

IN THE SUPREME COURT OF OHIO

COLUMBUS BAR ASSOCIATION,

Relator,

v.

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

Respondents.

: Supreme Court Case No. 2005-0422
: Case No. UPL 02-10
:
: From the Board of
: Commissioners on the
: Unauthorized Practice of Law
: of the Supreme Court of Ohio
:
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**OBJECTIONS OF RELATOR COLUMBUS BAR ASSOCIATION TO THE
RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON THE
UNAUTHORIZED PRACTICE OF LAW**

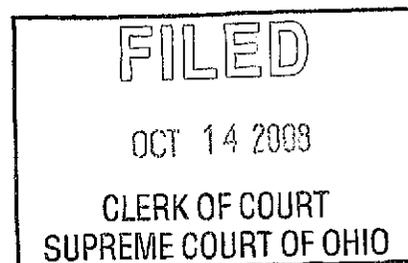
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I. INTRODUCTION/GENERAL OBJECTIONS

Pursuant to Gov. Bar. R. VII(19)(B), Relator Columbus Bar Association (the "CBA") objects to the Final Report ("Final Report") issued on August 26, 2008 by the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio (the "Board").

As an initial matter, the CBA does *not* object to the Board's findings of fact and conclusions of law. The Board correctly concluded that the Respondents engaged in the unauthorized practice of law and breached the 2003 Consent Agreement.

The CBA does object, however, to the scope of the sanctions the Board has recommended.

First, the Final Report rightly recommends that this Court issue "an order prohibiting the Entity Respondents and Individual Respondents from further engaging in the unauthorized practice of law in the future." But the CBA strongly urges that any order by this Court be more specific with its injunctive relief. If an order generically prohibiting the Respondents from engaging in the unauthorized practice of law were sufficient, then the law itself, the Consent Agreement, and this Court's Interim Cease-and-Desist Order against Respondents would have sufficed to shut down their trust-mill operation. Instead, Respondents continued to operate their scheme, making only minor superficial adjustments along the way. The record and this case's history show beyond any doubt that a detailed, comprehensive injunction will be necessary to prevent Respondents from further harming Ohioans.

Second, the Final Report rightly recommends civil penalties against the "Entity Respondents." But the civil penalties the Board has recommended do not sufficiently correlate to the great harm the Entity Respondents and the Individual Respondents

have caused to thousands of elderly Ohioans, their families, and their estates. To deter such conduct in the future, much more substantial civil penalties are in order, taking into full consideration the enormity of the harm Respondents have caused and Respondents' utter lack of concern for the law or the well-being of Ohioans.

Thus, as shown below, this Court should (1) impose a more detailed, comprehensive injunction against Respondents to ensure that they cannot operate a trust-mill scheme in Ohio again; and (2) impose meaningful civil penalties against all Respondents.

II. STATEMENT OF FACTS

The CBA fully concurs with, and makes no objection to, the Board's findings of fact regarding the Respondents' trust mill scheme, as far as they go. The Board adopted all of the findings of fact and conclusions of law made by the Panel of the Board of Commissioners on the Unauthorized Practice of Law that originally considered this matter – and thus concluded that Respondents engaged in the unauthorized practice of law and violated the Consent Agreement. (Final Report at 8, 13.) The Panel, in its Report, adopted the "Statement of Facts" and "Law and Argument" from its own Order of December 21, 2007 ("Order"). (Final Report at 7, 8.) Thus, the facts found by the Board encompass all facts found in the Final Report, the Panel Report, and the relevant sections of the Panel's Order.

Although the CBA fully concurs with the Board's findings of fact, the Board should have adopted additional findings of fact that are relevant to determining the appropriate civil penalties against Respondents. For this reason, the CBA respectfully requests that this Court make additional findings of fact as set forth in sections C, D, and E below.

A. The Parties

The Final Report divides the parties into two groups. One, the “Entity Respondents,” consists of Respondents American Family Prepaid Legal Corporation (“AFPLC”), Heritage Marketing and Insurance Services, Inc. (“Heritage”), Stanley Norman, Jeffrey Norman, Paul Chiles, and Harold Miller. The remaining Respondents – AFPLC sales agents and Heritage delivery and review agents – are referred to collectively as the “Individual Respondents.” (Final Report at 6.)

Respondent AFPLC is a California-based corporation which had offices in Ohio during the relevant time period and engaged in the business of selling living trusts in the guise of prepaid legal plans. (Order at 5-6¹; Final Report at 10.) Respondent Heritage is a California-based corporation that has sold annuities and insurance products in Ohio and whose Ohio-based agents have provided periodic review of the finances and estates of AFPLC’s Ohio customers who bought trusts. (Order at 6.) For the entire time they have done business in Ohio, AFPLC and Heritage have shared the same office.

(Deposition of Harold Miller, Nov. 14, 2002, attached to the CBA’s Motion for Summary Judgment (“MSJ”) as Exhibit C (“Miller Dep. I”) 20:22-25; Deposition of Joseph Hamel, July 22, 2002 (MSJ Exhibit D) (“Hamel Dep.”) 25:4-16; Shank Aff. ¶ 63; Affidavit of Stacy Solochek Beckman (MSJ Exhibit E) Ex. 1 at 2 (filed under seal).)

Respondents Stanley Norman and Jeffrey Norman each own half of AFPLC and Heritage. (Order at 6.) Jeffrey Norman has been Chief Executive Officer of AFPLC; Stanley Norman has been AFPLC’s president. (Id.) As the Panel found, the Normans have had “oversight, authority, control, and knowledge of the ongoing operations,

¹ The Panel’s Order did not have numbered pages; the CBA will cite these pages as though they had been numbered.

activities, and plans of both corporate entities.” (Id. at 22-23.) The Normans are not licensed to practice law in Ohio. (Final Report at 6.)

Respondent Harold Miller has been AFPLC’s office manager; he is not licensed to practice law in Ohio. (Order at 6; Final Report at 6.) Respondent Paul Chiles has been AFPLC’s state marketing director and oversees its sales force; he also oversees Heritage’s insurance agents. (Order at 6.) Mr. Chiles is not licensed to practice law in Ohio. (Final Report at 6.)

All of the remaining Respondents are Individual Respondents and thus either AFPLC sales representatives or Heritage agents. (Order at 6.) None of them is licensed to practice law in Ohio. (Final Report at 6.)

AFPLC has ostensibly sold prepaid legal plans that purportedly provide a variety of services. (Order at 7.) The Panel concluded, however, that AFPLC is “primarily and predominantly” in the business of marketing and selling living trusts to targeted Ohio citizens. (Final Report at 10.)

Heritage is an “integral part of the AFPLC operations.” (Order at 19.) It employs “delivery agents,” who deliver trust documents to AFPLC customers and then, using the personal and financial information the customer provided to AFPLC in buying a trust, sell the consumer annuities and insurance products. (Order at 19-20.) Heritage also employs “review agents,” who periodically reviewed the Plan members’ financial documents in order to sell more annuities and insurance products. (Final Report at 10.) The delivery agents and review agents are, in fact, insurance salespersons. (Order at 8.)

B. Procedural History

This matter came before the Board nearly six years ago on the CBA’s Complaint filed November 19, 2002. (Final Report at 1.) The CBA’s complaint alleged that the

Respondents – including the Entity Respondents, Individual Respondents Samuel Jackson and Eric Peterson, and John Doe and Jane Doe Respondents who have since been identified as the other Individual Respondents – engaged in the unauthorized practice of law (“UPL”). (Complaint; Order at 4.)

On or about March 23, 2003, the CBA and the Respondents entered into a Consent Agreement. (Order at 4.) That Consent Agreement prohibited the Respondents from engaging in the following activities:

1. selling, marketing, and/or preparing wills, living trusts, durable powers of attorney, deed transfers, and agreements for transfer or assignment of personal property (referred to collectively herein as “legal product”);
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;
8. engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or no contact with clients.

(Id. at 4-5, quoting Consent Agreement.) Respondents, all of whom signed the Consent Agreement, conceded in the Agreement that these activities constitute UPL.

Based upon numerous complaints against Respondents for conduct occurring after the date of the Consent Agreement, the CBA sought enforcement of the Consent Agreement by this Court. On April 12, 2005, this Court referred the matter to the Panel to determine whether the Respondents violated the Consent Agreement. (Id. at 5.)

Upon cross-motions for summary judgment, the Panel issued an Order granting summary judgment in the CBA's favor, finding that the Respondents had committed UPL and violated the Consent Agreement.² The Panel subsequently concluded that the Respondents' UPL conduct is subject to sanctions under Gov. Bar R. VII, and recommended injunctive relief and civil penalties. The Board agreed in its Final Report.

C. Overview of Respondents' Business

- 1. AFPLC uses non-attorney sales representatives to sell living trusts, using high-pressure sales tactics emphasizing the alleged benefits of living trusts over probate.**

As the Panel and the Board found, AFPLC's first contact with potential customers is through direct mailings. (Order at 7.) When a prospect returns a postage-paid card, AFPLC telephones the prospect and makes an appointment for an AFPLC sales representative to meet with the person in their home. (Id. at 7-8.) AFPLC's sales representatives would then do so, with the predominant purpose of promoting and selling living trusts and trust-related products to the prospective customer. (Final Report at 10.) In doing so, the sales representative explains general concepts of probate and methods that can be used to avoid probate. (Order at 8.) The sales representative's

² The Panel Denied the CBA's motion for summary judgment with respect to Respondents Adam Hyers, Joseph Hamel, Timothy Holmes, and Tim Clouse, and these parties have settled their claims with the CBA in this case and case no. UPL 05-02.

presentation uses high-pressure sales tactics that are provided and encouraged in AFPLC's training materials. (Id.)

