Zenas Zelotes, Esq. (Complainant)

v.

Kevin W. Chern, Esq. et al (Respondents)

COMPLAINT / MEMORANDUM OF LAW

Rule 8.3. Reporting Professional Misconduct (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

The purpose of this writing is to alert the United States Department of Justice (Office of the United States Trustee) and the 47 State Disciplinary Boards (wherein respondents are identified) of such acts that which (cumulatively considered) may well prove the most comprehensive plan of unlawful activities and/or professional misconduct ever perpetrated before the United States Bankruptcy Courts by a consortium of debtors counsel.

A copy of this complaint has been filed with disciplinary authorities in all jurisdictions wherein Kevin W. Chern, Esq. (an active member of the State Bar of Illinois) and all such other attorneys who have acted in concert with Mr. Chern, are known to have engaged in material professional misconduct (a comprehensive list of such attorneys and firms, in excess of 500 attorneys nationwide, appear as and appended exhibit). In instances wherein legal entities are identified as doing business with Mr. Chern and such entities have (or are presumed as having) multiple members, to facilitate the grievance process, Mr. Zelotes has designated the first named partner (or first identified partner) as the tentative nominal respondent. Mr. Zelotes respectfully submits
that all partners having enjoyed the benefits of unjust enrichment (resulting from the misconduct herein recited) are collectively accountable for the acts of their firm.

Mr. Zelotes urges the U.S. Trustee and the respective Disciplinary Boards to take immediate remedial action.

FACTUAL BACKGROUND

The undersigned complainant, Mr. Zenas Zelotes, is an attorney residing in Connecticut (New London County). Mr. Zelotes is a full-time practitioner of bankruptcy and a sustaining member of the National Association of Consumer Bankruptcy Attorneys (NACBA). Mr. Zelotes has an accomplished background in both bankruptcy law and consumer protection litigation and (most recently) achieved distinction as the first attorney in the United States to have filed a successful federal action contesting the Constitutionality of various free speech restrictions enacted as part of the Bankruptcy Abuse and Consumer Protection Act of 2005 (Zelotes v. Martini).

On March 25, 2009, Mr. Zelotes received an unsolicited telephone call from Mr. Aaron Roemig. Mr. Roemig identified himself as calling from the Law Office of Attorney Kevin Chern. Mr. Roemig told Mr. Zelotes that Mr. Chern was a Chicago attorney who developed and promoted a high-ranking bankruptcy website (www.ClearBankruptcy.com) and that Mr. Chern’s office was seeking a local bankruptcy attorney in New London County to whom prospective bankruptcy clients visiting Mr. Chern’s website could be referred.

Mr. Zelotes surmised that Mr. Roemig’s unsolicited gesture was motivated by less than charitable considerations (i.e. the prospect of pecuniary gain) and asked Mr. Roemig to cut direct to the chase: what (if anything) was Mr. Chern soliciting of Mr. Zelotes?
Mr. Roemig explained he was soliciting an arrangement wherein Mr. Zelotes would pay Mr. Chern $65.00 for each and every (prospective) client directed (i.e. referred) to Mr. Zelotes through Mr. Chern’s website.

Mr. Roemig further explained to Mr. Zelotes that, if this arrangement was accepted, Mr. Zelotes would be given exclusive rights to New London County as relates to attorney inquiries on ClearBankruptcy.com.

Mr. Zelotes next inquired of the other Connecticut counties. Mr. Roemig told Mr. Zelotes that Middlesex County was (likewise) available but that exclusive arrangements were already established in most other Connecticut counties. Mr. Zelotes asked who he might know who was an existing client of the website. Mr. Roemig offered a couple names.

Mr. Zelotes politely thanked Mr. Roemig for his time, informed him that he would take the matter upon due consideration, and concluded the call.

Over the course of days, Mr. Roemig attempted to follow-up with Mr. Zelotes.

Mr. Zelotes (in the meantime) contacted the Office of the United States Trustee, Region 11 (Chicago Division), and relayed the contents of his conversations to Assistant United States Trustee, Constantine (Dean) Harvalis. Mr. Zelotes is (and remains) of a firm conviction that the aforementioned proposed referral fee arrangement is expressly prohibited under both the U.S. Bankruptcy Code and the applicable Rules of Professional Responsibility.

n.b. Mr. Zelotes does not purport to speak or act on behalf of the United States Trustee. As such, Mr. Zelotes encourages the reviewing committee to contact the Office of the United States Trustee (Dean Harvalis) direct.
Mr. Zelotes subsequently (and on his own initiative) contacted Mr. Roemig anew and requested a copy of the proposed referral fee agreement (intending to forward the same to the UST).

Immediately upon Mr. Zelotes having made the request, the very first thing Mr. Roemig did (in response) was to make most clear to Mr. Zelotes that (when reviewing the agreement) "… what we are avoiding saying is that you are paying us a referral fee." (n.b. the foregoing is an exact quote transcribed contemporaneously as it was recited).

Mr. Roemig next told Mr. Zelotes that, when reviewing the proposed agreement, Mr. Zelotes would observe that the $65.00 “marketing fee” or “lead fee” (as Mr. Roemig would refer to the fee in his discussions) was (in fact) broken down into three separate fees ($15 call center fee; $25 marketing fee; $25 CMS licensing fee). Having explained this, and intending to avoid potential confusion, Mr. Roemig then assured Mr. Zelotes (in a candid tone) that "... the outcome is the contact information" (exact quote).

Having (communicated) the aforementioned, Mr. Roemig next proceeded to assure Mr. Zelotes (absent any affirmative solicitation from Mr. Zelotes) that Mr. Chern had hired an "independent ethics attorney" (exact quote) to "cover our asses" (exact quote) and that the aforementioned attorney spent "250 hours" researching “every case in the nation ... so that we would not have to submit our proposal to the bar." (exact quote)

Mr. Zelotes (in turn) asked Mr. Roemig if Mr. Zelotes was correct in understanding from his last statement that their proposed fee arrangement had never been submitted to a bar association for an independent advisory opinion. Mr. Roemig confirmed it had not.

Mr. Zelotes (again) asked why the aforementioned “marketing fee” was not (in fact) an impermissible referral fee. Mr. Roemig told Mr. Zelotes that the (referral) fee was not an impermissible referral fee because the attorney pays the (referral) fee regardless of the whether the (referred) client subsequently retains the attorney.
Mr. Zelotes (again) politely thanked Mr. Roemig for his time, informed him that he would take the matter upon due consideration, concluded the call, and relayed the contents of his conversation to the UST.

Mr. Zelotes thereafter contemplated how next to proceed. Mr. Zelotes was aware that another company (Total Attorneys) was a headline sponsor of the upcoming NACBA convention in Chicago and surmised that if Total Attorneys was promoting a similar online referral fee service as was Mr. Chern, then that organization should likewise be investigated and reported to the UST. Mr. Zelotes was deeply concerned that the prominence of Total Attorneys at the NACBA convention might be misinterpreted as an implicit endorsement of Total Attorneys by NACBA and that this misrepresentation might (in turn) lessen the likelihood that attorneys contemplating such an arrangement would engage in critical legal and ethical analysis. With that in mind: Mr. Zelotes visited the Total Attorneys website (www.TotalBankruptcy.com) and confirmed his suspicions correct. Mr. Zelotes typed his personal contact information into the website’s online request form (as a prospective interested attorney) and awaited a response.

Shortly thereafter, Mr. Roemig (again) called Mr. Zelotes. Mr. Roemig then shared an opinion that the reason Mr. Zelotes was then (likely) uncommitted to ClearBankruptcy.com was because Mr. Zelotes was actively engaged in comparison shopping. Mr. Roemig (in turn) explained his opinion on account of his having received Mr. Zelotes’ POC information direct from www.TotalAttorneys.com. Mr. Zelotes asked Mr. Roemig if the two sites were both run by Mr. Chern and operated under the same fee arrangement. Mr. Roemig confirmed this understanding as correct. Mr. Roemig further explained that there was no correlation between exclusivity on one site and exclusivity on the other (i.e. that the attorneys on the respective sites were, in essence, competing with one another, and all-the-while forwarding their fees on to Mr. Chern).

Mr. Zelotes proceeded to ask additional probing questions of Mr. Roemig who (in turn) directed Mr. Zelotes to a person identified as an office paralegal, Mr. Bret Libigs.
Mr. Zelotes requested from Mr. Libigs a copy of the opinion letter and/or memorandum of law (presumptively) resulting from the (aforementioned) “250 hours” of ethics research. Mr. Libigs told Mr. Zelotes that he was aware of no such document. Sensitive to Mr. Zelotes’ implicit reservations about the ethical propriety of the proposed arrangement, Mr. Libigs assured Mr. Zelotes that the head of the American Bar Association of Advertising and Ethics (Will Hornsby) “helped put together the agreement.” Mr. Zelotes (suffice to say) was neither impressed with, nor influenced by, the aforementioned name dropping. Mr. Zelotes politely thanked Mr. Libigs for his time, informed him that he would take the matter upon due consideration, concluded the call, and relayed the contents of his conversation to the UST.

Mr. Zelotes (then) began to reflect upon various advertised support services he stumbled upon while visiting the Total Attorneys website. Upon due reflection, Mr. Zelotes became progressively concerned that the aforementioned services might (likewise) involve inherent client deception and/or impermissible fee sharing arrangements between firms. Mr. Zelotes further surmised that (if his instincts were correct) that such an arrangement might entail a comparable degree of code and/or ethical violations (and proceeded to investigate).

Mr. Zelotes (as he would soon discover) was keen to trust his instincts.

Mr. Zelotes called Mr. Roemig and told him that (upon due consideration) he would not enter into a fee arrangement with www.ClearBankruptcy.com. Mr. Zelotes did (nonetheless) voice interest in the other services referenced on www.TotalBankruptcy.com and asked if he could review a proposed contract speaking to the same. Mr. Roemig told Mr. Zelotes that he would need to speak to Mr. Libigs about that service (a process Mr. Roemig referred to as “Legal Processing Optimization” [a/k/a “Legal Process Outsourcing”]) and thereafter transferred the call.

When Mr. Libigs entered the conversation, Mr. Zelotes asked Mr. Libigs to send him a sample LPO contract. Mr. Libigs hesitated. Mr. Libigs insisted that he first walk
Mr. Zelotes though the LPO process and that his presentation would require approximately 20 minutes. Mr. Zelotes invited Mr. Libigs to begin.

Mr. Libigs told Mr. Zelotes that Mr. Chern’s office was staffed by a team of paralegals who take “everything off of the attorney’s plate except the 341 hearing and the initial consultation.” Mr. Libigs told Mr. Zelotes that Mr. Zelotes would supply Mr. Chern with a copy of Mr. Zelotes’ letterhead, affix it to Mr. Chern’s questionnaire, and that the client would (thereafter upon completion) fax the questionnaire back to a paralegal in Chicago.

Mr. Libigs next told Mr. Zelotes that each attorney would receive a “dedicated toll-free line, unique to the attorney” which would be answered by a member of Chern’s staff, who would (in turn) answer as a member of Mr. Zelotes’ law office staff. Mr. Libigs added that, on account of the unique assigned toll free number and customized greeting “… they don’t even know we are in Chicago.” Mr. Zelotes (upon hearing the foregoing) asked Mr. Libigs to re-confirm for him that the client calling the toll free number would do so believing he was contacting Mr. Zelotes’ law office. Mr. Libigs (again) confirmed this to be true, adding that, upon receiving the call, the client would then be directed to one of Chern’s “liaisons” who would (in turn) hold him or herself out as a member of Mr. Zelotes’ staff. Mr. Libigs told Mr. Zelotes that the liaison would contact the client shortly after retention to introduce himself and to the bankruptcy process, attend to all of the client’s subsequent needs, inquiries, communications and requests, excepting that if the liaison opined that the client was requesting (or in need of) legal advice, that the liaison would then attempt to contact Mr. Zelotes at his office and, if successful in reaching Mr. Zelotes, that the liaison would transfer the call to Mr. Zelotes as if Mr. Zelotes and the liaison were in the same physical location.

Mr. Libigs next told Mr. Zelotes that once the petition was ready to be filed, the attorney would be notified of the same, and that the petition would be forwarded to the attorney for filing. Mr. Chern’s office would (in turn) be added to the creditor mailing matrix, such that Mr. Chern’s office would be made aware of the date of case
commencement and the 341 hearing. Mr. Libigs told Mr. Zelotes that Mr. Chern’s office would contact the client twice before the schedule 341 hearing “to prep them” for the hearing, remind them of their identification requirements and to “… tell them that these are questions you will be asked … or will not be asked.” Mr. Libigs next stated that the liaison would remain on call throughout the balance of the case to answer any follow up questions the clients might have.

Mr. Libigs continued to praise the program, emphasizing that as a result of the aforementioned delegations, the outsourcing attorney would be freed from the need to hire local assistants from his or her home community. Mr. Libigs next added that (as a result of our bumper to bumper outsourcing and unlimited capacity to accept new clients) “… you can focus instead on client growth without limitation. It’s the perfect storm”

Perfect storm indeed …

Mr. Libigs concluded with the pricing: $395.00 for Chapter 7; $495.00 for Chapter 13. To facilitate the same, the local attorney would be required to advance (and replenish) a $1,700.00 security retainer.

Mr. Zelotes (again) politely thanked Mr. Libigs for his time, informed him that he would take the matter upon due consideration, concluded the call, and relayed the contents of his conversation (and a copy of the proposed agreement) to the UST.
ANALYSIS

FIRST ISSUE: IMPERMISSIBLE REFERRAL FEES

Our analysis begins with basic principles.

11 U.S.C. 504 expressly provides that attorneys representing debtors in bankruptcy are prohibited from sharing (or agreeing to share) compensation, except as concerning fees shared between a member, partner, or regular associate of a firm. Section 504 (likewise) permits referral fees only when paid to a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.

See: 11 U.S.C. 504: Sharing of compensation
(a) Except as provided in subsection (b) of this section, a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share--
(1) any such compensation or reimbursement with another person; or
(2) any compensation or reimbursement received by another person under such sections.
(b) (1) A member, partner, or regular associate in a professional association, corporation, or partnership may share compensation or reimbursement received under section 503(b)(2) or of this title with another member, partner, or regular associate in such association, corporation, or partnership, and may share in any compensation or reimbursement received under such sections by another member, partner, or regular associate in such association, corporation, or partnership.
(2) An attorney for a creditor that files a petition under section 303 of this title may share compensation and reimbursement received under section 503(b)(4) of this title with any other attorney contributing to the services rendered or expenses incurred by such creditor’s attorney.
(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney
referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.

Comparable fee sharing prohibitions are found in most (if not all) state Codes of Professional Conduct. In the Complainant’s home state of Connecticut (for example), Rule 7.2(c) provides:

(c) “A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may (1) pay the reasonable cost of advertisements or communications permitted by this Rule; (2) pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

A referral service (in turn) is generally understood to mean “any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers . . . .” Formal Opinion 2106, Washington State Board of Governors (Infra)

Mr. Chern claims he is not a for-profit referral service. This position is untenable. Mr. Chern’s assertion defies not only that which is open and obvious to any rational thinking creature, but also stands entirely inconsistent with near every formal opinion (if not all formal opinions) solicited of state Boards of Governors (each of which, Mr. Chern is assuredly aware, if not himself the undisclosed subject of one or more such proposed opinions). Pertinent excerpts from such representative opinions appear below:

See: Formal Opinion 2007-180, Oregon Board of Governors (Excerpts Below)

Facts: Lawyer wants to participate in a nationwide Internet-based lawyer referral service and has received solicitations from companies offering this service. Customers who use the referral service are not charged. Some providers will charge Lawyer through various mechanisms. The referral service will not be involved in the lawyer-client relationship. A referred consumer is under no obligation to work with a lawyer to whom the consumer is referred. The referral service will inform consumers that participating lawyers are active members in good standing with the Oregon State Bar who carry malpractice insurance. Consumers may also be informed that participating lawyers may have paid a fee to be listed in
the directory. Furthermore, consumers will be informed that lawyers have written their own directory information and that a consumer should question, investigate, and evaluate the lawyer’s qualifications before he or she hires a lawyer.

... The questions presented here raise issues relating to both advertising and recommending a lawyer’s services. Advertising and recommendation are distinguished as follows: “When services are advertised, the nonlawyer does not physically assist in linking up lawyer and client once the advertising material has been disseminated. When a lawyer’s services are recommended, the nonlawyer intermediary is relied upon to forge the actual attorney and client link.” Former OSB Formal Ethics Op No 1991-112 (discussing former DR 2-101 and former DR 2-103). ...

Oregon RPC 7.1(d) permits a lawyer to pay others to disseminate information about the lawyer’s services, subject to the limitations of RPC 7.2. That latter rule, in turn, allows a lawyer to pay the cost of advertisements and to hire others to assist with or advise about marketing the lawyer’s services. RPC 7.2(a). RPC 7.2(a) provides: (a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer’s or law firm’s services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

At the same time, Oregon RPC 5.4(a) prohibits a lawyer from sharing legal fees with a nonlawyer (except in limited circumstances that are not relevant to the questions presented here). RPC 5.4(a) provides: A lawyer or law firm shall not share legal fees with a nonlawyer, except that: … (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter. This rule “prohibits a lawyer from giving a non-lawyer a share of a legal fee in exchange for services related to the obtaining or performance of legal work.” In re Griffith, 304 Or 575, 611, 748 P2d 86 (1987) (interpreting former DR 3-102, which is now RPC 5.4(a)). In the context of advertising, Oregon RPC 5.4 thus precludes a lawyer from paying someone, or a related third party, who advertises or otherwise disseminates information about the lawyer’s services based on the number of referrals, retained clients, or revenue generated from the advertisements. By contrast, paying a fixed annual or other set periodic fee not related to any particular work derived from a directory listing violates neither RPC 5.4(a) nor RPC 7.2(a). A charge to Lawyer based on the number of hits or clicks on Lawyer’s advertising, and that is not based on actual referrals or retained clients, would also be permissible.
Substantive law may also limit Lawyer’s ability to pay a referral fee. Here, the referral fee would be paid to a private third party rather than a “public service referral program,” and it thus appears that the U.S. Bankruptcy Code’s general prohibition against fee-sharing applies. (boldface: added)

See: Ethics Opinion KBA E-429, Kentucky Bar Association, (June 17, 2008) (Excerpts Below)

The KBA Ethics Committee has been asked to opine on the ethical propriety of various group marketing arrangements, specifically those that provide prospective clients with information about participating lawyers through the internet or an 800 telephone number.

It would be virtually impossible to address the specific details of each and every conceivable group marketing model. It is, however, possible to describe some of the more common features of these models and address the most frequent challenges and pitfalls a lawyer may face. Most of the group marketing models have several common characteristics. They are all sponsored by for-profit entities and the lawyer pays a fee to participate. In addition, the initial advertisement, whether it is in the newspaper, on television or on the internet, is generic in nature; it usually does not promote an individual lawyer. Only after the prospective client makes an initial contact with the group marketer, either through an 800 number or over the internet, does the prospective client receive more individualized information about one or more specific lawyers. Some group advertisements are targeted at anyone who might need a lawyer, while others target those with specific needs, such as those who have been charged with a crime or have been injured in an accident. As the following discussion indicates, the marketer’s level of involvement in analyzing the problem and identifying a specific lawyer may vary substantially. At one end of the spectrum, there are marketing arrangements designed so that the prospective client inputs certain demographic information, such as a zip code or type of practice needed, and a list of participating lawyers is provided. The list may include an internet link to each lawyer’s webpage or provide a way to contact the participating lawyers. It is up to the client to evaluate the information about the lawyers and decide which, if any, to contact. At the other end of the spectrum is the arrangement where the prospective client provides considerable detail about his or her needs; the marketing organization then evaluates the client’s needs and selects one or more lawyers from its participating members. The organization may represent that it is evaluating the needs of the client and the qualifications of the lawyer, thereby providing the prospective client with the best “match.”

…
Much of the debate over group marketing has focused on whether the marketing arrangement is just another type of advertising or is really a for-profit referral service. Whether a particular arrangement falls in one category or the other will depend upon a careful analysis of the facts. … For example, some group marketing arrangements require the prospective client to provide extensive information about the client’s needs. In some cases, third parties arrangement goes beyond the mere pooling of financial resources of group advertisers. The participating lawyer is paying a fee for a specific referral, something that is prohibited by Rule 7.20(2). Once the advertising organization becomes actively involved in screening cases and matching prospective clients to specific lawyers, the arrangement functions as a lawyer referral service, which the rules prohibit, except when it is a nonprofit organization. The Committee agrees with the substantial number of jurisdictions that have addressed this issue and concluded that such arrangements are unethical. NY State Ethics Op. 799 (2006); Va. Ethics Op. A-0117 (2006); Wa. Inf. Op. 2106 (2006); S.C. Ethics Adv. Comm. Op. 01-03 (2001).

Finally, the Committee understands that some group marketing arrangements limit the number of lawyers who may participate in a particular field or geographic area so as to assure that the participating lawyers will not be competing with other lawyers for the clients who contact the service. Without an appropriate disclaimer, such an arrangement may mislead the client into believing that there is an evaluative process being conducted when in fact there is not. This would violate the prohibition on false, deceptive or misleading advertisements. Further, it is the Committee’s view that, by limiting the number of participants in this way, the service is in effect directing prospective clients to a particular lawyer, thus violating Rule 7.20(2) in the same way that the matching process described above violates the rule.

…

The Rules of Professional Conduct prohibit a lawyer from paying a non-lawyer for recommending his or her services, but the rule authorizes a lawyer to “pay the reasonable costs of advertising or communications permitted by [the] rule.” Rule 7.20(2). Most group advertising arrangements require the participating lawyer to pay some kind of enrollment fee, and/or a monthly or yearly fee. The arrangement is not substantially different than the arrangement with the print advertiser who charges a set-up fee of some kind, and then charges another fee for the specific time that the advertisement runs. As long as the advertising costs are reasonable, there is nothing unethical about this type of compensation arrangement. The compensation issue becomes more complicated if the advertising fee paid by the lawyer is based in whole or in part on the presumed or real economic benefit to the lawyer. … For example, if the group advertising organization becomes active in directing potential clients to a specific lawyer and then charges the lawyer a fee for a specific
referral, then the arrangement violates Rule 7.20, which prohibits the lawyer from paying for referrals. As the Comments to the Rule observe, “[a] lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work.” Once the group marketing organization becomes actively involved in matching or referring clients, it ceases to be advertising and a lawyer may not give anything of value for that service. See, New York State Bar Association Committee on Professional Ethics, Opinion Number 799 (2006); South Carolina; SCR 3.130 - Rule 5.4; 7.01 - 7.06; 7.09-7.50; 8.3; KBA E-427; KBA E-428; NY State Ethics Op. 799 (2006); Va. Ethics Op. A-0117 (2006); WA. Inf. Op. 2106 (2006); S.C. Ethics Adv. Comm. Op. 01-03 (2001). Also problematic is the compensation system that is tied to the fee that is earned in a referred case. In addition to the fact that it is payment for the referral, which is prohibited under the Rules, it also is fee splitting with a non-lawyer, which is likewise prohibited under Rule 1.5(e).

See: Formal Opinion 2016, Washington State Bar Association (Excerpts Below)

I. NATURE OF INQUIRY: The inquiring attorney asked whether there were ethical implications involved in participating in a legal marketing plan operated by an Internet company (the “Company”). The inquiring attorney explained that he would be one of no more than six attorneys practicing in his field who would potentially bid for work from potential clients who have contacted the Company.

… 1. The Company Apparently Constitutes an Impermissible For-Profit Referral Service in Violation of RPC 7.2(c). RPC 7.2(c) provides as follows: A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the charges of a not-for-profit lawyer referral service or other legal service organization. The website states that the Company is an “attorney/client matching service and is not a referral service.” There are apparently no Washington State Bar opinions defining a referral service. In a 1999 opinion prohibiting lawyers from participating in Internet referral plans, the Arizona State Bar defined “referral service” as follows: The Committee has previously found the defining characteristic of a lawyer referral service to be ‘[t]he process of ascertaining the caller’s legal needs and then matching them to a member having the appropriate area of expertise.’ Arizona Bar Op. 99-06. Later, the Arizona Bar, in Opinion No. 05-08 (July 2005), reviewing the same or a similar service at issue in this response, concluded that it was a for-profit referral service, and therefore violated Arizona’s ER 7.2. That opinion relied on Comment 6 to Arizona ER 7.2, which defines referral service
as “any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers . . .” The Company says that it is not a referral service: [The Company] does not allocate or transfer requests to a particular lawyer or lawyers or recommend any lawyer’s services. Member attorneys review the posts and decide whether they wish to advertise their services to any of the posters. Oct. 5, 2005, email from the Company. Despite the Company’s characterizations, it ascertains consumers’ legal needs and forwards case descriptions to lawyers who practice in that particular specialty, a subset of who are “Verified” as capable of providing superior services. Furthermore, the pool of lawyers who may choose to “advertise” in response to the case descriptions forwarded to them may be quite small. The attorney making the Bar inquiry apparently was told he would be one of six trademark lawyers in the “Western U.S.” to whom trademark cases were circulated. Thus, while consumers are not referred to a particular lawyer, their cases are sent for review by only a small group of lawyers. Other state bars have examined this issue with regard to the same or similar Internet services. The South Carolina Bar opined that the service was not a referral service. Among other things, it noted that “the service provider plays no role in the decision-making process of the recipient of the information provided” (i.e., the potential client). It noted, however, that “a different answer would be reached if the Internet site provider was in anyway active in directing the user to a particular attorney.” It concluded that “so long as the Internet site provider does not make specific recommendations to a particular attorney and there are no subjective judgments made by a third party in directing the user to one attorney over another . . . it would not be a referral service.” The Ohio Supreme Court, Op. 2001-02, indicated that one of the identifying characteristics of a referral service is if the company provides “services that go beyond the ministerial function of placing the attorney’s or law firm’s information into the public view.” Rhode Island concluded that the Company was not a referral service. Rhode Island concluded that the fee was a flat fee which purchased advertising and access to requests for legal services attorney’s legal fees. Moreover, Rhode Island concluded that the Company does not recommend, refer or electronically direct consumers to a specific attorney. Attorney-client relationships are established off line and without the Company’s participation. Under the above authorities, it appears that the Company’s system is a referral service. (boldface: added)

See: Formal Opinion 561, Professional Ethics Committee for the State Bar of Texas (August 2005) (Excerpts Below)

A lawyer is considering participating in, registering with and/or subscribing to a privately owned for-profit internet service (the "Internet
Service") that encourages lawyers and law firms to list their names and areas of practice so that the Internet Service can assist consumers who desire legal assistance to connect with lawyers who might be available to represent such individuals. The Internet Service charges participating lawyers a fixed monthly or annual fee to subscribe and be listed on the Internet Service. The Internet Service does not receive any share of legal fees that may be generated by a lawyer who is retained as a result of being listed with the Internet Service. A consumer who desires to utilize the service typically fills out a form on the web page for the Internet Service. The form asks for basic information such as name, address, telephone number, date of incident, and a description of the problem for which the person is seeking legal assistance. The Internet Service then emails the consumer's information to one or more lawyers who have registered with or subscribed to the service so that the lawyer or lawyers can contact the consumer. The Internet Service is not involved in any way in a participating lawyer's providing legal services to a consumer...

Under section 952.002 of the Texas Lawyer Referral Act, a lawyer referral service is defined to be "... a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term "referral service" to describe the service provided." A person may not operate a lawyer referral service in Texas unless such person obtains a certificate from the State Bar of Texas. Section 952.101 of the Texas Lawyer Referral Act. To obtain a certificate, the lawyer referral service must, among other requirements, be operated either by a governmental entity or a non-profit entity. Section 952.102 of the Texas Lawyer Referral Act. The Internet Service is not a lawyer referral service meeting the requirements of the Texas Lawyer Referral Act because it is a privately owned, for-profit organization that is not eligible to obtain the required certificate. Rule 7.03(b) prohibits the payment of a fee by a lawyer to a non-lawyer for soliciting or referring prospective clients to the lawyer but allows payments for advertising and public relations services rendered in accordance with the Rule. In this case, the Internet Service provides lawyers and law firms with an opportunity, in return for payment of a fee, to list their names and areas of practice with the Internet Service so that consumers with legal problems can be connected with lawyers who might be available to represent such individuals. The Internet Service collects information on the internet from a consumer and that person's information and legal issues are then conveyed by the Internet Service to one or more of the lawyers who have registered with or subscribed to the Internet Service by paying a fee. The services provided by the Internet Service are not advertising or public relations services as allowed by Rule 7.03(b). The Internet Service is instead a service to solicit or refer prospective clients to subscribing lawyers who have paid a fee, and it is thus an arrangement prohibited by Rule 7.03(b).
A defining characteristic of soliciting or referring prospective clients is to ascertain information about a person's legal needs and then match or connect such person with a lawyer who has experience in the area of law appropriate to the legal problem. In general, if an internet site merely provides information about participating lawyers from which a consumer chooses a lawyer or group of lawyers based on the consumer's consideration or evaluation of that information, the site does not solicit or refer prospective clients but rather advertises for the lawyers listed. On the other hand, if an internet site is using information about participating lawyers for the purpose of identifying or selecting a lawyer or group of lawyers whose names are then suggested, offered or recommended to a consumer for consideration, the site is not advertising or providing public relations services but is rather soliciting or referring prospective clients.

*n.b.* For purposes of this Complaint, the Complainant identifies Mr. Chern as synonymous with (i.e. d/b/a) TotalAttorneys Inc. and TotalAttorneys LOP, LLC. Mr. Zelotes is careful to note (however) that the proposed referral and LPO agreements expressly provide that the provide referral and LPO arrangements are not as between two attorneys but (rather) as between a non-attorney and an attorney. Although this distinction is not of material significance in relation to the fee sharing injunction of Bankruptcy Code 504, this distinction (from time to time) is afforded significance is select instance under the Rules of Professional Conduct.

*See:* Proposed Contract (LPO), Para. 6(v) (“(ii) Neither TotalAttorneys, nor any third party service provider with which TotalAttorneys works in providing the Services, is a licensed attorney anywhere in the United States, and as such, neither TotalAttorneys nor any such service provider is authorized or qualified to provide legal advice or otherwise practice law anywhere in the United States.

*See:* Proposed Contract (LPO), Para. 6(v) (...Licensee hereby agrees and acknowledges that ClearBankruptcy is in no way acting as
legal counsel or co-legal counsel with respect to any Contact or any of Licensee’s clients.

As noted above, Mr. Chern and the respondents herein named are neither members, partners nor regular associates of a firm. Mr. Chern does not operate a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals. Section 504 and/or comparable state provisions (thus) prohibit any form of referral fees and/or shared compensation.

As the Oregon Board of Governors correctly observed, referral fees in the context of bankruptcy (be such fees shared between attorneys or between an attorney and non-attorneys) are impermissible, even if the proposed fee sharing arrangement would otherwise be permissible under an applicable Code of Professional Conduct. There can be no question that Mr. Chern’s referral fee arrangement violates the aforementioned substantive prohibitions recited in Bankruptcy Code Section 504. As noted by the USDC (infra) “the potential for harm makes such arrangements reprehensible as a matter of public policy as well as a violation of the attorney’s ethical obligations.”

As the Oregon Board of Governors (likewise) correctly observed, the Rules do not enjoin a referral fee paid only in instances wherein the referred client is subsequently retained, but also in instances wherein the prospective client referred ultimately declines the representation (i.e. compensation based on the cumulative number of referrals made).

The mere fact that Mr. Chern’s referral fee (thus) is entirely unrelated to the issue of whether the prospective client referred subsequently retains a particular attorney is of no legal or ethical significance. It is prohibited. Mr. Chern does not charge a fixed annual or other set periodic fee not related to any particular work derived from a directory (a practice which the Board of Governors opined permissible). Mr. Chern does not limit his services to the “ministerial function of placing the attorney’s or law firm’s information into the public view.” The referral fee paid to Mr. Chern is a fee for a
specific referral, which in turn is based (in whole or in part) upon the real or presumed economic benefit to the lawyer.

Mr. Chern contends that its referral fees are not (in fact) “referral fees” but are (instead) a “marketing expense.” Such disingenuous weasel-speak attempts a distinction of no material consequence. As the Washington Board of Governors correctly observed, a website disclaimer that says the site is an “attorney/client matching service and is not a referral service” does not make it so. This approach is consistent with the aforementioned language cited in the Texas Lawyer Referral Act, defining a lawyer referral service to be "... a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term "referral service" to describe the service provided." Mr. Chern’s attempt to disavow the “referral service” label does not (in any way) change the nature of his acts. Mr. Chern solicits and “receives requests” for lawyer services (free bankruptcy consultation) and then “allocates such requests to a particular lawyer” (based on the prospective client’s zip code). As earlier observed by the Arizona State Bar, Comment 6 to Arizona ER 7.2 defines a referral service as (“any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers . . . ”). Mr. Chern’s service is clearly a referral service.

