

Washington Law Review

Volume 48 | Number 3

5-1-1973

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Recommended Citation

William A. Roberts, Lampadephoria, *Union Group Legal Services: An Experiment in Group Legal Practice*, 48 Wash. L. Rev. 597 (1973).

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UNION GROUP LEGAL SERVICES: AN EXPERIMENT IN GROUP LEGAL PRACTICE

William A. Roberts*

Programs which furnish benefits ranging from life insurance to funerals on a group basis have been available to members of identifiable groups and their eligible dependents for many years. Until recently, however, proposals to develop group legal programs have met considerable resistance, a primary cause of which was the reluctance of bar associations to endorse such programs. However, when the United States Supreme Court stated in very clear language that the right of groups to secure competent legal services at a reasonable cost is a right protected by the first amendment,¹ the resistance of the bar associations began to subside. Following the lead of the American Bar Association, the Washington State Bar Association on January 1, 1972 authorized the formation of group legal programs which conform to specified guidelines.² Union Group Legal Services, a closed panel group legal program³ offered to eligible labor union members and their qualified dependents, was organized in Washington and has been in operation since August 1971.

This article does not discuss the history of, the need for, or the philosophy underlying group legal programs; other literature adequately has explored these topics.⁴ Rather, this article is designed to acquaint those interested in group legal programs with the essential considerations in establishing such a program and with the operating procedure

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1. *United Transp. Union v. State Bar of Michigan*, 401 U.S. 576 (1971); *UMWA v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967); *Bhd. of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1967); *NAACP v. Button*, 371 U.S. 415 (1963).

2. *See* WASH. ST. BAR ASS'N, CODE OF PROFESSIONAL RESPONSIBILITY DR 2-103(D)(5) (1972). This is a modification of the ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 2-103(D)(5) (Final Draft 1969), which is considered as being too restrictive in view of the recent Supreme Court decisions.

3. *See* section I *infra*, for a definition of a "closed panel" group legal program.

4. *See, e.g.*, B. CHRISTENSEN, *LAWYERS FOR PEOPLE OF MODERATE MEANS* (1970); Stolz, *The Legal Needs of the Public; A Survey Analysis*, in 4 RESEARCH CONTRIBUTIONS OF THE AMERICAN BAR FOUNDATION (1968).

and results of the group legal program initiated by Union Group Legal Services.

I. CONSIDERATIONS IN ESTABLISHING A GROUP LEGAL PROGRAM

In creating a group legal program it is necessary to consider the form of the organization, potential ethical problems, funding, fee minimization, existing labor legislation, and tax ramifications.

A. *Form of the Organization*

The terms "open panel" and "closed panel" are used often to designate the organization of group legal programs. A true open panel program would permit a participant to utilize the services of any attorney authorized to practice law. A true closed panel program, on the other hand, would require a participant to utilize the services of a specific attorney or group of attorneys in order to obtain the benefits of the program. Between the two extremes are variations with respect to the types of services offered, the program costs, and the size of the lawyer panel.

The ideal group legal program would be an open panel program enabling the participant to select the lawyer of his choice. However, the need to minimize legal fees and thereby generate support for group legal programs suggests that closed panel programs may initially be advisable. Although open panel programs providing hospital, medical, surgical, dental and optometric services have been in existence for many years, the fact that such programs generally contain very limited fee and price restraints has permitted the costs of these programs to rise markedly in the last few years. In light of this experience, labor organizations,⁵ contributing employers, and trustees of fringe benefit trusts probably will not endorse any group legal program unless controls on legal fees are assured which explicitly strip the legal profession of its exclusive power to set and control its own fees. Since the Bar presumably would not approve any program which substantially limits its power to set legal fees, closed panel programs

5. Statement of the AFL-CIO Executive Council on Prepaid Legal Services, Washington, D.C. (May 2, 1972).

stemming from private negotiations between individual lawyers or law firms and those desirous of legal aid are presently the most feasible.