When an AFPLC representative makes a sale in one of these meetings, no attorney has reviewed the client's information. (Id.) Instead, the AFPLC representative directs the new customer to prepare paperwork, from which AFPLC's non-attorney drafters will take information to plug into a form trust document – which the Plan Attorney then allegedly reviews. (Id.)

2. AFPLC's Plan Attorney's involvement follows the sale of the living trusts.

As the Panel found, the Plan Attorney is closely involved with both AFPLC and Heritage – and not-so-closely involved with the AFPLC plan members who are supposed to be his clients. The Plan Attorney – who, during the relevant time period, was Edward Brueggeman – maintained an office within AFPLC's suite of offices until March 2005 and used AFPLC employees to prepare documents, including deed-transfer paperwork. (Id. at 20.) He was also contracted at the same time to provide services and training to Heritage. (Id.) He never signed an engagement agreement with a client until *after* the client had already signed up for the legal plan based solely on advice from a non-attorney sales representative, not the Plan Attorney. (Id.) Until March 2005, the Plan Attorney would simply pass along his notes and copies of documents completed by the client to non-attorney drafters in AFPLC's California offices. (Id. at 20-21.) When the client's estate planning documents are completed and sent back to the Plan Attorney, he simply forwards them to Heritage for delivery. (Id. at 8.)

3. Heritage insurance agents deliver AFPLC customers' legal documents – and then sell them annuities and other insurance products.

Heritage delivery agents receive AFPLC customers' trusts from the Plan Attorney, then deliver the legal documents to the customers and serve as notaries as the customers execute their documents. (Id.) These delivery agents are also insurance agents – and are not paid for their delivery services, but instead are paid only through commissions they earn by selling AFPLC customers annuities and other insurance products. (Id. at 8-9.) When a delivery agent calls upon an AFPLC customer, the delivery agent already has the member's financial information – because the customer gave it to AFPLC in signing up for the legal plan and purchasing a trust – which the delivery agent then uses to sell annuities and other insurance products. (Id. at 19.) In sum, the delivery agents use AFPLC customers' information as an “inroad” to sell insurance products – and in some circumstances contribute to or facilitate a customer overextending his or her economic resources. (Id. at 20.)

D. Facts Relevant to Injunctive Relief

The CBA seeks broad injunctive relief against Respondents, especially the Entity Respondents, because of their persistence in operating a trust mill in Ohio despite orders not to engage in conduct and clear statements in previous (and contemporaneous) cases that their business constitutes the unauthorized practice of law. The following facts are relevant to show this.

Before they owned and oversaw AFPLC and Heritage, Stanley Norman and Jeffrey Norman each owned fifty percent of the American Heritage Corporation (“AHC”). (Deposition of Stanley Norman, Sept. 6, 2005 (MSJ Exhibit G) (“S. Norman

Dep.”) 46:1-7, 9-11.) Jeffrey Norman was the CEO of AHC. (Id. at 46:12-17.) Stanley Norman also was an officer of AHC. (Id. at 41:3-5.)

AFPLC is the successor company to AHC. AHC’s business was substantially similar to AFPLC’s: it involved non-attorney sales representatives visiting elderly customers in their homes to sell them living trusts. *See Columbus Bar Ass’n v. Fishman*, 98 Ohio St.3d 172, 2002-Ohio-7086, 781 N.E.2d 204. American Heritage’s attorney, the late Andrew Fishman, only became involved after the customers had purchased a living trust. For his role in AHC’s trust-mill scheme, this Court suspended Mr. Fishman from the practice of law. *See id.*

Until his suspension, Mr. Fishman was the Plan Attorney for AFPLC as well. (Deposition of Jeffrey Norman, July 20, 2005 (MSJ Exhibit H) 60:22-61:2; Deposition of Joseph Hamel, July 22, 2002 (MSJ Exhibit D) (“Hamel Dep.”) 42:2-5.) In addition, many individuals who worked for AHC went on to work for the new entity, AFPLC. Individual Respondent Joseph Hamel has testified that he worked as a salesman for AHC before he worked as a sales representative for AFPLC – and that he perceived the change from AHC to AFPLC as a “name change of the entity.” (Hamel Dep. 39:3-22.) Others who worked for both AHC and AFPLC and/or Heritage include Respondent Paul Chiles, who trained the sales people whom this Court found had committed UPL on behalf of AHC in *Fishman*, 2002-Ohio-7086 at ¶ 15; Respondent Harold Miller; Respondent Paul Morrison; Respondent Ron Baker; Respondent Adam Hyers; and Respondent Jack Riblett. (Miller Dep. I 16:2-17:9; Hamel Dep. 40:18-41:13, 42:8-20.)

Because the Respondents’ business was substantially similar to that of AHC, the CBA filed the Complaint in this matter against them in 2002. The manner in which the Respondents conduct their business did not materially change following the Consent

Agreement in March 2003. In fact, the sales representatives were directed to engage in business as usual immediately following the Consent Agreement. (Letter of Doss Estep, March 24, 2003, MSJ Exhibit CC.) Therefore, this Court issued its Cease and Desist Order. One Individual Respondent, Eric Peterson, has indicated that AFPLC and/or its attorneys told him that the Cease-and-Desist Order had been “lifted” and he could therefore “return to work.” (Respondent Eric Peterson’s Response to Relator’s MSJ (Nov. 5, 2007) at 1.)

Over the course of its litigation with the CBA, AFPLC has made only the most minor superficial changes to its behavior – none of which fundamentally alters the character of its conduct. Respondents efforts are too little, too late; indeed, most came after the March 2003 to May 2005 timeframe. For example, Respondent Jeffrey Norman noted in his brief opposing summary judgment that the forms that AFPLC sales representatives complete with customers were changed to state “Law Office Use Only” on some pages in 2006, that AFPLC removed those pages in 2007, and that AFPLC changed a form’s name from “Estate Planning Worksheet” to “Application Worksheet” in 2007. (Respondent Jeffrey Norman’s Memo. in Opp. to Relator’s MSJ and in Support of Respondent’s MSJ (Oct. 26, 2007) (“J. Norman Br.”) at 48.) Also, in 2005, AFPLC’s sales training manual stated that sales agents should tell consumers that they are not lawyers or accountants when introducing themselves to prospects. (Shank Aff. ¶ 15; Affidavit of Jeffrey Norman, attached to J. Norman Br. as Exhibit B, Ex. 20.) The 2004 training manual, however, instructed and *encouraged* sales representatives to advise customers that they should avoid probate through a living trust. (Shank Aff. Ex. 12.) And despite the 2005 manual’s instructions, the sales agents generally gave a detailed – and, in many respects, incorrect – explanation of the probate process, discussed

alternatives to the probate process, discussed ways to avoid probate, and advised the particular consumer that he or she would benefit from purchasing a living trust through AFPLC. (Shank Aff. ¶ 15.) In discovery in this case, the CBA obtained Respondents' sales files from the early part of 2005 demonstrating approximately 90-100 trust sales, all of which indeed include the pages captioned "Law Office Use Only." However, these pages were completed by the sales agents for the vast majority - at least 76 - of these sales. (See, e.g., E. Luttrell Aff. Ex. A; J. Luttrell Aff. Ex. A; Shank Aff. Exs. 75, 76).

In later years, AFPLC would give its sales agents a quiz during their sales training class entitled "General Information & Unauthorized Practice of Law 'Quiz.'" (Shank Aff. ¶ 16; Shank Aff. Ex. 16.) This quiz shows that the AFPLC sales agents are instructed to provide advice regarding "the most important reasons" to get a trust. The quiz also shows that AFPLC provides the sales agents with dubious information about the unauthorized practice of law. And they are quizzed on what sales materials not to leave behind. (Id.) It is unclear how this could pertain to the unauthorized practice of law, *except to cover it up*.

Today, the successor to AFPLC and Heritage is Quest Financial and Insurance Services ("Quest"), which continues to work in active concert with, and profit from, Respondents' trust mill scheme. Quest is a California company that was created on July 20, 2007 by Entity Respondent Jeffrey Norman's wife, Michelle Norman. (Shank Aff. Ex. 72.) On August 1, 2007, Quest became licensed to do business in Ohio. (Shank Aff. Ex. 73.) Quest's operations are in AFPLC's and Heritage's offices on Feder Road in Columbus. (Id.; Shank Aff. ¶ 59.) Individual Respondent Steve Grote stated in his Objection filed with this Court that Quest "is calling on the clients of [AFPLC and

Heritage] and attempting to engage them with purchases of annuities.” (Respondent Grote Objection (Sept. 26, 2008) (“Grote Objection”) at 2.)

These facts show that the Entity Respondents are determined to carry on operating a trust mill in Ohio regardless of any instruction from the law or this Court not to engage in UPL. As discussed below, this warrants imposition of a detailed, comprehensive injunction against Respondents to protect Ohio consumers.

E. Facts Relevant to the Penalties Against Respondents

Gov. Bar R. VII(8)(B) provides factors this Court can consider to determine the appropriate civil penalties against the Respondents: (1) the degree of cooperation provided by the Respondents, (2) the number of UPL violations, (3) the flagrancy of the violations, (4) harm to third parties, and (5) and any other relevant factors.

The Board rightly recognized that the Entity Respondents should be subject to civil penalties. It recommended a \$700,000.00 penalty against AFPLC, Heritage, Stanley Norman, and Jeffrey Norman, jointly and severally; it also recommended penalties of \$10,000.00 and \$7,500.00 against Respondents Paul Chiles and Harold Miller, respectively. The Board and Panel were silent, however, on the basis for the penalty recommendations; they did not state which facts support the penalties, or how they arrived at the amounts in question from the facts.