It is also worth noting that all referral fees are by definition “marketing fees.” The former is a subset of the latter. Calling a referral fee a marketing fee (with a wink and a handshake) or disguising the referral fee as (three) component parts of something else does not make an otherwise (impermissible) referral fee arrangement permissible.

n.b.: “Referral fees are payments made by providers to other parties as quid pro quo for referring customers. They are essentially a marketing expense. Referral fees raise the cost to debtors because providers must charge more to cover the cost ... As referral fees in consumer transactions have often been the source of abuse, we oppose any rule that permits such fees.” See: Joint Commentary of Carey D. Ebert, President, National Association of Consumer Bankruptcy Attorneys, and John Rao, Attorney, National Consumer Law Center in re: United States Trustee’s
Additional violations are noted:

The Ohio Ethics Commission indicated that one of the identifying characteristics of a referral service is if the company provides “services that go beyond the ministerial function of placing the attorney’s or law firm’s information into the public view.” As observed, Mr. Chern does more than place an attorney’s information into public view. In fact: Mr. Chern solicitations and home pages fail to meet even this (basic) indicia of an advertisement, as the attorney’s information (to whom the client is referred) is never placed in public view at all.

This last observation presents a particularly troubling (Catch-22) dilemma for Mr. Chern for even if his services are (arguendo) an “advertisement” (a disingenuous contention the complainant rejects) the absent identification of each such attorney “advertising” his or her services would itself compel a finding of professional misconduct.

To illustrate: in the Complainant’s home state of Connecticut, Rule 7.2(d) provides (in pertinent part): “Any advertisement or communication made pursuant to this Rule shall include the name of at least one lawyer admitted in Connecticut responsible for its content.” If Mr. Chern’s home page is an “advertisement” of one or more such Connecticut attorneys, then the Rule 7.2 violation is prima facie. Were this (in fact) an “advertisement,” one might likewise anticipate (and investigate) whether a concurrent violation of Rule 7.2(b)(2) is also to be found: “A lawyer shall comply with the mandatory filing requirement of Practice Book Section 2-28A.” Mr. Zelotes might expect as much.

n.b. Mr. Zelotes notes that the list of “sponsoring attorneys” on both ClearBankruptcy and TotalBankruptcy is buried deep within the website
boilerplate, and then (again) only accessible through the channeling of two obscure hyperlinks. It was (even for the undersigned attorney complainant) very difficult to locate. On www.Chapter 7.com (an identical Chern website) the requisite hyperlink does not function (and as such, Mr. Zelotes was unable to identify such additional attorneys who have engaged in professional misconduct and are otherwise properly joined as respondents). Mr. Zelotes encourages the United States Trustee and the Offices of Chief Disciplinary Counsel to compel the identification of all such persons doing business with Mr. Chern on www.Chapter 7.com and all such additional Chern websites as may be identified in the forthcoming investigations.

Were Chern’s service an “advertisement” (again: *arguendo*), the Kentucky & New Jersey Ethics Commissions would likewise find serious ethical fault with Mr. Chern’s (absent and/or inconspicuous) disclaimers regarding the site and the information gathering process (*infra*). Nowhere conspicuous on these websites does there appear an appropriate disclaimer calculated to prevent a prospective client from being mislead into believing that an evaluative process was being conducted (when in fact there is not) or that the websites (e.g. Chapter 7.com) were something more than a simple paid advertisement.

See: Opinion 36, New Jersey Committee on Attorney Advertising, 182 N.J.L.J. 1206 (December 26, 2005)

When advertising is done through a vehicle which is not explicitly referenced as an advertisement, and is not readily known to consumers as a place of pure advertising (as, for example, the Yellow Pages would be), there is a possibility that the presentation and language could lead a reasonably informed consumer to believe that the listing has some sort of professional or authoritative imprimatur, as a kind of endorsement, such as an authorized lawyer referral service might give (*e.g.*, a web page presented as “anti-trust lawyers.com,” as a hypothetical). Such a presentation *could*, intentionally or inadvertently, thus mislead consumers into believing it was other or more than simply a paid advertisement, and carried greater weight. Such a consequence would appear more likely when only a very limited number of lawyers are listed
for a particular geographical, subject matter or other defined area. To forestall such a possibility, we conclude that a lawyer who seeks to give anything of value in order to participate in such a listing must, before doing so, ensure that the listing or advertisement contains a prominently and unmistakably displayed disclaimer, in a presentation at least equal to the largest and most prominent font and type on the site, declaring that “all attorney listings are a paid attorney advertisement, and do not in any way constitute a referral or endorsement by an approved or authorized lawyer referral service.” (boldface: added)

e.g. Questions asked of prospective clients on Mr. Chern’s websites which, cumulatively considered, may mislead persons to believe that an evaluative process is being conducted (when in fact it is not) include:

Zip Code: 06510

Why are you considering bankruptcy? (select all that apply)

☐ Garnishment
☐ Creditor Harassment
☐ Repossession
☐ Foreclosure
☐ Lawsuits ☐ Illness/Disability
☐ License Suspension
☐ Divorce
☐ Loss of Income
☐ Other:

Estimate Total Debt: 20,000.00

What bills do you have? (select all that apply)

☐ Credit Cards / Store Cards
☐ Personal Loans
☐ Child Support
☐ Student Loans
☐ Auto Loans ☐ Income Taxes
☐ Payday Loans
Medical Bills
☐ Other: 

Estimate Total Monthly Expenses: $1,000.00

Do you own real-estate?
If Yes, are you behind in these payments?

Do you own an vehicle (car, truck, van, motorcycle)?
If Yes, are you behind in these payments?

Do you own any other assets worth more than $1,000?
If Yes, please describe:

Big Screen Television; Boat; 40

What types of income do you have? (select all that apply)

☐ Employed, Full-time
☐ Employed, Part-time
☐ Social Security
☐ Pension/Retirement
☐ Child Support/Maintenance
☐ Other:
☐ No Income

Estimate Total Monthly Income: $2,500.00

First Name:
Last Name:
Home Phone #:
Work Phone #:
Cell Phone #:
E-mail:
Address:

\textit{n.b.} The Total Bankruptcy website claims that “More than half a million people have trusted Total Bankruptcy when they were looking for bankruptcy information.” Putting aside the obvious ethical implications of
the foregoing misuse of “trusted,” the reverse implication (for present purposes) suggests (on that one website alone) more than a half million people may have been deceived. On information and belief, Mr. Chern manages more than a dozen such sites. That adds up to be a hell of a lot of misplaced trust (and professional misconduct) …

Additionally: despite a (weak) disclaimer present on the respective website footers (attempting disclaiming itself as an attorney referral service), Mr. Zelotes notes that the aforementioned disclaimers are so purposefully hidden from view (in a miniscule semi-transparent font) that the New Jersey Committee would opine its published presentment as an independent form of misconduct. (supra)

See: Exhibit (Clear Bankruptcy Home Page)

   e.g.: Unaltered “cut & paste” lifted from Clear Bankruptcy website appears directly below in original (transparent) 7.5 size font (worth also noting: the grey transparent font below appears on a grey background, making its comprehension even more difficult than appears here)

The foregoing is (admittedly) an exercise in academia as we are not an addressing an advertisement (or a reputable listing service; e.g. Martindale Hubble) but are (instead) dealing with a for-profit referral service. Mr. Chern gathers information about a prospective client and (upon forwarding said information [or live communication] to the referred attorney) assists the prospective client forge the actual attorney client link. In exchange for helping to forge such links, the referring attorney agrees to compensate Mr. Chern. The Oregon Board of Governors declares such a practice impermissible.

See: Formal Opinon 00-07, Iowa Supreme Court Board of Professional Ethics and Conduct (12/05/2000)

The Company in question seeks to operate as a Reputable Law List or Directory. The use of law lists and directories is authorized by DR 2-101(C) … “A reputable legal directory is a publication
which contains a list of lawyers or law firms in designated geographical areas, contains only the information permitted under DR 2-101, presents such information for each lawyer in the same size and style of type and in a dignified manner and the sole purpose of which is to assist lay-persons and lawyers in selecting a lawyer in the geographical area which it covers. A directory which charges a fee for a listing is not reputable unless it makes a listing available to every practicing lawyer in the geographical area on the same terms and conditions as every other lawyer in the area.

Other ethical improprieties:

The Kentucky Ethics Commission would also find serious ethical fault with Mr. Chern’s exclusivity arrangements. As earlier noted, the Kentucky Commission believes that by limiting the number of participants (or, in this instance, directing the client to an exclusive geographical attorney), Mr. Chern is in effect “matching” prospective clients to a particular lawyer and (in so doing) his services could not be understood as “advertising.” The impermissible aim of such an arrangement is to compensate Mr. Chern for “channeling professional work” and (for this) a lawyer may not give him anything of value.

The United States Bankruptcy Court, District of Delaware, recently articulated why referral fees and fee sharing arrangements present a matter of heightened concern in the context of Bankruptcy Code proceedings:

**The Bankruptcy Code prohibits the sharing of compensation under nearly all circumstances.** Section 504 provides that “[a] person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share (1) any such compensation or reimbursement with another person; or (2) any compensation or reimbursement received by another person under such sections.” 11 U.S.C. §504. Bankruptcy Code §504 “provides only two exceptions: partners or associates in the same professional association, partnership, or corporation may share compensation, inter se; and attorneys for petitioning creditors that join in a petition commencing an involuntary case may share compensation.” H.R. Rep. No. 95-595 at 356 (1977); S. Rep. No. 95-989 at 67 (1978); 11 U.S.C. §504(b). “Accordingly, fee sharing among attorneys is generally prohibited under the Bankruptcy Code unless the relationship between the attorneys falls within one of the narrow exceptions.” In re Greer,
271 B.R. 426, 430 (Bankr. D. Mass. 2002) (holding that a fee-sharing agreement in which one attorney paid another $50 for each creditors’ meeting the other attorney attended on her behalf violated §504).

**Although many states, including Delaware, allow the sharing of fees under certain circumstances, the Bankruptcy Code is more restrictive.** My colleague, Chief Judge Walrath, discussed the prohibition in In re Worldwide Direct, Inc., 316 B.R. 637 (Bankr. D.Del. 2004):

> Whenever fees or other compensation are shared among two or more professionals, there is incentive to adjust upward the compensation sought in order to offset any diminution to one’s own share. Consequently, sharing of compensation can inflate the cost of a bankruptcy case to the debtor and therefore to the creditors…. The potential for harm makes such arrangements reprehensible as a matter of public policy as well as a violation of the attorney’s ethical obligations. Worldwide, 316 B.R. at 649, quoting In re Peterson, 2004 WL 1895201 at *4 (Bankr. D. Idaho 2004).

The purpose of §504 also has been described as the preservation of “the integrity of the bankruptcy process so that the professionals engaged in bankruptcy cases attend to their duty as officers of the bankruptcy court, rather than treat their interest in bankruptcy cases as ‘matters of traffic [i.e., matters of trade or commerce].’” See 4-504 Collier on Bankruptcy, P. 504.02[1] at 504-5 (Alan N. Resnick & Henry J. Sommer, eds. 15th Edition Revised 2007) citing Matter of Arlan’s Department Stores, Inc., 615 F.2d 925, 943-44 (2d Cir. 1979).

Moreover, fee sharing is prohibited in bankruptcy proceedings because fee sharing “subjects the professional to outside influences over which the court has no control, which tends to transfer from the court some degree of power over expenditure and allowances.” 4-504 Collier on Bankruptcy P. 504.01 citing Futuronics Corp. v. Arutt, Nachamie & Benjamin (In re Futuronics Corp.), 655 F.2d 463, 470 (2d Cir. 1981), cert. denied, 455 U.S. 941 (1982).

See: *In re Winstar Communications*, Case No. 01-1430 through INC., et al.; Case No. 01-1462 (KJC): (Jointly Administered) Debtors. (Carey, J.) (boldface: added)

Mr. Chern’s contentions that referral fees somehow lose their characterization as referral fees if (1) the referral fees are paid in advance of the resulting consultation (in lieu of an ex-post-facto kickback); or if (2) one or more of the referred persons do not ultimately sign and retain the referred attorney; entail scant more than a bizarre and
nonsensical rationalization entirely inconsistent with the spirit, intent and letter of Section 504.

In soliciting, inducing and accepting impermissible referral fees, Mr. Chern violated both the strict prohibitions of the U.S. Bankruptcy Code and the Rules of Professional Conduct (of each applicable state reviewing this complaint). In his soliciting, inducing and accepting impermissible referral fees, Mr. Chern engaged in conduct prejudicial to the administration of justice, and conduct casting serious doubt upon his ethical fitness to practice.

The abetting attorneys (also subject to this complaint) who knowingly agreed to furnish Mr. Chern with impermissible referral fees for their respective and mutual pecuniary gain (likewise) violated both the strict prohibitions of the U.S. Bankruptcy Code and the corresponding Rules of Professional Conduct (of each applicable state reviewing this complaint). In both conveying and in conspiring to furnish Mr. Chern with said impermissible referral fees, these attorneys (likewise) engaged in conduct prejudicial to the administration of justice, and conduct casting serious doubt upon their ethical fitness to practice.

Mr. Zelotes is not unmindful that Mr. Chern actively endeavored to deceive and mislead prospective attorney clients as relates to the ethical propriety of his referral services, and that his efforts to mislead those with whom he does and did business might itself form an independent basis for ethical sanction. Mr. Chern’s misrepresentations (however) entail neither an excuse nor a justification. Attorneys are not entitled to rely upon the assurances of others when assessing the ethical propriety of their conduct and must (instead) exercise their own professional judgment before engaging in transactions prohibited under law or an applicable Code of Professional Conduct. If an attorney in uncertain about a proposed course of conduct, a reasonably prudent attorney seeks the advice and counsel of his or her respective Board of Governors. The respondents did not do this. The Respondents (instead) proceeded knowingly and/or recklessly in clear contraposition to both the express injunction of Section 504 and the respective Rules of
Professional Conduct, and such attorneys did so act motivated by the pursuit and prospect of personal pecuniary gain.

*See:* Ethics Opinion KBA E-429, Kentucky Bar Association, (June 17, 2008)

Rule 8.3 provides that “[i]t is professional misconduct for a lawyer to violate … the Rules of Professional Conduct … through the acts of another.” Thus, lawyers who participate in group marketing arrangements are responsible for the content of the advertisements and methods employed in promoting their services. Lawyers who rely on marketing organizations to promote their professional services **must thoroughly investigate the practices of the organization to assure that they comply with all of the applicable Rules of Professional Conduct.** (boldface: added)

The Complainant believes that the aforementioned form of serial misconduct must be both sanctioned and deterred. The Complainant believes that Mr. Chern and the respondents referenced herein should be presented to the state and federal courts for consideration of appropriate discipline, and the unjust enrichment resulting from such pattern misconduct be ordered disgorged and returned to the debtor clients and/or estate.

**SECOND ISSUE: IMPERMISSIBLE FEE SHARING AND DECEPTION**

Mr. Zelotes is (likewise) ethically troubled by Mr. Chern’s (attorney unique) toll free telephone number and the inherent deception implicit in his affirmatively misrepresenting or otherwise misleading the debtor clients as relates to the identities of persons handling his or her representation.

Ubiquitous rules that may be implicated (by analogy to Connecticut) include (but are not necessarily limited to):

Rule 1.4. Communication
(a) A lawyer shall: … (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

Rule 8.4. Misconduct
(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(4) Engage in conduct that is prejudicial to the administration of justice;

Mr. Zelotes suspects any reasonable person would be deeply troubled were he or she a client who had retained Attorney X and (unbeknownst to him or her) the client had been fundamentally misled as to the identity, whereabouts, backgrounds and affiliations of persons to whom his or her confidential communications were being directed and to whom personal (sensitive) case documents were being provided. In this context, the client is led to believe that (in dialing the Attorney X’s unique toll free number and speaking to his or her assigned “liaison”) that the client is communicating with a member of Attorney X’s local law office when (unbeknownst to the client) he or she is (in fact) directing his or her communications and documents to persons whose whereabouts, credentials, affiliations and identities he or she is entirely unaware.

There is something very troubling about this type of covert deception.

Mr. Zelotes contends that the foregoing misrepresentation and/or material omission of disclosure constitutes professional misconduct.

It gets even worse (much worse) …

Not only might the respondent attorneys (themselves) be unaware of the whereabouts, credentials, affiliations and identities of such persons involved in his or her client’s case, but a careful examination of Mr. Chern’s contracts reveals that both Mr. Chern and the abetting (LPO) attorneys have expressly agreed that some such legal services (along with the client’s confidential case information and sensitive case documents) are (unbeknownst to the debtor clients, the United States Trustee or the United States Bankruptcy Court) being outsourced to unknown persons domiciled outside the United States.

See: Proposed Contract (LPO), Para. 6(ix) (“Attorney acknowledges that certain portions of the Services will be outsourced to third party service providers including, without limitation, attorneys located outside of the United States which are not licensed to practice law within the United States.”)
Also: Proposed Contract (LPO), Para. 6(ix) (“(vi) Foreign-licensed lawyers are, without additional licensing, precluded from practicing law in the United States, and as such, any documentation or other materials prepared by any foreign-licensed attorney engaged by TotalAttorneys in providing the Services shall not, under any set of circumstances, be deemed to constitute legal advice.”)

Also: Proposed Contract (Clear Bankruptcy), Para. 24. (“Licensee hereby acknowledges that ClearBankruptcy may, in its sole discretion, outsource and/or subcontract certain functions in providing the Service. ClearBankruptcy shall not be liable for any actions of any such third party.”)

This is utterly reprehensible.

n.b. Mr. Zelotes can only surmise the reaction of debtor clients [in an age of identity theft concerns] were such persons alerted (after-the-fact) that their tax returns, pay advices, credit reports, and/or confidential communications, were forwarded (not only) to unknown persons in Chicago, but also to some unknown persons and place in Bangalore India. Mr. Zelotes contends that this form of deception and/or material non-disclosure likewise forms the basis of an independent ethics violation.

n.b. Mr. Zelotes encourages the Office of Disciplinary Counsel and/or the United States Trustee to compel Mr. Chern (by subpoena service) to release the names of all attorneys (nationwide) who agreed to participate in the LPO program and to further identify all clients whose confidential case information was outsourced to Mr. Chern pursuant to such LPO agreements. In all such cases, Mr. Zelotes recommends a full disgorgement of fees (inter alia).
n.b. “... fee sharing is prohibited in bankruptcy proceedings because fee sharing “subjects the professional to outside influences over which the court has no control, which tends to transfer from the court some degree of power over expenditure and allowances.” 4-504 Collier on Bankruptcy P. 504.01 citing Futuronics Corp. v. Arutt, Nachamie & Benjamin (In re Futuronics Corp.), 655 F.2d 463, 470 (2d Cir. 1981), cert. denied, 455 U.S. 941 (1982).

There is (additionally) something troubling about the prospect of a client’s attorney being near entirely disengaged from the day-to-day process of the client’s representation (or, as earlier represented to Mr. Zelotes: “freed” to focus not on the needs of one’s existing clients but (rather) upon “client growth without limitation.”) Mr. Zelotes surmises that this speaks to the same concern the Second Circuit Court of Appeals voiced when explaining the aims of Section 504 (enjoining fee sharing arrangements) as preserving “the integrity of the bankruptcy process so that the professionals engaged in bankruptcy cases attend to their duty as officers of the bankruptcy court, rather than treat their interest in bankruptcy cases as ‘matters of traffic [i.e., matters of trade or commerce].’” See: 4-504 Collier on Bankruptcy, P. 504.02[1] at 504-5 (Alan N. Resnick & Henry J. Sommer, eds. 15th Edition Revised 2007) citing Matter of Arlan’s Department Stores, Inc., 615 F.2d 925, 943-44 (2d Cir. 1979).

Mr. Zelotes submits that the (implicit or express) deception inherent in this masked delegation scheme is entirely inconsistent with requirements of the Code of Professional Responsibility (and submits this issue for the Committee’s due consideration).

Mr. Zelotes likewise submits that this comprehensive delegation of communications and case management (itself) entails an impermissible fee sharing arrangement prohibited under 11 USC 504.
To what extent (if any) an attorney might avail himself of such third party services, Mr. Zelotes does not purport to know. This articulation is properly reserved for the courts. It is clear (however) that that if such a line exists, as relates to the division of labors and impermissible sharing of fees under Section 504, that line has most certainly has been crossed. In this regard, Mr. Zelotes is reminded of the comments of former Supreme Court Justice Potter Stewart, who in a concurrence opinion once noted that "hard-core pornography" was hard to define, but that "I know it when I see it." Mr. Zelotes (likewise) knows when he sees the impermissible division of fee. Mr. Zelotes suggests that an inconsistent contention would be entirely at odds with the aforementioned analysis of Judge Corey and the holding of In re Greer, 271 B.R. 426, 430 (Bankr. D. Mass. 2002) (holding that a fee-sharing agreement in which one attorney paid another $50 for each creditors’ meeting the other attorney attended on her behalf violated §504).

n.b. Mr. Zelotes does not have direct knowledge of whether Mr. Chern (or those acting in concert with Mr. Chern) have engaged (or are presently engaged) in the unauthorized practice of law. This notwithstanding, in light of the sweeping breadth of the aforementioned proposed LPO delegations, Mr. Zelotes suggests that a person of reasonable prudence and caution would diligently investigate the same (probable cause). The propriety of such an investigation is of particular (pressing) concern given that Mr. Chern acknowledges that he avails himself of the services of foreign attorneys neither admitted nor domiciled in the United States. Mr. Zelotes appreciates that Mr. Chern expressly disclaims such unauthorized practice in his proposed agreements (and perhaps this is true), but a disclaimer alone (in the foregoing context) should prove of little assurance to the Courts and to this Committee. Mr. Zelotes submits this concurrent issue to the United States Trustee and the respective Offices of Disciplinary Counsel for their due and proper consideration.

Mr. Zelotes will add this additional observation:
Bankruptcy Rule of Procedure 2016 requires an attorney representing a debtor to disclose the compensation received in each case and to certify that he or she has not shared (or agreed to share) such compensation with any other person. Mr. Zelotes surmises that few (if any) attorneys who have availed themselves of the aforementioned referral and/or LPO services have affirmatively disclosed such fees paid. In omitting this material information, these attorneys have knowingly and affirmatively evaded the required active oversight of both the Bankruptcy Courts and the Office of the United States Trustee (said office being affirmatively tasking with reviewing and monitoring attorney 2016 statements).

Mr. Zelotes suggests that the reviewing committee and/or the United States Trustee compel both the respondents (and such other persons subsequently identified as having done business with Mr. Chern) to furnish all 2016 statements filed in each case referred by Mr. Chern or involving other LPO services, to affirmatively determine whether the respondents (and such other persons to be identified) have knowingly omitted this information from their 2016 statements and (in so doing) affirmatively evaded USBC and UST oversight (said documents are available online via ECF and pursuant to USBC two-year record keeping requirements). Mr. Zelotes likewise suspects few (if any) such respondents will have disclosed the extent to which LPO fees paid were shared with third persons outside the United States. Knowingly submitting a false 2016 statements entails both a false certification to a tribunal and may form the basis for some modicum of disgorgement. This equitable determination is appropriately reserved for the courts and Mr. Zelotes affords no associated recommendation. Mr. Zelotes (nonetheless) represents that the omission of this material information on 2016 statements is conduct prejudicial to the administration of justice and thereby also professional misconduct.
CONCLUSION

Mr. Chern is (without question) a talented businessman who has demonstrated remarkable ambition. As a general rule, Mr. Zelotes does not begrudge the success of persons who have achieved far greater success in our field of practice. As a former U.S. Marine, Mr. Zelotes appreciates that meaningful accomplishment often turns upon a rare combination of determination, courage, planning and endurance. Persons demonstrating such attributes are (more often than not) the proper subject of his sincere admirations. When (however) attorneys conspire to transfer from the court an impermissible degree of power over expenditure and allowances … when attorneys deceive, mislead and withhold material information from his or her clients … when attorneys endeavor to obtain a more substantial market share by means of unfair methods of competition and/or deceptive trade practices … there is rightful reason for both alarm and protest. In this instance, Mr. Chern (and those attorneys herein identified with whom he does business) acted knowingly and/or recklessly, turning a blind eye to the numerous advisory opinions promulgated by the Boards of Governors (obtained through the initiative of persons more appropriately mindful of their ethical obligations), the Rules of Professional Conduct as promulgated by the Judiciary, the commands of our elected representative in Congress assembled as set forth in the U.S. Code, and the holdings recited in our corresponding case law published by our Courts. Rather than conform their collective conduct to the requirements of the Rules of Professional Conduct and the corresponding substantive requirements of the United States Bankruptcy Code, Mr. Chern (and those with whom he conspired) aimed to (and did) affirmatively circumvent these rules (and thereafter rationalize the aforesaid circumvention) with an eye toward personal pecuniary gain and a more substantial market share. Mr. Chern (and those attorneys who have willfully abetted him) have profited substantially from their professional misconduct and did so at the expense and detriment of both the fair administration of justice and the reputation of our esteemed profession. This is no trivial matter. The remedies imposed must aim not only to enjoin and remedy the wrongs committed, but also to affirmatively deter and
enjoin similar misconduct by both Mr. Chern and those who would seek to replicate (or otherwise share in) his ill-begotten financial success.

Professional discipline (and/or presentment) is both warranted and recommended.

As relates specifically to Mr. Chern, Mr. Zelotes urges full disgorgement, meaningful injunctive relief, and disbarment \textit{(inter alia)}.

The exhibits identified below (and a copy of this complaint) are furnished to the aforementioned authorities on an accompanying compact disk in digital (pdf.) format. To facilitate ease of subsequent replication, reduce bulk, and mitigate (onerous) printing, assembly and/or postal expense to the complainant (who is acting in the public interest alone), a paper copy of such (voluminous) documents are not contemporaneously provided.

\textbf{LIST OF EXHIBITS}

1. Exhibit 1: Clear Bankruptcy Services Agreement
2. Exhibit 2: Total Attorneys LPO Services Agreement
3. Exhibit 3: e-Mail Correspondence & Miscellaneous e-Mail Attachments
4. Exhibit 4: Kevin Chern Auto-Biography
5. Exhibit 5: Clear Bankruptcy Screen Captures
6. Exhibit 6: Total Bankruptcy Screen Captures
7. Exhibit 7: Select Chapter 7.com Screen Captures
8. Exhibit 8: Comprehensive List of All Identified Respondents Broken Down Into Their Respective States
10. Exhibit 10: Total Bankruptcy Respondents (National Directory)
<table>
<thead>
<tr>
<th></th>
<th>Exhibit</th>
<th>Description</th>
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<td>In re Winstar Communications</td>
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<td>13</td>
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<td>Joint Statements of NACBA &amp; NCLC</td>
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<td>Arizona Formal Opinion 06 06</td>
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<td>Kansas Formal Opinion E 429</td>
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<td>New Jersey Formal Opinion 36</td>
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<td>Washington Formal Opinion 2106</td>
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<td>21</td>
<td>Digital File</td>
<td>Memorandum</td>
</tr>
<tr>
<td>22</td>
<td>Digital File</td>
<td>Memorandum Integrated With All Attached Exhibits</td>
</tr>
</tbody>
</table>

(Signature Page Follows)
Date: 04/14/09

Respectfully Submitted,

Zenas Zelotes LLC // P.O. Box 1052 // Norwich CT 06360
T (860) 449-0710 // F: (866) 475-6785 // E: ZenasZelotes@Gmail.com

In accord with 28 U.S.C. 1746 “I declare under penalty of perjury under the laws of the United States of America that the averments of fact recited in the foregoing complaint are true, accurate and correct to the best of my knowledge and belief.”

Executed on 04/14/09

Zenas Zelotes, Esq.
1. Exhibit 1: Clear Bankruptcy Services Agreement
DATE LAST MODIFIED: February 1, 2009

THIS GROUP MARKETING, LICENSE AND SERVICE AGREEMENT (this “Agreement”) is dated as of the latest date (the “Effective Date”) on which this Agreement is signed, in the event a hard copy of this Agreement is executed by the parties, or on the date on which Licensee (as defined below) clicks the “I Accept” box or otherwise accepts this Agreement online at www.ClearBankruptcy.com (the “Bankruptcy Web site”), in the event this Agreement is signed electronically. This Agreement, together with any electronically or physically signed pricing and/or other attachments hereto (each of which is incorporated herein by reference), sets forth the terms and conditions upon which ClearBankruptcy, Inc. (“ClearBankruptcy”) will license and/or sublicense use of the Bankruptcy Web site and certain software, as well as provide certain marketing, call center and other ancillary services, to the entity or person executing this Agreement as the “Licensee” or accepting this Agreement online (“Licensee” or “you”) as part of a group marketing effort. By indicating acceptance of this Agreement online, or by simply accessing or using any Services (as defined below), (x) you accept this Agreement and agree to be bound by each of its terms, and (y) represent and warrant to ClearBankruptcy that (i) you have the authority to enter into this Agreement both individually and, in the event you are signing for a law firm, on behalf of your law firm, (ii) this Agreement is binding and enforceable against you and, as applicable, your law firm, and (iii) you have read and understand ClearBankruptcy’s Privacy Policy which is posted at the Bankruptcy Web site, the terms of which are hereby incorporated by reference, and agree to the terms of such policy for the duration of the term of this Agreement.

Please read this Agreement carefully. Even if you fail to accept this Agreement as described above, by using any Services, you agree to be bound by the terms and conditions set forth below. If you do not agree to these terms and conditions or anything contained in this Agreement, do not use any Services.

RECITALS

A. ClearBankruptcy is, inter alia, engaged in the business of designing and coordinating individual and group marketing campaigns to law firms and related businesses. Such campaigns are a cooperative effort between ClearBankruptcy and such law firms. The Bankruptcy Web site serves as a vehicle for such law firms to promote and market their businesses and their Web sites.

B. In addition to serving as a marketing resource to various law firms, ClearBankruptcy also offers additional ancillary services to these entities, including, without limitation, access to its “Customer Management System” software and database.

C. Licensee, as part of a group marketing effort of bankruptcy law firms throughout the United States (the “Group”), wishes to license the use of the Bankruptcy Web site to market its Web site as described above and wishes to engage ClearBankruptcy to provide such marketing and ancillary services.

TERMS

In consideration of the covenants and agreements contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Incorporation of Recitals: The recitals and prefatory paragraph set forth above are incorporated in full into this Agreement.

2. Term: The initial term of this Agreement will be one month (the “Initial Term”), beginning on the Effective Date. During the Initial Term, Licensee may terminate this Agreement at any time, for any reason, by sending written notice to ClearBankruptcy as set forth in Section 23 of this Agreement. In
the event a termination during the Initial Term, Licensee shall only be required to pay for actual services received through the scheduled end of the Initial Term. **Unless this Agreement has been terminated as set forth above, this Agreement shall remain effective on a month to calendar month basis** (each, a “Renewal Term”) and shall be terminable by either party at any time by providing at least 30 days’ written notice to the other party (collectively, with the Initial Term and each Renewal Term, the “Term”). In the event that a termination notice is delivered during any Renewal Term, such termination shall be effective 30 days from such notice. Each Renewal Term shall be deemed to start as of the first day of a calendar month and end on the last day of such calendar month.

3. **Services.** In consideration for Licensee paying to ClearBankruptcy the Fees described in Section 6 of this Agreement, ClearBankruptcy shall license to Licensee use of the Bankruptcy Web site to market its practice and/or Web site as described in this Agreement, and shall otherwise assist Licensee in marketing efforts as described below:

   (a) **Marketing Services.** In connection with the Bankruptcy Web site, ClearBankruptcy shall provide Internet legal marketing services to the Group generally and to the Licensee specifically (collectively, the “Marketing Services”), including (1) the design of an Internet marketing campaign strategy, (2) the creation and/or updating of Internet advertisements, Web sites, and other similar web-based promotional material, (3) the “ad-buys” of the marketing campaign, and (4) related services necessary to implement and coordinate same. ClearBankruptcy shall have the sole and complete discretion to make any decisions regarding how it performs these tasks, including how much time and money to allocate for each respective task.

   (b) **CMS.** In addition to the Marketing Services, to assist Licensee in tracking and managing new business generated by the collective marketing efforts undertaken hereunder, ClearBankruptcy hereby licenses to Licensee, on a limited and non-exclusive basis (and not for resale, modification or sublicense), the use of ClearBankruptcy’s software commonly known as the “Customer Management System” (the “CMS”). Each Contact (as defined below) will result in a client file being created in the CMS. Specifically, through an extranet, ClearBankruptcy will offer activity logs to record work performed, e-mail templates to promote more efficient communication with Contacts, and calendaring capabilities to effectively manage Contact files. ClearBankruptcy shall perform all initial data entry requirements in respect of the CMS database.

