

PREPAID LEGAL SERVICES AND HAWAII

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FOREWORD

This study on *Prepaid Legal Services and Hawaii* is presented in response to Senate Concurrent Resolution 54, House Draft 1, adopted during the 1975 legislative session.

This report gathers into one place numerous writings on prepaid legal services concerning its history and development, the types of prepaid legal service plans and considerations in developing such plans, and the legal problems which have been resolved and which yet remain to be resolved at the national and state level.

The report contains suggestions for legislative action which will expedite the development of prepaid legal service plans in Hawaii.

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TABLE OF CONTENTS

	<i>Page</i>
FOREWORD	iii
TABLE OF CONTENTS	iv
SUMMARY	vii
 CHAPTER 1. INTRODUCTION TO PREPAID LEGAL SERVICES	
PART I. INTRODUCTION	1
PART II. HISTORICAL DEVELOPMENT	4
Development in the Courts	4
a. State Courts	4
b. United States Supreme Court	5
National Bar Association Developments	7
Congressional Legislation	12
a. Taft-Hartley Act	12
b. Employees Retirement Income Security Act	13
 CHAPTER 2. PREPAID PLANS	
PART I. TYPES OF PLANS--GENERAL COMPOSITION	15
Formation of Plans	17
a. Coverage	17
b. Delivery of Services	20
c. Funding and Payment Systems	21
d. Plan Administration	23
Summary	23
PART II. TYPES OF PLANS--SPECIFIC COMPOSITION	23
Shreveport Laborers Local 229--Open Panel	24
Utah State Bar Prepaid Legal Services Plan-- Partly Open	27
Michigan Education Association Legal Services Plan--Partly Open	28
Amalgamated Clothing Workers of America, Chicago--Closed Panel--One Law Firm	29
Laborers' Local 423, Columbus, Ohio--Closed Panel--Attorneys Staff	31
Stonewall Insurance Company--Insurance	32

	<i>Page</i>
PART III. PREPAID LEGAL SERVICES--IMPACT	33
Cost	33
Effecting Institutional Change	35
Load Placed on the Courts	36
Employer Savings	37
The Legal Profession	37
 CHAPTER 3. THE NEED FOR AND INTEREST IN PREPAID LEGAL SERVICES	
National Experience	39
Hawaii	43
 CHAPTER 4. STATE REGULATION OF PREPAID LEGAL SERVICES	
Existing Legislation	48
a. California	48
b. Georgia	49
c. Minnesota and Wisconsin	49
d. Oregon	49
e. Texas	49
Proposed Legislation	50
a. Maryland	50
b. South Carolina	51
Model Acts	52
a. An Act to Regulate Group Legal Services Plans	52
b. NAIC Model Act	53
 CHAPTER 5. PRESENT PROBLEMS IN THE DEVELOPMENT OF PREPAID LEGAL SERVICES	
Nationally	55
a. Antitrust Regulation	55
b. Income Tax Considerations	56
Credit Unions	58
Hawaii	58
a. Tax Considerations	58
b. Insurance Regulation	59
c. Code of Professional Responsibility	61
 CHAPTER 6. FINDINGS AND RECOMMENDATIONS	
PART I. FINDINGS	63

	<i>Page</i>
PART II. RECOMMENDATIONS	64
Tax Changes	64
Regulation as Insurance or as Prepaid Legal Services	65
Code of Professional Responsibility	67
Consumer Education	68
FOOTNOTES	71

APPENDICES

A. SHREVEPORT PLAN--FOUR YEAR CLAIMS SUMMARY	79
B. LABORERS' LEGAL SERVICE--STATISTICAL REPORT . . .	80
C. STONEWALL INSURANCE COMPANY--SCHEDULE OF BENEFITS.	81
D. ADDRESSES OF GROUPS INTERESTED IN PREPAID OR GROUP PLANS	82
E. PREPAID LEGAL SERVICES QUESTIONNAIRE SENT TO LABOR UNIONS, CREDIT UNIONS, AND OTHER ORGANIZATIONS	83
F. PAMPHLET ENTITLED: NOW YOU CAN RETAIN A LAWYER TO DRAW UP WILLS, DRAFT DEEDS, PREPARE TRUSTS, REVIEW CONTRACTS, CHECK WARRANTIES, AND A WHOLE LOT MORE FOR \$54 A YEAR	86

SUMMARY

This study on *Prepaid Legal Services and Hawaii* indicates that prepaid legal service plans are a growing and viable method of delivering legal services to the citizenry at an affordable price.

This report sets forth the historical development of prepaid legal services in the United States at the state and national level. It also covers the various types of prepaid legal service plans, considerations in forming such plans, and the possible impact such plans may have in different areas. A discussion of the need for prepaid legal service plans is presented together with the various regulations such plans have met in other states. Finally, the existing legal problems at the national and state level are discussed and possible solutions are set forth.

The report concludes that prepaid legal service plans are just beginning to appear in Hawaii and that action by the legislature would enhance their growth by clarifying certain tax and legal ramifications which presently exist.

Chapter 1

INTRODUCTION TO PREPAID LEGAL SERVICES

PART I. INTRODUCTION

The following report on prepaid legal services is submitted in response to Senate Concurrent Resolution 54, House Draft 1, adopted during the 1975 legislative session. Senate Concurrent Resolution 54 requested the Legislative Reference Bureau to study the national development of prepaid legal services, to initiate and recommend any legislation needed to expedite the development of a prepaid legal services program in the State of Hawaii, and to report findings and recommendations to the 1976 legislative session.

During the development of prepaid legal services, different terms have been used to refer to these services. Additionally, other terms inappropriately have been used to discuss these services when in fact the terms correctly apply to another activity. In order to avoid confusion in a discussion of prepaid legal services, certain terms used in this report are defined.

Group Legal Services. Group legal services is a generic term identifying legal services involving groups of persons and not necessarily containing an element of prepayment. Generally, the term identifies programs through which organized groups, such as labor unions or professional or fraternal associations, provide legal assistance as a benefit of membership. In addition to referring to groups of consumers, however, the term is sometimes used to refer to groups of providers such as law firms or clinics.¹

Prepaid Legal Services. Prepaid legal services is a form of a group legal service. A prepaid legal service plan may be defined as a system of delivering legal services to a large number of consumers, reasonably associated in groups having a common interest in which the cost of service has been prepaid by the group member or by some organization in his behalf.²

A parallel to prepaid medical service plans may be made. A patient, or client (consumer), pays an annual premium or authorizes a periodic deduction from his or her paycheck;

PREPAID LEGAL SERVICES AND HAWAII

the plan member then becomes entitled to a fixed amount of medical (legal) services which can be defined either in terms of a fixed dollar amount a year or in terms of maximum amounts for specific services.

Legal care and judicare are terms which are sometimes used to refer to prepaid legal services, but in those states using a system so named the services provided are similar to those provided by Legal Aid in Hawaii.³ Therefore, these terms should not be used to refer to prepaid legal services.

Prepaid Legal Insurance. Prepaid legal insurance also called prepaid legal cost insurance is sometimes differentiated from prepaid legal services although the difference is philosophical and is to a certain extent an attempt to avoid regulation of prepaid legal service plan under insurance statutes.⁴

The difference is set forth as follows:

Legal cost insurance is a form of insurance that indemnifies (reimburses) subscribers for specified (by contract) legal expenses they might incur. As in an insurance contract a covered individual makes "premium" payments to an insurer, in this case the "plan". If he uses a lawyer, the insurer or plan reimburses his expenses up to the coverage limits. Thus, legal cost insurance utilizes the principle of insurance in spreading the cost of the risk over the members of the group, thereby achieving lower cost for individual members of the group who use legal services.

