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2
3 STATE OF OREGON
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
5 DIVISION OF FINANCE AND CORPORATE SECURITIES

6 In the Matter of

7 Persels & Associates, LLC;

8 Respondent.

Agency Case No. DM-12-0049
OAH Case No. 1303297

FINAL ORDER TO CEASE AND
DESIST AND ASSESSING CIVIL
PENALTY

9 HISTORY OF THE CASE

10 On June 10, 2012, the Director of the Department of Consumer and Business
11 Services, Division of Finance and Corporate Securities (Division) issued an Order to
12 Cease and Desist, Proposed Order Assessing Civil Penalty, and Notice of Opportunity for
13 an Administrative Hearing (Notice) to Persels & Associates, LLC (Persels) ordering
14 Persels to cease and desist from violating any provisions of the law regulating debt
15 management service providers and assessing a civil penalty in the amount of \$500,000.
16 On June 19, 2012, Persels requested a hearing.

17 On May 21, 2013, the Division referred the matter to the Office of Administrative
18 Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha Fair to
19 preside over the matter. On July 23, 2013, ALJ Fair convened a telephone prehearing
20 conference and scheduled the hearing for March 4 through March 14, 2014 and set
21 deadlines for submission of exhibits and witness lists.

22 On November 12, 2013, Persels filed a Motion for Summary Determination
23 (Persels' Motion). On November 26, 2013, the Division filed a Motion for Summary
24 Determination and Response to Respondent's Motion (Division's Motion). Pursuant to
25 deadlines set by ALJ Fair, Persels filed its Response in Opposition to DFCS' Motion for
26 Summary Determination (Persels' Response) on December 20, 2013. Persels also filed a
Reply Memorandum Supporting Persels & Associates, LLC's Motion for Summary
Determination (Persels' Reply) on December 20, 2013. The Division filed its Reply to
Respondent's Response (Division's Reply) on December 24, 2013. The record closed on
December 24, 2013.

On February 14, 2014, ALJ Fair issued Rulings on Motions for Summary
Determination and Proposed Order. ALJ Fair concluded that all of the issues were
decided and granted summary determination in favor of the Division. ALJ Fair
concluded that Persels is not entitled to a favorable ruling and denied Persels' motion for
summary determination. The contested-case hearing was canceled.

On March 17, 2014, Persels filed exceptions to the Rulings on Motions for

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1 Summary Determination and Proposed Order.

2 Now, therefore, having reviewed the entire record in this matter, and having
3 reviewed and considered the exceptions filed by Persels, the Director of the Department
4 of Consumer and Business Services (“Director”) issues the following findings of fact,
5 conclusions of law and final order, consistent with that proposed by ALJ Fair.

6 The Director adopts the ALJ’s recommended decision and issues this Final Order,
7 without modification of the ALJ’s Findings of Fact. The Opinion section has been
8 supplemented for grammatical purposes and includes further clarification for denial of
9 Persels’ claim of exemption.

10 ISSUES

- 11 1. Whether there is a genuine issue as to any material fact and whether Persels or
12 the Division is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.
- 13 2. Whether Persels is a debt management service provider. ORS 697.602.
- 14 3. Whether Persels is exempt from the registration requirement for debt
15 management service providers. ORS 697.612, ORS 697.632 and OAR 441-910-0005(1).
- 16 4. Whether the Division may issue a cease and desist order to Persels, prohibiting
17 it from violating ORS 697.602 *et al.* ORS 697.825(1)(a).
- 18 5. Whether Persels must pay a civil penalty of \$500,000. ORS 697.832.

19 EVIDENTIARY RULINGS

20 The following declarations, submitted by Persels, were admitted into the record:

- 21 • Declaration of Neil J. Ruther in Support of Persels & Associates, LLC’s
22 Motion for Summary Determination, inclusive of its Exhibits A through
23 D;
- 24 • Declaration of Mark J. Fucile, inclusive of its Exhibits 1 through 4;
- 25 • Declaration of Brent E. Corwin in Support of Persels & Associates, LLC’s
26 Motion for Summary Determination, inclusive of its Exhibits A through
B;
- Declaration of Adam A. Kiel in Support of Persels & Associates, LLC’s
Motion for Summary Determination, inclusive of its Exhibits A through
B;
- Declaration of Christopher N. Weiss in Support of Persels & Associates,
LLC’s Motion for Summary Determination, inclusive of its Exhibits A
through D;

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- Supplemental Declaration of Neil J. Ruther in Support of Persels & Associates, LLC’s Motion for Summary Determination;
- Supplemental Declaration of Mark J. Fucile; and
- Supplemental Declaration of Christopher N. Weiss in Support of Persels & Associates, LLC’s Motion for Summary Determination.

Exhibits A1 through A21, offered by the Division, were admitted into the record.

FINDINGS OF FACT

Involved Individuals and Companies

1. Persels is a foreign limited liability company, organized in Maryland in December 2004 and registered as a business with the Oregon Secretary of State since April 2009. (Ex. A1 at 1-3.) Persels has never registered as a debt management service provider with the Division. (Ex. A2 at 1.) Ruther, an attorney licensed in Maryland, owns 99.75 percent of Persels and the remaining 0.25 percent is owned by Lisa Perrillo, an attorney licensed in North Carolina and New York. (Exs. A7 at 55; A10 at 1.)

2. CareOne Services, Inc. (CareOne) is a foreign business company, organized in Maryland in June 2004 and registered as a business with the Oregon Secretary of State since June 2007. CareOne was previously named FreedomPoint Corporation (FreedomPoint) and was registered as a business with the Oregon Secretary of State since June 2004. (Ex. A3 at 1-3.) Ruther has no ownership interest in CareOne. (Ex. A7 at 53.)

3. Attorney Brent Corwin has been an active member of the Oregon State Bar since October 2000. Attorney Adam Kiel has been an active member of the Oregon State Bar since May 2009. (Ex. A6 at 1-2.) Persels’ Oregon clients are assigned one of these two attorneys. (Dec. Ruther at 4.)

4. Consumer Law Associates, LLC (CLA) is a foreign limited liability company, organized in Maryland in April 2007 and registered as a business with the Oregon Secretary of State since April 2009. (Ex. A4 at 1-3.) Persels and CLA list the same address as their principal place of business. (Exs. A1 at 1-2; A4 at 1-2.) Ruther owns 99.75 percent of CLA with Perrillo owning the remaining 0.25 percent. (Ex. A7 at 53.)

The Creation of Persels

5. In the mid-2000s, there was a surge in companies offering debt settlement services to consumers. The debt settlement companies, for high fees, offered to settle consumers’ unsecured debts with their creditors. Many of these companies misled consumers into thinking that they would not be sued by their creditors and that the debt settlement companies would be successful in settling the consumers’ debts. (Ex. A7 at 37-38.) Some of these companies approached Ruther, who owned a nationwide telephone-based company that offered unbundled legal services to consumers, called Legal Advice Line (Legal Line). Legal Line provided advice on a variety of legal matters

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1 to consumers for flat fees. If the consumers needed more extensive legal assistance,
2 Legal Line would refer them, usually through local bar associations' referral services, to
3 attorneys that the consumers could hire to represent them in their legal matters. (*Id.* at
4 11, 19-39.) The debt settlement companies wanted Legal Line to provide limited
5 representation to the consumers who had been sued by their creditors. Legal Line
6 accepted the arrangement on the understanding that Legal Line represented the
7 consumers, not the debt settlement companies. (*Id.* at 39-40.) Because the business of
8 helping consumers with their unsecured debt grew rapidly, Ruther with another partner
9 created his first law firm, Griffith & Ruther, to deal specifically with these consumers.
10 Shortly afterwards, Griffith left the firm, and the firm name was changed to Ruther &
11 Associates. In 2008, Ruther assigned his interest to Jimmy Persels, and the firm name
12 was changed to Persels & Associates. In 2009, Ruther rejoined the firm, but Jimmy
13 Persels and Ruther did not change the firm's name. Later that same year, Jimmy Persels
14 retired from the firm. (*Id.* at 41-42, 44.) All of these law firms were limited liability
15 companies. (*Id.* at 44.)

