STATE OF CONNECTICUT
DEPARTMENT OF BANKING

In the Matter of	:	
	:	
Petition of Persels & Associates, LLC	:	No._____
For Declaratory Ruling Regarding	:	
Application of Attorney Exemption under Debt	:	
Negotiation Statutes (Conn. Gen. §36a-671c)	:	

PERSELS & ASSOCIATES, LLC'S
PETITION FOR DECLARATORY RULING

Persels & Associates, LLC ("Persels"), by and through its undersigned counsel, hereby submits this petition for declaratory ruling pursuant to Conn. Gen. Stat. §4-176. For the reasons set forth below, Persels respectfully requests that the Commissioner issue a ruling stating that a law firm that offers debt negotiation services to its clients using Connecticut attorneys is not required to have a debt negotiation license from the Department, when the debt negotiation services are delivered in aid of an attorney's representation of a client, as evidenced by a retainer agreement, the offering of legal advice, and the delivery of other services constituting the practice of law.

Application Statement

Pursuant to Conn. Agencies Reg. §36a-1-64(1)(A), the exact name of Persels, a Maryland Limited Liability Company, and its principal place of business are:

Persels & Associates, LLC
29 West Susquehanna Ave., 4th Floor
Towson, MD 231204

Pursuant to Conn. Agencies Reg. §36a-1-64(1)(B), notice, orders, and other communications concerning this petition may be directed to the following parties:

Neil J. Ruther, Esq., Managing Member
Persels & Associates, LLC
29 West Susquehanna Ave., 4th Floor
Towson, MD 231204
Tel: (410) 512-5505
Email: nruther@perselslaw.com

and

Robert M. Frost, Jr.
FROST BUSSERT, LLC
129 Church Street, Suite 226
New Haven, CT 06510
Tel: (203) 495-9790
Fax: (203) 495-9795
Email: rmf@frostbussert.com

Facts

Pursuant to Conn. Agencies Reg. §36a-1-64(1)(C), Persels requests that the Commissioner issue the requested ruling based upon the following facts:

Persels is a Maryland-based, national consumer advocate law firm that offers legal services to its clients in connection with compromises of unsecured debt, defense of creditor collection law suits, protection from creditor harassment, and bankruptcy. The firm uses Connecticut lawyers working in tandem with paraprofessional staff to provide these services. The Connecticut lawyers are actively involved in representing the clients and are responsible for the actions of the paraprofessional staff under the Rules of Professional Conduct applicable to lawyers. Although the Connecticut attorneys that provide services on behalf of Persels are licensed by the judicial branch and regulated by the Statewide Grievance Committee and the Office of Chief Disciplinary Counsel, Persels and its Connecticut attorneys do not have a separate license from the Department of Banking to provide debt negotiation services.

In its retainer agreements with clients, Persels agrees to provide, inter alia, debt negotiation services, but it also agrees to provide other legal services clearly constituting the practice of law. As part of the representation, the firm assigns a Connecticut attorney to consult with each client about their legal options. This includes legal advice on topics such as the applicable statute of limitations, the advantages and disadvantages of bankruptcy, garnishment exemptions, and litigation options and strategies. If litigation develops, the assigned Connecticut attorney assists the client in preparing answers to complaints and arbitration demands, drafts responses to discovery (if applicable), drafts cease and desist letters to creditors, and, when appropriate, helps the client assert claims against creditors who violate the law on collection practices. For an additional fee, the firm also offers to provide bankruptcy consultations to those clients who cannot settle their debts outside of bankruptcy. Thus, while it is true that Persels specializes in debt-relief matters and most of its clients receive debt-relief services, Persels does so in the context of providing legal advice and legal work that goes beyond mere debt negotiation and settlement.

Persels does not advertise in Connecticut. Instead, its clients come through referrals. Currently, the largest share of referrals comes from Care One Services, Inc. ("Care One"). Persels does not pay any referral fees to Care One, and Care One does its own marketing. When appropriate, however, Care One will provide information to its customers, or potential customers, about the possibility of and/or benefits of retaining Persels.

In addition to referring clients to Persels, Care One provides administrative services to Persels. This is done pursuant to a written contract for which Care One is

paid the fair market value of the services it provides at a flat fee per client per month. Those services include preparing client in-take folders and managing client information using Care One's proprietary software. Because of its proprietary software, Care One is able to provide these services at a much lower cost than if Persels provided them on its own.