Prepaid legal services, on the other hand, is not insurance. Prepaid legal service plans (as defined by this report) do not provide indemnity against legal costs but rather finance and deliver legal services. Contributions are collected from members before any legal services are utilized, and the plan provides the group members with legal services through its own attorneys. As such, these plans generally restrict the number of lawyers that service the members. The prepaid legal service plans use what is called a "closed panel", i.e., the plan retains its own legal staff or a lawyer or firm to whom members must go for legal services.⁵

The problem with such differentiation is that both systems collect moneys in advance, both provide for specified

INTRODUCTION

services, and both spread the cost (risk); however, the closed panel is not necessary to a prepaid legal services plan. Reimbursement to the covered individual through an "insurance plan" is not necessary in all cases since the cost of the service may be paid directly to the attorney.

For the purposes of this report prepaid legal services and prepaid legal insurance will be treated identically. As discussed later both may fall under the definition of insurance contained in section 431-3, *Hawaii Revised Statutes*.

Open Panel. A prepaid plan using an open panel means one in which the members of the plan are free to choose any attorney in the community. The plan may be likened to the HMSA method of delivering medical services in Hawaii.

Closed Panel. A prepaid plan using a closed panel is one in which the plan retains one or more attorneys to service the plan and the members of the plan are restricted to using these attorneys in obtaining the benefits of the plan. This is similar to the Kaiser method of delivering medical services. Attorneys handling a particular closed panel plan may all be members of a single law firm, may be scattered throughout a number of law firms; or, in the case of a labor union, may be staff attorneys hired by the union solely to service plan members.

Legal Clinics. A legal clinic is a relatively new term to legal practice and means a law office which attempts to furnish legal services at a cost lower than normally available through an orthodox legal office. Costs are reduced through the use of paralegals to process clients, low rent, and extensive use of forms and mechanical devices. The theory is that the more intensively an attorney is used on legal matters, the less the cost to the client since the time spent on clerical and nonlegal matters is being spent by persons other than attorneys. A clinic may be the firm which also provides legal services under a prepaid plan, but a clinic is not necessary to the furnishing of prepaid legal services.

In summary it should be noted that although neatly defined in this part, actual prepaid plans may include one or more components of each definition. For example, semi-closed panel plans exist in which if a member is not satisfied with the attorney servicing the plan, the member may go to an attorney outside of the plan and be reimbursed by the plan.

PART II. HISTORICAL DEVELOPMENT

Group legal service plans have existed since the early 20th century. Many of the plans were formed by unions or other groups and the early plans were attacked in court by the various state bar associations as being unethical under the *Code of Professional Responsibility*. The attacks of the state bar associations were generally upheld by the courts until 1962.

Development in the Courts

a. State Courts

One of the earliest attempts to provide group legal services involved Merchants Protective Associations in a series of cases between 1915 and 1925. The Associations contracted with attorneys to provide the members of the Associations with legal advice and consultation on all personal, business, and private matters, both civil and criminal. Yearly membership fees, of which the attorneys received part, were charged. The Association corporation performed no other function. When the activities of the Associations were challenged in court, the arrangements were found to involve the unlawful practice of law by a corporation and the corporation lost its charter. In some instances the attorneys involved were suspended or disbarred.⁶

In the 1930's automobile clubs attempted to provide members with legal services relating to the ownership and use of automobiles. The attorneys for the clubs were either staff attorneys hired by the club or were attorneys retained by the clubs. These plans when challenged by the state bar associations also were struck down in court.⁷

During the period 1930 to 1960 the Brotherhood of Railroad Trainmen established various legal service plans for its members. These plans were challenged in court by the state bar associations and in most instances the bar associations prevailed. The plans involved the establishment of regional counsel appointed by the Brotherhood. The attorneys brought litigation for injuries to Brotherhood members, and agreed to charge a lower contingency fee than usual and to return a percentage of the fee to meet the expenses of the Legal Aid Department of the Brotherhood. When the Brotherhood plans lost in court, its attorneys were reprimanded

INTRODUCTION

or disciplined for soliciting employment, a breach of the *Code of Professional Responsibility*.⁸

b. United States Supreme Court

The United States Supreme Court did not hear a group legal services case until 1962. Once presented with the concept, the Court, in a series of 4 major decisions, found that "meaningful access" to the courts is a group right protected under the First Amendment of the United States Constitution.

In *N.A.A.C.P. v. Button*, 371 U.S. 415 (1962), the Court overruled the Virginia Supreme Court and held that the activities of the N.A.A.C.P. and its legal staff were modes of expression and association protected by the First and Fourteenth Amendment to the United States Constitution. The activities engaged in by the N.A.A.C.P. involved the solicitation of plaintiffs for desegregation suits challenging statutes in Virginia. The specific activities involved included: financing litigation; maintaining an elected, paid legal staff to handle such litigation; distributing letters and bulletins to promote meetings designed to explain the legal aspects of desegregation efforts; and passing out forms on which the signatories could authorize the "firm" of N.A.A.C.P. and Defense Fund Lawyers to represent them in desegregation actions. The court stated that:

*In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression.*⁹

In 1964, the Virginia State Bar, again trying to enforce the statute against solicitation of legal business by attorneys, brought suit to enjoin the Brotherhood of Railroad Trainmen from carrying on activities which the Bar charged constituted the solicitation of legal business and the unauthorized practice of law.

In *Brotherhood of Railroad Trainmen v. Virginia ex. rel. Virginia State Bar*, 377 U.S. 1 (1964), the Court extended constitutional protection to the union's legal department. The activities engaged in involved soliciting personal injury claims of injured union members and referring them

PREPAID LEGAL SERVICES AND HAWAII

to attorneys who had agreed with the union to charge contingent fees lower than those of other practitioners.

Relying on the First Amendment guarantees of free speech, petition, and assembly as giving the railroad workers the right to help and advise each other in asserting rights granted by Congress under the Safety Appliance Act and the Federal Employees' Liability Act, the Court concluded:

We hold that the First and Fourteenth Amendments protect the right of members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers....[a]nd, of course, lawyers accepting employment under this constitutionally protected plan have a like protection which the State cannot abridge.¹⁰

The *Brotherhood* case was of major importance in that protection was granted to purely economic interests of union members rather than the promotion of the national, social objective of desegregation allowed in *Button*. Its importance is reflected in the fact that 44 state and 4 local bar associations joined the American Bar Association in a motion for rehearing in the *Brotherhood* case which was denied.¹¹

Opposition by the bar associations of various states continued by attempting to read the *Button* and *Brotherhood* cases narrowly. This attempt failed in *United Mine Workers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217 (1967), in which the court upheld a plan by which the union hired a licensed attorney, solely compensated by an annual salary, to represent union members and their dependents in connection with their claims under the Illinois Compensation Act. The Court held that *Button* and *Brotherhood* were controlling. Thus, the Court found for one type of closed panel plan for the first time.

The final case in this series was *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576 (1971), in which the Court upheld a union plan that channeled claimants under the Federal Employees' Liability Act to designated counsel and informed the claimant that the counsel would not charge more than 25 per cent of the recovery which was lower than that charged nonunion members. The Court laid to rest bar opposition by stating:

INTRODUCTION

...the principal here involved cannot be limited to the facts of this case. At issue is the basic right to group legal action.... The common thread running throughout decisions in NAACP v. Button, Trainmen, and United Mine Workers is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment. However, that right would be a hollow promise if courts could deny associations of workers or others the means of enabling their members to meet the costs of legal representation.¹²

Thus, for the present, the legal decisions protect the extension of legal services through a variety of plans.

