



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 15 1993

60-7375-0004

Michael J. Marovich, President
South Suburban Bar Association
c/o William J. Borah, Secretary
2024 Hickory Avenue
Homewood, IL 60430

Dear Mr. Marovich:

This letter responds to your request of March 30, 1993, on behalf of the South Suburban Bar Association ("Association") for a statement by the Department of Justice ("the Department") of its current enforcement intentions regarding a proposed survey of fees charged by Association members.^{1/} The Association proposes to conduct a survey of the general hourly billing rates and fees currently charged by its members or their firms for services in fifteen areas of law. The Association will then report to its members a range of high and low fees and hourly billing rates reported for each practice area. It may also report an average fee and hourly billing rate for each practice area.

You have represented that the Association will make no recommendations to its members or any other person regarding any type of prices charged, including any particular fee or hourly billing rate or range of fees or hourly billing rates, for any type of service. In addition, you have represented that the Association will not reveal fees charged by specific attorneys or their firms, and it will attempt to maintain confidentiality of the results of the survey by instructing survey participants to submit their fee information anonymously.

Based upon the information you have provided and your representations, the Department of Justice declines to state its current enforcement intentions with respect to the Association's proposed information exchange. The Department is concerned about the creation or implementation of an information exchange if it would likely facilitate collusion or otherwise would reduce competition. Exchanges of fee information are particularly sensitive, competitively. Such an exchange could

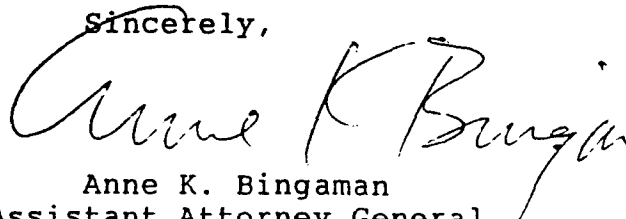
^{1/} The Association represents about 250 lawyers located in 36 cities in an approximately 250 square mile area south of Chicago in southern Cook and northern Will Counties, Illinois.

be used as a vehicle by Association members to agree explicitly or implicitly on various fees or billing rates or to assess the current disparity among fees or billing rates and the potential difficulty of entering into or maintaining any collusive agreement. This is a potential concern where, as in this case, Association members appear to constitute the majority of attorneys who provide legal services to the general public in the area immediately to the south of Chicago.

Although you have represented that the Association will not use the survey to create any type of fee or rate guideline or recommendation, and that the published information will contain only the high and low reported fee and billing rate, and possibly an average fee and billing rate, for each of the fifteen practice areas, it does not appear that the Association plans to implement sufficient procedural safeguards to ensure that the fee data is appropriately protected. As we understand your proposal, you have not yet developed any mechanism to ensure that some Association members will not have access to survey responses submitted by other Association members. In addition, although you will ask Association members to submit their responses anonymously, you have not yet developed any mechanism for preserving the confidentiality of members who do not submit their responses anonymously or who can be identified from their responses. The absence of such procedural safeguards increases our concern that some survey participants may be identified and that some Association members may have access to survey responses submitted by other Association members. While the Association and its members have disclosed no plans to conduct subsequent fee surveys or to obtain any additional or follow-up fee or rate information from survey respondents or any other Association members, this fact alone does not sufficiently mitigate our concern of the possibility the data exchange could be used to harm competition.

For the foregoing reasons, the Department, therefore, declines to state its current enforcement intentions with respect to the proposed fee survey. This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with paragraph 10(c) of the Business Review Procedure.

Sincerely,

A handwritten signature in cursive script, reading "Anne K. Bingaman". The signature is written in dark ink and is positioned above the typed name and title.

Anne K. Bingaman
Assistant Attorney General
Antitrust Division

Enclosure