   (c) **Call Center Services.** In addition to the Marketing Services and CMS, ClearBankruptcy will, through its call center, provide Call Center Services (as defined below) to Licensee. For purposes of this Agreement, “**Call Center Services**” shall mean (i) ClearBankruptcy will, within 5 minutes of its receipt of any inquiry from within Licensee’s Territory (as defined below) which is directed to Licensee, call such individual (the “Initial Call”) and, if ClearBankruptcy is successful in reaching such individual, “hot-transfer” such call to Licensee (a “Hot Transfer”), (ii) if the Initial Call does not result in a Hot Transfer, ClearBankruptcy will promptly send a follow-up e-mail to such individual, (iii) if the actions described above do not result in a Hot Transfer, ClearBankruptcy will attempt a second call to the applicable individual at the time suggested in such individual’s inquiry, and, if possible, Hot Transfer such call to Licensee, and (iv) if none of the actions described above result in a Hot Transfer, ClearBankruptcy will attempt up to 3 additional phone calls followed by e-mails in an effort to complete a Hot Transfer. The Call Center Services, together with the CMS and Marketing Services, are sometimes referred to collectively herein as the “Services”. ClearBankruptcy will not under any circumstance provide any legal advice or be deemed to be providing any legal advice in connection with the Call Center Services or any other Services, and will limit its role in this regard to performing ministerial tasks. In addition, (i) ClearBankruptcy makes no guarantees regarding the success of any Hot Transfer or whether or not a Hot Transfer will result from the performance of the Call Center Services, and (ii) Licensee agrees to pay all Fees due and owing to ClearBankruptcy, even if an individual elects to call ClearBankruptcy directly or ClearBankruptcy fails to reach an individual at all.

4. **Exclusivity:** Members of the Group may, as available from time to time and subject to the discretion of ClearBankruptcy and, in certain instances, the potential Contact, receive bankruptcy-related
inquiries regarding legal advice and/or representation from potential clients in their assigned territory. (collectively, “Licensee’s Territory”). Licensee, during the Term, specifically will be assigned the following territory: **County in Connecticut: New London.** ClearBankruptcy shall refrain from forwarding specific Contact information to multiple licensees.

5. **Licensee Information:** At the beginning of the Initial Term, or otherwise upon the request of ClearBankruptcy, Licensee shall provide to ClearBankruptcy, in a timely manner, Licensee’s contact information, which ClearBankruptcy will incorporate in its marketing efforts. If Licensee’s contact information changes at any time during the Term, Licensee shall, no later than 5 business days prior to such change, submit Licensee’s new contact information to ClearBankruptcy in accordance with Section 23 of this Agreement.

6. **Fees:** In consideration for providing the Services to Licensee hereunder, Licensee shall pay to ClearBankruptcy the following fees:

   (a) **Marketing Fees.** Subject to adjustments as set forth in clause (i) and clause (iii) below, a monthly fee of $750 (the “Marketing Fee”).

   (i) **Marketing Goals.**

   (1) Defined. In order for ClearBankruptcy to earn its full Marketing Fee, ClearBankruptcy must provide a minimum level of performance. ClearBankruptcy’s performance shall be measured by using two Goals (collectively, the “Marketing Goals”), both of which ClearBankruptcy must ‘pass’ in order to be paid its full fee.

   a) **Contacts Goal**: During any calendar month during the Term, ClearBankruptcy must provide to Licensee at least 30 Contacts (as defined below); and

   b) **Exposure Goal**: During any calendar month during the Term, ClearBankruptcy must make Licensee’s promotional material accessible to at least 90 viewers,

   (2) Adjustments.

   a) Discount: In the event that ClearBankruptcy under-performs on either of the Marketing Goals, then in either case it will provide a **pro rata** discount equal to the monthly Marketing Fee multiplied by the greater of the percentages by which either Marketing Goal was missed. For purposes of illustration only, if the number of Contacts established under the Contacts Goal is thirty (30) and the number of viewers who are to visit the Licensee’s site under the Exposure Goal is ninety (90), and ClearBankruptcy only delivers 15 Contacts, but exceeds 90 viewers, then Licensee shall be entitled to a 50% discount on the Marketing Fees because it failed the Contacts Goal even though it passed the Exposure Goal. For purposes of this example, the calculation would be as follows in Example Chart 1:

| Example Chart 1 | |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| 15 Contacts     | 30 Contacts     | .50 (50% underperformance) | $750            | $375            |
| (Actual Contacts) | Divided by (Contacts Goal Req.) | Equals (Percentage of Goal Req. Met) | Multiplied By (Marketing Fee) | Equals (Discounted/Adjusted Marketing Fee) |
b) **Additional Charge.** If both Marketing Goals are exceeded in a given calendar month during the Term, Licensee shall be obligated to pay, in addition to the Marketing Fee, an amount consisting of the Marketing Fee multiplied by the lesser of the percentages by which the respective Marketing Goals were exceeded. For purposes of illustration only, if the number of Contacts established under the Contacts Goal is thirty (30) and the number of viewers who are to visit the Licensee’s site under the Exposure Goal is ninety (90), and ClearBankruptcy delivers 45 Contacts, and exceeds 900 viewers, then ClearBankruptcy shall be entitled to a 50% additional charge on the Marketing Fees because it over-performed on the Contacts Goal and met the Exposure Goal because the lesser degree of over-performance was achieved on the Contacts Goal. For purposes of this example, the calculation would be as follows:

<table>
<thead>
<tr>
<th>Example Chart 2</th>
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<tbody>
<tr>
<td>45 Contacts</td>
</tr>
<tr>
<td>(Actual Contacts)</td>
</tr>
</tbody>
</table>

(ii) **Definition of Contact.** For purposes of this Section 6, “Contact” shall mean, as required by context, either (1) an instance where a member of the public fills out an on-line form or otherwise requests additional information about the Licensee’s law practice as a result of ClearBankruptcy’s or an affiliate’s marketing efforts, or (2) a member of the public contacts ClearBankruptcy through its call center and requests an evaluation by Licensee or otherwise requests additional information about the Licensee’s law practice.

(iii) **Invalid Contacts.** On or about the first day of each month during the Term, ClearBankruptcy will electronically submit to the Licensee a list of all Contacts (a “Contact Notice”) that were provided to Licensee for the preceding month. Each Contact Notice shall be deemed to be final and accepted by both parties unless Licensee, within 5 business days of its receipt of the Contact Notice, identifies in writing to ClearBankruptcy one or more Invalid Contacts (as defined below). For purposes of this Agreement, “Invalid Contacts” shall mean each Contact listed in a Contact Notice (i) with a disconnected telephone number or a telephone number that plainly bears no connection to the name of the Contact, (ii) which Licensee can demonstrate was, at the time of the applicable submission, already represented in the bankruptcy matter at issue by legal counsel, or (iii) which is a duplicate of a prior delivered Contact (it being understood that the fact that a particular Contact may fail to respond or may not be an appropriate client for Licensee does not render such Contact an Invalid Contact). ClearBankruptcy shall make the final determination regarding all Invalid Contact claims. Invalid Contacts shall be excluded from all calculations regarding Marketing Fees set forth above in this Section 6.

(b) **CMS License Fee.** In consideration for licensing the CMS to Licensee, Licensee shall pay to ClearBankruptcy $25.00 per Contact file entered by ClearBankruptcy (the “CMS License Fee”). By way of example, the CMS License Fee would be equal to $750 based on 30 Contact files entered in a given calendar month. No CMS License Fees shall be due and owing with respect to Invalid Contacts. To continue the example from 6ai2a above, assuming ClearBankruptcy over-performed on the Contacts Goal and delivered 45 Contacts (50% over-performance), a Marketing Fee of $1125 would be due. In addition, Licensee would be charged a CMS License Fee and a Call Center Service Fee for each Contact delivered.
(c) **Call Center Services.** Licensee shall pay ClearBankruptcy $15.00 for each instance in which ClearBankruptcy performs Call Center Services in respect of an individual as described in Section 3(c) of this Agreement (the “**Call Center Service Fee**”). **No Call Center Services Fee shall be due and owing with respect to Invalid Contacts.** To continue the example from 6ai2a above, assuming ClearBankruptcy over-performed on the Contacts Goal and delivered 45 Contacts (50% over-performance), a Marketing Fee of $1125 would be due. In addition, Licensee would be charged a CMS License Fee and a Call Center Service Fee for each Contact delivered.

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<thead>
<tr>
<th>Example Chart 3</th>
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<tbody>
<tr>
<td>45 Contacts</td>
<td>$25</td>
<td>$1,125</td>
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<tr>
<td>(Actual Contacts)</td>
<td>Multiplied By (CMS Fee)</td>
<td>Equals (Total CMS Fee)</td>
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<tr>
<th>Example Chart 4</th>
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<tbody>
<tr>
<td>45 Contacts</td>
<td>$15</td>
<td>$675</td>
</tr>
<tr>
<td>(Actual Contacts)</td>
<td>Multiplied By (Call Center Services Fee)</td>
<td>Equals (Total Call Center Services Fee)</td>
</tr>
</tbody>
</table>

(d) **Example Summary (based on 45 Contacts).**

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<th>Example Chart 5</th>
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<tbody>
<tr>
<td>Marketing Fee</td>
<td>$1125</td>
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<tr>
<td>CMS Fee</td>
<td>$1125</td>
</tr>
<tr>
<td>Call Center Fee</td>
<td>$675</td>
</tr>
<tr>
<td>Total Fee</td>
<td>$2925</td>
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7. **Payments:** All Fees earned by ClearBankruptcy during any calendar month during the Term shall be due and owing immediately as of the delivery of the Final Invoice, delivered no earlier than the 5th day of the subsequent month. On or about the 5th day following the end of each such calendar month, Licensee’s credit card listed in the credit card authorization form submitted to ClearBankruptcy will be billed automatically for such sums. **To clarify, no payment is due until the completed month’s Contacts have been furnished to Licensee.** By signing a copy of this Agreement, Licensee hereby authorizes ClearBankruptcy to charge Licensee’s credit card ending with the 4 numbers __________ for all Fees due and owing hereunder or, if no credit card number is listed in the foregoing blank, ClearBankruptcy shall have the authority to so charge any credit card provided by
Licensee to ClearBankruptcy. Any adjustments to Fees for Invalid Contacts will be deducted by ClearBankruptcy from future Fee payments. In the event either party provides 30 days’ written notice of termination of this Agreement to the other party, ClearBankruptcy shall have the right to require the Licensee to immediately pay a deposit reasonably estimated by ClearBankruptcy to cover any Fees which are anticipated to be due and owing for the 30-day period prior to the termination date (which deposit shall be partially credited back to Licensee in the event the actual Fees due and owing for such period are less than the amount of such deposit). Licensee shall not, under any circumstance, (i) revoke the above-referenced authorization to charge the above-referenced credit card or ACH for any Services previously rendered or to be rendered during the above-referenced 30-day termination period, or (ii) contest any charges to the above-referenced credit card or ACH which are made by ClearBankruptcy in accordance with this Section 7. Licensee shall, as is the case with other disputes arising hereunder, be entitled to resolve any and all such disputes pursuant to Section 19 of this Agreement.

8. **Warranties:** ClearBankruptcy warrants to Licensee that all Services provided hereunder will be performed in a professional manner consistent with industry practices. **Neither ClearBankruptcy nor any affiliate, parent company or subsidiary makes any other warranties of any kind regarding the Services or otherwise, either expressed or implied, including, without limitation, (a) warranties of merchantability or fitness for a particular purpose, (b) that the delivery of any Contacts will be error free, (c) as to the results that may be obtained as a result of ClearBankruptcy’s and/or Licensee’s marketing efforts, or (d) that any Web site, including without limitation www.ClearBankruptcy.com, will be continuously available.**

9. **Breach of Licensee’s obligations:** If Licensee materially breaches any of its obligations under this Agreement, including the failure to timely pay any Fees or other monies owed, ClearBankruptcy shall be permitted, at its sole discretion, to do any or all of the following (it being understood that such remedies are not exclusive of one another or any other remedies ClearBankruptcy may have at equity or law): (1) terminate this Agreement without notice, in which case Fees shall remain due and owing to ClearBankruptcy for all Services provided prior to the date of termination; (2) temporarily suspend this Agreement without notice (it being understood that ClearBankruptcy shall retain the right to reinstate this Agreement at any time in its sole discretion); (3) for unpaid Fees, assess interest at the lesser of 1.5% of the amounts owed per month or the maximum amount allowed by law; (4) collect from Licensee reimbursement for all costs, including attorneys’ fees, incurred by ClearBankruptcy in collecting any Fees or other monies owed to it by Licensee, or otherwise enforcing its rights under this Agreement; and/or (5) provide Services to other customers of ClearBankruptcy in Licensee’s Territory.

10. **Privacy:** Licensee agrees not to sell, transfer, license, sublicense or otherwise disseminate any information gathered by ClearBankruptcy pursuant to this Agreement (including, without limitation, with respect to any Contact), except to the limited extent Licensee is legally required to do so. Nothing in this Section 10 shall be construed to restrict or otherwise affect in any way Licensee’s relationship with any of its clients, and Licensee retains full and sole discretion in respect of decisions regarding clients and legal advice provided to clients. In addition, Licensee agrees that it will not use any Contact data for any unauthorized use including, but not limited to, chain letters, junk mail, "spamming", telephone solicitations in violation of any state or federal Do-Not-Call registry, or as a basis for any use or distribution lists to any person who has not given specific permission to be included in such a process. Licensee further agrees not to use Contacts or any Contacts data to send any messages or materials that are unlawful, considered an act(s) against public policy, discrimination of any kind, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise constitute a criminal offense, give rise to civil liability or otherwise objectionable material of any kind or nature or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. ClearBankruptcy reserves the right to terminate Licensee’s account immediately and without notice, if it becomes aware or determines, in its sole discretion, that Licensee is violating any of the foregoing guidelines.
11. **ClearBankruptcy’s Intellectual Property**: ClearBankruptcy shall at all times retain sole and exclusive ownership of, or, as applicable, sole and exclusive rights as a licensee or sublicensee of, all of its copyrights, trademarks, trade names, trade dress, patents, software, source code, object code and other intellectual property rights, including, without limitation, the CMS and all of the proprietary material provided and/or displayed by ClearBankruptcy at the Bankruptcy Web site, affiliated Web sites, extranet, marketing materials or otherwise. This Agreement shall not be construed to convey, assign, sell or transfer any copyrighted, trademarked or other material which ClearBankruptcy does not have the right to convey or assign or which is otherwise not specifically identified herein.

ClearBankruptcy may provide Licensee with proprietary software, code or other similar materials, including without limitation the CMS ("Services IP"), including through its extranet services, solely in connection with providing the Services hereunder. Subject to the terms and conditions of this Agreement, ClearBankruptcy grants to Licensee a world-wide, revocable, non-exclusive, non-transferable, non-sublicensable, limited use license (or, as applicable, sub-license) to access and use the Services IP solely in connection with Licensee’s business and solely to the extent expressly set forth in this Agreement. Such license or sub-license shall immediately expire upon expiration of the Term or termination of this Agreement by either party for any reason.

12. **Licensee’s Intellectual Property**: Licensee represents and warrants that none of the content, materials, designs, text, names, data or other information provided by Licensee to ClearBankruptcy with respect to the Services or otherwise (collectively, “Licensee Content”) infringes the intellectual property or other proprietary rights of ClearBankruptcy or any third party, and ClearBankruptcy shall have no liability for any claims arising out of any Licensee Content, including those based on infringement. Further, Licensee grants to ClearBankruptcy a non-exclusive license to use the Licensee Content, as well as any other copyrights, trade names and/or trademarks of Licensee, solely to the extent necessary for ClearBankruptcy to provide the Services (which includes, without limitation, (i) the right to make copies, create illustrations, display personal and/or corporate name(s), and display other pictures and materials, and (ii) for purposes of promoting ClearBankruptcy to the public and other potential customers). Such license shall include the right of ClearBankruptcy’s employees, agents and contractors to view Licensee Content for administrative purposes.

13. **Confidentiality**: ClearBankruptcy and Licensee each agree to treat as confidential all confidential information of the other party, not to use such confidential information except as set forth herein and not to disclose such confidential information to any third party except as may be reasonably required pursuant to this Agreement and subject to confidentiality obligations at least as protective as those set forth herein. Without limiting the generality of the foregoing, each of the parties shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of confidential information disclosed to it by the other party under this Agreement, provided, however, that in no event shall such degree of care be less than reasonable in light of general industry practice. Notwithstanding the foregoing, neither party hereto shall have liability to the other with regard to any confidential information of the other which: (i) was in the public domain at the time it was disclosed or enters the public domain through no fault of the receiver; (ii) was known to the receiver, without restriction, at the time of disclosure as shown by the files of the receiver in existence at the time of disclosure; (iii) is disclosed with the prior, written approval of the discloser; (iv) was independently developed by the receiver without any use of such confidential information; (v) becomes known to the receiver, without restriction, from a source other than the discloser, without breach of this Agreement by receiver; or (vi) is disclosed pursuant to the order or requirement of a court, administrative agency or other governmental body, provided, however, that the receiver shall provide prompt notice thereof to enable the discloser to seek a protective order to otherwise prevent such disclosure.

14. **Duties Regarding Contacts**: Licensee agrees that it will charge its normal and customary fees to clients retained through ClearBankruptcy’s Services, and Licensee will not increase its fees (directly or indirectly) for such clients due to or as a result of such Services. Further, in addition to all other duties Licensee owes to Contacts as actual and/or potential clients, Licensee agrees that it will act in a timely manner in deciding whether to accept or decline representation of each Contact and will send timely
declination letters, in accordance with its ethical obligations, to those Contacts it is not willing or able

to represent. Licensee hereby agrees and acknowledges that ClearBankruptcy is in no way acting as

legal counsel or co-legal counsel with respect to any Contact or any of Licensee’s clients.

15. Indemnification: The Parties agree to defend, indemnify, and hold harmless the other Party and,
where applicable, its past and present shareholders, members, parent companies, partners, licensees,
consultants, affiliates, contractors, subsidiaries, successors, predecessors, assigns, officers, directors,
managers, employees, attorneys, agents, and all third parties working with the other Party in
connection with any of the Services, from and against any and all losses, claims, controversies, causes
of action, demands, torts, damages, costs, attorneys' fees and liabilities of any kind actually or
allegedly related to or arising out of:

a. Any breach of this Agreement, including any breach of its representations or warranties set
forth herein;

b. Any professional malpractice or other breach of duty in the course of its communications with
Contacts or the legal representation of clients in any matter;

c. Any increase or decrease in the number or amount of business or profits of any kind or from
any source.

16. Limitations of Liability: ClearBankruptcy shall not be held liable for any special, indirect, incidental
or consequential damages arising out of the Services or otherwise arising out of this Agreement,
regardless of whether a claim is based on contract, tort, strict liability or otherwise, or whether caused
by ClearBankruptcy, its affiliates, agents, employees, subsidiaries, representatives, assigns, or
otherwise. In addition, ClearBankruptcy’s total liability hereunder shall not exceed the aggregate Fees
paid to ClearBankruptcy during the 6-month period preceding any claim. Furthermore, Licensee
hereby agrees and acknowledges that any liability arising out of this Agreement or the business
relationship between ClearBankruptcy and Licensee shall be limited to ClearBankruptcy, and Licensee
shall not seek to collect any amounts or damages from any party which is an affiliate of
ClearBankruptcy or any party with which ClearBankruptcy does business or licenses intellectual
property. To the extent Licensee breaches this Section 16 by seeking to collect any amounts from any
such third party, such third party shall be deemed to be a third party beneficiary of this Section 16 and
shall be entitled to have such claim dismissed on account of Licensee’s agreements set forth in this
Section 16. Licensee shall provide ClearBankruptcy timely written notice of any error, omission or
violation of any third party right by ClearBankruptcy of any kind, immediately upon learning of same.

17. Entire Agreement; Amendment: This Agreement cancels and supersedes all prior written and
unwritten agreements and understandings between the parties pertaining to the matters covered in this
Agreement. No obligations, agreement or understanding shall be implied from any course of dealing,
as all obligations, agreements and understanding with respect to the subject matter hereof are expressly
set forth herein. All understandings and agreements, whether written or oral, heretofore had between
the parties are merged into this Agreement, which alone fully and completely expresses the parties’
total agreement. No amendment to this Agreement shall be effective unless reduced to writing
and either signed by both parties or posted by ClearBankruptcy at the Bankruptcy Web site (in
which case such amendment shall be binding on both parties 10 days from the date of such
posting); provided, that (i) changes increasing amounts payable by Licensee as Fees shall not be
effective until 35 days from the delivery of notice by ClearBankruptcy to Licensee (which may
include, without limitation, notification to Licensee via a message posted at the Bankruptcy Web
site), and (ii) Licensee shall be permitted to terminate this Agreement by providing 30 days’
written notice to ClearBankruptcy within 10 days of the posting of any modification to this
Agreement, in which case Licensee shall remain subject to the version of this Agreement in effect
immediately prior to the posting of such modification for such 30-day period. Licensee’s
continued use of the Services shall constitute its express acceptance of any such amendment
posted at the Bankruptcy Web site. Licensee is advised to review this Agreement from time to
time for changes. The most recent date on which this Agreement has been modified or amended is posted at the top of this Agreement.

18. **Venue and Choice of Law:** This Agreement is intended to and shall be governed by the laws of the State of Illinois (without regard to its rules regarding conflicts of laws). Exclusive venue for any applicable state or federal court, or arbitration tribunal, shall lie within Cook County, Illinois.

19. **Arbitration:** Except as provided below, any controversy or claim asserted by Licensee or ClearBankruptcy, arising out of or relating to this Agreement, or the breach hereof, shall be resolved by binding arbitration in accordance with the rules, then obtaining, of the American Arbitration Association (Commercial Rules), and judgment upon the award rendered may be entered in any court having jurisdiction thereof. A party may bring an action in state or federal court if, and only if, the total damages such party seeks, inclusive of attorneys’ fees, interest and demands for special or exemplary damages, do not exceed $10,000. Notwithstanding the foregoing, ClearBankruptcy may, at its option, bring an action in state or Federal court in Cook County, Illinois to collect any past due amounts owing by Licensee to ClearBankruptcy hereunder.

Any claim arising from this Agreement or the services offered herewith shall be adjudicated on an individual basis, and shall not be consolidated in any proceeding with any claim or controversy of any other party. In the event of any arbitration or litigation arising out of or relating to this Agreement, the substantially prevailing party in such action shall be entitled to recover all costs and fees associated therewith including, without limitation, attorneys’ fees.

20. **Assignment; Binding Agreement:** ClearBankruptcy shall be permitted to assign this Agreement, without the consent of Licensee, (i) to an affiliate, parent company or subsidiary, and (ii) in connection with a merger or sale of substantially all of ClearBankruptcy’s equity or assets. Upon any such assignment by ClearBankruptcy, all references to “ClearBankruptcy” in this Agreement shall be deemed to be references to ClearBankruptcy’s assignee of its rights and obligations under this Agreement, and ClearBankruptcy shall have no further obligations under this Agreement. Licensee may not sell, transfer or otherwise assign its rights under this Agreement without the written approval of ClearBankruptcy (which approval may be granted or withheld in ClearBankruptcy’s sole discretion). This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties.

21. **No Waiver:** The waiver of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

22. **Duplicate Counterparts; Acceptance of Service:** This Agreement may be executed in duplicate counterparts to the extent a hard copy of this Agreement is to be signed, and each such executed counterpart shall be deemed an original. Further, to the extent a hard copy of this Agreement is to be signed, as ClearBankruptcy has provided Licensee with a copy of this Agreement, the payment of any Fees by Licensee, combined with the delivery of Services and acceptance of payment in full or in part by ClearBankruptcy, will be deemed to constitute acceptance of this Agreement by both parties, whether or not this Agreement has been signed by either or both parties.

23. **Notice.** All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally, (b) sent by confirmed facsimile (followed by the actual document via U.S. mail), (c) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt, or (d) sent by e-mail (followed by the actual document via U.S. mail). Unless otherwise indicated in writing by either party to the other party, all communications shall be sent to the address set forth for each party on the signature page hereto, or, if this Agreement is signed electronically, (i) for ClearBankruptcy at its principal place of business posted at the Bankruptcy Web site from time to time, and (ii) for Licensee, at its principal place of business as provided to ClearBankruptcy either during Licensee’s sign-up for services or as otherwise provided by Licensee to ClearBankruptcy in writing.
24. **Outsourcing.** Licensee hereby acknowledges that ClearBankruptcy may, in its sole discretion, outsource and/or subcontract certain functions in providing the Services. ClearBankruptcy shall not be liable for any actions of any such third party.

25. **Non-Solicitation; Non-Competition.** Licensee hereby agrees that it shall not, at any time during the Term and for 2 years following expiration or termination of the Term for any reason, (i) solicit any of the attorneys participating in the ClearBankruptcy’s network, or otherwise cause such attorneys, to cease doing business with ClearBankruptcy, (ii) directly or indirectly provide services to any of ClearBankruptcy’s customers which are substantially similar to those provided by ClearBankruptcy, or (iii) otherwise interfere with ClearBankruptcy’s relationship with any of its customers (which includes, without limitation, a prohibition on the sale or license by Licensee of a software platform or system substantially similar to the CMS). In addition, Licensee hereby agrees that it shall not, at any time during the Term and for 2 years following expiration or termination of the Term for any reason, either directly or indirectly (as an equity holder, founder, Web site owner, employee, officer, consultant, contractor or otherwise), provide online group or related marketing services to attorneys anywhere in the United States.

26. **Force Majeure.** ClearBankruptcy shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to a force majeure event or other circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, labor disturbance, interruption of or delay in transportation, unavailability of third party services, failure of third party software or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the Services.

27. **Independent Contractors.** The relationship of ClearBankruptcy and Licensee established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

28. **Severability Clause:** If any part of this Agreement is determined to be illegal and/or unenforceable, all other parts shall be given effect separately and shall not be affected.

29. **Survival of Certain Provisions:** Sections 10 through 30 of this Agreement shall survive any termination of this Agreement.

30. **Incorporation of Summary of Services:** The Summary of Services and Credit Card Authorization are hereby incorporated into this Agreement as if fully stated herein.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date(s) provided below.

CLEARBANKRUPTCY, INC.

__________________________________________  
By: Kevin Chern  
Its: President

Date: April 12, 2009

Address: 25 E. Washington Street, Suite 510, Chicago, IL 60602

Zenas Zelotes LLC

By: ________________________________________

Its: ________________________________________

Date: _____/_____/

Address: ________________________________________
Summary of Services and Credit Card Authorization Form

INVOICE#_____
ClearBankruptcy, Inc.
25 East Washington Street, Suite 510, Chicago, IL 60602

Please read carefully the Group Marketing and Services Agreement (the “Agreement”), of which this form is a part.

<table>
<thead>
<tr>
<th>Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Marketing Services (Agreement, ¶6)</td>
<td>$ 750</td>
</tr>
<tr>
<td>CMS Services (Agreement, ¶6)</td>
<td>$ 750</td>
</tr>
<tr>
<td>Call Center Services (Agreement, ¶6)</td>
<td>$ 450</td>
</tr>
<tr>
<td>Monthly Total (Based on satisfaction of Marketing Goals):</td>
<td>$ 1950</td>
</tr>
</tbody>
</table>

***Services Fees are based on Marketing Goals of 30 Contacts/month; 90 Viewers/month, but will be DISCOUNTED or UP-CHARGED based upon under-performance or over-performance of Marketing Goals.

Credit Card Authorization

Type of Credit Card: __________________________
Credit Card Number: __________________________
Expiration Date: __________________________
3 Digit VID/Security Code: __________________________
Name of Credit Card Holder: __________________________
Credit Card Billing Address:
   Street Address (line 1): __________________________
   Street Address (line 2): __________________________
   City: __________________________
   State/Zip: __________________________
   Telephone Number: __________________________

I hereby authorize ClearBankruptcy to charge my credit card for all fees and costs incurred under the terms of the Agreement.
___________________ /___ /_____ Cardholder's Signature Date

As the credit card holder, I also authorize ClearBankruptcy, Inc. to charge my credit card for future renewal charges approved by me pursuant to the Automatic Renewal Provision of the Agreement, ¶2.

Please sign and fax back to - - -
2. Exhibit 2: Total Attorneys LPO Services Agreement
TotalAttorneys LPO Services Agreement

This Services Agreement (this “Agreement”), dated as of April 10, 2009, is by and between TotalAttorneys LPO, LLC, an Illinois limited liability company (“TotalAttorneys”), and Zenas Zelotes LLC, a Connecticut limited liability company (“Attorney”).

1. Services

TotalAttorneys shall provide to Attorney the services (“Services”) described herein and in the Description of Services posted at www.totalattorneys.com/lpo/.

2. Term

This Agreement shall run on a month-to-month basis, and as such, shall continue in full force and effect until the last day of the next calendar month ending at least 30 days following written notice of termination provided by either party to the other party.

3. Fees

In consideration of TotalAttorneys providing the Services hereunder, Attorney shall pay to TotalAttorneys the following fees (the “Fees”) which shall be nonrefundable once paid: $395.00 for the preparation of each Chapter 7 bankruptcy petition and $495.00 for the preparation of each Chapter 13 bankruptcy petition. Attorney will provide TotalAttorneys with a Credit Card Authorization form authorizing TotalAttorneys to make periodic charges pursuant to the terms of this Agreement. Fees will be billed and charged to Attorney’s credit card upon TotalAttorneys’ receipt, whether by e-mail or alternative means, of each Debtor Notice. Attorney shall provide an initial deposit of $___________ (minimum $1700.00) and at any time that the balance deposited on Attorney’s account falls below $___________(minimum $495.00), Attorney authorizes TotalAttorneys to make a charge against Attorney’s credit card in the amount of $___________ (minimum $1700.00) to replenish the account. Attorney shall ensure that the credit card information on file with TotalAttorneys is current. Attorney may not offset or withhold Fees due under this Agreement for any reason, and Attorney agrees to reimburse TotalAttorneys for all reasonable costs (including attorney’s fees) incurred in collecting past due Fees owed by Attorney.

4. Relationship of the Parties

Each party will be and act as an independent contractor and not as an agent, partner, employee or joint venturer with the other party for any purpose related to this Agreement or the transactions and services contemplate herein. To this end, Attorney shall be deemed to be contracting the use of office space and personnel of TotalAttorneys and/or its third party service providers engaged in connection herewith to provide Services, and 1% of the total Fees paid to TotalAttorneys hereunder shall serve as payment for use of such office space and personnel.

5. Certain Attorney Responsibilities

During the term of the Services Agreement, Attorney hereby agrees to take all of the following actions:

1. Require each Debtor to complete TotalAttorneys’ Intake Form;
2. Require each Debtor to execute a Retainer Agreement, which shall include all of the terms and disclosures set forth in Exhibit A, attached hereto;
3. Obtain a photo ID and Social Security card from each Debtor;
4. Obtain all necessary authorizations for credit counseling and tax transcript requests;
5. In cases of exigent circumstances where time is of the essence, obtain from each Debtor any additional supporting documentation necessary for TotalAttorneys to perform the Services from time to time;
6. Forward items #1 through #5 above to TotalAttorneys at the fax number provided to Attorney from time to time;

7. Review each bankruptcy petition and each set of due diligence documents received in connection with the Services prior to the filing of the bankruptcy petition (such review to be no less thorough than Attorney would typically perform in connection with the preparation and review of such documents had Attorney created and/or ordered the same without using the Services);

8. Ensure that each Retainer Agreement, in addition to Attorney’s standard terms and conditions of client engagement, contains language substantially similar to the language set forth on Exhibit A to this Agreement, or otherwise advise Debtor(s) as consistent with applicable state law of the nature of outsourcing legal work;

9. Ensure that the fees charged by Attorney to each Debtor are reasonable and do not contain any mark-ups not permitted under the ABA Rules of Professional Conduct or any particular rules applicable to Attorney’s state rules of professional conduct.

10. Directly supervise each non-lawyer assistant and foreign-licensed attorney engaged to provide the Services, which shall include, without limitation, (a) checking the backgrounds of such individuals to ensure they have appropriate legal training (and checking references where necessary), (b) ensuring that the applicable assignment and related expectations are communicated on an ongoing basis to the non-lawyer, (c) reviewing the work product provided by the non-lawyer and/or foreign-licensed attorney and independently verifying that it is accurate, relevant and complete, (d) revising the work product to the extent necessary, (e) using reasonable efforts to ensure that each such third party service provider conforms to all applicable rules of professional conduct, (f) investigating hiring practices where possible, (g) evaluating the system of legal education, professional regulatory system and judicial system in the applicable country for each foreign-licensed attorney, and adjusting the level of scrutiny given to work product created by each such foreign-licensed attorney as necessary, and (h) ensuring that no conflicts of interest exist between any third party service provider and the Debtor or applicable legal matter.