The CBA respectfully suggests that the following facts – which were in the undisputed record evidence the CBA submitted to the Panel with its motion for summary judgment – are relevant to support an award of penalties substantially larger than those assessed by the Board. The CBA also respectfully submits that this Court should impose a civil penalty against each of the Individual Respondents; additional facts relevant to their penalties are contained in section III.C, below.

1. Facts showing lack of cooperation.

Respondents were not cooperative in the CBA's investigation of their trust mill scheme. Ignoring their Consent Agreement promises, Respondents continued their business practices unabated. They also collaterally attacked this Court's rules as unconstitutional – in a lawsuit that the United States Court of Appeals for the Sixth Circuit deemed meritless, and which the District Court found so frivolous as to merit an award of attorney's fees against AFPLC. *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass'n* (C.A.6, 2007), 498 F.3d 328; *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass'n* (S.D. Ohio Oct. 30, 2007), No. 2:05-CV-459, 2007 U.S. Dist. LEXIS 82429. The Respondents blocked discovery efforts by making overly broad privilege claims, many of which the Panel ultimately rejected. They failed to produce many documents that the CBA requested, including documents regarding the trusts as executed, annuities purchased, or other post-sale transactions between Respondents and the victims and any files on legal plans sold after May 2005. For example, Respondents refused to produce five boxes of membership agreements, 300,000 pages of telemarketing records from which sales were generated, 470,858 pages in a client database, and 545,670 pages of unexecuted estate planning documents. (Shank Aff. ¶ 38; Shank Aff. Ex. 25.) Respondents also regularly created and fostered unnecessary discovery disputes. Even when the CBA made good-faith efforts to resolve significant discovery disputes, Respondents did not compromise but instead erected further barriers to the CBA's investigation. *See, e.g.*, Relator's Motion to Compel Discovery and Request for Adoption of an Expedited Written Discovery Dispute Process (Aug. 17, 2005) (attached to the CBA's Mot. for Summary Judgment ("MSJ") as Exhibit DD); Respondents AFPLC's and Heritage's Memorandum in Opposition thereto (Sept. 2, 2005) (MSJ Exhibit EE);

Relator's Second Motion to Compel Remaining Written Discovery (Sept. 6, 2005) (MSJ Exhibit FF); Panel Entry of June 26, 2006 (granting Relator's first motion to compel and granting in part Relator's second motion to compel) (MSJ Exhibit GG).

2. Facts showing thousands of Consent Agreement breaches.

By their own admission, Respondents sold at least 8,000 legal plans in Ohio. (Respondents' Br. of Aug. 7, 2006 at 1.) The limited files Respondents produced to the CBA showed that from March 2003 to May 2005, after the parties entered into the Consent Agreement, Respondents had marketed trusts to at least 3,826 elderly Ohioans, and sold trusts to at least 3,202 elderly Ohioans. (Shank Aff. ¶ 46.) There is no reason to conclude that anything less than most or all of the 3,826 trust sale pitches entailed representations about living trusts and other estate planning matters because the predominant purpose of AFPLC's activities was to sell living trusts and trust-related products. (Final Report at 10.)

Thus, from March 2003 to May 2005, after specifically agreeing in the Consent Agreement that they would not do so, the Respondents marketed a trust at least 3,826 times and sold a trust at least 3,202 times. In addition, many of Respondents' sales involved preparation by Respondents of deeds to effect property transfers. (See, e.g., Affidavit of Bruce Campbell (MSJ Exhibit L) ("Campbell Aff.") Ex. 3 (filed under seal); Campbell Aff. Exs. 35, 58.)

3. Facts showing that Respondents' conduct was flagrant.

The facts also show that the Respondents' conduct was flagrant. As described in detail above, Respondents entered into a Consent Agreement in which they stipulated

that certain conduct constituted UPL and, upon signing that Consent Agreement, they continued to engage in essentially *all* of that conduct. (Order at 21.)

In doing so, Respondents used high-pressure scare tactics to close sales, making consumers believe that they needed a living trust to preserve their assets and provide for their beneficiaries. (Shank Aff. Ex. 12.) For example, if a prospect told an AFPLC non-attorney sales representative that he or she wanted “to think about” whether AFPLC’s product was appropriate for them, the AFPLC sales representative was trained to reply to the prospect as follows:

“I don’t understand. What do you want to think about. This is simple. Remember all we’re talking about here is a few sentences that say where you want your money to go when you die. I mean we’re not talking about investing your whole life savings in some oil rig * * * I mean you already said you did not want to go through the hassles of probate & estate settlement right? And didn’t you say you felt the cost of probate & estate settlement was very expensive? And the thought of being under a guardianship with the courts if you became ill was not where you wanted to be, right? Well then, let’s get this going. Go get your checkbook and I’ll start the paperwork. It will only take a few minutes to get this done here.” (Immediately begin completing the application paperwork.)

(Shank Aff. Ex. 12 at 6.) Another excerpt from AFPLC’s 2004 training manual shows how the non-attorney sales representatives were trained to urge customers to buy a trust whether they need one or not:

[Tell the prospects,] “Actually Mr. & Mrs. Smith, the only decision you have to make today is whether or not you want your kids to ever have to go through the perils of probate & estate settlement, and the agony of guardianship.” If the timing is right, add to this by saying, “Mr. & Mrs. Smith, isn’t it time you take care of this?” Without having them answer that say, “Let’s get your file open,” and begin completing the paperwork.

(Id. at 7.) The manual even instructed sales representatives to *discourage* customers from consulting their own attorney before buying their trust from AFPLC:

“Mr. & Mrs. Smith, professional advice is usually excellent. However, let me ask you something. If you had an apple orchard and I came to you and said that I wanted to know your opinion whether I should buy apples or oranges, what would you say? Of course, you would do everything in the world to sell me apples. That’s your business. Well, Mr. & Mrs. Smith, sometimes it’s that way with an attorney. I’ve never met an attorney for your affairs here around town, but our plan attorney is an estate planning attorney (show them the “Law Office Brochure” with the plan attorney’s resume). Let’s have a specialist get this process started.” (Immediately begin completing the application paperwork).

(Id. at 6.)

Statements from AFPLC victims Betty Hamm and Marjorie Martin exemplify how AFPLC sales representatives told customers that they needed a trust. A sales representative told Mrs. Hamm and her husband that they needed a living trust in order to avoid probate and to protect their assets for their son. (Affidavit of Betty Hamm (MSJ Exhibit K) (“Hamm Aff.”) ¶ 4.) A sales representative warned Ms. Martin in 2007 that an attorney would take eight percent of her estate in fees if she did not buy a trust; that she had done “the wrong thing” in handling her deceased husband’s estate; and her children would encounter problems if she did not buy a trust. (Affidavit of Marjorie Martin (MSJ Exhibit Q) (“Martin Aff.”) ¶¶ 6-8.)

Moreover, Respondents used their improper conduct to create opportunities to sell customers annuities, which are extremely unsuitable because the elderly purchasers are highly unlikely to survive to enjoy the benefits of the products unless they withdraw their money early and thereby incur substantial penalties. (See, e.g., Hamm Aff. ¶¶ 8-11; Shank Aff. ¶ 31.) For example, when AFPLC customer Betty Hamm was 81 years old,

she paid more than \$107,000 for an annuity under which she will not be able to receive payments until she reaches 92 without incurring significant withdrawal penalties.

(Hamm Aff. ¶ 11.) In making this decision, Mrs. Hamm believed she was being advised by a “legal assistant” – not receiving a pitch from a commission-earning insurance salesman. (Id. ¶ 10.)

Respondents also were on notice that their conduct constituted UPL. Not only did they have the benefit of this Court’s past decisions on trust mills (including *Fishman*, in which the Court concluded that the conduct of agents of the Entity Respondents’ predecessor engaged in UPL), their Consent Agreement, and this Court’s Cease and Desist Order, they also had an injunction against them in North Carolina that found that the North Carolina Attorney General had made a sufficient showing that AFPLC, Heritage, Stanley Norman, and Jeffrey Norman had engaged in “a continuing pattern of unfair and deceptive trade practices, including the unauthorized practice of law, in the marketing and sale, to elderly and vulnerable consumers, of revocable living trusts, certain ancillary documents and services, and annuities.” (Preliminary Injunction, *North Carolina ex. rel. Cooper v. Am. Family Prepaid Legal Corp.*, No. 06 CVS 7428 (N.C. Super. Ct. Oct. 5, 2006), MSJ Exhibit II at 2.)

4. Respondents’ conduct harmed their customers.

AFPLC’s customers paid at least \$1,995.00 each for their legal plans. (Deposition of Harold Miller, July 13, 2005 (MSJ Exhibit F) (“Miller Dep. II”) 104:12-17, 109:14-110:20, July 13, 2005; S. Norman Dep. 31:19-32:4.) Many also spent money to hire attorneys to pursue a refund of the money they paid to American Family and to fix their estate plans after Respondents sold them inappropriate products. (Hamm Aff. ¶ 12; Affidavit of Eleanor Luttrell (MSJ Exhibit R) (“E. Luttrell Aff.”) ¶ 11; Affidavit of Judith

Luttrell (MSJ Exhibit S) (“J. Luttrell Aff.”) ¶ 12; Campbell Aff. Ex. 1 (filed under seal); Campbell Aff. Exs. 7, 34, 38, 56.) The substantial financial harm that Respondents caused their customers—to say nothing of the emotional and psychological harms the customers endured—militates in favor of stiff penalties.

III. ARGUMENT

A. PROPOSITION OF LAW NO. 1

The Respondents’ trust-mill scheme justifies and requires a more detailed, comprehensive injunction to ensure that the Respondents do not continue or resume unlawful activities in Ohio.

