

Zenas Zelotes, Esq.

In Disciplinary Proceedings Before the

Complainant

Statewide Grievance Committee

v.

Matthew Scott Rousseau

Case No. 09-0412

Gregg W. Wagman, Esq.

Case No. 09-0414

Steven M. Lesco, Esq.

Case No. 09-0415

Kenneth E. Lenz

Case No. 09-0416

Russell Gary Small, Esq.

Case No. 09-0418

Respondents

10/30/09

COMPLAINANT'S FIRST SUPPLEMENTAL MEMORANDUM

The complainant, Zenas Zelotes, Esq., submits this supplemental memorandum in response to the principal retorts observed subsequent to this action's initiation; and further with his recommendations as to an appropriate sanction.

In this, his first supplemental brief, the complainant avoids complicating the simple, preferring a combination of common-sense analysis, metaphor and sarcasm, in place of the staid legal analysis characteristic of his complaint.

And so it begins:

Total Attorneys' Myth # 1:

Total Attorneys Sells Pay-Per-Click Advertising (Akin to Google Adwords)

Total Attorneys (TA) argues that its (pay-per-lead) compensation is indistinguishable from commonplace pay-per-click internet advertising (such as Google Adwords). TA's contention is indefensible. There are PROFOUND and material differences.

To start: Unlike TA, Google Adwords does not provide for geographic exclusivity. Google does not limit participation to a single attorney in a given geographic location (a disfavored practice ethics boards have consistently deemed *de facto* referring; i.e. matching or channeling professional work). Much like a local newspaper or reputable listing service (e.g. Martindale Hubble) Google is open to all who wish to participate.

Another key difference is that Google exercises no control over the message communicated. Like a disinterested newspaper, Google merely places the attorney's information into the public view. TA (on the other hand) exercises exclusive control over both the content of its website and its very existence. The Connecticut Respondents have no control over the content of TA's website nor do they exercise the collective right to revoke its publication. The TA websites are not the advertisements of the Respondents (whose identities are buried deep in the website boilerplate); rather, the TA websites are an advertisement for TA itself. TA elicits visitors to provide their personal information, and then TA sells that information to contracting attorneys for profit (*per capita*). TA operates a for-profit referral service.

The MOST PROFOUND difference between Google Adwords and TA however is the ACT that is being compensated. Google charges for EXPOSURE whereas TA charges for LEADS.

In other words: Google Adwords charges based on the amount of VIEWS ("clicks") without regard to whether the click-through visitor subsequently furnishes his or her POC information. Google is charging for EXPOSURE.

TA does not charge for EXPOSURE (like Google Adwords) or ANTICIPATED EXPOSURE (like a newspaper ad). TA charges for the resulting POC LEADS (which TA gathers and sells).

So (yes) there is a MATERIAL difference between Google Adwords (Pay-Per-Click) and Total Attorneys (Pay-Per-Lead).

Paying for exposure is permissible. Paying for referrals is not.

Total Attorneys' Myth # 2:

The Internet Made TA's Business Model Possible

TA alleges that its business model is a unique creature made possible by recent advances in internet technology. This allegation is pure bunk. The internet did not make TA's business model possible. The internet simply made it easier (and more profitable) for a single rogue dissident (in Chicago) to orchestrate serial RPC violations concurrently in 47 states.

Ben Franklin could have (easily) duplicated TA's "pay-per-lead" business model had he so elected. All Ben need have done is to place an advertisement in Ye Old Newspaper for his new business ("Total Barristers") soliciting a "free good-old-fashioned talking to" with a "sponsoring solicitor." Indentured debtors (covetous of avoiding debtor's prison) would then fill out a form at the bottom of the Ye Old Advertisement, hand it to Paul Revere, who in turn would deliver it up to the residence of Mr. Franklin. Mr. Franklin would then sell the debtors contact's information to the aforementioned solicitors, the same having earlier agreed to pay Ben 65 Continentals for each name and address provided. Ben, of course, would expressly disclaim being a referral service (we are, after all, taking about Ben Franklin -- not Honest Abe).

