

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENEVA COUNTY BAR ASSOCIATION,

Defendant.

CIVIL ACTION NO. 80-113-S

Filed: October 16, 1981

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)), the United States of America submits this Competitive Impact Statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDINGS

The Complaint in this action, filed on December 9, 1980, alleges that beginning at least as early as November 1979 and continuing to the present, the defendant and its co-conspirators engaged in a combination and conspiracy to raise, fix, maintain and stabilize fees for services offered to purchasers in the Geneva County, Alabama area in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by formulating, distributing and utilizing a schedule of fees to be charged for attorneys' services.

In its Complaint, the Government asked the Court to find that the defendant and its co-conspirators engaged in such a conspiracy and requested the Court to enjoin the defendant and its co-conspirators from continuing or renewing the conspiracy or engaging in any other actions having a

similar purpose or effect; to prohibit the defendant and its co-conspirators from formulating and circulating a fee schedule or similar guide among themselves; and to order the defendant and its co-conspirators to destroy any jointly formulated fee schedule in their possession.

Entry of the proposed final judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the judgment, or to punish violations of any of its provisions.

II

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

The defendant is an unincorporated association, located in Geneva, Alabama, whose members are attorneys admitted to the bar of Alabama and who reside or practice law in Geneva County, Alabama.

The Complaint alleges that the defendant and its co-conspirators engaged in a combination and conspiracy to raise, fix, maintain and stabilize fees for services offered in the Geneva County, Alabama area by formulating and utilizing a fee schedule in determining how much to charge clients. These services include giving advice, drafting documents, representing clients in litigation, conducting negotiations on behalf of clients, acting as fiduciaries, and closing real estate transactions, including assisting purchasers in obtaining title insurance.

The Complaint further alleges that the combination has had the following effects, among others:

- (a) fees charged by members of the defendant for their services have been raised, fixed, maintained, and stabilized at artificial and non-competitive levels;
- (b) price competition among members of the defendant for their services has been restrained; and
- (c) purchasers of services in Geneva County, Alabama have been deprived of the right to purchase such services at competitively determined prices.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant have stipulated that the Court may enter the proposed final judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed final judgment provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, the proposed final judgment may not be entered until the Court finds that entry is in the public interest.

A. Prohibited Conduct

The proposed final judgment prohibits the defendant, in concert with others, from continuing the conspiracy or participating in any activities whose purpose or effect is to

fix, establish, raise, stabilize or maintain legal fees. The defendant is also prohibited from formulating, renewing, publishing or adopting any list or similar guide used in calculating legal fees and from encouraging the use of any such guide. In addition, any form of communication among the defendant and its members about past, present or future legal fees is prohibited with certain exceptions, namely, (1) where the fees are court ordered, (2) where an attorney-client relationship exists between a member of the defendant and the other attorney and the communication involves the fee to be charged as a result of that relationship, (3) where there is joint representation of a client and the communication involves the fee to be charged that client, and (4) where the legal fees are part of a settlement between a client of the defendant and a client of another attorney or law firm and the communication involves the paying of that legal fee.

Nothing in the prohibitions in the final judgment applies to in-house communications in a law firm or to attendance at state bar seminars.

B. Affirmative Obligations

The defendant and its members are required to destroy all jointly formulated lists or similar guides for legal fees and, the defendant is required to send a copy of the final judgment to each of its members and any new members in the future.

C. Scope of the Proposed Judgment

The proposed final judgment will remain in effect ten (10) years from date of entry and applies to the defendant and to each of its officers, directors, members, committees, other organizational units, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this final judgment.

D. Effect of the Proposed Judgment on Competition

The relief in the proposed final judgment is designed to ensure that consumers have the opportunity to purchase legal services in the Geneva County, Alabama area at competitive rates.

Two methods for determining compliance with the terms of the final judgment are provided. First, upon reasonable notice, the Department of Justice shall be given access to any of the defendant's records relating to matters contained in the final judgment and be permitted to interview any officers, directors, employees, agents or members of the defendant. Second, upon written request, the Department of Justice may require the defendant to submit written reports about any matters relating to the final judgment.

The Department of Justice believes that this final judgment contains adequate provisions to prevent further violations of the type upon which the complaint is based.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed final judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the judgment has no prima facie effect in any subsequent lawsuits that may be brought against the defendant.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed final judgment should be modified may submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to entry. The judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed final judgment considered by the Department of Justice was a full trial of the issues on the merits and on relief. The Department considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the Complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)) were considered in formulating the proposed final judgment.

Respectfully submitted,

/s/ John J. Miles

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Dated: