

Email Discussion Group Guidelines

This discussion group is exclusive to chapter members who have *elected* to join -- not all chapter members are a part of this group. The discussion group is set-up for the sole purpose of sharing information and can be used to solicit best practices and ask legal management-related questions from your fellow chapter members. Questions related to billing rates, compensation, or other rates are strictly prohibited from discussion according to ALA guidelines to avoid violating antitrust/price-fixing laws. **Please review the attached Antitrust Guide for Members of the Association of Legal Administrators.**

RESTRICTED ACCESS: This discussion group was established for the exclusive use of ALA Silicon Valley Chapter members. Members are given access to the discussion group by invitation only after verification of their membership.

HOW TO SUBSCRIBE: To subscribe to the email discussion group, send an e-mail to ala-svc-subscribe@yahoogroups.com or visit www.alasvc.org and click on the ALA Discussion Group link on the home page.

HOW TO SEND MESSAGES: To send a message to the discussion group, simply address an e-mail to ala-svc@yahoogroups.com. Your message will be distributed to every subscriber to the list. Be sure to provide a meaningful description of your topic in the "subject" line and change the subject line if you switch topics. *You may need to adjust your spam filter to accept email from this address.*

HOW TO REPLY TO A MESSAGE: To add to the discussion thread so that your reply is distributed to **every** member of the list, click "reply". Type your response and then send the message. If you want to reply **only** to the person who sent the message, click "forward", enter the sender's e-mail address in the "To:" field, type your response and then send your message. Please be careful that you do not send side conversations through the discussion group -- if you have unrelated comments or comments directed to one person, please reply to the individual privately using the "forward" option.

HOW TO UNSUBSCRIBE: To unsubscribe from the discussion group, send a message to ala-svc-unsubscribe@yahoogroups.com with your request to unsubscribe.

OUT OF THE OFFICE AUTOREPLIES: For members who use their out of office "AutoReply" function of their e-mail (while on vacation or out of the office), please remember to change your message receiving options to "No Mail / Web Only". Failure to perform this step will cause all of our members to receive an "out of office" reply from you each time a message is posted. Go to: <http://groups.yahoo.com/group/ala-svc/> and click on the "edit my membership" link and choose "No Mail / Web Only" from the message delivery options.

MESSAGE RECEIVING OPTIONS:

Individual E-mails - Messages are delivered one at a time to your email inbox. This is the best option if you want to keep up on the latest posts immediately. Email attachments, if included in a message will be sent directly to you.

Daily Digest - Messages are delivered in batches of 25 or daily, whichever comes sooner. This is the best option if you want to receive fewer mail messages and don't need up-to-the minute posts in your inbox. Email attachments are not available in digests.

No Mail / Web Only - This option puts email message delivery on hold, for example while you are on vacation. This option also permits you to read messages at the Yahoo! Groups web site if you prefer not to receive any e-mail in your inbox.

To set any of these options, go to My Groups and choose from the drop-down list of message delivery options for your group.

Email Discussion Group Guidelines

IF YOUR E-MAIL ADDRESS CHANGES: If your e-mail address changes in any way, you will no longer receive or be able to post messages in this discussion group without re-subscribing from your new e-mail address. If you have difficulties or questions about this or related access issues, please contact ala-svc-owner@yahoogroups.com.

WHERE TO REPORT PROBLEMS: Questions or problems of a technical nature should be directed to ala-svc-owner@yahoogroups.com.

DISCUSSION GROUP GUIDELINES: The Chapter wants to protect the rights of all discussion group users, to comply with copyright and other regulations, and to prevent violations of the law. Therefore, by participating in the discussion group you agree to abide by the following guidelines and agree to the disclaimer appearing at the end of this document.

>Always check the "To" address line before you being composing a reply to be certain your message will be sent to your intended recipient.

>To maintain the confidentiality of discussions here, do not forward discussion group messages or threads to others.

>This is a discussion group where opinions are welcome but challenging or attacking others is not.

>Do not post commercial messages or defamatory, abusive, profane, threatening, offensive or illegal materials.

>Do not post information or other material protected by copyright without the permission of the copyright owner. By posting material, the posting party warrants and represents that she/he owns the copyright or has received permission from the copyright owner.

>Messages should not be posted if they encourage or facilitate members to arrive at any agreement that either expressly or impliedly leads to price-fixing, a boycott of another's business, or other conduct that is intended to illegally restrict free trade. Messages that encourage or facilitate an agreement about the following subjects are inappropriate: prices; discounts; terms or conditions of sale; salaries; profits, profit margins or cost data; market shares, sales territories or markets; allocation of customers or territories; or selection, rejection or termination of customers or suppliers.

By electing to join the Chapter's email discussion group, you agree to be bound by the foregoing terms regarding etiquette, confidentiality, and other posting issues, as well as the attached Antitrust Guide for Members of the Association of Legal Administrators.

The Chapter reserves the right to terminate access, without notice, to any user who does not abide by these guidelines.

DISCLAIMER: This email discussion group is provided as a service of the Silicon Valley Chapter of the Association of Legal Administrators (the "Chapter"). The Chapter accepts no responsibility for the opinions and information posted by others in the discussion group. The Chapter disclaims all warranties with regard to information posted, including all implied warranties of merchantability and fitness. In no event shall the Chapter be liable for any special, indirect or consequential damages or any damages whatsoever resulting from loss of use, data or profits arising out of or in connection with the use or performance of any information posted on the listserv.

The Chapter does not actively monitor this email discussion group for inappropriate postings nor undertake editorial control of postings. However, in the event that an inappropriate posting is brought to the Chapter's attention, appropriate action will be taken.

08-2014

See attachment: *Antitrust Guidelines for Members of the Association of Legal Administrators*



Antitrust Guide

For Members of the Association of Legal Administrators

Professional associations such as the Association of Legal Administrators (ALA), although well recognized as valuable tools of American business, are subject to severe scrutiny by both federal and state governments.

The single most significant law affecting professional associations is the Sherman Antitrust Act, which makes unlawful "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce..."

A professional association by the very nature of the fact that it is made up of competitors is a combination, thus satisfying one of the elements in proving an antitrust violation. Section 5 of the Federal Trade Commission Act is also applicable to professional associations; it makes unlawful the same types of conduct that are prohibited by the Sherman Act. Furthermore, almost all states have enacted antitrust laws similar to the Sherman Act.

There is no organization too small or too localized to escape the possibility of a civil or criminal antitrust suit. The federal government has brought civil or criminal actions against such small organizations as Maine Lobstermen, a Virginia audio-visual association, Bakersfield Plumbing Contractors, the Utah Pharmaceuticals Association, and local barbers associations.

The government has brought approximately five civil and ten criminal cases a year against professional associations. It is thus imperative that every professional association member, regardless of the size of the association or the size of those comprising the membership, refrain from indulging in any activity which may be the basis of a federal or state antitrust action.

There are four main areas of antitrust concern for professional associations: price fixing, membership, standardization and certification, and industry self-regulation. The area of greatest concern, for it is the area where individual members are most likely to violate the law and the area where the government appears most concerned, is price fixing. The government may infer a violation of the Sherman Act by the mere fact that all or most of the members of the professional association are doing the same thing with respect to prices. It is not required that there be an actual agreement, written or unwritten, to increase prices. Rather, price fixing is a very broad term which includes any concerted effort or action which has an effect on prices or on competition.

Accordingly, professional association members should refrain from any discussion which may provide the basis for an inference that the members agreed to take action relating to prices, production, allocation of markets, or any other matter having a market effect. The following topics, while not the only ones, are some of the main ones which should not be discussed at regular meetings or member gatherings:

1. Do not discuss current or future billing rates, fees, disbursement charges or other items that could be construed as "price." Further, be very careful of discussions of past billing rates,

fees or prices.