Indeed, sub out the newspaper and Continentals for papyrus and Drachma, and Cicero himself could have duplicated this same feat ("Total Oratory").

Said simply: There is nothing new or unique about this “pay-per-lead” or “performance based” business concept.

The internet is merely a convenient subterfuge cited in an effort to evade the clear RPC, CGS and USBC prohibitions enjoining the payment of referral fees.

Total Attorneys' Myth # 3:

Laws Enjoining the Payment of Referral Fees Compel First Amendment Analysis

TA protests (at length) that an injunction on the payment of referral fees is an injunction on protected commercial speech. TA would have us believe that the RPC, CGS and USBC provisions enjoining the payment of referral fees cumulatively violate the First Amendment (citing Central Hudson).

This whole argument goes straight to the circular file.

Central Hudson testing is used to determine whether a *time, place or manner* restriction on commercial speech is consistent with the First Amendment.

Law school 101.

The fundamental problem with TA's argument (of course) is that neither the RPC, CGS nor the UBSC impose a time, place or manner restriction. TA can say whatever it wants, whenever it wants, wherever it wants, however it wants. TA can refer clients to whomever it wishes, whenever it wishes, wherever it wishes, and however often it wishes. No one is preventing TA from referring clients to attorneys or otherwise exercising protected speech.

What the RPC, CGS and USBC are enjoining ... is PAYMENT.

Regulations of payments are governed by the COMMERCE CLAUSE and are subjected to lowest level “reasonable basis” analysis. This is the legal standard that

applies to an injunction on referral fees (not Central Hudson). TA's efforts to fashion the debate in terms of the First Amendment is merely an effort to confuse the issues and elevate the bar.

By analogy:

The Constitution gives me an implicit right to have sex with any consenting adult I choose. This recognized right (right to reproduce) is said to be a implicit "gloss upon the Constitution." If I wish to solicit sex from these same persons (in the interest of reproducing or [more accurately] "practicing" for the big event) that too is my right. No argument there.

If, on the other hand, I solicit sex with a woman in exchange for the payment of monies ... I am going to jail. It is called soliciting prostitution. Just because I have the right to engage in or solicit certain protected conduct *for free* does not mean that I have a corresponding Constitutional right to collect or solicit *payment* in exchange.

Using this analogy: TA is the metaphorical pimp (soliciting sex for others in exchange for the payment of monies). TA can refer as much business (or sex) as it desires. It is simply not entitled to compensation.

Were TA to challenge the RPC, CGS and USBC prohibitions on referral fees in Federal Court, its efforts would not survive a preliminary motion to dismiss.

Total Attorneys' Myth # 4:

A Referral Fee is Not a Referral Fee if You Call the Fee "Group Advertising"

TA endeavors at length to fashion its for-profit referral fee service as "group advertising."

This again brings to mind a prostitute soliciting \$500.00 for her “company and conversation” (any sexual acts occurring thereafter, of course, being the mere unrelated acts of two consenting adults).

Or a pimp calling himself a "professional dating service."

Homey don't think so ...

I can call a monkey anything I want.

I can call it a chimp, a chump, a dog, or a cat. Someone else might call it their mother-in-law (and might not be that far off from the truth).

It is still a monkey.

What TA calls itself is altogether inconsequential.

What matters is the *fundamental nature* of the transaction.

To illustrate the nature of the transaction, I have afforded some algebraic examples (below). TA's business model is reflected in Examples #1 and #2.

Example #1 (Referral Fee): TA solicits B's contact information on TA's website. TA then collects B's information then sells it to Z for \$65.00. How many people "click" on TA's website is inconsequential. If TA does not convert those clicks into contact information it can sell, TA does not get paid.

Example #2 (Referral Service): TA solicits B, C & D's contact information on A's website. TA then collects B, C & D's POC information then sells that information to X, Y & Z. Z, Y & Z execute separate contracts with TA. How many people "click" on TA's website is inconsequential. If TA does not convert those clicks into contact information it can sell, TA does not get paid.

Example #3 (Individual Newspaper Advertising): X pays NA \$300.00 to run X's ad in NA's newspaper. NA gets paid a flat \$300.00 without any adjustment on account of whether X's advertisement generates a response.

