

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
:
:
:

**ANSWER BRIEF OF RELATOR COLUMBUS BAR ASSOCIATION TO
RESPONDENTS' OBJECTIONS TO THE RECOMMENDATION OF THE
BOARD OF COMMISSIONERS ON THE UNAUTHORIZED
PRACTICE OF LAW**

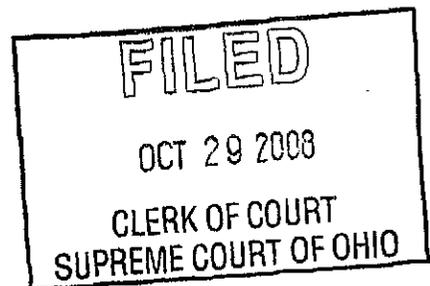
Joyce D. Edelman (0023111)
(COUNSEL OF RECORD)

Aaron M. Shank (0069414)
J. H. Huebert (0078562)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 227-2000
Facsimile: (614) 227-2100
E-mail: jedelman@porterwright.com
ashank@porterwright.com
jhuebert@porterwright.com

*Attorneys for Relator
Columbus Bar Association*

Andrew R. Bucher (0082931)
(COUNSEL OF RECORD)
REINHEIMER & REINHEIMER
208 Madison Street
Port Clinton, Ohio 43452
Telephone: (419) 734-1723
Facsimile: (419) 734-3620
E-mail: andrew.bucher@hotmail.com

*Attorney for Respondents
American Family Prepaid Legal
Corporation, Heritage Marketing &
Insurance Services, Inc., and Jeffrey
Norman*



James P. Tyack (0072945)
(COUNSEL OF RECORD)
Tyack, Blackmore & Liston Co., LPA
536 S. High Street
Columbus, Ohio 43215
Telephone: (614) 221-1341
Facsimile: (614) 228-0253
E-mail: jptyack@tblattorneys.com

Attorney for Respondent Adam Hyers

John N. MacKay (0002801)
(COUNSEL OF RECORD)
Shumaker, Loop & Kendrick, LLP
1000 Jackson Street
Toledo, Ohio 43604-5573
Telephone: (419) 321-1234
Facsimile: (419) 241-6894
E-mail: jmackay@slk-law.com

Eugene P. Whetzel (0013216)
General Counsel
Ohio State Bar Association
1700 Lake Shore Drive
Columbus, Ohio 43204
Telephone: (614) 487-2050
Facsimile: (614) 485-3191
E-mail: gwhetzel@ohiobar.org

*Attorneys for Amicus Curiae – Ohio State
Bar Association*

Tim Clouse
6188 South State St. Rt. 587
New Riegel, Ohio 44853

Pro Se Respondent

Joseph Ehlinger
127 19th Street
Findley, Ohio 45840

Pro Se Respondent

Christopher J. Moore (0065330)
(COUNSEL OF RECORD)
MOORE & SCRIBNER
3700 Massillon Road, Suite 380
Uniontown, Ohio 44685
Telephone: (330) 899-0475
Facsimile: (330) 899-0476
E-mail: attorneychrismoore@yahoo.com