Persels keeps records detailing each attorney's and paralegal's work on behalf of each of its clients. Each attorney is required to make an electronic record of the advice given. A database is used to keep detailed records of every interaction between the clients and the Persels attorney, and Persels has agreed to make these records available to the Office of Chief Disciplinary Counsel in the event a grievance is filed by a client to confirm that a Connecticut attorney was actively involved and supervised the paraprofessional staff during the representation.

In October 2011, Persels entered into a formal agreement with the Office of Chief Disciplinary Counsel in connection with the dismissal of a grievance filed against one of the firm's Connecticut attorneys. The parties presented the agreement to a reviewing committee of the Statewide Grievance Committee and it was approved as part of the disposition of the grievance. By approving the agreement,[1] the Statewide Grievance Committee effectively acknowledged that the services being provided by Persels – including debt negotiation services – constitute the "practice of law" subject to regulation and continuing oversight by the judicial branch. See Bysiewicz v. Dinardo, 298 Conn. 748, 774 (2010) ("functions that 'require ... a high degree of legal skill and great capacity for adaptation to difficult and complex situations,' or are 'performed with the possibility of

[1] In October 2011, Persels & Associates, through counsel, provided a copy of this agreement to staff attorneys at the Department of Banking. A copy of the agreement is attached hereto as Exhibit A.

litigation in mind,' may constitute the practice of law")(quoting State Bar Assn. v. Connecticut Bank & Trust Co., 145 Conn. 222, 235 (1958)).[2]

Argument

Connecticut's debt negotiation statutes give the Department of Banking the power to dictate who may engage in debt negotiation services in Connecticut and how those services can be rendered to consumers. In particular, the statutes: (1) require a license from the Commissioner, (2) give the Commissioner the authority to decide whether the "character, reputation, integrity and general fitness of [the applicant]" merit the issuance of the license, (3) require registration and payment of fees to the Department, (4) mandate what must be included in contracts with consumers, (5) give the Commissioner the authority to determine the maximum fees that can be charged, (6) authorize the Commissioner to conduct investigations and seek an injunction in the Superior Court to prevent a person from violating any of the statutory provisions, and (7) authorize the imposition of substantial civil penalties for violations, including $100,000 per violation. See Conn. Gen. Stat. §§36a-50 and 36a-52, and 36a-671 et seq.

The issue raised by this petition is whether, and if so, to what extent, lawyers offering debt negotiation services to their clients are subject to regulation and licensing by the Department of Banking. Prior to October 1, 2011, the statutes clearly exempted

[2] A lawyer advising a client, especially in the field of debt negotiation and settlement, wears many hats. The Rules of Professional Conduct governing lawyers summarizes a lawyer's multi-faceted role as follows:

> As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts his client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As evaluator, a lawyer examines a client's legal affairs and reports about them to the client or to others on the client's behalf.

See Connecticut Rules of Professional Conduct, Preamble (2012).

Connecticut attorneys from complying with the debt negotiation statutes and regulations. The attorney exemption, as originally drafted, read as follows: "The provisions of [the debt negotiation licensing statutes] ... shall not apply to ... [a]ny attorney admitted to the practice of law in this state, ***when engaged in such practice***." Conn. Gen. Stat. §36a-671c (2010)(emphasis added). The broad nature of the original exemption was entirely consistent with public policy and the Connecticut Supreme Court's stated position that "[t]he noncommercial aspects of lawyering – that is, the representation of the client in a legal capacity – should be excluded [from regulation by consumer protection statutes] for public policy reasons." Jackson v. R.G. Whipple, Inc., 225 Conn. 705, 730-31, 627 A.2d 374 (1993) (Berdon, J., concurring). Compare Conn. Gen. Stat. §36a-800(1)(D) (exempting "any member of the bar of this state" from needing a license from the Department in order to engage in collection work on behalf of clients in Connecticut).

In late 2011, however, the legislature quietly amended the attorney exemption language. Effective October 1, 2011, the exemption language was changed to read: "The provisions of sections 36a-671 to 36a-671d, inclusive, shall not apply to ... [a]ny attorney admitted to the practice of law in this state who engages or offers to engage in debt negotiation ***as an ancillary matter to such attorney's representation of a client***...." Conn. Gen. Stat. §36a-671c (emphasis added). There is no legislative history accompanying the change to the exemption; there were no public hearings to our knowledge; and consequently, there is no testimony supporting passage of the amendment. Nor is there any case law applying it to lawyers or law firms. The only reference in the legislative history is contained in an OLR Bill analysis, which states:

> Current law exempts attorneys admitted to practice in Connecticut from debt adjustment or negotiation licensing when engaged in such activities. The bill narrows this exemption by specifying that it only applies if the attorney engages in debt adjustment or negotiation as an ancillary matter to the attorney's representation of a client.