Example #4 (Group Newspaper Advertising): X Y & Z sign a joint contract to pay NA \$900.00 to run X Y & Z's group ad in NA's newspaper. NA gets paid a flat \$300.00 without any adjustment on account of whether X Y & Z's advertisement generates a response.

Example #5 (Individual Pay-Per-Click Advertising): X agrees to pay GA \$3.00 every time a website visitor views X's advertisement. GA gets paid a fixed \$3.00 per click (view) even if even if X's advertisement fails to generate an actual lead.

Example #6 (Group Pay-Per-Click Advertising): X Y & Z execute agree to pay GA \$3.00 every time a website visitor views X Y & Z's advertisement. GA gets paid a fixed \$3.00 per click (view) even if even if X Y & Z's advertisement fails to generate an actual lead.

As the foregoing makes plain (and as earlier stated) there is a fundamental and material difference between paying for exposure (actual or anticipated) and paying for personal contact information and leads.

The disingenuous act of making available the identities of those persons who might ultimately purchase the contact information does not in any way change the fundamental nature of the foregoing equations. No more so than a pimp letting a John know which prostitutes have exclusive rights to a given street-corner.

Group advertising is permissible. Conspiracy to commit criminal and/or professional misconduct with a group of unrelated individuals is not.

Total Attorneys' Myth # 5:

TA Provides a Valuable Public Benefit to Consumers

TA would have the Committee believe TA is a civic-minded organization that works diligently to educate consumers and provide a valuable public benefit. Nothing could be more distant from the truth. The (real) reason TA posts as much "useful" information about bankruptcy on its websites can be reduced to a single acronym: S.E.O. (Search Engine Optimization). Simply stated: the more bankruptcy-related information TA posts on its websites (and the more frequently that information is updated) the higher Google and the other search engines will rank TA's websites. That's why TA does what it does. The information it posts on its websites to "educate" consumers is simply a clever means to a purely commercial end.

By analogy: if a prison inmate drops the shower soap near your feet, don't misconstrue that as him doing you a favor. Soap in the shower can be a good thing ... but that's not why he tossed it.

Which brings me to another issue:

TA's true aim and mission is proliferate (copycat) site after site until TA has monopolized the front page of every major search engine. TA aims to take "pay-to-play" to a whole different level. Were TA to succeed in this endeavor, even honest and ethical attorneys might be forced to the metaphorical table at risk of being pushed out of internet commerce altogether. TA does not aim to help the little guy (as it represents). TA aims to destroy the little guy --every little guy, that is, except those who write checks to TA. Through its exclusive geographic arrangements, superior financing, and lucrative for-profit referral-fee driven business model, TA aims to meaningfully impair and interfere with (not promote) informed consumer choice. And as TA increases its stranglehold on internet commerce, TA's fees will rise with market demands, and with that rise shall come a corresponding rise in legal fees (or a corresponding derogation of service). And all the while, a steady stream of cash will skim off the top steadily to Chicago with no resulting local benefit.

More soap in the shower.

TA adds nothing unique to the mix (and takes away much). If TA disappeared tomorrow (and it should) consumers would have absolutely no problem locating a local bankruptcy attorney, securing a free consultation, and absolutely no troubling finding information about bankruptcy on the internet. Free consultations are a dime a dozen.

Make no mistake about this self-proclaimed “champion of the little man.” His motives are anything but benevolent. Like an old-fashioned Chicago gangster or bookie, TA manages an illegal racket from which he skims generous profits off the top.

This little man (Zenas Zelotes) is fighting back.

Total Attorneys' Myth # 6:

Mr. Zelotes Endeavors to Suppress Competition

TA has actively attempted to portray Mr. Zelotes as “anti-competitive.”

Mr. Zelotes has absolutely no problem with *free and fair* competition. That's not the problem. What Mr. Zelotes has a very big problem with is UNFAIR competition – competitors achieving a substantial market advantage by illegal and unethical means; improper means good, honest and law abiding practitioners cannot lawfully avail themselves of (here: the payment of prohibited referral fees). TA's success could be easily replicated by anyone willing to violate the RPC or risk incarceration. TA achieved its present-day success for one reason and one reason alone -- *it cheated*. Had TA played by the rules (like most internet advertisers) TA would have been the host of one of countless run-of-the-mill websites competing for legal advertising with limited success.