*Attorney for Respondents Joseph Hamel
and Timothy Holmes*

Stanley Norman
12 Bordeaux
Coto De Caza, California 92679

Pro Se Respondent

Jeff Alten
25302 Wolf Road
Bay Village, Ohio 44140

Pro Se Respondent

Paul Chiles
1117 Forest View Court
Westerville, Ohio 43081

Pro Se Respondent

William Downs
1682 Lexington Drive
Lancaster, Ohio 43130

Pro Se Respondent

Luther Mack Gordon
3420 Sodom Road
Casstown, Ohio 45313

Pro Se Respondent

Steve Grote
4941 N. Arbor Woods Court, Apt. 302
Cincinnati, Ohio 45248

Pro Se Respondent

Samuel Jackson
7789 Windward Drive
Massillon, Ohio 44646

Pro Se Respondent

Chris Miller
295 Laurel Lane
Pataskala, Ohio 43062

Pro Se Respondent

Eric Peterson
5014 Marigold Way
Greensboro, North Carolina 27410-8209

Pro Se Respondent

Richard Rompala
19559 Echo Drive
Strongsville, Ohio 44149

Pro Se Respondent

Vern Schmid
1024 Josiah Morris Road
London, Ohio 43140

Pro Se Respondent

David Helbert
195 Beachwood Avenue
Avon Lake, Ohio 44012

Pro Se Respondent

Harold Miller
4083 Guston Pl.
Gahanna, Ohio 43230

Pro Se Respondent

Paul Morrison
8580 State Route 588
PO Box 361
Rio Grande, Ohio 45674

Pro Se Respondent

Jack Riblett
952 South Brinker Avenue
Columbus, Ohio 43204

Pro Se Respondent

Daniel Roundtree
1273 Serenity Lane
Worthington, Ohio 43085

Pro Se Respondent

Alexander Scholp
2090 State Route 725
Spring Valley, Ohio 45370

Pro Se Respondent

Jerrold Smith
152 Elm Street
Ravenna, Ohio 44266

Pro Se Respondent

Anthony Sullivan
1587 Ringfield Drive
Galloway, Ohio 43119

Pro Se Respondent

Patricia Soos
3037 Lisbon-Canfield Road
Leetonia, Ohio 44431

Pro Se Respondent

Dennis Quinlan
1367 Pine Valley Court
Ann Arbor, Michigan 48104-6711

Pro Se Respondent

TABLE OF CONTENTS

Page

TABLE OF CONTENTS	v
TABLE OF AUTHORITIES.....	vii
I. Respondents Sell Trusts in the Guise of a Prepaid Legal Plan	1
A. Respondents’ Marketing Presentations and Materials Focused Exclusively on Why the Customer Should Have a Living Trust.....	1
B. Customers’ Statements Show That They Considered Themselves to Be Purchasing a Trust.....	2
C. Registering as a Prepaid Legal Plan and Employing an Attorney Did Not Change the Character of Respondents’ Business Or Authorize Them to Commit UPL	4
II. Respondents’ UPL Violations Closely Resemble Those of <i>Sharp Estate</i> and <i>Kathman</i>	6
A. Respondents’ UPL Violations Closely Resemble Those of <i>Sharp Estate</i>	7
1. Non-attorneys play the same unlawful role in Respondents’ trust mill as in <i>Sharp Estate</i>	7
2. Here as in <i>Sharp Estate</i> , the Respondents’ Plan Attorney cannot sanitize sales agents’ acts of UPL.	7
3. Here as in <i>Sharp Estate</i> , the Respondents market and sell living trusts.	9
4. Respondents’ scheme is worse than <i>Sharp Estate</i> because of Heritage’s role.....	10
B. Respondents’ UPL Violations Closely Resemble Those of <i>Kathman</i>	11
III. Respondents AFPLC, Heritage, and Jeffrey Norman Have Misrepresented the Contents of the Consent Agreement to this Court Because the Consent Agreement Explicitly Stipulates That Respondents’ Conduct Constitutes UPL	11
IV. Respondents AFPLC, Heritage, and Jeffrey Norman Have Misrepresented to this Court the Nature of the CBA’s Agreement Not to Pursue Contempt Actions During the Federal Proceedings	12

V. Respondents AFPLC, Heritage, Steve Grote, Alexander Scholp, and William Downs Should Not Be Permitted to Object to the Board's Recommendation Because They Failed to Oppose the CBA's Motion for Summary Judgment.....15

VI. Conclusion.....16

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

OHIO STATE CASES

Bennett v. Meshell, Meigs App. No. 07CA2, 2008-Ohio-1287 15

Cincinnati Bar Ass’n v. Kathman, 92 Ohio St.3d 92, 2001-Ohio-157, 748
N.E.2d 1091 6, 8, 11

Cleveland Bar Ass’n v. Sharp Estate Servs., Inc., 107 Ohio St. 3d 219,
2005-Ohio-6267, 837 N.E.2d 1183 6-10

Columbus Bar Ass’n v. Fishman, 98 Ohio St. 3d 172, 2002-Ohio-7086, 781
N.E.2d 204..... 11

Estate of Hood v. Rose, 153 Ohio App. 3d 199, 2003-Ohio-3268, 792
N.E.2d 736 15

Thompson v. Ghee (Franklin 2000), 139 Ohio App. 3d 195, 743 N.E.2d
459 15

RULE

Prof.Cond.R. 5.5..... 11

I. Respondents Sell Trusts in the Guise of a Prepaid Legal Plan

The argument Entity Respondents AFPLC, Heritage, and Jeffrey Norman put forth in opposition to the Board's recommendation rests primarily on their claim that Respondents' sales representatives sold legal plans, not trusts. The Individual Respondents who filed objections make similar claims. This argument, however, amounts to little more than a claim of, "our sales representatives' products weren't living trusts because we didn't call them living trusts." Respondents cannot, however, escape liability for UPL simply because the facts show that they did market and sell trusts in the guise of a prepaid legal plan.

A. Respondents' Marketing Presentations and Materials Focused Exclusively on Why the Customer Should Have a Living Trust

AFPLC's marketing materials in the record show beyond question that the Respondents marketed, and in effect sold, customers living trusts. As the CBA noted in its Objections, AFPLC's 2004 sales training manual focused on pressing prospective customers to join the legal plan *for the purpose of receiving a living trust*. (Objections of Relator CBA to the Recommendation of the Bd. of Commissioners on the UPL ("CBA Br.") at 15-16, 27.) To the extent that they acknowledge a problem with this – which they never actually do – Entity Respondents argue that they cleaned up their act with their training manuals after 2004. (Respondents AFPLC, HMISI, and Jeffrey Norman's Objections to the Findings of Fact and Recommendation of the Bd. Of Commissioners on the UPL ("Entity Resp'ts Br.") at 7.) In fact, however, AFPLC's 2005 and 2006 presentation books – materials that Individual Respondents showed to customers in sales presentations – preserved the same basic format as older versions, listing disadvantages of probate, wills, joint tenancy, and giving one's assets away, then

presenting trusts as an alternative with no apparent disadvantages. (Affidavit of Jeffrey Norman (Oct. 25, 2007), attached to Respondent Jeffrey Norman's Memorandum in Opposition to Relator's MSJ and in Support of Respondent's MSJ (Oct. 26, 2007) ("J. Norman Br.") as Ex. K ("J. Norman Aff.") (Exs. 13, 14.) If Respondents were really selling a legal plan that offers a variety of services – and not just selling trusts – then the Respondents would have no reason to make this particular sales pitch that praises trusts and attacks other estate-planning methods.