Without question, the Board rightly intended to put an end to Respondents’ trust-mill scheme in Ohio by recommending that this Court issue “an order prohibiting the Entity Respondents and Individual Respondents from further engaging in the unauthorized practice of law in the future.” (Final Report at 13.) The CBA respectfully submits, however, that significantly more than a generic injunction against engaging in UPL will be necessary to make Respondents stop operating their trust mill in Ohio.

Under Civil Rule 65(D), an injunction is to “be specific in terms, * * * describe in reasonable detail * * * the act or acts sought to be restrained; and is binding upon the parties to the action, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order.” The law and this Court have repeatedly told Respondents that they may not engage in the unauthorized practice of law in Ohio, yet they have continued to do so. This Court, therefore, must enter a detailed injunction against them that makes clear that their business is a trust mill, which they must discontinue entirely.

The Respondents had ample notice that their conduct constituted UPL. Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio prohibits the unauthorized practice of law in Ohio. In 2002, this Court had found that AFPLC's predecessor, AHC, engaged in the unauthorized practice of law through sales of living trusts, and the Court suspended AFPLC's plan attorney at the time from the practice of law for his participation in that scheme. *See Fishman*, 2002-Ohio-7086. In 2003, Respondents entered into a Consent Agreement that prohibited them from engaging in the unauthorized practice of law, and even spelled out eight specific prohibited activities, as described above. (Order at 4-5.) Upon a motion to enforce the Consent Agreement and a motion for an interim cease-and-desist order from the CBA, this Court entered an Interim Cease-and-Desist Order against Respondents, which directed them to cease and desist in engaging in the unauthorized practice of law. In addition, this Court "has repeatedly stated that the marketing of living trusts by nonattorneys is the unauthorized practice of law." *Trumbull Cty. Bar Ass'n v. Hanna*, 80 Ohio St.3d 58, 60, 1997-Ohio-1021, 684 N.E.2d 329; *see also Disciplinary Counsel v. Kramer*, 113 Ohio St.3d 455, 2007-Ohio-2340, 866 N.E.2d 498, ¶ 4 (describing trust mill as "usually targeting older customers, and then profit[ing] by also selling insurance"); *Disciplinary Counsel v. Goetz*, 107 Ohio St.3d 22, 2005-Ohio-5830, 836 N.E.2d 556; *Dayton Bar Ass'n v. Addison*, 107 Ohio St.3d 153, 2005-Ohio-6044, 837 N.E.2d 367; *Disciplinary Counsel v. Wheatley*, 107 Ohio St.3d 224, 2005-Ohio-6266, 837 N.E.2d 1188; *Cleveland Bar Ass'n v. Sharp Estate Serv.*, 107 Ohio St.3d 219, 2005-Ohio-6267 837 N.E.2d 1183 ; *Columbus Bar Ass'n v. Moreland*, 97 Ohio St.3d 492, 2002-Ohio-6726, 780 N.E.2d 579; *Fishman*, 2002-Ohio-7086 (held AFPLC's predecessor company, AHC, engaged in the unauthorized practice of law; suspended law license of AFPLC's former Plan Attorney);

Cincinnati Bar Ass'n v. Kathman, 92 Ohio St.3d 92, 96, 2001-Ohio-157, 748 N.E.2d 1091; *Akron Bar Ass'n v. Miller*, 80 Ohio St.3d 6, 1997-Ohio-364, 684 N.E.2d 288.

Despite all these things that should have clearly communicated to them that their conduct is illegal as UPL, the facts found by the Board show that Respondents have continued to operate their trust mill in essentially the same manner as always, even after signing the Consent Agreement.

Thus, this case's history demonstrates that being told by the law or even this Court not to engage in UPL is not enough to dissuade the Respondents from operating their trust mill. They seem to be under the impression that if they do not believe their conduct is UPL, then it is not. This Court's injunction, therefore, should be detailed and comprehensive in order to explain clearly to them that they may not continue to engage in their unlawful business – the sale of living trusts in the guise of a legal plan, or any other device or subterfuge – *at all*.

This Court's rules authorize it to grant broad injunctions to protect the public against those who engage in UPL. Gov. Bar R. VII, section 19(d)(1) allows this Court to enjoin "such conduct" that Respondents engaged in that is found to be UPL. Under Rule VII, section 17, this Rule is to be "liberally construed for the protection of the public, the courts, and the legal profession." Under Civ. R. 65(D), an injunction binds "the parties to the action, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order." Here, that should mean enjoining Respondents from all conduct they agreed to cease in their Consent Agreement – and enjoining the Entity Respondents and their principals, affiliates, and successors (including Quest) from continuing to do business in Ohio at all. In addition, this Court should enjoin Respondents from selling annuities or insurance

products to their customers because this has been an integral component of their trust-mill scheme.

This Court has similarly expanded upon the Board's recommended injunction in two previous UPL cases where necessary to stop the Respondents' harmful, unlawful trust mill conduct. In *Sharp Estate*, the Court found it appropriate to go beyond the Board's recommended injunction as follows:

The board recommended that an injunction be issued enjoining the respondents from the unauthorized practice of law in Ohio. Given the gravity of the respondents' UPL violations, we conclude that a permanent injunction preventing the respondents from marketing and selling living trusts in Ohio is appropriate. Otherwise, respondents could make minor changes to their operation and continue marketing and selling trusts and estates in Ohio.

2005-Ohio-6267 at ¶ 13.

In reaching this conclusion, the *Sharp Estate* decision cited *Hanna*, 80 Ohio St. 3d at 61. There, a financial planner who entered into a joint venture with a corporation to sell trusts was found to have engaged in UPL by advising customers about estate-planning devices and assisting in the preparation of trusts. *Id.* To prevent future UPL violations, the Court specifically enjoined *Hanna* from "any further activity involving the counseling of persons with respect to their legal rights and the preparation of legal instruments and documents to secure the legal rights of any person." *Id.*

Similarly, the Missouri Supreme Court has also recognized the need for a broader injunction against companies who engage in UPL when selling trusts in *In re Mid-America Living Trust Associates, Inc. v. Supreme Court of Missouri* (Mo. 1996), 927

S.W.2d 855.³ There, Mid-America, like Sharp Estate and AFPLC, was in the business of using non-attorney advisors to market, solicit, and prepare trusts, allowing the non-attorney advisors to make recommendations and give advice to customers and using “review attorneys” simply to check the documents after they had already been sold. *Id.* at 856-57. Mid-America prepared up to 200 estate plans each month in five states, with over 250 trusts prepared and sold to Missouri residents. *Id.* at 857.

With these facts, the Missouri court recognized that because of the “potential for harm and the actual harm,” it could not allow the company to continue operations. *Id.* at 870. Therefore, to carry out its duty to “protect the public from being advised or represented in legal matters by incompetent or unreliable persons,” the court enjoined the company from “soliciting, counseling, recommending, and selling, trusts, wills, and all other legal instruments, for valuable consideration, to Missouri residents” and from “drawing, preparing, or assisting in the preparation of trust workbooks, trusts, wills, and powers of attorney, for valuable consideration, for Missouri residents, without direct supervision of an independent licensed attorney selected by and representing those individuals.” *Id.* at 871.

A North Carolina court has recently entered a similar injunction against Entity Respondents AFPLC, Heritage, Jeffrey Norman, and Stanley Norman and “their

³ Notably, *Mid-America* cited numerous Ohio cases regarding UPL as it relates to advice regarding living trusts, see *Mid-America*, 927 S.W.2d at 860-65, and this Court has, in turn, followed *Mid-America* for the proposition that “attorneys aid in the unauthorized practice of law when they assist nonattorneys who market or sell trust documents.” *Kathman*, 92 Ohio St. 3d at 97.

successors, assigns, subsidiaries, and affiliates, including Quest and NAFB.”⁴ *North Carolina ex rel. Roy Cooper v. Am. Family Prepaid Legal Corp., Inc.* (N.C. Super. July 1, 2008), No. 06 CVS 7428, Consent Judgment (unreported decision attached as Exhibit A) at 9. For conduct identical in all material respects to that of Respondents in this case, that court barred AFPLC and the others from:

- “engaging in the sale of prepaid legal plans, living trusts, or any estate planning documents to residents of North Carolina or at any place within North Carolina;”
- “engaging in the sale of any insurance products, including but not limited to annuities, to residents of North Carolina or at any place within North Carolina;”
- “engaging in activities in North Carolina constituting the unauthorized practice of law, specifically including providing advice to consumers about estate plans, representing to consumers that they can provide living trusts or other estate plans either directly or through an attorney, representing to consumers that they can provide or arrange for the services of an attorney to prepare an estate plan, giving advice to consumers concerning disposition of assets, representing to consumers that they need a living trust as the sole or primary means of distributing their assets, and/or representing to consumers that living trusts are a better or superior method to distribute estates than any other estate plan;” and
- “using, selling, leasing, giving, or in any way allowing any other person or entity to use the [AFPLC] and Heritage customer lists which are defined as the names, addresses, telephone numbers, and any other personal identifying information that [AFPLC], Heritage or their agents collected from North Carolina consumers

⁴ NAFB is the National Association of Family Benefits, Jeffrey Norman’s newest operation, which includes a legal services component through Legal Maintenance Organization of American and a financial component through Quest.

who purchased prepaid legal plans or any estate planning documents from [AFPLC] or insurance products from Heritage.”

Id. at 10.

