January of 2006 Respondents made further changes regarding the information representatives collected and further revised the presentation book its representatives used (*See* J. Norman affidavit attached to J. Norman memo in opposition to relator's MSJ). These changes were done so as to comply with Settlement Agreement which this Court rejected in December of 2005, despite the agreement being rejected Respondent adopted the changes.

Finally, in January of 2007 Respondents further revised the materials their sales representatives use so they only have the potential to collect the most basic contact information. *See* J. Norman affidavit and Exhibit 18 - Application Worksheet attached to J. Norman Memo in Response to Relator's SJM.

These significant actions by Respondents should not go unnoticed by the Court and they will surely not go by unnoticed by other legal services plans. If the Court were to impose the heavy civil penalty recommended by the Board it will surely give pause to other legal service plans for a number of reasons. First and foremost, relator has spent the entire course of this litigation ignoring that Respondents even offer a legal services plan. They claim that Respondent has non-attorneys solicit, advise, contract for, produce, and explain specific legal services in disregard of UPL laws. At the same time they ignore all of the evidence offered by Respondents, the status they are granted as a validly registered legal services plan, the effect of that status on Respondents' business, Respondents' willingness to be compliant, and Respondents' want for clarification as to what compliance even is. Second, other plan providers will see the extent Respondents have went to in order to "comply" with the demands of the CBA so as to operate their business in what the CBA would consider a lawful manner. They will also see that the net result of these is a punitive penalty. Finally, they will see the extent to which litigation of this manner can carry on regardless of consent agreements and revisions to business practice and surely no one will need to advise them on the expense of litigation of this magnitude. In light of these concerns, adoption of the penalty requested by the Panel may well cause access legal service plans to dry up in the state of Ohio and this affordable alternative to traditional legal representation could no longer be an option to the public. At best, other legal service plans will

eliminate all portions of their plans regarding estate planning for Ohio members. This will result in harming Ohio citizens by reducing their estate planning options to a traditional attorney at traditional prices or nothing. Of course, this will only effect those Ohioans who may be in need of these services, that is, those who may eventually die.

Juxtaposed against both of the above policy arguments must be protection of the public. Relator has previously asserted that Ohio's citizenry has been harmed by the conduct of Respondents and they evidenced this via production of complaints filed as "Evidence Index set 2 of 3" with their Motion for Cease and Desist Order. The "complaints" consisted of approximately 3/10 of 1% of AFPLC's plan members at that time, further, some were only requests to cancel membership. *See* Respondents' Memorandum In Opposition to Relator's Motion for Cease and Desist Order, p. 13.

D Objections to the Boards Civil Penalty Recommendation

Imposition of a Civil Penalty is governed by Gov. Bar Rule VII, §8(B) and shall be based upon the following factors:

- 1) The degree of cooperation provided by the Respondent in the investigation;
- 2) The number of occasions that unauthorized practice of law was committed;
- 3) The flagrancy of the violation;
- 4) Harm to third parties arising from the offense;
- 5) Any other relevant factors.

The recommendation of the board is to impose a civil penalty of \$700,000 upon HMISI, AFPLC, Jeffery Norman, and Stanley Norman, jointly and severally. This determination was

based upon the Panel's allegations that the applicable factors are:

- a) Respondents' lack of cooperation in the action;
- b) The quantity of Respondents' violations of the 2003 consent agreement;
- c) Respondents' flagrant violations of the terms agreed to in the 2003 Consent Agreement;
- d) The harm caused to third parties by Respondents' violations;
- e) the following aggravating factors:
 - 1) Respondents' prior engagement in the unauthorized practice of law;
 - 2) The prior Agreement to cease in engaging in the unauthorized practice of law
 - 3) Respondents' prior notice per the 2003 Consent Agreement that its conduct constituted the unauthorized practice of law; and
 - 4) Respondents' benefit from its unauthorized practice of law
- f) The absence of mitigating factors

See UPL Board Final Report pp. 9-10. Each factor will now be addressed in turn in regard to Respondents HMISI, AFPLC, and Jeffery Norman.

1) Objection to allegation regarding Respondents' lack of cooperation in the action.

Respondents respectfully object to the allegation that they failed to cooperate in the current action. While it is true that Respondents actively engaged in this adversarial litigation, which is the basis of the American Legal System, they object that they failed to cooperate in the action. Respondents have complied with proper discovery requests by turning over thousands of

documents during the course of this litigation. Respondents produced a long list of agents, employees, office staff, and both Plan Attorneys for deposition, in some instances for multiple depositions. Respondent Jeffery Norman personally cooperated in this litigation by appearing to offer deposition testimony. Further Mr. Norman was well prepared to be deposed and participated in a candid manner so the results of the deposition would be fruitful. This is in stark contrast to the Representative offered by the CBA for deposition who clearly had no intention of cooperating with that phase of discovery and had clearly made no efforts to prepare so as to be competent for the deposition. Responses from the CBA representative included that she “had no idea who respondents were” and when asked about each respondent’s role in the breach her answer was simply, “I don’t know”. *See* CBA August 15 Depo., pp 41, 90-93. Though Respondents may have litigated vigorously, they were cooperative.

2) Objection to allegation of quantity of Respondents’ violations of the 2003 consent agreement

Respondents respectfully objects to the assertion that there are a large volume of violations of the 2003 consent agreement. Moreover, respondents contend that they did not in fact violate the 2003 consent agreement. Respondents conducted the lawful business of selling a legal plan granting access to attorneys who provide legal services to plan members. This action does not in fact constitute a breach of any term of the 2003 settlement agreement so as to result in a violation of that agreement.

3) Objection to allegation that Respondents flagrantly violated the terms of the 2003 consent agreement.

Respondents respectfully object that they flagrantly violated the terms of the 2003 consent agreement. The consent agreement was clear that Respondents were not restricted from conducting lawful business in the State of Ohio. From the time that the agreement was entered into up until the Cease and Desist Order was issued in 2005 Respondents engaged in the lawful business of operating a legal services plan. Respondents beliefs were reinforced by the Board on the Unauthorized Practice of Law overruling Relator's motion to enforce settlement agreement on December 30, 2004. Upon the issuance of the Cease and Desist order by this Court in 2005 Respondents immediately suspended all operations in Ohio. Respondents, through Counsel then reached an agreement through stipulated order in Federal Court with the CBA that the cease and desist order would not be enforced pending litigation in Federal Court. Only then, by the advice of counsel did Respondents resume business in the state of Ohio. The litigation in Federal Court was not fully resolved until July 13th, 2007, when the Federal Court ultimately found in favor of the CBA. On that date Respondents then immediately ceased operations in Ohio and those operations remain suspended to date. Respondents would direct the court to § III(B)(2) of the 12-21-07 Order regarding E. Peterson which states,

“At the outset, the Panel is troubled by Respondent Eric Peterson's 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 CBA MSJ at pg. 1. If respondent E. Peterson's statement is true, then such direction by legal counsel raises a myriad of issues”

Respondent would then direct the court to J. Norman Memo in Opposition to Relator's MJS,

p.54, which echos the statement of E. Peterson that American Family only resumed sales of its legal plan upon the advice of its attorney Philomena Dane. *Also See* Norman affidavit, ¶ 46 attached to same motion. In light of the fact that Respondents were relying on advise of counsel, and accordingly, truly believed they were authorized to operate, respondents respectfully object to allegations of any “flagrant violations.”

4) Objection to allegations of harm caused by violations of the 2003 consent agreement.

Respondents respectfully object that harm has been caused to third parties by alleged violations of the 2003 consent order. Of the complaints that were presented by the CBA to evidence violations and harm, many of them pertained to events which took place prior to the 2003 consent agreement. Currently there is no pending litigation in the State of Ohio against AFPLC, HMISI, or Jeffery Norman (excluding the case at hand). AFPLC, HMISI, and Jeffery Norman are not aware of any requests for refunds of plan membership fees that are currently outstanding. Request for refunds also constituted a number of the complaints offered by the CBA. In some instances, the CBA has alleged that because an estate is of a certain monetary amount, having a Plan Attorney prepare trust documents for a member are wholly inappropriate and this damaged plan members. If estate taxes were the only considerations to be weighed when an AB trust is proposed, their allegations of harm might have some merit. However, there are a number of other benefits to passing property via trust as opposed to the other alternatives available in Ohio. Moreover, these things were discussed with the Plan Attorney which ultimately manifested an agreement and an understanding between that attorney and the plan member prior to execution of any estate planning documents. The complaints offered by the

CBA represented less than three-tenths of one percent (3/10 of 1%; .003) of American Family Plan members, of that minuscule percentage, a very few individual complaints raise eyebrows. However, the conduct allegedly exhibited by sales representatives in these ultra-rare complaints flies in the face of all the standards, training, and safeguards which have been implemented, stressed, and continually refined by AFPLC, HMISI, and Jeffery Norman as detailed above.