National Bar Association Developments

As indicated by the court cases, the state bar associations were against the development of group legal services during the first half of this century. The activities of the state bar associations lessened after the *Brotherhood* case; and, although there is still resistance in some states, state bar associations are now attempting to encourage the formation of group plans.

The first state bar association to attempt such encouragement was the State Bar of California in 1964. A special committee of the bar made an inquiry into group legal services in 1964 and made a report to the bar.¹³ Although the report was rejected at that time, it should be noted that California is now a leader in the formation of group and prepaid legal plans.

While some state bar associations were resisting the development of group legal services through 1971, the American Bar Association passed a strong resolution in 1965 on the availability of legal services and formed the Special Committee on Availability of Legal Services. The special committee was to study, among other topics, systems of prepaid legal services as one means of improving the delivery of legal services in the United States. In 1970 the special committee recommended the formation of a special committee to concentrate on prepaid legal services alone. Later in 1970 the Special Committee on Prepaid Legal Cost Insurance was formed which in 1971 changed its name to the Special Committee on Prepaid Legal Services.¹⁴

PREPAID LEGAL SERVICES AND HAWAII

Since its inception committee activity in prepaid legal services has encouraged state bar associations to become involved in allowing group legal services. For example, the Special Committee on Availability instituted and the Special Committee on Prepaid Legal Services sponsored the Shreveport experimental prepaid legal service plan, the oldest known prepaid plan in the nation.

One of the problems facing the development of prepaid legal services has been, until 1975, the *Code of Professional Responsibility* which governs the legal profession. The present *Code* adopted in most states and Hawaii was rewritten and updated in 1969 by the American Bar Association. The 1969 *Code* was adopted after 3 of the 4 Supreme Court cases on group legal services and appeared to restrict the activities of attorneys particularly in regard to closed panel plans as opposed to open panels.

The argument between proponents of open versus closed panel plans has been a basic deterrent to the development of group legal service plans of any sort. An open panel plan provides legal services to consumers by allowing the consumer his choice of any attorney in the community, while a closed panel plan limits the consumer's choice to attorneys chosen by the plan.

The arguments for and against open and closed panels to a great extent reflect the economic fears of the profession. If an open panel plan is used, all attorneys in the community will be able to participate in the plan; therefore, there will be no loss of income to any attorney, since participants will choose attorneys as they have in the past. If a closed panel plan is chosen, only those attorneys involved in the plan will be benefited as they will be the only ones used by the participants in the plan; therefore, the other attorneys in the community will lose money to the extent they might have been chosen by those involved in the plan. It is not clear that this would result, since much of the business generated by prepaid plans possibly would not have existed but for the plan.

The problems are deeper than economic considerations, however, and the entire philosophy of the legal profession is to an extent challenged.

The bar has traditionally insisted on the open panel concept, arguing that the public is best served by preserving the independence of the private bar and allowing potential clients their free choice of the attorney who will

INTRODUCTION

represent them.¹⁵ Freedom of choice, it is urged, will avoid the possibility of conflicts of interest developing between the group which pays the attorney his fees and the client who has a right to expect a high quality of loyalty and zeal on his behalf. Allowing freedom of choice will preserve the attorney's independence and avoid lay interference between the attorney and client contrary to the *Code of Professional Responsibility*.¹⁶

Proponents of open panels also argue (1) that the sponsoring group must take on an unnecessary added responsibility for the quality of legal services performed when it requires a member to see a particular attorney paid by the group in a closed panel; (2) that a great deal of difficulty and uncertainty surrounds the matter of someone other than the client selecting a panel or firm of attorneys, as in the case of closed panel plans;¹⁷ and (3) that a real possibility exists under a closed panel plan for the attorney to develop assembly-line techniques of practice that may lower client costs, but at the same time be purchased at a cost of shoddy work in an impersonal environment.¹⁸

To counter the basic "freedom of choice" argument advanced by open panel proponents, it has been suggested that the bar's position actually serves to deny freedom of choice to the public, since if groups are prohibited from offering closed panel plans, the public will be denied the opportunity to choose freely between open and closed options.¹⁹ In short, "if the lay public is as concerned as the bar thinks it should be with having the freedom to choose an individual attorney, then presumably members of the public will opt for open panels and pass the closed panel alternatives by".²⁰ "Freedom of choice" may indeed be a misleading concept since attorneys cannot advertise their services and many prospective clients must make their choices without any real knowledge of the attorney's fees or qualifications.²¹ As the foremost study of legal services for middle-income clients concluded, "[I]t should be apparent that the traditional model for building a law practice, based as it is on the public's informally acquired knowledge of law and lawyers, is inadequate in the metropolitan setting as a means of bringing together lawyers and moderate income clients."²²

A further response can be made to the proponents of open panels who argue that such will preserve the integrity of the attorney-client relationship.²³ First, conflict of interest problems and the possibility of assembly-line legal work are no more likely to arise under closed panel plans than under other long-approved arrangements, for example

where liability insurers designate defense counsel for the insured. Second, experience with closed panel plans simply does not support fears of any threat to the attorney-client relationship. Third, should these fears ever be realized in practice as to a particular plan, the attorneys involved would be subject to discipline under the *Code of Professional Responsibility*. Finally, closed panel proponents also argue that the closed-panel approach produces legal services at a significantly lower per unit cost than open panels.²⁴ Certain economics of practice may result when attorneys, knowing that they can count on a relatively predictable number of cases and a certain sum each year from the group, are able to provide more legal services coverage at a lower premium.²⁵ Moreover, the assertion is that a closed panel can potentially offer higher quality legal assistance than an open panel, through improved support services resulting from cost spreading to a large client base, overhead reduction through efficiencies of scale, enhanced possibility for effective attorney performance evaluation, and increased attorney expertise developed from more narrowly focused high-volume case loads.²⁶ Additionally, it is argued that as to fee charges, a closed panel would provide some degree of regulation through reduced charges.²⁷

Proponents of the closed panel approach take pains to emphasize that they do not seek a closed panel approach to the exclusion of open panels. Rather they press the point that both should stand on equal footing and that the client should be allowed the right to choose between competing open and closed panel programs.²⁸

In 1973 the Standing Committee on Ethics and Professional Responsibility of the American Bar Association due to doubts concerning the constitutionality of the 1969 provisions governing group legal services, particularly in view of the *United Transportation Union* case, proposed amendments to the *Code* sections involved.²⁹ These amendments were presented at the February 1974 meeting of the American Bar Association in Houston. The amendments would have clarified the group legal service problems in favor of group legal services of all types. The Section on General Practice, however, presented substitute amendments to the *Code* which were adopted by the American Bar Association. These amendments became known as the "Houston amendments" and were attacked by various members of the Bar and by others outside the bar because of apparent favoritism towards open plans.³⁰

Due to pressure from the United States Justice Department, state insurance commissioners, and consumer groups,

INTRODUCTION

the American Bar Association, through its House of Delegates decided in its 1974 meeting in Honolulu to restudy and reconsider the Houston amendments. A 7-member committee was created to investigate the amendments and to make recommendations to the American Bar Association's February 1975 meeting in Chicago.³¹ Between February 1974 and February 1975, congressional hearings concerning prepaid legal services and the Houston amendments were held³² and a court challenge was filed to the amendments to the *Code* which were adopted by Tennessee.³³