B. *Ethical Considerations*

A group legal program can be successful only if the eligible members are advised of its benefits and encouraged to participate. Such advertising and encouragement—perhaps solicitation is a better word—creates potential ethical problems which cannot be ignored. In adopting the Code of Professional Responsibility, the Washington State Bar Association sought to avoid the alleged evils of advertising and solicitation.⁶ Although the Code generally prohibits an attorney from advertising or soliciting business, or from “knowingly assisting” another to advertise or solicit business for him,⁷ the Code nevertheless provides that an attorney may “cooperate in a dignified manner” with an “organization that recommends, furnishes or pays for legal services to its members or beneficiaries,” provided a written agreement between the lawyer and the organization is in force containing both a provision that the organization will not publicize the lawyer to its members beyond giving the lawyer’s name, address, telephone number and other information needed to acquire access to the lawyer’s services, and a provision that the organization will not identify the lawyer in any publicity “disseminated” to nonmembers.⁸ In drafting these sections of the Code, the Bar attempted to strike a balance between the necessity of advising a participant as to the details of the legal program and the temptation of a lawyer to obtain publicity beyond that essential to facilitate access of the participant to the attorney’s services.

6. Some have suggested that lawyers should be permitted to advertise and solicit. One reason being advanced for such a novel approach is that the legal profession, by prohibiting advertising and soliciting, has kept the public from being informed as to the need for legal services and the reasonableness of fees for such services rendered. Moore, *What Are Consumers Asking For? What Do the Consumers Want?*, Transcript of Proceedings, Nat’l Conference on Prepaid Legal Services (1972). See also Note, *Advertising, Solicitation and the Professional Duty to Make Legal Counsel Available*, 81 YALE L.J. 1181 (1972).

7. WASH. ST. BAR ASS’N, CODE OF PROFESSIONAL RESPONSIBILITY DR 2-103 (1972).

8. *Id.* Newspapers and periodicals published by labor unions and other organizations (although published for the purpose of informing and educating members of the organization) are frequently sent to nonmembers such as senators, representatives and judges.

C. *Funding and Fee Minimization*

Funding and fee minimization are primary considerations in establishing any group legal program. Since such programs are designed primarily to furnish legal services to those not able to pay fees ordinarily charged by lawyers, legal fees must be reduced if these programs are to be meaningful to the average participant.

Funding may be accomplished in two fashions. First, the eligible members, or their employers, may prepay the costs of the program, including a reasonable attorney's profit, through predetermined periodic contributions. Such a prepaid program is presently being established by the Washington State Bar Association. The Association has formed a nonprofit corporation and plans to solicit lawyers throughout the state to agree to perform services for specific, reduced fees which will be paid by the nonprofit corporation. Technically, the program will be closed panel, since the services will be performed only by those lawyers who have agreed in advance to participate. A portion of the lawyer's fees will be withheld to provide for administration and other expenses. The contracting entity will be the nonprofit corporation. The nonprofit corporation may have a difficult task convincing the average lawyer that he should agree to perform certain types of legal services for fees less than those presently suggested by minimum fee schedules, especially if the program requires the lawyer to furnish legal services which are presently proving unprofitable to the average practitioner—*i.e.*, domestic relations, debtor-creditor problems. Further, any lawyer who attempts to handle a group legal practice without revising his office procedures and utilizing paraprofessionals may find that his income has dropped sharply.

A true open panel program relying on prepaid funding usually will need an insurance company to accept a share of the risk that the amounts collected will not adequately cover the costs incurred in a given time period. However, insurance companies have been reticent to insure these programs,⁹ primarily because reliable actuarial statistics on the utilization of prepaid legal services presently do not exist.¹⁰ Therefore, lawyers and law firms contracting to furnish services under prepaid, closed panel programs must be prepared to accept the risk

9. Stolz, *Insurance for Legal Services: A Preliminary Study of Feasibility*, 35 U. CHI. L. REV. 417 (1968).

that the amount of prepayment will not be sufficient to meet the costs of the legal services promised the participants. Similarly, bar associations sponsoring open panel programs will have to rely on participating lawyers to absorb any losses sustained in carrying out the association's contractual commitments.

If prepaid funding is used, the participant must be furnished legal services when needed. Although insurance commissioners throughout the United States are not in accord, it appears reasonable that a prepaying participant must receive some protection through a regulatory agency.¹¹

An alternative, or possibly a supplement, to prepaid funding is a funding procedure in which the eligible members who actually participate in the program pay a specified, predetermined amount for each service performed. The amount charged for each service is negotiated between the lawyer or law firm providing the service and the contracting entity representing the participants. To further the purposes of any group legal program under such a funding procedure, the lawyers or law firms involved in the program unquestionably will have to perform particular types of legal services for program participants at fees substantially below the normal fees charged nonparticipants. Union Group Legal Services enters into a written contract with the labor organizations and specifically sets forth in the contract the fees to be charged the participants for particular types of services. Fee schedules are sent to eligible members. For the most part, the fees charged are substantially below the minimum fees recommended by the Bar Association. By utilizing forms and paraprofessionals whenever possible, routine legal services hopefully can be profitably per-

10. The number of prepaid programs is almost negligible at this time. Only one such program has been in operation for any period of time. This is the Shreveport (Louisiana) Bar Association Plan which has been providing legal services since January 1971. This plan is financed by a Laborers Union which contributes 2 cents per hour of work for each of its members out of a working dues check off. In addition, the American Bar Association and the Ford Foundation have provided some financial assistance. The group covers approximately 600 members of a Laborers Union and their dependents. It is not believed that the statistics on utilization of this group is sufficiently meaningful to warrant other groups' reliance on them.

