

THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW  
OF  
THE SUPREME COURT OF OHIO

09-1645

OHIO STATE BAR ASSOCIATION, :

Relator, :

v. :

UNITED FINANCIAL SYSTEMS  
CORP., :

Respondent. :

Case No. UPL 09-02

FINAL REPORT

Proposed Resolution,  
Gov.Bar R. VII(5b)

**I. PROCEDURAL BACKGROUND**

This matter was initiated on or about March 31, 2009, when Relator, the Ohio State Bar Association, filed a complaint alleging the unauthorized practice of law against Respondent, United Financial Systems Corporation. The Complaint alleges that Respondent engaged in the unauthorized practice of law by marketing and selling living trusts and other estate planning and transfer documents to Ohio residents.

Also on March 31, 2009, Respondent and Relator jointly filed a Motion to Approve Consent Decree, Memorandum in Support of Motion to Approve Consent Decree, and Proposed Consent Decree. On May 21, 2009, this matter was assigned to a panel consisting of Richard R. Hollington (Chair), Scott B. Potter, and Kevin L. Williams. The Panel considered the parties'

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SUPREME COURT OF OHIO

filings via teleconference on June 24, 2009, and agreed to recommend acceptance of the Proposed Consent Decree to the Board.

At its meeting on August 27, 2009, the Board formally considered this matter. By a majority vote, the Board granted the parties' Motion to Approve Consent Decree and also approved the Proposed Consent Decree. As required by Gov.Bar R. VII (5b)(D)(1), this Report will set forth the Board's reasons for recommending that the Court approve the Proposed Consent Decree.

## **II. FINDINGS OF FACT**

A. Relator is a bar association whose members include attorneys-at-law admitted to the practice of law in Ohio and who practice throughout Ohio. Relator is authorized to pursue this action against Respondent under Gov.Bar R. VII.

B. Respondent is a corporation with its principal place of business in Indiana and organized and existing under the laws of that state. (Proposed Consent Decree, ¶ 1).

C. Respondent, as a corporation, is not, and has never been, an attorney admitted to practice, granted active status, or certified to practice law in Ohio pursuant to Gov.Bar R. I, II, VI, IX, or XI.

D. Respondent marketed and sold living trusts and other estate planning and transfer documents to Ohio residents. (Proposed Consent Decree ¶ 3).

E. Respondent's business practice of marketing and selling estate planning services included the following (Proposed Consent Decree ¶¶ 4.a-j):

1. Respondent solicited Ohio residents by conducting mass mailings that encouraged recipients to return a postcard to obtain more information. Respondent contacted these potential clients by telephone to schedule a meeting in the client's home.

2. Respondent then sent an Estate Planning Assistance Representative, who was a non-lawyer affiliated with Respondent, to meet with the potential client and obtain various types of information necessary for the estate planning process. Specifically, the Estate Planning Assistance Representative had the client complete (or assisted the client in completing) a Personal and Financial Organizer to provide information such as the client's name, address, children's names, information regarding a trust (if the client desired a trust), names of proposed executors, a list of assets, and other relevant information to be used in the creation of the client's estate plan.

3. The Estate Planning Assistance Representative also made a presentation about possible estate planning options, including specific types of documents that could be prepared for the client. This person also discussed legal issues, even though the representative was not a lawyer.

4. If the client agreed to purchase estate planning documentation from Respondent, the Estate Planning Assistance Representative had the client sign an Agreement and Receipt and collected a flat fee ranging from \$695 to \$2,495, which included the retention of an attorney selected by Respondent. The Representative then submitted the Personal and Financial organizer and payment directly to Respondent.

5. Upon receipt of the information and payment from the Estate Planning Assistance Representative, Respondent forwarded the client's file, including the Personal and Financial Organizer, to an attorney.

6. Of the fee Respondent collected for the preparation of estate planning documents, the attorney who participated in the preparation of the documents received only \$150 to \$225, depending on the specific document packages ordered by the client. The attorney also received \$75 from Respondent for the preparation of an irrevocable life insurance trust or a last will and testament package.

7. Once the attorney received the Personal and Financial Organizer, he or she would sometimes contact the client by telephone to discuss the appropriate form of the client's estate plan, verify the information previously obtained by the Estate Planning Assistance Representative, and make certain the client understood what documents were to be completed.

8. When the attorney obtained all the necessary information from the client, the trust or estate planning documents would be prepared. The attorney then sent the documents to Respondent which then delivered them to the client. The documents were not delivered to the client by the attorney.