11. Attorney hereby represents and warrants that Attorney is a licensee of the software program identified below: [Please Check One]

   _____ Best Case
   _____ Bankruptcy Pro
   _____ EZ-Filing
   _____ New Hope Software (Bankruptcy 2008)

6. **Certain Authorizations and Acknowledgements**

TotalAttorneys and Attorney hereby agree to and acknowledge each of the following:

(i) TotalAttorneys is, pursuant to the Services Agreement, an independent contractor and agent of Attorney and, in connection therewith, (1) is authorized to take actions on Attorney’s behalf which are necessary to carry out TotalAttorneys’ responsibilities under the Services Agreement (including, without limitation, accepting or agreeing to the terms and conditions imposed by third party service providers, on behalf of itself and/or Attorney (as required), to the extent necessary for TotalAttorneys to provide the Services), and (2) is not a “bankruptcy petition preparer” as defined in 11 U.S.C. §110;
(ii) Neither TotalAttorneys, nor any third party service provider with which TotalAttorneys works in providing the Services, is a licensed attorney anywhere in the United States, and as such, neither TotalAttorneys nor any such service provider is authorized or qualified to provide legal advice or otherwise practice law anywhere in the United States. Attorney acknowledges that he is solely responsible for the legal work performed on Debtor’s legal matter;

(iii) The Services are administrative and preparatory in nature, and will not, under any set of circumstances, constitute legal advice or the practice of law in any state or jurisdiction;

(iv) Attorney shall be deemed to have agreed to and accepted each set of terms and conditions and each privacy policy applicable to bankruptcy due diligence posted at the Web site of any third party service provider with which TotalAttorneys works from time to time in providing the Services (including, without limitation, all terms and conditions and privacy policies posted at www.creditinfonet.com and www.startfreshtoday.com from time to time), as all such policies are hereby incorporated by reference and shall be deemed to be binding on Attorney to the same extent had Attorney agreed to and/or accepted such policies directly with the applicable service provider.

(v) Neither TotalAttorneys nor any third party service provider engaged by TotalAttorneys in providing the Services shall be liable for any errors, mistakes of fact, mistakes of law, other mistakes, omissions or other issues in (x) any bankruptcy petition prepared by TotalAttorneys or any such third party service provider, (y) any due diligence materials ordered by TotalAttorneys or any such third party service provider, or (z) any other aspect of the Services, as, in each of the foregoing cases, Attorney is fully and solely responsible for reviewing, modifying (as necessary) and ultimately approving all materials provided to Attorney in connection with the Services;

(vi) Foreign-licensed lawyers are, without additional licensing, precluded from practicing law in the United States, and as such, any documentation or other materials prepared by any foreign-licensed attorney engaged by TotalAttorneys in providing the Services shall not, under any set of circumstances, be deemed to constitute legal advice;

(vii) Neither TotalAttorneys, nor any third party service provider engaged by TotalAttorneys, will (a) answer any substantive legal questions posed by Debtor or otherwise provide legal advice to a Debtor, (b) establish an attorney-client relationship with a Debtor, (c) set fees to be charged to a Debtor, (d) be delegated all responsibilities of a law practice by Attorney, (e) maintain the direct relationship with a Debtor, (f) conduct initial interviews with a new client of Attorney, (g) solicit new business for Attorney, (h) determine any legal strategy, or (i) control the final content of any product delivered to Attorney or any Debtor or to be filed with any court (all of which responsibilities shall remain fully and solely with Attorney); and

(viii) TotalAttorneys, while it will pay certain third party service providers fees in connection with services rendered by such persons or entities to assist TotalAttorneys in providing the Services, does not and will not share in any fees paid by Debtor to Attorney (and neither shall any such third party service provider).

(ix) Attorney acknowledges that certain portions of the Services will be outsourced to third party service providers including, without limitation, attorneys located outside of the United States which are not licensed to practice law within the United States.

(x) Attorney acknowledges that TotalAttorneys will provide the Services as described herein and as posted at www.totalattorneys.com/lpo/, and that TotalAttorneys may modify the Description of Services on its website from time to time without invalidating this Agreement or Attorney’s obligation to pay for Services.
Each such authorization or acknowledgement above, as applicable, shall be deemed to be re-affirmed and re-made by TotalAttorneys and Attorney at the time of submission of each Debtor Notice to TotalAttorneys.

7. Confidential Information

(a) **Confidentiality.** Each party hereby agrees that it will not use any confidential information regarding the other party (including the terms of this Agreement and any Statement of Work) other than as incidental to such party’s responsibilities under this Agreement, and all confidential information of the other party will be returned upon termination of this Agreement. Further to the foregoing, (a) TotalAttorneys agrees to (i) maintain in confidence any confidential Debtor (as defined below) information received from Attorney or Debtor other than disclosures to previously-disclosed third party service providers, and (ii) return all such Debtor information upon termination of this Agreement for any reason, and (b) Attorney agrees to refrain from using any confidential information of TotalAttorneys or any affiliate of TotalAttorneys (including, without limitation, software, source code, processes, contact information or other intellectual property) to compete with TotalAttorneys or any of its affiliates or for any purpose other than allowing TotalAttorneys to perform Services hereunder. Unless instructed by Attorney, TotalAttorneys further agrees not to make any photocopies of any such confidential information and shall secure all digital Debtor confidential information on a SSL 128-bit encrypted computer server to which Attorney will have direct access.

(b) **Certain Definitions.** For purposes of this Agreement, (i) “Debtor” shall mean each client of Attorney which executes a Retainer Agreement and with respect to whom Attorney provides a Debtor Notice to TotalAttorneys, (ii) “Debtor Notice” shall mean each written or electronic notice provided to TotalAttorneys during the term of this Agreement requesting that TotalAttorneys provide Services in respect of a particular Debtor, and (iii) “Retainer Agreement” shall mean Attorney’s standard retainer agreement executed with clients of Attorney.

8. Intellectual Property

All trademarks, patents, copyrights and other intellectual property rights owned by either party on the date hereof shall continue to be owned solely by such party, and nothing herein shall be deemed to confer any rights to any such intellectual property on the other party. Further to, and not in limitation of, the foregoing, TotalAttorneys and/or its licensors shall retain sole and exclusive ownership to all Web sites, software platforms and other intellectual property utilized in any way in providing the Services.

9. Warranties; Disclaimer of other Warranties

TotalAttorneys warrants to Attorney that (i) all Services will be performed in a professional manner, and (ii) all Services will substantially conform to the Statement(s) of Work. **Except as explicitly set forth in this Agreement, neither TotalAttorneys, its agents, affiliates, suppliers, third-party information providers, licensors nor the like, make any warranties of any kind, either expressed or implied, including, without limitation, (a) warranties of merchantability or fitness for a particular purpose, (b) non-infringement, (c) that the Services will be uninterrupted or error free, or (d) as to the results that may be obtained from the use of the Services (including, without limitation, the results of any bankruptcy petition).**

10. Limitation of Liability

In no event will TotalAttorneys nor any of TotalAttorneys’ suppliers or third party service providers be liable for any amount which exceeds the sum of the Fees paid hereunder in connection with the applicable Debtor file giving rise to such liability. In no event shall either party, or either party’s suppliers, have any liability to the other party for any loss of data, lost profits, costs of procurement of substitute goods or services, or any other special, incidental, consequential or indirect damages arising from any of the Services, whether based in contract, tort (including negligence) or any other theory of liability, even if the applicable party has been
advised of the possibility of such damages.

11. Force Majeure

TotalAttorneys shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its or its suppliers’ reasonable control.

12. Indemnification

Each party shall defend and indemnify the other party, its affiliated entities, and each of their officers, directors, managers, members, employees, agents and suppliers (collectively, the “Indemnified Parties”) from and against any loss, damages, debt, liability, obligation, claim, demand, judgment or expenses (including, without limitation, reasonable attorneys’ fees) (“collectively, “Damages”), arising out of or resulting from, allegedly or in fact, the indemnifying party’s actions or omissions, or based upon any claim, action or proceeding by any third party alleging facts or circumstances which, if true, would constitute a breach of any provision of this Agreement. In addition, Attorney shall indemnify and hold harmless TotalAttorneys from and against any Damages incurred as a result of any malpractice claim brought by a Debtor or any third party against Attorney or any other claim arising out of Attorney’s practice. The foregoing indemnities are conditioned upon (a) prompt written notice by the indemnified party to the indemnifying party of any applicable claim (but any delay in giving notice shall not excuse any indemnity obligations unless such delay materially prejudices the indemnifying party), (b) complete control of the defense and settlement thereof by the indemnifying party, and (c) such reasonable cooperation by the indemnified party in the defense as the indemnifying party may request (provided, however that the indemnifying party shall not enter into a settlement that does not provide for a complete release of the indemnified party unless the indemnified party shall have consented thereto in writing, and provided further that the indemnified party may participate in the action at its election through counsel of its choice at its own expense).

13. Governing Law and Jurisdiction

This Agreement shall be governed by the laws of the State of Illinois, without reference to conflict of law principles. Any dispute or claim involving this Agreement shall be finally settled by arbitration in Chicago, Illinois under the rules the American Arbitration Association. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, (i) either party may apply to any court of competent jurisdiction located in Illinois for injunctive relief without breach of this arbitration process, and (ii) TotalAttorneys may, at its option, bring an action in state or Federal court in Cook County, Illinois to collect any past due amounts owing by Attorney to TotalAttorneys hereunder.

14. Representations and Warranties

Each party represents and warrants to the other party that it has the authority to enter into this Agreement and to perform its obligations hereunder, that the granting of the rights and undertaking of the obligations hereunder will not conflict with any rights of a third party, and that its performance hereunder will not violate any applicable U.S. laws or regulations.

15. Non-Solicit

Attorney shall not recruit, hire or engage any employee or independent contractor of TotalAttorneys or any affiliate under total or partial common ownership with TotalAttorneys until 18 months after termination of this Agreement for any reason. In the event that Attorney breaches this Section 13, Attorney shall pay to TotalAttorneys, immediately upon breaching this Section 13, an amount equal to the total first year compensation Attorney pays the applicable employee or independent contractor. Such fee shall be deemed to constitute partial liquidated damages, and shall not be in limitation of any other remedies TotalAttorneys may have at equity or law.

16. Miscellaneous

All notices required or permitted under this Agreement shall be in writing and shall be deemed
received when (i) delivered personally, or (ii) sent by confirmed facsimile (followed by the actual document via U.S. mail). All communications shall be sent to the address set forth for each party on the signature page hereto. If any provision of this Agreement is held to be unenforceable or invalid for any reason, the remaining provisions will continue in full force and effect with such unenforceable or invalid provision to be changed and interpreted to best accomplish its original intent and objectives. No changes or modifications to or waivers of any provisions of this Agreement shall be effective unless evidenced in writing and signed by both parties. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. This Agreement, including any Statements of Work, constitutes the entire agreement between the parties relating to the subject matter hereof and supercedes all prior oral or written communications or understandings related thereto. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement between the parties. Attorney shall be responsible for all sales taxes, use taxes and any other similar taxes and charges of any kind imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding taxes based solely upon TotalAttorneys’ income derived hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Zenas Zelotes, LLC

By: ________________________________
Print Name: __________________________
Title: ________________________________

TotalAttorneys LPO, LLC

By: ________________________________
Print Name: __________________________
Title: ________________________________
EXHIBIT A
RETAINER AGREEMENT PROVISIONS

“I acknowledge that Zenas Zelotes, LLC, hereinafter referred to as “Attorney”, uses outsourced legal and administrative support services, some of which may be provided by service providers located outside of the United States. By retaining Attorney, I expressly consent to the use of such service providers with no further notice to me of their use in any particular manner. In the course of these services, I authorize Attorney to disclose information that is protected by Attorney’s obligation of confidentiality and by attorney-client privilege. Attorney has carefully chosen the service providers with which they work, and they are all bound to Attorney by contractual obligations of confidentiality. Attorney also ensures that all service providers have not performed services for any parties adverse to my interest. Attorney will also review the work provided by Attorney’s support staff and verify that it is accurate, relevant and complete. I understand that Attorney alone is responsible for my legal matter.

My signature on this disclaimer constitutes my consent for Attorney to disclose information that Attorney considers necessary to the service providers. Attorney will refrain from using any such service providers if I request it, but this may increase the total fees in my case.

I acknowledge that Attorney advised me that conducting attorney-client conversations over cellular telephones, though not necessarily violating attorney-client privilege, involves potential risks of interception and such conversations cannot be considered confidential. My signature in this disclaimer serves as my informed consent to communicate with Attorney and/or service providers via cellular telephones should the need arise.

I further acknowledge that Attorney advised me that sending unencrypted email can violate attorney-client privilege as it involves the potential risk of interception of client confidences. My signature in this disclaimer serves as my informed consent to communicate with Attorney and/or service providers via email.

Attorney has advised me that some electronic documents will be stored outside of his office on a secured SSL 128 bit encrypted storage facility. My signature in this disclaimer serves as my informed consent to the storage of my personally identifiable electronic data in a secure SSL 128 bit encrypted online storage facility.”
3. Exhibit 3: e-Mail Correspondence & Miscellaneous e-Mail Attachments
Mr. Zelotes,

It was good talking with you today. I just wanted to go over the main points again for how Clear Bankruptcy is run.

We run a marketing cooperative that essentially allows sponsoring participants to take advantage of expensive nationwide search terms that most firms would be unable to afford on their own. We spend tens of thousands of dollars every month to drive traffic to our site. Here’s a quick overview of the program:

- No sign up or termination fees.
- Month to Month participation
- Exclusive right to contacts within a county (zip code)
- You only pay for the contacts you receive
- Call Center Services

The site is called www.clearbankruptcy.com. I want to be fair to every firm, so because it is exclusive, it is on a first come, first serve basis. Give me a call with any questions otherwise I’ll give you a call in a week.

Thanks,

Aaron Roemig

Office of Attorney Kevin Chern

(312) 496-6171 phone

(866) 233-2984 fax

aaron@clearbankruptcy.com
Gmail - Attn: Zenas - Clear Bankruptcy Information

25 East Washington Street, Suite 510
Chicago, IL 60602

www.totalattorneys.com
Hey Zenas,

Good talking with you today. I’ve attached the contracts for the Bankruptcy Case Support. There are five total documents. There is the basic CIN legal contract to set up an account for you, a second CIN legal contract which allow Total Attorneys access to the account and says that WE will be paying for it. There is the actual LPO agreement and finally the Credit Card authorization. We’ve also attached the questionnaire to get specifics on your firm/jurisdiction. Sounds like a lot, but once it’s all done everything after is a breeze.

Remember, if we get the contracts back within 5 business days, you can then send in as many cases in the following 48 hours as you want at half the cost (Chapter 7 would be $198 and Chapter 13 would be $248). Not a bad little deal.

Let me know if you have any questions in reviewing the docs, otherwise I will be giving you a call on Tuesday. Let me know what time works best.

Thanks Zenas,

Bret

---

**Bret Libigs**

**Office of Attorney Kevin Chern**

(312) 496-6150  phone

(312) 810-3228  cell

bret@totalattorneys.com

**Total Attorneys, Inc.**

25 East Washington Street, Suite 510
attachements

Credit Card Authorization Form - TA LPO.pdf
29K

LPO Agreement - _ _ .pdf
56K

TALPO Client Contract.pdf
206K

ATTORNEY QUESTIONNAIRE.pdf
72K

CIN Contract.pdf
33K
# LAW FIRM QUESTIONNAIRE

**NAME OF FIRM:**

**ADDRESS:** | **CITY:** | **STATE:** | **ZIP CODE:**

**CONTACT PERSON(S):**

**TELEPHONE NUMBER:** | **FAX NUMBER:**

**FEDERAL JURISDICTIONS WHERE YOU PRACTICE:**

**TIME ZONE:**

- [ ] EASTERN
- [ ] CENTRAL
- [ ] MOUNTAIN
- [ ] PACIFIC

**WEB ADDRESS:**

---

**PLEASE LIST ALL USERS TO HAVE ACCESS TO TOTAL ATTORNEYS LPO ONLINE CASE MANAGEMENT DATABASE BELOW:**

<table>
<thead>
<tr>
<th>USER</th>
<th>FIRST NAME</th>
<th>LAST NAME</th>
<th>EMAIL ADDRESS</th>
<th>TITLE</th>
<th>OFFICE PHONE NO.</th>
<th>DESIRED USER NAME</th>
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<td>DESIRED USER NAME</td>
</tr>
</tbody>
</table>
WILL MORE THAN ONE ATTORNEY BE SIGNING PETITIONS FOR THE LAW FIRM?

- [ ] YES
- [ ] NO

PLEASE LIST ALL ATTORNEYS:

<table>
<thead>
<tr>
<th></th>
<th>ATTORNEY NAME</th>
<th>BAR #</th>
</tr>
</thead>
<tbody>
<tr>
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<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PLEASE SELECT THE BANKRUPTCY PETITION PREPARATION SOFTWARE THAT IS IN USE BY YOUR FIRM:

- [ ] Best Case
- [ ] EZ-Filing
- [ ] Bankruptcy Pro
- [ ] Bankruptcy 2009

ON AVERAGE, HOW MANY BANKRUPTCY CASES DO YOU GENERATE PER MONTH?

- [ ] 1-5
- [ ] 6-10
- [ ] 11-20
- [ ] 21-30
- [ ] 31-40
- [ ] 41-50
- [ ] If greater than 51, approx. ______

ON AVERAGE, HOW MANY “RUSH PETITIONS” (LESS THAN 24-HOUR TURNAROUND) DO YOU GENERATE PER MONTH?

- [ ] 1-3
- [ ] 4-8
- [ ] 9-15
- [ ] 16-20
- [ ] 21+

DO YOU HAVE (CHECK ALL THAT APPLY):

- [ ] Scanner
- [ ] Adobe Acrobat
- [ ] Other PDF Creation Software

DOES YOUR JURISDICTION REQUIRE YOU TO OBTAIN TAX RETURNS FROM THE DEBTORS?

- [ ] YES
- [ ] NO

IF YES, PLEASE ANSWER QUESTIONS 11-12.

PLEASE SELECT THE NUMBER OF RETURNS REQUIRED PER CHAPTER:

- **CHAPTER 7:**
  - [ ] 1 YEAR
  - [ ] 2 YEAR
  - [ ] 3 YEARS
  - [ ] 4 YEARS

- **CHAPTER 13:**
  - [ ] 1 YEAR
  - [ ] 2 YEAR
  - [ ] 3 YEARS
  - [ ] 4 YEARS

DOES YOUR JURISDICTION ACCEPT TAX TRANSCRIPTS AS A SUBSTITUTE FOR TAX RETURNS?

- [ ] YES
- [ ] NO

FOR SCHEDULE B – QUESTION 4: IS IT YOUR STANDARD OF PRACTICE TO LIST HOUSEHOLD ITEMS INDIVIDUALLY?

- [ ] YES, EACH HOUSEHOLD ITEM MUST BE LISTED SEPARATELY, WITH AGGREGATE TOTAL
- [ ] NO, PLEASE LIST “UNSECURED MISC. HOUSEHOLD GOODS AND FURNISHINGS” AND PROVIDE AGGREGATE TOTAL

WHEN ASSIGNING A VALUE TO MOTOR VEHICLES, DOES YOUR FIRM USE:

- [ ] NADA TRADE-IN
- [ ] NADA RETAIL
- [ ] KELLY BLUE BOOK TRADE-IN
- [ ] KELLY BLUE BOOK PRIVATE PARTY VALUE
- [ ] KELLY BLUE BOOK RETAIL
<table>
<thead>
<tr>
<th>Question</th>
<th>Options</th>
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<tr>
<td>Does your judicial district mandate the use of a model Chapter 13 plan?</td>
<td>☐ Yes, a model plan is required  ☐ No, a standard form plan will suffice</td>
</tr>
<tr>
<td>Would you like your prepared Chapter 13 plans to include current mortgage payments by default?</td>
<td>☐ Yes  ☐ No</td>
</tr>
<tr>
<td>Do the Chapter 13 trustees or judges in your district accept plans that propose to pay a 0% dividend to general unsecured creditors?</td>
<td>☐ Yes, 0% plans are commonplace in my jurisdiction  ☐ No, trustees and judges usually like plans proposing at least ________% to G.U.C.</td>
</tr>
<tr>
<td>What is the statutory interest rates on judgment / judicial liens in your district/division?</td>
<td>________% interest</td>
</tr>
<tr>
<td>Does your jurisdiction require recorded mortgage documents from your debtors?</td>
<td>☐ Yes, required in all cases  ☐ No, not required</td>
</tr>
<tr>
<td>If required, please list what you would need obtained:</td>
<td></td>
</tr>
<tr>
<td>Does your jurisdiction require vehicle titles / registrations from your debtors?</td>
<td>☐ Yes, required in all cases  ☐ No, not required</td>
</tr>
<tr>
<td>If required, please list what you would need obtained:</td>
<td></td>
</tr>
<tr>
<td>Does your jurisdiction require vehicle insurance declarations from your debtors?</td>
<td>☐ Yes, required in all cases  ☐ No, not required</td>
</tr>
<tr>
<td>Does your jurisdiction require bank account statements from your debtors?</td>
<td>☐ Yes, last _________ months required in all cases  ☐ No, not required</td>
</tr>
<tr>
<td>Does your jurisdiction require cancelled checks from checking accounts from your debtors?</td>
<td>☐ Yes, last _________ months required in all cases  ☐ No, not required</td>
</tr>
<tr>
<td>Does your jurisdiction require credit card statements from your debtors?</td>
<td>☐ Yes, last _________ months required in all cases  ☐ No, not required</td>
</tr>
<tr>
<td>Does your jurisdiction require retirement / 401(K) / IRA statements from your debtors?</td>
<td>☐ Yes, required in all cases  ☐ No, not required  ☐ Not required, but preferred</td>
</tr>
<tr>
<td>Does your jurisdiction require divorce decrees / separation agreements from your debtors?</td>
<td>☐ Yes, required in all cases  ☐ No, not required  ☐ Not required, but preferred</td>
</tr>
<tr>
<td>Does your jurisdiction require installment contracts from your debtors?</td>
<td>☐ Yes, required in all cases  ☐ No, not required  ☐ Not required, but preferred</td>
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</table>

Please fax completed form to (866) 712-8951
CREDIT INFONET INC. AND CIN LEGAL DATA SERVICES
STANDARD AGREEMENT FOR SERVICES FOR CLIENTS OF TOTAL ATTORNEYS INC
LEGAL PROCESSING SERVICES

This contract is between Credit Infonet, Inc., an Iowa corporation doing business as CIN Legal Data Services, (hereafter, "CIN"), and the undersigned licensed attorney (hereafter, "Agent").

WHEREAS, CIN is offering for sale and Agent desires to obtain a wide variety of consumer credit, asset, income and tax information products pertaining to Consumers who wish to file a bankruptcy.

WHEREAS, Agent desires that CIN render services to Agent’s bankruptcy clients in accordance with CIN’s customary practice of providing access to credit reporting information at the written instructions of the consumer(s) to whom the data relates in compliance with section 604 (1681b) (a) (2) of the FCRA. Agent desires that said services provided under this specific contract and the account credentials provided by CIN be provided to its contract agent, Total Attorneys Inc (TAI), with whom Agent has entered into a contract relationship to act on its behalf.

WHEREAS, CIN provides a web-based application and system-to-system interfaces with multiple partner bankruptcy form preparation software companies from which Agent can order or Agent’s Contractor, TAI, can order on its behalf all of CIN’s products and services without the need to rekey information and one centralized location from which Agent or Agent’s Contractor, TAI, acting on its behalf can retrieve the financial information necessary to evaluate a Consumer’s bankruptcy options.

NOW THEREFORE, in consideration of the promises and the mutual benefits, covenants, and agreements set forth in this Agreement, CIN and Agent agree as follows:

DEFINITIONS

Bankruptcy Due Diligence Products shall mean the consumer-related asset, income, compliance and income tax information bankruptcy products offered by CIN, including but not limited to the real property automated appraisals and broker price opinions, the real property ownership reports and lien search reports, the vehicle information and valuation products, the federal income tax transcripts and the tax transcript summary reports.

Consumer shall mean any member of the general public who contacts Agent for advice on filing a bankruptcy.

Consumer Credit Products shall mean the Consumer Liability Report (CLR) in all of its forms, including but not limited to the CLR, CLR2, CLR3, 2 Source CLR, 3 Source CLR, and 3 Source Plus CLR. Consumer Credit Products contain information on consumers from one or more consumer reporting agencies.

Service shall mean both CIN’s online transaction management platform accessible via www.cinlegal.com and CIN’s transaction management platform accessible via interfaces with various partner bankruptcy form preparation software companies. These platforms are the means by which Agents can order and retrieve Consumer Credit Products and Bankruptcy Due Diligence Products from CIN.

Alò shall mean Total Attorneys Inc., a legal processing operation contracted by Agent to act on its behalf for purposes of processing consumer bankruptcy petitions, facilitating the ordering of Bankruptcy Due Diligence Products and Consumer Credit Products under the account credentials provided under this agreement, and collecting from Consumers and paying to CIN the fees owed to CIN for products ordered.
TAI Employee shall mean an employee of TAI designated to order Bankruptcy Due Diligence Products and Consumer Credit Products on behalf of Agent. TAI employees and contractors authorized by Agent under this agreement shall be listed in Exhibit B.

GENERAL TERMS & CONDITIONS

1.1 CIN is a company providing products and services to support the practice of consumer bankruptcy law. CIN is not a law firm or legal association, and accordingly, CIN can not establish an attorney-client relationship with any Agent or any Consumer.

1.2 Use of CIN’s Service is offered to Agent only upon its acceptance, without modification, of the terms, conditions, and notices contained herein.

1.3 CIN does not engage in the business of bankruptcy petition preparation as CIN does not prepare bankruptcy petitions, schedules, or any other documents for filing with the courts.

1.4 CIN makes no analysis or guarantees regarding the eligibility, suitability, or financial ability of any Consumer to file a bankruptcy.

1.5 Agent expressly states and represents that he or she is the sole individual or entity responsible for deciding whether or not to initiate an attorney-client relationship with any Consumer, to initiate a bankruptcy filing or any other legal action for any Consumer, and to prepare and file any bankruptcy petitions. The preparation and filing of a bankruptcy petition includes, without limitation, any legal discretion, judgment, interpretation, analysis, or activity, or any such activity that could be reasonably construed as such, that was utilized or demonstrated in causing the petition to be filed or not filed.

1.6 CIN does not engage in or do business with any entity that does engage in consumer credit repair activities.

1.7 CIN may from time to time change, delete, or add to the Consumer Credit Products and Bankruptcy Due Diligence Products currently offered for sale to Agent, with or without any advance notice to Agent.

1.8 CIN may suspend Agent’s access to any part of, or all of, the Service, and any related service(s), at any time, with or without cause, with or without notice, and effective immediately, for any reason whatsoever.

1.9 CIN will invoice TAI monthly for all Bankruptcy Due Diligence Products and Consumer Credit Products Agent orders under the Account Credentials provided under this agreement. Payment is due by the 15th of each month following invoicing.

1.10 Agent acknowledges that per Agent’s contract with TAI, TAI shall be responsible for paying CIN for each and every Consumer Credit Product and Bankruptcy Due Diligence Product ordered. Failure to pay monthly invoices by the 15th of the month may lead to the termination of this Agreement and subject both TAI and Agent to collection action.

1.11 CIN is not an agent or representative of the Agent or of TAI for any purpose, including but not limited to, the preparation and initiation of a bankruptcy filing for any Consumer. Agent agrees that no joint venture, partnership, employment, or agency relationship or direct credit report sales agreement exists or is created between it and CIN as a result of this Agreement.

1.12 Agent shall not, directly or indirectly, use or reference CIN on any of its stationary, marketing materials, or Internet websites without the expressed written consent of CIN.
1.13 Agent will be provided with a client code, user names and passwords for accessing the Service securely. The Agent’s client code, as well as a designated user name and password for a designated TAI Employee will further be provided to TAI for ordering the Services on behalf of Agent. Designated TAI employees shall be listed on Exhibit B of this Agreement. Agent is solely responsible for safeguarding the information provided, including credentials provided to TAI to be used on its behalf. Agent agrees to notify CIN of any changes in personnel or staffing that require a modification in the information provided to access the Service, as well as to notify CIN immediately should its relationship with TAI be terminated. In the event that the Agent detects unauthorized usage, it is Agent’s responsibility to immediately notify CIN of the detected unauthorized use.

1.14 CIN reserves the right to periodically audit Agent’s system utilization to detect any unauthorized use of the Service.

1.15 CIN does not guarantee or warrantee any information contained within its Consumer Credit Products and Bankruptcy Due Diligence Products. CIN shall not be held responsible or liable for any loss or damage caused by neglect or acts of any of its servants, agents, attorneys, clerks, contractors, or employees, or the servants, agents, attorneys, clerks, contractors, or employees of TAI, in procuring, collecting and communicating any information by or to Consumer. No promise, statement, representation or agreement made by any employee or other representative of CIN and not expressed in this Agreement shall bind CIN contractually or otherwise to Agent.

1.16 Agent agrees to indemnify and hold harmless CIN, its parents, subsidiaries, affiliates, strategic partners, officers and employees, jointly and severally, from any loss, claim, demand, or damage, including reasonable attorneys fees and costs, arising out of Agent’s, TAI’s, or Consumer’s use of the Service or arising from any claim or suit brought by Agent, TAI, or Consumer based on alleged violation of any provisions of this Agreement.

1.17 CIN will hold in the strictest of confidence any and all Agent-specific information collected by CIN in the process of fulfilling orders for Consumer Credit Products and Bankruptcy Due Diligence Products via the Service. CIN will utilize this information for no other purpose than the fulfilling of its responsibilities as outlined in this Agreement.

1.18 This Agreement shall be governed by and construed under the laws of the State of Ohio and the United States of America. Any Ohio state court or federal court situated in Ohio shall have proper jurisdiction over any legal action initiated regarding this Agreement or arising out of this Agreement. Use of the Service is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph.

1.19 All contents of the Service are Copyright (c) 2008 Credit Infonet Inc., c/o Credit Infonet, 4540 Honeywell Ct, OH, 45424, and USA. All rights reserved.

1.20 Credit Infonet, CIN Legal Data Services, CIN, myHorizon, and all Bankruptcy Due Diligence Products and services referenced herein are either trademarks or registered trademarks of Credit Infonet, Inc.

OBLIGATIONS OF AGENT AND CIN REGARDING CONSUMER CREDIT PRODUCTS

2.1 Agent desires that CIN render services to Consumers, in accordance with CIN’s customary practice of providing access to credit reporting information at the written instructions of the consumer(s) to whom the data relates in compliance with section 604 (1681b) (a) (2) of the FCRA.

2.2 Agent or Agent’s designated TAI Employee shall provide CIN with Consumer’s written instructions regarding credit reporting information by one of the following two methods: 1) by faxing, emailing, or on-line uploading of a completed and signed hard-copy Consumer
Authorization and Release form and a photo ID of each consumer on the order; or 2) by successfully completing the Online Authentication Module for each consumer on the order. If Agent uses a hard-copy Consumer Authorization and Release form, Agent shall solely be responsible for retaining the original form and the photo ID documentation in the consumers’ file for two (2) years from the date of submission.

2.3 CIN will complete most Consumer Credit Product orders in less than one (1) minute once proper authorization is received and processed per section 2.2.

2.4 CIN will deliver ordered Consumer Credit Products to the Agent or TAI online via its web-based application at www.cinlegal.com. Qualifying Agents or TAI may also receive the ordered products within partner bankruptcy form preparation software programs via system-to-system interfaces.

2.5 CIN archives Consumer Credit Products ordered. This ensures that proper documentation will exist in the unlikely event that there is a problem or issue with information provided by CIN.

2.6 Agent is responsible for safeguarding any Consumer Credit Product sent to the Consumer at the Agent’s place of business or to TAI.

2.7 Agent acknowledges that per agent’s contact with TAI, TAI shall be responsible for acting as an escrow agent by collecting from the Consumer the Consumer Credit Product charge due to CIN and for paying the collected funds to CIN upon receipt of a monthly invoice and usage summary from CIN. Agent acknowledges that TAI’s failure to remit the invoiced funds to CIN by the 15th of each month may constitute a breach of fiduciary duty and subject TAI or Agent to collection action. Failure to pay monthly invoices in a timely manner may also lead to the termination of this Agreement.