Whatever the legislature's intent, the addition of the new "ancillary" language has not been helpful. Instead, it has only created confusion and ambiguity. The Department of Banking has suggested recently that it may interpret the exemption to require an attorney to obtain a banking license anytime the debt negotiation services are only a "minor" part of the representation. The problem with this interpretation is that it will almost certainly lead to arbitrary line drawing and *ad hoc* application because a consumer law attorney's representation of a client is, by necessity, comprehensive and multi-faceted.

Once a lawyer-client relationship is established between the firm and its clients, all of the services and advice it provides constitute the practice of law. The retainer agreements used by Persels clearly establish that it is providing legal services to the client. Indeed, the very first thing which occurs in all Connecticut matters is a consultation with a lawyer licensed in Connecticut. That attorney gives legal advice concerning a broad range of legal issues, which the clients must consider. At the outset, the nature of those services may appear to be related primarily to negotiating compromises of debt, a function engaged in by nearly all consumer lawyers in this state. During the course of the same representation, however, attorneys of the firm are reviewing each client's file and issuing instructions to paraprofessionals on how and when to attempt compromises, and the attorney is always available to the client for further consultation under the terms of the retainer agreement. If the client is later sued

by the creditor, the representation may require further consultation with an attorney, the drafting of pleadings, or other litigation support for the client.

If the exemption is interpreted in the manner recently suggested by the Department, the determination of when a license is required could only be determined in hindsight. The division of work in any given case between negotiating with creditors – which is certainly the practice of law if done by a law firm – and providing other legal services to the client, would be nearly impossible to predict at the beginning of the attorney-client relationship. The attorney would simply have to guess at whether the Department would assert its jurisdiction.

While it is true that civil statutes can be less specific than criminal statutes and still pass constitutional muster, Bottone v. Westport, 209 Conn. 652, 657-58 (1989), the foregoing demonstrates that an attorney practicing in Connecticut would have no way of knowing when a banking license would be required. To prevent further confusion, the Department should state exactly how the new attorney exemption will be applied, if at all, to lawyers who agree to advise clients about their debt relief options and assist them in settling their debts.

I. THE DEBT NEGOTIATION STATUTES AND REGULATIONS SHOULD NOT APPLY TO PRACTICING ATTORNEYS WHO HAVE A RETAINER AGREEMENT, OFFER LEGAL ADVICE, AND AGREE TO PROVIDE SERVICES CONSTITUTING THE PRACTICE LAW AS PART OF THE REPRESENTATION

The proper interpretation of the attorney exemption presents a question of statutory interpretation, which is purely a matter of law. The Connecticut Supreme Court recently described the appropriate analysis as follows:

> When interpreting statutes, our fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, we

> seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.... In seeking to determine that meaning, General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.... When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter....

Pereira v. State Bd. of Educ., 304 Conn. 1, 4 (2012) (internal quotation marks and citations omitted).

The first step in the analysis is to consider the language used in exemption itself. The exemption states: "The provisions of sections 36a-671 to 36a-671d, inclusive, shall not apply to ... [a]ny attorney admitted to the practice of law in this state who engages or offers to engage in debt negotiation ***as an ancillary matter to such attorney's representation of a client***...." Conn. Gen. Stat. §36a-671c (emphasis added). In applying this language it becomes necessary to understand when something is an "ancillary matter," and what constitutes "an attorney's representation of a client."

Black's Law Dictionary defines "ancillary" as "[a]iding; attendant upon; describing a proceeding attendant upon or which aids another proceeding considered as principal...[a]uxiliary or subordinate." See Blacks Law Dictionary (6th Ed. West 1991). Similarly, Webster's Ninth New Collegiate Dictionary defines "ancillary" to mean "subordinate" or "auxiliary." Using these definitions, a matter that is "ancillary" is a matter that is subordinate to, or in aid of, something else.