16 *Source of Persels' Clients*

17 6. CareOne is a national company that provides debt management services to
18 consumers. A debt management plan is a plan in which a debtor's creditors agree to stay
19 attempts to collect a debt while the debtor makes payments under a plan that pays all
20 debts in full. CareOne refers those debtors who do not have the income or assets to pay
21 off their debts in full to Persels for debt settlement negotiations. For debt settlement
22 purposes, the debtor's creditors are contacted in an attempt to negotiate a reduction in the
23 amount of the debt. (Exs. A7 at 44-50, 52; A16 at 5.) CareOne does not refer Oregon
24 consumers to any other law firm other than Persels. (Ex. A8 at 4.)

25 7. For the period January 26, 2009 through February 18, 2012, CareOne had a
26 total of 22,185 Oregon consumers contact it. Of that number, CareOne referred 1,801 to
Persels. (Ex. A8 at 2.)

8. CLA performs the same functions as Persels but it accepts referrals from
CareOne's competitor, EFA Services (EFA). EFA did not want it known that they were
referring consumers to the same law firm as CareOne did. CLA uses the same
infrastructure and process as Persels. Ruther has no ownership interest in EFA. (Ex. A7
at 53.)

9 *Services Persels Provides After Receiving a Referral from CareOne*

10 9. When Persels first receives a consumer referral from CareOne, one of Persels'
11 staff attorneys reviews the initial documentation to verify the receipt of all necessary
12 documents. Persels then forwards that documentation to a field attorney assigned by
13 Persels in the state of residence of the consumer. (Ex. A7 at 58-59.) Persels has a
14 network of approximately 150 field attorneys to provide its services in addition to the
15 staff attorneys located at its Maryland headquarters. (*Id.* at 61.) Persels employs some of
16 the field attorneys and enters into independent contractor agreements with the remaining
17 field attorneys. (*Id.* at 55-56.)





1 10. In the initial consultation conducted by the field attorney, the consumer
2 receives a comprehensive analysis of their financial condition and a review of Persels'
3 procedure for negotiating settlements of their debts with the creditors. Persels has an
4 algorithm that factors the consumer's income, consumer's debts, and rates of settlements
with creditors. If the algorithm indicates that the consumer does not have the resources to
settle their debts, Persels will so advise the consumer and suggest bankruptcy as an
alternative. (Ex. A7 at 87-88.)

5 11. Persels charges from \$100 to \$400 for an initial consultation with a
6 consumer. The exact amount of the initial fee depends upon the amount of the
consumer's debt. (Ex. A7 at 87-88.)

7 *Services Persels Provides When Consumer Accepts Its Services*

8 12. When the consumer accepts Persels' debt settlement services, the consumer
9 must sign a retainer agreement (Retainer). With the Retainer, Persels provides the
10 consumer copies of the bankruptcy disclosure statements 527 B and C and an additional
11 disclosure statement (Disclosure) that summarizes Persels' initial discussions with the
12 consumer. In the Disclosure, Persels informs the consumer that creditors cannot be
13 forced to accept offers, creditors can still enforce their rights to collect on the debts,
consumer's wages may be garnished, consumer's credit rating will be adversely affected,
and agreements to reduce debts may result in taxable income that must be reported. (Exs.
A7 at 104-107; A10 at 3-4, 7, 13.)

14 13. The Retainer provides that Persels has been retained for up to a maximum of
60 months:

15 to represent [client] as attorneys with your creditors to negotiate
16 compromises of your unsecured debts and assist you in legal
17 matters relating to that process. * * *. We will hold your funds *
* * and we will negotiate with your creditors with the goal of
18 reaching compromises of your Debt that are favorable to you.

19 (Ex. A10 at 2.)¹ The Retainer provides that Persels will answer any legal questions and
20 deal with any legal issues that may arise in connection with the client's unsecured debt.
The Retainer specifically excludes the consumer's secured debt from any services. (*Id.* at
21 3.) The Retainer provides that "[i]f collectors violated the [FDCPA], at your request, we
will represent you in lawsuits to stop them and to recover damages. We may retain or
22 associate with other attorneys to assist us in representing you in these cases." (*Id.* at 3.)²

23 ¹ After 60 months, most debts on which no payments have been made are barred from
collections by the statute of limitations. (Ex. A7 at 100-104.)

24 ² Persels has never filed a FDCPA action on behalf of any of its clients. (Ex. A7 at 84.)
25 Persels reviews clients' complaints to determine if there has been a violation of the
FDCPA by a creditor. (*Id.* at 91.) If Persels believes there is a violation, it prepares a
26 report and forwards the matter to an unrelated law firm. The client would enter into a



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The Retainer provides that:

[i]f a creditor sues you to collect a debt, we will assist you with responding to the suit by preparing an answer to the complaint, advising you of your legal options, preparing necessary legal documents in connection with the litigation such as discovery responses, discovery request if appropriate, responses to motions for summary judgment and other motions filed by the Plaintiff's attorneys, and preparing you to appear at trial. * * * **we will not go to court for you or represent you in litigation.** * * *.

* * * * *

If you are sued on account of a Debt, we will assist you in preparing an answer and will negotiate with the creditor's attorney on your behalf. We will not go to court with you or file an appearance on your behalf, as the cost of doing so would be prohibitive. We will advise you on what the creditor can do, if anything, with a judgment and will work with you to revise your Representation if it's necessary to serve your interests.

* * * * *

Persels & Associates is a Debt Relief Agency as defined by the Federal Bankruptcy Code and we help people file for bankruptcy relief under the Bankruptcy Code. We are not offering to provide or willing to provide any services of bankruptcy assistance at this time. You must enter into a Bankruptcy Retainer agreement with us before we will offer to provide or provide any other services or bankruptcy assistance beyond what is contained in this Agreement[.]

(*Id.* at 3-4, 7; emphasis in original.) The Retainer further details the creation of the client's trust account, the monthly payments the client will pay into the account, Persels' use of those funds to negotiate and settle with creditors, and Persels' fees. (*Id.* at 3-6.)

14. The Disclosure that accompanies the Retainer includes a summary of Persels' services. (Ex. A10 at 12-13.) It provides, in part:

The goal of Persels & Associates' representation is to negotiate a settlement of all of the unsecured debts included in representation

separate retainer agreement with that law firm if that firm chooses to pursue the violation. (*Id.* at 84-85, 91-92.) Persels has a fee sharing agreement with the other firm and receives 20 or 25 percent of any fee awarded as a result of the FDCPA claim. (*Id.* at 120.)



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for less than the full amount owed and in amounts you can afford over a maximum of 60 months and to provide legal advice and litigation assistance when necessary. * * *.

* * * * *

You will be represented by a Persels & Associates attorney licensed in your state of residence for purposes of negotiation of your unsecured Debts, legal advice, and legal document drafting, arising out of, or related to your unsecured debts * * * your attorney will review your progress regularly and will be available to answer any legal questions or deal with any legal issues that arise and are related to your unsecured debts * * *. Our administrative staff, includes CareOne Services, Inc., which provides administrative, technology and paralegal services to us, will be available to assist you with any purely administrative or non-legal issues you may experience.

