
BEFORE THE SUPREME COURT OF OHIO

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

COLUMBUS BAR ASSOCIATION,
Relator,

v

AMERICAN FAMILY PREPAID LEGAL CORPORATION, ET AL.,
Respondents

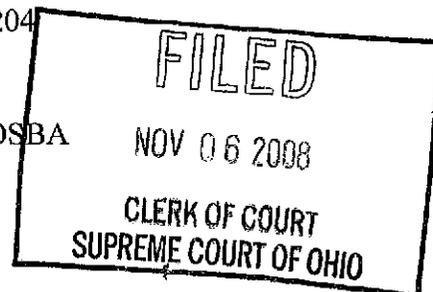
**REPLY OF RESPONDENTS AFPLC, HMISI, AND JEFFERY NORMAN
TO RELATORS MOTION FOR LEAVE TO SUPPLEMENT THE
RECORD TO ADDRESS MISSTATEMENTS IN ENTITY
RESPONDENTS' OBJECTIONS**

Andrew R. Bucher
(0082931)
REINHEIMER & REINHEIMER
204 Justice Street
Fremont, Ohio 43420
Phone: 419.355.0108
Fax: 419.355.0622
Andrew.Bucher@hotmail.com
Counsel for AFPLC, HMISI, and
Jeffery Norman

John N. MacKay, Esq
(0002801)
Shumaker, Loop, & Kendrick, LLP
1000 Jackson St.
Toledo, OH 43604
T: 419.321.1234
F: 419.241.6894
Counsel of record for OSBA

Joyce D. Edelman
(0023111)
PORTER, WRIGHT, MORRIS, &
ARTHUR LLP
41 S. High St.
Columbus, OH 43215
Phone: 614.227.2083
Fax: 614.227.2100
Counsel for Relator

Eugene P. Whetzel Esq. .
(0013216)
Ohio State Bar Association
1700 Lake Shore Dr.
Columbus, OH43204
T: 614.487.2050
F: 614.485.3191
General Counsel OSBA



BEFORE THE OHIO SUPREME COURT

COLUMBUS BAR ASSOCIATION	*	Case No. 05-422
	*	
Realtor	*	From the UPL Board
	*	Case No. UPL 02-10
	*	
	*	
-vs-	*	Andrew R. Bucher
	*	(0082931)
	*	Attorney for Respondents, AFPLC,
	*	HMISI, and Jeffery Norman
American Family Prepaid Legal Corp. Et al.	*	204 Justice Street
	*	Fremont, Ohio 43420
Respondents	*	Phone: 419.355.0108
	*	Fax: 419.355.0622
	*	<u>Andrew.Bucher@hotmail.com</u>
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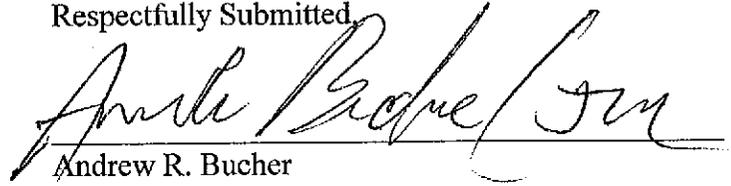
**REPLY OF RESPONDENTS AFPLC, HMISI, AND JEFFERY NORMAN  
TO RELATORS MOTION FOR LEAVE TO SUPPLEMENT THE RECORD TO  
ADDRESS MISSTATEMENTS IN ENTITY RESPONDENTS' OBJECTIONS**

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Relator, the Columbus Bar Association ("CBA") moved for leave to supplement the record before the court Pursuant to Rule XIV(4) of the Supreme Court Rules of Practice. They then attempt to ground this request upon the finding of this Court in *In re. Application of Manayan*, 102 Ohio St.3d 109, 2004-Ohio-1804. The CBA's claim that *Manayan* provides the proper precedent to supplement the record due to its analogous nature is misguided and incorrect.

For these reasons, more fully developed by the memorandum in support, Respondents respectfully request that the Court deny this motion for leave to supplement the record.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Andrew R. Bucher". The signature is written in a cursive style with a horizontal line underneath it.

Andrew R. Bucher
(0082931)

Counsel of Record for Respondents
HMISI, AFPLC, and Jeffery Norman
Reinheimer & Reinheimer
204 Justice St.