5) Objection to aggravating factors.

a) Objection to the allegation that Respondents previously engaged in the unauthorized practice of law;

Respondents have not previously engaged in the unauthorized practice of law.

Respondents previously operated a legitimate prepaid legal services plan which provides access to attorneys for plan members. Respondents did not admit UPL in the prior consent agreement. Any connection with attorney Andrew Fishman was strictly through a now dissolved corporation that Jeffery Norman did have a financial interest in, however, not only was that corporation not found to have violated UPL regulations by any agency in Ohio but, Jeffery Norman individually was not found to have engaged in any UPL violation in Ohio.

b) Objection to the allegation that the prior Agreement to cease in engaging in the unauthorized practice of law has bearing as an aggravating factor.

As stated above in II(D)(3), Respondents ceased their business operations not once, but two times in Ohio. The latter has remained in effect to date. Respondents only resumed working in Ohio upon the advice of counsel that the cease and desist would not be in effect until the litigation in Federal Court had concluded. Not only does this series of stopping, restarting, and then stopping their business a second time not an aggravating factor, Respondents believe it is a

mitigating factor which they will address *infra*.

c) Objection that Respondents were on prior notice that their conduct constituted UPL by virtue of the 2003 Consent Agreement.

Respondents were not on notice that their actions constituted UPL due to the prior 2003 consent agreement, they were on notice that they could operate a lawful business in Ohio. Respondents believed not only were they were in full compliance with the 2003 consent order, they thought that the subsequent changes they made to their business model caused it to exceed mere compliance and safeguarded against any possible UPL in the future. This belief was bolstered first by the UPL board finding in their favor on December 30th, 2004, and then again by their Counsel advising them they could resume their operations in Ohio.

d) Objection that Respondents' benefitted from the unauthorized practice of law

Respondents do not object that they reaped benefit from operating business in Ohio, that is the goal of capitalism and the free market. However, respondents contend that they did not benefit from UPL because they do not feel that the operations of the business constituted UPL as has been addressed more fully herein.

6) Objection that no mitigating factors are present to be considered.

Respondents respectfully offers the following mitigating factors to be considered. Respondents at all times operated in good faith and at advice of counsel during this litigation. Respondents did vigorously litigate the case at hand, but were indeed cooperative as the case progressed. Respondents complied fully with reimbursement to any Ohio plan members who

choose to seek alternative legal opinions on documents in accordance with the consent agreement. Respondents closed the doors to their business not once, but twice during the course of their litigation and did not re-open after the first closure until they had clearance from their Counsel. Respondents have expended significant sums of money obtaining legal opinions from attorneys with expertise in the area of legal ethics regarding their business model both prior to and during this litigation so as to assure lawful operation. Respondents earnestly believe that the business model utilized is in compliance with all applicable legal and ethical guidelines and welcome additional guidelines so as to comply with them.

Respondents would also like to take this opportunity to reiterate that the case at hand is not only dissimilar to *Sharp*, it is distinguishable in nearly every aspect. The penalties dealt by this Court in *Sharp* were indeed severe. Should the Court does choose to adopt the findings of the UPL Board, congruent penalties are not appropriate because the matters are so dissimilar.

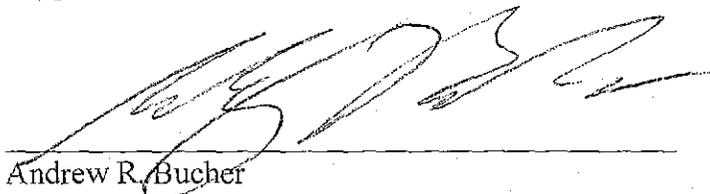
III) CONCLUSION

For the reasons fully set forth above, Respondents Heritage Marketing and Insurance Services Inc., American Family Prevail Legal Corp., and Jeffery Norman, respectfully request that this Court reject the Board's Final Report and Recommendations and remand this case for a full and proper consideration of all the evidence in the record.

Alternatively, should the court choose to accept the Board's Final Report, Respondents Heritage Marketing and Insurances Services Inc, American Family Prepaid Legal Corp., and Jeffery Norman respectfully request that this Court reject the Boards Recommendations at to penalty in this matter for the reasons stated fully set forth above.

Alternatively, Should the court reject the Boards Recommendation as to penalty, Respondents respectfully request that no monetary penalty be imposed and that they be given some clarification as to what would constitute proper operation so as to avoid future penalty and future litigation.

Respectfully Submitted,



Andrew R. Bucher
Attorney for Respondents, AFPLC, HMISI, and
Jeffery Norman
(0082931)
REINEHIMER & REINHIEIMER
204 Justice Street
Fremont, Ohio 43420
P: 419.355.0108
F: 419.355.0622

CERTIFICATION

A copy of the foregoing written motion was mailed to Relator, Columbus Bar Association, at 175 South 3rd Street, Columbus, OH 43215, and to Joyce D. Edelman Esq. Of Porter, Wright, Morris, and Arthur LLP, 41 S. High Street, Columbus OH 43215; by First Class U.S. Mail, postage prepaid on the 13th day of October, 2008



Andrew R. Bucher
Attorney for Respondents HMISI, AFPLC, and
Jeffery Norman

APPENDIX

FILED

The Supreme Court of Ohio

SEP 12 2008

CLERK OF COURT
SUPREME COURT OF OHIO

Columbus Bar Association,
Relator,

v.

Case No. 05-422

American Family Prepaid Legal Corporation,
et al.,

ORDER

Respondents.

On April 12, 2005, this court granted an interim cease and desist motion, filed by the Columbus Bar Association, and ordered respondents to immediately cease and desist engaging in the unauthorized practice of law. The court further ordered the Board on the Unauthorized Practice of Law to hold a hearing to consider whether the March 2003 settlement agreement between the parties had been violated and to file a report with the court. On August 26, 2008, the board filed two reports in the office of the clerk of this court.

The first report, filed pursuant to Rule VII(5b) of the Rules for the Government of the Bar of the Supreme Court of Ohio, recommends that the court approve the March 2008 consent decrees submitted by the parties as to respondents Joseph Hamel, Timothy Holmes, Adam Hyers and Timothy Clouse. The board further recommends that civil penalties in the amount of \$2,500 be imposed against each of these four respondents as agreed upon by the parties and that each of these individual respondents be ordered to deposit his respective penalty with the clerk of the court within 90 days after the court's approval and entry of the consent decrees.

As to the report regarding respondents Joseph Hamel, Timothy Holmes, Adam Hyers and Timothy Clous, it is ordered that pursuant to Gov.Bar R. VII(5b)(E)(1), no objections may be filed by the parties. It is further ordered that this matter is submitted to the court on the report and record filed by the board and that the court shall enter an order as it finds proper.

The second report filed by the board recommends that the court issue an order finding that the remainder of the respondents have engaged in the unauthorized practice of law, prohibiting those respondents from engaging in the unauthorized practice of law in the future, imposing civil penalties ranging from \$10,000 to \$700,000 upon those respondents, and providing for the reimbursement of costs and expenses incurred by the board and relator.

Upon consideration thereof, it is ordered by the court that the respondents or relator may show cause why the recommendation of the board should not be confirmed by the court and an appropriate order entered.