* * * * *

Should you be sued by a creditor, and after you fax/email us the legal documents pertaining to one of your unsecured debts listed on the Debt Schedule, we will assist you with responding to the suit and will advise you of your legal options. **WE WILL NOT REPRESENT YOU IN COURT.** One of your options may be to consider filing for bankruptcy protection[.]

(*Id.*; emphasis in original.)

15. Clients can access further information on Persels' internet website. (Ex. A11 at 1-20.) On its welcome page, Persels informs the client of its goals and services:

Congratulations on taking your first step toward gaining control of your debt by beginning your representation with Persels & Associates. As your attorneys, we will legally represent you and work to negotiate settlements on your debts for less than the full balance amounts.

* * * * *

Persels & Associates' goal is to help you build your money management skills while we work with you to become debt-free. Your legal representation includes access to legal advice, as well as the online resources of CareOne, a service provider to our law firm[.]

(*Id.* at 1.) The website reiterates the need for the client to make regular monthly payments into the trust account and the use of the funds by Persels to negotiate settlements of the debts. It provides payment reminders, confirmation of payments



1 received, notices of negotiated settlements, and confirmations of debts paid. (*Id.* at 2-19.)

2 16. In setting up the consumer’s account, Persels uses another algorithm to
3 determine the consumer’s monthly disposable income. The consumer then pays that
4 disposable income to Persels, which payments are placed in a trust account and used to
5 pay Persels’ fees and the consumer’s debts. (Ex. A7 at 94-96.) For the first 18 months,
6 nearly all of the monthly payments go toward Persels’ fees. Once the fees are paid, the
7 monthly payments are held in trust to be applied toward settlements with creditors. No
8 negotiations with creditors occur until the client has accumulated enough funds to offer to
9 compromise the debts. (Ex. A16 at 6.)

10 17. After it’s retained, Persels issues letters to the consumer’s creditors. In these
11 letters, Persels identifies itself as the consumer’s representative for “the limited purpose
12 of settling their debt.” (Ex. A7 at 99.) These letters further advise the creditors that
13 Persels will not accept service of a lawsuit on behalf of the client and will not enter an
14 appearance on behalf of the client in any related litigation. The letters also direct the
15 creditors to cease contacting the client pursuant to the FDCPA. (Ex. A10 at 23.)

16 18. CareOne issues most of the letters generated by Persels through the software
17 system managed by CareOne. (Ex. A7 at 111-112.) The letters have Persels’ letterhead
18 and represent being sent by Persels’ attorney. (Ex. A10 at 18-29.)

19 19. Persels typically does not start offering settlements on debts until the
20 consumer has enough money in the trust account to make payments on settlement offers.
21 The staff at the CareOne call centers, who are not attorneys, primarily negotiates with
22 creditors, instead of the field attorneys. The field attorney can affect the settlement
23 negotiations if the attorney determines that a creditor must take priority. Otherwise, the
24 staff determines when to contact a creditor and what settlement to offer the creditor. (Ex.
25 A7 at 107-111, 113.)

26 20. After the Retainer is signed, the consumer pays a monthly fee of \$50 per
month fee to Persels. Persels also receives a contingency fee of 30 percent of any portion
of the consumer’s debt that is reduced in negotiations with the creditors. (Ex. A7 at 87,
94.)³

21 21. For some consumers, usually elderly or disabled who have limited income
22 that is protected from execution by federal or state laws, Persels provides a modified
23 service. For a monthly fee of \$20, Persels sends a letter to all of the consumer’s
24 creditors, advising the creditors that Persels represents the consumer and to contact
25 Persels about the debt. When the creditors call, Persels advises them of the consumer’s
26 inability to pay the debt based upon the limited income and the creditor’s inability to
collect on the debt because the consumer’s income is protected from execution. After a
period of time, most of the creditors will write off the debt. (Ex. A7 at 89-90.)

Distribution of Services between Persels and CareOne

³ Persels’ fee structures changed over time with different combinations of initial fees, monthly fees, and/or
contingency fees. (Dec. Ruther, Ex. D, Vol 1, 11.C.1.)



1 22. In exchange for a monthly fee Persels pays to CareOne based upon the
2 number of referred clients, CareOne provides administrative and paralegal support
3 services in connection with the debt-related services that Persels provides to consumers.
4 (Exs. A7 at 65; A8 at 1; A16 at 6-7.) CareOne’s services include collecting and storing
5 client data, mailing letters and other documents to Persels’ clients and the clients’
6 creditors, providing budget analysis and quality control, processing clients’ payments to
7 Persels, communicating with creditors on behalf of Persels and providing reporting
8 assistance related to Persels’ trust accounts. CareOne provides Persels access to its
9 proprietary debt resolution software. CareOne provides these services under the
10 supervision of Persels, and Persels’ attorneys oversee and are responsible for all legal
11 services. (Ex. A8 at 1-2.)

12 23. Persels’ clients are provided a call center number as the contact number for
13 the law firm. The call center is staffed by CareOne’s employees. Persels discourages
14 clients from having the direct phone number of the attorney assigned to the client. (Exs.
15 A7 at 66-69; A12 at 1, 4.) Because of low profit margins, Persels found that it needs to
16 have non-lawyers provide services to its clientele unless it is a service that must be
17 provided by an attorney. When a client calls the call center number, a “triage” person
18 determines whether the client needs to speak to an attorney. If necessary, Persels has a
19 staff attorney speak with the client to provide preliminary advice and make a final
20 determination that referral to the field attorney must be made. (Ex. A7 at 70-71.) If an
21 action is needed for a client, an entry for a task is made in Persels’ computer system.
22 Persels monitors the tasks to verify their completion and will contact the assigned
23 attorney to remind them of outstanding tasks. (*Id.* at 70-71.)

24 24. CareOne provides the retainer package to the client, obtains the client’s
25 signature on the Retainer agreement, sends notices to the creditors of Persels’
26 representation, negotiates and obtains settlements with creditors, and manages the client’s
trust account. (Ex. A16 at 6-7.) The debt settlement plans are drawn up and
administered almost exclusively by CareOne’s non-lawyer administrative staff. (*Id.* at
44.) The letters sent by CareOne for Persels’ clients indicate that the letters are from
Persels or are sent on behalf of Persels. These letters were drafted by Persels or drafted
under its supervision and Persels approves the issuance of the letters. CareOne’s
paralegal staff communicates directly with Persels’ clients on issues such as missed
payments or settlement terms with creditors. (Ex. A8 at 3.)

27 25. CareOne granted Persels a license to access its debt resolution software and
28 systems. With these applications, Persels captures client information, tracks payments to
29 creditors and monitors settlement progress. These applications also allow Persels access
30 to historical creditor settlement data, creditor negotiation channels, data reporting, and
31 task management. (Ex. A8 at 5.) The applications are contained on servers hosted and
32 operated by CareOne and accessible to Persels via the internet. (Ex. A9 at 5.)

33 26. CareOne and Persels entered into an Amended and Restated Service
34 Agreement (Agreement) on March 21, 2011 with an effective date of October 23, 2010.
35 (Ex. A9 at 3.) The Agreement states that the following services will be provided upon
36 initial client referral to Persels:



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- CareOne receives initial call from client, collects client information and creates the electronic client file;
- CareOne arranges for initial consultation fee from client and puts task in database for a Persels attorney to perform the initial consultation;
- Persels attorney reviews the client file and performs initial consultation with client; and
- If client accepts Persels’ services, CareOne sends cease and desist letters to creditors and a Persels’ welcome letter to the client.

(*Id.* at 26.)

27. The Agreement states that the following services will be provided for general client questions:

- Clients call CareOne which answers the phone in Persels’ name;
- CareOne representatives answer clients’ general questions, services account and notes clients’ electronic files regarding the interactions; and
- If there is a question for an attorney, CareOne arranges for Persels attorney to contact client to provide legal guidance.

