

# DRAKE LAW REVIEW INSURANCE LAW ANNUAL

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## PREPAID LEGAL SERVICES

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### I. INTRODUCTION

There is a need for legal services in this country which is not receiving adequate attention. The matter requires comprehension and resolution. Pre-paid legal service plans provide a vehicle for delivery of the service with cost control as well as quality control, and the legal profession by this means has the opportunity to reform.

This article will discuss the need, illustrate a specific plan, consider benefits, suggest practical approaches to start-up, explore legal concepts which must be satisfied, and examine the question of whether acceptance of advance payment against the fortuity of need for legal services constitutes insurance.

### II. NEED FOR LEGAL SERVICES

The bar is adequately serving not more than fifteen percent of the population, according to Lee Turner, Chairman of the American Bar Association Committee on Legal Assistance:<sup>1</sup>

Just as the people foresaw the benefits to be reaped from the medical profession 40 years ago, so do they envision the fruits to be harvested from the progress and efforts of the legal profession.

Fortunately, for both the consumer-client and the legal profession, it appears that prepaid legal will not be compelled to endure the intensity of the birth pains and the profuse bleeding which plague the

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<sup>1</sup> American Bar Association, "Conference on Paralegals in the United States," University of Denver College of Law, June 25, 26 and 27, 1971.

doctor-patient relationship. However, that is not to say that the legal profession or its clients can avail themselves of the medical profession's current posture.

They will proceed with the lawyers if the legal profession gives them that option, or they will do so without the lawyers should the profession fail to meet the challenge. Consumer-clients have not been reluctant in the past to abandon the legal profession when it did not adequately serve them. This is evidenced by title searches being done by title companies, the licensing of escrow companies, and allowing non-attorneys to practice before various administrative boards. The traditional personal injury practice is threatened with no-fault advocates exerting pressure and succeeding in many areas. A variety of "counseling services" are popping up to supply needs traditionally handled only by attorneys.

So at least 120 million people have the income and can afford attorneys' services in the quantity they need. But they must be given the opportunity to do so other than on an unpredictable basis.

*The answer is prepaid legal services.* These people want to share the risks and benefits with the other members of their class.

If the legal profession fails to come to the aid of the "American of moderate means," politicians will fill the void—and not necessarily in the interests of the legal profession.<sup>2</sup>

### III. THE PLAN

The Plan seeks to provide primarily preventive legal services to the family unit.<sup>3</sup> Clients will be in groups, such as unions or other organizations, and pay a fixed monthly amount entitling them to specific legal services.

A non-profit corporation<sup>4</sup> establishes the vehicle through which subscribers contract and pay, and through which lawyers join the panel.<sup>5</sup>

Contracts are entered into between the corporation, which we shall refer to as the Plan, and participating panel lawyers.<sup>6</sup> Lawyers agree to provide services, for which the clients subscribe<sup>7</sup> at periodic rates fixed by the Plan. Clients are not indemnified but receive services for which the corporation makes direct payment to the lawyer. Lawyers agree to look solely to the corporation for pay, agree to attain consumer oriented standards, and adhere to Plan administrative procedures. Proposed fees for the lawyers are modest but reasonable.

Confidential lawyer-client relationships are retained. The client has free choice among panel practitioners.

The Plan is administered by the non-profit corporation itself, or an ad-

<sup>2</sup> D. Jones, *Prepaid Legal Services—A Boom or A Bust for the Lawyer*; Proceedings of a Conference on the Development of Prepaid Legal Services, Institute of Industrial Relations, University of California, Los Angeles, November 12, 13, 1971; p. 153 *et seq.*

<sup>3</sup> See Appendix A, p. 697 *infra.* (Schedule of Benefits).

<sup>4</sup> See Appendix B, p. 699 *infra.* (Articles of Incorporation).

<sup>5</sup> See Appendix C, p. 701 *infra.* (By-Laws).

<sup>6</sup> See Appendix D, p. 705 *infra.* (Participating Lawyer's Agreement).

<sup>7</sup> See Appendix E, p. 707 *infra.* (Legal Services Agreement).

ministrative firm under contract as agent for the Plan. Actuarial uncertainty, underwriting difficulties, and administrative problems usually suggest that this be done through an administrative firm already established and engaged in similar work.

Prepaid legal service plans are intended to make legal service accessible and attractive to the very great number of people lying between those eligible for legal aid and those who are above any considerations of ability to pay. The main thrust is to make much needed lawyer service available to families with annual incomes between \$5,000 and \$20,000. This is the great segment of our society which is ineligible for free legal service and which is unable, or believes itself to be unable, to afford to pay going rates to a lawyer for legal assistance delivered in accordance with our traditional delivery system.

The format for such plans requires important decisions of the legal profession. Criteria upon which plans are to be created and maintained have to be determined. It is urged that all plans preserve the opportunity to the client of seeking the lawyer of his choice.

By adopting a decidedly positive position with respect to creation and promotion of prepaid legal services, the legal profession will come closer to discharging its basic function and responsibility in meeting the need for legal services.

Prepaid legal services are not to be confused in any manner or by any means with Lawyer Referral Services, Legal Aid, Office of Economic Opportunity Programs, Legal Assistance, or the Public Defender. Each of the foregoing has its special merit, but the reader must be aware that this is instead a new system of delivery to the mass of the American public.

Nor, as this article is intended to point out, is the plan one of pure insurance.<sup>8</sup>

#### IV. BENEFITS

A variety of plans may evolve to suit particular attitudes and circumstances. The development and growth of prepaid legal services is expected to:

1. Permit lawyers to cure as well as prevent legal "ills" for the great number of middle American families.
2. Develop more respect and appreciation for law and legal process by making the public more aware of the function of the lawyer in our society, and in so doing improve lawyer-client relationships.
3. Provide an alternative to closed panels and captive clients.
4. Avoid a broadening of the role of the public defender and related programs.
5. Utilize the throngs of young lawyers finishing law school.
6. Permit lawyers to acquire a better understanding of the legal requirements of the community.
7. Improve the quality of legal advice and assistance.