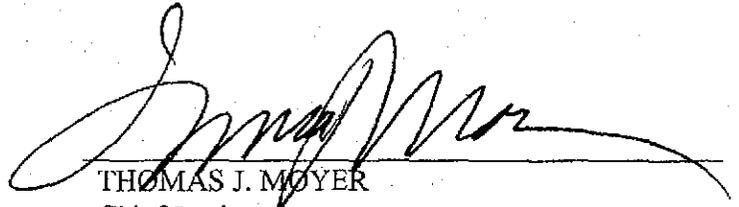
It is further ordered that any objections to the findings of fact or recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order and accompanied by 18 copies. It is further ordered that the objections and brief in

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support include proof of service of copies on the secretary of the board and all counsel of record. It is further ordered that an answer brief and proof of service may be filed within 15 days after a brief in support of objections has been filed. It is further ordered that the answer brief be accompanied by 18 copies.

After a hearing on the objections or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.



THOMAS J. MOYER
Chief Justice

BEFORE THE SUPREME COURT OF OHIO

COLUMBUS BAR ASSOCIATION, : SUPREME COURT CASE NO.
 : 2005-0422
 Relator :
 : Board Case No. UPL 02-10
 vs. :
 : FINAL REPORT
 AMERICAN FAMILY PREPAID : (adopting Order ruling on
 LEGAL CORPORATION, ET AL., : dispositive Motions regarding
 : respondents American Family
 Respondent : Prepaid Legal Corporation,
 : Heritage Marketing & Insurance
 : Services, Inc., Stanley Norman,
 : Jeffrey Norman, 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 Schlop,
 : Jerold Smith, Patricia Soos,
 : Anthony Sullivan, Dennis Quinlan,
 : Daniel Roundtree)

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

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SUPREME COURT OF OHIO

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 ("HMIS"), 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 Susac 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.

On November 12, 2007, Entity Respondent AFPLC and Individual Respondent STANLEY NORMAN filed voluntary petitions in bankruptcy.

Following several modifications to the discovery schedule and dispositive Motion deadline, the Panel per its Order filed on December 21, 2007, addressed 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. Said Order specifically:

1. denied Respondents AMERICAN FAMILY PREPAID LEGAL CORPORATION (“AFPLC”), HERITAGE MARKETING INSURANCE SERVICES (“HMIST”), STANLEY NORMAN, JEFFREY NORMAN, HAROLD MILLER, and PAUL CHILES’S MOTION FOR SUMMARY JUDGMENT and granted Relator’s Motion for Summary Judgment against the same;
2. denied Individually Named Respondents PAUL MORRISON and ERIC PETERSON’s Motion for Summary Judgment and granted Relator’s Motion for Summary Judgment against the same;

3. denied 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's Motion for Summary Judgment and granted Relator's Motion for Summary Judgment against the same;
4. denied Individually Named Respondents TIMOTHY CLOUSE, JOSEPH HAMEL, TIMOTHY HOLMES, and ADAM HYERS's Motion for Summary Judgment and denied Relator's Motion for Summary Judgment against the same as there existed genuine issues of material fact as to said Individually Named Respondents;
5. denied Relator's Motion to Strike Memorandum in Opposition of Respondent JEFFREY L. NORMAN and denied Respondent JEFFREY L. NORMAN's Motion to Strike Relator's Motion for Summary Judgment;
6. granted Individually Named Respondents DANIEL ROUNDTREE'S Motion for Summary Judgment.

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.

Relator filed a Motion for an Order Confirming that it is Excepted From the Automatic Stay Under 11 U.S.C. §362(d)(1) in the bankruptcy Case No. 8:07-bk-13777-RK involving Entity Respondent AFPLC and Individual Respondent STANLEY

NORMAN. On April 29, 2008, the Bankruptcy Court heard oral argument and granted the CBA's Motion for Relief From the Automatic Stay pursuant to 11 U.S.C. §362(d)(1).

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. Respondents, AFPLC, HMISI, S. NORMAN, J. NORMAN, P. CHILES, and H. MILLER, (collectively the "Entity Respondents") are not licensed to practice law in Ohio.

3. Individual Respondents, P. MORRISON, E. PETERSON, J. ALTON, W. DOWNS, J. EHLINGER, L. MACK GORDON, S. GROTE, D. HELBERT, S. JACKSON, C. MILLER, J. RIBLETT, R. ROMPALA, K. ROYER, V. SCHMIDT, A. SCHLOP, J. SMITH, P. SOOS, A. SULLIVAN, and D. QUINLAN (collectively the "Individual Respondents" for purposes of this Report) are not licensed to practice law in Ohio.

4. Individual Respondents, T. CLOUSE, J. HAMEL, T. HOLMES, and A. HYERS are not licensed to practice law in Ohio and are specifically addressed in a separate Panel Report adopting the proposed Consent Decrees involving said Individual Respondents.

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

6. The Panel specifically adopts the Statement of Facts as set forth in the Order filed on December 21, 2007, as if fully restated herein. (Exhibit 1)

7. The Panel specifically notes the relief from the automatic stay granted in AFPLC's and STANLEY NORMAN's bankruptcy case per Order dated May 7, 2008, in its determination to proceed with full disposition of this matter.

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 Ohio St.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 Entity Respondents and the Individual Respondents are not attorneys nor have they ever been admitted to practice law in Ohio.

8. The Entity Respondents and Individual Respondents engaged in the unauthorized practice of law by violating the terms of the Consent Agreement as more fully set forth in this Panel's Order filed on December 21, 2007.

9. The Panel specifically adopts the Law and Argument set forth in the Order filed on December 21, 2007, and Nunc Pro Tunc Order (Exhibit 1) as if fully restated herein.

IV. PANEL RECOMMENDATIONS

1. The Panel recommends that the Supreme Court of Ohio issue an Order

finding that the Entity Respondents and Individual Respondents have engaged in the unauthorized practice of law and thus breached the 2003 Consent Agreement.

2. The Panel further recommends that the Supreme Court of Ohio issue a further Order prohibiting the Entity Respondents and Individual Respondents from further engaging in the unauthorized practice in the future.

3. Despite the Panel's earlier conclusion set forth in its December 7, 2007, Order to not address the issue of civil penalties, the Panel reconsidered its conclusion following its receipt of the Consent Decrees addressed in a separate Panel Report whereby penalties were voluntarily agreed, and in the interests of judicial economy and equity, considered the appropriateness of recommending to the Supreme Court at this time the imposition of civil penalties pursuant to Gov. Bar Rule VII, §8(B). The Panel considered the following factors in concluding that civil penalties should be imposed upon the Entity and Individual Respondents:

- a. Respondents' lack of cooperation in the within action;
- b. The quantity of Respondents' violations of the 2003 Consent Agreement;
- c. Respondents' flagrant violations of the terms agreed to in the 2003 Consent Agreement;
- d. The harm caused to third parties by the Respondents' violations;
- e. Aggravating factors including:
 1. Respondents' prior engagement in the unauthorized practice of law;

2. the prior Agreement to cease engaging in the unauthorized practice of law;
3. Respondents' prior notice per the 2003 Consent Agreement that its conduct constituted the unauthorized practice of law; and
4. Respondents' benefit from its unauthorized practice of law;

and

- f. The absence of mitigating factors.

4. The Entity Respondent AFPLC, through its sales representatives, promoted the sale of prepaid legal services for the purpose of selling living trusts and other related estate planning products. AFPLC primarily and predominantly promoted and sold living trusts and trust related products to targeted Ohio citizens. The sale of these trust products and the actions of Respondent AFPLC and its sales representatives are in contravention of the prohibitions agreed to by Respondent AFPLC in the Consent Agreement.

The Entity Respondent HMISI generated a profit through the actions of its employees, independent contractors, and/or representatives (i.e., delivery agents) who delivered the trust documents created by Entity Respondent AFPLC. The delivery agents of HMISI reviewed instructions that the Plan attorney enclosed with the estate planning documents to be delivered to the Plan member. These agents could return annually to discuss the Plan member's financial situation, and if necessary, sell additional insurance products.

The sole Plan attorney was contracted to provide services and training to Entity Respondent HMISI while at the same time contracted to serve as Plan attorney by Entity Respondent AFPLC. The engagement agreement with the Plan member was not executed by the Plan Attorney until after the Plan member was signed up. The evidence showed that legal documents were prepared in the offices of Entity Respondent AFPLC by employees of Entity Respondents AFPLC or HMISI. 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.