Respondents' marketing of trusts after 2004 is also evident in the forms that new AFPLC members completed upon joining: until at least January 1, 2007, they included an "Estate Planning Worksheet." (J. Norman Br. at 48; see id. at Ex. 17.) If AFPLC were not in the business of selling trusts, but instead merely sold access to a broad variety of legal services, there would be no reason to fill out this form with every "plan" sale.

B. Customers' Statements Show That They Considered Themselves to Be Purchasing a Trust

One can readily see that Respondents were selling trusts through the statements of Respondents' customers.

First, there is the testimony – described in the CBA's brief in support of its own Objections – of various customers, which consistently indicates that AFPLC's sales representatives told customers that they needed a living trust to avoid probate and, in many cases, to ensure that their property went to their children. (Affidavit of Betty Hamm, attached to CBA's Motion for Summary Judgment ("MSJ") as Ex. K ("Hamm Aff.") at ¶4; Affidavit of Marjorie Martin (MSJ Ex. Q) ("Martin Aff.") at ¶¶ 4, 6-8; Affidavit of Eleanor Luttrell (MSJ Ex. R) ("E. Luttrell Aff.") at ¶¶3-4; Affidavit of Judith Luttrell (MSJ Ex. S) ("J. Luttrell Aff.") at ¶¶3-4.) In fact, Ms. Judith Luttrell was told

that in order to obtain benefits from AFPLC's legal plan, she first needed to sign trust documents that were delivered to her. (J. Luttrell Aff. at ¶11.)

Second, the many consumer complaints in the record show that these elderly Ohioans were sold a trust by the Respondents. (Affidavit of Bruce Campbell (MSJ Ex. L) ("Campbell Aff.") Ex. 1, at 1 (filed under seal); Campbell Aff. Ex. 2, at 2; Campbell Aff. Ex. 3, at 3 (filed under seal); Campbell Aff. Ex. 4, at 1; Campbell Aff. Ex. 5, at 1 (filed under seal); Campbell Aff. Ex. 6, at 3 (filed under seal); Campbell Aff. Ex. 7, at 4; Campbell Aff. Ex. 8, at 3 (filed under seal); Campbell Aff. Ex. 9, at 1 (filed under seal); Campbell Aff. Ex. 13, at 1; Campbell Aff. Ex. 18, at 1 (filed under seal); Campbell Aff. Ex. 20, at 1; Campbell Aff. Ex. 22, at 2; Campbell Aff. Ex. 23, at 1 (filed under seal); Campbell Aff. Ex. 24, at 1; Campbell Aff. Ex. 25, at 1 (filed under seal); Campbell Aff. Ex. 26, at 2 (filed under seal); Campbell Aff. Ex. 27, at 2 (filed under seal); Campbell Aff. Ex. 28, at 1 (filed under seal); Campbell Aff. Ex. 29, at 5 (filed under seal); Campbell Aff. Ex. 30, at 1 (filed under seal); Campbell Aff. Ex. 31, at 3; Campbell Aff. Ex. 32, at 1; Campbell Aff. Ex. 33, at 3; Campbell Aff. Ex. 36, at 2; Campbell Aff. Ex. 38, at 1; Campbell Aff. Ex. 40, at 1; Campbell Aff. Ex. 41, at 1; Campbell Aff. Ex. 42, at 1; Campbell Aff. Ex. 44, at 2; Campbell Aff. Ex. 45, at 5; Campbell Aff. Ex. 47, at 1; Campbell Aff. Ex. 48, at 2; Campbell Aff. Ex. 49, at 1; Campbell Aff. Ex. 51, at 4 (filed under seal); Campbell Aff. Ex. 52, at 1; Campbell Aff. Ex. 53, at 2; Campbell Aff. Ex. 55, at 1; Campbell Aff. Ex. 58, at 1; Affidavit of Stacy Solochek Beckman (MSJ Ex. E) ("Beckman Aff.") Ex. 1, at 1; Beckman Aff. Ex. 2, at 1.)

Third, statements that many plan members signed on their applications show that they considered themselves to be purchasing a trust. For example, one customer signed her name below the note written by Individual Respondent Ken Royer that reads

“...Want estate plan (trust included) in order to avoid probate” (Affidavit of Aaron Shank (MSJ Ex. B) (“Shank Aff.”) Ex. 49, at 6; see also Shank Aff. Exs. 51, 56, 61, 64.) The notes taken down onto customers’ Estate Planning Worksheets by the Individual Respondent sales agents during sales calls further demonstrate that the product sold was a trust. For example, Alexander Scholp noted on one application, “He wants a living trust to help his kids avoid probate + atty fees.” (Shank Aff. Ex. 35, at 6.)

