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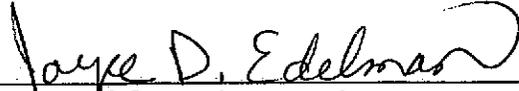
BEFORE THE SUPREME COURT OF OHIO

COLUMBUS BAR ASSOCIATION,	:	
	:	
Relator,	:	Case No. 2005-0422
	:	
v.	:	Case No. UPL 02-10
	:	
AMERICAN FAMILY PREPAID LEGAL	:	
CORPORATION, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	

**MOTION OF RELATOR COLUMBUS BAR ASSOCIATION
TO STRIKE ENTITY RESPONDENTS' OUT-OF-RULE BRIEFS**

Pursuant to Rule XIV(4) of the Supreme Court Rules of Practice, the Columbus Bar Association, by and through counsel, hereby moves the Court to strike (a) Respondents AFPLC, HMISI, and Jeffery [sic] Norman's Reply to Relator's Objections to UPL Board Recommendation; and (b) Respondents AFPLC, HMISI, and Jeffery [sic] Norman's Reply to the Amicus Brief Filed By the Ohio State Bar Association. Respondents' reply briefs violate Rules VI, X, and XIV of the Rules of Practice of the Supreme Court of Ohio; Rule VII, §19(B) of the Rules for the Government of the Bar of Ohio; and this Court's September 12, 2008 Order. Accordingly, and as specifically set forth in the attached Memorandum in Support, this Court should strike these briefs.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Respondents' Reply Briefs Violate The Applicable Requirements Of The Rules Of Practice Of The Supreme Court Of Ohio.

Rule VII, §19(B), of the Rules for the Government of the Bar, which governs these proceedings, provides that “* * * Objections and briefs shall be filed in the number and form required for original actions by the Rules of Practice of the Supreme Court of Ohio, to the extent such rules are applicable.” Gov.Bar R.VII, §19(B). Thus, the Court ordered “that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.” (Order (Sept. 12, 2008) at 2.)

Regarding original actions, the Rules of Practice of the Supreme Court of Ohio provide that “All merit briefs shall conform to the requirements set forth in S.Ct.Prac. R. VI and VIII, to the extent those rules are applicable.” S.Ct.Prac. R. X(8). As applicable to original actions, these rules require that reply briefs “shall not exceed 20 numbered pages, exclusive of the table of contents, table of authorities cited, the certificate of service, and any appendix.” S.Ct.Prac. R. VI(4)(A). Rule VI(4) also provides that there shall be only one reply brief, even when there are multiple opposing parties. S.Ct.Prac. R. VI(4)(B).

The only way that the Entity Respondents could have arrived at the incorrect conclusion that they had a right to file a reply brief in excess of 20 pages was to ignore Rule VI(4) in favor of Rule VI(5), which concerns cross-appeals rather than original actions. Again, however, the rules that govern UPL actions clearly provide that the number and form of briefs to be filed in these proceedings shall conform to the rules for original actions, not appeals. Gov.Bar R. VII, §19(B). Moreover, Rule VI(5) establishes

a briefing process that is inconsistent with the process in this case. Here, this Court and the applicable rules contemplated two simultaneous sets of briefs, spanning 35 days from the Court's show cause Order. Conversely, briefing of cross-appeals under Rule VI(5) involves four staggered briefs that span, in most appeals, a total of 120 days from the date the record is filed. Because Rule VI(5) is clearly inapplicable here, the 20-page limitation under Rule VI(4) applies.

In spite of the applicable rules, Respondents American Family Prepaid Legal Corporation ("AFPLC"), Heritage Marketing & Insurance Services, Inc. ("Heritage") and Jeffrey Norman, violated Rule VI(4)(B) by filing two separate reply briefs. They also violated Rule VI(4)(A) by filing a reply brief with 42 numbered pages, exclusive of table of contents, table of authorities cited, certificate of service, and appendix.

II. Respondents' Reply Briefs Should Be Stricken Because They Violated The Applicable Rules And This Court's Order.

Yet again, the Entity Respondents flouted this Court's rules and rulings by filing not one, but two briefs, one of which was more than double the permissible length.¹ The applicable rules, however, demand strict compliance. See, e.g., *Ohio Consumers' Counsel v. Pub. Util. Comm. of Ohio*, 105 Ohio St.3d 1211, 2005-Ohio-1023, 823 N.E.2d 872 (appeal dismissed); *Ohio Heritage Dev. Co. v. Portage Cty. Bd. of Elections*, 90 Ohio St.3d 1436, 2000-Ohio-2971, 736 N.E.2d 476 (brief stricken); *Drake v. Bucher* (1966), 5 Ohio St.2d 37, 34 O.O.2d 53, 213 N.E.2d 182, para. 2 of the syllabus (appeal dismissed *sua sponte*; failure to conform to rules "necessarily wrongs those members of

¹ The Entity Respondents also violated S.Ct.Prac. R. XIV(2)(A)(1) by failing to serve copies of their reply briefs "on all parties to the case" According to their counsel's certifications to both of their reply briefs, the Entity Respondents served only the CBA and the Ohio State Bar Association. While this Motion is rightly not filed under Rule XIV(2)(D) because the CBA was served, their failure to meet this elemental requisite of civil practice underscores the Entity Respondents' ambivalence towards the rules.

the bar who labor to adhere to the rules”); see also *Vorisek v. Village of N. Randall* (1980), 64 Ohio St.2d 62, 65, 18 O.O.3d 296, 413 N.E.2d 793 (affirming dismissal of appeal, “the line must be drawn so that Local Rules continue to be respected and the threat of sanctions continues to be an effective deterrent to the rampant disregard of those rules”). This Court should not overlook the Entity Respondents’ rampant disregard for its own rules, especially in light of the Court’s clear directive in its September 12, 2008 Order that the parties need to conform their filings to the Rules of Practice of the Supreme Court of Ohio.

III. Conclusion.

Respondents AFPLC, Heritage, and Jeffrey Norman’s reply briefs violate this Court’s Practice Rules, this Court’s September 12, 2008 Order, and the Rules for the Government of the Bar. Accordingly, this Court should strike these Respondents’ reply briefs.

Respectfully submitted,



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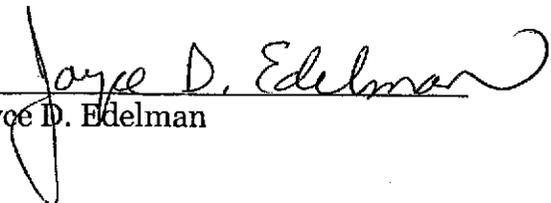
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was duly served via U.S. mail this 31st day of October, 2008, upon the following:

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