Here, the CBA respectfully submits that the best possible injunction would prohibit the Entity Respondents and their principals, affiliates, and successors from doing business in Ohio *at all*. AFPLC, Heritage, and their owners, Stanley Norman and Jeffrey Norman, have shown again and again that even prohibitions as precise as those in the Consent Agreement will not stop them from trying to operate a trust mill in Ohio. Respondents already had a chance to comply with the Consent Agreement’s prohibitions and willfully disregarded them. The Entity Respondents’ conduct here and in other states – as evidenced by other states’ proceedings and injunctions against them – indicate that Respondents are determined to prey upon Ohio’s elderly residents to sell them trusts and then annuities. It is time to tell them simply to leave Ohioans alone and cease to operate *any* business in Ohio. The CBA therefore respectfully requests that this Court’s injunction bar the Entity Respondents, and their principals, affiliates, and successors, from engaging in any business in Ohio whatsoever.

In the alternative, at a minimum, the Court should not only enjoin Respondents from engaging in UPL generally but also, as it did in *Sharp Estate* and *Hanna*, prohibit them from selling living trusts by any means at all, just as the North Carolina court did. Specifically, the injunction should be detailed and comprehensive so as to bar Respondents from engaging in the eight activities enumerated in their Consent Agreement, amended to also prohibit sales of prepaid legal plans that have any legal product as a benefit. In addition, this Court should enjoin Respondents from selling

insurance products, including but not limited to annuities, just as the North Carolina court did.

The CBA further respectfully requests that this Court enjoin the Individual Respondents, imposing the same prohibitions that Individual Respondents Hamel, Holmes, Hyers, and Clouse agreed to, which the Panel and Board approved. (Consent Decree Between the CBA and Respondents Hamel, Holmes, and Hyers at 5-8; Consent Decree Between the CBA and Respondent Clouse at 5-8; Panel Report Regarding Respondents Hamel, Holmes, Hyers, and Clouse at 7.)

B. PROPOSITION OF LAW NO. 2

The Entity Respondents' egregious conduct is precisely the conduct that warrants higher civil penalties than the Board recommended.

Gov. Bar R. VII(8)(B) provides that this Court can impose civil penalties of up to \$10,000 per offense. The factors this Court can consider under the Rule include the degree of cooperation provided by the Respondents, the number of UPL violations, the flagrancy of the violations, and any other relevant factors. *See also* UPL Regulation 400. Here, each of these factors weighs heavily in favor of penalties substantially higher than those recommended by the Board.

1. The Entity Respondents were not cooperative in the CBA's investigation.

As described in the fact section above, the Entity Respondents were not cooperative in the CBA's investigation of their trust-mill scheme. After signing the Consent Agreement, they continued their business as usual; they collaterally attacked this Court's rules; they blocked and failed to cooperate with the CBA's discovery efforts. In sum, Respondents' conduct could not have been much less cooperative and, as such,

causes this factor to weigh entirely against them. *Compare Sharp Estate*, 2005-Ohio-6267 at ¶ 15 (respondent's failure to "fully cooperate" caused this factor to weigh "heavily" against them).

2. The Entity Respondents committed thousands of UPL violations.

As noted above, from March 2003 to May 2005, the Respondents marketed a trust at least 3,826 times and sold a trust at least 3,202 times, for a *minimum* of 7,028 breaches of the Consent Agreement. (Shank Aff. ¶ 46.) In fact, the minimum number is even higher because Respondent AFPLC's pleadings and correspondence acknowledge about 8,000 plan members in Ohio. (Respondents' Br. (Aug. 7, 2006) at 1.) Each of those constitutes an instance of marketing a trust, and thus violates the Consent Agreement; and each sale of a trust, of which we know there were at least 3,202, constitutes an additional violation. By this measure, Respondents actually committed a *minimum* of 11,202 Consent Agreement violations, each of which constitutes an instance of UPL. *See, e.g., Sharp Estate*, 2005-Ohio-6267; *Fishman*, 98 Ohio St.3d 172; *Kathman*, 92 Ohio St.3d at 96. In addition, many of Respondents' sales involved preparation by Respondents of deeds to effect property transfers, which would constitute still more violations. (See, e.g., Campbell Aff. Ex. 3 (filed under seal); Campbell Aff. Exs. 35, 58.) *See Toledo Bar Ass'n v. Chelsea Title Agency*, 100 Ohio St. 3d 356, 2003-Ohio-6453, 800 N.E.2d 29, ¶ 7.

3. The Entity Respondents' conduct was flagrant.

Respondents' conduct was flagrant because they knew or should have known it was unlawful when they engaged in it. First, this Court's many decisions on trust mills – especially *Kathman*, *Sharp Estate*, and of course *Fishman*, in which AFPLC's plan

attorney was suspended from the practice of law for running a trust mill owned by Entity Respondents Jeffrey Norman and Stanley Norman – gave notice that operating a trust mill such as that of the Respondents constitutes the unauthorized practice of law. This alone would support a finding of flagrancy. *See Sharp Estate*, 2005-Ohio-6267 at ¶ 15 (“respondents’ violations were flagrant because they aggressively targeted customers even after *Kathman*”). *Kathman* also informed the Respondents that even if an attorney reviews or prepare trusts after a non-attorney salesman has sold them, the salesmen’s conduct is still UPL – the “attorney enters the relationship too late – the nonattorney has already given legal advice to the client regarding the client’s legal matters, has gathered important information, and has recommended and sold a trust instrument.” 92 Ohio St.3d at 96-97. Moreover, as described in detail above, Respondents entered into a Consent Agreement in which they stipulated that certain conduct constituted UPL – and then, upon signing the Consent Agreement, they continued to engage in essentially *all* of that conduct. They also continued to do so after this Court issued its Cease and Desist Order against them.

Respondents’ conduct also was flagrant because of its exceptionally offensive nature. Respondents used scare tactics to close sales, making consumers believe that they needed a living trust to preserve their assets and provide for their beneficiaries. As described above, AFPLC’s training manual gave sales representatives detailed instructions on how to persuade customers that they needed a trust regardless of whether a trust was truly appropriate. (Shank Aff. Ex. 12 at 6-7.) The statements of AFPLC victims Betty Hamm and Marjorie Martin, described above, also provide examples of how AFPLC representatives followed the instructions they were given to convince customers they needed a trust. (Hamm Aff. ¶ 4; Martin Aff. ¶¶ 6-8.)

Then Respondents used their improper conduct to create opportunities to sell annuities – products that are extremely unsuitable for elderly customers such as AFPLC's. For example, as noted in the statement of facts above, AFPLC and Heritage customer Betty Hamm paid more than \$107,000 for an annuity at age 81, from which she cannot receive any payments until she is 92 unless she is willing to incur high penalties. In deciding to buy the annuity, she believed she was being advised by a “legal assistant,” not an insurance salesman who would earn a commission. (Hamm Aff. ¶¶ 10-11.) The Panel concluded that Heritage's activities constitute an “integral” part of AFPLC's operations and a breach of the Consent Agreement. (Order at 19.)

For these reasons, Respondents' conduct was exceptionally flagrant and should subject them to the most severe sanctions available.

4. The Entity Respondents should pay high civil penalties because their conduct has harmed third parties.

In *Sharp Estate*, this Court noted that a trust mill inherently harms third parties: namely, the trust mill's clients. 2005-Ohio-6267 at ¶ 15.

Here, each client has been harmed to the tune of at least \$1,995.00 per living trust sold. Assuming just the 3,202 known victims who purchased living trusts, that is a total of nearly \$6.4 million in direct financial harm from just the trust sales from the March 2003 to May 2005 timeframe. Given the Respondents' lack of cooperation in discovery, the actual harm to Ohio's elderly population is certainly much higher.

Of course, the real money in this trust mill was in the annuity sales and churning of insurance products. (Order at 19-20.) Each of these high-risk annuities came with hefty surrender charges to complement the hefty commissions that Heritage's agents

earned. (Shank Aff. at ¶ 31.) In this way, Respondents' trust mill has likely harmed Ohioans by tens, if not hundreds, of millions of dollars.

In addition, many victims have been further harmed because they needed to hire attorneys to pursue refunds of the money they paid to American Family, or to fix their estate plans after Respondents sold them inappropriate products, or both. (Hamm Aff. ¶ 12; E. Luttrell Aff. ¶ 11; J. Luttrell Aff. ¶ 12; Campbell Aff. Ex. 1 (filed under seal); Campbell Aff. Exs. 7, 34, 38, 56.)

For the millions of dollars of harm the Entity Respondents caused to their clients, this Court should impose a severe civil penalty on them.

5. Other relevant factors support requiring the Entity Respondents to pay high civil penalties.

Regulation 400(E)(5) provides that the Board can consider any other relevant factors in determining whether to impose civil penalties. Regulation 400(F) defines those factors: (1) whether civil penalties are sought by the relator, (2) whether civil penalties would further the purposes of Rule VII of the Rules for the Government of the Bar, (3) whether certain aggravating factors (listed below) are present, and (4) whether certain mitigating factors (listed below) are present.

a. High civil penalties against Entity Respondents would further the purposes of Gov. Bar R. VII.

Section 17 of Gov. Bar R. VII provides that the rule "and regulations relating to investigations and proceedings involving complaints of unauthorized practice of law shall be liberally construed for the protection of the public, the courts, and the legal profession * * *." Penalizing Respondents would serve to protect the public by discouraging Respondents and anyone else from operating a deceptive trust-mill scheme in Ohio. *See, e.g., Chelsea Title Agency*, 2003-Ohio-6453 at ¶ 8.

b. Aggravating factors warrant an award of civil penalties against Entity Respondents.