(Ex. A9 at 27.)

28. The Agreement states that the following services will be provided for cases involving litigation:

- Clients call CareOne when sued by a creditor. CareOne answers the phone in Persels’ name;
- CareOne arranges for clients to forward litigation documents and scans them into clients’ electronic files. CareOne notifies local attorney of lawsuit;
- Persels attorney reviews documentation, contacts client and provides legal guidance; and
- Persels attorney forwards any responsive document to CareOne for scanning and processing.

(Ex. A9 at 27.)

29. The Agreement states that the following services will be provided for negotiations with creditors:

- CareOne negotiates with creditors to settle debts when the database system sends an alert, a creditor contacts CareOne, or Persels attorney requests an expedited settlement; and
- If settlement reached, then one of three things occurs: CareOne notifies Persels attorney of settlement, who reviews and may notify CareOne of requested changes; CareOne notifies client of settlement and obtains



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consent; or CareOne sets up settlement and arranges payments to creditor, which settlement will be reviewed by Persels attorney who may notify CareOne of requested changes.

(Ex. A9 at 28.)

30. The Agreement states that the following services will be provided for accounting purposes:

- Client account is set up in database with client payments being debited from client's checking account;
- Client payments deposited into Interest on Lawyers Trust Accounts (IOLTA) accounts and disbursements are sent to creditors and fees sent to Persels; and
- IOLTA accounts are reconciled daily.

(Ex. A9 at 28.)

31. The Agreement provides that:
[T]o the extent that any of the Services provided by CareOne involve communicating with a Client or a Client's creditor or performing any other task on behalf of or in the name of [Persels] or its client with respect to Debt Services, [Persels] shall supervise, oversee and be responsible for such Services. * * *
[Persels] will make, direct, or approve all decisions with respect to the Debt Services performed, or to be performed, for a Client, all communications to a Client or the Client's creditors related thereto, and all other services incident to the practice of law and the legal representation of the Clients.

(Ex. A9 at 4.)

32. The Agreement provides that all changes made to content related to the services will be reviewed by Persels before implementation. Persels will provide legal ethics training to CareOne staff who works with its clients. (Ex. A9 at 29.)

33. When a prospective Persels' client calls the call center staffed by CareOne employees, the CareOne employee utilizes a call guide to determine what information to provide to the prospective client. (Ex. A12 at 1, 4.) The call guide indicates that the following things should be stated to the client regarding Persels' services:

* * *. Your budget shows that you can't afford the Debt Management payment. The good news is that a Debt Settlement representation may be a better fit for your situation. * * *.

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* * * CareOne also provides paralegal services for Persels & Associates and now I am going to talk to you on behalf of Persels. P&A is a national law firm that offers debt settlement legal services in your state. The law firm (Persels & Associates) will represent you and work to settle the accounts for roughly half of what you owe. * * *

* * * * *

* * *. [The Debt Settlement Representation] uses the legal expertise of attorneys from the nationwide firm of Persels and Associates and you will be assigned an attorney licensed in your state.

* * * * *

The amount you save each month will be kept in an attorney's trust account until P&A negotiates settlements on your behalf. * * *

* * * * *

In most cases, [a creditor suing you] is meant to scare you into making payments or settling directly with the creditor

* * * * *

Persels and Associates will provide additional legal services such as document review/preparation, written responses to complaint/claims, etc as a part of the Debt Settlement Representation.

Your state assigned attorney will be available to answer any questions or concerns you have throughout the litigation process * * *

* * * * *

The attorneys will provide you with legal advice regarding your current debt situation, your rights under the Federal Fair Debt Collection Practices Act and any options the law provides when negotiating with your creditors[.]

(*Id.* at 1-3.) The call guide further advises the call center employee to explain Persels' initial consultation procedures, the client's monthly payments, and debt settlement process. (*Id.* at 3-4.)

1 *Services Provided by Persels' Field Attorneys*

2 34. Corwin and Kiel are the field attorneys assigned by Persels to its Oregon
3 clients. (Dec. Ruther at 4.) Persels creates and distributes a training manual to all the
4 attorneys that provide Persels' services. The manual is in excess of 500 pages and details
5 Persels' policies and procedures. The manual includes Persels' expectations for
6 competent legal advice and services provided for litigation, information and case law
7 regarding consumer laws, and instructions for the use of the software utilized by Persels
8 for its clientele. (Ex. A7 at 59-60; Dec. Ruther, Exhibit D.)

9 35. Corwin works as a sole practitioner in his own law firm, Brent E. Corwin,
10 P.C. For a portion of his practice, he performs work for Persels and CLA's client "when
11 those firms and their clients wish him to do so." (Ex. A14 at 2.)

12 36. Originally, both Corwin and Kiel performed services for Persels' Oregon
13 clients pursuant to independent contractor agreements. (Dec. Ruther at 4.) On August
14 23, 2009, Persels, Legal Line and CLA entered into an independent contractor agreement
15 with Brent Corwin, an attorney licensed to practice law in Arizona and Oregon. Pursuant
16 to the agreement, Corwin agreed to provide Persels' clients with legal services
17 "including, but not necessarily limited to, the provision of legal advice in the general
18 practice of law, debt settlement, bankruptcy, etc. * * *. Attorney further agrees to limit
19 his/her representation of any clients in debt settlement to clients of [these three
20 companies]." (Ex. A13 at 1.) The agreement specifically provided that it was not an
21 employment agreement. (*Id.* at 2.) In exchange for his services to Persels pursuant to
22 this agreement, Corwin received a flat fee for every initial consultation with a client and a
23 flat monthly fee for every client who has made a monthly payment. (*Id.* at 8.)

24 37. Sometime after June 2012, Persels entered into employment agreements with
25 Corwin and Kiel. (Dec. Ruther at 4; Dec. Weiss at 2.) Regardless of their status as
26 employees or independent contractors, Corwin and Kiel provided the same services for
Persels' Oregon clients. (Dec. Corwin; Dec. Kiel.)

38. During the initial consultation, Corwin reviews the client's electronic file,
introduces himself as the client's assigned attorney, reviews "salient points of the debt
reduction representation," and responds to any client questions. (Ex. A13 at 8.) On a
monthly basis, Corwin reviews each client's file and is available to the clients for any
legal issues that arise. (*Id.*) Corwin also received flat fees for certain services to clients
involved in litigation, primarily for document drafting such as drafting an answer to a
complaint. (*Id.* at 15.)

39. For Persels' clients, Corwin "provides legal advice and assistance in
attempting to negotiate matters with the client's creditors. He also provides documents
for potential use by clients who are sued, and he explains how to use (and not use) those
documents but does not appear for those clients in court." (Ex. A14 at 3.) Corwin may
draft answers and other pleadings for the client to sign and file pro se. The pleadings
disclose that a Persels' attorney prepared the documents. (Ex. A16 at 7-8.) These
pleadings are loaded into the consumer's electronic file, and Persels sends them to the
consumer with instructions on how to use them. (Ex. A7 at 50-51.) Corwin does not file



1 any bankruptcy documents for these clients. If these clients need substantive bankruptcy
2 advice or assistance, Corwin refers them “to the bankruptcy lawyers at those firms.” (Ex.
3 A14 at 3.) Corwin does not handle any funds or fees from these clients. Client funds are
4 exclusively handled by Persels and CLA. (*Id.*) His “activities with respect to Persels and
5 CLA are limited to the provision of entirely ethical unbundled legal services on the
6 debtor side of debtor-creditor matters.” (*Id.* at 4.)

7
8 40. Corwin and Kiel always identify themselves as attorneys during their
9 representation of Persels’ clients. (Dec. Corwin at 2-3; Dec. Kiel at 1-2.) Both attorneys
10 communicate with Persels’ clientele with Persels’ email address and telephone system;
11 issue letters to clients and/or creditors on Persels’ letterhead; maintain client files using
12 Persels’ information technology systems; and are supervised by Persels’ staff attorneys.
13 (Dec. Ruther at 4.) They attend trainings sponsored by Persels including Continuing
14 Legal Education classes (CLEs), use of Persels’ information technology systems,
15 monthly webinars, and changes in law. (Dec. Corwin at 2-3; Dec. Kiel at 1-2.)

16 41. Corwin and Kiel perform the following services for Persels’ clients:

17 Responding to their creditors, offering assistance to enforce their
18 rights against unlawful harassment by debt collectors in violation
19 of the Fair Debt Collection Practices Act (“FDCPA”), giving
20 advice on protections under bankruptcy laws and advice on
21 formulating common law composition with creditors under
22 Oregon law, defending against threatened and actual litigation,
23 and preparing pleadings to respond to motions in litigation.

24 * * * * *

25 * * * provide clients with “unbundled legal services,” meaning
26 that, in order to keep the cost of legal services low * * *, the
client provides informed consent in a written retainer agreement
to limit the scope of my legal representation. * * *. I do not enter
a notice of appearance on behalf of the client or appear in court
for the client. Rather, on behalf of Persels, I perform certain
discrete legal services such as drafting pleadings and responses to
discovery, and assisting with strategy for defending against
creditor motion practice. * * * the client proceeds *pro se*.

(Dec. Corwin at 3-4; Dec. Kiel at 2-3.)

42. The field attorneys do not keep time records for their services but enter notes
in the clients’ electronic files when they review a case or take an action on a case. (Ex.
A16 at 8-9.)

Public Policy Concern

43. One business model followed by debt relief companies is:



1 [T]he so-called “attorney model,” whereby a debt relief company
2 affiliates itself with local attorneys who purport to do “legal
3 services” on behalf of clients. * * *. Consumers are told that an
4 attorney will represent them in negotiations with creditors and
5 provide legal assistance when, in fact, the attorney’s involvement
6 is minimal or nonexistent.

7
8 (Ex. A15 at 5.) In response to this situation, Connecticut’s legislature narrowed the
9 attorney exemption to the requirement for licensure for debt negotiating services to only
10 apply when an attorney engages in debt negotiation as an “ancillary matter to such
11 attorney’s representation of a client.” (*Id.* at 6.)

12 CONCLUSIONS OF LAW

- 13 1. There is no genuine issue of material facts and the Division is entitled to a
14 favorable ruling as a matter of law. Persels is not entitled to a favorable ruling
15 by law.
- 16 2. Persels is a debt management service provider.
- 17 3. Persels is not exempt from the registration requirement for debt management
18 service providers.
- 19 4. Persels must cease and desist from further violations of ORS 697.612.
- 20 5. Persels must pay a civil penalty in the total amount of \$500,000.

21 OPINION

22 The Division seeks an order for Persels to cease and desist from violating any
23 provisions of the law regulating debt management service providers, and it seeks to
24 assess a civil penalty in the amount of \$500,000 against Persels based on allegations that
25 Persels performed debt management services without registering with the Division. As
26 the proponent of the allegations, the Division has the burden to establish, by a
preponderance of the evidence, that the allegations are correct and that a cease and desist
order and civil penalty are the appropriate sanctions. ORS 183.450(2) (“The burden of
presenting evidence to support a fact or position in a contested case rests on the
proponent of the fact or position”); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule
regarding allocation of burden of proof is that the burden is on the proponent of the fact
or position). Proof by a preponderance of the evidence means that the fact finder is
persuaded that the facts asserted are more likely than not true. *Riley Hill General
Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

Standard of Review for Motion for Summary Determination





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OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

* * * * *

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling * * *.

Pursuant to OAR 137-003-0580(6)(a), in making her ruling, the ALJ considered Persels' Motion, Response and Reply; the Division's Motion and Reply; Persels' declarations and supplemental declarations; the Division's exhibits; and the additional case law submitted by both parties. After a review of the record, the ALJ determined there are no genuine issues as to material facts that are relevant to resolution of the legal issues and that the Division is entitled to a favorable ruling as a matter of law. Therefore, the Division's Motion is granted.⁴ Because the ruling on the Motions resolves all issues in this matter, a proposed order was issued and the hearing was canceled.

⁴ Because Persels is not entitled to a favorable ruling, its Motion was denied.



1 *Status as a Debt Management Service Provider*

2 ORS 697.632 provides for the maintenance of a registry of debt management
3 service providers. ORS 697.632(1) provides, in part:

4 The Director of the Department of Consumer and Business
5 Services shall maintain a registry of debt management service
6 providers and by rule in accordance with ORS chapter 183 shall
7 require a person that performs a debt management service, unless
8 the person is exempt under ORS 697.612 (3), to apply to the
9 director to register or to renew a registration as a debt
10 management service provider[.]

11 ORS 697.602 defines the terms “debt management service” and “debt
12 management service provider.” It provides:

13 (1) “Consumer” means an individual who is obligated or is
14 allegedly obligated to pay a debt and on whose behalf a debt
15 management service provider performs or agrees to perform a
16 debt management service.

17 (2) “Debt management service” means an activity for which a person
18 receives money or other valuable consideration or expects to receive money
19 or other valuable consideration in return for:

20 (a) Receiving or offering to receive funds from a consumer for the purpose of
21 distributing the funds among the consumer’s creditors in full or partial
22 payment of the consumer’s debts, whether or not the person holds the
23 consumer’s funds;

24 (b) Improving or offering to improve or preserve a consumer’s credit record,
25 credit history or credit rating;

26 (c) Modifying or offering to modify terms and conditions of an existing loan
or obligation; or

(d) Obtaining or attempting to obtain as an intermediary on a consumer’s
behalf a concession from a creditor including, but not limited to, a reduction
in the principal, interest, penalties or fees associated with a debt.

(3) “Debt management service provider” means a person that:

(a) Resides or does business in this state; and

(b) Provides or performs, or represents that the person can or will provide or
perform a debt management service in return for or in expectation of money



1 or other valuable consideration.⁵

2 A. Persels as a “Person”

3 In their Motions, Responses and Replies, the parties argued over terminology and
4 the application of that terminology to Persels. ORS 697.602(2) and (3) provide that a
5 “person” performs debt management services and a “person” is a debt management
6 service provider. The portions of the statute regulating debt management service
7 providers, ORS 697.602 to 697.842, do not include a definition of “person.” However,
8 ORS 697.005, regulating collection agencies and contained in the same statutory scheme
9 as debt management service providers, includes such a definition. ORS 697.005(8)
10 defines “person” as “an individual, firm, partnership, trust, joint venture, association,
11 limited liability company or corporation.” Such definition for “person” is commonly
12 found in Oregon statutes, including most pertinently, ORS 9.160 through ORS 9.166,
13 which provides for the practice of law. ORS 9.162(1) defines “person” as “a human
14 being, a public body as defined by ORS 174.109, a public or private corporation, an
15 unincorporated association, a partnership, a limited liability company or any other
16 business entity created under law.” *See also* ORS 183.310(8) (for purposes of the
17 administrative procedures act a person is “any individual, partnership, corporation,
18 association, governmental subdivision or public or private organization of any character
19 other than an agency.”); ORS 648.005(5) (for purposes of business names a person is “an
20 individual or an entity” with ORS 648.005(4) defining “entity” as a “* * *, foreign or
21 domestic limited liability company, * * *.”); ORS 63.001(28) (for the statutory scheme
22 creating limited liability companies a person is “an individual or an entity” with ORS
23 63.001(9) defining “entity” as “a domestic or foreign limited liability company, * * *.”).
24 As a foreign limited liability company, Persels is a “person” as used in ORS 697.602 to
25 697.842.