The Panel considered the fact that Entity Respondents continued to operate and conduct business in blatant violation of the terms of the Consent Agreement. Said continued violation of the Consent Agreement and continued engagement in the unauthorized practice of law warrants the imposition of civil penalties against the Entity Respondents.

Accordingly, the Panel recommends that civil penalties should be imposed upon these two (2) Respondents.

5. The Panel also determined that civil penalties should be imposed upon Respondents S. NORMAN and J. NORMAN (hereinafter "Respondents NORMAN") as 50% owners of AFPLC and officers of HMISI per their violation of the Consent Agreement by their oversight, authority, control, and knowledge of the ongoing operations, activities, and plans of both Entity Respondents.

The Panel determined that Respondents NORMAN oversaw, authorized, controlled, and knew of the thousands of violations of the 2003 Consent Agreement which violations may each carry a maximum penalty of \$10,000.00. While the Panel

acknowledges that Relator seeks a total civil penalty against Respondents relative to the marketing and sale of trusts of \$70,280,000.00, the Panel recommends that a total civil penalty of \$700,000.00 be imposed against Respondents NORMAN and Entity Respondents AFPLC and HMISI, jointly and severally. (Relator's Motion for Summary Judgment and Memorandum in Opposition to Respondents' Motions for Summary Judgment filed 10/01/07, p. 45).

6. The Panel determined that Individual Respondent P. CHILES was the state marketing director of AFPLC and oversaw its sales force as well as HMISI's contractors which position and oversight warrants the imposition of civil penalties against him. Accordingly, the Panel recommends that a civil penalty of \$10,000.00 should be imposed against Respondent CHILES.

7. The Panel determined that Individual Respondent H. MILLER was AFPLC's office manager and therefore responsible for the actions and conduct of AFPLC which actions and conduct constitute a breach of the Consent Agreement warranting the imposition of civil penalties. The Panel accordingly recommends that a civil penalty of \$7,500.00 should be imposed against Respondent MILLER.

The Panel thus recommends that the Respondents be ordered to deposit the penalties imposed against them with the Clerk of Court ninety (90) days after the Court's approval and entry of this Decision.

V. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered the matter on June 30, 2008. The Board adopted the findings of fact, conclusions of law, and recommendation of the Panel.

The Board recommends that the Supreme Court of Ohio find that the Entity Respondents and Individual Respondents have engaged in the unauthorized practice of law and breached the 2003 Consent Agreement.

The Board further recommends that the Supreme Court of Ohio issue an order prohibiting the Entity Respondents and Individual Respondents from further engaging in the unauthorized practice of law in the future.

The Board further recommends that the Supreme Court impose a civil penalty of \$700,000 against Respondents NORMAN and Entity Respondents AFPLC and HMISI, jointly and severally.

The Board further recommends that the Supreme Court impose a civil penalty of \$10,000 against Respondent CHILES.

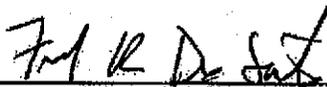
The Board further recommends that the Supreme Court impose a civil penalty of \$7,500 against Respondent H. MILLER.

The Board further recommends that the Respondents be ordered to deposit the penalties imposed against them with the Clerk of Court within ninety days after the Court's approval and entry of its Decision.

VI. STATEMENT OF COSTS

Attached as Exhibit 2 is a statement of costs and expenses incurred to date by the Board and Relator in this matter for which payment by respondents on a joint and several basis is recommended.

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



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

DR 2-101. PUBLICITY.

(A) A lawyer shall not, on his or her own behalf or that of a partner, associate, or other lawyer affiliated with the lawyer or the lawyer's firm, use, or participate in the use of, any form of public communication, including direct mail solicitation, that:

(1) Contains any false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement;

(2) Seeks employment in connection with matters in which the lawyer or law firm does not intend to actively participate in the representation, but that the lawyer or law firm intends to refer to other counsel, except that this provision shall not apply to organizations defined in DR 2-103(D)(1);

(3) Contains any testimonial of past or present clients pertaining to the lawyer's capability;

(4) Contains any claim that is not verifiable;

(5) Contains characterizations of rates or fees chargeable by the lawyer or law firm, such as "cut-rate," "lowest," "giveaway," "below cost," "discount," and "special;" however, use of characterizations of rates or fees such as "reasonable" and "moderate" is acceptable.

(B) Subject to the limitations contained in these rules:

(1) A lawyer or law firm may advertise services or the sale of a law practice through newspapers, periodicals, trade journals, "shoppers," and similar print media, outdoor advertising, radio and television, and written communication.

(2) A lawyer or law firm may permit or purchase inclusion of information in a telephone or city directory, subject to the following standards:

(a) The lawyer's or the firm's name, address, and telephone number may be listed alphabetically in the residential, business, or classified sections.

(b) Listing or display advertising in the classified section shall be limited to one or more of the following:

(i) under the general heading "Lawyers" or "Attorneys;"

(ii) if a lawyer or a firm meets the requirements of DR 2-105(A)(1), under the classification or heading identifying the field or area of practice in which the lawyer or firm is so qualified;

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(iii) under a classification or heading that identifies the lawyer or firm by geographic location, certification as a specialist pursuant to DR 2-105(A)(4) or (5), or field of law as provided by DR 2-105(A)(6).

(c) Nothing contained in this rule shall prohibit a lawyer or law firm from permitting inclusion in reputable law lists and law directories intended primarily for the use of the legal profession, of such information as has traditionally appeared in those publications.

(3) Brochures or pamphlets containing biographical and informational data that is acceptable under these rules may be disseminated directly to clients, members of the bar, or others.

(C) A communication is false or misleading if it satisfies any of the following:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Code of Professional Responsibility or other law;

(3) Is subjectively self-laudatory, or compares a lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

(D) The following information with regard to lawyers, law firms, or members of firms will be presumed to be informational rather than solely promotional or self-laudatory, and acceptable for dissemination under these rules, if accurate and presented in a dignified manner:

(1) Name or names of lawyer, law firm, and professional associates, together with their addresses and telephone numbers, with designations such as "Lawyer," "Attorney," "Law Firm";

(2) Field or fields of practice, limitations of practice, or areas of concentration, but only to the extent permitted by DR 2-105;

(3) Date and place of birth;

(4) Dates and places of admission to the bar of the state and federal courts;

(5) Schools attended, with dates of graduation and degrees conferred;

(6) Legal teaching positions held at accredited law schools;

(7) Authored publications;

(8) Memberships in bar associations and other professional organizations;

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- (9) Technical and professional licenses;
- (10) Military service;
- (11) Foreign language abilities;
- (12) Subject to DR 2-103, prepaid or group legal service programs in which the lawyer or firm participates;
- (13) Whether credit cards or other credit arrangements are accepted;
- (14) Office and telephone answering services hours.

(E)(1) Any of the following information with regard to fees and charges, if presented in a dignified manner, is acceptable for communication to the public in the manner stipulated by DR 2-101(B):

- (a) Fee for an initial consultation;
- (b) Availability upon request of either a written schedule of fees or of an estimate of the fee to be charged for specific services;

(c) Contingent fee rates, subject to DR 2-106(C), provided that the statement discloses whether percentages are computed before or after deduction of costs and expenses and advises the public that, in the event of an adverse verdict or decision, the contingent fee litigant could be liable for payment of court costs, expenses of investigation, expenses of medical examinations, and costs incurred in obtaining and presenting evidence;

(d) Fixed fee or range of fees for specific legal services or hourly fee rates, provided the statement discloses that;

(i) Stated fixed fees or range of fees will be available only to clients whose matters are included among the specified services;

(ii) If the client's matter is not included among the specified services or if no hourly fee rate is stated, the client will be entitled, without obligation, to a specific written estimate of the fee likely to be charged.

(2)(a) If a lawyer or a law firm quotes a fee for a service in an advertisement or direct mail solicitation, the service must be rendered for no more than the fee advertised or quoted.