9. Respondent generally delivered the documents to the client by sending a Financial Planning Assistance Representative, another non-lawyer affiliated with Respondent, to meet with the client. In addition to assisting the client in executing their documents and reviewing the trust funding process, the Financial Planning Assistance

Representative attempted to sell the client life insurance, long-term care insurance, and other insurance products.

10. Generally, no lawyer was present at the execution of the estate planning documents, and the involved lawyer never saw the executed documents.

F. Over 2,000 Ohio residents have purchased estate planning documents as a result of the activities of Respondent in Ohio, and of its activities at its principal place of business in Indiana, designated and intended to take effect in Ohio. (Proposed Consent Decree ¶ 5).

G. It is the desire of the parties to settle this litigation. (Proposed Consent Decree ¶ 6).

H. Respondent ceased the marketing and sale of estate planning services prior to the filing of the Complaint, and has fully cooperated with Relator's investigation of this matter. (Proposed Consent Decree ¶ 7).

I. Relator does not recommend the imposition of civil penalties pursuant to Gov.Bar R. VII (8)(B). (Proposed Consent Decree ¶ 8).

J. On May 1, 2008, the Supreme Court of Ohio suspended Ohio attorney Katherine E. Jackel for conduct that included aiding nonlawyer employees of Respondent in the unauthorized practice of law. See *Ohio State Bar Assn. v. Jackel*, 118 Ohio St.3d 186, 2008-Ohio-1981, 887 N.E.2d 340.

### **III. CONCLUSIONS OF LAW**

A. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney*

*Co.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 617; *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288. Accordingly, the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, Slip Opinion No. 2009-Ohio-3508, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

B. The unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice law in Ohio. Gov.Bar R. VII (2)(A).

C. In Ohio, selling and marketing living trusts and estate plans, “explain[ing] the legal consequences of specific decisions relating to living trusts or estate plans, and prepar[ing] legal documents related to living trusts or estate plans” is the unauthorized practice of law. *Cleveland Bar Assn. v. Sharp Estate Serv., Inc.*, 107 Ohio St.3d 219, 2005-Ohio-6267, 837 N.E.2d 1183, at ¶ 8.

D. With limited exception, a corporation may not give legal advice to another, directly or indirectly, through its employees or attorney employees. *Judd* at 88, 12 N.E.2d at 291-2.

E. Respondent engaged in the unauthorized practice of law by selling and marketing living trusts and other estate planning and transfer documents to Ohio residents. (Proposed Consent Decree ¶ 3).

F. Respondent engaged in the unauthorized practice of law by providing estate planning services to Ohio residents that included giving legal advice and assisting with estate planning options. (Proposed Consent Decree ¶ 4).

G. As a result of the activities of Respondent in Ohio, and of its activities at its principal place of business in Indiana designed and intended to take effect in Ohio, over 2,000 Ohio residents have purchased estate planning documents that may be of doubtful utility. These persons have been subject to the unauthorized practice of law by Respondent. (Proposed Consent Decree ¶ 5).

**IV. PRINCIPAL TERMS OF CONSENT DECREE**

A. Respondent is enjoined from all activities that constitute the unauthorized practice of law, including:

1. The marketing, sale, or preparation of legal documents in Ohio by or on behalf of Respondent;
2. The rendering of advice regarding legal documents by or on behalf of Respondent;
3. Facilitation or assistance with respect to any amendment to legal documents; and
4. Providing any advice regarding “settling” or processing of trusts or estates, provided, however, that Respondent can continue to assist its customers in processing insurance and annuity claim forms and perform other authorized activities as an insurance agency registered with the Ohio Department of Insurance, including the sale of insurance and annuities.

B. Written notice, at Respondent’s cost, shall be provided (either by Relator or under Relator’s supervision) to all persons who have received services from Respondent that:

1. Respondent has ceased the marketing and sale of estate planning services;

2. The Supreme Court of Ohio has determined that the preparation and marketing and sale of estate planning documents constitutes the unauthorized practice of law; and

3. Respondent has fully cooperated with Relator's investigation of this matter, and as part of the Consent Decree entered into between the parties and approved by the Court, the Court has ordered Respondent to cease the marketing, sale, and preparation of estate planning services;

4. Clients should contact an attorney of their choosing who is not affiliated with or paid by Respondent:

- a. To determine if the trust or other documents prepared through Respondent meet the client's needs, or
- b. For purposes of preparing any modifications or amendments to their estate planning documents.

The form, content, and delivery of this notice shall be in a manner satisfactory to Relator. At Relator's option, Respondent shall provide to Relator the name and address of every person residing in Ohio who received a legal document through Respondent.