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<sup>8</sup> 1 G. COUCH, COUCH ON INSURANCE § 1:59 (2d ed. Anderson 1959).

The image of the lawyer, long enveloped by notions of suspicion, skepticism and resentment would improve.

In actual operation subscribers will pay through their group \$8 to \$9 per month to insure legal help for themselves and their families. Actuarial data is extremely scarce, but available sources indicate that this figure is within the appropriate range. The money goes to the non-profit legal services corporation established to administer the fund and pay the lawyers, to whom the members go for counsel with legal problems.

The client is permitted to choose a lawyer, based upon the free choice concept, from any of those on the panel. Traditional lawyer-client relationships continue unaffected by third party payment.

The Plan for a subscriber and spouse pays for specified covered benefits, for example:<sup>9</sup>

1. Consultations to discuss legal matters; Prepare demands and notices.
2. Divorce, within limitations.
3. Will and community property survivorship agreement, not more than every two years.
4. Probate—covering fees for the first \$25,000 of assets.
5. Traffic violations and other criminal matters, with limitations.
6. Personal residence real estate transactions.
7. Certain tax matters.
8. Specified bankruptcy procedures.

In domestic relations only the subscriber will be entitled to the service, not the spouse. Also excluded are services related to business ventures, cases in which a contingent fee is usually charged, and those involving the Plan, the lawyer, the union, or the group.

The Plan stresses "preventive law," seeking an attorney before making decisions.

## V. STARTING UP

Starting up involves the allocation of significant amounts of staff time, management and money. To some degree these are interchangeable. If necessary, the organized bar provides them. The organized bar has a substantial interest, and is assuming a role in the process of approving programs to be offered the public. For example the Plan offered must contain a well chosen benefit package which fits the consumer's needs and is within his price range. The Plan must not permit a client's benefits to expire in mid-transaction or in mid-trial. If the profession is involved in an approving process, these requirements will be met.

The task of implementation is essentially one of marshaling administrative functions. As stated above, the various elements are contracted out to organi-

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<sup>9</sup> See Appendix A, p. 697 *infra*. (Schedule of Benefits).

zations already in the field other than insurers. No particular insurance expertise is required. At the present time no expertise exists in this country with respect to "legal insurance," except with regard to the Shreveport plan.

The program in Shreveport, Louisiana "has been placed into effect without any great technical difficulty and apparently is working to accomplish the admittedly modest but nevertheless important objective that we had in mind in Shreveport—gathering of at least some data as to the practicality, workability, and need for 'open-end' prepaid legal plans, patterned roughly after similar health plans."<sup>10</sup> Rules of professional responsibility make approval of the plan a prerequisite to participation in it by the lawyers.<sup>11</sup>

The significant difference between this Plan and an insured plan is in the "underwriting" function, the provision of working capital to pay start-up costs and to meet any deficiencies between income and expenditure. The "underwriting" can be accomplished by participation fees charged to participating lawyers, or by obtaining a direct grant. Another "underwriting" device inherent here, along with or in conjunction with money, is the agreement by each participating lawyer under the open-panel free-choice program that he will bear a burden of risk by foregoing, if necessary, a part of his fee during the early stages of the program while time is devoted to develop actuarial data and sound concepts. Remember, there is no intention of establishing a cut-rate program or operating on reduced fees.

The Plan also holds promise for a deferred compensation plan with income tax benefits for the lawyer. The usual and customary fee will be the rule, and as in health care programs, there is no reason to foresee anything but a completely solvent and successful project, meeting the consumer's criteria, embodying quality and cost controls.

## VI. SOLICITATION AND ETHICS

This concept carries with it outright solicitation and advertising by the Plan seeking groups of subscribers interested in establishing coverage. And in this sense panel lawyers are to cooperate with the corporation that recommends and pays for their legal services.

Traditionally it was clear that lawyers would not advertise or solicit: "Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman."<sup>12</sup> Nor would lawyers cooperate with organizations that recommend, furnish or pay for legal services to members or beneficiaries.<sup>13</sup> Nevertheless we now find forces moving from many directions to make prepaid legal services a reality.

<sup>10</sup> R. Jackson, *The ABC's of a Free Choice of Prepaid Plan* 56; Proceedings of a Conference on the Development of Prepaid Legal Services, Institute of Industrial Relations, University of California, Los Angeles, November 12, 13, 1971.

<sup>11</sup> ABA CODE OF PROFESSIONAL RESPONSIBILITY DR2-103(D)(5)(f).

<sup>12</sup> ABA CODE OF PROFESSIONAL RESPONSIBILITY EC2-9.

<sup>13</sup> *Id.*

During the last 10 years, in four cases,<sup>14</sup> the Supreme Court of the United States trimmed the restrictions recited above by holding that the activity of the National Association for the Advancement of Colored People, which provided services of staff lawyers to its members in cases involving racial discrimination, could not be prohibited by state law;<sup>15</sup> by upholding activity in which injured members of the union were advised of their need for legal counsel and referred to lawyers selected by the union;<sup>16</sup> by confirming an arrangement by which a labor union provided services of a salaried lawyer to assist individual members in workmen's compensation matters;<sup>17</sup> and by ruling that the State Bar could neither prevent a union from controlling legal fees nor preclude a union from stating that a recommended lawyer could defray expenses or make advances.<sup>18</sup> In the last case the Court stated that these prohibitions would violate the first amendment right to act collectively to obtain affordable and effective legal representation.