But more to the point (where the Connecticut respondents are concerned): attorneys who mind their ethical responsibilities have families to provide for too. They, like everyone else, deserve a fair shot at opportunity in the marketplace. Good and ethical

persons should not find themselves placed at a competitive disadvantage in the marketplace because he or she is not willing to risk their livelihoods by engaging in ethical or criminal misconduct. More likely than not, the business TA unjustly channeled to the Respondents represents food taken off of someone else's plate. That's not right.

TA claims no one is complaining. I beg to differ. The voices lined up against TA in the legal community are legion. On account of Chern's unfair and illegal acts, Mr. Zelotes (and like-minded ethical attorneys) have suffered an indirect (but real) ascertainable loss in trade and commerce. Mr. Zelotes is not one to sit back and take it.

To the winner the spoils, fair enough – but not to the criminals, cheats and scoundrels.

Total Attorneys' Myth # 7:

Mr. Zelotes' Personal Motives Are Relevant to a Determination of Misconduct

Even if (*arguendo*) Mr. Zelotes reported the foregoing criminal and professional misconduct for (so-called) "anti-competitive" reasons (a position the complainant rejects) -- Mr. Zelotes' subjective motives are entirely irrelevant to a determination of whether the Respondents committed criminal and professional misconduct. This sideshow is scant more than irrelevant smoke and mirrors.

Total Attorneys' Myth # 8:

The Respondents' Reputations are Relevant to a Determination of Misconduct

When I was an enlisted sergeant in the Marine Corps, I was deeply disturbed with what I will describe as the "two tiers of justice." One standard for enlisted persons (harsh); another standard for the officers (illusory). An enlisted person violates the

Uniform Code of Military Justice -- he gets a dishonorable discharge and is sent to the brig. An officer commits the exact same offense -- he or she gets a letter of reprimand.

Military justice is an *bona-fide* oxymoron.

The respondents (as a group) appear to covet similar treatment. I cannot speculate how many briefs I have reviewed from respondents (across the nation) who attach their resumes as exhibits, and ramble on (at length) about their personal and professional accomplishments as if there were two standards of professional conduct. One standard for everyday practitioners (harsh) and a second standard for more accomplished and prominent attorneys (above reproach).

This too disgusts me.

Either you violated the state criminal code, bankruptcy code and/or the RPC ... or you did not.

Whatever the Respondents' personal or professional accomplishments ... whatever organizations they belong to ... whatever committees they serve on ... whatever certifications they may hold whatever the Better Business Bureau (or anyone else) thinks of them ... it deserves no consideration whatsoever. It is of no consequence.

Take their appended resumes ... and toss them in the trash.

Justice is blind.

Total Attorneys' Myth #9:

**Referral Fees Paid to TA are Referral Fees Paid to an Attorney because TA's
President is an Attorney (Kevin Chern)**

Some Respondents have recently argued that they could not possibly have violated Connecticut Criminal Code section 51-87 because the (referral) fees are being paid to an attorney (Kevin Chern).

The fundamental flaw with this contention is the referral fees are NOT paid to an attorney. The referral fees are paid to the corporate entities with whom the respondents contracted to do business (e.g. Total Attorneys, Inc.; Clear Bankruptcy Inc.; Colonel Rico Holdings LLC, etc.). Having a bar admitted corporate president (or a bar admitted majority shareholder) execute contracts on behalf of a company does not transform a transaction between an attorney and a corporation (TA) into a transaction between two attorneys. To the express contrary, TA expressly disavows any active involvement in the evaluative process consistent with that of a law firm (i.e. the rationale underlying the attorney-referral exception) and TA certainly does not hold itself to be a law firm.

This *ex-post-facto* rationale goes nowhere.

Refer this matter over to the Chief State's Attorney ... and let the respondents make this implausible argument to the judge.