9. Do not discuss what is a fair profit, billing rate or wage level.
10. Do not discuss an increase or decrease in price, fees or wages, or disbursement charges. In this regard, remember that interest charges are considered an item of price.
11. Do not discuss standardizing or stabilizing prices, fees or wages, or disbursement charges.
12. Do not discuss current billing or fee procedures.
13. Do not discuss the imposition of credit terms or the amount thereof.
14. Do not complain to a competitor that his billing rates, fees or wages constitute unfair trade practices. In this context, another law firm (or even a corporate legal department) may be considered a competitor.
15. Do not discuss refusing to deal with anyone because of his pricing or fees.

Do not conduct surveys (under the auspices of ALA or informally) relating to fees, wages or other economic matters without prior review by antitrust legal counsel. Any survey should have the following characteristics: a) participation is voluntary and open to non-members, b) data should be of past transactions, c) data should be collected by an independent third party, such as an accounting firm, d) confidentiality of each participant's data should be preserved, and e) data should be presented only in a composite form to conceal data of any single participant. If these criteria are met, an association can collect and disseminate data on a wide range of matters, including such things as past salaries, vacation policies, types of office equipment used, etc.

However, care must be taken to ensure that the purpose of any survey is to permit each firm to assess its own performance. If a survey is used for the purpose of or has the effect of raising or stabilizing fees, wages, disbursements, credit policies and the like, it will create serious antitrust problems.

Within this same legal framework applicable to surveys, an association can make presentations or circulate articles regarding such educational matters as establishing sound office procedures, etc., provided it is clear that the matters are educational, and not a basis for law firm uniformity or agreement.

Inasmuch as association antitrust violations can subject all association members to criminal and civil liability, members should be aware of the legal risks in regard to membership policy and industry self-regulation. Fair and objective membership requirement policies should be established. Membership policies should avoid:

1. Restrictions on dealing with non-members.
2. Exclusions from membership, especially if there is a business advantage in being a member.
3. Limitations on access to association information, unless the limitation is based upon protection of trade secrets.

The Association of Legal Administrators has a code of ethics, which sets forth parameters of ethical conduct. However, to ensure that the Code of Ethics does not create any antitrust problems, ALA must continue to ensure that its Code does not have arbitrary enforcement procedures or penalties.

The penalties for violating federal or state antitrust laws are severe. The maximum criminal penalty for violating the Sherman Act was increased in 2004 from \$350,000 to \$1,000,000 for an individual and from \$10,000,000 to \$100,000,000 for a corporation. Pursuant to the Sentencing Reform Act, alternative maximum fines could be increased to twice the pecuniary gain of an offender or twice the loss to another person.

Individuals and corporate officers who are found guilty of bid rigging, price fixing or market allocation will virtually always be sentenced to jail pursuant to the Sentencing Guidelines; community service cannot be used to avoid imprisonment. The minimum recommended sentence is four months; the maximum is three years.

Additionally, there are civil penalties such as injunctions or cease and desist orders which could result in government supervision of association members, restricting the association's activities or disbanding the association.

Civil suits may be brought by consumers or competitors. Civil antitrust actions result in treble damage awards and attorneys' fees. Thus, if association members are held liable to a competitor for antitrust violations which resulted in \$500,000 worth of lost business, the verdict may exceed \$1,500,000.

The government's attitude toward professional associations requires professional association members, as well as professional associations themselves, to at all times conduct their business openly and avoid any semblance of activity which might lead to the belief that the association members had agreed, even informally, to something that could have an effect on prices, fees or competition. Thus, it is important that members contact the association headquarters or legal counsel for guidance if they have even the slightest qualms about the propriety of a proposed activity or discussion.

Copyright © 1996 – 2010 by the Association of Legal Administrators. All rights reserved.