In February of 1975 the American Bar Association adopted a new version of the *Code* which "everybody likes".³⁴ Under the new amendments which do not differentiate between open and closed panels:

- (1) Qualified legal assistance organizations may engage in dignified commercial publicity about their services, but information about individual attorneys may be communicated only to panel members or beneficiaries.
- (2) Legal assistance plans may not interfere with the independent professional judgment of the attorney on behalf of his client--nor may such plans in any way subject the conduct of attorneys to the regulation of nonattorneys.
- (3) An organization set up to provide legal services may be for profit, but may not profit from rendering legal services.
- (4) Profit-making organizations may not provide legal services through attorneys employed by them, but can recommend attorneys as long as they are not supervised or directed by the organization, except when such an organization bears ultimate liability of its members or beneficiaries.
- (5) No legal assistance organization may operate to procure legal work for any attorney as a private practitioner outside the program of the organization.
- (6) Attorneys may not operate or promote group practice organizations for the purpose of self-benefit.
- (7) The plan must provide appropriate relief for a plan member who wishes to select counsel

PREPAID LEGAL SERVICES AND HAWAII

other than that furnished, selected, or approved by the plan--in cases where representation by plan counsel would be inadequate, inappropriate, or unethical.³⁵

The amendments also provide that a prepaid plan meet applicable laws, rules of court, and other requirements governing its operations and that it file a report at least annually with the appropriate attorney disciplinary agency.

Neither the Houston amendments nor the later 1975 amendments to the *Code of Professional Responsibility* have been adopted by the Hawaii Supreme Court. The new amendments are being studied by the Special Committee on Prepaid Legal Services of the Hawaii Bar Association which has indicated through its chairman that it will submit the amendments to the Hawaii Supreme Court with possible further liberalization before the end of 1976.

While not every problem involved in allowing group legal services under the *Code of Professional Responsibility* has been solved, the most important step has been taken. Any person doubting that the *Code* problems will not be solved can look to the experience of the medical profession with prepaid medical services. "The doctors in 1934, like the lawyers of today, lost to a patient group before the United States Supreme Court. Thereafter, the prepaid medical experience expanded to the present status where over 80% of the citizens of this country have some type of medical benefits."³⁶

Congressional Legislation

Congressional activity in the field of prepaid legal services involves two major Acts--the Taft-Hartley Act, (Labor-Management Relations Act of 1947) and the Employees Retirement Income Security Act of 1974.

a. Taft-Hartley Act

Prior to its amendment in 1973, section 302 of the Taft-Hartley Act prohibited employer payments to employee representatives, except as specifically allowed. The prohibition was originally designed to prevent bribes and other corrupt practices. Exceptions to the broad prohibition are allowed which include contributions to jointly administered funds for medical programs, retirement plans, life and accident

INTRODUCTION

insurance, apprentice and training programs, scholarships, and child care centers.³⁷ With the exception of child care centers all other allowable contributions have been found by the courts and the National Labor Management Relations Board to be mandatory items of bargaining.³⁸

The 1973 amendment expanded the list of exceptions to allow employers to make contributions to jointly administered trust funds to pay for legal services. This amendment will allow employees to negotiate for group legal services as a fringe benefit. The amendment does not mandate any form of group legal service plan nor does it require an open or closed panel.

Under the amendment, benefits may not be used (1) to sue employers, except in worker's compensation cases, (2) to sue unions, (3) in any proceeding for the defense of union officials in cases in which the union itself would be barred from the defense by the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffith Act), or (4) to enable employees to initiate proceedings against nonunion employees in labor-management related cases.³⁹

b. Employees Retirement Income Security Act

The second major act affecting prepaid legal services is the Employees Retirement Income Security Act of 1974 otherwise known as ERISA.⁴⁰ This Act is particularly important as it preempts the regulation of many prepaid plans by the state itself or indirectly through its bar associations.

Section 3 of the Act defines "employee welfare benefit plan" as any plan, fund or program established or maintained by an employer or by an employee organization, or by both... for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A)...prepaid legal services, or (B) any benefits described in section 302(c) of the Labor Management Relations Act of 1947...." [Section 302(c) refers to those benefits including group legal services covered by the Taft-Hartley Act.]⁴¹

Section 4 makes it clear that the coverage is intended to be comprehensive.⁴² Section 514 declares that the Act "shall supercede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan...." The section further states "neither an employee benefit plan..., nor any trust established under such a plan, shall

PREPAID LEGAL SERVICES AND HAWAII

be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any state purporting to regulate insurance companies, insurance contracts, banks, trust companies or investment companies."⁴³

Regarding bar association regulation, Senator Javits in remarks made on the floor of the United States Senate just before ERISA was passed stated section 514 "...does not preempt state bar associations from adopting and enforcing ethical rules or guidelines generally and/or disciplining its members or acting to discipline members of the bar, ...[, however,] the state, directly or indirectly through the bar, is preempted from regulating the form and content of a legal service plan, for example, open versus closed panels, in the guise of disciplinary or ethical rules or proceedings."⁴⁴

Unlike the Taft-Hartley Act amendments which provide for the establishment of a jointly administered trust fund if funds are contributed by an employer, ERISA covers all employer-employee activities establishing plans whether they are acting separately or together. ERISA also imposes extensive disclosure, reporting, and fiduciary responsibilities on plan trustees. Preparation of a summary plan must be written in a manner calculated to be understood by the average plan participant, annual reports must be made to plan members, including an independently prepared financial statement, and both the summary and the financial statement must be filed with the United States Secretary of Labor. The statement and summary become public information. The Secretary may prescribe simplified forms for plans covering less than 100 persons or he may exempt a plan from all or part of the requirements. ERISA provides an extremely high standard of care, details liability of the fiduciary, and sets forth a series of prohibited transactions for those plans supervised by trustees.⁴⁵

It should be noted in closing that both Taft-Hartley and ERISA only cover group legal service plans involving employers and employees, acting together or separately. Neither Act covers the multitude of other organizations, such as credit unions, which may provide group legal service plans.

Chapter 2

PREPAID PLANS

PART I. TYPES OF PLANS—GENERAL COMPOSITION

Although simply defined in chapter 1, when considered in depth, prepaid legal service plans do not fall within neat parameters. As earlier indicated a prepaid plan may use an open or closed panel method of delivering legal services to the group. Prepaid plans may also involve some but not all of the following elements: (1) a prepayment feature, (2) sponsorship by the group served, (3) sponsorship by a bar association, (4) group control over the delivery mechanism and the funding mechanism, (5) voluntary or automatic participation, (6) cost savings due to volume and new techniques, and (7) the practice of preventive law.¹

Plans sponsored by bar associations are generally a form using open panel and contain a prepayment feature, and limited group (consumer) control over delivery and funding depending on representation on a board of directors; member participation may be either voluntary or automatic depending on the group involved; most do not induce cost savings, and few stress preventive law.

A plan, sponsored by a union or other organization, generally uses a closed panel form and contains a prepayment feature, is sponsored by the group served; retains group control over delivery and funding (usually automatic participation); generally results in cost savings; and practices preventive law.

There may be an infinite variety of plans. One method of grouping plans is as follows:

According to Providers of Service

Fully Open. A client may choose any attorney anywhere for legal services covered under the benefit schedule of the plan.

Partly Open. The client may choose an attorney from a specific geographic area or from a panel in which membership is open to any attorney who subscribes to the terms and conditions of

PREPAID LEGAL SERVICES AND HAWAII

plan (possible entry fee, agreement to accept suggested fee as total payment for service).

Partly Closed. A small number of attorneys and/or firms are available to the group member who has a choice within this narrower grouping.