In the light of the first three of these decisions, the American Bar Association's Code of Professional Responsibility Rule DR2-103(D)(5) was rewritten in 1971 to allow a lawyer to cooperate in a dignified manner with a non-profit organization that recommends, furnishes, or pays for legal services for its members, but "only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities" and subject to the further conditions that the primary purpose of the organization is not the rendition of legal services, but that such plan is "incidental and reasonably related to the primary purposes of such organization," and that the organization does not derive a financial benefit from the plan and recognizes that the member of the group is the client of the lawyer rendering services.

Social and economic trends are swiftly moving away from the historical concepts. The American Bar Association's Code has been liberalized in the Washington State Bar Association's version of Disciplinary Rule 2-103(D)(5). In the State of Washington there is no requirement that the primary purposes of the organization which is to furnish the legal assistance not "include the rendition of legal services," or that the recommending, furnishing or paying for legal services to members of such organization be "incidental and reasonably related to the primary purposes of such organization."<sup>19</sup> This forward-looking version makes it easier to organize and operate plans.

At the August, 1972, annual meeting of the House of Delegates of the American Bar Association, upon the recommendation of the Association's

<sup>14</sup> *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576 (1971); *United Mine Workers of America v. Illinois Bar Ass'n*, 389 U.S. 217 (1967); *Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963).

<sup>15</sup> *NAACP v. Button*, 371 U.S. 415 (1963).

<sup>16</sup> *Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964).

<sup>17</sup> *United Mine Workers of America v. Illinois Bar Ass'n*, 389 U.S. 217 (1967).

<sup>18</sup> *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576 (1971).

<sup>19</sup> CODE OF PROFESSIONAL RESPONSIBILITY OF WASHINGTON STATE BAR ASSOCIATION.



realistic and forward-looking special committee on Prepaid Legal Services, interim standards were adopted to be met by plans providing for prepaid legal services. Formal Opinions 332 and 333 of the Association's Committee on Ethics and Professional Responsibility followed on February 12, 1973. Now lawyers may ethically participate in plans that meet ABA standards if there is free choice of attorneys, even though the plan does not conform to DR2-103 (D).

## VII. INSURANCE

While the courts have historically indicated rather broadly that contracts by which corporations agree to render group members legal services are contracts of insurance,<sup>20</sup> a doctrine more sensitive to modern need has long been applied to implement Blue Cross and other prepaid group health care plans. Generally a corporation organized to provide members of a group with medical service and hospitalization is considered not engaged in the insurance business and not subject to insurance laws.<sup>21</sup> This reasoning follows from the fact the corporation is not indemnifying a beneficiary, but rendering a service. As stated in a later California case, the company "will be classified as an insurer where indemnity is a significant financial proportion of its business."<sup>22</sup> Need, as well as social and economic change, now justify spreading to legal services the following doctrine:

Much support is given by the cases to the view that a corporation, whether or not organized for profit, the object of which is to provide the members of a group with medical services and hospitalization, is not engaged in the insurance business and hence not subject to the insurance laws. The fact that an element of risk is involved does not, it is said, override the primary element in the contract issued of providing medical services when they are needed and the means of making payment therefor.<sup>23</sup>

Health care services in many states have a specific act exempting them from the insurance code, and a specific exemption might well be construed as an essential ingredient for prepaid legal services to get out from under the insurance code; but, in the light of trends that have been in vogue for thirty years, there is much to support the doctrine of exemption without a specific enabling act when the risk is undertaken by the profession as outlined in the

<sup>20</sup> *Allin v. Motorist's Alliance of America, Inc.*, 234 Ky. 714, 29 S.W.2d 19 (1930). See generally 43 AM. JUR.2d *Insurance* § 10 (1969); Annot., 119 A.L.R. 1241 (1939); Annot., 71 A.L.R. 695 (1931).

<sup>21</sup> *California Physicians' Serv. v. Garrison*, 28 Cal. 2d 790, 172 P.2d 4 (1946).

<sup>22</sup> *People ex rel. Roddis v. California Mut. Ass'n*, 68 Cal. 2d 677, 681, 441 P.2d 97, 101, 68 Cal. Rptr. 585, 589 (1968).

<sup>23</sup> 1 G. COUCH, *COUCH ON INSURANCE* § 1:59 (2d ed. Anderson 1959). See also, *Jordan v. Group Health Ass'n*, 107 F.2d 239 (D.C. Cir. 1939); *People ex rel. Roddis v. California Mut. Ass'n*, 68 Cal. 2d 677, 441 P.2d 97, 68 Cal. Rptr. 585 (1968); *Michigan Hosp. Serv. v. Sharpe*, 339 Mich. 357, 63 N.W.2d 638 (1954) (Blue Cross Plan); *Commissioner v. Community Health Serv., Inc.*, 129 N.J.L. 427, 30 A.2d 44 (Ct. Err. & App. 1943); *Hospital Serv. Corp. v. Pennsylvania Ins. Co.*, 101 R.I. 708, 227 A.2d 105 (1967); *State ex rel. Fishback v. Universal Serv. Agency*, 87 Wash. 413, 151 P. 768 (1915).

Plan, no indemnity is afforded, and the open concept is embodied permitting the client free choice of practitioner.

### VIII. LABOR-MANAGEMENT NEGOTIATED FRINGE BENEFITS

Trade union groups and their employers are governed by the provisions of the Taft-Hartley Act. The organization and operation of group legal plans involving labor organization members would be affected by that act, also known as the Labor-Management Relations Act. Section 302 prohibits payments by employers to unions or union representatives for certain purposes under certain stated conditions. There appears to be no latitude in this act for the inclusion of group legal services as a fringe benefit which the employer may deduct from the employee's pay for the purpose of establishing a pooled fund from which legal costs will be paid. Congress intended to prohibit the establishment of any union fund by means of employer payments unless the fund conformed in all respects with the specific dictates of Section 302(c).<sup>24</sup> Amendments have been offered. On the Senate side on May 2, 1973, the Senate Sub-Committee on Labor referred S.1423 to the full Labor and Public Welfare Committee. Hearings on a similar bill (HR 77) have been held before the House Special Sub-Committee on Labor. This legislation has now passed both the House and the Senate and is on its way to the President for his expected approval. If approved, legal services, as well as other programs, would become a permissible benefit to which an employer might contribute.