C. Respondent shall be assessed all costs of this matter pursuant to Gov.Bar R. II(8)(A).

D. Respondent shall not be subject to the civil penalties authorized by Gov.Bar R. VII(8)(B).

V. PANEL ANALYSIS

A. Review of the Proposed Consent Decree Using Factors  
in Gov.Bar R. VII (5b)(C)

When evaluating a proposed resolution, in this case a consent decree, the Board is required to consider the factors set forth in Gov.Bar R. VII(5b). The Panel reviewed the parties' proposed resolution using the factors stated in Section 5b and made the following determinations:

1. The proposed resolution is submitted in the form of a consent decree;
2. Respondent admitted to the material allegations of the unauthorized practice of law as stated in the Complaint;
3. The public is sufficiently protected from future harm as Respondent ceased the marketing and sale of estate planning services prior to the filing of the Complaint and has agreed to notify each Ohio resident who purchased its estate planning services that they should have an attorney review their estate documents;
4. Respondent has agreed to cease and desist all activities that constitute the unauthorized practice of law;
5. The Proposed Consent Decree resolves material allegations of the unauthorized practice of law as it contains detailed admissions by Respondent;
6. The Proposed Consent Decree furthers public policy by requiring Respondent to take steps to rectify the effects of its sale of estate planning services;
7. The parties' collaborative efforts to resolve this matter via a consent decree resulted in a prompt cessation of the unauthorized practice of law and saved Relator considerable time and expense without jeopardizing public protection. This

collaboration furthers the purposes of Gov.Bar. R. VII, prevents protracted litigation, and is consistent with the Supreme Court's approach to case resolution set forth in S.Ct.Prac.R. XIV(6).

Based upon these findings, the Panel recommended that the Proposed Consent Decree be considered and approved by the Board.

B. Applicability of Civil Penalties Based on Factors in Gov.Bar R. VII (8)(B) and UPL Reg. 400

When determining whether to recommend that the Supreme Court impose civil penalties in an unauthorized practice of law case, the Board is required to base its recommendation on the factors set forth in Gov.Bar R. VII (8)(B) and UPL Reg. 400(F). Additionally, UPL 400(F)(4) specifies mitigating factors the Board may use to justify a recommendation of no civil penalty or a less severe penalty. Because Relator does not recommend a civil penalty in this case, the Panel considered both the general civil penalty factors and the mitigating factors and its analysis is described below.

1. General Civil Penalty Factors

In regard to the general civil penalty factors listed in Gov.Bar R. VII (8)(B)(1)-(5) and UPL Reg. 400(F)(1) and (2), the Panel made these findings:

- a. Respondent cooperated fully with Relator's investigation in this matter;
- b. The record does not contain any evidence of flagrancy;
- c. While the Proposed Consent Decree indicates that 2,000 Ohio residents purchased Respondent's estate planning documents, Relator has not presented any examples of specific harm to third parties;
- d. Relator has not sought the imposition of a civil penalty;

e. Because Respondent immediately altered its business activities to eliminate the unauthorized practice of law, and there is no evidence that Respondent has resumed its previous activities, pecuniary punishment contrary to Relator's recommendation is not appropriate and would not further the purposes of Gov.Bar R. VII.

2. Mitigating Civil Penalty Factors

Applying the mitigating factors of UPL Reg. 400(F)(4)(a)-(g), which are the basis for a recommendation of no civil penalty or a less severe penalty, the Panel finds:

- a. Respondent ceased the conduct at issue before the Complaint was filed;
- b. Respondent admitted all of the allegations stated in the Complaint;
- c. Respondent admitted its conduct constitutes the unauthorized practice of law;
- d. Respondent agreed to the imposition of an injunction against future unauthorized practice of law;
- e. The record fails to contain any evidence of a dishonest motive by Respondent;
- f. Respondent has agreed to rectify the consequences of its unauthorized practice of law;
- g. Respondent has not had other penalties imposed for the conduct at issue.

3. Conclusion Regarding Civil Penalties

Based upon these findings, the Panel agreed with Relator that civil penalties are not warranted in this case. Consistent with the Proposed Consent Decree, the Panel recommended that all direct costs of this matter be charged to Respondent.

**VI. BOARD RECOMMENDATION**

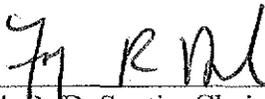
As indicated previously, the Board formally considered this matter on August 27, 2009. By majority vote, the Board adopted the findings of fact and conclusions of law of the Panel. Also by majority vote, the Board adopted all of the recommendations of the Panel.

The Board hereby recommends that the Court approve the Proposed Consent Decree in the form submitted by the parties (Exhibit "A") and issue the appropriate order as specified in Gov.Bar R. VII(E)(2).