Fully Closed. Only full-time staff lawyers are available to the group members.

Mixed. Any combination of ways of providing service. For example, in one plan a full-time staff attorney does the major portion of the interviewing and consultation, some selected cases, and many referrals to a panel composed of almost fifty attorneys who specialize and charge favorable fees for the legal services that they render to plan members.

According to Benefits Offered

Plans may offer only advice plus possibly some office work as prepaid in full with no further fee for service up to coverage of any and all legal problems with no exclusions, all fully prepaid. Most plans exclude personal injury or fee-generating cases. If a jointly trustee plan, it must necessarily exclude suits against the employer or the union or use of funds for situations barred under the Landrum-Griffin Act. Other common exclusions are tax returns and traffic court cases.

According to Sponsoring or Administering Organizations

Consumer Groups. Most plans now operating have been designed and formed by consumer groups, principally unions.

Bar Associations. Plans have been designed by bar associations in a number of states: California, Colorado, Florida, Kansas, Michigan, New Mexico, North Carolina, Oregon, Texas and Utah. Utah's and Michigan's are operative.

Insurance Companies. A number of insurance companies have designed policies and are making some marketing efforts.

PREPAID PLANS

Other Organizers. There are a number of non-union, nonbar, and noninsurance organizations that are promoting and administering prepaid plans.²

Formation of Plans³

In forming any prepaid legal services plan, the group must consider (1) what coverage to offer, (2) what delivery system they want, (3) what funding and payment system they will use, and (4) how the plan will be administered. Although the following discussion is presented from a consumer's point of view, the same considerations are relevant to the attorney who may be asked to help form a plan.⁴

a. Coverage

The problem of coverage involves two problems--who to cover and what is and is not covered.

1. Who Is Covered. Within the group, membership in the plan may automatically cover all members of the group upon entering the group or membership may be voluntary at a member's option. If membership in the plan is voluntary, however, problems arise due to adverse selection. That is, those persons having pending legal problems are more likely to join the plan to have these problems solved and then may drop out of the plan after the legal services are provided. Since one of the aspects of a group prepaid plan is risk spreading throughout the group, adverse selection reduces or negates this aspect and the solvency of the plan may be threatened. A voluntary plan can vitiate adverse selection by requiring a certain percentage of the group to join and remain in the plan or by establishing a period of membership which must elapse before legal services are provided. Automatic membership of all persons in the group appears preferable due to the adverse selection aspects of voluntary membership and also for financial and administrative reasons.

Further considerations must be made concerning the coverage of the member of the group and his immediate family. Termination of coverage may end when the member leaves the group, but it would appear that if a legal problem was being serviced at the time of termination of membership, the service should be completed. Provision must also be made concerning conflicts in representation. These conflicts may arise in divorce cases or in cases against the group, as one attorney cannot represent both sides in the

PREPAID LEGAL SERVICES AND HAWAII

case. The *Code of Professional Responsibility* recommends the establishment of a procedure to resolve disputes between a member and the plan.⁵ Referral to an independent counsel with or without reimbursement by the plan may also be provided.

2. What Is Covered. What legal services should the plan provide its members? The type and extent of services provided, of course, depend on the group being covered and the problems confronting group members, i.e., the problems of a union composed of laborers would differ from those of a union composed of teachers. The extent and type or number of services provided will also be controlled by the amount the members of the group are willing to pay--plans cost from \$12 to \$225 a year and more.⁶ The number of different services the group wishes provided are extensive, and although unlimited coverage could be provided, no plans presently so provide.

A variety of services may be covered. The basic service provided by almost all plans is advice and consultation. Many legal problems may be clarified by a telephone call and the advice and consultation service when used prior to signing documents or prior to incurring a legal obligation can forestall future problems; which emphasizes use of the planning and preventive aspect of legal services. An annual legal "check-up" can settle problems before they arise and keep legal matters up to date.

Another service provided is legal document preparation and review. Representation in all stages and for all manner of law suits may be provided with appearances before courts and administrative tribunals. Service limits for plans are usually set forth in dollar amounts or total hours of service provided. Some plans may provide a deductible feature, i.e., the member pays the first \$10 involved in a service the member uses.

A few plans cover nonattorney services such as those rendered by a social worker and expenses such as filing fees and court costs.

3. What Is Not Covered. Almost all plans contain some exclusions. Typically the exclusions include conflict of interest cases, fee generating cases, and business activities of the members.

Fee Generating Cases. Fee generating or contingent fee cases are those in which a person sues for an amount of money and pays the attorney out of the recovery,

PREPAID PLANS

if any. If the suit fails, the attorney is not paid for personal services. Since a group member can obtain the fee for the legal problem in these cases, plans usually do not cover them. An exception, however, is worker's compensation cases which are covered in some union plans.

Profit-Seeking Activities. Legal services involving profit-seeking activities or business activities are usually excluded from the plan. Again the member can obtain the fee from the activity which lessens the necessity for coverage by a plan.

Cases Where Other Coverage Is Available. These cases are excluded to eliminate dual coverage. An example would be car accident cases in which the member's insurance company would provide an attorney if necessary.

Exclusions by Operation of Law. As indicated in chapter 1, certain matters may not be handled by a trust fund established under the Taft-Hartley Act.

4. Other Coverage Issues. In addition to types of service and exclusions, other issues of coverage must be considered by the members of the plan.

Plaintiff Cases. Should there be representation in a legal matter involving a case instituted by a member of the plan? Most plans do provide for coverage when the member is sued, i.e., the member is the defendant. A few plans cover certain types of plaintiff cases, such as consumer actions. When the member is a plaintiff, however, a problem may arise concerning frivolous suits and the stricture on attorneys regarding these suits. These considerations may be resolved by requiring the member to pay expenses and then reimbursing the member if the member wins, or by establishing a dollar amount the member must pay prior to being covered by the plan, i.e., a deductible.

Cases Involving Excessive or Disproportionate Costs. Due to the risk-spreading aspect of prepaid plans, most plans exclude services which involve excessive costs or which will benefit only a small minority of the members. Those involving excessive costs would involve the use of an attorney to prepare tax forms or to handle traffic cases. On the other hand, only a small minority would use the services of an attorney to file an *amicus* brief or to make appeals. Criminal and juvenile delinquency matters are also sometimes excluded.

PREPAID LEGAL SERVICES AND HAWAII

Other exclusions, depending on the group involved, could include: probate matters, wage claims, enforcement of support claims, divorce, patents and copyrights, and bankruptcy.

b. Delivery of Services

Under an open panel prepaid plan such as those provided by bar associations and insurance company policies, there is no change in the method by which a consumer chooses an attorney as all attorneys in the community are generally covered by the plan. This manner of delivery is similar to the Hawaii Medical Service Association plan in which the doctor performs the service and is reimbursed up to a certain amount by the plan. The attorney generally files for payment from the plan.

Under closed panel plans, the group chooses the attorney, firm of attorneys, firms of attorneys, or the group may place an attorney on salary.

In making a selection of a panel, if the group is not choosing a completely open panel plan, the following should be considered.

1. Accessibility. Convenience to the members of the plan is important in influencing utilization of services. This can include flexibility of hours, ease of contact, and broader coverage by geographical location.

2. Member Choice of Attorney. The smaller the number of attorneys involved in the plan the smaller the choice allowed the member of the plan. The members may want a wider choice of attorneys and this may become a consideration in establishing the plan.