The "something else," insofar as the exemption is concerned, is "the attorney's representation of a client." Section 36a-671c's reference to an "attorney's representation of the client" is both general and broad, and therefore it cannot be limited to any particular substantive area of the law. Instead, it must be read to refer broadly to any professional engagement by a lawyer whereby the lawyer holds him or herself out to the public as a lawyer and agrees to provide legal services to a client. See Bysiewicz v. Dinardo, 298 Conn. at 774 ("for conduct to constitute the practice of law, the conduct must be undertaken on behalf of a client").

The foregoing textual analysis demonstrates that in order to be covered by the attorney exemption, debt negotiation services must be offered "in aid of" or "subordinate to" the attorney's underlying agreement to represent the client in a legal capacity, as evidenced by, inter alia, a retainer agreement, a decision by the attorney to hold herself out as an attorney in providing the services, and the offering of legal advice in the course of the representation. This makes it the practice of law and subjects the attorney conduct to the scrutiny of the bar regulators. Whether the representation is primarily a bankruptcy representation, a debt work-out, or a pure debt negotiation representation is irrelevant under this approach. Whether legal advice is given and the attorney has taken the obligations of an attorney are the touchstones. Further, if the attorney has agreed to provide other legal services constituting the practice of law – such as drafting pleadings, providing litigation support, or offering bankruptcy consultations – this would strengthen the case for finding that a given representation is exempt. If, on the other hand, an attorney licensed to practice law in Connecticut is acting only in an entrepreneurial capacity (*i.e.*, the attorney owns and operates a debt relief business

called "Debt Relief USA," which delivers services using only non-lawyers), then there might not be a bona fide attorney-client relationship and the services offered might require a separate debt negotiation license.

Persels and its attorneys are clearly entitled to the exemption under the foregoing analysis because (1) the firm has retainer agreements with each of its clients, (2) the Connecticut attorneys assigned to the clients are actively involved in each representation, and (3) the firm agrees to provide other legal services in the course of the representation. In the retainer agreement, the firm agrees to provide, inter alia, legal advice, litigation support in the event a creditor sues the client, drafting of pleadings in the lawsuit, and bankruptcy consultations for the client, if needed.

II. ENFORCEMENT OF THE DEBT NEGOTIATION STATUTES AGAINST PRACTICING ATTORNEYS WOULD VIOLATE PUBLIC POLICY AND SIGNIFICANTLY INTERFERE WITH THE JUDICIAL BRANCH'S AUTHORITY TO REGULATE THE PRACTICE OF LAW

Should the Department of Banking reject exempting Persels and its Connecticut attorneys, the decision to regulate the practice of law as it relates to debt negotiation and debt work-outs will intrude upon the judicial branch's regulation of attorneys and may violate the separation of powers doctrine. A more prudent course would be to avoid the constitutional conflict, particularly where there is no evidence that the General Assembly intended to contravene established public policy by conferring upon the Department the authority to license and regulate lawyers.

"In order to constitute an unconstitutional violation of the separation of powers doctrine, the action of one branch of government" – in this case, the executive – "must significantly interfere with the orderly conduct of the other branch," in this case the disciplinary and regulatory function of the judicial branch. See Massameno v. Statewide

Grievance Committee, 234 Conn. 539, 553-54 (1995) (Berdon, concurring)(citing Adams v. Rubinow, 157 Conn. 150, 160–61 (1968) and Bartholomew v. Schweizer, 217 Conn. 671 (1991)). Here, requiring attorneys to be licensed by the Department of Banking would unnecessarily interfere with the Statewide Grievance Committee's authority to regulate attorney conduct in Connecticut as it relates to the delivery of services that clearly constitute the practice of law. Debt negotiation services and legal advice, if provided by a Connecticut licensed attorney, constitute the practice of law.

It is well established that the judicial branch has the inherent power to investigate the conduct of an officer of the court. Grievance Committee v. Broder, 112 Conn. 263, 273, (1930). In Massameno v. Statewide Grievance Committee, the Connecticut Supreme Court summarized the judicial branch's authority to regulate attorneys as follows:

> The Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar. See State v. Jones, 180 Conn. 443, 448, 429 A.2d 936 (1980) [overruled on other grounds by State v. Powell, 186 Conn. 547, 442 A.2d 939 (1982)]; Lublin v. Brown, 168 Conn. 212, 228, 362 A.2d 769 (1975); Heiberger v. Clark, [148 Conn. 177, 182–83, 169 A.2d 652 (1961)]; Grievance Committee of the Bar of New Haven County v. Sinn, 128 Conn. 419, 422, 23 A.2d 516 (1941); In re Kone, 90 Conn. 440, 442, 97 A. 307 (1916); In re Durant, 80 Conn. 140, 147, 67 A. 497 (1907). The judiciary has the power to admit attorneys to practice and to disbar them; In re Application of Griffiths, 162 Conn. 249, 252, 294 A.2d 281 (1972), rev'd on other grounds, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973); Heiberger v. Clark, supra [at], 185–86 [169 A.2d 652]; In re Durant, supra [at] [147] [67 A. 497]; to fix the qualifications of those to be admitted; In re Application of Griffiths, supra [at] [252] [294 A.2d 281]; Heiberger v. Clark, supra [at] [185–86] [169 A.2d 652]; and to define what constitutes the practice of law. State Bar Assn. v. Connecticut Bank & Trust Co., [145 Conn. 222, 232, 140 A.2d 863 (1958)]. In the exercise of its disciplinary power, the Superior Court has adopted the Code of Professional Responsibility. Practice Book, pp. 1–52 (as amended 1982)." Heslin v. Connecticut Law Clinic of Trantolo & Trantolo, 190 Conn. 510, 523, 461 A.2d 938 (1983).

234 Conn. 539, 553-54 (1995). In 2004, the judicial branch enhanced its oversight capability by creating and empowering the Office of Chief Disciplinary Counsel to prosecute grievance matters and conduct investigations into allegations of misconduct by attorneys.

In Heslin v. Connecticut Law Clinic of Trantolo & Trantolo, 190 Conn. 510, the Connecticut Supreme Court rejected the notion that the judicial branch has exclusive authority to regulate all conduct engaged in by attorneys. Heslin involved the issuance of investigative demands issued by the Connecticut Commissioner of Consumer Protection to a legal clinic as part of an investigation into deceptive advertising practices by the clinic. The court upheld the issuance of the investigative demands and concluded that the executive branch's enforcement of the Connecticut Unfair Trade Practices Act (CUTPA) against attorneys did not violate the separation of powers doctrine.

Subsequent case law has made it clear, however, that the holding of Heslin is limited to situations in which the executive branch seeks to enforce laws of general application to the conduct of an attorney that is strictly "entrepreneurial and commercial" in nature. In Haynes v. Yale-New Haven Hosp., 243 Conn. 17, 34-35 (1997), the Connecticut Supreme Court observed:

> Although an attorney is not exempt from CUTPA; Heslin v. Connecticut Law Clinic of Trantolo & Trantolo, 190 Conn. 510, 461 A.2d 938 (1983); we made it clear in Heslin that we were not deciding 'whether every provision of CUTPA permits regulation of every aspect of the practice of law....' Id. at 520 [461 A.2d 938]. We have held that it is important not to 'interfere with the attorney's primary duty of robust representation of the interests of his or her client.' Mozzochi v. Beck, [204 Conn. 490, 497, 529 A.2d 171 (1987)]. This public policy consideration requires us to hold that CUTPA covers only the entrepreneurial or commercial aspects of the profession of law. The noncommercial aspects of lawyering-that is, the

> representation of the client in a legal capacity-should be excluded for public policy reasons. See Krawczyk v. Stingle, 208 Conn. 239, 246, 543 A.2d 733 (1988)." Jackson v. R.G. Whipple, Inc., 225 Conn. 705, 730-31, 627 A.2d 374 (1993) (Berdon, J., concurring).

Here, the requirement that an attorney obtain a license from the Department of Banking would place the executive branch in the position of regulating conduct that is beyond the "entrepreneurial" or "commercial" aspects of the practice of law. The Department of Banking would be permitted to tell attorneys what must be included in a retainer agreement and how much they can charge for their legal advice if it relates to debt settlement. In many instances, this will conflict with what constitutes a "reasonable fee" under Rule of Professional Conduct 1.5 (especially if the legal services provided include valuable legal advice, litigation support, and drafting of pleadings). The Department might also be permitted to intrude upon the privileged nature of the attorney-client relationship by requesting confidential client documents, sensitive financial information, and privileged client communications with their attorneys regarding the representation, all presumably under authority of the investigatory and enforcement powers granted by the banking statutes.