**VII. STATEMENT OF COSTS**

Attached as Exhibit "B" is a statement of costs and expenses incurred to date by the Board and Relator in this matter.

**FOR THE BOARD ON THE UNAUTHORIZED  
PRACTICE OF LAW**

  
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Frank R. DeSantis, Chair

**CERTIFICATE OF SERVICE**

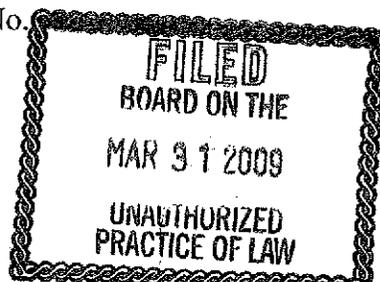
This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 14<sup>th</sup> day of September 2009: United Financial Systems Corp., 7602 Woodland Drive, Suite 100, Indianapolis, IN 46278; Christopher J. Weber and Geoffrey Stern, Kegler, Brown, Hill & Ritter, 65 East State Street, Suite 1800, Columbus, OH 43215; David A. Kutik, Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Donald Lundberg, Indiana Disciplinary Commission, 30 S. Meridian St., Ste. 850, Indianapolis, IN 46204.

  
Michelle A. Hall, Secretary  
Board on the Unauthorized Practice of Law

THE SUPREME COURT OF OHIO

IN RE: )  
 )  
 OHIO STATE BAR ASSOCIATION )  
 1700 Lake Shore Drive )  
 Columbus, Ohio 43204, )  
 )  
 Relator, )  
 )  
 v. )  
 )  
 UNITED FINANCIAL SYSTEMS, )  
 CORPORATION )  
 7602 Woodland Drive )  
 Suite 100 )  
 Indianapolis, Indiana 46278, )  
 )  
 Respondent. )

Case No.



PROPOSED CONSENT DECREE

UPL 09-02

The Parties, Relator, the Ohio State Bar Association Unauthorized Practice of Law Committee and Respondent, United Financial Systems, Corporation have agreed to settle and resolve all disputes between them on the terms set forth below for the purposes of terminating all existing claims in this litigation. The parties consent to entry of judgment in accordance with the following order and decree.

Accordingly, it is hereby stipulated, found and determined:

1. Respondent United Financial Systems, Corporation ("UFSC") is a corporation with its principal place of business in Indiana and organized and existing under the laws of that state.
2. Respondent, as a corporation, is not, and has never been, an attorney admitted to practice, granted active status, or certified to practice law in the State of Ohio pursuant to Rules I, II, VI, IX or XI of the Ohio Supreme Court's Rules for the Government of the Bar.

3. Respondent has engaged in the unauthorized practice of law by marketing and selling to residents of the state of Ohio living trusts and other estate planning and transfer documents.

4. Respondent's business practice of marketing and selling estate planning services included the following:

- a. Respondent solicited Ohio residents by conducting mass mailings that encouraged recipients to return a postcard to obtain more information. Respondent then contacted these potential clients by telephone to schedule a meeting in the client's home.
- b. Respondent then sent an Estate Planning Assistance Representative, who was a non-lawyer affiliated with Respondent, to meet with the potential client and obtain various types of information necessary for the estate planning process. Specifically, the Estate Planning Assistance Representative had the client complete (or assisted the client in completing) a Personal and Financial Organizer to provide information such as the client's name, address, children's names, information regarding a trust (if the client desired a trust), names of proposed executors, a list of assets, and other relevant information to be used in the creation of the client's estate plan.
- c. The Estate Planning Assistance Representative also made a presentation about possible estate planning options, including specific types of documents that could be prepared for the client. This person also discussed legal issues, even though the representative was not a lawyer.

- d. If the client agreed to purchase estate planning documentation from Respondent, the Estate Planning Assistance Representative had the client sign an Agreement and Receipt and collected a flat fee ranging from \$695 to \$2,495, which included the retention of an attorney selected by Respondent. The Representative then submitted the Personal and Financial Organizer and payment directly to Respondent.
- e. Upon receipt of the information and payment from the Estate Planning Assistance Representative, Respondent forwarded the client's file , including the Personal and Financial Organizer, to an attorney.
- f. Of the fee Respondent collected for the preparation of estate planning documents, the attorney who participated in the preparation of the documents received only \$150 to \$225, depending on the specific document packages ordered by the client. The attorney also received \$75 from Respondent for the preparation of an irrevocable life insurance trust or a last will and testament document package.
- g. Once the attorney received the Personal and Financial Organizer, he or she would sometimes contact the client by telephone to discuss the appropriate form of the client's estate plan, verify the information previously obtained by the Estate Planning Assistance Representative, and make certain the client understood what documents were to be completed.
- h. When the attorney obtained all the necessary information from the client, the trust or estate planning documents would be prepared. The attorney then sent the documents to Respondent which then delivered them to the client. The documents were not delivered to the client by the attorney.