Total Attorneys' Myth #10:

The State of Hawaii & Virginia Opines TA's Business Model Legitimate

When a state trooper pulls a driver over without issuing a ticket, his inaction in this regard not a state sanctioned declaration that speeding is permissible or an implicit admission that a ticket could not have properly issued. More likely than not, it means it's getting late and the officer doesn't want to do the associated paperwork; or it means the

trooper knows a member of the driver's family; or it means the cop noticed a purple heart on the driver's license plate and is a former vet himself; and the list of goes on. That's just how the world turns.

Suffice to say: TA certainly knows how to pile an inbox. Amidst a recession, tight state budgets, staffing cuts and the like, it is not difficult to imagine why a CDC might prefer to avoid this onerous task. TA has repeatedly threatened to sue the Connecticut Judicial Branch and I suspect TA has uttered similar threats with some success.

Enter Hawaii. Hawaii's OCDC recently declined to pursue this matter against two named respondents. Nothing more. Nothing less. Hawaii's CDC backed down in the shadow of a contested fight the CDC it would prefer not be involved in. Hawaii has not issued an formal opinion deeming TA as permissible.

Worth noting is the fact is TA has never once sought out an advisory opinion from any state bar association. The reason TA never sought an advisory opinion (of course) is because TA knew damn well how the state bar associations would have reacted. The profit motive simply won out.

TA also makes much fuss about Virginia's recent "withdrawal" draft LEO 1851. On information and belief, Virginia stands firmly behind LEO 1851 but in light of these recent developments a more comprehensive draft opinion is anticipated. With that said: the true reason I suspect Virginia pulled back was to avoid being the first sovereign dragged into Federal Court. Fair enough. I suspect the Honorable Richard Blumenthal will take handsomely to the task.

No better man for the job.

Total Attorneys' Myth #11:

Laws Enjoining the Payment of Referral Fees Serve No Meaningful Purpose

From a legal standpoint, the principal policy served by disciplinary rules enjoining referral fees "... is to ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the client's interest, and not to serve the business impulses of either the lawyer or the person making the referral; ... The Disciplinary Rule also serves to discourage overzealous or unprofessional solicitation by denying compensation to a lay person who engages in such solicitation on behalf of a lawyer, or even as to another lawyer unless the latter has also rendered legal services for the client and the fee that is shared reflects a fair division of those services ... For these policies to succeed, both indirect as well as direct fee-sharing must be banned so as fully to preserve the integrity of attorney client relations. The plain terms of the Disciplinary Rules and the salutary policy they serve indicate that infractions are to be regarded as serious matters." *In re Weinroth*, 100 N.J. 343 (1985)

Connecticut also deems infractions to be "serious matters" as evidenced by CGS 51-87 (which provides that the payment and/or receipt of referral fees is a felony crime punishable by three years imprisonment and/or a \$1000.00 fine). In fact: earlier this year, Connecticut enacted new legislation similarly aimed at enjoining efforts to channel professional work (Public Act 09-222). It would appear that the public policy considerations that prompted the enactment of CGS 51-87 are very much alive and well.

Mr. Zelotes' concern is the slippery slope.

If an attorney could pay TA \$65.00 per lead (*arguendo*) ... then it would likewise follow that an attorney could pay ANYONE \$65.00 per lead (social workers; ambulance drivers; employment agencies; and the list goes on). The referral fee business model would not stop with TA (and the referral fees would not cap out at \$65.00 per lead). It is not difficult to imagine the detriment to our profession were such practices permitted. Realizing the fair market value of attorney referrals (overnight) masses of laypersons and would-be entrepreneurs would be out actively canvassing for legal cases to refer. Easy

money. Cottage industries would spring up immediately for the sole purpose of generating legal advertising and auctioning off leads. Attorneys (in turn) would be actively bidding up the prices of such leads in an effort to compete for these referrals and for the loyalties of referral rainmakers. Given the green light ... nurses, ambulance drivers, doctors (everyone) would be out looking for a piece of the action.

Imagine (for instance) how much a personal injury attorney might compensate a doctor or an EMT for a solid wrongful death referral or lead. A hell of a lot more than \$65.00 (or however much he spent to a newspaper advertisement in exchange for anticipated exposure).