(b) Unless otherwise specified in the advertisement, if a lawyer or a law firm includes any fee information in a publication that is published more frequently than one time per month, the lawyer or law firm shall be bound by any representation made in the advertisement for a period of not less than thirty days after such publication. If a lawyer or law firm publishes any

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fee information in a publication that is published once a month or less frequently, the lawyer or law firm shall be bound by any representation made in the advertisement until the publication of the succeeding issue. If a lawyer or law firm advertises any fee information in a publication that has no fixed date for publication of a succeeding issue, the lawyer or law firm shall be bound by any representation made in the advertisement for a reasonable period of time after publication, but in no event less than one year.

(c) Unless otherwise specified, if a lawyer or law firm broadcasts any fee information by radio or television, the lawyer or law firm shall be bound by any representation made in the broadcast for a period of not less than thirty days after the date of the broadcast.

(F)(1) A lawyer shall not make any solicitation of legal business in person or by telephone, except as provided in DR 2-103 and DR 2-104.

(2) A lawyer or law firm may engage in written solicitation by direct mail addressed to persons or groups of persons who may be in need of specific legal service by reason of a circumstance, condition, or occurrence that is known or, upon reasonable inquiry, could be known to the soliciting lawyer or law firm, provided the letter of solicitation:

(a) Discloses accurately and fully the manner in which the lawyer or law firm became aware of and verified the identity and specific legal need of the addressee;

(b) Disclaims any prior acquaintance or contact with the addressee and avoids any personalization in approach unless the facts are otherwise;

(c) Disclaims or refrains from expressing any predetermined evaluation of the merits of the addressee's case;

(d) Conforms to standards required by these rules with respect to information acceptable for inclusion in media advertising by lawyers and law firms;

(e) Includes in its text and on the envelope in which mailed, in red ink and in type no smaller than 10 point, the recital –“ADVERTISEMENT ONLY.”

(3) The provisions of division (F)(2) of this rule shall not apply to organizations defined in DR 2-103(D)(1).

(4) Prior to mailing a written solicitation of legal business pursuant to division (F)(2) of this rule to a party who has been named as a defendant in a civil action, a lawyer or law firm shall verify that the party has been served with notice of the action filed against that party. Service shall be verified by consulting the docket of the court in which the action was filed to determine whether mail, personal, or residence service has been perfected or whether service by publication has been completed. Division (F)(4) of this rule shall not apply to the solicitation of a debtor regarding representation of the debtor in a potential or actual bankruptcy action.

(G) A lawyer shall not directly or indirectly compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

(H)(1) If a communication is sent by a lawyer to a prospective client or a relative of a prospective client within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death, the following "Understanding Your Rights" must be enclosed with the communication.

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UNDERSTANDING YOUR RIGHTS*

If you have been in an accident, or a family member has been injured or killed in a crash or some other incident, you have many important decisions to make. We believe it is important for you to consider the following:

1. **Make and keep records** - If your situation involves a motor vehicle crash, regardless of who may be at fault, it is helpful to obtain a copy of the police report, learn the identity of any witnesses, and obtain photographs of the scene, vehicles, and any visible injuries. Keep copies of receipts of all your expenses and medical care related to the incident.
2. **You do not have to sign anything** - You may not want to give an interview or recorded statement without first consulting with an attorney, because the statement can be used against you. If you may be at fault or have been charged with a traffic or other offense, it may be advisable to consult an attorney right away. However, if you have insurance, your insurance policy probably requires you to cooperate with your insurance company and to provide a statement to the company. If you fail to cooperate with your insurance company, it may void your coverage.
3. **Your interests versus interests of insurance company** - Your interests and those of the other person's insurance company are in conflict. Your interests may also be in conflict with your own insurance company. Even if you are not sure who is at fault, you should contact your own insurance company and advise the company of the incident to protect your insurance coverage.
4. **There is a time limit to file an insurance claim** - Legal rights, including filing a lawsuit, are subject to time limits. You should ask what time limits apply to your claim. You may need to act immediately to protect your rights.
5. **Get it in writing** - You may want to request that any offer of settlement from anyone be put in writing, including a written explanation of the type of damages which they are willing to cover.
6. **Legal assistance may be appropriate** - You may consult with an attorney before you sign any document or release of claims. A release may cut off all future rights against others, obligate you to repay past medical bills or disability benefits, or jeopardize future benefits. If your interests conflict with your own insurance company, you always have the right to discuss the matter with an attorney of your choice, which may be at your own expense.
7. **How to find an attorney** - If you need professional advice about a legal problem but do not know an attorney, you may wish to check with relatives, friends, neighbors, your employer or co-workers who may be able to recommend an attorney. Your local bar association may have a lawyer referral service that can be found in the Yellow Pages.

8. **Check a lawyer's qualifications** - Before hiring any lawyer, you have the right to know the lawyer's background, training, and experience in dealing with cases similar to yours.

9. **How much will it cost?** - In deciding whether to hire a particular lawyer, you should discuss, and the lawyer's written fee agreement should reflect:

- a. How is the lawyer to be paid? If you already have a settlement offer, how will that affect a contingent fee arrangement?
- b. How are the expenses involved in your case, such as telephone calls, deposition costs, and fees for expert witnesses, to be paid? Will these costs be advanced by the lawyer or charged to you as they are incurred? Since you are obligated to pay all expenses even if you lose your case, how will payment be arranged?
- c. Who will handle your case? If the case goes to trial, who will be the trial attorney?

This information is not intended as a complete description of your legal rights, but as a checklist of some of the important issues you should consider.

***THE SUPREME COURT OF OHIO, WHICH GOVERNS THE CONDUCT OF LAWYERS IN THE STATE OF OHIO, NEITHER PROMOTES NOR PROHIBITS THE DIRECT SOLICITATION OF PERSONAL INJURY VICTIMS. THE COURT DOES REQUIRE THAT, IF SUCH A SOLICITATION IS MADE, IT MUST INCLUDE THE ABOVE DISCLOSURE.**

(2) The communication described in division (H)(1) of this rule must meet all of the other requirements of these rules.

(3) The communication described in division (H)(1) of this rule applies to any communication sent by a lawyer, on the lawyer's behalf, or by the lawyer's firm, partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm.

[Effective: October 5, 1970; amended effective October 20, 1975; November 28, 1977; February 12, 1979; June 11, 1979; March 1, 1986; January 1, 1993; August 16, 1993; January 1, 2000; April 1, 2001; February 1, 2003.]

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DR 2-102. PROFESSIONAL NOTICES, LETTERHEADS, AND OFFICES.

(A) A lawyer or law firm may use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, that are in dignified form and comply with the following:

(1) A professional card of a lawyer identifying the lawyer by name and as a lawyer and giving the lawyer's addresses, telephone numbers, law firm name, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates and may be used for identification.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, sale of a law practice, or similar matters pertaining to the professional offices of a lawyer or law firm. It shall not state the nature of the practice except as permitted under DR 2-105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.

(4) A letterhead of a lawyer identifying the lawyer by name and as a lawyer, and giving the lawyer's addresses, telephone numbers, law firm name, associates, and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under the name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or association, legal clinic, limited liability company, or registered partnership shall contain symbols indicating the nature of the organization as required by Gov. Bar R. III. If otherwise lawful, a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, public executive, or administrative post or office shall not permit his or her name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm, and during this period other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm.

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(C) A lawyer shall not hold himself or herself out as having a partnership with one or more other lawyers or professional corporations unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on the lawyer's letterhead, office sign, or professional card, nor shall the lawyer identify himself or herself as a lawyer in any publication in connection with his or her other profession or business.

(F) Nothing contained in this rule shall prohibit a lawyer from using or permitting the use, in connection with the lawyer's name, of an earned degree or title derived from an earned degree indicating the lawyer's training in the law.

(G) A legal clinic operated by one or more lawyers may be organized by the lawyer or lawyers for the purpose of providing standardized and multiple legal services. The name of the law office shall consist only of the names of one or more of the active practitioners in the organization, and may include the phrase "legal clinic" or words of similar import. The use of a trade name or geographical or other type of identification or description is prohibited. The name of any active practitioner in the clinic may be retained in the name of the legal clinic after the lawyer's death, retirement or inactivity because of age or disability, and the name must otherwise conform to other provisions of the Code of Professional Responsibility and The Supreme Court Rules for the Government of the Bar of Ohio. The legal clinic cannot be owned by, and profits or losses cannot be shared with, nonlawyers or lawyers who are not actively engaged in the practice of law in the organization.