C. Registering as a Prepaid Legal Plan and Employing an Attorney Did Not Change the Character of Respondents’ Business Or Authorize Them to Commit UPL

Respondents argue that registering as a prepaid legal plan somehow “alter[ed] [AFPLC’s] character,” empowering it to do things it could not otherwise do under the law. (Entity Resp’ts Br. at 21-23.) But nothing in the former Code of Professional Responsibility or the current Ohio Rules of Professional Conduct authorizes a non-attorney to give legal advice about living trusts, estate planning, or anything else – yet the record shows that Respondents’ sales representatives did just that.

Respondents point to the other putative benefits of the AFPLC plan as evidence that they sold plans, not trusts. (Entity Resp’ts Br. at 5.) But before 2005, the first substantive question that AFPLC’s telemarketers were directed to ask prospective customers was “Do you have a trust?” (J. Norman Aff. Ex. 39 (telemarketer script); see id. at ¶31.) After September 2005, AFPLC’s sales script directed representatives to ask, “Have you ever done any estate planning?” and did not mention *any* of the other legal services AFPLC supposedly could provide. (J. Norman Aff. Ex. 40; see id. at ¶31.) Again, in the context of all the record evidence, this demonstrates that AFPLC’s sales representatives marketed and effectively sold consumers living trusts.

Indeed, even if the Plan Attorney did provide some plan members with some other services in addition to a trust – something of which there is *no* evidence in the documents Respondents produced to the CBA – this would not change the fact that AFPLC representatives *market trusts* before an attorney even enters the process. Also, Respondents do not and cannot deny that AFPLC does not even attempt to sell a legal plan to prospective purchasers who do not “qualify” for a living trust in the judgment of the non-attorney AFPLC sales representative. (Deposition of Paul Chiles (July 27, 2005), attached to the CBA’s MSJ Reply Brief (“MSJ Reply”) as Ex. TT (“Chiles Dep.”).) Again, there is no conceivable reason for this apart from the fact that Respondents operate a trust mill and not, as they would have it, an innocent prepaid legal plan.

Entity Respondents also rehash the deposition testimony of Edward Brueggeman and Cindy Irwin to suggest that the Plan Attorney had more and better contact with AFPLC customers than consumer complaints¹ and other record evidence suggest. Respondents, however, miss the point: the Consent Agreement and the rules against UPL do not make an exception to their prohibitions where an attorney comes along after the fact to conduct an interview or complete paperwork. To the contrary, the Consent Agreement requires that a sales representative must be under the “direct supervision and control of the client’s attorney.” Here, though, the undisputed evidence from both the Plan Attorney and the sales representatives shows the opposite to be true: AFPLC sales representatives do *not* work under the supervision or control of the plan attorney

¹ The record evidence reflects thousands of trust sales by non-attorneys. The issue here is UPL by marketing and selling legal products, and it does not matter how many of these thousands of elderly victims realized they were being taken advantage of and had the gumption to take a stand against the Respondents. Fortunately, some elderly Ohioans did so, which enabled the CBA to uncover the widespread UPL committed by the Respondents.

or any other attorney. (Deposition of Edward Brueggeman (Dec. 14, 2004) (MSJ Reply Ex. UU) (“Brueggeman Dep. I”) 85:8-86:7; Deposition of Timothy Clouse (Aug. 26, 2005) (MSJ Ex J) 47:18-48:3.) No matter how much they may wish the law were otherwise, Respondents cannot sanitize their sales representatives’ unlawful conduct by bringing in an attorney after the non-attorney sales representative has already given legal advice and marketed and sold a trust – which is exactly what they do, *at best*, even by their own account.

Finally, Respondent Alexander Scholp states that the Respondents’ sales representatives did not always sell trusts because AFPLC also sold a “will package,” which cost \$995.00.² (Respondent Alexander Scholp’s Response to Order to Show Cause (“Scholp Br.”) at 1.) The CBA has seen no evidence of a “will package” – everything Respondents produced to the CBA showed evidence only of AFPLC and its sales representatives marketing and selling trusts. Still, even if Mr. Scholp’s claim is true, it only serves to demonstrate that each time a customer did pay at least \$1,995.00 – which, in the records Respondents produced to the CBA, was *every* time AFPLC made a sale – the customer *purchased a trust*.

II. Respondents’ UPL Violations Closely Resemble Those of *Sharp Estate and Kathman*

Entity Respondents AFPLC, Heritage, and Jeffrey Norman attempt to distinguish this case from *Cleveland Bar Ass’n v. Sharp Estate Servs., Inc.*, 107 Ohio St.3d 219, 2005-Ohio-6267, 837 N.E.2d 1183, and *Cincinnati Bar Ass’n v. Kathman*, 92 Ohio St.3d 92, 2001-Ohio-157, 748 N.E.2d 1091. Their attempt fails.

² As noted in Section V below, this Court should not consider Mr. Scholp’s Objections because Mr. Scholp failed to oppose the CBA’s motion for summary judgment. This paragraph is provided in the event that the Court decides to consider Mr. Scholp’s Objection.

A. Respondents' UPL Violations Closely Resemble Those of *Sharp Estate*

Entity Respondents AFPLC, Heritage, and Jeffrey Norman attempt to distinguish this case from *Sharp Estate* on several grounds: they claim the non-attorneys' roles in the two schemes are different, the attorneys' roles are different, and the products involved are different. In fact, however, the two cases are alike in these respects.