2.8 CIN may from time to time reduce or increase the charges to Consumers for Consumer Credit Products after written notices mailed, emailed, or otherwise delivered to Agent at its business address. Agent agrees to make said Consumers aware of all such price changes.

2.9 Agent hereby agrees, represents, and warrants that in assisting CIN in complying with the Consumer’s written instructions, said Agent will in all respects comply with all the provisions of 15 U.S.C. 1681 et seq (Fair Credit Reporting Act) and that services will be requested only for the Consumer’s exclusive use and only in connection with bankruptcy services provided by said Agent. Agent certifies, agrees, represents, and warrants that it will not use the Consumer Credit Products provided under this Agreement in connection with any services to Consumers for the repair or improvement of their credit files at the national credit repositories. Agent agrees that the employees of Agent or TAI will be forbidden to attempt to obtain reports for any other purpose than those pertaining to the Consumer’s written instructions. Please initial to show your acceptance and full understanding of the terms in this section. ______________

2.10 Agent acknowledges and understands that 15 U.S.C. 1681 et seq provides that any person who knowingly or willfully obtains information on a consumer from a consumer reporting agency under false pretense shall be fined under Title 18 U.S.C or imprisoned for not more than two years or both.

OBLIGATIONS OF AGENT AND CIN REGARDING BANKRUPTCY DUE DILIGENCE PRODUCTS

3.1 Agent is a consumer bankruptcy attorney who desires to obtain financial liabilities, asset, income and tax information on a Consumer for the sole purpose of determining the suitability of bankruptcy for that Consumer.
3.2 Agent or Agent’s contracted firm, TAI, will obtain any required signatures and/or authorizations from the Consumer prior to ordering Bankruptcy Due Diligence Products from CIN and will promptly fax or upload any required authorizations, forms and/or documentation to CIN. Failure to provide required authorizations, forms and/or documentation to CIN in a timely manner may lead to termination of this Agreement.

3.3 CIN will fulfill Bankruptcy Due Diligence Product orders after receiving and processing the required authorizations, forms and/or documentation. CIN will return most real property valuations and vesting information for Consumers in outlying areas of the country within two business days. CIN will return most income tax transcript data within two business days of the receipt of a signed 4506-T form from the Consumer.

3.4 CIN will deliver ordered Bankruptcy Due Diligence Products to the Agent or TAI online via its web-based application at www.cinlegal.com. Qualifying Agents or TAI may also receive the ordered products within partner bankruptcy form preparation software programs via system-to-system interfaces.

3.5 CIN archives Bankruptcy Due Diligence Products ordered for a minimum of seven (7) years. This ensures that proper documentation will exist in the unlikely event that there is a problem or issue with information provided by CIN.

3.6 Agent acknowledges that per Agent’s contract with TAI, TAI shall be responsible for paying CIN for each and every Bankruptcy Due Diligence Product ordered on its behalf. Failure to pay monthly invoices by the 15th of each month may lead to the termination of this Agreement and subject TAI or Agent to collection action.

**OBLIGATIONS OF AGENT AND CIN REGARDING N.A.D.A. AUTO VALUATION OPTION**

4.1 Option description, warranties, and limitations. By selecting the NADA valuations (hereinafter, the NADASC Licensed Program) option, Agent and TAI agree to abide by this Addendum as well as any click-through license that may appear upon installation of the program. Agent acknowledges that CIN is a Value Added Remarketer (VAR) for NADASC and does not warrant or represent itself as the originator of the vehicle valuation information.

NADASC warrants that the Valuation Information provided in the Licensed Program is as current and complete as may be achieved using the source data and editorial methods normally employed by the N.A.D.A. Official Used Car Guide® Company in the ordinary course of its business.

Agent agrees to indemnify and hold CIN harmless from and against any losses, damages, liabilities and expenses resulting from any claim made in connection with the performance of the NADASC Licensed Program. The obligations of Agent under this Paragraph shall survive termination of this Agreement.

4.2 Delivery of Monthly Valuation Updates. CIN will provide access to monthly valuation updates (Update) by the first business day of the month.

4.3 Pricing. Agent acknowledges that the pricing (Option Fee) provided in the Order Form is subject to change on an annual basis in accordance with any changes made by NADASC.

4.4 Terms and Termination. Agent and CIN acknowledge that the NADASC Licensed Program option term shall be one (1) year. Thereafter, this option will renew under the same terms and conditions set forth in this Addendum, except that the Option Fee shall be the fee in effect at the time of the renewal. Renewal terms shall be for one year each effective on the anniversary of the date of this Addendum.
4.5 Declarations. With respect to the NADASC Licensed Program, Agent agrees as follows:

4.5.1 Agent acknowledges that the license to use the NADASC Licensed Program granted hereunder shall not permit Agent to market, sublicense or utilize the NADASC Program separate from or independent of the Software.

4.5.2 Agent agrees to not disassemble, decompile, reverse engineer or otherwise modify or alter the NADASC Licensed Program.

4.5.3 Agent agrees that the NADASC Licensed Program shall not be used as a data source from which a new valuation database or valuation system may be created, and that vehicles will be valued individually as needed in the Software.

4.5.4 Except as otherwise provided in the terms of this license agreement, Agent agrees not to reproduce, store in a retrieval system or transmit, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, any vehicle valuation information contained in the N.A.D.A. Official Used Car Guide® (hereinafter, the NADASC Values), without the prior written consent of NADASC.

4.5.5 Agent acknowledges and agrees that the NADASC Licensed Program, the NADASC Values, all enhancements and derivative works, are the sole property of NADA Services Corporation, and are subject to a valid copyright. Agent acknowledges that NADASC has created the NADASC Values and the NADASC Licensed Program at great time and expense and that the NADASC Values and the NADASC Licensed Program contain confidential and proprietary information protected by copyright and trade secret laws. Agent further acknowledges that certain of its employees will become familiar with the NADASC Licensed Program, and that NADASC may suffer great harm if Agent, or its employees disclose the NADASC Licensed Program to a third party. Agent, therefore, agrees to: (a) hold the NADASC Licensed Program in strict confidence; (b) disclose the NADASC Licensed Program only to Agent’s employees to whom knowledge is required for its proper use hereunder; (c) cause such employees to hold the NADASC Licensed Program in strict confidence; and (d) take steps to prevent the accidental or otherwise unauthorized disclosure of the NADASC Licensed Program. The confidentiality obligations of Agent contained in this paragraph shall survive termination of this license agreement.

EFFECTIVE DATE AND TIME

This Agreement shall become effective on the date referenced below. Agent’s account with CIN will be activated usually within three (3) business days of its returning this agreement to CIN. CIN’s Account Management Team will notify Agent by telephone and by email once Agent’s account is active and ready for use.

TERM

This Agreement is for a term of one (1) month and shall remain in force and renew automatically for successive terms of one (1) month each, subject to termination by either party.

TERMINATION

Either party, with or without cause, for any reason or no reason, may terminate this Agreement at any time by giving a one-day notice, either verbally or in writing, to each party’s primary place of business; however, the obligations and agreements set forth in sections 1.10, 1.16, 1.18, 2.2, 2.6, 2.7, 2.9, 3.5, 3.6 and 4.1-4.7 above will remain in force.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date noted below.

**Agent:**

Agent Name__________________________________________________________

Agent Signature ______________________________________________________

Date ________________________________________________________________

**Agent information (Agent):**

Agent’s Firm’s Name: ________________________________________________

Agent's Firm’s Address: ______________________________________________

Agent’s Firm’s City: __________________________________________________

Agent’s Firm’s State: ____________ Agent’s Firm’s Zip: _________________

Agent’s Firm’s Phone: ________________________________

Agent’s Firm’s Fax: ________________________________________________

Agent’s Firm’s e-Mail: ______________________________________________

Software System Utilized by Agent’s Firm: ______________________________

**Credit Infonet Inc. (CIN):**

Credit Infonet Representative: _________________________________________

Position: ___________________________________________________________

Signature and Date: ________________________________

Exhibit A:
Agent’s Firm’s Authorized Users:

Name: _______________________________________________________________________
Position: _____________________________________________________________________
Phone: _______________________________________________________________________
e-Mail: _______________________________________________________________________

Name: _______________________________________________________________________
Position: _____________________________________________________________________
Phone: _______________________________________________________________________
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| Name: | ________________________________ |
| Position: | ________________________________ |
| Location: | ________________________________ |
| Phone: | ________________________________ |
| e-Mail: | ________________________________ |
Consumer Referral Agent Agreement

1. The undersigned Agent hereby petitions Credit Infonet, Inc. (CIN) to render services to said Agents Consumer clients in accordance with the CIN customary practice of providing access to credit reporting information at the written instructions of the consumer to whom the data relates. The supplying of such data is in compliance with section 604 (1681b) (a) (2) of the FCRA.

2. Agent shall provide CIN with Consumer’s written instructions regarding credit reporting information by one of the following two methods: 1) by faxing, emailing, or on-line uploading of a completed and signed hard-copy Consumer Authorization and Release form and a photo ID of each consumer on the order; or 2) by successfully completing the Online Authentication Module for each consumer on the order. If Agent uses a hard-copy Consumer Authorization and Release form, Agent shall retain the original form and the photo ID documentation in the consumers’ file for two (2) years from the date of submission. Agent is responsible for safeguarding any Consumer Credit Product sent to the Consumer at the Agent’s place of business.

3. Agent is also responsible for acting as an escrow agent by collecting from the Consumer the Consumer Credit Product charge due to CIN and for paying the collected funds to CIN upon receipt of a monthly invoice and usage summary from CIN. Agent acknowledges that failure to timely remit the invoiced funds to CIN may constitute a breach of fiduciary duty and subject Agent to collection action. Failure to pay monthly invoices in a timely manner may also lead to the termination of this Agreement.

4. CIN may from time to time reduce or increase the charges to the Consumer after written notices mailed or delivered to Agent at his business address. Agent agrees to make said Consumers aware of all price changes.

5. Agent hereby agrees, represents, and warrants that in assisting CIN in complying with the Consumers written instructions, said agent will in all respects comply with all the provisions of 15 U.S.C. 1681 et seq (Fair Credit Reporting Act) and that services will be requested only for the Agents Clients exclusive use and only in connection with bankruptcy services provided by said Agent. Agent certifies, agrees, represents, and warrants that it will not use CLR reports provided under this agreement in connection with any services to Consumer for the repair or improvement of their credit files at the national credit repositories. Agent agrees that the employees of Agent will be forbidden to attempt to obtain reports for any other purpose than those pertaining to the Consumers written instructions. Please initial to show your acceptance and full understanding of the terms in this section. (*Please Initial Here*)

6. Agent further agrees to indemnify CIN and each of its officers and employees, jointly and severally, from any loss, damage, attorney fees and cost arising from any claim or suit based on alleged violation of any provisions of this agreement.

7. This agreement is for a term of one month and shall remain in force and renew automatically for successive terms of one month each, subject to cancellation by either party at the end of such one-month period. CIN may at any time terminate this agreement in the event of any federal or state law or decision, or data access price increases that affect the economic operation of CIN, or any violation of the provisions of this agreement by the agent. Agent may terminate this agreement at any time in the event of increases in charges to the consumer by CIN.

8. No Information furnished to the Consumer is guaranteed nor is CIN in any way responsible for the content of such information. CIN shall not be held responsible or liable for any loss caused by neglect or acts of any of its servants, agents, attorneys, clerks or employees in procuring, collecting and communicating any information by or to Consumer. No promise, statement, representation or agreement made by any employee or other representative of CIN and not expressed in this agreement shall bind it contractually or otherwise to Agent.

9. In no way shall this agreement be construed or implied as a partnership, joint effort or direct credit report sales agreement between Agent and CIN.

10. 15 U.S.C. 1681 et seq provides that any person who knowingly or willfully obtains information on a consumer from a consumer reporting agency under false pretense shall be fined under Title 18 U.S.C or imprisoned for not more than two years or both.

This agreement shall be governed by and construed under the laws of the State of Ohio, and when services are facilitated via the Internet they shall be subject to the Credit Infonet Terms & Conditions, a copy of which is acknowledged to be attached to this agreement.

Signature__________________________________________  Title____________________________

Date____________________________________  200__

Firm Name: Zenas Zelotes, LLC
Address: 2389 Main Street                      City: Glastonbury                      State: CT
Zip: 06033                                      Phone: 860-449-0710
Fax:                                            Contact Name: Zenas Zelotes

Bankruptcy Software Used___________________________  CIN Account Manager: Ray Stuchell
Credit Infonet Terms & Conditions

The following are the terms and conditions for use of Credit Infonet Online (the Service), Credit Infonets online customer service and transaction management platform. Credit Infonet Online is utilized for the ordering of information products and services including, but not limited to, credit reporting products, consumer liability reports, flood zone determinations, closing, valuation, title, disbursement and recordation services. This Service is provided for the benefit of Credit Infonet customers who have executed valid contracts for the ordering of such information services.

Referral Agent Client Code, User Names and Password
Referral Agent utilizing the service has been provided with client code, user names and passwords for accessing the Service securely. The Referral Agent is solely responsible for safeguarding the information provided. The Referral Agent agrees to notify Credit Infonet of any changes in personnel or staffing that require a modification in the information provided to access the service. In the event that the Referral Agent detects unauthorized usage, it is its responsibility to immediately notify Credit Infonet of the detected unauthorized use.

Privacy
Referral Agent specific information collected by Credit Infonet in the process of fulfilling the Service is held in the strictest confidence. Credit Infonet utilizes this information for no other purpose than fulfilling its responsibilities as outlined in the Master Contract. Credit Infonet reserves the right to periodically audit a Referral Agents system utilization to detect any unauthorized use.

Indemnification
You agree to indemnify and hold Credit Infonet, its parents, subsidiaries, affiliates, strategic partners, officers and employees, harmless from any claim, demand, or damage, including reasonable attorneys fees, arising out of use of the service.

Termination by Credit Infonet
Credit Infonet may suspend access to any part, or all of the service, and any related service(s), at any time, with or without cause, with or without notice, effective immediately, for any reason whatsoever.

Modifications to Terms of Service
The Service is offered to users upon their acceptance without modification of the terms, conditions, and notices contained herein.

General
The laws of the State of Ohio and the United States of America govern this agreement. Use of the service is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph. Users agree that no joint venture, partnership, employment, or agency relationship exists between them and Credit Infonet as a result of this agreement. This agreement is to be used in conjunction with additional Credit Infonet agreements that may include, but are not limited to; a master product and service agreement, an application for service, an onsite inspection list, and an Internet usage policy addendum.

Copyright and Notices
All contents of the Service are Copyright (c) 2005 Credit Infonet Inc., c/o Credit Infonet, 4540 Honeywell Ct, OH, 45424, and USA. All rights reserved.

Trademark
Credit Infonet and Credit Infonet products and services referenced herein are either trademarks or registered trademarks of Credit Infonet, Inc.

Please initial to show acceptance and full understanding of the Terms and Conditions

INITIAL HERE

Signed Agreement should be returned via Fax to: 866-712-8951
Terms & Conditions of Use of myHorizon Credit Scoring Analysis
Within Consumer Liability Report (CLR)

1. By agreeing to these terms you are granted a limited, non-exclusive, non-transferable license to remotely access CIN Legal Data Services’ myHorizon Credit Score™ Utility, powered by CreditXpert Inc. for the sole purpose of accessing consumer-specific reports in connection with those authorized accounts consistent with ordinary operation of the Licensed Software’s functionality.

2. CIN Legal Data Services’ myHorizon Credit Score™ Utility, powered by CreditXpert, may only be utilized for internal business operations consistent with CIN Legal Data Services Standard Agreement for Service.

3. CIN Legal Data Services’ myHorizon Credit Score™ Utility, powered by CreditXpert, may not be utilized for use in any credit repair activities as described under the Credit Repair Organization Act (CROA).

4. You agree that you are not a Credit Repair Agency as described under the CROA, and that you shall not use, offer, or provide CIN Legal Data Services’ myHorizon Credit Score™ Utility, powered by CreditXpert, or any information derived from its utilization for use in any credit repair activities as described under the CROA.

5. You Agree that you will not change, delete or omit information or output generated by CIN Legal Data Services’ myHorizon Credit Score™ Utility, powered by CreditXpert.

6. You understand that CIN Legal Data Services, and CreditXpert retain all right, title and interest in the myHorizon Credit Score™ Utility, powered by CreditXpert, including all copyright and other intellectual property rights.

7. You Agree to comply with all applicable export laws and regulations.

Please initial to show acceptance and full understanding of the Terms and Conditions For Use of the myHorizon Credit Score™ Analysis

INITIAL HERE

Signed Agreement should be returned via Fax to: 866-712-8951
I hereby authorize TotalAttorneys LPO, LLC (“TotalAttorneys”) to charge my credit card for all fees and costs incurred under the terms of the Agreement at such times as are set forth in the Agreement and any attached Statement of Work. To this end, I authorize TotalAttorneys to immediately charge my credit card for an initial deposit equal to $___________________ (please enter amount - minimum $1,700.00 required). Fees due and owing as set forth in the Agreement shall be deducted from such deposit until such time as the deposit is reduced to $495, at which time (and at each successive time thereafter) I authorize TotalAttorneys to charge my credit card the amount equal to the initial deposit indicated above. I hereby agree that I shall not, under any circumstance, contest any charges to such credit card which are made by TotalAttorneys pursuant to the Agreement. I shall, as is the case with other disputes arising under the Agreement, be entitled to resolve any and all such disputes pursuant to Section 11 of the Agreement.

Cardholder’s Signature: _______________________________________

Date: _____/_____/_____
4. Exhibit 4: Kevin Chern Auto-Biography
Kevin Chern
Partner and Vice President of Technology

Kevin Chern is the former managing partner of the largest consumer bankruptcy law firm in the United States. Between 1997 and 2005, Mr. Chern built that firm from two attorneys to more than 180 employees in 19 states serving approximately 450 new clients each week. He has personally represented thousands of consumers in bankruptcy matters, and is a recognized expert in the area of law practice development.

Currently, Mr. Chern serves as administrator of five nationwide legal marketing networks, providing marketing, technology, business development and law practice management consulting services to more than 500 law firms across the country. He has architected four comprehensive law office case management systems and dozens of legal websites, and contributes regularly to several legal web logs. He is a member of the National Association of Consumer Bankruptcy Attorneys (NACBA) and the American Bankruptcy Institute (ABI).

As author of Life After Bankruptcy and President of Start Fresh Today Instructional, LLC, an EQUUS-approved provider of debtor education under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), Mr. Chern has throughout his career maintained a commitment to helping bankruptcy petitioners preserve the fresh start guaranteed by the bankruptcy discharge and rebuild their financial lives.

He is a lifelong resident of Chicago, married for ten years and proud father to a 7-year-old girl and 3-year-old boy.
5. Exhibit 5: Clear Bankruptcy Screen Captures
Trying to Fix Your Finances? We Can Help. Call 877-833-2410

IS BANKRUPTCY RIGHT FOR YOU?

Learn About...

- Chapter 7
- Chapter 13
- State Laws
- Automatic Stay

Click Here To Get A FREE CASE EVALUATION

Bankruptcy Information Center
Defy Your Debt & Get Back to Living

If you're struggling to make your monthly payments, filing bankruptcy may be the right debt-relief

Free Case Review
Bankruptcy Lawyers
Bankruptcy Basics
Chapter 7 Bankruptcy
Chapter 13 Bankruptcy
Financial Literacy
Bankruptcy and Family Life
Personal Financial Health
Protect Your Income
Your Financial Future
Bankruptcy Information Center
Defy Your Debt & Get Back to Living

If you're struggling to make your monthly payments, filing bankruptcy may be the right debt-relief solution for you.

Take the first step today and fill out the below form to talk to a local bankruptcy lawyer.

Step 1 of 5
FREE CONSULTATION — START HERE!

Bankruptcy laws vary by state. Supplying your Zip Code helps us to place you with a local lawyer.

Zip Code: 

Why are you considering bankruptcy? (Select all that apply)

- Garnishment
- Creditor Harassment
- Repossession
- Foreclosure
- Lawsuits
- Loss of Income
- Other: 

Estimate Total Debt:
Bankruptcy Codes Offer Protection

Millions of Americans have sought the protection of the U.S. Bankruptcy Code. It’s designed to deliver protection to people in financial jeopardy.

Bankruptcy often provides relief to those who’ve been affected by divorce, job loss, identity theft, excessive medical debt, disability or to folks who’ve had a hard time juggling high interest rates and late fees.

Many times, a combination of events contribute to financial woes; for example, some seemingly manageable credit card debt can become insurmountable when combined with a job loss. So, stop blaming yourself for your situation and take control of it.

The provisions of the U.S. Bankruptcy Code can provide a new beginning. Ask a bankruptcy lawyer about how the bankruptcy laws may be able to work for you.

Filing Bankruptcy Can Stop Creditor Harassment

Bankruptcy can provide immediate relief from creditor harassment. In most cases, when a person files a Chapter 7 bankruptcy or Chapter 13 bankruptcy, the court issues an automatic stay order, which prohibits any further collection action by creditors.

The bankruptcy automatic stay essentially:

- STOPS Foreclosure & Repossesion
• STOPS Foreclosure & Repossession
• HALTS Many Lawsuits, Wage Garnishments
• SILENCES Creditors (no more harassing phone calls, letters, etc.)

Sound like the kind of relief you could use? Speak to a bankruptcy lawyer about your debt-relief options.

Bankruptcy Questions? Talk to a Bankruptcy Lawyer
Considering what you’re going through, you deserve a break. Talk to a bankruptcy lawyer about whether filing bankruptcy may be right for you.

Call us at 877-833-2410 or fill out the fast free bankruptcy case review form.
NOTICE THE LOCATION AND USE OF A NEAR TRANSPARENT FONT IN WEB SITE FOOTER (ABOVE)

FOR ASSOCIATION DISCUSSION ABOUT THIS DISCLAIMER / SEE: Page 20
MR. ZELOTES PROCEEDS TO COMPLETE INFORMATION REQUEST FORM:
Take the first step today and fill out the below form to talk to a local bankruptcy lawyer.

### Step 2 of 5

**WHAT TYPE OF BILLS DO YOU HAVE?**

If you are not sure what bills you have, don't worry. Just give us your best estimate.

What bills do you have? (select all that apply)

- [x] Credit Cards / Store Cards
- [ ] Personal Loans
- [ ] Student Loans
- [x] Child Support
- [ ] Auto Loans
- [ ] Medical Bills
- [ ] Payday Loans
- [ ] Income Taxes
- [ ] Other:

Estimate Total Monthly Expenses: \$1,000.00

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**SECURE FORM**

Bankruptcy Codes Offer Protection

Millions of Americans have sought the protection of the U.S. Bankruptcy Code. It's designed to deliver...
Step 4 of 5
WHAT TYPES OF INCOME DO YOU HAVE?

Telling us about your debt, assets and income gives us a snapshot of your financial situation.

What types of income do you have? (select all that apply)
- Employed, Full-time
- Employed, Part-time
- Social Security
- Pension/Retirement
- Child Support/Maintenance
- Other: 
- No income

Estimate Total Monthly Income: $ 2500.00

Bankruptcy Codes Offer Protection

Millions of Americans have sought the protection of the U.S. Bankruptcy Code. It's designed to deliver...
Take the first step today and fill out the below form to talk to a local bankruptcy lawyer.

Step 5 of 5

Please provide your contact info below:

Please supply accurate contact information so we can provide you with the best possible customer service.

First Name: Bob
Last Name: Smith
Home Phone #: (860) 333-4848
Work Phone #: (712) 484-9940
Cell Phone #: bob@yahoo.com
E-mail: bobi@yahoo.com
Address: 15 Main Street

Bankruptcy Codes Offer Protection

Millions of Americans have sought the protection of the U.S. Bankruptcy Code. It's designed to deliver...
NEXT SET OF SCREENS DEMONSTRATES CHERN’S DISCLAIMERS / DISCLOSURES AND HOW HARD IT IS TO LOCATE THE ATTORNEY LIST (Search started by clicking remote blue disclosures hyperlink below)
Terms & Conditions

PLEASE READ THE FOLLOWING TERMS OF SERVICES & LEGAL NOTICES (THIS AGREEMENT) CAREFULLY BEFORE USING THE ClearBankruptcy.com WEBSITE (the 'Site' or Clear Bankruptcy). These terms explain your (and our) rights under this Agreement, and make certain disclosures required by the law. By using the Site, you give your assent to the terms of this Agreement. If you do not agree to these terms, you may not use the Site. Clear Bankruptcy, Inc. (Clear Bankruptcy), 'We' or 'Our') has the right, in our sole discretion, to modify, add, or remove any terms or conditions of this Agreement without giving individual notice to you, by posting the changes on the Site. Your continuing use of the Site signifies your acceptance of any such changes.

DISCLOSURES REQUIRED UNDER SECTION 527 AND 342 OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005;

NOTICE NO. 1 Notice Mandated By Section 342(b)(1) and 527(a)(1) Of The Bankruptcy Code

PURPOSES, BENEFITS AND COSTS OF BANKRUPTCY
PURPOSES, BENEFITS AND COSTS OF BANKRUPTCY

The United States Constitution provides a method whereby individuals, burdened by excessive debt, can obtain a fresh start and pursue productive lives unimpeded by past financial problems. It is an important alternative for persons strapped with more debt and stress than they can handle.

The federal bankruptcy laws were enacted to provide good, honest, hard-working debtors with a fresh start and to establish a ranking and equity among all the creditors clamoring for the debtor’s limited resources.

Bankruptcy helps people avoid the kind of permanent discouragement that can prevent them from ever re-establishing themselves as hard-working members of society.

To the extent that there may be money or property available for distribution to creditors, creditors are ranked to make sure that money or property is fairly distributed according to established rules as to which creditors get what.

This discussion is intended only as a brief overview of the types of bankruptcy filings and of what a bankruptcy filing can and cannot do. No one should base their decision as to whether or not to file for bankruptcy solely on this information. Bankruptcy law is complex, and there are many considerations that must be taken into account in making the determination whether or not to file. Anyone considering bankruptcy is encouraged to make no decision about bankruptcy without seeking the advice and assistance of an experienced attorney who practices nothing but bankruptcy law.

Types of Bankruptcy

The Bankruptcy Code is divided into chapters. The chapters which almost always apply to consumer debtors are chapter 7, known as a “straight bankruptcy,” and chapter 13, which involves an affordable
Types of Bankruptcy

The Bankruptcy Code is divided into chapters. The chapters which almost always apply to consumer debtors are chapter 7, known as a 'straight bankruptcy', and chapter 13, which involves an affordable plan of repayment.

An important feature applicable to all types of bankruptcy filings is the automatic stay. The automatic stay means that the mere request for bankruptcy protection automatically stops and brings to a grinding halt most lawsuits, repossessions, foreclosures, evictions, garnishments, attachments, utility shutoffs, and debt collection harassment. It offers debtors a breathing spell by giving the debtor and the trustee assigned to the case time to review the situation and develop an appropriate plan. In most circumstances, creditors cannot take any further action against the debtor or the property without permission from the bankruptcy court.

Chapter 7

In a chapter 7 case, the bankruptcy court appoints a trustee to examine the debtor’s assets to determine if there are any assets not protected by available ‘exemptions’. Exemptions are laws that allow a debtor to keep, and not part with, certain types and amounts of money and property. For example, exemption laws allow a debtor to protect a certain amount of equity in the debtor’s residence, motor vehicle, household goods, life insurance, health aids, retirement plans, specified future earnings such as social security benefits, child support, and alimony, and certain other types of personal property. If there is any non-exempt property, it is the Trustee’s job to sell it and to distribute the proceeds among the unsecured creditors. Although a liquidation case can rarely help with secured debt (the secured creditor still has the right to repossess the collateral if the debtor falls behind in the monthly payments), the debtor will be discharged from the legal obligation to pay unsecured debts such as credit card debts, medical bills and utility arrearages. However, certain types of unsecured debt are allowed special treatment and cannot be discharged. These include some student loans, alimony, child support, criminal fines, and some taxes.
fails behind in the monthly payments), the debtor will be discharged from the legal obligation to pay unsecured debts such as credit card debts, medical bills and utility arrears. However, certain types of unsecured debt are allowed special treatment and cannot be discharged. These include some student loans, alimony, child support, criminal fines, and some taxes.

Additional information about chapter 7 is available at the Site.

In addition to attorney fees, there is a filing fee that must be paid to the Bankruptcy Court.

Chapter 13

In a chapter 13 case, the debtor puts forward a plan, following the rules set forth in the bankruptcy laws, to repay certain creditors over a period of time, usually from future income. A chapter 13 case may be advantageous in that the debtor is allowed to get caught up on mortgages or car loans without the threat of foreclosure or repossession, and is allowed to keep both exempt and nonexempt property. The debtor's plan is a document outlining to the bankruptcy court how the debtor proposes to dispose of the claims of the debtor's creditors. The debtor's property is protected from seizure from creditors, including mortgage and other lien holders, as long as the proposed payments are made and necessary insurance coverages remain in place. The plan generally requires monthly payments to the bankruptcy trustee over a period of three to five years. Arrangements can be made to have these payments made automatically through payroll deductions.

Additional information about chapter 13 is available at the Site.

In addition to attorney fees, there is a filing fee that must be paid to the Bankruptcy Court.

Chapter 11
Chapter 11

By and large, chapter 11 is a type of bankruptcy reserved for large corporate reorganizations. Chapter 11 shares many of the qualities of a chapter 13, but tends to invoke much more complexity on a much larger scale.

However, since chapter 11 does not usually pertain to individuals whose debts are primarily consumer debts, further information about chapter 11 will be provided by reference to the following resource: The A Bankruptcy Basics & brochure prepared by the Administrative Office of the United States Courts, dated June 2000, and which can be accessed over the Internet by visiting the following website: www.uscourts.gov/bankruptcycourts.html.

Chapter 12

Chapter 12 of the Bankruptcy Code was enacted by Congress in 1986, specifically to meet the needs of financially distressed family farmers. The primary purpose of this legislation was to give family farmers facing bankruptcy a chance to reorganize their debts and keep their farms.

However, as with chapter 11, since chapter 12 does not usually pertain to individuals whose debts are primarily consumer debts, further information about chapter 12 will be provided by reference to the same 'Bankruptcy Basics' brochure referred to above, which can be accessed over the Internet at the same said website as mentioned for chapter 11.

What Bankruptcy Can and Cannot Do

Bankruptcy can relieve you from the debts that are not dischargeable and can provide you with a fresh start. Bankruptcy cannot stop creditors from trying to collect on a dischargeable debt until you file bankruptcy.
What Bankruptcy Can and Cannot Do

Bankruptcy may make it possible for financially distressed individuals to:

1. Discharge liability for most or all of their debts and get a fresh start. When the debt is discharged, the debtor has no further legal obligation to pay the debt.

2. Stop foreclosure actions on their home and allow them an opportunity to catch up on missed payments.

3. Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.

4. Stop wage garnishment and other debt collection harassment, and give the individual some breathing room.

5. Restore or prevent termination of certain types of utility service.

6. Lower the monthly payments and interest rates on debts, including secured debts such as car loans.

7. Allow debtors an opportunity to challenge the claims of certain creditors who have committed fraud or who are otherwise seeking to collect more than they are legally entitled to.

Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:

1. Eliminate certain rights of secured creditors. Although a debtor can force secured creditors to
Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:

1. Eliminate certain rights of secured creditors. Although a debtor can force secured creditors to take payments over time in the bankruptcy process, a debtor generally cannot keep the collateral unless the debtor continues to pay the debt.

2. Discharge types of debts singled out by the federal bankruptcy statutes for special treatment, such as child support, alimony, student loans, certain court ordered payments, criminal fines, and some taxes.

3. Protect all cosigners on their debts. If relative or friend co-signed a loan which the debtor discharged in bankruptcy, the cosigner may still be obligated to repay whatever part of the loan not paid during the pendency of the bankruptcy case.

4. Discharge debts that are incurred after bankruptcy has been filed.

Bankruptcy's Effect on Your Credit
By federal law, a bankruptcy can remain part of a debtor's credit history for 10 years. Whether or not the debtor will be granted credit in the future is unpredictable, and probably depends, to a certain extent, on what good things the debtor does in the nature of keeping a job, saving money, making timely payments on secured debts, etc.

Services Available From Credit Counseling Agencies
With limited exceptions, Section 109(h) of the Bankruptcy Code requires that all individuals who file for bankruptcy relief on or after October 17, 2005 receive a briefing that outlines all available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing must be given within 180 days prior to the bankruptcy filing. The briefing may be provided
Under certain exceptions, Section 407 of the bankruptcy code requires that all individuals who file for bankruptcy relief on or after October 17, 2005 receive a briefing that outlines all available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing must be given within 180 days prior to the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted over the Internet or over the telephone) and must be provided by a non-profit budget and credit counseling agency approved by the United States Trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies. In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge. The clerk also has a list of approved financial management instructional courses.

If you're not disciplined enough to create a workable budget and stick to it, can't work out a repayment plan with your creditors, can't keep track of mounting bills, or need more help with your debts than can be achieved by merely having a few of your unsecured creditors lower your interest rates somewhat, it probably makes little sense to consider contacting a credit counseling organization.

If, on the other hand, you meet all or most of those criteria, there are many non-profit credit counseling organizations that will work with you to solve your financial problems.

But be aware that, just because an organization says it's 'nonprofit,' there's no guarantee that its services are free, affordable or even legitimate.

Most credit counselors offer services through local offices, the Internet, or on the telephone. If possible, it probably best to find an organization that offers in-person counseling. Many universities, military bases, credit unions, housing authorities, and branches of the U.S. Cooperative Extension Service operate nonprofit credit counseling programs. Your financial institution, local consumer protection agency, and friends and family also may be good sources of information and referrals.
Reputable credit counseling organizations can advise you on managing your money and debts, help you develop a budget, and offer free educational materials and workshops. Their counselors are certified and trained in the areas of consumer credit, money and debt management, and budgeting. Legitimate counselors will discuss your entire financial situation with you, and help you develop a personalized plan to solve your money problems. An initial counseling session typically lasts an hour, with an offer of follow-up sessions.

If your financial problems stem from too much debt or your inability to repay your debts, a credit counseling agency may recommend that you enroll in what is known as a 'Debt Management Plan' or DMP. A DMP alone is not credit counseling, and DMPs are not for everyone. You should sign up for one of these plans only after a certified credit counselor has spent time thoroughly reviewing your financial situation, has offered you customized advice on managing your money, and has analyzed your budget to make sure that the proposed DMP is one you can afford. However, remember that all organizations that promote DMPs fund themselves in part through arrangements with the creditors involved, which are called 'fair share,' so you have to be wary as to whose best interest the counselor has in mind. Even if a DMP is not appropriate for you, a reputable credit counseling organization still can help you create a budget and teach you money management skills.

In a DMP, you deposit money each month with the credit counseling organization, which uses your deposits to pay your unsecured debts, like your credit card bills and medical bills, according to a payment schedule the counselor develops with your creditors. Your creditors may agree to lower your interest rates or waive certain fees, but it's always best to check with all your creditors, just to make sure they offer the concessions that a credit counseling organization is promising you. A successful DMP requires you to make regular, timely payments, and could take 48 months or more to complete. Ask the credit counselor to estimate how long it will take for you to complete the plan.
your interest rates or make certain fees, but it's always best to check with all your creditors, just to make sure they offer the concessions that a credit counseling organization is promoting. A successful DMP requires you to make regular, timely payments, and could take 48 months or more to complete. Ask the credit counselor to estimate how long it will take for you to complete the plan. You may have to agree not to apply for C or use C any additional credit while you're participating in the plan, and a DMP is likely of little value if your problems stem from or involve your secured creditors holding your car, truck or home as collateral. DMPs are also likely of little value if your problems stem from alimony, child support or overdue taxes.

The bottom line is this: If all you need is a little lowering of your interest rates on some unsecured debts, a DMP might be the answer. However, if what you really need to reduce the amount of your debt, bankruptcy may be the solution.

NOTICE NO. 2

Notice Mandated By Section 527(a)(2) Of The Bankruptcy Code

NOTICE OF MANDATORY DISCLOSURE

TO CONSUMERS WHO CONTEMPLATE FILING BANKRUPTCY

You are notified as follows:

1. All information that you are required to provide with the filing of your case and thereafter, while your case is pending, must be complete, accurate and truthful.

2. All your assets and all your liabilities must be completely and accurately disclosed in the documents filed to commence your case, and the replacement value of each asset (as defined in Section 506 of the Bankruptcy Code) must be accurately stated.
2. All your assets and all your liabilities must be completely and accurately disclosed in the documents filed to commence your case, and the replacement value of each asset (as defined in Section 506 of the Bankruptcy Code) must be stated in those documents where requested after reasonable inquiry to establish such value.

3. Some sections of the Bankruptcy Code require you to determine and list the replacement value of an asset such as a car or furniture. When replacement value is required, it means the replacement value, established after reasonable inquiry, as of the date of the filing of your bankruptcy case, without deduction for costs of sales or marketing. With respect to property acquired for personal, family or household purposes, replacement value means the price a retail merchant would charge for 'used' property of that kind considering the age and condition of the property. Again, replacement value is defined in the Bankruptcy Code as the price that a retail merchant would charge for property of the same kind, considering the age and condition of the property at the time its value is determined. This is not the cost to replace the item with a new one or what you could sell the item for; it is the cost at which a retail merchant would sell the used item in its current condition. In many cases (particularly used clothing, furniture, computers, etc.), this would be 'yard sale' value, or what the item might sell for on eBay. In other cases, such as jewelry, antiques or collectibles, it may be retail value. For motor vehicles, it would be the third party purchase value. For real property, it is what the real property would sell for, at current Market value. For cash and bank accounts, it is the actual amount on deposit. For stocks and bonds, it is their market value as of the date your case is filed. You must make a reasonable inquiry to determine the replacement value of your assets.

4. Before your case can be filed, it is subject to what is called 'Means Testing.' The Means Test was designed to determine whether or not you qualify to file a case under chapter 13 of the Bankruptcy Code, and if not, how much you need to pay your unsecured creditors in a chapter 13 case. For purposes of means test, you must state, after reasonable inquiry, your total current monthly income, the amount of all expenses as specified and allowed pursuant to section 707(b)(2) of the bankruptcy code, and if the amount is to be filed in a Chapter 13 case, your past due, and future disposable income
Code, and if not, how much you need to pay your unsecured creditors in a chapter 13 case. For purposes of means test, you must state, after reasonable inquiry, your total current monthly income, the amount of all expenses as specified and allowed pursuant to section 707(b)(2) of the bankruptcy code, and if the plan is to file in a Chapter 13 case, you must state, again after reasonable inquiry, your disposable income, as that term is defined.

5. Information that you provide during your case may be audited pursuant to the provisions of the Bankruptcy Code. Your failure to provide complete, accurate and truthful information may result in the dismissal of your case or other sanctions, including criminal sanctions.

NOTICE NO. 3
Notice Mandated By Section 527(b) Of The Bankruptcy Code
IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES

If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help from some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

The following information helps you understand what must be done in a routine bankruptcy case to help evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, you must complete a Statement of Financial Affairs, an Official Form 107.
Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a trustee and by creditors.

If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts. It may not be in your best interest to reaffirm a debt.

If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which, if held, will be before a bankruptcy judge.

If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief. However, please be advised that in most cases, you will only be concerned with chapter 7 and chapter 13.

Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.

NOTICE NO. 4

Notice Mandated By Section 342(b)(2) Of The Bankruptcy Code
NOTICE NO. 4

Notice Mandated By Section 342(b)(2) Of The Bankruptcy Code

FRAUD & CONCEALMENT PROHIBITED

If you decide to file bankruptcy, it is important that you understand the following:

1. Some or all of the information you provide in connection with your bankruptcy will be filed with the bankruptcy court on forms or documents that you will be required to sign and declare as true under penalty of perjury.

2. A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both.

3. All information you provide in connection with your bankruptcy case is subject to examination by the Attorney General.

ACKNOWLEDGMENT OF RECEIPT

By using the site and/or otherwise accepting this Agreement, you acknowledge that you have received a copy of or been provided with access to all of the following notices:

1. Notice Mandated By Section 342(b)(1) and 527(a)(1) Of The Bankruptcy Code

2. Notice Mandated By Section 527(a)(2) Of The Bankruptcy Code
2. Notice Mandated By Section 527(a)(2) Of The Bankruptcy Code

3. Notice Mandated By Section 527(b) Of The Bankruptcy Code

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The attorney responsible for the content of this site is Kevin W. Chern, Esq., 25 East Washington, Suite 510, Chicago, Illinois 60602 (Chern).

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Bankruptcy may be a debt-relief option for you if you:

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Contact us today and find out if filing bankruptcy is a good debt-relief option for you.

Bankruptcy & The Chapter 7 Code
If you’re seeking to eliminate unsecured debt like credit card and medical bills, filing Chapter 7 bankruptcy may be a good debt-relief option for you.

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Estimate Total Debt: ____________

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You may also be able to determine whether you should file Chapter 7 bankruptcy by asking yourself the following questions:
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- payday loans
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The attorney responsible for the content of this Site is Kevin W. Chem, Esq., 25 East Washington, Suite 510, Chicago, Illinois 60602 ("Chem").

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8. Exhibit 8: Comprehensive List of All Identified Respondents Broken Down Into Their Respective States
11. Exhibit 11: In re Greer
In re Roy GREER.
In re Jeanne Phifer.
No. 01-44560.
No. 00-44958.
United States Bankruptcy Court, D. Massachusetts.
January 10, 2002.

Memorandum of Decision

JOEL B. ROSENTHAL, Bankruptcy Judge.

Before the Court for determination is a Motion to Determine Reasonableness of Compensation and Fee Arrangement filed by the United States Trustee (the "UST") seeking a finding from this Court that the fee sharing arrangement between the Debtors' attorney and another attorney is in violation of 11 U.S.C. § 504. The UST urges that this Court void the fee sharing arrangement between the attorneys, order the disgorgement of any fees found to be excessive, and enjoin the parties from continuing the arrangement in other cases. Additionally, before the Court for determination is the Debtor's Motion to Amend her Statement of Attorney Compensation/Rule 2016(b) which includes the fee sharing arrangement objected to by the UST.

I. BACKGROUND

On December 17, 2001, this Court conducted an evidentiary hearing regarding the relationship between the attorneys and makes the following findings and rulings.

Marjorie Soforenko ("Soforenko") is a bankruptcy attorney who has a law office located in Springfield, Massachusetts. Beginning in June 2001, Attorney Julia Fullwood ("Fullwood") began performing secretarial and paraprofessional work for Soforenko's Springfield law office through a temporary employment agency. Starting in late July or early August 2001, Fullwood and Soforenko entered into a verbal understanding whereby Soforenko would pay Fullwood $50.00 for each 11 U.S.C. § 341 Meeting of Creditors ("341 meeting") at which she represented Soforenko's clients. To date, Fullwood has attended approximately ten 341 meetings on Soforenko's behalf. Fullwood did not file...
notices of appearance in any of the cases in which she represented the Debtor at the 341
meeting.2

On November 6, 2000, Soforenko filed her Disclosure of Compensation of Attorney
for Debtor ("Disclosure") in In re Phifer [Case No. 00-44958] while the case was a
Chapter 13 proceeding.3 In said Disclosure, Soforenko states that she agreed to accept
$2,500.00 for legal fees and had received $500.00 thus far. Soforenko further states in the
Disclosure that she "[h]as not agreed to share the above-disclosed compensation with any
other persons unless they are members and associates of my law firm."

On August 17, 2001, a 341 meeting was scheduled in the Phifer case. Soforenko
made arrangements to have Fullwood attend the meeting on her behalf. Fullwood
was not permitted to represent the client at the meeting because the Chapter 7 Trustee,
David Ostrander ("Ostrander"), informed her that Soforenko needed to be present.
Soforenko paid Fullwood $50.00 for attending this 341 meeting despite the fact that she
was not allowed to represent the client. Thereafter, in September 2001, the UST
convened a meeting with Soforenko, Fullwood, and Ostrander in order to discuss the fee
sharing arrangement. During this meeting, Soforenko informed the UST that she was
going to place Fullwood on her malpractice insurance.

After Soforenko realized that the fee sharing arrangement between her and Fullwood
was problematic, she sought advice from fellow attorneys regarding what she could do to
remedy the problem. As a result of such conversations, Soforenko placed Fullwood on
her office letterhead as being "of counsel" to her law practice (Soforenko Exhibit # 1) and
apparently made arrangements to place Fullwood on her legal malpractice insurance.4

On September 25, 2001, the UST filed a Motion to Determine Reasonableness of
Compensation and Fee Arrangement in Phifer [Docket No. 80]. The UST argues in said
Motion that the fee sharing arrangement between Soforenko and Fullwood is improper
under Section 504 of the Bankruptcy Code and that the fees are unreasonable under
Section 329 of the Bankruptcy Code.

On September 27, 2001, after the fee sharing issue was raised by the UST,
Soforenko filed a Motion to Amend her Statement of Attorney Compensation/Rule
2016(b) [Docket No. 16] in In re Greer [Case No. 01-44560], a Chapter 13 proceeding.
In that Motion, Soforenko informs the Court that Fullwood is "of counsel" to her law firm
for the purpose of handling 341 meetings. Soforenko states in her Disclosure to this case
that she agreed to accept $2,500.00 in legal fees and has received $745.00 thus far. She
further states that "I have agreed to share the above-disclosed compensation with a person
or persons who are not members or associates of my law firm." (emphasis added). The
Agreement, which is attached to her Disclosure, states that "Julia Fullwood, Esq. is 'Of
Counsel' to my law firm. I have agreed to give her $50.00 for attending and handling the
341 meeting of creditors."
On September 28, 2001, Fullwood attended *Greer's* 341 meeting. During such meeting, the Chapter 13 Trustee asked the Debtor if he knew that Fullwood was going to attend the 341 meeting on Soforenko's behalf and he responded that he did not. (See UST's Exhibit # 1).

**II. DISCUSSION**

Although the sharing of fees among attorneys not otherwise associated is permitted in certain instances under Massachusetts law, i.e. See Rule 1.5(e) of the Massachusetts Rules of Professional Conduct, the Bankruptcy Code is more restrictive. The sharing of compensation by attorneys is generally prohibited by bankruptcy law except under limited circumstances. *In re Matis, 73 B.R. 228, 231 (Bankr.N.D.N.Y.1987)*; *In re Maller Restaurant Corp., 57 B.R. 72, 74* (Bankr. E.D.N.Y.1985). Section 504 of the Code provides that "a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share — (1) any such compensation or reimbursement with another person; or (2) any compensation or reimbursement received by another person under such sections." 11 U.S.C. § 504(a). However, "[a] member, partner, or regular associate in a professional association, corporation, or partnership may share compensation or reimbursement received ... under section 503(b)(2) or 503(b)(4) of this title with another member, partner, or regular associate in such association, corporation, or partnership ..." 11 U.S.C. § 504(b).

"Section 504 prohibits the sharing of compensation, or fee splitting, among attorneys, other professionals, or trustees. The section provides only two exceptions: partners or associates in the same professional association, partnership, or corporation may share compensation inter se; and attorneys for petitioning creditors that join in a petition commencing an involuntary case may share compensation." H.R.Rep. No. 595, 95th Cong., 1st Sess. 356 (1977), U.S.Code Cong. & Admin.News pp. 5963, 6311-12; S.Rep. No. 989, 95th Cong., 2d Sess. 67 (1978), U.S.Code Cong. & Admin.News pp. 5787, 5853. Accordingly, fee sharing among attorneys is generally prohibited under the Bankruptcy Code unless the relationship between the attorneys falls within one of the narrow exceptions.

Section 504 "illustrates a Congressional intent to preserve the integrity of the bankruptcy process so that professionals engaged in bankruptcy cases attend to their duty as officers of the bankruptcy court, rather than treat their interest in bankruptcy cases as 'matters of traffic.'" *In re Matis, 73 B.R. at 231*, citing 3 Collier on Bankruptcy, ¶ 504.02[1], 508-8 & 9 (15th ed.1986). This legislation was enacted because Congress wanted to decrease the tendency of an attorney from increasing legal fees to offset the compensation for the attorney with whom the fee will be shared. Collier on Bankruptcy, ¶ 504.01 at 504-2. Another concern of fee splitting is that it "subjects the professional to outside influences over which the court has no control, which tends to transfer from the
court some degree of power over expenditure and allowances." Collier on Bankruptcy, ¶ 504.01 at 504-2.

Any attorney representing a debtor must file with the Court a statement of compensation paid or agreed to be paid "whether or not such attorney applies for compensation." 11 U.S.C. § 329. Every debtor attorney must file with the UST "the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required." Fed. R. Bankr.P.2016(b). Soforenko filed a Disclosure pursuant to Fed. R. Bankr.P.2016(b) in both cases at issue here. However, she only disclosed the fee sharing arrangement with Fullwood in Greer.

As stated earlier, Section 504 applies to compensation paid pursuant to Sections 503(b)(2) and 503(b)(4) of the Code. Soforenko received compensation under Section 503(b)(2) of the Bankruptcy Code in both cases. Accordingly, Section 504(a) of the Code is applicable to both cases at bar.

Additionally, there is no dispute that fee sharing occurred between Fullwood and Soforenko. Therefore, the only issue before the Court to determine is whether the fee sharing agreement fits under one of the narrow exceptions under the Code.

If Fullwood is a "member", "partner" or "regular associate" of Soforenko's law firm, the fee sharing agreement is permissible. See 11 U.S.C. § 504(b). Soforenko argues that her fee sharing arrangement with Fullwood is not violative of the Bankruptcy Code because their relationship falls under one of the exceptions enumerated in Section 504(b). Specifically, Soforenko argues that Fullwood is a "member" of her law firm because she is "of counsel" to said firm. The challenge to this Court comes in defining the terms "member", "partner", "regular associate", and "of counsel". Section 101 of the Bankruptcy Code does not define any of these terms. Neither the Section's legislative history, nor case law interpreting the Section, lend much assistance.

"A lawyer who is acting `of counsel' for a law firm and is held out to the public will be regarded as a `member' within 11 U.S.C. § 504, so as to be free from statutory limitations on fee sharing arrangements." Lemonedes v. Balaber-Strauss (In re Coin Phones), 226 B.R. 131, 132 (S.D.N.Y.1998) (citation omitted). In In re Coin Phones, the attorney seeking compensation was an independent practitioner who worked with the law firm retained by the debtor on a case by case basis in the status of "of counsel". Id. The law firm was authorized to act on the debtor's behalf, however, the application for the firms' retention did not mention the individual attorney. Id. The court, in dicta, stated that the fee sharing arrangement was appropriate because the attorney was held out by the law firm, and "he held himself out as a person acting on behalf of and affiliated with the ... firm." Id. at 133.
At all relevant times, Fullwood was not "of counsel" to Soforenko's law practice because she did not hold herself out and Soforenko did not hold her out as being "of counsel" to her practice. Soforenko argues that there are two factors that points to Fullwood being "of counsel" to her law firm. First, Fullwood was placed on her malpractice insurance and, second, she is listed on her letterhead as "of counsel" to her law practice. However, these two events occurred after Fullwood represented the two Debtors at the 341 meetings. At best, Soforenko added Fullwood to her malpractice insurance and listed Fullwood as "of counsel" to Soforenko's law practice sometime in October or November 2001 and the 341 meetings Fullwood attended took place in August and September 2001. Additionally, in the Disclosure that Soforenko filed with this Court in Greer, she states that she has agreed to share compensation with a person who is not a "member" or "associate" of her law firm. Therefore, Soforenko herself admits that Fullwood is not a member of her law firm. If Fullwood was in fact a "member" of Soforenko's law practice, Soforenko was not required to disclose the fee sharing arrangement. However, it was precisely because they were not "members" or "associates" that Soforenko made the fee sharing disclosure.

This Court finds that the fee sharing arrangement between Soforenko and Fullwood relative to the two cases at issue here is prohibited by the Bankruptcy Code because at the time Soforenko was representing the aforementioned clients, Fullwood was not "of counsel" to her law practice. It was only after Fullwood's representation at the Debtors' 341 meetings and after having conversations with colleagues that Soforenko placed Fullwood on her letterhead and perhaps on her malpractice insurance thus making a subsequent attempt to remedy the Section 504 problem. This Court is not convinced that had Fullwood been listed as "of counsel" on Soforenko's letterhead and been placed on her malpractice insurance prior to the 341 meetings that they would have been "members" of the same law firm.

There are a number of factors that convinces this Court that Fullwood was not and is not "of counsel" to Soforenko's law practice. Soforenko does not consistently use the letterhead in which Fullwood is listed as "of counsel" and she continues using letterhead that does not list Fullwood. There is a lack of a written agreement between the parties indicating that they are members of the same law firm. Soforenko does not advertise with Fullwood as being "of counsel" to her law practice. Fullwood is not listed on Soforenko's business cards. Soforenko does not provide written engagement letters to her clients stating that Fullwood is "of counsel" to her law practice. Fullwood has her own letterhead for her law practice and does not list Soforenko as being "of counsel" but she lists Joel Soforenko, Soforenko's brother, on her letterhead as being "of counsel". Fullwood maintains her own malpractice insurance and Soforenko is not listed on it. Fullwood maintains her own business cards and does not list Soforenko on them as being "of counsel" to her law practice.
Soforenko and Fullwood presently share an office space in Springfield. They each pay $350.00 for rent and they split the electricity bills. They share the use of the fax machine and photocopier. Fullwood operates out of the bigger office and maintains one employee and Soforenko works out of the smaller office. Fullwood and Soforenko have separate telephone numbers. Fullwood maintains her own law practice and has own clients. She maintains independent liability insurance and IOLTA accounts. According to the UST, Fullwood represented to him that she was not an employee, member, or associate with Soforenko's law office; instead she was an independent attorney contracting to represent Soforenko's clients at 341 meetings. Accordingly, it appears that the relationship between Soforenko and Fullwood is that of independent co-counsel. In this Court's view, Soforenko's thought was to put a label of "of counsel" on Fullwood, yet not have a legal relationship with her; without an identifiable legal relationship, the fee sharing engaged in here was prohibited. As in In re Matis, the relationship between Soforenko and Fullwood at the time of the 341 meeting was at best simply that of sharing office space.

In In re Matis, the debtor retained Leon J. DeBernardis ("DeBernardis") to represent him in a Chapter 11 proceeding. Once the case was filed, all contact with DeBernardis ended and the debtor was represented and counseled solely by Brett W. Martin ("Martin"). In re Matis, 73 B.R. at 233. The court concluded that the relationship between the two attorneys was nothing more than that of "office sharing." Id. at 232. DeBernardis permitted Martin to share his suite of offices, waiting room, parking space, photocopy machine, and supplies in return for a "minimal rental" fee of $175.00 per month. Id. The court found that part of the motivation for DeBernardis entering such an arrangement was so that he could refer cases to Martin and split on such referrals. Id. at 233. "An examination of the documents filed with this Court fail to indicate any relationship between [the attorneys] other than that of independent co-counsel"; therefore, the court held that the fee sharing arrangement was in "obvious violation of Code 504(a)." Id. at 233-234. The court utilized Section 329(b) to order the return of fees paid by the debtor to his attorney pre-petition to the extent they were excessive. Id. at 234.

The UST also argues in his Motion that the Debtors were never informed of Fullwood's representation of them during the 341 meetings. The Chapter 13 Trustee testified during the evidentiary hearing that she had approximately three cases in which Soforenko's clients either did not know that Fullwood was going to represent them at the two 341 meetings or such clients were informed the night prior regarding such representation. On the other hand, Soforenko contends that her clients were informed of Fullwood's representation. However, this Court finds that the Debtors' knowledge or consent regarding representation at the 341 meetings does not validate an otherwise impermissible fee sharing arrangement. Knowledge and/or consent or lack thereof go to the quality of the representation but are not relevant in the analysis under Section 504.
The UST further argues that Soforenko's fees are excessive pursuant to 11 U.S.C. § 329. Under Section 329(a) of the Code, "[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to (1) the estate ... or ... (2) the entity that made such payment."

Although the Court does not believe that Soforenko and Fullwood intentionally violated Section 504 of the Code, it was nonetheless violated. In order to maintain the integrity of the bankruptcy process, such violations, even if inadvertent, need to be addressed by the Court. "Generally, a finding of improper sharing of compensation results in a denial or disgorgement of compensation." Collier on Bankruptcy, ¶ 504.02[8] at 504-10. The Matis court, after finding a violation of Section 504(a), looked to former Bankruptcy Rule 219 which provided that if a person violates the rule's proscription against sharing compensation, "the court may deny him compensation ... or may enter such other order as may be appropriate", and opined that "there is no reason to conclude that the Court does not still retain such discretion to deny compensation." In re Matis, 73 B.R. at 234. Without additional information, however, the Court cannot determine whether Soforenko's fees are reasonable and whether disgorgement of some or all of the fees is appropriate.

III. CONCLUSION

For the foregoing reasons, having reviewed the pleadings, arguments of counsel, and testimony of three witnesses, this Court ALLOWS the Motion of the United States Trustee to Determine Reasonableness of Compensation and Fee Arrangement [Docket No. 80] and finds that the fee sharing arrangement between Soforenko and Fullwood relative to these two cases was in violation of 11 U.S.C. § 504. Accordingly, this Court finds that the fee sharing arrangement between Soforenko and Fullwood is void and DENIES Debtor's Motion to Amend Statement of Attorney Compensation/Rule 2016(b) [Docket No. 16] in the Greer case.

This Court further Orders Soforenko to file a fee application in these two cases. Additionally, until further notice by this Court, Soforenko shall file a fee application in all Chapter 13 cases before this Court, including Chapter 13 cases that were subsequently converted to Chapter 7, beginning from August 17, 2001 to the present, in which Soforenko and Fullwood had a similar relationship. Once this Court receives the aforementioned fee applications, it will be in a better position to decide if any fees are excessive and if it will order the disgorgement of any fees found to be excessive. This Court will not issue an injunction enjoining the parties from continuing their arrangement in other cases as this Court expects that Soforenko and Fullwood, as officers of the Court, will at all times act in accordance with the Bankruptcy Code and Rules.
Notes:

1. Soforenko's practice consist primarily of domestic and bankruptcy law. Soforenko also has a law office located in Newton, Massachusetts.

2. All of the 341 meetings that Fullwood attended on Soforenko's behalf took place in Springfield, Massachusetts, with the exception of one or two which took place in Worcester, Massachusetts.

3. On April 17, 2001, this Court converted the case to a Chapter 7 proceeding. The United States Trustee appointed David Ostrander as the Chapter 7 Trustee.

4. It is unclear if or when Soforenko placed Fullwood on her malpractice insurance because Soforenko failed to provide the Court with any evidence on this issue. If Fullwood is in fact on Soforenko's malpractice insurance, she was placed on it some time after September 2001.

5. It has been represented to this Court that Fullwood has not covered a 341 meeting on Soforenko's behalf since cover the 341 meeting in Greer.

6. "[T]here shall be allowed administrative expenses ... including — compensation and reimbursement awarded under section 330(a) of this title." 11 U.S.C. § 503(b)(2).

7. According to Fed. R. Bank. P. 9001(9), "'regular associate' means any attorney regularly employed by, associated with, or counsel to an individual or firm." Although Soforenko argues that her relationship with Fullwood is that of a "member" and not a "regular associate", this Court also considered whether the relationship was that of "regular associates" and concluded that it was not.

8. This Court is not implying that a written agreement is needed in order for attorneys to be members of a law firm or that the sole existence of a written agreement establishes membership. A written agreement, or lack thereof, is only one out of many factors a Court can look to in establishing whether or not two attorneys are members of the same law practice. The standard described in Matis, infra, of an "identifiable legal relationship" is a factual one, to be determined on a case by case basis. Matis, 73 B.R. at 232.

9. Based on that "of counsel" relationship, Fullwood shares compensation with Joel Soforenko on bankruptcy and non bankruptcy cases and pays him $150.00 an hour.

10. "Code § 504 represents a significant departure from prior bankruptcy law dealing with the sharing of compensation." In re Matis, 73 B.R. at 230. Section 62 of the Bankruptcy Act of 1898, as amended, allowed the sharing of compensation by attorneys as long as the other attorney contributed to the case. Id. However, the Code now prohibit all sharing of compensation unless one of the exceptions enumerated in the Code is present. Id.
12. Exhibit 12: In re Winstar Communications
M E M O R A N D U M

BY: KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE

The matter before the Court is the “Motion of Herrick Feinstein LLP (“Herrick”) and Impala Partners, LLC (“Impala”) For Authority to Enter Into Agreement” (docket no. 4741)(the “Motion”). The Motion asks for court approval of a “hedging transaction” with Credit Suisse Loan Funding LLC (“CS”) regarding a portion of Herrick’s and Impala’s anticipated contingency fees. The United States Trustee (the “UST”) has objected. For the reasons set forth below, the Motion will be denied, without prejudice.

BACKGROUND

On April 18, 2001, Winstar Communications, Inc. and Winstar Wireless, Inc. (the “Debtors”) filed petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). On January 24, 2002, the Court entered an order converting the chapter 11 cases to chapter 7 cases. Christine C. Schubert was appointed as Chapter 7 Trustee (“Trustee”) of these cases on January 28, 2002.

The Trustee engaged Herrick as special litigation counsel as of July 1, 2002 to represent

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1This Memorandum constitutes the findings of fact and conclusions of law required by Fed.R.Bankr.P. 7052. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A) and (M).
the Trustee in a pending adversary proceeding (the “Lucent Adversary Proceeding”) against Lucent Technologies, Inc. (“Lucent”). 2 By Order dated March 18, 2003 (docket no. 3222), the Court modified Herrick’s fee arrangement as special counsel for the Trustee, and authorized the Trustee’s employment of Impala as a special litigation consultant. Under the terms of its retention, Herrick was entitled to receive a modified contingency fee for its services rendered through entry of judgment in the Lucent Adversary Proceeding. Impala was also entitled to receive a contingency fee in the Lucent Adversary Proceeding.

After extensive pre-trial proceedings and a 21-day trial over a three-month period, the Bankruptcy Court entered judgment in the Lucent Adversary Proceeding on December 28, 2005 (docket no. 373) in favor of the Trustee for approximately $300,000,000. 3 Lucent posted a bond and took an appeal to the District Court, which affirmed the decision of the Bankruptcy Court (docket nos. 400, 401). The matter has since been appealed to the Court of Appeals for the Third Circuit (docket no. 404).

On April 7, 2007, Herrick and Impala filed the Motion, which seeks the Court’s permission to assign part of their anticipated contingency fees to CS (the “Agreement”). The Agreement requires that CS pay Herrick and Impala an undisclosed fixed price (the “Purchase Price”), regardless of the amount of contingency fees awarded. In exchange, Herrick and Impala agree to pay CS the actual amount of contingency fees awarded, up to $10,000,000. If the actual fees are less than $10,000,000, Herrick and Impala would keep the Purchase Price and pay CS what fees, if any, the Court awards. If the actual fees awarded exceed $10,000,000, Herrick and


3This decision was rendered by my predecessor, The Honorable Joel B. Rosenthal, a visiting judge who served this District.
Impala would share the fees in excess of $10,000,000 in accordance with their respective, court-approved retention agreements. The Motion describes “this proposed transaction [as] simply a risk mitigating hedge involving trade claims.” Motion, ¶16. To assure the Chapter 7 Trustee that the Agreement will not affect Herrick’s and Impala’s loyalty, the Agreement includes a provision stating that CS has no right to object to the Trustee’s settlement or other disposition of the Lucent Adversary Proceeding. The assignment does not become “operative” until final court approval of the Herrick and Impala contingency fees.

On May 11, 2007, the UST filed an Objection to the Motion, claiming the Agreement violates the Bankruptcy Code’s prohibition of fee sharing.

**DISCUSSION**

The Bankruptcy Code prohibits the sharing of compensation under nearly all circumstances. Section 504 provides that “a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share (1) any such compensation or reimbursement with another person; or (2) any compensation or reimbursement received by another person under such sections.” 11 U.S.C. §504. Bankruptcy Code §504 “provides only two exceptions: partners or associates in the same professional association, partnership, or corporation may share compensation, *inter se*; and attorneys for petitioning creditors that join in a petition commencing an involuntary case may share compensation.” H.R. Rep. No. 95-595 at 356 (1977); S. Rep. No. 95-989 at 67 (1978); 11 U.S.C. §504(b).

“Accordingly, fee sharing among attorneys is generally prohibited under the Bankruptcy Code unless the relationship between the attorneys falls within one of the narrow exceptions.” *In re Greer*, 271 B.R. 426, 430 (Bankr. D. Mass. 2002) (holding that a fee-sharing agreement in which
one attorney paid another $50 for each creditors’ meeting the other attorney attended on her behalf violated §504).

Although many states, including Delaware,4 allow the sharing of fees under certain circumstances, the Bankruptcy Code is more restrictive. My colleague, Chief Judge Walrath, discussed the prohibition in In re Worldwide Direct, Inc., 316 B.R. 637 (Bankr. D.Del. 2004):

Whenever fees or other compensation are shared among two or more professionals, there is incentive to adjust upward the compensation sought in order to offset any diminution to one’s own share. Consequently, sharing of compensation can inflate the cost of a bankruptcy case to the debtor and therefore to the creditors.... The potential for harm makes such arrangements reprehensible as a matter of public policy as well as a violation of the attorney’s ethical obligations.


The purpose of §504 also has been described as the preservation of “the integrity of the bankruptcy process so that the professionals engaged in bankruptcy cases attend to their duty as officers of the bankruptcy court, rather than treat their interest in bankruptcy cases as ‘matters of traffic [i.e., matters of trade or commerce].’” 4-504 Collier on Bankruptcy, P. 504.02[1] at 504-5 (Alan N. Resnick & Henry J. Sommer, eds. 15th Edition Revised 2007) citing Matter of Arlan’s Department Stores, Inc., 615 F.2d 925, 943-44 (2d Cir. 1979).

Moreover, fee sharing is prohibited in bankruptcy proceedings because fee sharing “subjects the professional to outside influences over which the court has no control, which tends to transfer from the court some degree of power over expenditure and allowances.” 4-504 Collier

These policies indicate that the statute was promulgated to prevent certain forms of fee sharing agreements that undermine the integrity of the bankruptcy proceeding, most commonly involving the sharing of compensation between two parties when one party is given a referral fee, or when one party appointed by the court hires another party to work on the case without court approval. See In re Hepner, 2007 WL 161003 at *2 (Bankr. S.D. Tex. 2007); In re Greer, 271 B.R. 426; Futuronics Corp., 655 F.2d 463.

Herrick and Impala assert that the Agreement does not violate § 504 because the Agreement is consistent with the policies §504 was promulgated to advance. First, there is no incentive to inflate fees because the fees have already been earned. The parties have agreed that compensation associated with the appeal will be calculated separately from the fees earned in the Lucent Adversary Proceeding. Second, Herrick and Impala contend that undue influence is not a factor because CS specifically agreed that it has no right to object to any settlement.

The UST points out that the Agreement is not an outright assignment of Herrick’s and Impala’s professional fees. Under the Agreement, CS would not pay the undisclosed Purchase Price immediately. Nor would Herrick and Impala immediately assign their anticipated contingency fees to CS. Instead, the Purchase Price is to be paid only when the bankruptcy court has entered an order approving payment of such fees, payment of such approved fees to Herrick and Impala is actually received by them, and Herrick and Impala have delivered to CS the lesser of the approved fees or the first $10 million of such fees.

Herrick and Impala reply that the Agreement is structured to provide for the legitimate assignment and purchase of what will be – at the time the Agreement becomes operative – a claim
consisting of earned fees. Herrick and Impala also argue that the Agreement provides for payment of the Purchase Price if, ultimately, there is no final judgment in favor of Winstar and, consequently, no fees awarded. Hence, this possible outcome cannot result in any fee sharing, since there would be no fees to “share.”

The UST asserts that §504 prohibits Herrick’s and Impala’s sale of a share of their contingency fee compensation to CS, describing this treatment of their interest as a “matter of traffic.” Herrick and Impala respond that the UST’s objection is “a knee-jerk reaction...to a novel and unfamiliar financing transaction.” Reply, ¶10. This, they say, is not a transaction in “the making of a market in the bankruptcy process for legal referrals and thereby trafficking in bankruptcy representations.” Id.

In construing §504, the analysis must begin with the text of the statute. “[I]f the statutory language is unambiguous and the statutory scheme is coherent and consistent...,” the inquiry must end there. Baroda Hill Investments v. Telegroup, Inc. (In re Telegroup, Inc.), 281 F.3d 133, 137 (3d Cir. 2002), quoting, Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997). Here, the question to be asked simply is: does the Agreement propose “sharing” of fees within the meaning of §504?

Merriam-Webster OnLine defines the transitive verb “share,” as it pertains here, as 1) “to divide and distribute in shares: apportion...3) to grant or give a share in....” See Merriam-Webster Online available at http://www.merriam-webster.com. The Agreement, by its terms, indisputably “apportions” any award of fees to Herrick and Impala with CS. Moreover, the Agreement provides that Herrick and Impala will “grant or give [to CS] a share in” any contingency fees awarded. In this context, I cannot conclude that there is any ambiguity about whether this proposed transaction falls within the prohibition of Bankruptcy Code §504.

I do not necessarily disagree with Herrick and Impala that the proposed transaction does
I deny the Motion without prejudice because the parties may very well be able to structure a transaction that does not run afoul of the §504 prohibition. I leave such an exercise to the creative efforts of the parties and their advisors.

not appear to offend the policy considerations underlying §504. Nor do I think estate professionals should be discouraged from developing creative methods to attract and support law firms that undertake complex and expensive litigation on behalf of a debtor’s estate or to provide the “‘downside’ protection normally available in the market place via insurance or hedges in comparable economic situations.” Reply, ¶10. But in the absence of ambiguity in the statute, I must apply it as written.

The Motion will be denied, without prejudice.5

BY THE COURT:

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Dated: December 4, 2007

5I deny the Motion without prejudice because the parties may very well be able to structure a transaction that does not run afoul of the §504 prohibition. I leave such an exercise to the creative efforts of the parties and their advisors.
ORDER

AND NOW, this 4th day of December, 2007, upon consideration of the Motion of Herrick Feinstein LLP and Impala Partners, LLC to Enter Into an Agreement (Docket No. 4741)(“Motion”), the Objection of the United States Trustee thereto (Docket No. 4745)(“Objection”), after a hearing thereon, and for the reasons set forth in the accompanying Memorandum, it is hereby

ORDERED and DECREED that the Objection is SUSTAINED and the Motion DENIED, without prejudice.

BY THE COURT:

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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13. **Exhibit 13:** Joint Statements of NACBA & NCLC
The National Association of Consumer Bankruptcy Attorneys1 and the National Consumer Law Center2 on behalf of its low-income clients make the following recommendations regarding the notice of proposed rulemaking on the application procedures and criteria for approval of providers of personal financial management instructional courses.

Before focusing on areas of concern, we want to express our support for many of the proposed rules. We appreciate the Trustee’s willingness to listen to consumer voices in developing these proposals. In particular, we support the mandatory and early disclosure of fee policies and information on how a debtor may obtain free or reduced cost services. We also support the presumptively reasonable fee established by the rule as well as the process that places the burden on the provider who seeks to establish a higher fee to demonstrate that that higher fee is reasonable. The comments below focus on key areas where we believe additional changes or clarification are necessary to ensure that consumers are protected throughout the debtor education process.

1 Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 3,200 consumer bankruptcy attorneys nationwide. Member attorneys and their law firms represent debtors in an estimated 300,000 bankruptcy cases filed each year. NACBA is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors. The NACBA membership has a vital interest in the proposed rule as NACBA members represent a large number of the individual debtors who file consumer cases nationally.

2 The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal servicers, government and private attorneys, as well as community groups and organizations, from all states that represent low-income and elderly individuals on consumer issues. In addition, NCLC publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including Consumer Bankruptcy Law and Practice (8th ed. 2006 and Supp.).
Fee Waivers.

Section 111(d)(1)(E) provides that those who furnish the personal financial management course must provide services without regard to ability to pay. Section 58.33 of the proposed rule requires providers to disclose their fee policy and policies enabling debtors to obtain the instructional course at free or reduced rates. The rule requires that this disclosure take place “[p]rior to providing any information to or obtaining any information from the debtor.”

Debtors who do not have the ability to pay face a variety of obstacles. In some instances, agency representatives have stated that there is no way to obtain a fee waiver if the certificate is needed on an expedited basis. In other cases, agencies have acknowledged that a fee waiver/reduced rate is possible, but will not disclose the criteria for the reduction/waiver and will not inform consumers if they are eligible to receive a reduction until AFTER the completion of the course. Currently, several providers require debtors to “register” before any information is provided regarding the fee structure or fee waivers. Failure to notify consumers about fees being charged and their statutory rights to obtain fee waivers in the event they are unable to pay can have the effect of denying debtors their rights under the Code.

We commend the UST for requiring mandatory and early disclosures regarding fee waivers or reduced fee courses. However, the information related to fee waivers is included among a list of eight, potentially lengthy, items that must be disclosed. We are concerned that the information regarding the availability of reduced fees or free courses will be lost among the other required disclosures. Therefore, we recommend that the provisions related to fees be made more prominent, either by requiring larger type size or by setting the fee information apart in some visual way. Additionally, provider websites should make this information clearly available wherever the cost of the program is discussed. A review of several websites for approved providers reveals that many do not mention the availability of a fee reduction/waivers where the cost of the program is mentioned.

Language Barriers to Access.

For debtors with limited English ability, satisfying the credit counseling and personal financial management course requirements is a significant barrier to accessing bankruptcy system and obtaining a discharge. Many approved agencies and providers have no ability to provide services in a language other than English. Consequently, debtors in many districts do not have access to meaningful services.

Section 58.33(i) of the proposed rule entitled “Language services to debtors” falls short of addressing the hurdles faced by debtors with limited English proficiency. Currently, providers that are unable to provide an instructional course to a debtor due to the debtor’s limited English proficiency are only required to employ “best efforts” in referring the debtor to another provider. Because the provision of language-appropriate services is not mandatory, providers may simply “pass the buck” and leave debtors without meaningful access to the necessary courses. We recommend that the EOUST require agencies to provide language-appropriate services or ensure that the debtor is
referred to others who provide them. Such services should be provided without additional charge. Alternatively, borrowers without meaningful access to language appropriate services should be granted waivers from the course requirement.

**Reporting of Section 111(g)(2) Actions.**

Section 111(g)(2) creates an express private right of action for debtors against nonprofit budget and credit counseling agencies that willfully or negligently fail to comply with the requirements of the statute. Many of these agencies provide both pre-filing credit counseling and personal financial management courses. The individual enforcement mechanism of section 111(g)(2) is not only designed to provide relief to injured debtors, but also to assist the EOUST in identifying problems with agencies and providers. However section 58.30 of the proposed rule, which provides a list of events that must be reported to the EOUST, does not include these actions as reportable events.

We recommend that an additional subsection in 58.30 be added that would require course providers to notify the EOUST of any actions taken against them pursuant to section 111(g)(2) or any other consumer protection statutes.

**Content of Personal Financial Management Course**

Completion of a personal financial management course is required for a debtor to obtain a discharge in chapter 7 or chapter 13. Section 111(d) requires providers to have “learning materials and teaching methodologies designed to assist debtors in understanding personal financial management.” This broad statutory requirement is further detailed in section 58.32 of the proposed rule. Despite the fact that most, if not all, persons taking the personal financial management course will be debtors in bankruptcy, the learning materials and methodologies requirements contain no reference to bankruptcy.

Debtors in bankruptcy face unique financial management obligations and challenges during and after their bankruptcy case. Failure to acknowledge this reality is a tremendous shortcoming in the proposed rule. We recommend that the content of the course address challenges faced specifically by bankruptcy debtors.

**Fees for Certificates or Replacement Certificates**

Section 58.35 permits a provider to charge a separate fee for a certificate or replacement certificate if certain conditions are satisfied. Since most, if not all, persons participating in the financial management course are bankruptcy debtors who need a certificate to obtain a discharge, we oppose a separate fee for the issuance of a certificate or replacement certificate.

**Referral Fees**

Referral fees are payments made by providers to other parties as quid pro quo for referring customers. They are essentially a marketing expense. Referral fees raise the cost to debtors because providers must charge more to cover the cost. Section
58.33(c)(2) prohibits referral fees except payments to a “locator.” “Locator” is broadly defined as any entity that assists a debtor in finding an approved provider for the purpose of taking a course, unless the entity is the provider of the course itself. The broad definition of “locator” renders the prohibition on referral almost meaningless. The prohibition applies to no one but the entity providing the service. Thus a provider could receive a referral fee for referring the debtor to another provider that provides language appropriate services.

As referral fees in consumer transactions have often been the source of abuse, we oppose any rule that permits such fees.

Very truly yours,

/s/ Carey D. Ebert  
Carey D. Ebert  
President  
National Association of Consumer Bankruptcy Attorneys

/s/ John Rao  
John Rao  
Attorney  
National Consumer Law Center
14. Exhibit 14: Arizona Formal Opinion 06 06
An online service that matches prospective clients with potential lawyers based on the appropriate geographic and practice areas, makes representations about the qualifications of its member lawyers, and provides a monetary satisfaction guarantee, is a "lawyer referral service" within the meaning of ER 7.2(b). Unless the service is a non-profit service or is approved by an appropriate regulatory authority, Arizona attorneys may not pay a fee to participate.

FACTS

The particular online attorney/client matching service at issue in this request ("the Service") advertises itself to prospective clients as a method to "Find the Right Lawyer" for their particular legal problem. A prospective client submits a description of her legal problem to the Service, which then notifies member lawyers in the prospective client’s geographic area and the relevant area of practice that a prospective client has submitted a potential case. Member lawyers can view the prospective client’s description of her legal problem without any identifying or contact information. Any member lawyer who is interested in working with that client submits a return message through the Service providing information about his or her relevant experience and fee structure. Return messages, which are marked as "ADVERTISING MATERIAL," are available for review by the prospective client along with profiles and customer ratings for the responding lawyers. The prospective client may then choose to contact a member lawyer. Only if the prospective client does so does the lawyer learn the prospective client’s identity or contact information.

Prospective clients are not required to pay for the Service or to select any of the lawyers whose names they receive through the Service. However, prospective clients can choose to pay for "priority" service. If they do so then a staff lawyer employed by the Service will speak with them by phone or review their case description and prepare or edit the written summary so that potential lawyers are more likely to recognize it as a "high value" case or one that is "legally compelling" and to ensure that the correct area of legal specialty is selected.

The Service provides a satisfaction guarantee to prospective clients who choose a lawyer designated by the Service as "verified." If the prospective client has a serious dispute with the "verified" lawyer, takes the dispute to arbitration and obtains a judgment, the Service will guarantee payment of up to $1,000 of the arbitration award ($2,000 for clients who also paid for "priority" service) if the client is unable to collect. To attain "verified" status, member lawyers must submit letters of recommendation, work regularly with the Service’s marketing professionals, and use the Service with a specified frequency to contact prospective clients. In addition to being the only lawyers for whom the Service provides its satisfaction guarantee, "verified" lawyers will have their messages placed first in the list of responses made available to prospective clients, above the messages of regular member attorneys and any subsequently "verified" attorneys.

The Service specifically and repeatedly disclaims being a "referral" service, instead calling itself a "matching" service. According to the Service’s materials, it differs from a referral service in two respects: (1) it leaves the choice of lawyer up to the prospective client and (2) it provides the prospective client with information, including ratings by other clients, about the lawyers with whom the client is matched. The Service nonetheless describes the "matching" process as one that will match the prospective client with the "right" lawyer, one who is "specifically qualified" to handle the client’s case and located in the right geographic area. The Service also makes representations about the quality of the lawyers with whom prospective clients will be matched, claiming that they are pre-screened, "knowledgeable" and "competent," and providing the satisfaction guarantee described above to clients who select "verified" lawyers.

To participate in the Service, an attorney must apply for membership and pay a fee. The Service is not generally open to all attorneys. In addition to the requirement that attorneys be licensed and in good standing in the jurisdictions in which they practice, the Service limits membership in each geographic and practice area via an "allocation model" designed to ensure the appropriate balance of prospective clients and member attorneys and to permit the Service to guarantee members that they will recoup at least the amount of their membership fee via clients obtained through the Service.

The Service is a for-profit entity. It has not been approved by any regulatory authority in Arizona.

QUESTION PRESENTED

May an Arizona attorney participate in the Service?

RELEVANT ETHICAL RULES

ER 7.2 Advertising
The Texas State Bar Association recently issued a similar opinion, holding that an Internet service providing information about prospective
we agree with the Washington Bar’s conclusion that the Service is a referral service.

has found, as we do, that the Service makes subjective judgments about which lawyers to connect to which prospective clients and that it
“priority” service.

South Carolina Ethics Advisory Committee considered a proposed Internet site that would permit attorneys to place advertisements for their
lawyers was not a “referral” service unless it selects or recommends lawyers.

Our decision is also consistent with an opinion of the South Carolina Bar evaluating a different Internet-based service. In that opinion, the
South Carolina Ethics Advisory Committee considered a proposed Internet site that would permit attorneys to place advertisements for their
services and to pay either by the number of “hits” (the number of times a user accessed the advertisement) or on a set monthly or yearly fee.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;
(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and
(3) pay for a law practice in accordance with ER 1.17.

RELEVANT ARIZONA ETHICS OPINIONS

Ariz. Ops. 85-8, 95-13, 99-06, 02-03 (withdrawn December 2002), 05-08[2].

OPINION

The resolution of this inquiry depends on whether the Service is a “referral service” within the meaning of ER 7.2(b). If it is a referral service,
then Arizona lawyers may not participate unless the Service seeks and receives the approval of an “appropriate regulatory authority.” ER 7.2
(b)(1) (Arizona lawyers may pay referral service fees only if the service is non-profit or has been approved by an appropriate regulatory
authority). If it is not a referral service, then participation would constitute advertising subject to the requirements of the ethical rules for
advertising activities.

The Service is unquestionably a lawyer referral service. According to the comments to ER 7.2, a referral service is “any organization in which a
person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers or that holds itself out to
the public as a lawyer referral service.” ER 7.2, cmt 6.

The Service meets both definitions. According to the Service’s own website, it matches (or allocates) prospective clients to particular lawyers
who it represents to be appropriately qualified to handle the prospective client’s case. Neither the fact that the Service provides more than one
lawyer from which the prospective client may choose nor the fact that the client makes the choice after receiving information about the
member lawyers change the essential nature of the transaction — a prospective client comes to the Service seeking the names of potential
lawyers to handle a case, and the Service responds with the names of lawyers it has chosen from among its members as appropriate. Any
recipient of information from a referral service must obtain information and choose from among the lawyers whose names are provided. It is
the act of providing the name of an attorney who the provider claims would meet the client’s needs that constitutes a referral. See Ariz. Ethics
Op. 95-13 at 4 (the defining characteristic of a lawyer referral service is “[t]he process of ascertaining the caller’s legal needs and then
matching them to a member having the appropriate ‘area of expertise’”); see also Ariz. Ethics Op. 99-06 (website that routed inquiries to
member lawyers based on the “match between the subject matter of the question and the members’ claimed expertise” was a referral service).

Moreover, despite its express rejection of the term “referral service,” the Service holds itself out to the public as providing a service through
which members of the public may obtain the names of lawyers who are specifically qualified to handle their particular legal matter. That is
precisely what a referral service does, and the public will understand the Service’s offerings as such.

That the Service is providing referrals, and not merely directory listings or some similar advertising venue, is even more clear when the
“verified” attorneys and satisfaction guarantee are considered. The Service not only matches the client with prospective lawyers, but prioritizes
certain of those lawyers in the list the client receives based on the Service’s professional evaluation of those lawyers’ qualifications and then
provides a monetary guarantee that the client will not be dissatisfied and unable to collect in the event of a dispute with those lawyers. A mere
directory listing does not do that.

A mere directory also does not provide users with assistance in formulating their requests to ensure that they will attract the attention of the
listed professionals or to ensure that the right group of professionals is contacted, as the Service does for those prospective clients who choose
“priority” service.

We recognize that there is a split of authority on this issue among state ethics authorities on this issue. The Washington State Bar Association
has found, as we do, that the Service makes subjective judgments about which lawyers to connect to which prospective clients and that it
therefore functions as a referral service. Wash. Ethics Op. 2106 (2006). In so doing, it relied upon the Ohio Supreme Court’s characterization
of a referral service as one that “[g]o[es] beyond the ministerial function of placing the attorney’s or law firm’s information into the public view.”
Ohio Ethics Op. 2001-02 (2001). We believe that is an accurate description of what distinguishes a referral service from mere advertising, and
we agree with the Washington Bar’s conclusion that the Service is a referral service. Cf. Ariz. Ethics Op. 95-13 at 4.

The Texas State Bar Association recently issued a similar opinion, holding that an Internet service providing information about prospective
lawyers was not a “referral” service unless it selects or recommends lawyers. See Tex. Ethics Op. 573 (July 2006). In this case, however, the
Service holds itself out as providing access to the “right” lawyers, and provides a satisfaction guarantee for clients who select lawyers awarded
“verified” status by the Service. It therefore falls within the definition of a referral service as set forth in the Texas opinion.[3] Moreover, unlike
a directory or advertising listing open to most or all lawyers in an area, the Service selects the lawyers whose names it will provide to
prospective clients by restricting membership to a small number of lawyers in each practice and geographic area. The Texas opinion recognized
that this kind of membership selection can itself constitute a referral. See id.

Our decision is also consistent with an opinion of the South Carolina Bar evaluating a different Internet-based service. In that opinion, the
South Carolina Ethics Advisory Committee considered a proposed Internet site that would permit attorneys to place advertisements for their
services and to pay either by the number of “hits” (the number of times a user accessed the advertisement) or on a set monthly or yearly fee.

http://www.myazbar.org/Ethics/opinionview.cfm?id=690

04/10/09
We must respectfully disagree with the opinions of ethics authorities in two other states. Both North Carolina and Rhode Island have considered whether the Service is a "referral service" in which their attorneys may participate, and have concluded that it is not.

The North Carolina State Bar reasoned that the Service was not "strictly" a referral service because a user of the Service's website "must evaluate the information and offers he receives from potentially suitable lawyers and decide for himself which lawyer to contact." North Carolina Formal Ethics Op. 1 (2004). As discussed above, the fact that the prospective client may choose from multiple lawyers is common among referral services, and it is to be expected that a prospective client will obtain information about the referred lawyers before hiring one.

We therefore disagree with the North Carolina State Bar’s conclusion that the Service is not a referral service.

The Rhode Island State Bar’s opinion, which specifically addresses the Service at issue in this request, is based on information about how the Service operates that differs materially from the information currently available on the Service’s website, on which our opinion is based. The Rhode Island opinion found that payment to participate in the Service was not a payment "for recommending a lawyer’s services" within the meaning of ER 7.2 because it believed that the Service did not "recommend, refer, or electronically direct consumers, i.e., potential clients, to a specific attorney" and that "all requests for legal services by consumers are accessible to every attorney who registers to receive them." Rhode Island Supreme Court Ethics Advisory Panel Op. No. 2005-01 (2005). Neither of these statements accurately describes the Service in its current form, according to the Service’s own website.

The Service expressly recommends member attorneys as "knowledgeable," "competent," and "pre-screened." It prioritizes the responses of its "verified" attorneys and provides a monetary satisfaction guarantee to clients who select those attorneys. And it repeatedly states that its purpose is to match prospective clients with the "right" lawyer. The Service recommends, refers, and electronically directs potential clients to specific member attorneys. Moreover, requests for legal services are not accessible to all attorneys who register. Registration as a member is limited by practice and geographic area and "verified" attorneys receive priority in responding to prospective clients, as well as the advantage of having their services backed by a monetary satisfaction guarantee.

Because the facts available to us differ substantially from those relied upon by the Rhode Island State Bar, we disagree with its conclusion that the Service does not provide referrals.

In rendering this opinion, we do not make any comment on the merit of the idea of legal matching services or the possibility that they may provide useful information to prospective clients seeking legal representation. We recognize that the Service has actually been adopted by another jurisdiction as a substitute for its traditional bar association referral service, and that the Federal Trade Commission has opined that the Service does not provide referrals.

Because we find that the Service is a lawyer referral service, and that participation is not permitted unless and until it receives the approval of an appropriate regulatory authority, the Service has not done so, Arizona attorneys may not participate.

CONCLUSION

An Arizona lawyer cannot participate in the Service because it is a for-profit lawyer referral service within the meaning of ER 7.2(b) and it has not been approved by an appropriate regulatory authority.

Formal opinions of the Committee on the Rules of Professional Conduct are advisory in nature only and are not binding in any disciplinary or other legal proceedings. © State Bar of Arizona 2006

[1] These facts are compiled from information submitted by the Inquiring Attorney as well as from the website of the Service about which the inquiry was made.

[2] To the extent Ariz. Ethics Op. 05-08 is inconsistent with the analysis in this opinion, that opinion is no longer effective. We do not, however, withdraw that opinion, but instead issue this superceding opinion.

[3] The Texas rule also differs from our rule. It lacks the definition of referral service, found in the comments to ER 7.2, indicating that a service that "allocates ... requests to a particular lawyer or lawyers" is a referral service. As explained above, the Service meets Arizona’s definition of referral service.

[4] We have no way of knowing the source of the Rhode Island Ethics Advisory Panel’s information or whether it was accurate at the time the opinion was rendered, and we intend no disrespect to our Rhode Island colleagues.
15. Exhibit 15: Iowa Formal Opinion 00 07
Date of Opinion: 12/05/2000

Opinion Number: 00-07

Title: INTERNET -- WEB SITE LINKS

Opinion: You state that your law firm is in the process of developing a web page. You would like to provide an internet world-wide-web link to a company that provides a lawyer referral service and to be included in the company’s electronic database which is accessible by the general public.

According to the company’s promotional information submitted with your letter, the database lists lawyer’s names, biographies and areas of practice. In that material, the company states that for an annual fee to participating lawyers, it operates:

“...an internet site that provides consumers with a way to find attorneys by specialty and locale and publishes a wealth of consumer legal content and attorney resources.”

Further the company promises that:

“Many attorneys have web sites that receive no traffic and are unproductive. Lawpages.com (the Company) through exclusive and non-exclusive advertising relationship with major search engines, will feature your firm nationally to prospective clients who are looking for attorneys in your locale and specialty!” (Emphasis added).

You request an opinion whether an Iowa lawyer can participate in such a program.

The need for and selection of a lawyer are important decisions. To ensure the public has access to information to assist it in the decision-making process, the Iowa Supreme Court, in the Iowa Code of Professional Responsibility, has created specific rules and procedures that lawyers must employ in their advertising and marketing. By operation of DR 1-102(A)(1) lawyers are duty bound to follow the Code.

http://www.iowabar.org/ethics.nsf/e61beed77a215f6686256497004ce492/09d823189cda5ebc86... 04/10/09
From the materials furnished to the Board, the proposed program is a referral service and is not in compliance with DR 2-103(C) which controls the participation by a lawyer in a lawyer referral service, scheme or program.

The Company in question seeks to operate as a Reputable Law List or Directory. The use of law lists and directories is authorized by DR 2-101(C) which requires that such a list or directory be:

- a “reputable” law list and directory
- “intended primarily for the use of the legal profession.”

A “reputable” list is defined by Definition 11 of the Iowa Code of Professional Responsibility for Lawyers:

“A reputable legal directory is a publication which contains a list of lawyers or law firms in designated geographical areas, contains only the information permitted under DR 2-101, presents such information for each lawyer in the same size and style of type and in a dignified manner and the sole purpose of which is to assist lay-persons and lawyers in selecting a lawyer in the geographical area which it covers. A directory which charges a fee for a listing is not reputable unless it makes a listing available to every practicing lawyer in the geographical area on the same terms and conditions as every other lawyer in the area. Notwithstanding the foregoing, any directory which has received the formal written approval of the Iowa Supreme Court Board of Professional Ethics and Conduct or has received the certification of the Law List Committee of the American Bar Association shall be considered reputable.”

Additionally, to be “reputable” it must fully comply with the Iowa Code of Professional Responsibility by including the required DR 2-101 disclosures.

DR 2-101(C) states:

“Nothing contained herein shall prohibit a lawyer from permitting the inclusion in a reputable law list and law directories intended primarily for the use of the legal profession of such information as traditionally has been included in these publications.”

A law list is “intended primarily for the use of the legal profession” if it does not act as a client referral service or engage in active marketing to the lay public.

Applying the foregoing, it is the opinion of the Board that it would not be proper to knowingly allow your name to be included in the Company’s
electronic database or to participate in its program. From the information submitted to the Board, it appears that the Company essentially operates a client-referral program that is not in compliance with DR 2-103(C). Furthermore, as described above it does not qualify as a reputable law list under DR 2-101(C) or Definition 11.

For problems with this site, contact the webmaster.
The Iowa State Bar Association, 625 East Court Avenue, Des Moines, IA 50309

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Terms & Condition of Use
16. Exhibit 16: Kansas Formal Opinion E 429
KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-429
Date: June 17, 2008

Subject: Participation in for-profit group marketing

Question I: May a lawyer participate in a for-profit group marketing arrangement where prospective clients are provided information about lawyers through an 800 number or an internet website?

Answer: Qualified yes, so long as the arrangement complies with the Advertising Rules and does not function as a for-profit lawyer referral service. See discussion below.

Question II: May a lawyer pay reasonable costs to participate in a for-profit group marketing arrangement?

Answer: Qualified yes. See discussion below.

Question III: If a lawyer participates in for-profit group marketing, is the lawyer responsible for assuring that the advertisement complies with the requirements of the Kentucky Rules of Professional Conduct.

Answer: Yes

Introduction

The KBA Ethics Committee has been asked to opine on the ethical propriety of various group marketing arrangements, specifically those that provide prospective clients with information about participating lawyers through the internet or an 800 telephone number. Before beginning a discussion of group marketing, it should be noted that the Attorneys’ Advertising Commission (AAC) has jurisdiction over lawyer advertising under SCR 3.130 (7.01-7.06). Rule 7.05 provides that all advertisements must be submitted to the AAC not later than the publication date of the advertisement. The AAC reviews advertisements and may issue advisory opinions to individual lawyers. As in the past, however, when specific advertising arrangements raise ethical questions beyond the advertising rules, the Ethics Committee will address the ethical implications of those arrangements. 1

It would be virtually impossible to address the specific details of each and every conceivable group marketing model. It is, however, possible to describe some of the more common features of these models and address the most frequent challenges and pitfalls a lawyer may face.

Most of the group marketing models have several common characteristics. They are all sponsored by for-profit entities 2 and the lawyer pays a fee to participate. In addition, the initial advertisement, whether it is in the newspaper, on television or on the internet, is generic in nature; it usually does not promote an individual lawyer. Only after the prospective client makes an initial contact with the group marketer, either through an 800 number or over the internet, does the prospective client receive more individualized information about one or more specific lawyers. Some group advertisements are targeted at anyone who might need a lawyer, while others target those with specific needs, such as those who have been charged with a crime or have been injured in an accident. As the following discussion indicates, the marketer’s level of involvement in analyzing the problem and identifying a specific lawyer may vary substantially. At one end of the spectrum, there are marketing arrangements designed so that the prospective client inputs certain demographic information, such as a zip code or type of practice needed, and a list of participating lawyers is provided. The list may include an internet link to each lawyer’s webpage or provide a way to contact the participating lawyers. It is
up to the client to evaluate the information about the lawyers and decide which, if any, to contact. At the other end of the spectrum is the arrangement where the prospective client provides considerable detail about his or her needs; the marketing organization then evaluates the client’s needs and selects one or more lawyers from its participating members. The organization may represent that it is evaluating the needs of the client and the qualifications of the lawyer, thereby providing the prospective client with the best “match.”

Discussion

As this Committee has noted previously, the Rules of Professional Conduct were not designed to specifically address many of the issues that arise in an age of advanced technology and sophisticated marketing schemes. Nevertheless, despite the many changes in the profession and the way in which we communicate, the underlying values and principles of the profession remain unchanged – lawyers must protect their clients and the public. These principles are reflected in the Rules of Professional Conduct in various ways, but those most relevant to group marketing are as follows:

1 For example, KBA E-427 (2007) dealt with the ethical implication of domain names and KBA E-428 (2007) dealt with not-for-profit lawyer referral services.

2 Participation in not-for-profit lawyer referral services is specifically authorized by Rule 7.20 and KBA E-428 (2007) addresses compensation arrangements with not-for-profit bar associations.


• A lawyer may not use a third party to do that which the lawyer is prohibited from doing under the Rules of Professional Conduct. Rule 8.3(a).

• Communications regarding the lawyer’s services cannot be false, deceptive or misleading. Rule 7.15.

• A lawyer may not give anything of value to a non-lawyer for recommending the lawyer, except that the lawyer may pay the reasonable cost of advertising. Rule 7.20(2).

• A lawyer may not share a fee with a non-lawyer. Rule 5.4.

It is against the backdrop of these principles that we will evaluate the propriety of group marketing.
Participation in Group Marketing

It is the view of the Committee that there is nothing inherently unethical about two or more lawyers pooling their financial resources in order to maximize the effectiveness of marketing, as long as those lawyers follow the applicable Rules of Professional Conduct. Each participating lawyer remains responsible for assuring that marketing arrangements comply with the Rules of Professional Conduct, even where the advertisement and the underlying arrangements are controlled by a third party. Issues of compliance with the Advertising Rules, including those which prohibit communications that are false, deceptive or misleading, fall within the jurisdiction of the Advertising Commission, but will be mentioned briefly. For example, it would be a violation of the rules for the

4 Rule 8.3(a) provides:
   It is professional misconduct for a lawyer to:
   (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

5 Rule 7.15 provides:
   A lawyer shall not make a false, deceptive or misleading communication about the lawyer or the lawyer’s service. A communication is false, deceptive or misleading if it:
   (a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; or
   (b) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or
   (c) Compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated.”

