OHIO STATE BAR ASSOCIATION

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Andrew R. Davis
Chief of the Division of Interpretations & Standards
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Avenue, NW, Room N-5609
Washington, D.C. 20210

Re: Proposed Rule on the Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption; RIN 1215-AB79 and 1245-AA03, 76 Fed. Reg. 36178 (June 21, 2011)

Dear Mr. Davis:

I write to you on behalf of the Ohio State Bar Association to express our concerns over the proposed rule referenced above that would substantially narrow the Labor Department's longstanding interpretation of the "advice" exemption to the "persuader activities" rule under the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA" or the "Act").

We respectfully request that the proposed rule be withdrawn or that it be modified to reaffirm the Department's traditional interpretation of the advice exemption under Section 203(c) of the LMRDA that exempts lawyers and law firms from the disclosure requirements of the Act when they merely provide legal advice or other legal services to their employer clients in connection with those clients' persuasion activities but the lawyers have no direct contact with the employees.

In addition, we concur with a recommendation of the American Bar Association that for those lawyers and law firms that engage in direct persuader activities and thus are subject to the LMRDA's disclosure requirements under the Department's longstanding interpretation of the Act, the Department should narrow the scope of the information that must be disclosed under Form LM-21 so that disclosure is required only for those receipts and disbursements that relate directly to the employer clients for whom persuader activities are performed.

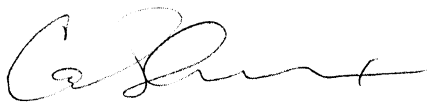
The Ohio State Bar Association is concerned that unless the proposed rule is withdrawn or modified as described above, it threatens to undermine existing state court and state bar ethical rules on client confidentiality, erode the confidential lawyer-client relationship, and discourage many labor lawyers from providing the important legal services that their employer clients need. In addition, we believe that the scope of the information that the proposed rule would require lawyers and law firms to disclose is clearly excessive and calls for a great deal of confidential financial

information from clients that has no reasonable relationship to the "persuader activities" that the Act seeks to monitor.

Changing from an objective to a subjective standard for determining whether an engagement is reportable as "persuader activity" also poses grave concerns. Under the proposed rule, a law firm will often be unable to predict its reporting obligations at the commencement of the relationship. The rule's application is not limited to times of active union representation campaigns. Hence, the employer's subjective intent about whether persuasion has anything to do with the engagement is not always obvious. However, if influencing employees about whether they want a union is just one of many subjective motivations of the employer, the proposed rule requires the law firm to report on the LM-20 form, with significant penalties for failing to do so within a very short 30-day time period. This lack of clarity needlessly exposes lawyers to inadvertent violations that could have serious consequences.

We have reviewed the American Bar Association's comments regarding the proposed rule, and we endorse those comments as a fuller explanation of our concerns and recommend-dations. On behalf of our membership, we urge that the proposed rule be modified or withdrawn.

Sincerely,



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