1. Non-attorneys play the same unlawful role in Respondents' trust mill as in *Sharp Estate*.

Entity Respondents attempt to distinguish the role of their non-attorney sales agents from that of the *Sharp Estate* sales agents by claiming that Respondents' sales representatives did not tell customers that they needed a trust or estate plan. But that is not true at all – as described in section I above, and as ample record evidence shows, Respondents' entire sales presentation was based upon convincing the prospective customer that he or she needed a living trust to avoid probate. The non-attorney sales agents' role is a key *similarity* between the *Sharp Estate* scheme and the Respondents' scheme, not a difference.

2. Here as in *Sharp Estate*, the Respondents' Plan Attorney cannot sanitize sales agents' acts of UPL.

Entity Respondents also claim that the attorney's role in the *Sharp Estate* scheme differed from the Plan Attorney's role in the Respondents' scheme. (Entity Resp'ts Br. at 14-17.) Here, too, the Entity Respondents have identified a similarity, not a difference, between their trust mill and the *Sharp Estate* trust mill.

In *Sharp Estate*, the key fact about the attorney's involvement was that he became involved *too late*, after a non-attorney had already committed UPL. See *Sharp* at ¶6, 10. Even Entity Respondents acknowledge this, stating that *Sharp Estate* held

that “if UPL has already been committed by the non-attorney, then introduction of an attorney at a later juncture will not cure that prior UPL.” (Entity Resp’ts Br. at 15.) Respondents’ only means of avoiding liability under this rule is to argue that their sales representatives did not commit UPL in the first place. But as the CBA has shown above, in its Objections, and in the proceedings before the Panel and Board, Respondents’ sales agents did indeed commit UPL through marketing and sales of trusts.

Entity Respondents also argue that the attorney’s role is different in their scheme because their Plan Attorney, unlike the *Sharp Estate* attorney, supposedly spoke to clients before having their documents prepared and then reviewed their documents before the client received them. Even assuming Entity Respondents’ claim about their Plan Attorney’s role is correct,³ this is irrelevant. It is UPL – and a violation of the Consent Agreement – for sales representatives to give legal advice in the first place. Again, *no* amount of subsequent attorney involvement can change this. Again, in Entity Respondents’ own words: “if UPL has already been committed by the non-attorney, then introduction of an attorney at a later juncture will not cure that prior UPL.” See, also, *Kathman*, 92 Ohio St.3d at 97.

That AFPLC or the Plan Attorney may have generically admonished sales representatives not to engage in UPL is irrelevant – Respondents’ actual conduct and their training materials reveal what they actually did, which is all that matters.

³ There is much reason to believe that it is *not* correct. Ample record evidence shows that the Plan Attorney did *not* speak with clients before creating their trust documents and in many cases did not speak with them *at all* – his self-serving deposition testimony to the contrary notwithstanding. (Hamm Aff. at ¶16; J. Luttrell Aff. at ¶11; Campbell Aff. Ex. 1, at 1 (filed under seal); Campbell Aff. Ex. 5, at 3 (filed under seal); Affidavit of Willard Bettinger (Campbell Aff. Ex. 8, at 5-7 (filed under seal)) at ¶¶10, 11, 13; Campbell Aff. Ex. 25, at 1 (filed under seal); Campbell Aff. Ex. 26, at 2 (filed under seal); Campbell Aff. Ex. 29, at 5 (filed under seal).)

Likewise, it does not matter if the Plan Attorney told sales representatives to call him if certain legal questions arose; what does matter for purposes of UPL and the Consent Agreement is that the sales representatives consistently marketed and sold trusts while not under the Plan Attorney's direct supervision.

3. Here as in *Sharp Estate*, the Respondents market and sell living trusts.

Entity Respondents also try to distinguish this case from *Sharp Estate* by arguing that the *Sharp Estate* sales representatives sold trust documents, while Respondents' sales agents sold legal plans. This argument fails for all the reasons given above.

Making a marketing presentation that is solely about the benefits to the customer of having a living trust instead of going through probate, and then selling that customer a legal plan of which the primary (perhaps sole) benefit is a living trust, is the same thing as selling the consumer a trust. Entity Respondents' arguments do not even attempt to hide the fact that they have attempted to perform an end-run around the law simply by characterizing the product they sell as a "plan" instead of a trust – a distinction without a material difference, especially to vulnerable consumers.

Entity Respondents also argue that if the CBA has its way, no prepaid legal plan will be allowed to function because neither attorneys (who are prohibited from direct solicitation) nor non-attorney salesmen (who want to avoid committing UPL) will be able to market the plans. (Entity Resp'ts Br. at 17.) Entity Respondents present a false dilemma. As an initial matter, direct solicitation is not the only possible means of selling a legal plan – lawyers manage to sell their services by the usual means without it. Moreover, even if non-attorneys could lawfully market a legal plan by describing its general benefit – i.e., the consumer will have access to an attorney who could perform

various services – non-attorneys certainly cannot tell customers that they need a trust. That constitutes UPL – and it is exactly what Respondents’ sales agents have done..