Even more significant, however, is the fact that the Department of Banking's purported licensing authority would clearly give it the authority to determine which attorneys in this state have the "character, reputation, integrity and general fitness" to offer debt negotiation services to a given client, Conn. Gen. Stat. §36a-671a(d)(1), a decision which would supplant the judicial branch's exclusive authority to determine which persons in this state are fit to practice law in this field. See Massameno, 234 Conn. at 553-54 (discussing judicial branch's authority "to fix the qualifications of those to be admitted [to practice law]" and "to define what constitutes the practice of law.").

Likewise, the Department's enforcement powers and ability to obtain an injunction prohibiting an attorney from offering debt negotiation services to his or her clients without a license from the Department could effectively prohibit a consumer advocate law firm from practicing law in this state. This would impinge upon the judicial branch's exclusive power to suspend or disbar an attorney based on misconduct. See Heslin, 190 Conn. at 527 & n.18.

While not controlling here, we note that for these and other reasons many other states have concluded that consumer fraud statutes cannot be enforced against attorneys. See Beyers v. Richmond, 937 A.2d 1082, 1092 (Penn. 2007) ("The General Assembly has no authority under the Pennsylvania Constitution to regulate the conduct of lawyers and the practice of law."); State of Georgia ex rel. Doyle v. Frederick J. Hanna Associates, P.C., 695 S.E.2d 612, 615(Ga. 2010) ("We hold that the representation of clients by a law firm does not come within the [Fair Businesses Practices Act] even if certain services were provided by non-lawyers within the firm and could have been offered by a company without any attorneys."). The majority of jurisdictions that have addressed this issue have held that the regulation of attorneys does not fall within the ambit of consumer protection laws. See, e.g., Cripe v. Leiter, 185 N.E.2d 100, 104 (Ill. 1998) (consumer fraud statutes inapplicable to plaintiff's overbilling claim against attorney; observing that the legislature "did not intend to include the furnishing of legal services to clients within the [Consumer Fraud Act]). Courts which strictly adhere to the separation of powers doctrine hold that consumer protection laws do not apply to attorneys. See, e.g., Averill v. Cox, 761 A.2d 1083, 1088 (N.H. 2000) (courts "comprehensive" regulation of the practice of law "protects

consumers from the same fraud and unfair trade practices" as the state consumer protection act). Other jurisdictions hold that the consumer protection statutes do not apply to the practice of law based upon the existence of a regulatory board, or explicit exemptions for attorneys within the statutes themselves. See, e.g., Gadson v. Newman, 807 F.Supp. 1412, 1417 (C.D. Ill. 1992) ("medical and legal bodies are afforded immunity from the Consumer Fraud Act primarily, because, unlike other commercial services, medical and legal bodies are regulated by governmental bodies."). We urge the Department to consider these sister-state decisions in evaluating the position it intends to take with respect to the consumer protection statutes at issue here.

III. BEFORE ENFORCING THE DEBT NEGOTIATION STATUTES AGAINST PRACTICING LAWYERS, THE DEPARTMENT SHOULD HOLD A PUBLIC HEARING AND INVITE PUBLIC COMMENT

Upon the filing of this petition, the Commissioner can:

> (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action.

Conn. Gen. Stat. §4-176. Here, assuming the Commissioner is not prepared to issue a declaratory ruling on the state of the current record, the Commissioner should consider scheduling a public declaratory ruling proceeding, or initiate regulation-making proceedings under Conn. Gen. Stat. §4-168, on the subject of the exemption. This should be done before any formal enforcement action is taken pursuant to the amended exemption. Such an approach should ensure that there is a forum for public comment from the Connecticut bar, representatives of the judicial branch (including the Office of

Chief Disciplinary Counsel), and other interested parties, something that did not occur at the time Conn. Gen. Stat. §36a-671c was amended in 2011.

Conclusion

WHEREFORE, Persels, through its undersigned counsel, respectfully requests that the Commissioner:

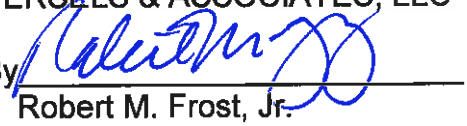
1. Issue a declaratory ruling stating that a law firm that offers debt negotiation services to a client using Connecticut attorneys is not required to have a debt negotiation license from the Department, when the debt negotiation services are delivered in aid of the firm's representation of the client, as evidenced by a retainer agreement, the offering of legal advice, and the delivery of other services constituting the practice of law; or

2. In the alternative, issue a declaratory ruling clarifying the Commissioner's interpretation of the amended exemption, Conn. Gen. Stat. §36a-671c, with specific guidance as to when a Connecticut attorney or law firm must have a license from the Department of Banking to offer legal services in the field of debt negotiation.