### IX. INCOME TAX FREE

Section 501(c)(9) of the *Internal Revenue Code* governs the tax exempt status of certain employee benefit plans. This section declares health, accident and "other" (employee) benefit plans to be exempt from federal taxation. But the Internal Revenue Service has never specifically defined "other" benefits, although in 1968 it published proposed regulations intended to do so. Because the definition of "other" benefits contained in the proposed regulations was extremely narrow, legal service plans, as well as several existing fringe benefits, would have been denied tax exempt status. On behalf of its affiliates, the AFL-CIO filed detailed comments with the IRS in which it took the position that labor-management legal service plans and other existing fringe benefits programs should be declared tax exempt. No action has been taken by the IRS to make the proposed regulation final.

Another problem concerns an employee's federal income tax liability for his employer's contribution to a legal service fringe benefit fund on his behalf, as well as for legal service benefits the employee receives. Under present law, a worker who might be provided \$2,000 or \$3,000 worth of legal service benefits under a collectively bargained plan would later face a \$400-\$700 federal income tax liability based on the fair market value of the services. Medical

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<sup>24</sup> *Moglia v. Geoghegan*, 403 F.2d 110 (2d Cir. 1968).



benefits are tax exempt under Section 105 of the Internal Revenue Code, and it would certainly seem equitable to treat legal services in a similar manner. But specific legislation would be required to obtain this result.

#### X. FEE SCHEDULES—PRICE FIXING—ANTI-TRUST

Lawyers' minimum fee schedules and uniform fee schedules have only recently been under attack. The same concepts were banned years ago when used by others:

[I]n a series of cases challenging anti-competitive behavior in the service industries, the Division<sup>25</sup> swept aside the interstate commerce umbrella under which many of the defendants had previously sought refuge.

Although these cases were directed at price-fixing conspiracies among real estate brokers, it seems likely that they warrant challenge to the continued existence of attorneys' minimum fee schedules. This area (which in recent times has approached the status of an exemption) can best be labeled the "you wouldn't sue your own grandmother, would you?" immunity.

This is of particular interest to the organized bar. For serious questions exist about the propriety of those "suggested" fee schedules from an anti-trust standpoint. It is presumably clear (if not per se) it seems to me, that this type of professional unanimity raises the cost of legal services to the consuming public, and deprives the individual practitioner of the unencumbered freedom to decide what he will charge for his services. It would seem, therefore, that unless some justified exemption from the anti-trust law is found, these schedules have many of the characteristics of traditional illegal restraints. The Division's service industry cases, by reducing the showing necessary to meet the interstate commerce requirement, should, at least, cause some discomfort among members of the Bar. I believe that lawyers will probably find no immunity from the anti-trust laws. . . .<sup>26</sup>

It is to be hoped that each practitioner's opportunity to accept or reject Plan membership and with it the Plan's pay arrangement will constitute that individual practitioner's unilateral action and not be looked upon as concerted action with respect to fees. No lawyer is compelled to participate and each can decline enrollment if he feels the schedule is not satisfactory to him.

#### XI. CONSUMER ORIENTED STANDARDS OF QUALITY AND COST CONTROL

The importance of standards in the public interest cannot be too strongly emphasized. Free choice of practitioner is a keynote to the success of the program. This means the profession must be broadly represented, not only as to specialized ability and social strata, but geographically as well. Practitioners must be encouraged to join the panel with no restrictions except achievement

<sup>25</sup> Anti-Trust Division of the U.S. Department of Justice.

<sup>26</sup> Kirkpatrick, *The Anti-Trust Division—Its Current Activities and Future Directions*, 41 ABA ANTI-TRUST SECTION 381, 385.

of standards reasonably related to the public interest.<sup>27</sup> It behooves the professional association to provide a vehicle through which great pent-up public demand can be met with cost and quality controls. If we do not establish it voluntarily, consumer groups will control one without us. Our greatest hope for meeting the needs of the public is through the total involvement of a great cross-section of the bar. Quality control<sup>28</sup> is the hallmark of this Plan and cost control is equally vital.

## XII. SUMMARY

Robert W. Meserve, President of the American Bar Association asks: "Is the open panel arrangement so similar to Blue Cross, or other group medical arrangements, that really no ethical prohibition exists and your bar association and mine should cooperate?"<sup>29</sup> The Supreme Court, in the four cases cited above,<sup>30</sup> has opened the way to a large extent. Recent bar rulings are also laboring toward meeting the public need.

Under a non-profit corporation controlled by the profession where there is no indemnity, the subscriber has free choice of lawyer, and practitioners "underwrite" the risk by limiting themselves to accept as compensation only that which the fund provides; there is no justification for insurance controls.

With lawyers free to accept or reject participation in the Plan and schedule of compensation, it is to be hoped that anti-trust enforcers will not look upon this plan for meeting a public need, as concerted action with respect to fees.

Just as in health care, labor-management negotiated fringe benefits will ultimately include legal services. Likewise it is anticipated that income tax benefits will also be extended in this direction.

Consumer-oriented standards of quality and cost control must be the foremost guideposts of our planners. The old stand-by of "peer review" must give way to consumer participation in the review of quality and costs.

In this manner the great need for legal services in our country will receive adequate attention.

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<sup>27</sup> See Appendix C, Article V, § 1, p. 703 *infra*; Appendix D, para. 5, p. 706 *infra*.

