
BEFORE THE SUPREME COURT OF OHIO

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

COLUMBUS BAR ASSOCIATION,
Relator,

v

AMERICAN FAMILY PREPAID LEGAL CORPORATION, ET AL.,
Respondents

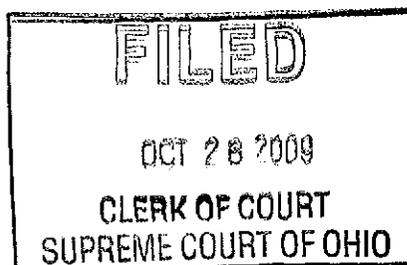
**RESPONDENTS AFPLC, HMISI, AND JEFFERY NORMAN'S MOTION FOR
RECONSIDERATION**

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BEFORE THE OHIO SUPREME COURT

COLUMBUS BAR ASSOCIATION	*	Case No. 05-422
	*	
Relator	*	From the UPL Board
	*	Case No. UPL 02-10
	*	
	*	
-vs-	*	James L. Reinheimer
	*	(0059231)
	*	Attorney for Respondents, AFPLC,
	*	HMISI, and Jeffery Norman
American Family Prepaid Legal Corp. Et al.	*	204 Justice Street
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**MOTION TO RECONSIDER**

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Now come Respondents, American Family, Heritage Marketing, and Jeffrey Norman, and move this Court to reconsider its decision in this case filed October 14, 2009. The Grounds urged for reconsideration are generally 1) the decision is not supported by the record, 2) the Court has imposed a sanction which for which compliance is impossible, and 3) the fine imposed is disproportionate to fines imposed in similar cases.

Pursuant to S.Ct.Prac.R.XI, Section 2(A)(3) and Section 2(A)(4), Respondents American Family Prepaid Legal Corp. (AFPLC), Heritage Marketing and Insurance Services Inc. (HMISI), and Jeffrey Norman (J. Norman) (collectively, "Respondents"), by and through counsel, respectfully ask the Court to reconsider its October 14, 2009 decision.

Deponent after deponent has testified that Respondents do not sell living trusts, do not give legal advice and do not prepare legal documents. Deponent after deponent has also testified that all legal work is performed by the Plan Attorney, and further, that it is the Plan Attorney, and not Respondents, who decide what, if any, legal services a plan member may obtain. No

matter how much controversy the CBA attempts to manufacture with its conclusory and unsupported allegations that Respondents are running a "trust mill," the undisputed material facts establish that Respondents have not breached the Consent Agreement or engaged in the unauthorized practice of law.

However, as evident from the Court's Order October 14, 2009, it is apparent the Court has disregarded all of Respondents' defenses and ignored material facts. The Court has instead chosen to rely upon the Board's Final Report in support of its Order and accepted the Board's findings as the truth.

In light of the Court's clear reliance on the Board's recommendation, Respondents hereby move the Court to reconsider its Order on grounds that the Board's Final Report was flawed ab initio. The Court has overlooked, ignored and excluded from its findings of fact what only can be described as a mountain of evidence demonstrating the supervision and control of AFPLC's plan attorneys in regards to the production of legal documents at all times relevant, including between the period of March 2003 and May 2005. Conversely, the Court's Order has adopted into virtually all of its findings mountains of conclusory and unsupported "allegations".

Uncontested complaints produced and argued by the Realtor Columbus Bar Association (CBA) are not evidence that can support the Court's findings of facts. Argumentative affidavits of Relator's own attorneys and a mere few consumer affidavits cannot be used by the Court to support its conclusions. In fact, over the course of a four-year period, the CBA has not produced any deposition testimony what so ever from any consumer or expert witness to support its allegations or the Courts Order.

THE FINDINGS MADE BY THE COURT ARE NOT SUPPORTED BY THE RECORD

1. The Court found that the Plan Attorneys had little or no involvement with clients.

This Court made the following findings at ¶ 54 to 57:

¶ 54} After their sales pitches, American Family sales agents sent the personal and financial information gathered about plan members to American Family's Ohio plan attorney, who for the periods of time in questions was Brueggeman. From the start of his employment until March 2005, Brueggeman had an office within American Family/Heritage offices on Citygate Drive in Columbus. Brueggeman did not pay rent and used supplies and services provided by American Family and Heritage employees to perform his role. Brueggeman did not hire or supervise American Family sales agents.