[Effective: October 5, 1970; amended effective November 28, 1977; March 13, 1978; June 11, 1979; January 4, 1982; March 1, 1986; December 1, 1995; February 1, 2003.]

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DR 2-103. RECOMMENDATION OF PROFESSIONAL EMPLOYMENT.

(A) A lawyer shall not recommend employment, as a private practitioner, of himself or herself, his or her partner, or associate to a non-lawyer who has not sought the lawyer's advice regarding employment of a lawyer, except as provided in DR 2-101.

(B) A lawyer shall not compensate or give any thing of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client, except that the lawyer may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).

(C) A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, except that:

(1) The lawyer may request referrals from a lawyer referral service that refers the lawyer to prospective clients but only if the lawyer referral service conforms to all of the following:

(a) Operates in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service programs, and government, consumer, or other agencies who can provide the assistance the clients need in light of their financial circumstance, spoken language, any disability, geographical convenience, and the nature and complexity of their problem;

(b) Calls itself a lawyer referral service or a lawyer referral and information service;

(c) Is open to all lawyers who are licensed and admitted to the practice of law in Ohio who maintain an office in the geographical area to be served by the service and who meet reasonable, objectively determined experience requirements established by the service; pay the reasonable registration and membership fees established by the service; and maintain in force a policy of errors and omissions insurance in an amount established by the service;

(d) Establishes rules that prohibit lawyer members of the service from charging prospective clients to whom a client is referred, fees and or costs that exceed charges the client would have incurred had no lawyer referral service been involved;

(e) Establishes procedures to survey periodically clients referred to determine client satisfaction with its operations and to investigate and take appropriate action with respect to client complaints against lawyer members of the service, and the service and its employees;

(f) Establishes procedures for admitting, suspending, or removing lawyers from its roll of panelists and promulgates rules that prohibit the making of a fee generating referral to any lawyer who has an ownership interest in, or who operates or is employed by the lawyer referral

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service, or who is associated with a law firm that has an ownership interest in, or operates or is employed by the lawyer referral service;

(g) Establishes subject-matter panels, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria;

(h) Does not, as a condition of participation in the referral service, limit the lawyer's selection of co-counsel to other lawyers listed with the referral service;

(i) Does not make a fee-generating referral to any lawyer who has an ownership interest in or who operates or is employed by the lawyer referral service or who is associated with a law firm that has an ownership interest in or operates or is employed by a lawyer referral service.

(j) Reports regularly to the Supreme Court Committee for Lawyer Referral and Information Services and complies with the record-keeping and requirements of and regulations adopted by the Committee.

(2) A lawyer participating in a lawyer referral service that meets the requirements of divisions (C)(1)(a) to (j) of this rule may:

(a) Be required, in addition to payment of a membership or registration fee as provided in divisions (C)(1)(c) of this rule, to pay a fee calculated as a percentage of legal fees earned by any lawyer panelist to whom the lawyer referral service has referred a matter. The income from the percentage fee shall be used only to pay the reasonable operating expenses of the service and to fund public service activities of the service or its sponsoring organization, including the delivery of pro bono public services;

(b) As a condition of participation in the service, be required to submit any fee disputes with a referred client to mandatory fee arbitration;

(c) Participate in moderate and no-fee panels and other special panels established by the service that respond to the referral needs of the consumer public, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria.

(3) The lawyer may cooperate with the legal service activities of any of the offices or organizations enumerated in divisions (D)(1) to (4) of this rule and may perform legal services for those to whom the lawyer was recommended by it to do such work if both of the following apply:

(a) The person to whom the recommendation is made is a member or beneficiary of such office or organization;

(b) The lawyer remains free to exercise independent professional judgment on behalf of the lawyer's client.

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(D) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm except as permitted in DR 2-101(B). However, this does not prohibit a lawyer or the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from being recommended, employed, or paid by, or cooperating with, assisting, and providing legal services for, one of the following offices or organizations that promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm if there is no interference with the exercise of independent professional judgment on behalf of the lawyer's client:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide non-profit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service that complies with division (C) of this rule.

(4) Any bona fide organization that recommends, furnishes, or pays for legal services to its members or beneficiaries provided all of the following conditions are satisfied:

(a) The organization, including any affiliate, is organized and operated so that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised, or selected by it except in connection with matters where the organization bears ultimate liability of its member or beneficiary.

(b) Neither the lawyer, the lawyer's partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, nor any non-lawyer, shall have initiated or promoted the organization for the primary purpose of providing financial or other benefit to the lawyer, partner, associate, or affiliated lawyer.

(c) The organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d) The member or beneficiary to whom the legal services are furnished, and not the organization, is recognized as the client of the lawyer in the matter.

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(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization, if such member or beneficiary so desires, may select counsel other than that furnished, selected or approved by the organization; provided, however, that the organization shall be under no obligation to pay for the legal services furnished by the attorney selected by the beneficiary unless the terms of the legal services plan specifically provide for payment.

Every legal services plan shall provide that any member or beneficiary may assert a claim that representation by counsel furnished, selected, or approved by the organization would be unethical, improper, or inadequate under the circumstances of the matter involved. The plan shall provide for adjudication of a claim under division (D)(4)(e) of this rule and appropriate relief through substitution of counsel or providing that the beneficiary may select counsel and the organization shall pay for the legal services rendered by selected counsel to the extent that such services are covered under the plan and in an amount equal to the cost that would have been incurred by the plan if the plan had furnished designated counsel.

(f) The lawyer does not know or have cause to know that the organization is in violation of applicable laws, rules of court, and other legal requirements that govern its legal service operations.

(g) The organization has filed with the Supreme Court of Ohio, on or before the first day of January of each year, a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of the failure.

(E) Nothing in this rule prohibits a lawyer from accepting employment received in response to the lawyer's own advertising, provided the advertising is in compliance with DR 2-101.

[Effective: October 5, 1970; amended effective January 1, 1973; October 29, 1975; March 1, 1986, July 1, 1996; November 1, 1999.]

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DR 2-104. SUGGESTION OF NEED OF LEGAL SERVICES.

(A) A lawyer who has given unsolicited advice to a nonlawyer that the nonlawyer should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client, if the advice is germane to the former employment, or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from the lawyer's participation in activities designed to educate nonlawyers to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if the activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2103(D)(1) through (4), to the extent and under the conditions prescribed in these rules.

(3) A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR 2-103(D)(1) through (4) may represent a member or beneficiary of the organization, to the extent and under the conditions prescribed in these rules.

(4) Without affecting the lawyer's right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not emphasize the lawyer's own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of the lawyer's client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

(B) Nothing in this rule prohibits a lawyer from accepting employment received in response to the lawyer's own advertising, provided the advertising is in compliance with DR 2-101.

[Effective: October 5, 1970; amended effective October 20, 1975; March 1, 1986; December 1, 1995.]

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DR 3-102. DIVIDING LEGAL FEES WITH A NON-LAWYER.

(A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with his or her firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) An agreement to purchase the practice of a deceased, disabled, or disappeared lawyer in accordance with DR 2-111 may provide for the payment of money, over a reasonable period of time, to a nonlawyer.

(3) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer a proportion of the total compensation that fairly represents the services rendered by the deceased lawyer.

(4) A lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(5) A lawyer participating in a lawyer referral service that satisfies the requirements of DR 2-103(C) may pay to the service a fee calculated as a percentage of legal fees earned by the lawyer in his or her capacity as a lawyer to whom the service has referred a matter. This percentage fee is in addition to any reasonable membership or registration fee established by the service.

[Effective: October 5, 1970; amended effective: July 1, 1996; February 1, 2003.]

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RULE 7.2

Ohio Court Rules

RULES OF PROFESSIONAL CONDUCT

VII. INFORMATION ABOUT LEGAL SERVICES

RULE 7.2 ADVERTISING AND RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

RULE 7.2: ADVERTISING AND RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may pay any of the following:

(1) the reasonable costs of advertisements or communications permitted by this rule;

(2) the usual charges of a legal service plan;

(3) the usual charges for a nonprofit or lawyer referral service that complies with Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio;

(4) for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

(d) A lawyer shall not seek employment in connection with a matter in which the lawyer or law firm does not intend to participate actively in the representation, but that the lawyer or law firm intends to refer to other counsel. This provision shall not apply to organizations listed in Rules 7.2(b)(2) or (3) or if the advertisement is in furtherance of a transaction permitted by Rule 1.17.