16 B. Jurisdiction of the Oregon Legislature to Regulate Law Firms and/or
17 Attorneys

18 In its pleadings, Persels argues that the Oregon Supreme Court has exclusive
19 jurisdiction over Persels’ activities because it is a law firm and engages in the practice of
20 law. Because of this argument of exclusive jurisdiction, Persels asserts that the doctrine
21 of separation of powers prohibits the Oregon legislature from regulating Persels’
22 activities. Article III, section 1, of the Oregon Constitution provides:

23 The powers of the Government shall be divided into three
24 separate branches, the Legislative, the Executive, including the
25 administrative, and the Judicial; and no person charged with
26 official duties under one of these branches, shall exercise any of
the functions of another, except as in this Constitution expressly
provided.

25 ⁵The Division has included a reference to ORS 697.602(2) and (3) as part of addressing Respondent’s
26 exceptions in subsection C below.



1 The Oregon Supreme Court has described its inquiry into a violation of separation
2 of powers claim as whether, in taking an action, “a ‘person’ or member of one
3 department is exercising a function of another department of government.” *McFadden v.*
4 *Dryvit Systems, Inc.*, 338 Or 528 at 532 (2005). However, as explained in *Sadler v.*
5 *Oregon State Bar*, 275 Or 279, “[t]he separation of powers principle cannot in practice
6 work absolutely; there is a necessary overlap between the governmental functions.”
7 *Sadler* at 285. The Oregon Supreme Court concluded that “[t]he rule has evolved that
8 legislation can affect the practice of law so long as it does not unduly burden or
9 substantially interfere with the judiciary.” *Id.* In a number of prior decisions, the Oregon
10 Supreme Court found several statutes constitutionally valid even though they impacted
11 judicial power, such as:

- 12 • A statute that set maximum penalties for a finding of contempt was valid
13 even though courts have inherent power to punish for contempt. The
14 statute did not limit the court’s power to punish but merely prescribed the
15 procedure for exercising such power;
- 16 • A statute that limited the court’s discretion as to the type of penalty to
17 impose when disciplining attorneys was valid even though the power to
18 discipline attorneys was an inherent power of the courts;
- 19 • A statute that provides for the filing of an affidavit of prejudice in order to
20 disqualify a judge from hearing a case was valid because of the public
21 policy for the courts to maintain the confidence of the public; and
- 22 • A statute that required orders granting new trials to be made within ten
23 days of the filing of the original judgment was valid and within the
24 province of the legislature to prescribe the procedure for a hearing.

25 *Id.* at 288-290.

26 In other decisions, the Oregon Supreme Court found several statutes
unconstitutional, such as:

- A statute providing for the removal of judges at will, without an allegation
of prejudice or bias, was not valid because it imposed an unwarranted
restraint on the courts in the exercise of their judicial function; and
- A statute that granted immunity from libel for statements made to the
Oregon State Bar only if they were made in good faith was found invalid
and that the immunity from libel was absolute. The Court found that this
legislative action unduly burdened or interfered with the court’s exercise
of its judicial function because it was essential to maintain the impartiality
and integrity of the courts and the bar by encouraging free criticism of
those individuals.

Id. at 290-292.

And finally, in *Sadler*, the Oregon Supreme Court found that a statute that
required disclosure of public records was valid. In *Sadler*, the plaintiff sought to compel
the Oregon State Bar to disclose copies of any communications received by the Oregon



1 State Bar relating to an attorney’s professional conduct pursuant to the Public Records
2 Law. The Oregon Supreme Court found that the statute did not affect the rules for
3 admission, suspension, or disbarment, areas that are within the exclusive power of the
4 judiciary and any statutes affecting those areas would likely be found to be a substantial
5 impairment of the court’s power. Instead, the statute affected the disciplinary procedure
6 by opening up the files of the Bar to the public on request. The Oregon Supreme Court
7 found that the disciplining of attorneys by the court is the performance of a public trust
8 and should be disposed of in a public manner, which will promote confidence in the
9 integrity of the profession. Therefore, it concluded that the Public Records Law that
10 required the disclosure did not unreasonably encroach upon the powers of the judiciary.
11 *Id.* at 293-295.

12 In several of the cases reviewed in *Sadler*, the Oregon Supreme Court discussed
13 the public policies involved in its determination of the constitutionality of a statute. The
14 Oregon Supreme Court concluded that it must be circumspect when finding that there has
15 been a legislative abridgment of judicial power and that a statute is entitled to the benefit
16 of every reasonable doubt. *Id.* at 289. The Oregon Supreme Court has further found that
17 the legislature may put reasonable limitations upon the exercise of the power of the courts
18 so long as the regulations do not substantially impair or destroy the power. *Id.* at 290,
19 293.

20 In conclusion, the Oregon Supreme Court only has exclusive jurisdiction in the
21 areas of admission, suspension, or disbarment of attorneys. In other areas over which the
22 Oregon Supreme Court exercises jurisdiction, the Legislature can limit, proscribe or
23 define those areas so long as it does not unduly burden or interfere with the court’s
24 exercise of its judicial function. Therefore, the question here is whether the Legislature’s
25 statutory scheme that requires the registration and regulation of debt management service
26 providers unduly burdens or substantially interferes with the power of the judiciary.

The services provided by debt management service providers involve collecting
funds from clients and distributing those funds among the clients’ creditors. There is no
requirement that these services must be performed by an attorney. *See* ORS 697.602 *et*
al. In *Erwin & Erwin v. Bronson*, 117 Or 443 (1993), the Oregon Supreme Court found
that:

There are many services that attorneys provide for their clients
that do not require licensing as an attorney and, consequently, do
not constitute the practice of law. Serving as a trustee of a trust is
one of them. An attorney acting as a trustee is in no different
position than a lay trustee[.]

Id. at 446. There is nothing about debt management services, obtaining concessions or
agreements with creditors and making payments to those creditors with funds paid by the
consumers, that is inherently legal in nature and would amount to the practice of law.
Finally, as found in *Erwin*, the services do not become legal services simply because an
attorney performs them. An attorney who is also an accountant can prepare a tax return;
however, the preparation of the tax return remains an accounting task. It does not



1 become the practice of law merely because an attorney performs the task. Because the
2 services regulated by the Oregon Legislature in ORS 697.602 *et al.* are not the practice of
law, the statutory scheme does not directly infringe on the power of the judiciary.

3 As noted in this statutory scheme, the Oregon Legislature is not placing any
4 particular restriction on judicial functions as many of the statutes previously reviewed by
5 the Oregon Supreme Court did (granting of new trials, removal of judges, penalties for
6 contempt of court). Instead, this case most closely resembles *Sadler*, in which the Public
7 Records Law requiring disclosure of public records applies to numerous entities, one of
8 which was the Bar and its disciplinary process. Therefore, it was not the words of the
9 statute itself that interfered with the power of the judiciary, but rather the application of
10 the law to the Bar’s disciplinary process that potentially made the statute interfere with
11 the inherent power of the judiciary to discipline attorneys. Similarly here, the statutory
12 scheme for the registration and regulation of debt service providers does not, on its face,
13 involve any aspect of the power of the judiciary. Instead, it would be the application of
14 that scheme to Persels, a law firm, and whether such application unduly burdens and
15 interferes with the judiciary’s power over the practice of law.