¶ 55} Brueggeman, after receiving the agreement, sent a form letter to the purchases of the plans thanking them for choosing him to prepare their living trusts and estate planning documents. The letter also stated that the drafting process would take four to six weeks and invited the customer to call him with questions.

¶ 56 } Occasionally, Brueggeman telephoned the customer to introduce himself or to confirm information on the paperwork provided by the American Family sales agent. These occasions were the usually the only the only contact Brueggeman had with the customer. Brueggeman rarely, if ever, actually met an American Family plan member in person.

¶ 57 } Brueggeman or office staff sent the information gathered by American Family's sales agents to American Family's California office. American Family's California employees generated each plan member's living trust documents with computer software designed for this

purpose. Brueggeman did not hire these American Family employees and did not control or supervise the California employees. After the California employees incorporated the client information into the living trust form documents using computer software designed for the task, the California employees packaged the completed documents and returned them to the Columbus office for delivery to the customers. Brueggeman cursorily reviewed the documents.

This Court essentially concluded that Plan Attorneys did not have contact the American Family clients. This conclusion is not supported by the record. Edward Brueggeman was the primary Plan Attorney for American Family in the State of Ohio (*See* Brueggeman Depo., p.13-14). In March of 2004 he hired Cynthia Irwin to aid in providing legal services to the members of the Plan (*See* Irwin Depo., p. 9). At all times relevant to the case at hand, the worksheets containing the information gathered by the sales representatives were given to Attorney Brueggeman, not to non-attorney document drafters (see Brueggeman Depo., pp. 26-27 and 33-34). Upon receipt of the worksheets, the plan member would be contacted by one of the abovementioned Plan Attorneys. During this contact, the Plan Attorney would conduct an in-depth interview to collect additional information from the plan member and to facilitate legal analysis regarding the member's legal interests, wants, needs, and what legal devices may already have been established for the member prior to contact with AFPLC. During this interview the Plan Attorney would then discuss the applicable legal principals and devices that could be utilized for the member as the Plan Attorney sees appropriate (*See* Irwin Depo., pp. 17-18, 20; and Brueggeman Depo., pp. 27-34).

Following the consultations with the Plan Attorney, if the attorney determined that the member was in need of legal documents and acquired the acquiescence of the member (*See* Brueggeman Depo., pp 31, 34; Irwin Depo., p. 38) the Plan Attorney then provides the

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

Upon completion of the draft of the document as directed by Plan Attorney Brueggeman, it was provided to him for review. Mr. Brueggeman reviewed *all* estate planning documents and signed off on them prior to them leaving his office *See* Brueggeman Depo., pp. 32, 35; Irwin Depo., p. 22; Volbert Depo., p. 18. In this manner, the American Family employees who aided the Plan Attorney in document production were truly support staff acting within the attorney's direction and control. Further, after the CBA Motion to Enforce was overruled in December of 2004 and prior to the filing of the March 3rd, 2005 Motion to Cease and Desist in this court, the Plan Attorneys relocated to another office location and hired in-house staff to provide the services that American Family's employees once offered. Moreover, this was done in response to concerns raised by Relator. *See* Brueggeman Depo., p. 7-12.

2. The Court erred in finding no mitigating factors under UPL Reg 400 (F).

This Court made the following findings in its decision:

¶78} We therefore accept the board's recommendation to enjoin respondents from further illegal acts constituting the unauthorized practice of law. We also accept the board's recommendation to impose monetary penalties under Gov. Bar R. VII (8)(B), which allows the board to recommend and the court to impose civil penalties in an amount up to \$10,000 per offense. And because of the breadth of respondent's illicit enterprise, which the CBA insists has

continued in operation under at least one corporate reincarnation, we increase the recommended monetary penalties in accordance with the formula advocated by the CBA.

¶ 79} In reaching this conclusion, we have weighed the aggravating and mitigating factors listed in Gov. Bar R. VII (8)(B) and the supplementary provisions of UPL Reg. 400 (F) that are present in this case. The factors to be considered under Gov. Bar R. VII (8)(1)(B) through (5) are the degree of cooperation by the respondents in the investigation, the number of UPL violations, the flagrancy of the violations, harm to third parties arising from the violations, and any other relevant factors. Under UPL Reg. 400 (F), the “other relevant factors: include the following:

¶ 80} “(1) Whether relator has sought a civil penalty and, if so, the amount sought.