11. The Insurance Commissioner of the State of Washington presently takes the position that a prepaid legal program cannot be operated without complying with the Insurance Code. *See* WASH. REV. CODE § 48.01.040 (1959). An entity operating a closed panel program or one such as that contemplated by the Washington State Bar Association must obtain an exemption under the Insurance Code in order to accept prepayment for legal services. Such legislation has been proposed to the Washington State Legislature.

formed at rates lower than those normally charged. If law firms engaged in group legal practice are able to handle these types of legal services successfully at fees less than those suggested by minimum fee schedules, other law firms may be forced to reduce fees by using more efficient office procedures.

D. Labor Legislation

Existing labor legislation must be considered in establishing a prepaid group legal program. It is no secret that most programs which provide benefits on a prepaid group basis were created as a result of the collective bargaining efforts of labor organizations. Managed primarily by trustees representing both union and management, these benefit programs were established pursuant to section 302 of the Labor Management Relations Act,¹² which authorizes employers to contribute to trusts created to furnish employee benefits. Unfortunately, legal services is not one of the employee benefits presently permitted under section 302. Until this benefit can be provided through a jointly administered labor-management trust fund,¹³ it is doubtful that any labor organization will press for prepaid group legal programs. In addition, many labor organizations are finding it necessary to use all available fringe benefits funds to keep medical and pension plans financially healthy. These plans have a priority which must be met before funds are channelled into new benefit programs. Present restrictions imposed on wages and fringe benefits by the Economic Stabilization Act of 1970,¹⁴ as amended, will also seriously curtail adoption of prepaid group legal programs at this time. Nevertheless, some sort of national health program probably will become a reality for most employees within a few years, thereby freeing dollars presently expended for health and welfare benefits to provide legal services.

12. 29 U.S.C. § 186 (1970).

13. Legislation was initiated to amend section 302 of the Labor Management Relations Act to include legal services. See H.R. 13938, 92d Cong., 2d Sess. (1972) and S. 3386, 92d Cong., 2d Sess. (1972). Due to the opposition, primarily from employer associations, the amendment was not adopted in 1972. It appears reasonable to assume that such amendatory legislation will be enacted in the near future.

14. 12 U.S.C. § 1904 (1970).

E. Tax Ramifications

It is questionable whether an entity which secures legal services through contracts with insurance companies or law firms on a prepaid basis is entitled to a tax exempt status under section 501(c)(9) of the Internal Revenue Code.¹⁵ Although no final regulations have been promulgated under section 501(c)(9), the Internal Revenue Service did propose regulations on January 18, 1969 which do not define "other benefits"¹⁶ in terms broad enough to include legal services. Therefore, before any successful prepaid legal program can be adopted, it will be necessary to amend section 501(c)(9) to clearly include legal services as a benefit.

There also exists considerable doubt as to how the benefits or employer contributions under a group legal program would be taxed to the members in the absence of an appropriate amendment. It is probable that employer contributions would be taxable to the employee as additional compensation and deductible as such by the employer. A more difficult problem relates to the taxability of the value of the services furnished a participant. The employee would probably have to include in his gross income the excess of the fair market value of the benefit on the date of its receipt over the amount of the employer contributions.

15. INT. REV. CODE of 1954, § 501(c)(9) describes those organizations which are exempt as follows:

Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

16. The proposed regulations state:

The term 'other benefits' includes only benefits furnished to a member, his spouse or an individual specified in section 152 (a) (even if more than 50 percent support is not furnished) which are similar to life, sick, and accident benefits. A benefit is similar to a life, sick, or accident benefit if it is intended to safeguard or improve the health of the employee or to protect against a contingency which interrupts earning power. Thus, paying vacation benefits, subsidizing recreational activities such as athletic leagues, and providing vacation facilities are considered 'other benefits' since such benefits protect against physical or mental fatigue and accidents or illness which may result therefrom.

4 CCH FED. TAX REP. ¶ 3,044, at 41,101 (1972).

II. THE EXPERIENCE OF UNION GROUP LEGAL SERVICES

A. *Organization*

Union Group Legal Services contracted with labor organizations to provide particular types of legal services to eligible union members and their qualified dependents in accordance with specific fee schedules. Drafted to comply with the Code of Professional Responsibility,¹⁷ the contracts were filed with the Washington State Bar Association and contained, *inter alia*, provisions regarding the following:

1. Union Group Legal Services does not provide all types of legal services and may refuse to handle those matters which it feels cannot be handled properly by its staff and personnel. The contracts expressly describe the services to be rendered and the fees to be charged.

2. Members of the labor organization are not required to use the services of Union Group Legal Services and are free to obtain legal services from any attorney of their choice.

3. Union Group Legal Services is not financed with union funds.

4. The conduct of Union Group Legal Services is not under the control of any labor organization nor will its policies or operations be dictated by any labor organization.

5. Union Group Legal Services is limited to members of labor organizations and their qualified dependents. A member is required to obtain an eligibility card from his union identifying him as a qualified participant.

6. The obligation of the lawyer rendering the legal services is to the individual client, and the labor organization shall not interfere with the lawyer's independent exercise of his professional judgment.

7. No legal services are to be rendered in instances in which a conflict of interest exists between members of the labor organization or between a member and the labor organization itself.

8. The law firm sponsoring Union Group Legal Services must comply with all disciplinary rules specified in the Code of Professional Responsibility.

9. Any publicity sent by the labor organization to its members must be approved by Union Group Legal Services.

17. WASH. ST. BAR ASS'N, CODE OF PROFESSIONAL RESPONSIBILITY DR 2-103 (1972).

10. The agreement may be terminated by either party at any time.

The program does not cost an eligible member anything unless he uses the program, in which case he is charged in accordance with the fee schedule.¹⁸ The only cost to the labor organization is the cost of printing membership cards and the cost of printing and mailing material explaining the program to its members.

Initially, Union Group Legal Services agreed to provide only routine legal services which could be handled by a paraprofessional under the supervision of a lawyer, through extensive use of printed forms and documents. Services relating to contested matters were not provided. Since the extent of utilization was uncertain, it was believed these restrictions were necessary to avoid overloading the program. In November of 1972 the schedule of benefits was expanded to include contested matters such as those relating to domestic relations, industrial insurance claims and personal injury actions. In addition, members were offered a greater variety of legal services relating to trusts, wills, and real and personal property transactions, including such matters as lien foreclosures, quiet title actions and unlawful detainer actions. This expanded program is designed to provide the member with the type of service that the average working man would in all probability require from time to time, and not to provide representation with respect to more exotic types of litigation such as anti-trust actions or tax fraud cases.

B. Utilization

The labor organizations initially participating in the program had a combined total membership of approximately 10,000. The program was gradually expanded throughout 1972 to include an additional 15,000 members of other labor organizations. With the inclusion of the members' spouses and qualified dependents, it is estimated that the program is now available to 75,000 individuals.

Inasmuch as the expanded benefit program has been in existence only since November 1972, it is still too early to generalize with respect to utilization, except to say that use is considerably less than anticipated. Approximately 1,280 members used the program between

18. See Appendix *infra*.

August 1971 and December 1972; this represents utilization of approximately five percent. It does not appear that the expanded benefit program will result in any change in these statistics.

Many factors may account for the low utilization. First, like many laymen, some of the members may simply distrust lawyers. Second, lawyers for many years have discouraged the types of legal services offered to program participants (*i.e.*, small collection cases, traffic hearings and contested matters involving minor damages). This has forced the participants to seek these services from other sources—real estate agents, accountants, collection agencies and the like. Third, Union Group Legal Services requires the participants to pay for the actual legal services rendered. Although the services are provided under a reduced fee schedule, it appears that even the reduced fees are too high for many of the participants whose incomes range from \$8,000 to \$12,000. Fourth, lawyers and the Bar have not adequately advised the public concerning the need for legal services. The average person does not appreciate the importance of preventive law and usually only seeks the advice of a lawyer when in serious trouble. Finally, except for the initial letters sent by the labor organizations, very little publicity has been directed at the members. Unquestionably, utilization can be increased by an informational program conducted by the participating groups. Although accurate statistics have not been gathered as to why participating members have undertaken to use the program, it appears that many of the participants learned of the program through fellow employees. A large number of the members did not retain the benefit schedules and promotional material furnished them. Therefore, the success of the program ultimately may depend on spreading the merits of the program by word of mouth rather than urging the use of the program through repeated mailings.