<sup>28</sup> *Id.*

<sup>29</sup> Robert W. Meserve, President of the American Bar Association, speech to National Conference of Bar Presidents, August, 1972.

<sup>30</sup> Cases cited note 14 *supra*.

## APPENDIX A

### PREPAID LEGAL SERVICES SCHEDULE OF BENEFITS (subscriber and spouse only)

#### I. GENERAL LEGAL SERVICES.

Consultation to discuss legal matters.

Demands and notices.

Services under this category are available insofar as not otherwise excluded. The services provided under this category shall not exceed 2 court days and preparation, or equivalent, and not more than once a year per member.

#### II. REAL ESTATE.

Deeds.

Promissory notes and mortgages.

Contract of sale.

Reconveyance or satisfaction of mortgage.

Leases.

Powers of Attorney.

Mechanics Lien.

Foreclosures.

Evictions.

Representation for member and dependent spouse. Limited to transactions related to personal, principal, single-family residence. All documents and services listed as may be needed in a particular real estate transaction are included, but only one such transaction in a year. Prepare all miscellaneous printed forms having to do with acquisitions or disposition of real property and leases. Defend actions for non-payment by contract sellers, or eviction, or landlord-tenant matters where the member or dependent is tenant.

#### III. DOMESTIC RELATIONS.

Family Court.

Divorce.

Separation.

Annulment.

Adoption.

Name change.

Child support.

Not more than one every three years. Child support arrangements and modifications are covered, not to exceed 2 court days plus preparation, or equivalent. In all domestic relations matters except child support, representation for member only, uncontested, not to exceed 1 1/2 court days plus preparation, or equivalent.

**IV. CRIMINAL MATTERS.**

Traffic offenses.

Other criminal proceedings.

Not more than one every three years. Representation for member only. All proceedings are included, but not to exceed 5 days in court plus preparation, or equivalent.

**V. ECONOMIC MATTERS.**

Wills.

Community Property Survivorship Agreement.

Bankruptcy.

Probate.

Attachment, garnishment and execution.

Tax matters.

Preparation of federal income tax return.

Wills and community property survivorship agreement, not more than one of each for member and one of each for dependent spouse every two years. Probate complete on assets reported for state inheritance tax purposes up to \$25,000.00 (after deduction for survivor's community property share), on behalf of member or dependent spouse acting as personal representative for deceased member or dependent spouse, not more often than one every two years. In all other economic matters, not to exceed 2 court days plus preparation, or equivalent.

In tax matters, not more than one individual federal income tax return every year, and one every year for dependent spouse. Client to provide summary data. Not to include self-employed taxpayer, depreciation schedules, income averaging, annuities, foreign tax credit, oil depletion allowance, or similar matters.

**VI. EXCLUSIONS.** Excluded from the Schedule of Benefits of Prepaid Legal Services are the following:

1. Any case or dispute resulting (a) from the ownership or operation of a business by a member or covered dependent; or (b) from the professional activities of a member or covered dependent.
2. Class actions, interventions or amicus curiae filings in any suit or controversy among other parties if the interests of a member or covered dependent are not immediately and directly involved.
3. Any suit or claim for which defense or other legal representation, and the costs and expenses thereof, is provided for a member or covered dependent under any insurance policy or by an automobile or motor club or other plan.
4. Any case or dispute against the employer of a member or covered dependent, any labor union or the officers thereof or the trustees of an employee benefit program or fund, or the administration thereof.
5. Any case or dispute against Prepaid Legal Services if such case or dispute arises out of a question as to whether benefits are payable under this Plan, or as to the amount of benefits payable under this Plan.

6. Any appeal or post-trial motion except as specifically herein set forth.
7. Costs, expenditures, bond premiums, long distance telephone, postage, or fines and penalties whether imposed by the court or any other agency.
8. Any case or proceeding where the claim procedure required has not been properly followed.
9. Any legal action herein which arose prior to the effective date of this Plan, or prior to the eligibility of the member or covered dependent, whichever is later.
10. Title examination or title insurance.
11. Will contests for or against estate.
12. Any case not otherwise excluded in which the member or covered dependent is plaintiff or claimant and a contingent fee would normally customarily be charged.

## APPENDIX B

### ARTICLES OF INCORPORATION PREPAID LEGAL SERVICES A Non-Profit Corporation

#### KNOW ALL MEN BY THESE PRESENTS:

The undersigned incorporators hereby create this corporation pursuant to Section \_\_\_\_\_ et seq of the Code of Laws of the State of \_\_\_\_\_ authorizing the formation of non-profit corporations:

#### I.

In addition to all statutory purposes, the purposes of this corporation are to educate the public as to the advantages of broad availability of lawyer services on a free choice basis for the client; to provide programs by which the public may obtain quality legal services within their means on such free choice basis; and to provide for the cost of such services by establishing funds from periodic payments by subscribers or beneficiaries from which funds payments may be made the lawyers providing such services.

#### II.

The name of this corporation is PREPAID LEGAL SERVICES. Its initial registered agent is \_\_\_\_\_. The principal place of business, registered office, and address of its registered agent are \_\_\_\_\_, in the city of \_\_\_\_\_ and state of \_\_\_\_\_. Its existence shall be perpetual.

#### III.

This corporation, while not authorized to carry on a business, trade, avocation or profession for profit, shall nevertheless have the following powers: Enter into contracts and incur obligations; sue and be sued; receive gifts and devises; purchase real and personal property; appoint agents and officers;

assess members and terminate their interests; borrow and issue notes, bills or evidences of indebtedness; mortgage or otherwise encumber its property as security; and generally do all things necessary or proper to carry out its purposes as a non-profit corporation.