6 Rule 7.20(2) provides:
   A lawyer shall not give anything of value to a non-lawyer for recommending the lawyer’s services, except that a lawyer may pay the reasonable cost of advertising or communication permitted by this Rule.”

7 Rule 5.4 provides, in part:
   (a) A lawyer or law firm shall not share legal fees with a nonlawyer....

8 See note 4 for text of Rule 8.3, which prohibits a lawyer from circumventing the rules through the acts of another.

9 See note 5 for text of Rule 7.15, which prohibits the use of false, deceptive or misleading advertising.

marketing organization to state or imply that it “selects” attorneys based on experience and training, when, in fact, the attorney’s selection is based upon payment of a participation fee. Likewise, ads that promote a participating lawyer as “specialist” in a particular area violate the rules. In addition, all advertisements must contain the name of at least one lawyer or law firm, licensed in Kentucky, responsible for the content. As with any communication promoting the lawyer, group advertisements must be submitted

10 See note 8 for text of Rule 7.20, which provides that a lawyer shall not give anything of value to a non-lawyer for recommending the lawyer’s services, except that a lawyer may pay the reasonable cost of advertising or communication permitted by this Rule.”

11 As with any communication promoting the lawyer, group advertisements must be submitted...
These purely advertising issues are mentioned here because they often present the biggest challenges to participation in group marketing arrangements. In addition to the advertising issues, there are other ethical challenges to this type of arrangement and the balance of this opinion will focus on the non-advertising issues, specifically whether the arrangement is, in reality, a for-profit referral service rather than advertising and whether the payment arrangement between the lawyer and the service provider is permissible.

Much of the debate over group marketing has focused on whether the marketing arrangement is just another type of advertising or is really a for-profit referral service. Whether a particular arrangement falls in one category or the other will depend upon a careful analysis of the facts. For example, some internet group marketing arrangements are merely directories, similar to the lawyer advertisements in the Yellow Pages, except that the prospective client may be able to narrow the search by locality or area of practice. But even some traditional directories, authorized under the advertising rules, have similar features. Some 800 number ads in newspapers and on television are also similar to the directories described above. The prospective client may provide minimal information about the type of lawyer sought and the locality, and the operator provides the caller with names of participating lawyers. The operator does not analyze the prospective client’s needs or the qualification of the particular lawyers, but merely passes on information about participating lawyers. It is the Committee’s view that a group marketing arrangement that provides directory services, such as those described above, is a type of advertising contemplated by the rules and can be structured in such a way so as to comply with the Rules of Professional Conduct.

Other group marketing arrangements have characteristics of for-profit lawyer referral services. For example, some group marketing arrangements require the prospective client to provide extensive information about the client’s needs. In some cases, third parties purport to analyze the needs of the client and match the client with a specific lawyer. This

10 Rule 7.40 provides, in part:
A lawyer may communicate the fact that the lawyer does nor does not practice in particular fields of law. … Any such advertisement or statement shall be strictly factual and shall not contain any form of the words “certified”, “specialist”, “expert”, or “authority.” A lawyer shall not state or imply that the lawyer is a specialist ... (exceptions omitted).

11 Rule 7.20 (3) provides:
Any communication made pursuant to these Rules shall include the name of at least one lawyer licensed in Kentucky, or law firm any of whose members are licensed in Kentucky, responsible for its contents.

12 Rule 7.02 provides the definitions for the Advertising Rules. Rule 7.02(1) provides:
For the purposes of Rule 7, the following definitions shall apply:
(1) “Advertise” or “advertisement” means to furnish any information or communication containing a lawyer’s name or other identifying information… (exceptions omitted).
arrangement goes beyond the mere pooling of financial resources of group advertisers. The participating lawyer is paying a fee for a specific referral, something that is prohibited by Rule 7.20(2). Once the advertising organization becomes actively involved in screening cases and matching prospective clients to specific lawyers, the arrangement functions as a lawyer referral service, which the rules prohibit, except when it is a non-profit organization. The Committee agrees with the substantial number of jurisdictions that have addressed this issue and concluded that such arrangements are unethical. NY State Ethics Op. 799 (2006); Va. Ethics Op. A-0117 (2006); Wa. Inf. Op. 2106 (2006); S.C. Ethics Adv. Comm. Op. 01-03 (2001).

Finally, the Committee understands that some group marketing arrangements limit the number of lawyers who may participate in a particular field or geographic area so as to assure that the participating lawyers will not be competing with other lawyers for the clients who contact the service. Without an appropriate disclaimer, such an arrangement may mislead the client into believing that there is an evaluative process being conducted when in fact there is not. This would violate the prohibition on false, deceptive or misleading advertisements. Further, it is the Committee’s view that, by limiting the number of participants in this way, the service is in effect directing prospective clients to a particular lawyer, thus violating Rule 7.20(2) in the same way that the matching process described above violates the rule.

**Payment for Group Marketing**

The Rules of Professional Conduct prohibit a lawyer from paying a non-lawyer for recommending his or her services, but the rule authorizes a lawyer to “pay the reasonable costs of advertising or communications permitted by [the] rule.” Rule 7.20(2). Most group advertising arrangements require the participating lawyer to pay some kind of enrollment fee, and/or a monthly or yearly fee. The arrangement is not substantially different than the arrangement with the print advertiser who charges a set-up fee of some kind, and then charges another fee for the specific time that the advertisement runs. As long as the advertising costs are reasonable, there is nothing unethical about this type of compensation arrangement.

The compensation issue becomes more complicated if the advertising fee paid by the lawyer is based in whole or in part on the presumed or real economic benefit to the lawyer. For example, some sponsors of internet group advertising charge the lawyer based the number of “hits” to the website or link. Others may charge on the basis of the number of referrals, clients represented or fee generated.

As the Committee understands the system based on “hits,” the lawyer is charged each time a potential client accesses a particular website or link. The question is whether such a fee structure is payment for a referral, which is prohibited under Rule 7.20(2), or is the...

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13 According to the American Bar Association’s Model Supreme Court Rules Governing Lawyer Referral & Information Service, a referral service is an entity that helps potential clients determine if a problem is truly of a legal nature by screening inquiries and, where appropriate, providing an unbiased referral to an attorney who has experience in the area of law appropriate to the potential client’s needs.
payment the reasonable cost of advertising, which is permitted under the same rule. The Committee is of the view that “hits” do not constitute “referrals” within the meaning of the Rules. Calculating the cost of advertising based on the number of viewers of the ad (hits) is no different than basing advertising charges on newspaper circulation or television viewership. Once the prospective client has viewed the information, he or she makes an independent decision whether to contact the lawyer. A “hit” does not necessarily result in employment or even contact with the lawyer. Charging based on “hits” is merely a method of calculating viewership. It is the Committee’s view that payment of reasonable costs for advertising based on the number of hits is consistent with the rules which permit a lawyer to pay the reasonable cost of advertising. This conclusion is consistent with opinions in other jurisdictions, including a recent opinion out of South Carolina. S.C. Ethics Advisory Opinion 01-03 (2001).

While compensation arrangements based “hits” may be permissible, most other arrangements based on presumed or actual economic benefit are highly suspect. For example, if the group advertising organization becomes active in directing potential clients to a specific lawyer and then charges the lawyer a fee for a specific referral, then the arrangement violates Rule 7.20, which prohibits the lawyer from paying for referrals. As the Comments to the Rule observe, “[a] lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work.” Once the group marketing organization becomes actively involved in matching or referring clients, it ceases to be advertising and a lawyer may not give anything of value for that service. See, New York State Bar Association Committee on Professional Ethics, Opinion Number 799 (2006); South Carolina; SCR 3.130 - Rule 5.4; 7.01 - 7.06; 7.09-7.50; 8.3; KBA E-427; KBA E-428; NY State Ethics Op. 799 (2006); Va. Ethics Op. A-0117 (2006); WA. Inf. Op. 2106 (2006); S.C. Ethics Adv. Comm. Op. 01-03 (2001). Also problematic is the compensation system that is tied to the fee that is earned in a referred case. In addition to the fact that it is payment for the referral, which is prohibited under the Rules, it also is fee splitting with a non-lawyer, which is likewise prohibited under Rule 1.5(e).

**Lawyer’s Responsibility for Group Marketing**

Rule 8.3 provides that “[i]t is professional misconduct for a lawyer to violate … the Rules of Professional Conduct … through the acts of another.” Thus, lawyers who participate in group marketing arrangements are responsible for the content of the advertisements and methods employed in promoting their services. Lawyers who rely on marketing organizations to promote their professional services must thoroughly investigate the practices of the organization to assure that they comply with all of the applicable Rules of Professional Conduct. Lawgists who are not directly but vicariously responsible for the conduct of an organization must take reasonable steps to ensure that the rules are not violated. KBA Ethics Opinion 2001-04 (2001).
Conclusion

Group advertising represents just one of many new marketing arrangements that have been developed in recent year. While such arrangements may be attractive to lawyers in promoting their services, lawyers must be careful to assure that the arrangements comply with all of the Rules of Professional Conduct, including the Advertising Rules. The lawyer is responsible for the content of all advertisements. He or she may pay the reasonable costs of advertising, but may not pay for client referrals. A lawyer may not participate in arrangements that are for-profit referral services.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: “Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act performed by that attorney in compliance with an informal opinion furnished by the Ethics Committee member pursuant to such attorney’s written request, provided that the written request clearly, fairly, accurately and completely states such attorney’s contemplated professional act.”
17. Exhibit 17: New Jersey Formal Opinion 36
Internet Advertising and Disclaiming
Impermissible Lawyer Referral Service?

The inquiring attorney asks whether listing the attorney's web page on a web site run by a private commercial advertising and marketing enterprise, where the attorney pays a flat fee for the listing and receives an exclusive listing for a particular county in a specific practice area - in this case criminal law - is permissible under the Rules of Professional Conduct.

The starting point for analyzing this type of inquiry is Opinions 6, 13 and 13 (Supplement) of this Committee, which contain detailed discussion of the obligations of lawyers utilizing private commercial advertising, marketing or referral services, or combinations of such activities. The activity proposed by this inquiry is fundamentally advertising and marketing, and as such is controlled by the strictures of RPC 7.1 and 7.2. As we said in Opinion 13:

In particular, we note that an attorney may not, by advertising through a consortium, collective, or any other kind of group or association, be involved in any kind of advertising activity which would be prohibited if the attorney advertised directly. Cf. Opinion 8, 127 N.J.L.J. 753 (1991). An attorney remains responsible for the ethical propriety of all advertising with which he or she has any connection or involvement.

Opinion 13, 132 N.J.L.J. 267 (October 5,1992) and 1 N.J.L. 1588 (October 12, 1992).

As stressed in these earlier opinions, frequently advertising or marketing services cross the line and become a form of lawyer referral service, invoking additional scrutiny under RPC 7.3(d) and (e):

In RPC 7, 3(d), a lawyer is barred from giving compensation or anything of value “to a person or organization to recommend or secure the lawyer's employment by a client,” except that a lawyer “may pay for public communications permitted by RPC 71,” and “usual and reasonable fees or dues charged by a lawyer feral service operated, sponsored, or approved by a bar association.” In a parallel vein, RPC 7.3(e)(3) exempts from a general prohibition on allowing others to promote the use of the lawyer's services “a lawyer referral service operated, sponsored, or approved by a bar association.”

Id.

When advertising is done through a vehicle which is not explicitly referenced as an advertisement, and is not readily known to consumers as a place of pure advertising (as, for example, the Yellow Pages would be), there is a possibility that the presentation and language could lead a reasonably informed consumer to believe that the listing has some sort of professional or authoritative imprimatur, as a kind of endorsement, such as an authorized lawyer referral service might give (e.g., a web page presented as “anti-trust lawyers.com,” as a hypothetical). Such a presentation could, intentionally...
or inadvertently, thus mislead consumers into believing it was other or more than simply a paid advertisement, and carried greater weight. Such a consequence would appear more likely when only a very limited number of lawyers are listed for a particular geographical, subject matter or other defined area.

To forestall such a possibility, we conclude that a lawyer who seeks to give anything of value in order to participate in such a listing must, before doing so, ensure that the listing or advertisement contains a prominently and unmistakably displayed disclaimer, in a presentation at least equal to the largest and most prominent font and type on the site, declaring that “all attorney listings are a paid attorney advertisement, and do not in any way constitute a referral or endorsement by an approved or authorized lawyer referral service.” With such disclosure, the proposed activity is permissible, as long as it otherwise complies with RPC 7.1 and 7.2, as noted above.
Exhibit 18: Oregon Formal Opinion 2007 180
FORMAL OPINION NO. 2007-180

Internet Advertising:
Payment of Referral Fees

Facts:
Lawyer wants to participate in a nationwide Internet-based lawyer referral service and has received solicitations from companies offering this service. Customers who use the referral service are not charged. Some providers will charge Lawyer through various mechanisms.

The referral service will not be involved in the lawyer-client relationship. A referred consumer is under no obligation to work with a lawyer to whom the consumer is referred. The referral service will inform consumers that participating lawyers are active members in good standing with the Oregon State Bar who carry malpractice insurance. Consumers may also be informed that participating lawyers may have paid a fee to be listed in the directory. Furthermore, consumers will be informed that lawyers have written their own directory information and that a consumer should question, investigate, and evaluate the lawyer’s qualifications before he or she hires a lawyer.

Questions:
1. May Lawyer participate in an Internet-based referral service?
2. May Lawyer ethically pay a fee to be listed in a directory of lawyers?
3. May Lawyer ethically pay a fee based on lawyer’s being retained by a referred client?

Conclusions:
1. Yes, qualified.
2. Yes, qualified.
3. No.

Discussion:
Internet-based advertising is governed by the same rules as other advertising. The questions presented here raise issues relating to both advertising and recommending a lawyer’s services. Advertising and recommendation are distinguished as follows: “When services are
advertised, the nonlawyer does not physically assist in linking up lawyer and client once the advertising material has been disseminated. When a lawyer’s services are recommended, the nonlawyer intermediary is relied upon to forge the actual attorney and client link.” Former OSB Formal Ethics Op No 1991-112 (discussing former DR 2-101 and former DR 2-103).¹

Lawyers are permitted to communicate information about their services as long as the communication does not misrepresent a material fact and is not otherwise misleading. Oregon RPC 7.1(a)(1)–(2). Internet-based communication is available to consumers outside the states where Lawyer is licensed. Therefore, Lawyer must ensure that nothing in the advertisement implies that Lawyer may represent consumers beyond the scope of Lawyer’s licenses. A lawyer who allows his or her name to be included in a directory must ensure that the organizers of the directory do not promote the lawyer by any means that involve false or misleading communications about the lawyer or his or her firm. RPC 7.2(b). For instance, if the directory lists only one type of practitioner, it may not include any statement that the lawyer is a specialist or limits his or her practice to that area unless that is in fact the case. RPC 7.1(a)(4). If the advertising creates an impression that Lawyer is the only practitioner in a specific geographic area who offers services for a particular practice area, when that is not the case, that representation would be misleading and therefore prohibited. Lawyer is responsible for content that Lawyer did not create to the extent that Lawyer knows about that content. Lawyer therefore cannot participate in advertising, including the home page of the advertising site and pages that are directly linked or closely related to the home page and that are created by the advertising company, if the content on those pages violates the Oregon RPCs. Lawyer is not responsible for the content of other lawyers’ pages.

Oregon RPC 7.1(d) permits a lawyer to pay others to disseminate information about the lawyer’s services, subject to the limitations of RPC 7.2. That latter rule, in turn, allows a lawyer to pay the cost of advertisements and to hire others to assist with or advise about marketing the lawyer’s services. RPC 7.2(a). RPC 7.2(a) provides:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer’s or law firm’s services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

At the same time, Oregon RPC 5.4(a) prohibits a lawyer from sharing legal fees with a nonlawyer (except in limited circumstances that are not relevant to the questions presented here). RPC 5.4(a) provides:

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer’s firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer’s death, to the lawyer’s estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

This rule “prohibits a lawyer from giving a non-lawyer a share of a legal fee in exchange for services related to the obtaining or performance of legal work.” In re Griffith, 304 Or 575, 611, 748 P2d 86 (1987) (interpreting former DR 3-102, which is now RPC 5.4(a)). In the context of advertising, Oregon RPC 5.4 thus precludes a lawyer from paying someone, or a related third party, who advertises or otherwise disseminates information about the lawyer’s services based on the number of referrals, retained clients, or revenue generated from the advertisements. By contrast, paying a fixed annual or other set periodic fee not related to any particular work derived from a directory listing
violates neither RPC 5.4(a) nor RPC 7.2(a). A charge to Lawyer based on the number of hits or clicks on Lawyer’s advertising, and that is not based on actual referrals or retained clients, would also be permissible.

Oregon RPC 7.2(c) permits a lawyer or law firm to be recommended by a referral service or other similar plan, service, or organization as long as (1) the operation of the plan does not result in the lawyer or the lawyer’s firm violating the rules relating to professional independence or unauthorized practice of law; (2) the client is the recipient of the legal services; (3) the plan does not impose any restriction on the lawyer’s exercise of professional judgment; and (4) the plan does not engage in direct contact with prospective clients that would be improper if done by the lawyer. If a third-party provider were to collect specific information from a consumer, analyze that information to determine what type of lawyer or which specific lawyer is needed, and refer the consumer based on that analysis, it would constitute the unauthorized practice of law and is prohibited. OSB Formal Ethics Op No 2005-168.

A lawyer cannot control where people choose to access the Internet, just as a lawyer does not know where a client will use a traditional telephone directory. Solicitation of clients and payment for referrals in personal injury or wrongful death cases is prohibited by ORS 9.500 and 9.505. Lawyers are also prohibited from soliciting “business at factories, mills, hospitals or other places . . . for the purpose of obtaining business on account of personal injuries to any person or for the purpose of bringing damage suits on account of personal injuries.” ORS 9.510. This statute must be read in conjunction with constitutional limitations on the restriction of free speech and does not bar all Internet-based advertising on these issues. OSB Formal Ethics Op No 2005-127.

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2 Oregon RPC 5.4.


4 Oregon RPC 7.3.
Substantive law may also limit Lawyer’s ability to pay a referral fee. Here, the referral fee would be paid to a private third party rather than a “public service referral program,” and it thus appears that the U.S. Bankruptcy Code’s general prohibition against fee-sharing applies.

Approved by Board of Governors, November 2007.

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5 See, e.g., 11 USC §503(b)(4), which governs the allowance of attorney fees in bankruptcy cases; §504(a) and (b), which prohibit a lawyer from agreeing to the sharing of compensation or reimbursement with another person; and §504(c), which creates an exception to the §504(a) and (b) restrictions for fee-sharing “with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.”
19. Exhibit 19: Texas Formal Opinion 561
Texas Professional Ethics Opinions

Type in a specific opinion number or search for specific keywords.

**OPINION**

THE PROFESSIONAL ETHICS COMMITTEE FOR THE STATE BAR OF TEXAS

August

**QUESTIONS PRESENTED**

May a lawyer pay a fee to be listed on a privately sponsored internet site which obtains information over the internet from potential clients about their legal problems and forwards the information to one or more lawyers who have paid to be listed on the internet site?

**STATEMENT OF FACTS**

A lawyer is considering participating in, registering with and/or subscribing to a privately owned for-profit internet service (the "Internet Service") that encourages lawyers and law firms to list their names and areas of practice so that the Internet Service can assist consumers who desire legal assistance to connect with lawyers who might be available to represent such individuals. The Internet Service charges participating lawyers a fixed monthly or annual fee to subscribe and be listed on the Internet Service. The Internet Service does not receive any share of legal fees that may be generated by a lawyer who is retained as a result of being listed with the Internet Service.

A consumer who desires to utilize the service typically fills out a form on the web page for the Internet Service. The form asks for basic information such as name, address, telephone number, date of incident, and a description of the problem for which the person is seeking legal assistance. The Internet Service then emails the consumer's information to one or more lawyers who have registered with or subscribed to the service so that the lawyer or lawyers can contact the consumer. The Internet Service is not involved in any way in a participating lawyer's providing legal services to a consumer.

**DISCUSSION**

The Texas Disciplinary Rules of Professional Conduct (the "Rules") contain provisions dealing with advertisements in the public media and participation in lawyer referral services. Effective June 1, 2005, the Rules affecting communications and advertisements pertaining to a lawyer's services were amended. The following portions of the Rules (as amended) are relevant to this opinion:

*Rule 7.03* Prohibited Solicitations and Payments . . .

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

. . . .

*Rule 7.04* Advertisements in the Public Media

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

. . .

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

. . .

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the internet, or electronic or digital media.
(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

"Rule 7.06 Prohibited Employment
(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

Rules 7.03 and 7.04 permit a lawyer to pay reasonable fees for advertising and public relations services rendered in accordance with the Rules. Such services, including advertising in public media such as newspapers, telephone directories, or legal directories, do not violate the prohibition in Rule 7.03(b) against paying, giving, or offering to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients. Rule 7.03(b) also provides that a lawyer "may pay the usual charges of a lawyer referral service that meets the requirements of" chapter 952 of subtitle B of title 5 of the Texas Occupations Code, which is known as the Texas Lawyer Referral Service Quality Assurance Act (the "Texas Lawyer Referral Act").

Under section 952.002 of the Texas Lawyer Referral Act, a lawyer referral service is defined to be "...a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term "referral service" to describe the service provided." A person may not operate a lawyer referral service in Texas unless such person obtains a certificate from the State Bar of Texas. Section 952.101 of the Texas Lawyer Referral Act. To obtain a certificate, the lawyer referral service must, among other requirements, be operated either by a governmental entity or a non-profit entity. Section 952.102 of the Texas Lawyer Referral Act. The Internet Service is not a lawyer referral service meeting the requirements of the Texas Lawyer Referral Act because it is a privately owned, for-profit organization that is not eligible to obtain the required certificate.

Rule 7.03(b) prohibits the payment of a fee by a lawyer to a non-lawyer for soliciting or referring prospective clients to the lawyer but allows payments for advertising and public relations services rendered in accordance with the Rule. In this case, the Internet Service provides lawyers and law firms with an opportunity, in return for payment of a fee, to list their names and areas of practice with the Internet Service so that consumers with legal problems can be connected with lawyers who might be available to represent such individuals. The Internet Service collects information on the internet from a consumer and that person's information and legal issues are then conveyed by the Internet Service to one or more of the lawyers who have registered with or subscribed to the Internet Service by paying a fee. The services provided by the Internet Service are not advertising or public relations services as allowed by Rule 7.03(b). The Internet Service is instead a service to solicit or refer prospective clients to subscribing lawyers who have paid a fee, and it is thus an arrangement prohibited by Rule 7.03(b).

A defining characteristic of soliciting or referring prospective clients is to ascertain information about a person's legal needs and then match or connect such person with a lawyer who has experience in the area of law appropriate to the legal problem. In general, if an internet site merely provides information about participating lawyers from which a consumer chooses a lawyer or group of lawyers based on the consumer's consideration or evaluation of that information, the site does not solicit or refer prospective clients but rather advertises for the lawyers listed. On the other hand, if an internet site is using information about participating lawyers for the purpose of identifying or selecting a lawyer or group of lawyers whose names are then suggested, offered or recommended to a consumer for consideration, the site is not advertising or providing public relations services but is rather soliciting or referring prospective clients.

CONCLUSION
Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may not pay a fee to be listed on a privately sponsored internet site which obtains information over the internet from potential clients about their legal problems and forwards the information to one or more lawyers who have paid to be listed on the internet site.
20. Exhibit 20: Washington Formal Opinion 2106
I. NATURE OF INQUIRY

The inquiring attorney asked whether there were ethical implications involved in participating in a legal marketing plan operated by an Internet company (the “Company”). The inquiring attorney explained that he would be one of no more than six attorneys practicing in his field who would potentially bid for work from potential clients who have contacted the Company. Subsequently, we were contacted by the General Counsel for the Company. This response is based on information from (i) the inquiring attorney, (ii) the Company’s General Counsel, and (iii) the Company’s website.

II. DISCUSSION AND ANALYSIS

A. The Company’s Services

The Company’s website says that it is an “attorney/client matching service and is not a referral service.” From information available on their website, it appears that “matching” is accomplished as follows:

1. Basic Services

The Company’s basic services consist of three steps:

(a) A consumer seeking an attorney visits the website and fills out a questionnaire describing the legal services being sought. This questionnaire, says the website, presents questions “that are designed by attorneys to guide you through the process, just as a lawyer would during an initial consultation.”

(b) The Company reviews the case description, determines what type of legal services are being sought and whether the case is “urgent.” The Company then provides the case description to attorneys who practice in the proper field and are located in the correct geographical area -- without revealing the potential client’s name or contact information.

(c) Interested attorneys may thereafter respond in writing describing relevant experiences and fee structures. From among those attorneys who respond, potential clients may review the attorneys’ on-line profiles and contact attorneys with whom they are interested in working.

The Company’s website also reveals the following:

• With respect to basic services, prospective clients pay no fees to the Company.
• Reportedly, attorneys do not pay any percentage of fees earned to the Company. Instead, the attorneys who become affiliated with the Company pay an application fee and a flat yearly fee. The Company guarantees attorneys that, at the end of a Membership Term, their revenues will exceed the paid membership fee. If not, for “Verified” attorneys (see below) membership will be extended without charge for up to half of the original membership term.
• The Company employs an “Allocation Model” that “balances” the number of Member Attorneys with the number of cases being posted by consumers. With respect to the Bar Inquiry at issue, the attorney reports that he was solicited to join the “trademark category” where the allocation is "limited to 6 attorneys who would bid on Federal trademark cases in the Western U.S.” The Company’s General Counsel represented that the company does not limit membership in a given area “except to the extent we may briefly put a potential member on the waitlist while we increase traffic in the area,” and that attorneys “are never rejected due to low volume or to protect the bottom line of other members.”

2. “Real-time Priority Service” and “Priority Service”

Although standard services are free to consumers, the Company advertises that “the fastest way to find the right lawyer” is to pay the Company a fee for either Priority Service or Real-time Priority Service.

a. Real-time Priority Service

For a fee, after a consumer fills out the on-line questionnaire, a Company “Staff Lawyer” contacts the consumer by telephone within one business day, and the consumer can discuss the case for up to 30 minutes. The Staff Lawyer “will listen carefully, and identify the precise legal issues relevant to your case” (emphasis added). Then, the Staff Lawyer will draft a “written summary of your case to make it appeal strongly to lawyers.” Thereafter, the summary will be circulated to affiliated lawyers via a “Priority broadcast,” alerting lawyers that “a high-value case has been
that the fee was a flat fee which purchased advertising and access to requests for legal services. Rhode Island concluded that the Company was not a referral service. Rhode Island concluded that a "referral service is if the company provides "services that go beyond the ministerial function of the service provider in directing the user to one attorney over another . . . it would not be a referral service." It concluded that "so long as the Internet site provider does not make specific recommendations to a particular attorney and there are no subjective judgments made by a third party in directing the user to a particular attorney making the Bar inquiry apparently was told he would be one of six trademark lawyers in "advertise" in response to the case descriptions forwarded to them may be quite small. The pool of lawyers who may choose to be reached if the Internet site provider was in anyway active in directing the user to a particular lawyer, their cases are sent for review by only a small group of lawyers. Thus, while consumers are not referred to a particular lawyer, their cases are sent for review by only a small group of lawyers. The "Western U.S." to whom trademark cases were circulated. Thus, while consumers are not able "improve and finalize" the attorney's on-line Profile. The benefits of Verified status are described as follows:

- Clients see a "Verified" logo attached to the lawyer's on-line Profile;
- Clients presenting cases will obtain a Satisfaction Guarantee only when they hire a Verified attorney; and
- Verified attorneys obtain an "Active Priority Listing." This means that the attorneys' responses to clients will be "presented above those Responses from Standard Members" and above Verified attorneys with less tenure.

Consumers are told that Verified lawyers "have taken several extra steps to prove their superior professional background and firm commitment to serving [the Company's] clients." Consumers who end up "matching" with Verified attorneys thereby obtain the Company's "Satisfaction Guarantee."

B. Discussion of Rules Implicated.

1. The Company Apparently Constitutes an Impermissible For-Profit Referral Service in Violation of RPC 7.2(c).

RPC 7.2(c) provides as follows:

A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the charges of a not-for-profit lawyer referral service or other legal service organization.

The website states that the Company is an "attorney/client matching service and is not a referral service." There are apparently no Washington State Bar opinions defining a referral service. In a 1999 opinion prohibiting lawyers from participating in Internet referral plans, the Arizona State Bar defined "referral service" as follows:

The Committee has previously found the defining characteristic of a lawyer referral service to be 

"[t]he process of ascertaining the caller's legal needs and then matching them to a member having the appropriate area of expertise."

Arizona Bar Op. 99-06. Later, the Arizona Bar, in Opinion No. 05-08 (July 2005), reviewing the same or a similar service at issue in this response, concluded that it was a for-profit referral service, and therefore violated Arizona’s ER 7.2. That opinion relied on Comment 6 to Arizona ER 7.2, which defines referral service as "any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers . . . ."

The Company says that it is not a referral service: [The Company] does not allocate or transfer requests to a particular lawyer or lawyers or recommend any lawyer's services. Member attorneys review the posts and decide whether they wish to advertise their services to any of the posters.

Oct. 5, 2005, email from the Company. Despite the Company’s characterizations, it ascertains consumers’ legal needs and forwards case descriptions to lawyers who practice in that particular specialty, a subset of who are “Verified” as capable of providing superior services. Furthermore, the pool of lawyers who may choose to “advertise” in response to the case descriptions forwarded to them may be quite small. The attorney making the Bar inquiry apparently was told he would be one of six trademark lawyers in the “Western U.S.” to whom trademark cases were circulated. Thus, while consumers are not referred to a particular lawyer, their cases are sent for review by only a small group of lawyers. Other state bars have examined this issue with regard to the same or similar Internet services. The South Carolina Bar opined that the service was not a referral service. Among other things, it noted that “the service provider plays no role in the decision-making process of the recipient of the information provided” (i.e., the potential client). It noted, however, that “a different answer would be reached if the Internet site provider was in anyway active in directing the user to a particular attorney.” It concluded that “so long as the Internet site provider does not make specific recommendations to a particular attorney and there are no subjective judgments made by a third party in directing the user to one attorney over another . . . it would not be a referral service.”

The Ohio Supreme Court, Op. 2001-02, indicated that one of the identifying characteristics of a referral service is if the company provides “services that go beyond the ministerial function of placing the attorney’s or law firm’s information into the public view.” Rhode Island concluded that the Company was not a referral service. Rhode Island concluded that the fee was a flat fee which purchased advertising and access to requests for legal services.
posted by consumers. The fee was not a percentage of, or otherwise linked to, the participating
attorney’s legal fees. Moreover, Rhode Island concluded that the Company does not recommend,
refer or electronically direct consumers to a specific attorney. Attorney-client relationships are
established off line and without the Company’s participation.
Under the above authorities, it appears that the Company’s system is a referral service. In
particular, the “verified” attorneys are recommended above others, a logo appears next to their
profile, and their responses are presented above those from “standard” attorneys. Thus, the
Company makes “subjective judgments,” and provides more than “ministerial services.”


Rule 7.4 contains detailed standards regarding attorneys implying that they are “specialists.”

COMMUNICATION OF FIELDS OF PRACTICE

A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(b) Upon issuance of an identifying certificate, award, or recognition by a group, organization, or
association, a lawyer may use the terms ‘certified,’ ‘specialist,’ ‘expert,’ or any other similar term to
derive his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the
law. If the terms are used to identify any certificate, award, or recognition by any group,
organization, or association, the reference must meet the following requirements: (1) the reference
must be truthful and verifiable and may not be misleading in violation of rule 7.1; (2) the reference
must identify the certifying group, organization, or association; and (3) the reference must state
that the Supreme Court of Washington does not recognize certification of specialties in the
practice of law and that the certificate, award, or recognition is not a requirement to practice law in
the state of Washington.
Consumers are told that Verified lawyers “have taken several extra steps to prove their superior
professional background.” The “Verified” logo is displayed on such an affiliated lawyer’s profile.
Thus, it appears that participating lawyers are holding themselves out as “verified” with a “superior
professional background.” This implicates the requirements of RPC 7.4. It is unclear whether the
disclaimer required by RPC 7.4(b)(3) appears with the attorney’s listing. If it does not, the
participating attorney would be in violation of the rule. The representations, “verified” and “superior
professional background” may be misleading under both RPC 7.1(a), (b) and (c) and 7.4(b).