16 Persels argues that restrictions, such as the fee limitations provided in ORS
17 697.692, create an undue burden and interfere with the practice of law and such
18 limitations would inhibit attorneys from assisting consumers in settling their debts.
19 However, Persels presents no persuasive argument in support of this position. In *Sadler*,
20 the application of the Public Records Law impacted the attorney disciplinary process, an
21 area of law within the judiciary’s power. However, as already discussed, debt
22 management services are not the practice of law. Therefore, regulation of those services,
23 and the application of those regulations to attorneys, would not infringe on the judiciary’s
24 power. Additionally, even if accepting an overly broad argument that anything that may
25 inhibit an attorney from performing any type of services, legal or non-legal, would
26 infringe on the judiciary’s power or accepting the argument that debt management
services can be the practice of law, the restrictions contained within the statutory scheme
do not unduly burden attorneys from performing debt management services. Attorneys
would merely be subject to the same restrictions as any non-attorney performing such
services.⁶ Similar to the case involving contempt powers cited in *Sadler*, by regulating
debt management services, the Oregon Legislature is not limiting an attorney’s ability to
perform such services. The Oregon Legislature is merely prescribing the procedure by
which the attorney performs such services.

21 Because ORS 697.602 *et al.* does not infringe upon the judiciary’s power, it is
22 constitutionally valid and can be applied to attorneys and law firms that perform debt
management services.

23 C. Persels as a “Debt Management Service Provider”

24
25 ⁶ Most of the requirements contained in ORS 697.602 *et al.* concern record keeping, disclosures,
26 maintenance of trust accounts, bonds and liabilities for losses, most of which do not create any new burden
on an attorney or law firm.



1 CareOne receives the initial telephone calls from consumers seeking assistance
2 with their unsecured debts. After reviewing the consumer's financial situation and
3 determining that the consumer does not have the ability to pay off the debts in full,
4 CareOne refers the consumer to Persels to pursue the possibilities of settling the debts for
5 less than their full amounts. Therefore, Persels only offers services to those consumers
6 seeking to settle their debts.

7 After receiving such a referral from CareOne, Persels assigns a field attorney
8 from the consumer's state of residence to perform an initial consultation with the
9 consumer. During the initial consultation, Persels' field attorney conducts an analysis of
10 the consumer's financial position. The field attorney reviews Persels' process of
11 negotiating settlements of the debts with the creditors, which would include the
12 requirement for the consumer to make monthly payments into an account, for the account
13 to increase enough in amount for Persels to make settlement offers to creditors, and for
14 the actual negotiation and possible settlements with creditors. The field attorney warns
15 the consumer about adverse results that may occur as a result of debt settlement, such as
16 the creation of taxable income, the reduction in the consumer's credit rating, and the
17 possibility of continued collection activities by the creditors. The field attorney will
18 answer any questions posed by the consumer and may discuss such legal issues as
19 defenses to collection of the debts and protections from collection activities by debt
20 collectors pursuant to the FDCPA. For this initial consultation, Persels charges the
21 consumer \$100 to \$400. Although the field attorney may discuss legal issues during this
22 consultation, the primary purpose of the consultation is to screen the consumer for his/her
23 capacity to enter into a debt settlement plan and to encourage such consumer to sign
24 Persels' retainer agreement for its assistance with such a debt settlement plan.⁷ Even if
25 such debt settlement discussions were not the primary purpose of the consultation, the
26 fact that Persels provides legal advice during the initial consultation does not negate its
offer to assist the consumer in settling his/her debts. Therefore, through its initial
consultations with consumers referred by CareOne, Persels receives money in return for
offering to receive funds from consumers for the purpose of distributing the funds among
the consumers' creditors in partial payment of the consumers' debts. For these reasons,
Persels performs a debt management service during its initial consultations with these
consumers.

Persels provides further debt management services to the consumer after the
consumer signs the Retainer. Pursuant to the Retainer, Persels structures a monthly
payment plan for the consumer to contribute to a trust account based upon the consumer's
disposable income, and, once enough funds have accumulated in the account, Persels
contacts the creditors to present offers to settle the consumer's debts for less than the full
amount. As stated in the Disclosure distributed by Persels to its clients, Persels'

⁷ The evidence in the record clearly established that Persels' primary service to its clients was the
development of the consumer's debt settlement payment plan and subsequent settlement negotiations with
the creditors. Even the Retainer and the Disclosure, although referencing the additional services of legal
advice and document preparation, repeatedly emphasize that Persels will not represent the consumer in any
legal action involving its debts and will not provide any bankruptcy assistance unless the consumer enters
into a separate bankruptcy retainer agreement with Persels.



1 representation goal is to negotiate settlement of all of the consumer’s unsecured debt for
2 less than the full amount. Its additional goal is to provide legal advice and litigation
3 assistance when necessary. Again, just because Persels’ field attorney may answer legal
4 questions posed by the consumer and may provide document preparation services if a
5 creditor sues the consumer or the consumer decides to file bankruptcy does not negate its
6 primary goal of negotiating settlements of the consumer’s debts for less than the full
7 amount owed based upon the sums the consumer has paid into the trust account. In
8 exchange for these debt settlement services, the consumer pays Persels a monthly fee and
9 Persels receives a contingency fee payment based upon the amount of the reduction of
10 any settled debts. Therefore, after the Retainer is signed by the consumer, the consumer
11 pays money to Persels in return for Persels receiving funds from a consumer for the
12 purpose of distributing the funds among the consumer’s creditors in partial payment of
13 the consumer’s debts. Persels performs debt management services throughout its
14 potential 60-month representation of the consumer.

9 For the period January 26, 2009 through February 18, 2012, Persels received
10 1,801 referrals of Oregon consumers from CareOne. For those referrals, Persels would
11 perform initial consultations with the Oregon consumers with the possibility of entering
12 into retainer agreements with the consumers. Persels argued, in its exceptions, that
13 Persels was not on notice that DFCS would rely on the definition of debt management
14 services in ORS 697.602(2)(a). Persels exceptions are without merit. In paragraph (14)
15 of its Notice, DFCS concluded that Persels was acting as a debt management service
16 provider. To prove that Persels acted as debt management service provider, DFCS need
17 only show that Persels “provides or performs, or represents that person can or will
18 provide or perform a debt management service” per ORS 697.602(3). That “debt
19 management service” could be any one of the debt management services listed in ORS
20 697.602(2). Here, the evidence shows that Persels represented it could and would
21 perform the debt management services provided in each of the subsections of ORS
22 697.602(2)(a)-(d); any one of which makes Persels a debt management services provider
23 under ORS 697.602(3). For example, the initial consultation performed by Persels after
24 the referral constitutes a debt management service as described in ORS 697.602(2)(d)
25 because Persels represented in these referrals that Persels would obtain or attempt to
26 obtain as an intermediary on a consumer’s behalf a concession from a creditor including,
but not limited to, a reduction in the principal, interest, penalties or fees associated with a
debt. In doing so, Persels acted as a debt management service provider by representing it
would perform a debt management service in return for or in expectation of money or
other valuable consideration to these referred consumers. Persels’ initial consultations
with the Oregon consumers, and any additional services performed for those consumers,
constituted doing business in Oregon while performing, or at least offering to perform,
debt management services in return for the consumer paying money to Persels. Thus,
Persels is a debt management service provider under ORS 697.602(3).⁸

⁸ Persels argues that the evidence failed to show how many of those referrals resulted in Persels being hired by the consumers as their legal counsel. However, the number of referrals that result in signed retainer agreements is irrelevant because in each referral Persels represented that it could and would provide a debt management service in return for or in expectation of money. Persels need not be hired by the consumer

1 *Exemption from Registration as a Debt Management Service Provider*

2 ORS 697.612(1) prohibits a person that has not registered with the Division from
3 performing a debt management service in Oregon. ORS 697.612(3) includes a list of
4 exemptions from the prohibition in ORS 697.612(1). ORS 697.612(3) provides, in
5 relevant part:⁹

6 Subsection (1) of this section does not apply to:

7 * * * * *

8 (b) An attorney licensed or authorized to practice law in this
9 state, if the attorney provides a debt management service only
10 incidentally in the practice of law[.]