#### IV.

Membership shall be open to all lawyers licensed to practice in the State of \_\_\_\_\_ who attain and comply with standards for membership. Such standards, the rights and privileges of membership, dues, or assessments, if any, shall be set forth in the By-Laws. There shall be no stock, shares shall not be issued, and the interest of each member shall be equal to that of any other. No member shall acquire any interest which will entitle him to any greater vote, voice, authority or interest than any other member.

#### V.

Certificates of Membership shall be issued. Membership shall be terminated by voluntary withdrawal, expulsion, or death. Loss of membership through any of such causes, and the transfer thereof, shall be governed by the By-Laws.

#### VI.

The Board of Directors shall have such qualifications, tenure, powers, duties and compensation, and shall be chosen in such manner, as is provided in the By-Laws. The number constituting the Board of Directors shall also be regulated by the By-Laws, provided they shall never be reduced below five. The initial Board of Directors shall consist of five members, and the name together with the address of each is:

Name	Address	City & State
Name	Address	City & State
Name	Address	City & State
Name	Address	City & State
Name	Address	City & State

#### VII.

Upon dissolution of this corporation, after making adequate provision for debts and obligations, the Directors shall first repay to members out of remaining assets the amount of dues collected from each member respectively, and the balance remaining shall be distributed to a charitable or educational institution, organization or association, to be expended in providing legal services.

IN WITNESS WHEREOF, we, the undersigned and each of us, have hereunto set our hands this \_\_\_\_\_.

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

I, the undersigned Notary Public in and for the State of \_\_\_\_\_, do hereby certify that on this \_\_\_\_\_, personally appeared before me \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, to me known to be the individuals described in and who executed the within instrument, and



acknowledged to me that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

NOTARY PUBLIC in and for the State  
of \_\_\_\_\_, residing at  
\_\_\_\_\_.

## APPENDIX C

### BY-LAWS PREPAID LEGAL SERVICES

#### ARTICLE I—MEMBERSHIP

*Section 1.* There shall be but one class of members with equal rights and privileges.

*Section 2.* Membership shall be open to all lawyers licensed to practice in the State of \_\_\_\_\_ who pay dues, execute and comply with the Participating Lawyers' Agreement, and otherwise comply with the Charter, By-Laws and regulations.

*Section 3.* The terms "member," "panelist," "participating lawyer" shall be interchangeable as membership provides panel participation for the lawyer.

*Section 4.* Membership shall not be transferable, and shall terminate upon voluntary withdrawal, expulsion, or death. Upon a member's termination, regardless of reason, his interest in the corporate property shall cease and he shall not be reimbursed therefor.

#### ARTICLE II—VOTING

*Section 1.* Each member shall have one vote, which can be exercised in person or by proxy.

*Section 2.* Voting at meetings may be by voice or by secret ballot, provided, however, that all elections for Directors must be by secret ballot upon demand by a member at any election before voting begins.

*Section 3.* Any action required to be taken at a meeting of the members or Directors, or any action which may be taken at a meeting of the members or Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the Directors as the case may be. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such.

#### ARTICLE III—DUES

*Section 1.* There shall be no assessments, but the Board from time to time by resolution may prescribe annual dues and other charges.

*Section 2.* Dues shall be payable annually in advance on or before January 1 of each and every year, and if not paid, membership shall automatically terminate after 30 days notice.

*Section 3.* Dues of a member may on request be waived while he is in military service, and during that time he shall not serve as a panelist. Unless

## ARTICLE VI—OFFICERS

*Section 1.* The officers shall be a President, Vice-President and Secretary-Treasurer. They shall be elected from among the Board, for a term ending at the first Board meeting after the next annual meeting; however, each shall continue until his successor is elected and qualifies. Vacancies in any office shall be filled by the Board of Directors.

## ARTICLE VII—MEMBERSHIP MEETINGS

*Section 1.* An annual meeting of members shall be held between June 1 and October 1 of each year at such place within the State as the Board may designate. Failure to hold any meeting shall in no wise suspend or invalidate the business of the corporation, but failure to hold such meeting shall of itself be considered an adjournment of such meeting until another meeting shall be held. All other membership meetings shall be held at a place within the State that may be designated by the President.

*Section 2.* Written or printed notice stating the place, day and hour of the annual membership meeting, and in case of a special membership meeting the purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the President or Secretary, or the officers or persons calling the meeting to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

*Section 3.* Any number that may be present at a regular or special membership meeting shall constitute a quorum for the transaction of business.

## ARTICLE VIII—INDEMNITY

*Section 1.* Each Director, whether or not then in office, shall be indemnified by the corporation against all liabilities, costs and expenses reasonably incurred by or imposed upon him in connection with or arising out of any action, suit or proceeding in which he may be involved or to which he may be made a party by reason of his being or having been a Director or officer of the corporation, such expenses to include the cost of reasonable settlements (other than amounts paid to the corporation itself) made with a view to curtailment of costs of litigation. The corporation shall not, however, indemnify such Director or officer with respect to matters as to which he shall be finally adjudged in any such suit, action or proceeding to have been derelict in the performance of his duty as such Director or officer, nor in respect of any matter on which any settlement or compromise is effected, if the total expense, including the cost of such settlement, shall substantially exceed the expense which might reasonably be incurred by such Director or officer in conducting such litigation to a final conclusion; and in no event shall anything herein contained be so construed as to authorize the corporation to indemnify any such Director or officer against any liability or expense by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office. The foregoing right of indemnification shall not be exclusive of other rights to which any Director or officer may be entitled as a matter of law.

## ARTICLE IX—LAWYER-CLIENT

*Section 1.* Panelists shall render service to subscribers in accordance with their professional skill. They shall look solely to available funds of the corporation for payment for such services, other than such funds as may be collected from the subscriber pursuant to his individual contract. Nothing in these By-Laws shall be construed to limit the participant in following such procedures or charging such fees as may be desired when performing services for a non-subscriber.