¶ 81} “(2) Whether the imposition of civil penalties would further the purposes of Gov. Bar R. VII.

¶ 82} “(3) Aggravation. The following factors may be considered in favor of recommending a more severe penalty:

¶ 83} “(a) Whether respondent has previously engaged in the unauthorized practice of law;

¶ 84} “(b) Whether respondent has been previously ordered to cease engaging in the unauthorized practice of law;

¶ 85} “(c) Whether respondent has 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;

¶ 86} “(d) Whether respondent has benefitted from the unauthorized practice of law and, if so, the extent of any such benefit;

¶ 87} “(e) Whether respondent’s unauthorized practice of law included an appearance before a court to other tribunal;

¶ 88} “ (f) Whether respondent’s unauthorized practice of law included preparation of a legal instrument for filing with a court or other governmental entity; and

¶ 89} “(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.

¶ 90} “(4) Mitigation. The following factors may be considered in favor of recommending no penalty or a less severe penalty:

¶ 91} “(a) Whether respondent has ceased engaging in the conduct under review;

¶ 92} “(b) Whether respondent has admitted or stipulated to the conduct under review;

¶ 93} (c) “Whether respondent has admitted to stipulated that the conduct under review constitutes the unauthorized practice of law;

¶ 94} “(d) “ Whether respondent has agreed or stipulated to the imposition of an injunction against future unauthorized practice of law;

¶ 95} “(e) Whether respondent’s conduct resulted from a motive other than dishonesty or personal benefit;

¶ 96} “(f) Whether respondent has engaged in a timely good faith effort to make restitution or to rectify the consequences of the unauthorized practice of law;

¶ 97} “(g) Whether respondent has had other penalties imposed for the conduct at issue;

¶ 98} We find that there are no mitigating factors ...

At least two mitigating factors apply to the conduct of Respondents. As to mitigating factor “a”, Respondents have ceased engaging in the conduct under review.

The Ohio Supreme Court issued its Cease and Desist Order on April 12, 2005. Immediately upon the issuance of this order, Respondent J. Norman stopped all sales of American Family's legal plan in the State of Ohio. Not until May 12, 2005 (a full month after the issuance of the Cease and Desist Order) and at the instruction of Counsel Philomena Dane who reached a temporary agreement with the CBA on behalf of Respondents via the federal litigation, did Respondent J. Norman by the advice of counsel allow Respondent American Family to resume business in the state of Ohio.

Respondents, through Counsel, then reached an agreement through stipulated order on May 27, 2005 in Federal Court with the CBA that the Cease and Desist Order would not be enforced pending litigation in Federal Court. In paragraph numbered one of the Order it states, "the Columbus Bar Association agrees that it will not seek to enforce the April 12, 2005 Cease and Desist Order entered by the Supreme Court of Ohio pending resolution of the present case on its merits, either by settlement or final adjudication." (See - CBA Agreement Not To Enforce Cease & Desist Order 05.27.2005).

The litigation in Federal Court was not fully resolved until July 13th, 2007, when the Federal Court ultimately found in favor of the CBA. On that date Respondent J. Norman immediately ceased operations in Ohio and those operations remain suspended to date.

Due to the course of events as outlined above, the issuance of penalties against Respondent J. Norman are not warranted from the time period beginning with the 2003 Consent Agreement and ending July 13th, 2007 when operations immediately ceased upon the ruling of the Federal Court. This time period encompasses the entire period at hand in this case. Respondent J. Norman reasonably believed he was following Orders of the Panel and the Court,

at the direction of counsel and in accordance with the Order stipulated to by the CBA to not enforce the Cease and Desist Order.

As to factor (f), Respondents did engage in a timely good faith effort to make restitution or to rectify the consequences of the unauthorized practice of law. Respondent J. Norman complied with all stipulations and requirements as outlined in the March 2003 Consent Agreement, including the issuance of \$49,444.70 in reimbursements to 68 plan members that sought alternative legal opinions on documents in accordance with the Consent Agreement. (Affidavit of Gregory J. Shebest, Esq.; p. 1 ¶ 3)

3. The Courts findings are against the overwhelming substantial weight of the evidence regarding the business practices of American Family and Heritage from March 2003 until March 2005.