4. Respondents’ scheme is worse than *Sharp Estate* because of Heritage’s role.

Entity Respondents finally argue that this case is unlike *Sharp Estate* because there was no equivalent to Heritage in the *Sharp Estate* scheme. This is not true, however, because non-attorney agents delivered the *Sharp Estate* trust documents to consumers, just as Heritage’s non-attorney delivery agents take customers their trust documents to be signed and notarized. See *Sharp* at ¶4.

To an extent, however, Entity Respondents are correct: it appears that the perpetrators of the *Sharp Estate* scheme, unlike Respondents, were content merely to sell elderly Ohioans living trusts. Respondents, on the other hand, go much further by using Heritage delivery agents, armed with the customers’ personal and financial information gathered by AFPLC, to sell customers financially crippling annuities as well. In this way, Respondents’ scheme is not like the *Sharp Estate* scheme – it is worse. Respondents should know that. After all, this Court imposed a “severe” penalty on their former Plan Attorney⁴ because he had “set up his clients as a sales prospect for insurance agents with no overriding commitment to their financial and personal security” when he worked for Respondents’ predecessor corporation, American Heritage

⁴ Respondents claim the late Andrew Fishman – the plan attorney for AFPLC’s predecessor, American Heritage Corporation (“AHC”), who was suspended from the practice of law for his involvement in that trust-mill scheme – was only involved in “a now-dissolved corporation [AHC] that Jeffrey Norman did have a financial interest in,” not AFPLC. (Entity Resp’ts Br. at 35.) But Respondents admitted that Mr. Fishman was AFPLC’s Plan Attorney before Edward Brueggeman. (See, e.g., Jeffrey Norman Deposition (July 20, 2005) (J. Norman Br. Ex. K) at 58:8-22; see also Scholp Br. at 1.) Respondents are correct, of course, that Jeffrey Norman “had a financial interest” in AHC. (Entity Resp’ts Br. at 35.)

Corporation. See *Columbus Bar Ass'n v. Fishman*, 98 Ohio St.3d 172, 2002-Ohio-7086, 781 N.E.2d 204, ¶20.

B. Respondents' UPL Violations Closely Resemble Those of *Kathman*

Entity Respondents also try to distinguish the trust mill in *Kathman* from their own, again to no avail. In *Kathman* as in *Sharp Estate*, the first and foremost problem was that “the review 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.” *Kathman*, 92 Ohio St.3d at 97 (citing *In re Mid-America Living Trust Assoc., Inc.* (Mo. 1996), 927 S.W.2d 855, 867). “By the time the attorney enters the transaction, the unauthorized practice of law has already occurred and anything the attorney does thereafter aids the prohibited conduct.” *Id.* There is no need to belabor the point: here, as in *Kathman*, the attorney enters the picture only after non-attorneys have committed UPL, and therefore does not sanitize the non-attorneys’ unlawful conduct, but rather aids their UPL. See Prof.Cond.R. 5.5(a).

III. Respondents AFPLC, Heritage, and Jeffrey Norman Have Misrepresented the Contents of the Consent Agreement to this Court Because the Consent Agreement Explicitly Stipulates That Respondents’ Conduct Constitutes UPL

Entity Respondents AFPLC, Heritage, and Jeffrey Norman have objected to the Panel and Board’s conclusion that Respondents engaged in UPL by violating the Consent Agreement because, they argue, the Consent Agreement merely listed “conduct that the CBA considered to be UPL,” and the parties did not stipulate that the conduct constitutes UPL. (Entity Resp’ts Br. at 23.) Respondents’ suggestion is false: the Consent Agreement states that the “Respondents * * * stipulate and agree that to the

extent they engaged in the conduct referenced in the first paragraph of this consent agreement, then they engaged in the unauthorized practice of law * * *.” (Consent Agreement at 2-3.) The “conduct referenced in the first paragraph” includes the eight prohibitions the Respondents violated that gave rise to the instant proceedings. (Id. at 1-2.) Entity Respondents’ misrepresentation to this Court further exemplifies Respondents’ uncooperative, flagrant conduct throughout these proceedings.

IV. Respondents AFPLC, Heritage, and Jeffrey Norman Have Misrepresented to this Court the Nature of the CBA’s Agreement Not to Pursue Contempt Actions During the Federal Proceedings

In their Objections, Entity Respondents AFPLC, Heritage, and Jeffrey Norman have asserted that the prohibition against UPL set forth in this Court’s April 12, 2005 Cease-and-Desist Order was somehow not effective until July 13, 2007, more than two years later. (Entity Resp’ts Br. at 2, 33, 35.) This Court, however, did not issue any such stay, nor did this Court ever acquiesce to Respondents’ ongoing UPL. Likewise, the CBA did not offer Respondents any amnesty for their UPL or their violations of the 2003 Consent Agreement.

Entity Respondents attempt to circumvent this Court’s plenary authority to regulate the practice of law and the prohibitions of the Consent Agreement by pointing to the CBA’s agreement to a brief pause in prosecution during the pendency of AFPLC’s collateral attack on this Court’s rules in federal court.⁵

For this remarkable proposition – that the Respondents somehow had a free pass to break the law for two more years after this Court told them to stop – these Entity

⁵ Notably, Entity Respondents find it necessary to stray outside the record to make this point and then to exaggerate the scope and purpose of the stipulation between AFPLC and the CBA.