*Section 2.* All payments for professional services shall be made in accordance with such rates or schedules as may be adopted by the Board of Directors from time to time. Such rates or schedules shall be forwarded to members as soon as reasonably possible after such adoption. Rates or schedules may be adopted by the Board of Directors retroactively insofar as payment for prior services is concerned, but no retroactive rates or schedules shall cause any member to repay any sums previously paid for professional services.

## ARTICLE X—COMMITTEES

The Board of Directors shall have the power to create such advisory committees as they may from time to time determine to be appropriate. Advisory committee members need not be members of this corporation. Committees shall advise and make recommendations to the Board of Directors as and when requested.

## ARTICLE XI—OUT OF STATE CONTRACTS

The corporation is authorized to enter into contracts with lawyers' service groups in other states, insofar as permitted by the laws of applicable states.

## ARTICLE XII—AMENDMENTS

Amendments to the By-Laws shall not be within the power of the Directors, but shall be made only by the membership at a regular or special meeting, after notice in writing of the proposed change having been given to every member. The notice shall conform with all other requirements of Article VII, Section 2. A favorable vote of 2/3 of those voting on the question is required to pass an amendment.

DATED \_\_\_\_\_

## APPENDIX D

## PARTICIPATING LAWYER'S AGREEMENT

This Agreement made and entered into between PREPAID LEGAL SERVICES (PLS) and the Participating Lawyer signatory hereto and referred to as the LAWYER,

## WITNESSETH:

The corporation named below is chartered under the laws of the State of \_\_\_\_\_, arranges prepaid legal services through participating lawyers, has developed standards responsive to the interest of the client, and monitors those standards.

Lawyers licensed to practice in this state and desiring to serve PLS sub-

scribers establish their relationship with the corporation as hereinafter set forth.

**NOW, THEREFORE, IT IS AGREED:**

1. Nothing contained in this plan for providing legal services to subscribers or dependents shall interfere with the usual and ordinary relationships that exist between lawyer and client, including liability for malpractice.

2. PLS is authorized to negotiate with prospective subscribers and arrive at fees for legal services and periodic rates as it deems advisable. Accordingly, fees to be paid the lawyers for legal services may vary according to the contracts written.

3. Panel lawyers shall render services pursuant to contracts between PLS and subscribers in accordance with their professional skills, and for said services shall look solely to payments as and when provided by the Board of PLS. Additional payments may be collected from the client only when permitted by a specific subscriber contract. Services not covered by a subscriber contract are outside the provisions hereof.

4. Continuously throughout the term of this Agreement the Lawyer will abide by the Code of Professional Responsibility of the \_\_\_\_\_ State Bar Association then in effect, and shall not use or cause to be used any reference to PLS or this Participating Lawyer's Agreement in any publicity.

5. A subscriber standards committee, consisting of three persons appointed by PLS, may upon request of the PLS Board investigate and report on any complaint regarding services provided by a lawyer. The Lawyer shall be given notice of the investigation and an opportunity for a full hearing before the subscriber standards committee. Disputes as to whether services provided by or requested of a lawyer are within the scope of the subscriber's agreement with PLS, and disputes as to the amount of a lawyer's charge for services to a client arising out of PLS coverage, shall be submitted to and determined by the PLS Board, and its decision shall be final and binding upon the Lawyer and subscriber. This procedure shall not impair or delay PLS' right to summary action as provided in its By-Laws.

6. Upon request the Lawyer will furnish PLS with statistics relating to claims, and permit PLS to use the information so obtained for statistical, actuarial, scientific or other reasonable purposes, provided however, that no professional confidence shall be jeopardized thereby.

7. All claims for services provided by a lawyer to subscribers or dependents shall be filed by the Lawyer with PLS on approved forms monthly, and failure to comply will bar the claim.

8. After each subscriber claim for services has been approved, PLS will pay as large a percentage of that claim as in its judgment may be deemed practical. Fully recognizing the desirability of paying 100% of the Lawyer's fee as specified in the respective subscriber contracts, nevertheless, a portion will be withheld as a contingent reserve, and unpaid balances, if any, may be paid at such later date as PLS in its judgment may determine, having due regard for contract experience. Unpaid balances of approved accounts outstanding for more than 12 months may be cancelled by 2/3 vote of the PLS Board without further liability. In no event shall the total amount received by the Lawyer be more than one dollar for each dollar of approved services rendered.

9. PLS may establish from its collection from subscribers, such reserves from time to time as it considers advisable, including but not limited to reserves for general operating expense within 15% of the collection from subscribers.

10. This agreement shall continue until the following December 31, and thereafter from year to year unless termination or suspension takes place under the provisions of the PLS By-Laws; should the Lawyer's status as a member of PLS terminate for any reason, or should he no longer be licensed to practice law in this state, this Agreement shall automatically terminate. Should the subscriber standards committee, pursuant to Paragraph 5 above, issue an adverse report, PLS may terminate the Lawyer's contract forthwith. Either party may terminate upon default of the other after 30 days notice in writing specifying the alleged default, which has not meanwhile been corrected. Either party may terminate as of the end of any contract term on 30 days written notice.

Adequacy of the panel both numerically and geographically is at all times essential to subscribers. Therefore, notwithstanding a member's request for termination, the member shall remain obligated to serve clients until those specific subscriber contracts in existence at the attempted termination date have expired. The Board of PLS may, however, consent to a lawyer's termination at any time if in its judgment there still remains an adequate panel to serve subscribers.

11. Should a particular subscriber's contract provide for payment of fees based upon customary, usual and reasonable rates, the following will be taken into consideration:

- (a) The usual fee which the individual lawyer most frequently charges to the majority of his clients for similar service;
- (b) The fees which fall within the customary range of fees charged in a locality by most lawyers for similar service;
- (c) Unusual circumstances or complications requiring additional time, skill, and experience in connection with a particular service.