3. Quality Control. There is no agreement on how to control the quality of legal services--whether through peer review, measures of client satisfaction, or administrative evaluation. Any of these or others may be used; however, the closer the relationship of the members and the attorneys the more likely that some form of quality control will result, even if only regarding treatment of the members by the attorney.

4. Specialization. Because attorneys are not allowed to list specialties, the plan may have difficulty in choosing the proper attorney for the plan. Group action should, however, result in finding the proper attorney for

PREPAID PLANS

the plan. Further, an attorney in a plan will develop expertise in the areas most used by the members.

5. Administration. Depending on the method of delivery of services and the funding of the plan, administrative problems may occur to a greater or lesser degree. It has been suggested that the group retain overall supervision, but place the handling of daily problems in an administrator.

6. Interest in Innovation and Law Reform. The larger the permanent staff component, the greater the potential for changing the manner in which legal services are provided and for effecting law and administrative reforms in the areas of special interest to the members. For example, the establishment of a plan may lead to the extensive use of paralegal professionals, legal forms, and the most advanced technology. Also the formation of the group may encourage use of class actions relating to matters concerning all members of the group.

7. Attorney-Client Relationships. Under the *ABA Code of Professional Responsibility* the confidentiality and freedom of the attorney-client relationship must be maintained. The relationship may be modified by the presence of third parties such as the sponsor of the group and the plan administrator. The *Code* specifically requires that in a legal services program the individual served rather than the plan or the group is to be considered the client by the attorney.⁷ Attention must be given to this point to preserve the attorney-client relationship.

Further, under the *Code* the client has the option of seeking other counsel if he is not satisfied with the representation he is receiving.⁸ Thus, the plan should provide for means of obtaining such other representation even if outside referral is required.

8. Use of Other Professionals. In establishing a plan consideration should be given to the use of other professionals to reduce the cost of legal services or to serve as an adjunct to such services. Such professionals would include paralegals, social workers, psychiatrists, and specialized personnel. Use may also be made of law students.

c. Funding and Payment Systems

Plans may be financed by the group members by means of premium payments, special assessments, or regular dues; by the group out of its general funds; by employers; or by any

PREPAID LEGAL SERVICES AND HAWAII

combination of these. Most plans rely on funding by group members, but with the amendment of the Taft-Hartley Act under collective bargaining agreements, additional funding will be available from employers.

The method of collecting funds is basic to the plan's stability. The easier and more automatic the fund collection the more efficient the plan. The easiest manner of collection is the union check-off, whether or not the employer is contributing. Payroll deduction or lump-sum payments may also be used. One of the simplest financial delivery systems involves a union agreement with a law firm. The union uses a check-off method for collection of payments for the plan and pays all collections directly to the law firm. The union acts as administrator of the plan.

On the other hand, collection of funds may not be a problem. For example, a minimum benefit plan may only provide for free advice and consultation with further legal work to be provided at a reduced rate. Although the purchasing power of the group secured the lower fees and free advice, there is no payment by the group in this type of plan.

A consideration in establishing a funding system should include a determination of the ability and willingness to pay of the members of the group. To an extent this will be determined by the level of services to be provided and the cost of such services.

Since actuarial data on plan operation is presently limited and since there are no standard rate schedules, financial guarantees by the group or service guarantees by the attorneys must be considered. These guarantees must be given attention due to possible overuse of services by group members and the possibility then arising of insufficient funds to pay for such services. Generally, however, unless entrance into a plan membership is voluntary which results in adverse selection problems, short-falls in funding have been unusual.

There should be some method of accounting and financial controls to report to the membership on the use of funds. For some plans this may not be a problem since plans established as nonprofit corporations must comply with various state laws governing financial records and disclosure. Plans subject to ERISA will have extensive reporting and disclosure requirements.

PREPAID PLANS

d. Plan Administration

After establishing the elements of the plan the administrative structure under which the plan will operate must be chosen. Some of the possibilities include operation by the sponsoring group with perhaps the addition of a person to be concerned full- or part-time with the administrative details, such as collection, disbursement, and filings required by law, of the plan itself.

Placing the administration in the hands of a nonprofit corporation is also a common method. If a for-profit corporation is used to administer the plan, the primary business of the corporation may not be the delivery of legal services.⁹ Under the Taft-Hartley Act a trust jointly administered by the employer and employee may be established. The trustees themselves may administer the plan or they may hire an administrator.

Administration costs have been between 10 and 20 per cent in presently operating plans.¹⁰

Summary

Although there are a number of plans operating in the nation, only 15 to 20 have had extensive experience. While there are similarities between these plans, there is, as yet, no single model prepaid plan.¹¹

PART II. TYPES OF PLANS—SPECIFIC COMPOSITION

In order to gain more familiarity with prepaid legal service plans it is advisable to consider plans already in operation. Already at least 1,500 to 2,000 plans are in operation throughout the nation involving labor unions, employee associations, state and county employees, homeowners, church groups, teachers, consumers, and others.¹² The plans set forth in this part were selected to present the different forms prepaid plans may take and to provide usage and operational data where available. Unfortunately, the actuarial data necessary to determine proper plan costs are still being developed, but such as are available will give some insight.

Shreveport Laborers Local 229—Open Panel¹³

The first and oldest official prepaid plan in the United States is that instituted in Shreveport, Louisiana, in January 1971. This Plan was started as a pilot project of the American Bar Association by its Special Committee on Prepaid Legal Cost Insurance. The Shreveport Plan is an open panel plan involving the attorneys of the Shreveport Bar. It was funded by a 2 cents an hour employee contribution (approximately \$21 a year¹⁴) in addition to grants by the American Bar Association, the American Bar Endowment, and the Ford Foundation. The pilot project was to run for three years and its purpose was to:

1. Develop specific actuarial data on the economic feasibility of prepaid legal services, i.e., can the prepaid approach serve as an effective method of funding adequate legal services for the great body of middle Americans?
2. Determine the causes and consequences of failure to make timely use of legal services; i.e., what legal ills could have been avoided by a proper use of legal expertise?
3. Determine the viability of the Shreveport Plan which preserves to the individual the right of selecting counsel of his own choosing; i.e., can the prepaid concept work effectively where the funds are provided the individual who then chooses his own attorney?

The Shreveport Plan involves the members of Laborers Local 229 composed of approximately 500 members and with spouses and dependent children the number of persons involved was approximately 2,000. The Plan does not establish fees to be charged, but leaves this to be established by the attorney. The attorney bills the plan administrator, an employee-benefit consulting and administrative firm, which reviews the fee charges and may refuse to pay an unreasonable bill. The Plan only pays that amount which is funded by the Plan, the remainder of the bill is paid by the client.

The Plan provides the following benefits.

Advice and Consultation. The Plan provides \$100 per family per year for consultative services, not to exceed \$25 per visit; however, if the initial interview leads to use of the other benefits provided under the Plan, no benefits are allowed under this item.

PREPAID PLANS

Office Work. For office work such as investigation and research, conferences and negotiations, document drafting or review, title search and opinions, etc., the Plan pays \$250 per family per year with a \$10 deductible on each case.

Judicial and Administrative Proceedings. If a member requires representation in judicial or administrative proceedings, the Plan provides \$325 for legal fees, \$40 for court costs and \$150 for out-of-pocket expenses preparatory to such proceedings. If the client is the plaintiff in litigation, there is a \$25 deductible.

Major Legal Expenses. If the member is named as a defendant in a civil suit, or if he is charged with a criminal offense, or if he is named respondent in an action before an administrative agency, the Plan will pay the other applicable benefits, plus 80 per cent of the next \$1,000 of expenses or \$800 above and beyond the coverage otherwise provided.