The Court's findings are not based on evidence and facts found in the record, but rather reiterations of the mere "allegations" of the CBA. The CBA did not take any consumer witness depositions, and only possess three contestable consumer affidavits. Additionally, no expert affidavits or testimony in support of the CBA's allegations can be found in the record. Uncontested complaints received by the CBA do not constitute evidence that the unauthorized practice of law has occurred. The Court's findings cannot be supported by evidence from anywhere in the record, however plenty of evidence in contrary exists.

{¶ 15} The Court incorrectly states, "American Family's purported mission — to provide a variety of legal assistance to members at a discounted price from an assortment of affiliated lawyers — was not as promised." On the contrary, testimony of J. Norman confirmed that AFPLC's legal plan offers access to a wide range of legal services, including but not limited to estate planning, elder care, Medicaid planning, landlord/tenant, and bankruptcy provided by the

plan attorney. J. Norman Depo., pp. 184-85, Irwin Depo., p. 30. Access to basic estate planning services are provided at no extra costs and other legal services are offered at a 25% discounted rate off the plan attorney's usual hourly rate. J. Norman Depo., pp. 184-85; Brueggeman Depo., p. 55.

The Court has incorrectly found that “the legal assistance that American Family provided for the cost of its plan nearly all related to one service — avoiding estate probate costs through the creation of a living trust. The CBA has not produced any evidence in support of this finding. Conversely, the testimony of plan attorney Edward Brueggeman confirmed that legal services other than estate planning services were provided “often”. Brueggeman Depo., p. 53:5-21.

{¶ 17} The Court incorrectly states, “The mailers encouraged customers to fill out and return preaddressed postcards to obtain information about trusts and estates...” On the other hand, there is no record of any AFPLC advertisements containing the word “trusts”. In fact, the one example provided by the Court in paragraphs {¶ 18} through {¶ 20} does not contain the word “trust” or any written offer to obtain information about trusts.

The Court incorrectly found that “some customers claim that they never mailed a response card but received a “cold call” from American Family. However, the affidavit of J. Norman indicates that American Family does not, and never has, made cold call solicitations to prospective American Family members. J. Norman Aff. ¶ 30.

{¶ 22} The Court incorrectly states, “American Family telemarketers did not refer to a prepaid legal plan, when in fact the evidence reflects the telemarketing scripts announce the call on behalf of American Family Legal Plan. J. Norman Aff. ¶ 31.

**THE COURT HAS IMPOSED A SANCTION FOR WHICH COMPLIANCE IS
IMPOSSIBLE**

Paragraph One Hundred Ten (110) of this Court's Decision of October 14, 2009 provides as follows:

¶ 110 } Finally, consistent with *Sharp Estates*, 107 Ohio St. 3d 219, 2--5-Ohio-6267, 837 N.E.2d 1183, and on the urging of *amicus curiae*, Ohio State Bar Association ("OSBA"), we order American Family, Heritage, Jeff Norman and Stanley Norman to disclose the names of their Ohio customers. Within seven days following the issuance of the order of this court, these respondents shall disclose to the board, with a copy to the CBA, the names and addresses of all of their Ohio clients. Beginning on the eighth day after the order, a fine of \$25,000.00 per day will be imposed until all Ohio clients have been disclosed. CBA shall send a letter to each of the Ohio clients informing them of the unauthorized practice of law by the respondents and suggesting that the clients may want to consult with a lawyer of their choice, at the client's expense, to confirm that the respondent's documents are suitable and appropriate for them. These respondents shall also be responsible for costs in the amount recommended by the board.

The customer list of American Family was sold United States Bankruptcy Trustee Thomas H. Casey to Puritan Financial Group, Inc. pursuant to the Chapter 7 Bankruptcy filing by American Family Pre-Paid Legal, Inc. Said Bankruptcy was file in the United States Bankruptcy Court for the Central District of California, Santa Ana Division, Case No. 8:07-bk-13777-RK. See attached letter from Thomas Casey dated September 29, 2008, Bill of Sale, and letter from Puritan Financial Companies, Inc. dated October 6, 2008. American Family no longer owns a customer list and has no legal right to possess its prior customer list which was physically taken by the Bankruptcy Trustee.

The customer list of Heritage was sold to Quest Financial in 2007. Quest Financial is not a party to this case. See Contract for the Purchase of Client List dated September 4, 2007. Heritage owns no customer list which can be provided to the Court and the CBA.