UPL Regulation 400(F)(3) lists aggravating circumstances that warrant an award of a “more severe penalty” against parties that have engaged in UPL:

- (a) Whether respondent has previously engaged in the unauthorized practice of law;
- (b) Whether respondent has previously been ordered to cease engaging in the unauthorized practice of law;
- (c) Whether the respondent had been informed prior to engaging in the unauthorized practice of law that the conduct at issue may constitute an act of the unauthorized practice of law;
- (d) Whether respondent has benefited from the unauthorized practice of law and, if so, the extent of any such benefit;
- (e) Whether respondent’s unauthorized practice of law included an appearance before a court or other tribunal;
- (f) Whether respondent’s unauthorized practice of law included the preparation of a legal instrument for filing with a court or other governmental entity; and
- (g) Whether the respondent has held himself or herself out as being admitted to practice law in the State of Ohio, or whether respondent has allowed others to mistakenly believe that he or she was admitted to practice law in the State of Ohio.

The first, second, third, fourth, and sixth aggravating factors are present here and thus strongly support a “severe penalty” against Respondents.

Respondents have “previously engaged in the unauthorized practice of law” because, as shown above and in the proceedings below, they have engaged in the same conduct both before and after the Consent Agreement – conduct they stipulated was UPL. As presented above, this prohibited conduct in which Respondents engaged

included “selling, marketing and/or preparing * * * living trusts;” “advising and counseling clients concerning the suitability of said legal products for a client’s particular situation;” “advising and counseling clients concerning the suitability of said legal products for [the] client’s particular situation without acting under the direct supervision and control of the client’s attorney;” and “engaging the services of an Ohio attorney to conduct only cursory reviews of said legal products with little or no contact with clients.”

The second aggravating factor is present because Respondents have “previously been ordered to cease engaging in the unauthorized practice of law.” They have been ordered to do so by their own Consent Agreement, and they have been ordered to do so by this Court’s Interim Cease and Desist Order of April 12, 2005. Since the Consent Agreement, and since the Cease and Desist Order, Respondents have continued their trust-mill UPL business as usual – with reports of unlawful activity occurring as recently as May 24, 2007 (Martin Aff. ¶¶ 5-10) and complaints of more such activity received in June and July 2007 (Beckman Aff. Exs. 1, 2). Respondents’ recent business activity as a trust mill was confirmed by Individual Respondent Steven Grote, who provided the Court with evidence of AFPLC’s trust-mill operations, in concert with Quest, as recent as July 15, 2008. (Grote Objection at 3-4.)

Indeed, AFPLC has also been enjoined from engaging in this very conduct in Minnesota, North Carolina, and Pennsylvania. Exhibit A; Consent Preliminary Injunction, *Minnesota v. Am. Family Prepaid Legal Corp.*, No. 27-CV-07-4102 (Minn. Dist. Ct. June 28, 2007) (MSJ Exhibit HH); Interim Consent Decree, *Pennsylvania v. Weinstein*, No. 239 M.D. 2006 (Pa. Commw. Ct. June 1, 2006) (MSJ Exhibit JJ). The North Carolina court entered summary judgment against AFPLC, finding that it had

engaged in UPL. Summary Judgment, *North Carolina ex rel. Cooper v. Am. Family Prepaid Legal Corp.*, No. 06 CVS 7428 (unpublished decision attached as Exhibit B).

All of this satisfies the third aggravating factor as well – Respondents were “informed prior to engaging in the unauthorized practice of law that the conduct at issue may constitute an act of the unauthorized practice of law.” The fourth aggravating factor – Respondents’ benefit – strongly weighs in favor of penalties because Respondents made millions selling thousands of trusts for \$1,995.00 each. The sixth aggravating factor is satisfied because AFPLC employed non-attorneys who prepared deeds.

6. All of these factors combined support imposing a severe penalty against the Entity Respondents.

a. This Court should impose a severe penalty on Entity Respondents AFPLC, Heritage, Jeffrey Norman, and Stanley Norman, jointly and severally.

Taken together, the above support imposing high civil penalties against AFPLC, Heritage, Jeffrey Norman, and Stanley Norman, jointly and severally. These Respondents have taken advantage of Ohio’s elderly population for their own great profit and have persisted in this conduct despite a Consent Agreement, a Cease and Desist Order, and case law instructing them that their scheme constituted unlawful unauthorized practice of law. There simply is no case more suited than this one for the highest allowable penalties. As Justice Stratton has noted, greater fines are warranted “for persons who engage in the unauthorized practice of law with multiple customers or who sell mass-produced legal documents such as ‘probate packets’ with advice that only a lawyer is competent to provide.” *Disciplinary Counsel v. Goetz*, 107 Ohio St. 3d 22,

2005-Ohio-5830, 836 N.E.2d 556, ¶ 11 (Stratton, J., concurring in part and dissenting in part).

In the Panel proceedings, the CBA requested the maximum penalty for each of the 11,202 UPL violations (at least 8,000 members to whom trusts were marketed, plus at least 3,202 sales) for a total civil penalty of \$112,020,000 in connection with the twenty-six months of sales files the CBA obtained in discovery. Certainly, such a penalty would indeed correlate to the enormity of harm the Respondents caused through these particularly egregious UPL violations. A very high penalty would also serve as a deterrent to others.

There are other ways this Court can calculate the civil penalties against the Respondents AFPLC, Heritage, Jeffrey Norman, and Stanley Norman. In *Sharp Estate*, this Court calculated the defendants' penalty by multiplying the number of trusts and estate plans sold, 468, by \$2,195, the higher of two prices the respondents had normally charged for trusts. 2005-Ohio-6267 at ¶ 5. This resulted in a total penalty of \$1,027,260. *Id.* at ¶ 17. The Court could apply a similar methodology in determining appropriate penalties for Respondents AFPLC, Heritage, Jeffrey Norman, and Stanley Norman. For example, the Court could multiply the minimum number of trusts marketed plus the minimum number of victims who purchased trusts from March 2003 through May 2005, 7,028, by the base price paid for the trusts, \$1,995.00, which would result in a penalty against those four Respondents of \$14,020,860.00. Or, in the alternative, the Court could multiply the number of victims who purchased trusts from March 2003 through May 2005, 3,202, by \$1,995.00, for joint and several liability against AFPLC, Heritage, Jeffrey Norman, and Stanley Norman in the total amount of \$6,387,990.

b. This Court should impose high penalties on Entity Respondents Paul Chiles and Harold Miller.

Respondents Paul Chiles and Harold Miller supervised and actively participated in Respondents' trust-mill scheme and should face high penalties for that participation. Respondent Chiles is the state marketing director for AFPLC in Ohio and oversees AFPLC's Ohio sales force. (Order at 26.) Respondent Chiles also oversees Respondent Heritage's delivery agents. (Id.) Respondent Harold Miller is Respondent AFPLC's Ohio office manager and has worked alongside Paul Chiles. (Id. at 27.) Both Mr. Chiles and Mr. Miller also worked for AHC, the trust-mill company to which AFPLC is the successor. (Miller Dep. I 16:2-17:9; Hamel Dep. 40:18-41:13, 42:8-20.)

As the Panel found and the Board affirmed, Mr. Chiles and Mr. Miller both violated the Consent Agreement through their respective roles at AFPLC and Heritage. (Id.) Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose appropriately high civil penalties upon Respondents Paul Chiles and Harold Miller.

C. PROPOSITION OF LAW NO. 3

The Individual Respondents' egregious conduct in carrying out the Entity Respondents' trust-mill scheme warrants a broader injunction and a civil penalty against each of them.

Although the Board did not address the issue of assessing civil penalties against the Individual Respondents, the CBA respectfully submits that the Individual Respondents should be made to pay a penalty for their role in carrying out the Entity Respondents' trust-mill scheme, from which they personally profited.⁵

⁵ In approving the respective Consent Decrees of Individual Respondents Hamel, Holmes, Hyers, and Clouse, the Panel and Board did recommend civil penalties against these Respondents, finding this an appropriate "acknowledgment of the serious nature

After all, the front line for the Respondents' trust mill is comprised of its sales force, a team of non-attorneys who peddle largely unneeded legal documents across Ohio to the great and ongoing harm of Ohio's elderly residents, their families, and their estates. The second line of attack in this trust mill is comprised of a team of non-attorney delivery agents (who are licensed to sell insurance) who deliver the trusts and other legal documents and then use the victims' personal and financial information to generate further profits at the expense of Ohio's elderly. Through high-pressure sales tactics, the Individual Respondents earn commissions by bilking the life savings of thousands of Ohioans. For these reasons, and all the reasons that support broader injunctive relief and a civil penalty against the Entity Respondents, the Individual Respondents should be subject to a broader injunction and civil penalties.

Through discovery, the CBA obtained Respondents' files regarding at least 3,202 elderly Ohioans who purchased living trusts from these non-attorney sales agents as part of AFPLC's trust mill. Using these sales files produced by Respondents, the CBA has demonstrated a minimum number of sales that were made by each of the Individual Respondent sales agents during this time frame. (Shank Aff. ¶¶ 43-46.) The CBA was also able to demonstrate the ages for the customers and to show flagrancy the CBA has established the average victim age per Individual Respondent sales agent. Finally, the CBA has established numerous especially dreadful trust sales for which these sales and delivery agents are responsible.

The Individual Respondents who are non-attorney sales and delivery agents signed the 2003 Consent Agreement. However, these sales and delivery agents

of the conduct" and a "deterrent to similar conduct in the future." (Panel Report Regarding Respondents Hamel, Holmes, Hyers, and Clouse at 7.)

continued to perpetuate AFPLC and Heritage's trust mill for years after they signed the 2003 Consent Agreement. In fact, the record evidence shows that the Individual Respondents have continued to operate their trust mill throughout these proceedings. For example, former sales agent and Respondent herein Eric Peterson was an employee of AFPLC from April 2001 until June 2006. (Brief of Eric Peterson in Opposition to Summary Judgment at 1.) When Respondent Peterson met with potential clients in their homes, he explained probate proceedings to customers, including how such proceedings supposedly work. (Deposition of Eric Peterson (MSJ Exhibit VV) 23:10-24:3.) Last year, he informed the Panel that at some time after April 2005, when this Court issued its Interim Cease and Desist Order, AFPLC advised him that the Order "was lifted and I was instructed by my attorneys and American Family Prepaid Corporation that I could return to work." (Brief of Eric Peterson in Opposition to Summary Judgment at 1.) Respondent Peterson's statement demonstrates that the Entity Respondents and Individual Respondents disregarded the Court's Order and the 2003 Consent Agreement, by continuing to market and sell living trusts as usual.

