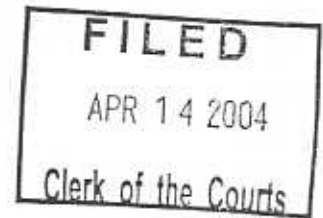


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



IN RE: PETITION TO ADOPT PROPOSED SUPREME COURT RULE 44

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No. M2003-00394-SC-RL1-RL

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**PETITION TO RECONSIDER, ALTER OR AMEND**

On December 10, 2003, the Court adopted Rule 44, Rules of the Supreme Court, and simultaneously amended Supreme Court Rule 8, RPC 7.6 relating to regulation of lawyer intermediary organizations. Intermediary organizations, as defined in the rules, are required to comply by providing the Board of Professional Responsibility [Board] with specified registration and reporting data and information in initial and annual registration statements.

The Board is required to determine whether the organizations are in compliance with the regulations and registration requirements. Lawyers are prohibited by Tenn. Sup. Ct. R. 8, RPC 7.6 from accepting referral of a client, or compensation for representing a client, from an intermediary organization that has not registered with the Board and complied with Rule 44 regulations. Comment [2] of RPC 7.6 states, in part, that, *(n)ormally it will be sufficient for the lawyer to ascertain that the organization is registered with the Board ---.*

On January 13, 2004, the Board mailed initial registration packets and forms to twenty-six (26) organizations which were preliminary identified as potential intermediary organizations, noting an effective date of February 1, 2004 for application of the rules.

Legal Club of America has responded with a partial registration. This organization has not provided information of their intent to comply with the requirement of Rule 44(B)(7), about

informing its beneficiaries that they may file a complaint of unethical conduct by a participating attorney with the Board, nor the method to do so.

Pre-Paid Legal Services of Tennessee, Inc. filed an Initial Registration Statement with the Board on March 24, 2004. The audited financial statement filed with their Registration Statement disclosed in "Note 8 - Contingencies" various pending lawsuits alleging fraud and breach of contract in connection with sales of memberships, accountings for commissions, misleading financial information, securities violations and damages for inappropriate referrals. The "Contingency Note" states, in part, that the company does not anticipate the contingencies will result in any material adverse effects to its financial conditions or operations in the absence of unexpected results in one of the cases. The "Note" states the company believes it has meritorious defenses in all pending cases and will vigorously defend the claims. A copy of "Note 8 - Contingencies" of the December 31, 2002 and 2001 financial statements is attached as Appendix A and incorporated herein for a brief description of the pending lawsuits.

The only other current responses from the January 13, 2004 mailing of the Board are as follows:

- (a) LawInfo.com filed a memorandum (attached as Appendix B) with the Board on February 24, 2004 asserting (i) that they are not operating as an attorney referral service because they do not actively participate in the selection of an attorney; and (ii) that use of their *Lead Counsel* program by consumers does not constitute a lawyer referral service. They assert that their *Lead Counsel* program is open to all attorneys and that their program does not direct consumers to specific attorneys.

LawInfo.com claims to be one of the internet's oldest and most established resources for locating attorneys on the internet. They state that consumers seek out an attorney by two parameters, location and practice area, by a process that is completely automated and free of any subjective input.

LawInfo.com asserts that they operate as an electronic legal directory, similar to an electronic version of the telephone directory yellow pages, by providing electronic listings of all attorneys who practice in specified areas of law. They state that all attorneys may choose to participate in their *Lead Counsel* program, subject to certain objective requirements. They allege that a search for an attorney in a specific practice area will generate a listing of all attorneys in their directory for that practice area, whether or not they are designated as *Lead Counsel*.

The URL website for LawInfo.com is *www.lawinfo.com*. A recent inquiry on their internet site for lawyers in Tennessee in the area of personal injury resulted in an initial information screen of 13 lawyers or law firms *designated as LEAD COUNSEL MEMBERS* —. Other information on their website provides the following information as to *LEAD COUNSEL*:

*LawInfo.com is dedicated to providing the best, most accurate legal resources, as well as the best possible choices for legal representation. Lead Counsel Members have been recognized by their peers as outstanding lawyers in their respective fields. To be considered for a Lead Counsel position, each firm must meet or exceed the following preliminary criteria.*

- *Nominated by 3 professional peers.*
- *Good standings in local bar association.*
- *No disciplinary sanctions.*

The initial information screen of 13 Lead Counsel members mentioned above also contains a *More Results* button or electronic link which provides access to information relating to 205 non-lead counsel attorneys in Tennessee for personal injury.

- (b) R. W. Lynch Co., Inc. Has filed a memorandum with the Board asserting they are not a Rule 44 intermediary organization because (i) they operate as a lawyer advertising agency coordinating a lawyer advertising cooperative that does not *refer* consumers to lawyers; and (ii) that the advertising cooperative does not have *customers, members, or beneficiaries*. In addition, they assert that application of the registration, reporting and compliance requirements of Rule 44 to the advertising cooperative violate the State and Federal Constitutions relating to Equal Protection and Commercial Free Speech. A copy of their supporting memorandum is attached as Appendix C.
- (c) Hyatt Legal Plans, a MetLife Company, asserts that their group and individual prepaid legal products provide plan members with covered legal services for which Metropolitan Property and Casualty Insurance Company bears ultimate responsibility for the covered services and, consequently, not an intermediary organization. A copy of their response is attached as Appendix D.

The Board anticipates that similar arguments may be made by other organizations, i.e.:

Martindale-Hubbell ([www.lawyers.com](http://www.lawyers.com));

Legal Match ([www.legalmatch.com](http://www.legalmatch.com));

The Best Lawyers in America ([www.bestlawyers.com](http://www.bestlawyers.com)); and

Legal IQ ([www.legaliq.com](http://www.legaliq.com)).

The Board respectfully seeks reconsideration, alteration or amendment of Supreme Court Rule 44 and Rule 8, RPC 7.6 for clarification and guidance to the Board relating to the issues identified herein.