Fremont, OH 43420

P: 419.355.0108

F: 419.355.0622

MEMORANDUM IN SUPPORT

I. Relator Provides Insufficient Support For Motion to Supplement The Record.

In their motion, Relator CBA claim that the proper basis for supplement the record in the present case lies within this Courts holding in *In re. Application of Manayan*, 102 Ohio St.3d 109, 2004-Ohio-1804, due to the analogous nature of the cases. A comparison of the cases shows them to not be analogous and the nature of the material to be supplemented is not analogous. While Rule XIV(4) of the Supreme Court Rules of Practice may open the door widely for motions, it does require that the motion must be accompanied by a particular statement of the grounds upon which it is based. This standard sets the bar higher than merely offering a case whose only similarity to the one at bar is the fact that a party attempted to supplement the record.

Manayan is a case about a Hawaii Lawyer whom wanted to be admitted to the Ohio Bar without enduring the rigors of the Ohio Bar Exam. During his character and fitness evaluation it came to light that he had failed to pay his Taxes, both Federal and State, for a number of years while previously practicing in Hawaii. Attorney Manayan ultimately requested that he be allowed to supplement the record to display his payment of Hawaii state taxes, a more recent event which he, the proponent, wanted to display to the Court. The clear distinction is that Attorney Monayan was the proponent of a request, namely to be admitted to the Ohio Bar and he was seeking to gain the administrative style of approval which is required to satisfy said request. In the case at hand there is an ongoing adversarial proceeding between (many) opposing parties that takes on the style of adversarial litigation, not of administrative approval. Further, the evidence in the record in *Monayan* was primarily generated by his interviews and responding to the requests of those interviewers, this can even be applied to his supplemental material. The present case represents an entirely different set of circumstances with the long and exhaustive adversarial discovery

phase which involved dozens of depositions, extensive document requests, interrogatories, and motion work on both sides.

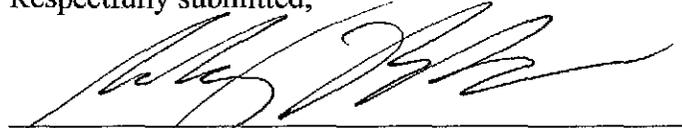
The content of the material to be supplemented is also not analogous between the two cases. Attorney Monayan sought to provide documents of empirical character to the Court, more or less receipts that displayed payment had been made on a particular date, in a particular amount, that he was responsible for no outstanding balance, and was subject to no liens. This is data which is plain on its face and examination of it can result in only one conclusion. This is a far cry from the documents proposed by the CBA in the present case. The CBA seeks to introduce documents which are subject to interpretation, are not empirical in nature, and are most fit to be the subject of formal discovery. Should the Court decide to allow these documents into the present proceeding, it should only be through reopening discovery proceedings and allowing all parties to this case the usual devices of discovery to properly evaluate the evidence, provide the proper context to the evidence, challenge the evidence, and then possibly to admit the evidence. Respondents in this case dispute some of the allegations contained in the proposed supplemental evidence. Therefore, Respondents should be entitled to conduct discovery by way of depositions to fully evaluate the proposed allegations.

This Court issued a Show Cause Order regarding the Recommendation of the Board as to whether the recommendation should or should not be approved. The Recommendation of the Board is based upon the evidence which was in the record at the time the Board considered the matter. Supplemental evidence has no bearing on the Recommendation. This supplemental evidence was not considered by the Board and therefore should not be considered by this Court in evaluating the Board's Recommendation.

II Conclusion

The documents offered by Relator were not available for review by the Board when they made their recommendation and have no bearing on that recommendation which is now at issue in this Court. Further, the precedent that Relator provides to ground their motion upon is analogous to the present case in only one way, a party to a case in this Court attempted to supplement the record. They ignore the very differing style of the proceeding, the nature of the proceedings, the content of the material to be supplemented, and the fact that in the present case Respondents dispute the content of the proposed material. Accordingly, the Court should deny Relator's motion or alternatively, should reopen discovery to properly supplement the record.

Respectfully submitted,



Andrew R. Bucher

(0082931)

Counsel of Record for Respondents
HMISI, AFPLC, and Jeffery Norman
Reinheimer & Reinheimer
204 Justice St.

Fremont, OH 43420

P: 419.355.0108

F: 419.355.0622

CERTIFICATION

A copy of the foregoing Reply was mailed to Joyce D. Edelman, Attorney for Relator, Porter, Wright, Morris & Arthur, LLP, 41 South High Street, Columbus, Ohio, 43215; John N. MacKay, Attorney for OSBA, Shumaker, Loop & Kendrick, LLP, 1000 Jackson Street, Toledo, Ohio, 43604; and Eugene P. Whetzel, General Counsel, OSBA, Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio, 43204; by First Class U.S. Mail, postage prepaid on the 5th day of November, 2008.



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