11 The parties dispute whether Persels qualifies for the attorney exemption cited in
12 ORS 697.612(3). Resolution of this issue requires an interpretation of the phrase “An
13 attorney licensed or authorized to practice law in this state.” Legislative enactments are
14 subject to the tools of statutory construction enunciated in *PGE v. Bureau of Labor and
15 Industries*, 317 Or 606 (1993). In *PGE*, the Oregon Supreme Court explained that to
16 determine legislative intent, a court begins by examining a statute’s text, giving words of
17 common usage their plain meaning. If the legislative intent is unambiguous after review
18 of the text and context of the statute, the court stops at that first level of analysis. *PGE* at
19 610-11. Only if ambiguity remains does the court proceed to the second level of analysis,
20 a review of the legislative history in an attempt to resolve the ambiguity. *Id.* at 610-612.
21 Only if such review fails to resolve the ambiguity does the court resort to the final level
22 of statutory analysis, use canons of construction to resolve the ambiguity. *Id.*
23 Subsequently, in *State v. Gaines*, 346 Or 160 (2009), the Oregon Supreme Court
24 modified the *PGE* analytical formula in light of the 2001 amendments to ORS 174.020.
25 Because of those amendments, the Oregon Supreme Court determined that “we no longer
26 will require an ambiguity in the text of a statute as a necessary predicate to the second
step – consideration of pertinent legislative history that a party may proffer.” *Gaines* at
171-172. Instead, the court will review any legislative history a party offers “where that
legislative history appears useful to the court’s analysis.” *Id.* at 172. However, the
Oregon Supreme Court reiterated that the “third, and final step, of the interpretative
methodology is unchanged. If the legislature’s intent remains unclear after examining
text, context, and legislative history, the court may resort to general maxims of statutory
construction to aid in resolving the remaining uncertainty.” *Id.*

21 The Division argues that Persels does not qualify for the attorney exemption cited
22 in ORS 697.612(3) because Persels is not an “attorney licensed or authorized to practice
23 law in this state.” The Division is correct in its position that Persels is not an “attorney.”

24 for Persels to be debt management services provider under ORS 697.602(3).

25 ⁹ The list is extensive but only subsection (b) would be applicable in this case. The remainder of the list
26 includes such entities as public bodies, consumer reporting agencies, a person obeying a court order, a
mortgage broker, etc. See ORS 697.612(3).





1 ORS 9.005(1) defines attorney as “a member of the [Oregon State Bar].” Pursuant to
2 ORS 9.220, admission to the Oregon State Bar requires the applicant to be at least 18
3 years old, have good moral character and be fit to practice law, and have the requisite
learning and ability. Persels, as a law firm, cannot satisfy the criteria for admission to,
and is not a member of, the Oregon State Bar.¹⁰

4 Neither party offered any legislative history for consideration by the ALJ.
5 Instead, Persels argues that excluding Persels from the attorney exemption has an
6 unreasonable result, *i.e.* that the attorneys employed by or contracted with Persels are
7 exempt from registration but Persels is not exempt. Persels is correct that such an
8 argument, that the legislature would not intend an unreasonable result, is a canon of
9 statutory construction. *See State v. Vasquez-Rubio*, 323 Or 275, 282-283 (1996).
10 However, this canon is considered a canon used during the third level of the *PGE*
analysis, not during the first level of analysis. *See Brundridge v. Board of Parole*, 192 Or
App 648, *rev den*, 337 Or 327 (2004). Pursuant to *PGE* and *Gaines*, because the plain
meaning of the phrase “attorney licensed or authorized to practice law in this state” is
unambiguous, the ALJ cannot conduct the third level of the *PGE* analysis and cannot
consider this canon of statutory construction.¹¹

11 Because Persels is not an “attorney,” it does not qualify for the attorney
12 exemption provided by ORS 697.612(3).

13 *Issuance of Cease and Desist Order*

14 ORS 697.825(1) provides, in part:

15 The Director of the Department of Consumer and Business
16 Services may, if the director has reason to believe that a person:

17 (a) Violated, is violating or is about to violate ORS 697.612,
18 697.642 to 697.702 or 697.752, a rule adopted under ORS
19 697.632 or an order issued under ORS 697.652 or 697.732, issue
an order to cease and desist from the violation[.]

20 ¹⁰ Persels’ reliance on ORS 9.310, which states that an attorney is a person authorized to represent a party,
21 is erroneous. That statute defines attorney only as to his/her relationship to a client.

22 ¹¹ The parties presented considerable argument regarding the additional phrase “only incidentally to the
23 practice of law” and OAR 441-910-0005(1) which provides further elaboration on this phrase. However,
24 because Persels does not qualify for the exemption because it is not an “attorney,” the ALJ found it
25 unnecessary to conduct an analysis of this portion of ORS 697.612(3). Nevertheless, the Division
26 concludes that Persels also does not qualify under the “only incidentally in the practice of law” portion of
the exemption, because: the primary business of Persels was offering and attempting to obtain reductions
for consumers in the debt owed to creditors; Persels’ agreements with its customers are primarily for debt
management services; Persels collected money from its customers for the purpose of reducing and paying
the amounts owed to the customers’ creditors; and, such practices are not incidental to legal services being
offered to pre-existing clients.

1 As previously discussed, Persels performed debt management services in Oregon
2 when not registered as a debt management service provider as required by ORS
3 697.632(1). Because Persels was not exempt from this registration requirement, its
4 performance of debt management services violated ORS 697.612(1). Therefore, the
5 Division is entitled to issue Persels an order to cease and desist from further violations of
6 ORS 697.612. Persels must cease and desist from further violations of ORS 697.612.

7 *Assessment of Civil Penalty*

8 ORS 697.832(1) provides:

9 In addition to any other liability or penalty provided by law, the
10 Director of the Department of Consumer and Business Services
11 may impose a civil penalty on a person in an amount not to
12 exceed \$5,000 for each violation of ORS 697.612 or 697.642 to
13 697.702, rules adopted under ORS 697.632 or order issued under
14 ORS 697.825.

15 For the period January 26, 2009 through February 18, 2012, Persels received
16 1,801 referrals of Oregon consumers from CareOne. After referral, Persels scheduled
17 initial consultations, a debt management service as determined above, with these Oregon
18 consumers in violation of ORS 697.612(1). Based upon 1,801 violations of ORS
19 697.612(1), the Division could assess Persels a civil penalty of up to \$9,005,000 (1,801
20 violations x \$5,000 per violation). Based upon Persels' numerous violations of ORS
21 697.612(1) and the extended period of time over which it performed these violations, the
22 Division's proposed assessment of \$500,000 as a civil penalty is well within its
23 discretion. Persels must pay the Division a civil penalty in the total amount of \$500,000.

24 **ORDERS**

25 Based on the foregoing, the Division issues the following ORDERS:

26 Persels & Associates, LLC must cease and desist from violations of ORS
697.612.

Persels & Associates, LLC must pay the Division of Finance and Corporate
Securities a civil penalty of \$500,000.

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AUTHORITY OF THE DIRECTOR TO SEEK OTHER
REMEDIES UNDER OREGON LAW

This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that provision, the entry of this Order does not limit other remedies that are available to the Director under Oregon law.

IT IS SO ORDERED.

Dated this 29th day of May, 2014.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Administrator
Division of Finance and Corporate Securities

NOTICE OF RIGHT TO JUDICIAL REVIEW

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is in accordance with ORS 183.482(1) to the Oregon Court of Appeals.

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