In order to prevent further harm to Ohio's elderly residents, their families, and their estates, this Court should issue injunctive relief and civil penalties significant enough to deter the Individual Respondents from engaging in the same or similar conduct in the future. In addition, such an order for injunctive relief and civil penalties should be significant enough to deter the Individual Respondents from further associating with the Entity Respondents in their affiliated, successor, or spin-off enterprises in Ohio. Finally, in order to adequately protect the public, this Court should issue injunctive relief and civil penalties significant enough to send a message in order

to deter others who would otherwise consider engaging in similar conduct in connection with or in furtherance of trust mill activities in Ohio.

The various Individual Respondents' violations – and the CBA's corresponding requests for injunctive relief and civil penalties – break down as follows.

1. Individual Respondent Eric Peterson violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC

From March 2003 through May 2005, Individual Respondent Eric Peterson marketed and then sold at least 124 plans to Ohioans with average age at sale of 75.5 years. (See CBA MSJ at 15; Shank Aff. ¶ 56.) As one example, a man of Vermilion, Ohio bought a trust even as his children explained that he was showing signs of Alzheimer's Disease. And even though this customer had estimated gross assets of \$162,600, including real estate comprising \$130,000 of that amount, Respondent Peterson sold him a trust and advised this customer to purchase a trust "to start covering a look-back period." (Shank Aff. Ex. 39 (filed under seal).) Respondent Peterson's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Peterson an appropriate civil penalty.

2. Individual Respondent Luther Mack Gordon violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC, and by managing AFPLC's trust mill operations.

From March 2003 through May 2005, Individual Respondent Luther Mack Gordon marketed and then sold at least 180 plans to Ohioans with an average age at sale of 76.4 years. (See CBA MSJ at 16; Shank Aff. ¶ 56.) As one example, he sold a trust to

an 88-year-old Dayton, Ohio woman even though he estimated her gross assets at \$105,000, including her house valued at \$100,000. This widow had only \$2,000 in her bank accounts, so she paid for her trust with a credit card. (Shank Aff. Ex. 40.)

By March 2007, Respondent Gordon was acting manager for AFPLC. (Grote Objection at 2.) As acting manager, with the power to terminate the sales force (see *id.*), Respondent Gordon was in control of the ongoing operation of the trust mill. Since at least that time, Respondent Gordon has not even participated in these proceedings. His complete lack of cooperation simultaneous to his managerial position with AFPLC weighs heavily against mitigation of any civil penalty. Respondent Gordon's trust sales and oversight of many more trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Gordon an appropriate civil penalty.

3. Individual Respondent Chris Miller violated the 2003 Consent Agreement and engaged in the Unauthorized Practice Of Law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Chris Miller marketed and then sold at least 98 trusts to Ohioans with an average age at sale of 75.6 years. (See CBA MSJ at 16; Shank Aff. ¶ 56.) For example, Respondent Chris Miller, sold a trust to an elderly couple of Columbus, Ohio even though they had combined estimated assets of less than \$120,000. Respondent Chris Miller discussed issues about the couple's special needs daughter and he gathered information for purposes of preparing or determining the suitability of further appropriate legal products for this family. (Shank Aff. Ex. 41.) Respondent Chris Miller's trust sales harmed elderly

Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Chris Miller an appropriate civil penalty.

4. Individual Respondent Patty Soos violated the 2003 Consent Agreement and engaged in the Unauthorized Practice Of Law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Patty Soos marketed and then sold at least 118 trusts to Ohioans with an average age at sale of 76.7 years. (See CBA MSJ at 17; Shank Aff. ¶ 56.) As one example of a trust sale by Respondent Soos, an elderly couple, each 81 years of age, of Leetonia, Ohio, bought a trust from her even though their house accounted for more than half of their \$145,000 in estimated gross assets. At the time of the sale, Respondent Soos noted, "Husband has cancer and has refused chemotherapy. Please expedite the trust." (Shank Aff. Ex. 43.)

Ms. Soos was still marketing and selling trusts for AFPLC at least as recently as last year. On May 24, 2007, Respondent Soos came to the home of Marjorie Martin, then 83 years old, to market and sell a living trust. (Martin Aff. ¶ 5.) Ms. Martin had actually purchased a living trust from Respondent Ken Royer in 2004 when she had total assets of \$19,000. (Id. at ¶ 2.) After that sale in 2004, Ms. Martin's attorneys determined that she did not need a living trust and contacted Respondent AFPLC to refund her money. (Id. at ¶ 3.)

At the sales call three years later, Respondent Soos showed Ms. Martin a poster that Respondent Soos claimed hangs in "every court in Ohio," and which she claimed depicts the amount of fees an attorney would make for handling an estate. (Id. at ¶ 6.) Respondent Soos warned Ms. Martin that an attorney would take eight percent of her

estate in fees if she did not buy a trust. (Id.) During the sales presentation, Respondent Soos told Ms. Martin that she had done “the wrong thing” in regards to handling her deceased husband’s estate. (Id. at ¶ 7.) Respondent Soos also stressed that Ms. Martin’s children would encounter problems if Ms. Martin did not buy a trust. (Id. at ¶ 8.) After Ms. Martin declined to purchase a trust, Respondent Soos accused her of wasting her time. (Id. at ¶ 9.)

Respondent Soos’s trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Soos an appropriate civil penalty.

5. Individual Respondent Anthony Sullivan violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Anthony Sullivan marketed and then sold at least 4 trusts to Ohioans with an average age at sale of 83.8 years. (See CBA MSJ at 17; Shank Aff. ¶ 56.) As one example, a 90 year old woman from Jamestown, Ohio bought a trust even though Respondent Sullivan estimated her gross assets at \$110,000, including her \$90,000 house and a \$10,000 annuity. (Shank Aff. Ex. 44.) Respondent Sullivan’s trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Sullivan an appropriate civil penalty.

6. Individual Respondent Jeff Alten violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Jeff Alten marketed and then sold at least 55 trusts to Ohioans with an average age at sale of 77.3. (See CBA MSJ at 17; Shank Aff. ¶ 56.) As one example, Respondent Alten convinced a couple from Parma, Ohio in their 70s to buy a trust even though they had combined estimated assets of less than \$40,000. (Shank Aff. Ex. 45.) In another instance, a couple from Shaker Heights, Ohio, both in their 80s, bought a living trust from Respondent Alten even though they had only \$72,000 in estimated gross assets. Respondent Alten noted that although the wife had Alzheimer's Disease, she was able to sign the sales documents anyway. (Shank Aff. Ex. 32.) Respondent Alten's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Alten an appropriate civil penalty.

7. Individual Respondent William Downs violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent William Downs marketed and then sold at least 203 trusts to Ohioans with an average age at sale of 74.7. (See CBA MSJ at 18; Shank Aff. ¶ 56.) As one example, Respondent Downs sold a trust to an 87 year old widower from Chillicothe, Ohio. At the time, Respondent Downs estimated this man's gross assets at \$38,000, including a mobile home worth \$33,000. Thus, the sale depleted this man's liquid assets when he gave Respondent Downs a check for \$1,995 to buy the trust. (Shank Aff. Ex. 46.) As another example, Respondent Downs marketed and sold a trust to Betty and Thomas Hamm, of Martins Ferry, Ohio, who were both in their 80s at the time. (Hamm Aff. at ¶ 3.) Respondent Downs told the

Hamms that they needed a living trust in order to avoid probate and to protect their assets for their son. (Id. at ¶ 4.) The Hamms never spoke to plan attorney Edward Brueggeman even though they purchased the trust for \$1,995.00. (Id. at ¶¶ 5-6.) Respondent Downs's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Downs an appropriate civil penalty.

8. Individual Respondent Steve Grote violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Steve Grote marketed and then sold at least 202 trusts to Ohioans with an average age at sale of 76.8. (See CBA MSJ at 18; Shank Aff. ¶ 56.) As one example, an 81-year-old woman of Cleves, Ohio bought a trust from Respondent Grote even though she did not have enough money in her bank accounts for the purchase. This widow paid \$1,995 by credit card since she had an estimated \$500 assets aside from her house. (Shank Aff. Ex. 47.) Respondent Grote's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors except that Respondent Grote has represented to the Court in his Objection to the Board's recommendation that he intends to avoid representing a company such as Respondent AFPLC in the future. (Grote Objection at 2.) Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Grote an appropriate civil penalty.

9. Individual Respondent Jack Riblett violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Jack Riblett marketed and then sold at least 92 trusts to Ohioans with an average age at sale of 73.6. (See CBA MSJ at 18; Shank Aff. ¶ 56.) As one example, an 88-year-old woman from Columbus, Ohio bought a trust from Respondent Riblett even though she had only \$6,000 in the bank. (Shank Aff. Ex. 48.) In another example, Jack Riblett sold a trust to a 92-year-old man from Lancaster, Ohio who had only \$100 in the bank; his house was his only other asset. (Shank Aff. Ex. 33.) Respondent Riblett's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Riblett an appropriate civil penalty.