The price of legal services would spike and (of more troubling concern) referrals would no longer be driven by the best interests of the client but (rather) by the best interests of the referring agent. There is a profound and very serious resulting public harm.

The import of this complaint is not confined to bankruptcy or the individual respondents. Opening the door to referral fees would have a profound negative impact on ALL practitioners. All attorneys (including those sitting on the board) have reason for alarm and concern. Your practices are no less targeted.

Total Attorneys' Myth #12:

The Committee Can (and Should) Overrule the State Legislature and Judiciary

Perhaps Connecticut did not get the memo ... but word has it the Rules of Professional Conduct do not apply to attorneys who violate the rules over *the internet*. According to TA: the Superior Court needs to get with the times. There is a new sheriff in town (Google) ... and if some dusty group of grey-haired, golden-girls-watching, Perry-Cuomo-listening judges in Hartford can't figure that out ... well, the Statewide

Grievance Committee needs to slap those out-of-touch relics into the 21st century. After all: Papa needs a brand new pair of shoes (and that requires cash-flow).

Really?

The Superior Court does not answer to Google.

Neither do you.

The role of the Committee is to administer the law -- plain and simple. Not to re-invent it. Not to question the judgment of the Superior Court or the General Assembly, or advance what TA would have the Committee believe is a better policy (i.e. that which puts money in TA's pockets).

Whatever TA thinks of Connecticut Criminal Code 51-87 ... or the RPC ... or Bankruptcy Code Section 504(c) ... is of no concern to the Committee.

All this rambling (*ad nauseum*) about how "wonderful" the internet is ... means absolutely nothing.

TA answers to the Superior Court. Not the other way around.

RECOMENDATIONS

Suppose a criminal steal's a lottery ticket which later that evening hits the jackpot. Suppose next that, one year later, the criminal act is exposed. Does the criminal get to keep the winnings?

The answer ought to be obvious.

His ill-begotten gains were the result of an illegal and unethical act.

So now let me ask the Committee:

If an attorney obtains a client by means of criminal or professional misconduct, does the attorney get to retain the proceeds?

I should hope the answer equally obvious.

Suppose next that the thief used the ill-begotten money to open a legitimate business and thereafter doubled his take ... is the thief entitled to retain the portion of such proceeds legitimately earned?

Again, the answer should be obvious. The ill-begotten monies made it possible.

So (again I ask) if an attorney acquires professional work by criminal or unethical means, may the attorney retain the ill-begotten proceeds (averring that legitimate services were thereafter performed)?

Of course not. Equity would not suffer such a result.

If an attorney obtains legal work by criminal and/or professional means, the entire fee must be disgorged.

Crime and misconduct either pays or it does not. There is no in-between.

Suppose (lastly) suppose the thief (or attorney) averred: "Making me repay all that ill-begotten money would impose a material hardship (because I already spent it)" or "Making me repay that money would force me into Bankruptcy Court (and heaven forbid a Bankruptcy Attorney should swallow his own medicine)." How far do you think that argument is going to take him or her when presented before a criminal judge? How far do you think that argument should take him?

Not far at all.

The attorneys who participated in this criminal and unethical scheme *must not* in any way be left enriched by reason of their misconduct.

Any and all fees resulting from their criminal and professional misconduct must necessarily be disgorged.

What equally disturbs me is that TA marches on with its national campaign, without remorse, unapologetic and recalcitrant as ever. The Committees' probable cause findings notwithstanding, TA continues to solicit attorneys to participate in their for-profit referral service in both Connecticut and elsewhere. Apparently, TA has enough "___ you" money such that it feels sufficiently emboldened to flip the Committee a metaphorical bird. There is simply too much money to be made here and elsewhere.

Even numerous individual respondents (from various sister jurisdictions) have continued to do business TA unabated and undeterred. Perhaps the sentiment is (if discipline is unavoidable) we might as well make as much profit as we can in the interim.

Disgorgement in Connecticut, however ... changes everything.