Comment

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This rule permits public dissemination of information concerning a lawyer's name or firm name, address, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

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[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as provided by these rules, lawyers are not permitted to give anything of value to another for channeling professional work. A reciprocal referral agreement between lawyers, or between a lawyer and a nonlawyer, is prohibited. Cf. Rule 1.5.

[5A] Division (b)(1) allows a lawyer to pay for advertising and communications permitted by this rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] A lawyer may pay the usual charges of a legal service plan or a nonprofit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this rule only permits a lawyer to pay the usual charges of a nonprofit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved pursuant to Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio. Relative to fee sharing, see Rule 5.4(a)(5).

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar

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association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] [RESERVED]

Comparison to former Ohio Code of Professional Responsibility

Rule 7.2(a) directs attention to Rules 7.1 and 7.3, each of which includes or deletes language from the advertising and solicitation rules contained in DR 2-101 through DR 2-104.

The following are provisions of DR 2-101 that have not been included in Rule 7.1, 7.2, or 7.3:

* The specific reference to types of fees or descriptions, such as "give-away" or "below cost" found in DR 2-101(A)(5), although Rule 7.1, Comment [4] specifically indicates that these characterizations are misleading;

* Specific references to media types and words, as set forth in DR 2-101(B)(1) and (2);

* Specific reference that brochures or pamphlets can be disclosed to "others" as set forth in DR 2-101(B)(3);

* The list of items that were permissible for inclusion in advertising, contained in DR 2-101(D).

Comparison to ABA Model Rules of Professional Conduct

Rule 7.2(b)(3) is modified to remove a reference to a qualified legal referral service and substitute a reference to the lawyer referral service provisions contained in Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio. Rule 7.2 does not include Model Rule 7.2(b)(4) and thus prohibits reciprocal referral agreements between two lawyers or between a lawyer and a nonlawyer professional. Rule 7.2(d) is added to incorporate the prohibition contained in DR 2-101(A)(2) relative to soliciting employment where the lawyer does not intend to participate in the matter but instead will refer the matter to other counsel.

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RULE 7.3

Ohio Court Rules

RULES OF PROFESSIONAL CONDUCT

VII. INFORMATION ABOUT LEGAL SERVICES

RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless either of the following applies:

(1) the person contacted is a lawyer;

(2) the person contacted has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by division (a), if either of the following applies:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer;

(2) the solicitation involves coercion, duress, or harassment.

(c) Unless the recipient of the communication is a person specified in division (a)(1) or (2) of this rule, every written, recorded, or electronic communication from a lawyer soliciting professional employment from a prospective client whom the lawyer reasonably believes to be in need of legal services in a particular matter shall comply with all of the following:

(1) Disclose accurately and fully the manner in which the lawyer or law firm became aware of the identity and specific legal need of the addressee;

(2) Disclaim or refrain from expressing any predetermined evaluation of the merits of the addressee's case;

(3) Conspicuously include in its text and on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication the recital - "ADVERTISING MATERIAL" or "ADVERTISEMENT ONLY."

(d) Prior to making a communication soliciting professional employment from a prospective client pursuant to division (c) of this rule to a party who has been named as a defendant in a civil action, a lawyer or law firm shall verify that the party has been served with notice of the action filed against that party. Service shall be verified by consulting the docket of the court in which the action was filed to determine whether mail, personal, or residence service has been perfected or whether service by publication has been completed. Division (d) of this rule shall not apply to the solicitation of a debtor regarding representation of the debtor in a potential or actual bankruptcy action.

(e) If a communication soliciting professional employment from a prospective client or a relative

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of a prospective client is sent within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death, the following "Understanding Your Rights" shall be included with the communication.

UNDERSTANDING YOUR RIGHTS *

If you have been in an accident, or a family member has been injured or killed in a crash or some other incident, you have many important decisions to make. It is important for you to consider the following:

- 1. Make and keep records - If your situation involves a motor vehicle crash, regardless of who may be at fault, it is helpful to obtain a copy of the police report, learn the identity of any witnesses, and obtain photographs of the scene, vehicles, and any visible injuries. Keep copies of receipts of all your expenses and medical care related to the incident.
- 2. You do not have to sign anything - You may not want to give an interview or recorded statement without first consulting with an attorney, because the statement can be used against you. If you may be at fault or have been charged with a traffic or other offense, it may be advisable to consult an attorney right away. However, if you have insurance, your insurance policy probably requires you to cooperate with your insurance company and to provide a statement to the company. If you fail to cooperate with your insurance company, it may void your coverage.
- 3. Your interests versus interests of insurance company - Your interests and those of the other person's insurance company are in conflict. Your interests may also be in conflict with your own insurance company. Even if you are not sure who is at fault, you should contact your own insurance company and advise the company of the incident to protect your insurance coverage.
- 4. There is a time limit to file an insurance claim - Legal rights, including filing a lawsuit, are subject to time limits. You should ask what time limits apply to your claim. You may need to act immediately to protect your rights.
- 5. Get it in writing - You may want to request that any offer of settlement from anyone be put in writing, including a written explanation of the type of damages which they are willing to cover.
- 6. Legal assistance may be appropriate - You may consult with an attorney before you sign any document or release of claims. A release may cut off all future rights against others, obligate you to repay past medical bills or disability benefits, or jeopardize future benefits. If your interests conflict with your own insurance company, you always have the right to discuss the matter with an attorney of your choice, which may be at your own expense.
- 7. How to find an attorney - If you need professional advice about a legal problem but do not know an attorney, you may wish to check with relatives, friends, neighbors, your employer, or co-workers who may be able to recommend an attorney. Your local bar association may have a lawyer referral service that can be found in the Yellow Pages or on the Internet.
- 8. Check a lawyer's qualifications - Before hiring any lawyer, you have the right to know the lawyer's background, training, and experience in dealing with cases similar to yours.
- 9. How much will it cost? - In deciding whether to hire a particular lawyer, you should discuss, and the lawyer's written fee agreement should reflect:

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a. How is the lawyer to be paid? If you already have a settlement offer, how will that affect a contingent fee arrangement?

b. How are the expenses involved in your case, such as telephone calls, deposition costs, and fees for expert witnesses, to be paid? Will these costs be advanced by the lawyer or charged to you as they are incurred? Since you are obligated to pay all expenses even if you lose your case, how will payment be arranged?

c. Who will handle your case? If the case goes to trial, who will be the trial attorney?

This information is not intended as a complete description of your legal rights, but as a checklist of some of the important issues you should consider.

* THE SUPREME COURT OF OHIO, WHICH GOVERNS THE CONDUCT OF LAWYERS IN THE STATE OF OHIO, NEITHER PROMOTES NOR PROHIBITS THE DIRECT SOLICITATION OF PERSONAL INJURY VICTIMS. THE COURT DOES REQUIRE THAT, IF SUCH A SOLICITATION IS MADE, IT MUST INCLUDE THE ABOVE DISCLOSURE.

(f) Notwithstanding the prohibitions in division (a) of this rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] There is a potential for abuse inherent in direct in-person, live telephone, or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications that may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone, or real-time electronic persuasion that may overwhelm the prospective client's judgment. In using any telephone communication, a lawyer remains subject to applicable requirements of the "Do Not Call" provisions of federal telemarketing sales regulations.

[3] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone, or real-time electronic contact, will help to ensure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This

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potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone, or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach, and occasionally cross, the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, division (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, that involves coercion, duress, or harassment within the meaning of Rule 7.3(b)(2), or that involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a prospective client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement that the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] None of the requirements of Rule 7.3 applies to communications sent in response to requests from clients or prospective clients. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this rule.

[7A] The use of written, recorded, and electronic communications to solicit prospective clients who have suffered personal injuries or the loss of a loved one can potentially be offensive. Nonetheless, it is recognized that such communications assist potential clients in not only making a meaningful determination about representation, but also can aid potential clients in recognizing issues that may be foreign to them. Accordingly, the information contained in division (e) must be communicated to the prospective client or a relative of a prospective client when the solicitation occurs within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death.