DATED: March 20, 2012

Respectfully submitted

PERSELS & ASSOCIATES, LLC

By 
Robert M. Frost, Jr.

FROST BUSSERT, LLC
129 Church Street, Suite 226
New Haven, CT 06510
Tel: (203) 495-9790
Fax: (203) 495-9795
Email: rmf@frostbussert.com

EXHIBIT A

This Agreement is made by and between the law firm of **Persels & Associates, LLC, 29 West Susquehanna Ave., 4th Floor, Towson, MD 231204** its members, successors, assigns, and affiliated entities, including Consumer Law Associates, LLC (hereinafter "Persels"), and the **Office of Disciplinary Counsel, 100 Washington Street, Hartford, CT 01601.**

Recitals

WHEREAS, the Office of Disciplinary Counsel ("OCDC") is authorized pursuant to Connecticut Practice Book §2-34A to investigate and prosecute complaints involving the unauthorized practice of law under General Statutes §51-88; and

WHEREAS, by letter dated April 27, 2011 and pursuant to Rule of Professional Conduct 8.1(2), the Office of Disciplinary Counsel notified Neil Ruther, Esq., the managing member of Persels of an investigation into the unauthorized practice of law by Attorney Ruther; and

WHEREAS, the OCDChas been involved in prosecuting at least two (2) grievances filed against Connecticut attorneys contracted with Persels to provide legal services to the firm's Connecticut clients: *New Haven J.D. Grievance Panel v. Saas*, #09-1109 and *Cardini v. Michaud*, #11-0136; and

WHEREAS, the parties have had extensive settlement discussions concerning the applicability of the unauthorized practice of law provisions of Rule 5.5 to Persels and its attorneys, as well as the requirements of the IOLTA program for attorney trust accounts located out-of-state, and because the parties are desirous of resolving this controversy, subject to such limitations as may be provided herein;

NOW, THEREFORE, in consideration of the foregoing Recitals and the promises, agreements, covenants, and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Agreement

1. Persels agrees that:

   a. Availability of In-Person Initial Consultations. Persels and its attorneys will continue to abide by Rules 1.2, 1.4, and 1.5 of the Rules of Professional Conduct. For each Connecticut client that hires Persels to perform, *inter alia*, debt settlement services, Persels will have procedures and policies in place to ensure that an initial consultation occurs between the Connecticut client and a Persels attorney admitted to practice law in Connecticut. The

consultation shall be available in person. Should the client not wish for an in-person consultation it may be conducted via telephone. This provision notwithstanding, nothing in this Agreement shall require the Connecticut attorney to travel to meet the client; the client may be required to travel to meet with the Connecticut attorney.

b. Documentation of the Initial Consultations. The client's decision to have the initial consultation by telephone in lieu of a face-to-face meeting with the Connecticut attorney will be documented in the file management notes for the client's matter. Should a grievance complaint be filed, and if it becomes necessary to confirm that a consultation occurred, the OCDC may contact the Connecticut attorney identified on the letterhead of the retainer agreement and/or contact the managing member of Persels to identify the Connecticut attorney involved.

c. Collection of Initial Consultation Fee. While the initial consultation fee may be posted in the firm's trust account before the consultation occurs, Persels will have procedures and policies in place to ensure that the initial consultation fee is not collected until such time as the initial consultation has occurred and the fee is earned.

d. Revisions to Retainer Agreement. Persels will revise its standard retainer agreement letter to describe the role of the local Connecticut attorney and will provide language that makes it clear that the client may request that the initial consultation take place in a face-to-face meeting with the Connecticut attorney.

e. Paralegals/Non-Lawyer Assistants/Non-Connecticut Attorneys. Persels will have polices, training, and procedures in place to ensure that there is adequate supervision of paralegals and other non-lawyer assistants; and further, Persels and its attorneys will, at all times, abide by Rule 5.3. Legal documents sent on behalf of the client, although drafted by paralegals and/or non-lawyer assistants, will be reviewed and approved by a Connecticut attorney; provided, nothing in this agreement shall prohibit the use of forms or form letters reviewed and approved for use by Persels and its Connecticut attorneys. Legal advice will be given only by the Connecticut attorney.