The moment these greedy and remorseless attorneys (upon whom TA relies) acquire a reasonable apprehension that the ill-begotten monies received today may well be disgorged tomorrow ... the entire TA empire collapses. Even the best trained armies require beans, bullets and band-aids. If what happens here in Connecticut creates a reasonable apprehension of disgorgement on the streets, TA cannot sustain.

It's one thing to earn a substantial fee. Being compelled to pay it back (after the money has already been spent) ... is a whole different story.

Disgorgement is the absolute minimal requisite deterrent.

Consider also how many unemployed and underemployed attorneys populate this state (and every other state). Law schools continue to churn out far more graduates than the market can absorb. Countless other experienced and established attorneys are likewise out of work, struggling and/or falling upon hard times. Were the anticipated punishment a potential reprimand (wrist slap) the profit motive would prevail consistently. Desperate times invite desperate measures.

Were the anticipated sanction disgorgement, on the on other hand, even the most cash starved attorney would be loathe to dare attempt such misconduct. At best, he or she recognizes a minimal return or loss on their investment. At worst, he or she will become a (literal) victim of their own success.

With this in mind: I urge the Committee to take a long-term (big picture) view of how best to deter similar criminal and professional misconduct from recurring.

Consider also that these proceedings have captured the national spotlight. What happens here will capture widespread media attention and set a national precedent.

Which brings me back to my "two-tiered" system of justice concerns and its import in relation to these proceedings.

Media representatives who have covered this developing story (*inter alia*) will be present at the hearing. One issue that I am certain the media will take great interest is the resulting consequence to attorneys who engage in felony misconduct. Were the Committee to issue a "reprimand" (wrist slap) following a finding that referral fees were paid to TA in violation of a state criminal statute specifically targeting attorneys (*inter alia*) ... I would be inclined to think the reviewing public justifiably outraged. Many a lay man and woman have served time in a correctional facility or been called to account for much lesser things and misdemeanor crimes. Were the Judicial Branch (Committee) to issue a reprimand in the wake of felonious misconduct (in lieu of presentment and/or a criminal referral) such dealings would likely be viewed as smacking of incestuous protectionism.

Self regulation cannot expect to sustain absent system public confidence that the system is neutral, just and fair. Self regulation must not be perceived as the facilitator of a two-tiered system of justice. One standard for of justice for lawyers. A second standard of justice for laypersons. By this I mean no critique of the Committee. To the contrary, I hold the Committee in the highest of regard and have every confidence in its judgment. I mean only to call this (background) issue to the Committee's attention for its due consideration.

Which brings me to my second recommendation:

If the Committee finds that the Respondents paid referral fees in derogation of Connecticut's criminal code (or, in the alternative, committed acts in furtherance of a conspiracy to pay referral fees) ... presentment is inescapable.

Presentment would likewise be necessary to effectuate the recommended disgorgement remedy (although I could be mistaken; that is my understanding). The Superior Court is best suited to fashion the appropriate remedy in this matter.

Which brings me to my final recommendation:

The Committee has no jurisdiction over TA or TA's principal actors

The Chief State's Attorney does.

The Committee should be deeply disturbed by TA's active solicitations, and its aiding and abetting of the criminal and professional misconduct herein averred. TA is no less actively engaged in serial criminal misconduct specifically directed at the legal profession and the genesis of the misconduct herein averred.

The Committee cannot turn a blind eye to this.

A Committee referral of this matter to the Chief State's Attorney would carry significant weight. A criminal referral would likewise boost the public's faith and confidence in our system of self-regulation at a time when the Committee finds itself under the public microscope. I also fear that nothing less than criminal charges will deter TA from sustaining in its for-profit referral services. The profit motive is simply too great. Absent criminal sanction, the resulting consequence to TA is relatively inconsequential. Absent criminal sanction, copycats will emerge.

There exists in this a moral imperative.

Thank you for your consideration.

RESPECTFULLY,

A handwritten signature in blue ink, appearing to be 'Zenas Zelotes', written in a cursive style.

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CERTIFICATE OF SERVICE

The undersigned certifies that on 10/30/09 I served the attached supplemental memorandum upon the following persons by first class mail:

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