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[8] Division (f) of this rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned or directed, whether as manager or otherwise, by any lawyer or law firm that participates in the plan. For example, division (f) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably ensure that the plan sponsors are in compliance with Rules 7.1, 7.2, and 7.3(b). See Rule 8.4(a).

Comparison to former Ohio Code of Professional Responsibility

Rule 7.3 embraces the provisions of DR 2-104(A), DR 2-101(F) and DR 2-101(H), with modifications.

At division (c), the rule broadens the types of communications that are permitted by authorizing the use of recorded telephone messages and electronic communication via the Internet. Further, in keeping with the new methods of communication that are authorized, the provisions of DR 2-101(F) regarding disclosures are incorporated and modified to apply to all forms of permissible direct solicitations.

The provisions of DR 2-101(F)(2) have been incorporated in division (c) and modified to reduce the micromanagement of lawyer contact, which previously had been the subject of abuse, by requiring that the disclaimers "ADVERTISEMENT ONLY" and "ADVERTISING MATERIAL" be "conspicuously" displayed. The requirements contained in DR 2-101(F)(2)(b) regarding disclaimers of prior acquaintance or contact with the addressee and avoidance of personalization have not been retained.

The provisions of DR 2-101(F)(4) [pre-service solicitation of defendants in civil actions] have been inserted as a new division (d), and the provisions of DR 2-101(H) [solicitation of accident or disaster victims] have been inserted as a new division (e).

Comparison to ABA Model Rules of Professional Conduct

Rule 7.3 contains the following substantive changes to Model Rule 7.3:

* With the modifications discussed above, the requirements placed upon the lawyer involved in the direct solicitation of prospective clients are more stringent than the requirements contained in division (c) of the Model Rule. Because a lawyer is not likely to have actual knowledge [Rule 1.0(g)] of a prospective client's need for legal services, the Model Rule standard contained in division (c) is changed to "* * * soliciting professional employment from a prospective client whom the lawyer reasonably believes to be in need of legal services * * *." See Rule 1.0(j).

* Division (d), regarding preservice solicitation of defendants in civil actions, has been inserted.

* Division (e), regarding direct solicitation requirements respecting solicitation of accident or disaster victims and their families, has been inserted.

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Added to the rule is Comment [7A], which discusses the rationale for inclusion of the new division (e).

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Ohio Court Rules - Section 5b

Ohio Court Rules

RULES FOR THE GOVERNMENT OF THE BAR

RULE VII. UNAUTHORIZED PRACTICE OF LAW

Section 5b Settlement of Complaints; Consent Decrees

Section 5b. Settlement of Complaints; Consent Decrees

(A) As used in this section:

(1) A "settlement agreement" is a voluntary written agreement entered into between the parties without the continuing jurisdiction of the Board or Court.

(2) A "consent decree" is a voluntary written agreement entered into between the parties, approved by the Board, and approved and ordered by the Court. The consent decree is the final judgment of the Court and is enforceable through contempt proceedings before the Court.

(3) A "proposed resolution" is a proposed settlement agreement or a proposed consent decree.

(B)(1) The proposed resolution of a complaint filed pursuant to Gov. Bar R.VII, Section 5, prior to adjudication by the Board, shall not be permitted without the prior review of the Board, or the Court, or both. Parties contemplating the proposed resolution of a complaint shall file a motion with the Secretary of the Board. The voluntary dismissal of a Complaint filed pursuant to Civ.R. 41(A) in conjunction with a proposed resolution is subject to the requirements of this section.

(C) The Board shall determine whether a proposed resolution shall be considered and approved by either the Board or the Court based on the following factors:

(1) The extent the agreement is submitted in the form of a proposed consent decree;

(2) The admission of the respondent to material allegations of the unauthorized practice of law as stated in the complaint;

(3) The extent the public is protected from future harm and any substantial injury is remedied by the agreement;

(4) Any agreement by the respondent to cease and desist the alleged activities;

(5) The extent the settlement agreement resolves material allegations of the unauthorized practice of law;

(6) The extent the agreement involves public policy issues or encroaches upon the jurisdiction of the Supreme Court to regulate the practice of law;

(7) The extent the settlement agreement furthers the stated purposes of Gov. Bar R. VII;

(8) Any other relevant factors.

(D) Review by the Board

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(1) Upon receipt of a proposed resolution, the Board chair shall direct the assigned hearing panel to prepare a written report setting forth its recommendation for the acceptance or rejection of the proposed resolution. The Board shall vote to accept or reject the proposed resolution. Upon a majority vote to accept a settlement agreement, an order shall be issued by the Board chair dismissing the complaint. Upon a majority vote to accept a consent decree, the Board shall prepare and file a final report with the Court in accordance with division (E)(1) of this section.

(2) The refiling of a complaint previously resolved as a settlement agreement pursuant to this section shall reference the prior settlement agreement, and proceed only on the issue of the unauthorized practice of law. The case shall be presented on the merits and any previous admissions made by the respondent to allegations of conduct may be offered into evidence.

(E) Review by the Court

(1) After approving a proposed consent decree, the Board shall file an original and twelve copies of a final report and the proposed consent decree with the Clerk of Court of the Supreme Court. A copy of the report shall be served upon all parties and counsel of record. Neither party shall be permitted to file an objection to the final report.

(2) A consent decree may be approved or rejected by the Court. If a consent decree is approved, the Court shall issue the appropriate order.

(3) A motion to show cause alleging a violation of a consent decree and any memorandum in opposition shall be filed with the both the Court and the Board. The Board, upon receipt of the motion and memorandum in opposition, by panel assignment shall conduct either an evidentiary hearing or oral argument hearing on the motion, and by a majority vote of the Board submit a final report to the Court with findings of fact, conclusions of law, and recommendations on the issue of whether the consent decree was violated. Neither party shall be permitted to file objections to the Board's report without leave of Court.

(F) Rejection of a Proposed Resolution

(1) A complaint will proceed on the merits pursuant to Gov. Bar R. VII if a proposed resolution is rejected by either the Board or the Court. Upon rejection by the Board, an order shall be issued rejecting the proposed resolution and remanding the matter to the hearing panel for further proceedings. Upon rejection by the Court, an order shall be issued remanding the matter to the Board with or without instructions.

(2) A rejected proposed resolution shall not be admissible or otherwise used in a subsequent proceeding before the Board.

(3) No objections or other appeal may be filed with the Court upon a rejection by the Board of a proposed resolution.

(4) Any panel member initially considering a proposed resolution and voting with the Board on the rejection of the proposed resolution may proceed to hear the original complaint.

(G) The parties may consult with the Board through the Secretary concerning the terms of a proposed resolution.

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(H) All settlement agreements approved by the Board and all consent decrees approved by the Court shall be recorded for reference by the Board, bar association unauthorized practice of law committees, and the Office of Disciplinary Counsel.

(I) This regulation shall not apply to the resolution of matters considered by an unauthorized practice of law committee or the Office of Disciplinary Counsel before a complaint is filed pursuant to Gov. Bar R. VII, Section 5.

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Section 8

Ohio Court Rules

RULES FOR THE GOVERNMENT OF THE BAR

RULE VII. UNAUTHORIZED PRACTICE OF LAW

Section 8 Costs; Civil Penalties.

Section 8. Costs; Civil Penalties.

(A) Costs. As used in section 7(G) of this rule, "costs" includes both of the following:

- (1) The expenses of relator, as described in Section 9 of this rule, that have been reimbursed by the Board;
- (2) The direct expenses incurred by the hearing panel and the Board, including, but not limited to, the expense of a court reporter and transcript of any hearing before the hearing panel.

"Costs" shall not include attorney's fees incurred by the relator.

(B) Civil Penalties. The Board may recommend and the Court may impose civil penalties in an amount up to ten thousand dollars per offense. Any penalty shall be based on the following factors:

- (1) The degree of cooperation provided by the respondent in the investigation;
- (2) The number of occasions that unauthorized practice of law was committed;
- (3) The flagrancy of the violation;
- (4) Harm to third parties arising from the offense;
- (5) Any other relevant factors.

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