f. IOLTA. Within a reasonable period of time, which time period may be extended by agreement of the parties, Persels will either (1) transfer its IOLTA account to an approved financial institution that has an agreement with the Statewide Grievance Committee to

report on any overdrafts in accordance with Practice Book §2-28, or (2) have its current bank apply to become an eligible financial institution which participates in the reporting requirements of Practice Book §2-28. Until such time as Persels can comply,, Persels will continue to include language in its retainer agreement notifying the client that client's funds will be kept in an IOLTA account in Maryland in accordance with Rule 1.15(b); and further, Persels will instruct each Connecticut attorney to identify the Persels trust account in the Connecticut attorney's annual registration.

g. Cost of Compliance. The parties agree that the nature of Persels' practice and the manner in which legal services are rendered through Connecticut attorneys is relatively new; and further, that the OCDC has expended substantial time and effort discussing reviewing and discussing the issues involved with Persels and its counsel. In recognition of the OCDC's investment of time and effort and the expense associated with the process that culminated in this Agreement, Persels has agreed to make a one-time payment to the Connecticut Client Security Fund in the amount of $5,000.00. Said payment will be made within thirty (30) days of acceptance of this Agreement by the parties.

2. The OCDC agrees not to initiate any unauthorized practice of law investigation, or prosecute any future complaint against any attorneys employed by or contracted with Persels for a violation of Rule 5.5, so long as Persels has implemented and can demonstrate that it followed the policies and procedures set forth in paragraph 1 of this Agreement during the course of the representation. Any complaints made by a Connecticut client for services rendered prior to this Agreement may be prosecuted, but the OCDC will take a position consistent with this Agreement in the event that a new complaint raises an alleged Rule 5.5 violation. Nothing in this Agreement shall prohibit the OCDC from defending the decision of the Statewide Grievance Committee in the pending Superior Court appeal in *New Haven J.D. Grievance Panel v. Saas*, #09-1109, although the OCDC reserves the right to take a position consistent with this Agreement should the matter is remanded to the Statewide Grievance Committee.

3. The Office of the Chief Disciplinary Counsel agrees not to require compliance with the request for information in the Investigator's letter of April 27, 2011, or to pursue a Rule 8.1 complaint against Persels for failure to provide OCDC with the requested information.

4. No Admission of Liability. The parties acknowledge that Persels and its attorneys have cooperated fully with the OCDC in its investigation; and further, the parties agree that the existence of this Agreement and the

payment made hereunder shall not be construed as an admission of liability or of the truth of the allegations, claims, or contentions of any party, and that there are no covenants, promises, undertakings, or understandings between the parties outside of this Agreement except as specifically set forth herein.

5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. A photocopy signature or facsimile signature on this Agreement shall be deemed an original for all purposes.

6. Full Agreement. The parties acknowledge and agree that this Agreement represents the full and complete agreement of the parties, that this Agreement supersedes and replaces any prior agreements whether oral or written, and that no promises, understandings, or representations not expressly integrated into this Agreement have induced any party into executing it. Any amendments or modifications of this Agreement, including to this sentence, must be in writing and executed by all of the parties to be effective.

7. Construction and Enforcement. This Agreement has been and shall be deemed to have been made in the State of Connecticut, and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Connecticut, without reference to principles of conflict of laws thereof. This Agreement shall not be construed more strictly against any one of the parties than against any other by virtue of the fact that the Agreement may have been drafted or prepared by counsel for one of the parties, it being recognized that all of the parties to this Agreement have contributed substantially and materially to its preparation.

8. Jurisdiction. The courts in the State of Connecticut shall have jurisdiction to enforce this Agreement and all obligations arising thereunder, and all parties hereto will be deemed to have consented to the personal jurisdiction thereof.

9. Captions. The titles or captions of the paragraphs or sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, extend, or describe the scope of this Agreement or the intent or meaning of any provision hereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Agreed to on this date by:

PERSELS & ASSOCIATES, LLC

By: _____ DATED: 10/5/11
Neil J. Ruther, Esq., Managing Member
Persels & Associates, LLC
29 West Susquehanna Ave., 4th Floor
Towson, MD 231204

OFFICE OF CHIEF DISCIPLINARY COUNSEL

By: _____ DATED: 10/5/11
Suzanne B. Sutton, Esq.
Assistant Disciplinary Counsel
100 Washington Street
Hartford, CT 06106