PLS reserves the right, however, to determine the customary, usual and reasonable fee.

12. Notice shall be given by registered mail, return receipt requested, to the last known address of the Lawyer as shown on the records of PLS, or if to PLS, directed to its business office address.

DATED \_\_\_\_\_, 197\_\_\_\_, and effective after acceptance by PLS and signed by its authorized agent.

PREPAID LEGAL SERVICES

PARTICIPATING LAWYER

By \_\_\_\_\_  
(Authorized Signature)

	Name		
	Office Address		
	City	State	Zip
	Office Telephone		

Effective date: \_\_\_\_\_

## APPENDIX E

### PREPAID LEGAL SERVICES LEGAL SERVICES AGREEMENT (for subscriber and spouse only)

THIS AGREEMENT is between PREPAID LEGAL SERVICES, (PLS), and the GROUP signatory hereto,

WITNESSETH:



WHEREAS the group desires to obtain lawyers' services for subscribers, as shall later be defined, and

WHEREAS, PLS is a non-profit corporation established as a contracting agency to avail the group, and in turn, subscribers with the means for acquiring lawyers' services on a prepaid basis,

**NOW, THEREFORE, IT IS AGREED:**

### I.

**BENEFITS:** Each and every subscriber shall be entitled to the benefits set forth on the schedule attached and made a part hereof.

### II.

**EXCLUSIONS:** In the absence of an endorsement to this Agreement which may provide for other services than those specifically identified in this Agreement, the following are excluded from coverage: Services for which the subscriber without cost obtains the needed payment or reimbursement or services from any government agency, organization or subdivision. If the subscriber receives services for which he is so compensated and said compensation is not sufficient to defray the incurred expenses insofar as they are covered by this Agreement and all other conditions of the Agreement are complied with, the balance of the fee for the services excluded under this paragraph will be included in this plan in accordance with the agreement between the panel lawyer and PLS.

### III.

#### **ADMINISTRATION:**

A. Each subscriber shall be entitled to obtain the services provided in this Agreement from any panel lawyer of PLS. A complete list of lawyers so qualified in the area, with their names, addresses and telephone numbers shall be made available to all subscribers upon request, and maintained at such place or places as may be designated by the Group. If subsequent to the commencement of such services, the lawyer is removed from the list for any reason, the subscriber may continue such service under this plan with said lawyer until that particular phase of the service is completed.

B. PLS acts as a contracting agent for its participating lawyers who are the principals of this Agreement. Under no circumstances shall PLS be liable for the negligence, wrongful acts, or omissions of any panel lawyer or his employee or associate. Under no circumstances shall PLS be liable for services which for any reason are unavailable to the subscriber.

C. PLS, while acting as contracting agent as set forth in Paragraph III B above, desires to maintain high professional standards for the benefit of the subscribers, and if any grievance or complaint regarding the quality of professional service is made to PLS, PLS will investigate such complaint or grievance. Although PLS does not guaranty quality of service performed or to be performed by any lawyer, PLS will use all reasonable efforts to assure each subscriber of the highest quality professional service.

D. Group shall from time to time furnish PLS a complete list of subscribers with appropriate designation of those eligible for services, together with the age



and marital status of all subscribers. Such data shall be revised by the Group at six-month intervals or as often as requested by PLS.

#### IV.

**DEFINITIONS:** Except as may be varied by any endorsements which are attached, the following definitions of terms shall be used in interpreting this Agreement:

- (a) **AGREEMENT** is defined as this contract together with any endorsements, riders, attached agreements or applications made to obtain any of the foregoing. This Agreement as defined above shall consist in its entirety of the written documents set forth in this paragraph and shall not include any oral representations nor preliminary correspondence in the negotiations.
- (b) **SUBSCRIBER** is the individual eligible member of the Group who is the beneficiary of this Agreement and who will receive the service provided for in this Agreement. "Subscriber" shall be limited to employees who are eligible for benefits hereunder, and spouse, but will not include other dependents.
- (c) **LAWYER'S SERVICES** shall be defined as services under the Schedule of Benefits provided in this Agreement which may be rendered by a lawyer-member of PLS.
- (d) **ENDORSEMENT** shall be any attachment or addition to this agreement providing benefits or services in addition to those contained in this contract.

#### V.

**CONSIDERATION.** The Group agrees to pay PLS \$\_\_\_\_\_ per subscriber, and \$\_\_\_\_\_ per eligible spouse per month. The initial payment shall be made to PLS at its principal office by \_\_\_\_\_, 19\_\_\_\_. Subsequent payments shall be made monthly on or before the same calendar day or within 31 days, whichever is later, at the same address, until notified in writing by PLS of any change in the place of payment.

#### VI.

**TERM.** This Agreement shall take effect on the 1st day of \_\_\_\_\_, 19\_\_\_\_, and continue on the same terms and conditions and at the same rate for 24 months thereafter. Thereafter the Agreement shall continue on a monthly basis until terminated by either party on 60 days written notice.

#### VII.

**NOTICE.** All notices shall be deemed to have been properly given upon mailing with postage prepaid, and addressed to PLS at its principal office, or to Group or Subscriber at the address appearing last on the books of PLS.

#### VIII.

**SUSPENSION OR TERMINATION.** If the Group fails to pay its premium when due, and after 5 days written demand not complied with, PLS may sus-

pend service; or as an alternative PLS may terminate the contract. In all events, PLS shall be entitled to damages for breach. Indulgence, failure or neglect on PLS' part to demand strict performance on due date shall not be construed as a waiver on the part of PLS but only an indulgence.

DATED \_\_\_\_\_

\_\_\_\_\_  
(Group)

PREPAID LEGAL SERVICES

By \_\_\_\_\_  
Address

By \_\_\_\_\_