Exclusions. The Plan excludes legal fees incurred in connection with certain business expenses; successful contingent fee cases; controversies involving immediate parties to the Plan (handled by arbitration); fines and penalties or amounts for which the member might be liable in case of judgment, class actions; interventions or *amicus curiae* filings; charges that were unreasonable or for services that were unnecessary for which no charge would have been made, except for the existence of the Plan; physically filling out and filing tax returns, however, advice and information on any tax problem is provided; any case in which defense or legal representation is provided to the member through any policy or insurance; and "shopping", i.e., the Plan will not pay claims for services or advice when they involve a duplication of the same services or advice previously obtained in connection with the same problem and previously claimed under the Plan.

Summary. After the pilot project was completed the union voted in February 1974 to continue the Plan and assume the costs. The present Plan is essentially the same as set forth above, except that the member's contributions increased from 2 to 3 cents an hour as of September 1974.

The American Bar Foundation studied the Shreveport Plan after the first year of operation and concluded that the major effects of the Plan were to increase the availability of legal services, to bring the legal profession closer to its users, and to bring clients closer to the attorneys. Furthermore, users of the Plan tended to think about the

PREPAID LEGAL SERVICES AND HAWAII

attorneys as problem solvers in areas they had not identified as legal problems before the Plan was operating. With regard to the free choice of attorney issue, the Foundation concluded that the open panel Shreveport Plan did not show free choice of attorneys to mean very much. The report found that the former referral pattern of relying on friends and relatives was replaced by a more structured referral system based on the union and the attorney's reputation in the community.¹⁵

Although final results are not available concerning the Shreveport Plan, some findings have been made. During the first 3 years of operation approximately 45 per cent of the average family units made use of the Plan,¹⁶ based on an average plan membership of 550 families in any given month. In 33 per cent of the instances the cases were handled without a fee being charged. That is, the Plan did not change the practice in the Shreveport area of attorneys not charging for brief advice and consultation sessions, the execution of an instrument, or the preparation of a letter.

The automobile was found to be the cause of 33 per cent of all legal services provided. This includes all kinds of legal problems, civil and criminal, arising out of the automobile. The second area of maximum usage was in domestic relations--separations, divorce, adoptions, and property settlements--equaling 16 per cent. Due to a wildcat strike, unemployment compensation claims accounted for 11 per cent during the first year. The other major categories included property damage 11 per cent, criminal 9 per cent, and retail credit and consumer problems 6 per cent.¹⁷ *[See appendix A for 4-year statistical breakdown.]*

Benefits, in dollars paid, broke down into 28 per cent for office work, 62 per cent for judicial and administrative proceedings, and 9 per cent for major legal. The Plan apparently did cause increased use of the advice and consultation aspect of legal services thus causing a move from crisis counseling to preventive law. The change was small, but measurable.¹⁸

In using the findings from the Shreveport Plan, consideration must also be given to the membership of the Plan. The Shreveport Bar consisted of 268 attorneys of which 1 was a woman and 4 were Black. The members of the union on the other hand were almost all Black, over 50, married with 4 children, and unskilled laborers with a low level of education. The income level of the union members was \$4,000 a year which is just above the poverty level.¹⁹

PREPAID PLANS

The Shreveport Plan works, but the application of the Shreveport experience would appear to require modification for persons with a higher income level, women, single persons, or persons with a greater education level.

Utah State Bar Prepaid Legal Services Plan—Partly Open²⁰

The Utah Prepaid Plan is sponsored by the Utah State Bar and the Utah Credit Union League, Inc. In Utah, the Credit Union League has 328-member credit unions, of which 30 are participating in the Plan. The Plan is administered by a nonprofit corporation organized by the Utah State Bar and operated under contract by a private consulting firm.

As of June 1975 the Plan had 941 members of varying ages, marital status, occupation, and education. The Plan costs the individual and his dependents \$60 a year paid out of credit union shares.

Although the Plan is open and allows any member of the Utah Bar to participate, it appears that there are participating and nonparticipating attorneys. The Plan will pay for attorney services used by a Plan member whether or not the attorney used is a participating member.

If a Plan member uses a participating attorney, payment will be made directly to the attorney. On the other hand, if the Plan member uses a nonparticipating attorney, the member pays the attorney and is reimbursed by the Plan. Participating attorneys, in addition, agree that if the amounts received from Plan members less administration expenses, are insufficient to pay the customary and usual charges of the participating attorneys, the participating attorneys agree to accept their pro-rata share of such amount received from members during the year or part of a year, as determined available.

The benefits and exclusions of the Plan are almost identical to those of Shreveport; however, the Plan provides that if benefits available concerning advice and consultation, office work, and judicial and administrative proceedings have not been used at all in any year, then the Plan member may have the benefit of a carry-over not to exceed 1 year of these benefits to the following year. Thus, the member may have double benefits, but only if the benefit was not used at all in the preceding year.

Summary. Although this Plan is voluntary on the part of the person joining the Plan and no time restrictions are imposed prior to using the legal services of the Plan, the Plan has had no adverse selection problems. The higher cost of the Plan when compared to Shreveport is justified due to the necessity of obtaining Plan members which was not a problem in Shreveport as membership was automatic upon joining the union.

**Michigan Education Association Legal Services Plan—
Partly Open ²¹**

The Michigan Education Association has recently launched a pilot prepaid plan available to 400 members and their families in Lansing, Michigan. The program is funded through one-year grants totaling \$14,000 from the Michigan Bar Association, the Association, and the National Education Association. The cost is estimated to be \$35 per member for the one-year pilot program; however, it appears that the Association participants are not being charged. The average age of the Association members is 37 years and the median family annual income is between \$18,000 to \$20,000. In 53 per cent of the families both spouses work.

The Plan is operated by a nonprofit corporation run by a board of 3 directors from the Association and 2 from the State Bar of Michigan. The total number of attorneys participating in the Plan is approximately 25 per cent of those engaged in private practice. Unlike the Utah Plan, this Plan will not reimburse an Association member who uses the services of a nonparticipating attorney. Attorneys who wish to participate in the Plan agree to accept the billing rates which are slightly reduced from those normally charged and the other terms and conditions of the Plan. The attorneys are paid at the rate of \$30 an hour for covered services. In the event the Plan is terminated, the participating attorneys agree to carry any pending matters through to their completion.

The Plan provides the following benefits.

Advice and Consultation. The member and his family are allowed up to 3 contacts per family per year of not more than one-half hour each. The contacts may be made by telephone, letter, or in person.

Office Work. The member and his family are allowed up to 3 hours per family per year. Coverage includes conferences

PREPAID PLANS

and negotiations, investigations and factual research, and letter writing and document drafting.

Judicial and Administrative Proceedings. Coverage includes all legal representation, limited as to hours, for civil, criminal, or administrative hearings, trials, motions, rules, or appearances of any kind before judicial or administrative bodies. Hour limits per family per year are (1) civil matters--18 hours, (2) criminal matters--3 hours, and (3) traffic offenses--3 hours, limited to moving violations where conviction might lead to an assessment of points resulting in loss of license. Court costs, witness fees, deposition costs, etc., will be paid up to \$100. All of the services allowed under this coverage are subject to a \$50 deductible.

Exclusions. The Plan will not cover (1) expenses of businesses participated in by the member, (2) controversies involving any of the parties to the Plan, (3) contingent fee cases, (4) fines and penalties, (5) unreasonable charges, (6) filling out and filing tax returns, (7) class actions and related proceedings, (8) any case in which the member was entitled to counsel through insurance or other means, (9) shopping, (10) cases pending at the time the person became a member, (11) any case or proceeding involving a decedent's estate, and (12) any matter involving the member's employment.