C. *Staff*

Union Group Legal Services is a closed panel program consisting of two lawyers, two paraprofessionals, a receptionist and a typist. Those matters which cannot be handled properly by the staff are handled by the sponsoring law firm under the same fee arrangement.

The use of paraprofessionals in a group legal aid program is a necessity if fees are going to be reduced for participants. Presently, paraprofessionals are not widely used in general practice, and opinions

differ as to the duties and responsibilities a paraprofessional should have. Only within recent months has formal training been available to those interested in becoming paraprofessionals.¹⁹

Optimum use of a paraprofessional demands that he or she specialize in doing a particular type of work such as probate or domestic relations, an ideal which can be realized only by large law firms. In the smaller firm, the paraprofessional needs a broad variety of skills if he or she is to be of any profitable assistance to the lawyer.

The paraprofessionals at Union Group Legal Services undertake to interview a client initially and then perform, under the supervision of an attorney, routine services such as drafting a simple will, articles of incorporation, or pleadings in a domestic relations case. The paraprofessionals are not permitted to give either written or oral legal advice to a client unless such advice first has been approved by a lawyer. It is hoped that in the future intensified training programs will enable paraprofessionals to assume a greater role in handling simple legal problems.

D. Financial Report

Any entity performing legal services cannot operate continually at a loss. The benefit schedule presently used by Union Group Legal Services represents its best efforts to set fees which the participants realistically can afford but which nevertheless enable the Service to pay its overhead and return a profit. Although constant analysis is made of the time spent in providing each of the services referred to in the benefit schedule, at this time it cannot be determined if all the fees have been pegged at the correct level. Until utilization can be predicted accurately and the procedure refined, intermittent revision of the fee schedules will have to be made.

The following is a summary of the types of legal services performed from August 1971 through December 1972 and the number of members utilizing such services:

19. Edmonds Community College in Lynnwood, Washington, has initiated a paraprofessional training program which has met with enthusiastic response.

TYPE OF SERVICE	NUMBER UTILIZING SERVICE	PERCENTAGE OF UTILIZATION
Domestic Relations	247	19.38
Adoptions	19	1.62
Wills and Community Property Agreements	299	23.46
Probate	48	3.96
Change of Name	9	.74
Contracts—Consumer Debtor	245	19.18
Real Estate Transactions— Deeds, etc.	122	9.68
Landlord / Tenant	21	1.82
Taxes	1	.00
Bankruptcy	25	1.12
Business—Advice and Setting Up of Corporations, Partnerships, Sole Proprietorships, etc.	13	1.20
Torts	41	3.26
Traffic	171	13.46
Welfare	1	.00
Workmen's Compensation	14	1.12
Miscellaneous	4	.00
TOTAL	1,280	100.00%

With the above volume, Union Group Legal Services did not make a profit in 1972. It is hoped that greater participation in 1973 will generate a profit. One fact is apparent: group legal programs do not represent the bonanza some members of the Bar have anticipated.

There can be no doubt that the Bar has failed to provide adequate legal services to middle income groups. Accepting the excuse that legal services are too costly, these groups have gone without needed legal assistance. A solution to this problem must be forthcoming from lawyers. Group legal practice may not be the entire answer, but it certainly constitutes one step in the right direction.

Group Legal Practice

APPENDIX*

TYPE OF SERVICE	COST
<u>Default Divorces</u>	\$200.00
<u>Change of Name</u>	\$35.00
<u>Wills</u>	
Ordinary simple will:	
one individual	\$12.50
husband and wife	\$20.00
community property agreements	\$10.00
<u>Traffic Offenses</u>	
Representation in cases where charge is driving while under the influence of liquor	\$150.00
Other traffic offenses—traffic court only	\$100.00
<u>Bankruptcies</u>	\$175.00
<u>Personal Injury or Wrongful Death</u>	20% contingent fee of the gross amount recovered
<u>Industrial Insurance Claims</u>	20% of the increase in the award obtained for the workman
<u>Real Property</u>	
Deeds	\$10.00
Contract for the sale of residential property	\$25.00
Residential leases	\$25.00
Quiet title action (uncontested)	\$150.00

* The information presented in this Appendix is taken from the Union Group Legal Services Benefit Schedule. It is not a complete itemization of all types of services provided.