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February 8, 2012

Via Electronic Mail and U.S. Mail

Alice Neece Mine, Esq.
Assistant Executive Director and Ethics Counsel
North Carolina State Bar
PO Box 25908
Raleigh, NC 27611

Re: Request for Formal Ethics Ruling

Dear Ms. Mine:

Pursuant to N.C. Gen. Stat. § 84-23(a) and sections .0102 and .0104 of Subchapter D of the Rules of the State Bar, I respectfully request a formal ethics ruling concerning the following hypothetical.

ASSUMED FACTS

The XYZ Law Firm, located in North Carolina, wishes to perform legal services on behalf of parties seeking to foreclose on residential real estate in North Carolina.

ABC Services provides administrative and support services to attorneys in connection with managing foreclosures. ABC does not own any mortgage loans, nor is ABC Services the designated “servicer” of any mortgage loans. Rather, ABC Services is engaged in the business of providing “mortgage default services.”

XYZ Law Firm proposes to sign the standard ABC Services Network Agreement which states:

1. ABC Services will maintain a national network (“Network”) of service oriented attorneys who handle Referrals, and will develop and implement marketing services to obtain clients for the Network.
2. ABC Services may decide which default matters are to be referred to the Firm. ABC Services will prepare and deliver complete referral packages to the Firm.

3. Both the holder of the mortgage and ABC Services will be XYZ Law Firm's clients. ABC Services will be considered the agent of the holder of the mortgage.
4. ABC Services will provide direction to XYZ Law Firm for institution or reinstatement of foreclosure actions. ABC Services will maintain all direct contact with the holder of the mortgage and work with the holder of the mortgage on processing appropriate information requested by the mortgage borrower, including working with the collection/loss mitigation department on approval for repayment plans and the like. ABC Services will compile, scan, and email all necessary information to the Firm. ABC Services will maintain contact with investors, agencies, mortgage insurance companies and other appropriate signatory offices to obtain executed documents needed in the foreclosure.
5. XYZ Law Firm will not be prohibited from directly contacting the holder of the mortgage client where, in the professional opinion of the Firm, such contact is necessary.

The Network Agreement sets the fees that XYZ Law Firm may charge to the holder of the mortgage or the mortgage servicer, and provides that XYZ Law Firm will pay "administrative fees" to ABC Services as follows:

	<u>Fees Billed to Client</u>	<u>Administrative Fee to ABC Services</u>
Foreclosure	\$550	\$125
Eviction	\$300	\$75
Deed in Lieu of Foreclosure	\$350	\$50
Bankruptcy motion for relief	\$600	\$150

The fees provisions of the Network Agreement further state that XYZ Law Firm will be billed the full administrative fee, regardless of when a foreclosure effort is terminated and regardless of what actual services are provided by ABC Services.

XYZ Law Firm proposes to execute the Network Agreement and abide by its provisions in connection with foreclosure actions and bankruptcy claims filed in North Carolina on behalf of mortgage holders.

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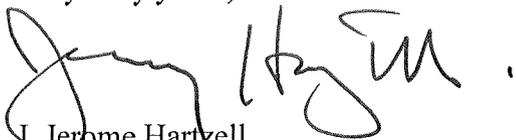
QUESTIONS

I request that the State Bar address the following questions:

1. Does the Network Agreement violate Rule 7.3(a), which prohibits solicitation of legal work by direct contact, and Rule 8.4(a), which prohibits violation of the Rules of Professional Conduct “through the acts of another”?
2. Does the Network Agreement violate Rule 7.2(b), which provides that “a lawyer shall not give anything of value to a person for recommending the lawyer’s services”?
3. Does the Network Agreement violate Rule 5.4(a), which provides that “a lawyer or law firm shall not share legal fees with a nonlawyer”?
4. Does the Network Agreement infringe on Rule 1.2(a), which requires a lawyer to “abide by a *client’s* decisions concerning the objectives of representation and . . . consult with *the client* as to the means by which they are to be pursued,” and which further obligates a lawyer to “abide by a *client’s* decision as to whether to settle a matter,” or Rule 5.4(c), which provides that “a lawyer shall not permit a person who recommends . . . the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services”?

Thank you for your consideration of this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Jerome Hartzell", with a stylized flourish at the end.

J. Jerome Hartzell

JJH:cco