Respondents suggest that the CBA granted them amnesty in relation to their illegal conduct while the federal case was pending and even during AFPLC's unsuccessful appeal to the Sixth Circuit. Entity Respondents' claim is false: the CBA did not and would not turn a blind eye to Respondents' illegal conduct. On or about May 27, 2005, the CBA did agree to temporarily delay enforcement of the Cease-and-Desist Order until "settlement or final adjudication" of AFPLC's collateral attack on this Court's rules in the federal district court. (See Order, *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass'n* (S.D. Ohio May 27, 2005), Case No. C-2-05-459.) Those proceedings became finally adjudicated when, on May 9, 2006, the district court issued its Opinion & Order granting the CBA's Motion to Dismiss.⁶ Thereafter, the CBA was under no agreement to forgo enforcement of any of the Respondents' illegal conduct that began before the CBA filed its Complaint in 2002 and continues to the present.⁷

Recognizing that the CBA was free to resume enforcement of the Court's Cease-and-Desist Order following the May 9, 2006 dismissal of the federal case, AFPLC made three requests for a stay of the federal district court's Order – and the court denied each one. In its first such motion, filed May 31, 2006, AFPLC pointed out that the CBA "has

⁶ The federal case was finally resolved by dismissal on May 9, 2006. Yet Entity Respondents AFPLC, Heritage, and Jeffrey Norman seem to suggest that the federal case was not *really* final until after AFPLC pursued and then lost its appeal to the U.S. Court of Appeals for the Sixth Circuit, culminating in the Sixth Circuit's decision on July 13, 2007. See *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass'n* (C.A.6, 2007), 498 F.3d 328. But the District Court's May 9, 2006 Order dismissing AFPLC's Verified Complaint was final – the parties' agreement to delay prosecution could not have survived dismissal.

⁷ To refute the Entity Respondents' claims that they no longer operate in Ohio, the CBA filed a Motion for Leave to Supplement the Record to Address Misstatements in Entity Respondents' Objections in this Court on October 28, 2008. The CBA's motion offers ample evidence that the Entity Respondents, along with their successor, Quest, have continued to operate and take advantage of elderly Ohioans up to the present.

refused to agree to continue the earlier stipulation and thus [AFPLC] has no choice but to seek interim relief from this Court.” (See Pl.’s Mtn., *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass’n* (S.D. Ohio May 31, 2006), Case No. C-2-05-459, at 2.) In that Motion, AFPLC also conceded that it was “risking contempt proceedings” by moving forward.⁸ (Id. at 5.) The district court denied that motion on June 1, 2006. The next day, AFPLC renewed its plea by filing a second motion for a stay. AFPLC again pointed out that the stipulation was no longer effective and again conceded that it was risking contempt by continuing to operate. (See Pl.’s Mtn., *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass’n* (S.D. Ohio June 2, 2006), Case No. C-2-05-459.) The district court then denied this second motion for a stay. AFPLC then turned to the Sixth Circuit and on August 7, 2006 sought a stay there through an “Emergency Motion.” AFPLC again conceded, “The CBA may seek contempt sanctions to enforce the interim cease and desist order.” (See Pl.’s Mtn. *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass’n* (C.A.6, Aug. 7, 2006), Case No. 06-3758, at 1.) The Sixth Circuit denied the motion.

The CBA’s agreement simply reflected a decision of prosecutorial discretion on the CBA’s part to wait to pursue contempt proceedings for Respondents’ UPL, out of deference to the federal court’s consideration of a constitutional question.⁹ The parties *never* agreed that Respondents’ conduct during *any* timeframe would be forgiven or ignored. Nothing about AFPLC’s frivolous federal case could have somehow eradicated

⁸ Of course, if AFPLC’s business were not UPL, there would have been no such risk. AFPLC thus acknowledged its own recognition that its business operation likely constituted UPL in Ohio.

⁹ Of course, as this Court may be aware from its own involvement in that case, the federal court ultimately deemed AFPLC’s argument frivolous and awarded the CBA its attorney fees as a sanction against AFPLC for its groundless lawsuit. Unsurprisingly, the Respondents have chosen not to highlight that aspect of the federal proceedings.

or justified the Respondents' unlawful conduct that has harmed thousands of elderly Ohioans. Upon the dismissal of the federal case in 2006, the CBA was free to enforce this Court's Cease-and-Desist Order against the Respondents for *all* of their illegal conduct. Respondents' representation to the contrary before this Court is false.

V. Respondents AFPLC, Heritage, Steve Grote, Alexander Scholp, and William Downs Should Not Be Permitted to Object to the Board's Recommendation Because They Failed to Oppose the CBA's Motion for Summary Judgment

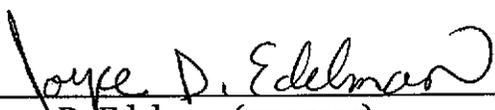
This Court should not consider the objections of Respondents AFPLC, Heritage, Steve Grote, Alexander Scholp, or William Downs, because these Respondents failed to file a memorandum in opposition to the CBA's motion for summary judgment and thus waived their right to object before this Court.