10. Individual Respondent Ken Royer violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Ken Royer marketed and then sold at least 193 trusts to Ohioans with an average age at sale of 75.3. (See CBA MSJ at 18; Shank Aff. ¶ 56.) Several of the files of sales by Respondent Royer concern what he describes as "small estates," however, he convinced elderly Ohioans to purchase the trusts as a way to "avoid probate." For example, Respondent Royer sold a trust to a Dalton, Ohio woman. Respondent Royer estimated that this widow twice over had gross assets of \$55,000, including her \$50,000 house. It is evident from the sales file produced that Respondent Royer wrote a note in an effort to validate the need for a trust that states, "Client realizes she has small estate; however she still wants the estate plan ... Want estate plan (trust included) in order to avoid probate and maintain

privacy!” The widow signed below Respondent Royer’s note. (Shank Aff. Ex. 49.)⁶ In addition, as explained above, in 2004 Respondent Royer marketed and sold a trust to Marjorie Martin, an 81-year old widow who had only \$19,000 in assets other than her real estate. (Martin Aff. ¶ 2.) Ms. Martin’s attorneys later determined that the trust was unnecessary and managed to obtain a refund for her from Respondent AFPLC. (Id. at ¶ 3.) Respondent Royer’s trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Royer an appropriate civil penalty.

11. Individual Respondent Joseph Ehlinger violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Joseph Ehlinger marketed and then sold at least 76 trusts to Ohioans with an average age at sale of 75.7. (See CBA MSJ at 19; Shank Aff. ¶ 56.) As one example, an 81-year-old woman from Toledo, Ohio bought a trust even though Respondent Ehlinger estimated her liquid assets as \$50 to \$500; her only other asset was her house worth about \$60,000. Lacking any other means to pay for the trust, the woman paid by credit card. (Shank Aff. Ex. 53.) Respondent Ehlinger’s trust sales harmed elderly Ohioans and the record

⁶ It bears noting that the vast majority of sales files demonstrate trust sales to elderly Ohioans whose gross estates (as estimated by the Respondent sales agents) fall below \$338,000, the approximate exemption limit for Ohio’s estate tax. In recognition of the fact that most trusts were sold to people who did not need them, the files produced by Respondents are replete with similar statements written by the Respondent sales agents and signed by the victims, which are attempts to validate the purchase of trusts based on specific legal advice. For example, another sales representative, Respondent Scholp, noted regarding the sale to an 84-year-old Eaton, Ohio woman, “[customer’s name] wants to avoid probate + future atty fees...” (Shank Aff. Ex. 50.)

does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Ehlinger an appropriate civil penalty.

12. Individual Respondent Dennis Quinlan violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Dennis Quinlan marketed and then sold at least 83 trusts to Ohioans with an average age at sale of 75.2 years. (See CBA MSJ at 20; Shank Aff. ¶ 56.) The record facts demonstrate that Respondent Quinlan's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Quinlan an appropriate civil penalty.

13. Individual Respondent Alexander Scholp violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent For Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Alexander Scholp marketed and then sold at least 164 trusts to Ohioans with an average age at sale of 75.2 years. (See CBA MSJ at 20; Shank Aff. ¶ 56.) As one example, he sold a trust to a 79-year-old man from Miamisburg, Ohio by convincing him that he needed a trust to avoid probate and attorney fees that would otherwise be incurred to administer his estate, which totaled \$64,200 gross assets, including his mobile home. (Shank Aff. Ex. 35.) Respondent Scholp's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate

injunctive relief, the CBA requests the Court to impose upon Respondent Scholp an appropriate civil penalty.

14. Individual Respondent Jerrold Smith violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Jerrold Smith marketed and then sold at least 68 trusts to Ohioans with an average age at sale of 76.4. (See CBA MSJ at 20; Shank Aff. ¶ 56.) Respondent Smith's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Smith an appropriate civil penalty.

15. Individual Respondent Vern Schmid violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

From March 2003 through May 2005, Individual Respondent Vern Schmid marketed and then sold at least 4 trusts to Ohioans with an average age at sale of 71.2. Respondent Schmid's trust sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Schmid an appropriate civil penalty.

16. Individual Respondent Samuel Jackson violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC.

Individual Respondent Samuel Jackson marketed and then sold trusts to Ohioans on behalf of AFPLC. Respondent Jackson's trust sales harmed elderly Ohioans. The

CBA cannot confirm the precise number of trust sales completed by Respondent Jackson. Accordingly, the CBA requests the Court impose upon Respondent Jackson any and all appropriate injunctive relief.

17. Individual Respondent Paul Morrison violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by furthering the Respondents' trust mill through sales of annuities and insurance products and by training other insurance salespersons to further the trust mill in the same way.

Individual Respondent Paul Morrison has been an employee of Heritage for about seven years. (Morrison Memorandum in Opposition to Summary Judgment at 1.) Mr. Morrison, a non-attorney insurance salesperson, was complicit in the trust mill scheme when he delivered or reviewed at least 30 trust packages to Ohio plan members from March 2003 to May 2005. (See Respondent Paul Morrison's Sales Files, attached to the CBA's Reply Brief in Support of Summary Judgment as Exhibit QQ.) In this way, Respondent Morrison violated the 2003 Consent Agreement, which he signed on March 24, 2003, and engaged in the unauthorized practice of law by supporting and furthering the Respondents' trust mill. In addition, Respondent Morrison was responsible for training for other Heritage delivery agents. (Hamel Dep. 84:7-9.) Therefore, Respondent Morrison was responsible at a supervisory level for advancing perhaps the most harmful aspect of the trust mill – the sale of high-commission, high-risk annuities and insurance products to elderly Ohioans who purchased trusts from AFPLC. One of his own sales demonstrates the harm of these annuity sales on the lucrative back-end of the Respondents' trust mill. During 2005, as noted above, Betty Hamm purchased a living trust from Respondent Downs. In late 2005 and early 2006, Respondent Morrison aggressively sought and eventually succeeded in selling an annuity to Mrs.

Hamm. (Hamm Aff. at ¶¶ 8-9) Mrs. Hamm and her husband believed that Morrison was a legal assistant, and they did not know that he was an insurance agent. (Id. at ¶ 10.)

In connection with a different victim interaction, Respondent Morrison represented himself as a practicing attorney on at least one of his visits. (See Campbell Aff. Ex. 39 (filed under seal).)

Respondent Morrison's conduct harmed elderly Ohioans, his involvement in training other Heritage agents resulted in significant additional sales of annuities and insurance products that caused further and ongoing harm to elderly Ohioans, and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Morrison an appropriate civil penalty.

18. Individual Respondent David Helbert violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by marketing and selling living trusts as an agent for Respondent AFPLC and by furthering the Respondents' trust mill through sales of annuities and insurance products.

Individual Respondent David Helbert, a non-attorney insurance salesperson, marketed and then sold at least one living trust in 2002. Respondent Helbert was also complicit in the trust mill scheme when he delivered or reviewed at least 29 trust packages to Ohio plan members from March 2003 to May 2005. In addition, Respondent Helbert performed at least one annual review (during March 2005) of a victim's estate in order to sell additional annuities and insurance products. Respondent Helbert's trust, annuity, and insurance sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all

appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Helbert an appropriate civil penalty.

19. Individual Respondent Richard Rompala violated the 2003 Consent Agreement and engaged in the unauthorized practice of law by furthering the Respondents' trust mill through sales of annuities and insurance products.

Individual Respondent Richard Rompala, a non-attorney insurance salesperson, was complicit in the trust mill scheme when he delivered or reviewed at least 17 trust packages to Ohio plan members from March 2003 to May 2005. Respondent Rompala caused significant harm to Ohioans by using the victims' personal and financial information as an inroad to sell annuities and insurance products to elderly Ohioans who purchased trusts through the Respondents' trust mill. Respondent Rompala's annuity and insurance sales harmed elderly Ohioans and the record does not establish any mitigating factors. Accordingly, in addition to any and all appropriate injunctive relief, the CBA requests the Court to impose upon Respondent Rompala an appropriate civil penalty.

IV. CONCLUSION

Respondents have flagrantly operated a trust-mill scheme in Ohio for years, making their money by having non-attorneys sell vulnerable Ohio seniors living trusts and annuities. For all the foregoing reasons, this Court should end Respondents' scheme by specifically, comprehensively enjoining the Entity Respondents from doing business in Ohio. In the alternative, this Court should at a minimum prohibit the Entity Respondents from engaging in the conduct prohibited by the Consent Agreement, with additional provisions prohibiting Respondents from selling, marketing, and/or

preparing any prepaid legal plan that has any legal product as one of its benefits and from selling any insurance products, including but not limited to annuities.

The Court should also enjoin the Individual Respondents, imposing the same prohibitions that Individual Respondents Hamel, Holmes, Hyers, and Clouse agreed to, which the Panel and Board approved. (Consent Decree of Respondents Hamel, Holmes, and Hyers at 5-8; Consent Decree of Respondent Clouse at 5-8; Panel Report Regarding Respondents Hamel, Holmes, Hyers, and Clouse at 7.)

This Court should also impose high civil penalties against AFPLC, Heritage, Jeffrey Norman, and Stanley Norman, jointly and severally; Paul Chiles and Harold Miller; and the Individual Respondents for their flagrant, harmful violations of their Consent Agreement and this State's prohibition on the unauthorized practice of law.

Respectfully submitted,


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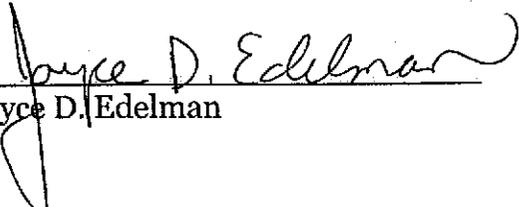
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The Columbus Bar Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was duly served via U.S. mail this fourteenth day of October, 2008, upon the following:

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