Jeffrey Norman, as an individual, maintains no customer lists. Jeffrey Norman has always operated his business through corporate entities including American Family and Heritage Marketing. All customer lists were maintained by the corporate entities. Jeffrey Norman as an individual owns no customer lists. As to the corporate entities in which Jeffrey Norman may have been a principal, American Family has filed for Bankruptcy and Heritage no longer operates and has sold its customer list.

It is therefore not possible for Respondents American Family, Heritage or Jeffrey Norman to comply with this Court's Order to produce customer lists. Therefore, this Court should delete this requirement from the Order. The CBA has the additional remedy of obtaining American Family's customer list from Puritan Financial Group, Inc., the purchaser of the American Family customer list from the Bankruptcy Trustee.

**THE AMOUNT OF THE FINE IMPOSED IS DISPROPORTIONATE AND CANNOT
BE JUSTIFIED**

This Court imposed a fine in this case which was determined as follows from One Hundred Eight Paragraph Nine of this Court's Decision:

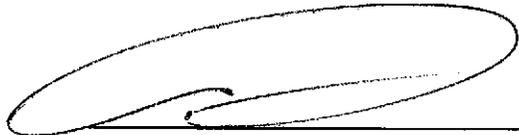
¶ 108 } Next, we impose a civil penalty of \$6,387, 990, assessed jointly and severally, against American Family, Heritage, Jeffrey Norman, and Stanley Norman. We calculate this by multiplying the number of persons who purchased living-trust documents as discovered by the CBA, 3,202, by the fee collected from each individual, \$1,995.00.

This calculation assumes no one American Family customer benefitted from the living trust documents. Living trust documents are appropriate and beneficial for many individuals. It is certain that a significant portion of American Family customers derived great benefit from having a living trust and having their assets pass to their heirs without having involvement with the Probate Court. To assess a fine based upon the gross value of sales to American Family customers ignores the fact that some of the customers needed a living trust and benefitted therefrom.

CONCLUSION

The record is clear and consistent, yet the Court's findings of fact are not. The Court has adopted as facts through reliance of the Board's tarnished and bias Final Report, mere allegations from the CBA's pleadings and complaints that cannot be interpreted as evidence. It is not in the interest of justice to render an Order in which the facts are not supported by evidence, especially one with the magnitude of civil penalties awarded in this case. The Court's analysis is not consistent with the evidence and facts in the record. Accordingly, for all the above reasons, Respondents request the Court to reconsider its October 14, 2009 Order.

Respectfully Submitted,



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CERTIFICATION

A copy of the foregoing Motion for Leave to Supplement, was mailed to the following by First Class U.S. Mail, postage prepaid on the 26th day of October, 2009.

Bruce A. Campbell, Esq., Columbus Bar Association, 175 South Third Street, Suite 1100, Columbus, Ohio, 43215; Susan B. Christoff, Esq., Board on the Authorized Practice of Law, The Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio, 43215-3431; Joyce 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; Eugene P. Whetzel, General Counsel, OSBA, Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio, 43204; Christopher J. Moore, Attorney for Respondents, Joseph Hamel and Timothy Holmes, Moore & Scribner, 3700 Massillon Road, Suite 380, Uniontown, Ohio, 44685; James P. Tyack, Attorney for Respondent, Adam Hyers, 536 South High Street, Columbus, Ohio, 43215; Stanley Norman, 12 Bordeaux, Coto De Caza, California 92679; Jeff Alten, 25302 Wolf Road, Bay Village, Ohio, 44140; William Downs, 1682 Lexington Drive, Lancaster, Ohio, 43130; Joseph Ehlinger, 127 19th Street, Findlay, 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 Place, Gahanna, Ohio, 43230; Chris Miller, 295 Laurel Lane, Pataskala, Ohio, 43062; Paul Morrison, 8580 State Route 588, P.O. Box 361, Rio Grande, Ohio, 45674; Eric Peterson, 5014 Marigold Way, Greensboro, North Carolina 27410-82098; 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 Schmit, 1024 Josiah Morris Road, London, Ohio, 43140; Alexander Schlop, 2090 State Route 725, Spring Valley, Ohio, 453709; 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; and Dennis Quinlan, 1267 Pine Valley Court, Ann Arbor, Michigan, 48104-6711.



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