"It is a fundamental tenet that a party who does not respond to an adverse party's motion for summary judgment may not raise issues on appeal that should have been raised in response to the motion for summary judgment." *Thompson v. Ghee* (Franklin 2000), 139 Ohio App.3d 195, 199, 743 N.E.2d 459; see also, e.g., *Bennett v. Meshell*, Meigs App. No. 07CA2, 2008-Ohio-1287, ¶13; *Estate of Hood v. Rose*, 153 Ohio App. 3d 199, 2003-Ohio-3268, 792 N.E.2d 736, ¶8. Respondents AFPLC, Heritage, Grote, Scholp, and Downs all failed to file any memorandum in opposition to the CBA's motion for summary judgment before the Panel. This Court, therefore, should not now consider the arguments that those Respondents should have, but did not, make below.

VI. Conclusion

Respondents have operated a trust-mill scheme in Ohio for years, to the great and ongoing harm of thousands of vulnerable Ohio seniors. For all of the foregoing reasons, and for all the reasons set forth in the CBA's Objections, this Court should grant the relief requested by the CBA in its Objections.

Respectfully submitted,



Joyce D. Edelman (0023111)
(COUNSEL OF RECORD)

Aaron M. Shank (0069414)
J. H. Huebert (0078562)
Porter, Wright, Morris & Arthur, LLP
41 South High Street
Columbus, OH 43215
(614) 227-2083
(614) 227-2100 (fax)

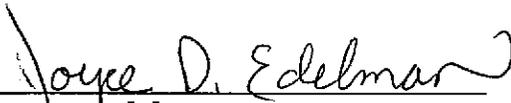
Attorneys for Relator
The Columbus Bar Association

CERTIFICATE OF SERVICE

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

<p>Bruce A. Campbell, Esq. Columbus Bar Association 175 South Third Street, Suite 1100 Columbus, Ohio 43215</p>	<p>Susan B. Christoff, Esq. Board on the Unauthorized Practice of Law The Supreme Court of Ohio 65 South Front Street, 5th Floor Columbus, OH 43215-3431</p>
<p>Andrew R. Bucher, Esq. Reinheimer & Reinheimer 208 Madison Street Port Clinton, Ohio 43452</p> <p>Attorney for Respondents American Family Prepaid Legal Corporation, Heritage Marketing & Insurance Services, Inc., and Jeffrey Norman</p>	<p>Christopher J. Moore, Esq. Moore & Scribner 3700 Massillon Road, Suite 380 Uniontown, Ohio 44685 (330) 899-0475 (330) 899-0476 (fax) attorneychrismoore@yahoo.com</p> <p>Attorney for Respondents Joseph Hamel and Timothy Holmes</p>
<p>John N. MacKay, Esq. Shumaker, Loop & Kendrick, LLP 1000 Jackson Street Toledo, Ohio 43604-5573</p> <p>Attorney for Amicus Curiae Ohio State Bar Association</p>	<p>Eugene P. Whetzel, Esq. Ohio State Bar Association 1700 Lake Shore Drive Columbus, Ohio 43204</p> <p>Attorney for Amicus Curiae Ohio State Bar Association</p>
<p>James P. Tyack, Esq. Tyack, Blackmore & Liston Co., LPA 536 S. High Street Columbus, Ohio 43215</p> <p>Attorney for Respondent Adam Hyers</p>	<p>Stanley Norman 12 Bordeaux Coto De Caza, California 92679</p>
<p>Jeff Alten 25302 Wolf Road Bay Village, Ohio 44140</p>	<p>Paul Chiles 1117 Forest View Court Westerville, Ohio 43081</p>

Tim Clouse 6188 South State St. Rt. 587 New Riegel, Ohio 44853	William Downs 1682 Lexington Drive Lancaster, Ohio 43130
Joseph Ehlinger 127 19 th Street Findley, Ohio 45840	Luther Mack Gordon 3420 Sodom Road Casstown, Ohio 45313
Steve Grote 4941 N. Arbor Woods Court, Apt. 302 Cincinnati, Ohio 45248	David Helbert 195 Beachwood Avenue Avon Lake, Ohio 44012
Samuel Jackson 7789 Windward Drive Massillon, Ohio 44646	Harold Miller 4083 Guston Pl. Gahanna, Ohio 43230
Chris Miller 295 Laurel Lane Pataskala, Ohio 43062	Paul Morrison 8580 State Route 588 PO Box 361 Rio Grande, Ohio 45674
Eric Peterson 5014 Marigold Way Greensboro, North Carolina 27410-8209	Jack Riblett 952 South Brinker Avenue Columbus, Ohio 43204
Richard Rompala 19559 Echo Drive Strongsville, Ohio 44149	Daniel Roundtree 1273 Serenity Lane Worthington, Ohio 43085
Vern Schmid 1024 Josiah Morris Road London, Ohio 43140	Alexander Schlop 2090 State Route 725 Spring Valley, Ohio 45370
Jerrold Smith 152 Elm Street Ravenna, Ohio 44266	Patricia Soos 3037 Lisbon-Canfield Road Leetonia, Ohio 44431
Anthony Sullivan 1587 Ringfield Drive Galloway, Ohio 43119	Dennis Quinlan 1367 Pine Valley Court Ann Arbor, Michigan 48104-6711


 Joyce D. Edelman

COLUMBUS/1457933 v.01