- i. Respondent generally delivered the documents to the client by sending a Financial Planning Assistance Representative, another non-lawyer affiliated with Respondent, to meet with the client. In addition to assisting the client executing their documents and reviewing the trust funding process, the Financial Planning Assistance Representative attempted to sell the client life insurance, long-term care insurance and other insurance products.
- j. Generally, no lawyer was present at the execution of the estate planning documents, and the involved lawyer never saw the executed documents.

5. As a result of the activities of Respondent in Ohio, and of its activities at its principal place of business in the State of Indiana designed and intended to take effect in Ohio, over 2,000 residents of the State of Ohio have purchased estate planning documents that may be of doubtful utility. In any event, these persons have been subject to the unauthorized practice of law by Respondent.

6. It is the desire of the Parties to settle this litigation.

7. Respondent ceased the marketing and sale of estate planning services prior to the filing of Relator's Complaint, and has fully cooperated with Relator's investigation of this matter.

8. Relator does not recommend the imposition of civil penalties pursuant to Gov. Bar R. VII(8)(B).

It is hereby ordered:

A. Respondent is enjoined from all activities that constitute the unauthorized practice of law, including:

- (i) the marketing, sale or preparation of legal documents in Ohio by or on behalf of Respondent;

- (ii) the rendering of advice regarding legal documents by or on behalf of Respondent;
- (iii) facilitation or assistance with respect to any amendment to legal documents; and
- (iv) providing any advice regarding “settling” or processing of trusts or estates, provided, however, that Respondent can continue to assist its customers in processing insurance and annuity claim forms and perform other authorized activities as an insurance agency registered with the Ohio Department of Insurance, including the sale of insurance and annuities

B. Written notice, at Respondent’s cost, shall be provided (either by Relator or under Relator’s supervision) to all persons who have received services from Respondent that:

- (i) Respondent has ceased the marketing and sale of estate planning services;
- (ii) this Court has determined that the preparation and marketing and sale of estate planning documents constitutes the unauthorized practice of law; and
- (iii) Respondent has fully cooperated with Relator's investigation of this matter, and as part of the Consent Decree entered into between the parties and approved by the Court, this Court has ordered Respondent to cease the marketing, sale and preparation of estate planning services;
- (iv) clients should contact an attorney of their choosing who is not affiliated with or paid by Respondent:
  - (a) to determine if the trust or other documents prepared through Respondent meets the client’s needs, or
  - (b) for purposes of preparing any modifications or amendments to their estate planning documents.

The form, content and delivery of this notice shall be in a manner satisfactory to Relator. At Relator’s option, Respondent shall provide to Relator the name and address of every person residing in Ohio who received a legal document through Respondent.

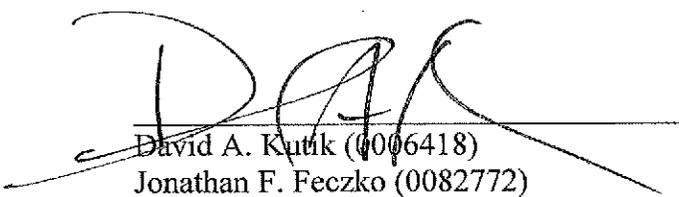
C. Respondent shall be assessed all costs of this matter pursuant to Gov. Bar.

R. VII(8)(A).

**IT IS SO ORDERED**

Date: \_\_\_\_\_

Agreed to:

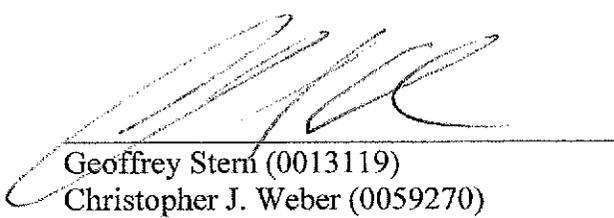


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ATTORNEYS FOR RELATOR

Date: March 19, 2009



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ATTORNEYS FOR RESPONDENT

Date: MARCH 24, 2009

**BOARD ON THE UNAUTHORIZED PRACTICE OF LAW  
OF  
THE SUPREME COURT OF OHIO**

Exhibit "B"

**STATEMENT OF COSTS**

*Ohio State Bar Assn. v. United Financial Systems Corp.*

Case No. UPL 09-02

To date, no expenses have been incurred.