As in all plans, depending on the work performed for the member, the member is responsible for any additional charge made by the attorney not covered by the Plan.

Summary. This Plan has only been in operation for approximately 6 months, thus there is no information available regarding usage by the members.

Amalgamated Clothing Workers of America, Chicago— Closed Panel—One Law Firm ²²

The number of persons covered by this Plan varies from month to month, and is between 5,000 and 6,000 members with 2,000 retirees entitled to full benefits. The variance is due to the fact that the Plan is handled on a voluntary check-off basis and the number of employees varies. The Plan has been in operation for some 4 years. The initial cost of the Plan was 50 cents per member per month and paid directly through the Amalgamated Benefit Association of the union to the law firm involved. The cost was later increased

PREPAID LEGAL SERVICES AND HAWAII

to \$2 per member per month or \$24 a year. The present Plan is operating at the break-even point with no funds being retained by either the union or the law firm since the total funds are utilized by the Plan. The family of union members are not covered by the Plan, except in situations in which the entire family is involved. The union is composed of all age and racial groups earning between \$125 and \$250 a week.

Benefits. The Plan specifically allows unlimited service, consultation, and appointments within the area covered. All phases of advice, consultation, negotiation, preparation of legal pleadings or documents necessary to conclude each matter is necessarily included. The Plan specifically covers consumer transactions including defense in certain suits, domestic relations as specified, uncontested adoptions, landlord-tenant problems including defenses in rent and mortgage actions, real estate transactions, wills, and preventive law or legal check up.

Exclusions. All services not listed in the Plan are excluded. Specifically excluded are all criminal matters, including traffic violations, collection suits with the member as plaintiff, paternity cases, commercial or income producing realty matters, buy-and-sell agreements, incorporations, and general business transactions, existing lawsuits where a demand has been made for a jury, appellate court proceedings, claims on behalf of the member for bodily injuries, worker's compensation claims, deportation or other proceedings, and fee generating or commercial cases.

All incidental filing costs, etc., to legal cases are to be paid by the member.

Summary. Utilization of the Plan by members of the union has steadily increased over the 4-year period of the Plan to approximately 15 to 20 per cent of the total membership. The heavy areas of use--70 to 75 per cent--are small home purchases, domestic relations matters, and wills for retirees. From there usage drops off into matters involving consumer defense, various types of individual lawsuits, change of name matters, and adoptions. Quality control of services is gained from the fact that the union may discontinue using the law firm at any time as there is no written contract between the union and the firm.

PREPAID PLANS

Laborers' Local 423, Columbus, Ohio—Closed Panel— Attorneys Staff ²³

The number of persons in this Plan varies between 2,000 and 2,500. The members of the Union are spread throughout 9 counties in central Ohio. The population of the Local in Columbus, Ohio, is about 80 to 85 per cent Black, overall about 60 to 65 per cent Black. The cost of the service to the Plan members is 10 cents an hour, or approximately \$70 a year, in the form of an automatic check off. The membership is composed of varied salaried classes. Approximately 10 per cent earn between \$18,000 and \$20,000 a year; another 10 per cent between \$11,000 and \$15,000, usually employed around the year; 20 per cent earn around \$6,000 to \$8,000 a year; with the remainder earning between \$2,000 and \$4,000 a year.

Members and retired members of the Local are eligible for the Plan including spouses and dependents of eligible members. The Plan is administered by an advisory committee selected by the board of the Local. Provisions are made for arbitration; and, with the staff in the union building settlement usually occurs immediately.

The union employs a staff of 3 full-time attorneys and a director of legal services. The attorney staff plus 2 secretaries are housed in the union hall for which rental is paid.

Plan benefits include unlimited advice and consultation and representation in worker's unemployment compensation proceedings. For other matters which involve legal representation beyond advice and consultation, each covered family is entitled to 80 hours of legal services during each calendar year in connection with 5 matters or proceedings per calendar year. Upon exhaustion of the 80 hours, representation in any pending matter or proceeding is carried to conclusion, but further services are not provided. Costs and expenses incurred in connection with legal services rendered under the Plan are covered.

In some areas the services of the Plan are limited. For example, coverage of real estate matters is restricted to the members residence; divorces and separation to the first person applying; representation in juvenile matters to one each calendar year for each of the member's minor children; bail or collateral, if necessary, in an amount not to exceed \$500; and felony cases through the indictment.

Exclusions. Subject matter exclusions include business matters; judicial or administrative matters if an adverse

PREPAID LEGAL SERVICES AND HAWAII

party is an eligible member or defendant, except as provided; cases involving any employer party to a collective bargaining agreement of the Local, the Plan itself or any employee, the Local or its officers and agents or benefits of the Local; contingent fee cases; any matter in which legal services are otherwise available such as insurance, except to the extent not provided; interventions or *amicus curiae* filings; payment of fines and damages; payment of the first \$15 of filing fees in an original proceeding or action; collections on behalf of the member or dependent; court appearances in connection with small claims; and cases pending at the time the member becomes eligible for Plan services.

Summary. Usage in this Plan which has been in operation since 1972 runs about 20 to 30 per cent of the membership at all income levels. Little is done in the way of preventive law as the members do not contact the attorneys early enough. Usage in this Plan is divided between criminal and civil. Traffic offenses involve 22 per cent of the cases, although speeding tickets and the like are seldom involved; misdemeanor cases involve 14 per cent of the cases; divorce 9 per cent; worker's compensation 7 per cent; and the remaining time is spent on varied problems. [See appendix B for a statistical breakdown.]

Quality control results through the attorney staff being in the same building as the union officials who do not hesitate to bring objections of the members to the attention of the attorney staff.

Stonewall Insurance Company—Insurance ²⁴

The Stonewall Insurance Company has filed a Legal Services and Expenses Indemnification Insurance Policy with the Hawaii Department of Regulatory Agencies which was approved April 30, 1973. Since approval of the filing, a supplemental Schedule of Benefits form has been filed and approved. While it does not appear that any sales of this policy have been made in the State, it is an example of prepaid legal insurance.

The policy insures the named insured; and, if a resident of the insured's household, his spouse and children not yet 18 years of age. The policy will reimburse the insured for legal services to the extent provided and allows the insured to choose any attorney he desires in the community. Payment by the company will be made to the insured or to the attorney

PREPAID PLANS

at the insured's request. Various coverages may be purchased at a cost ranging from \$3.50 to \$10 a month. [See appendix C for Schedule of Benefits provided at \$6.50 a month.]

The policy excludes certain legal services in a manner similar to the other plans discussed in this part.

PART III. PREPAID LEGAL SERVICES—IMPACT

After the amendment of the Taft-Hartley Act to allow the formation of prepaid legal service plans, one of the leaders in the prepaid area stated that 1974 would be "...reminiscent of the land rush in the old Oklahoma Territory. We think there are going to be plenty of covered wagons lined up, axle to axle, waiting for a go-ahead signal in the Spring to either rush out and stake a claim for a share of the group legal service funds or to supply the support of services."²⁵ Unfortunately the American Bar Association *Code of Professional Responsibility* headed the wagons off at the pass in 1974; and, although there are still obstacles to the wholesale formation of prepaid plans, 1975 saw the resolution of the *Code of Professional Responsibility* obstacle. Nineteen seventy-six may see the resolution of further obstacles and will undoubtedly witness an increase in the formation of prepaid and group legal service plans.

A continued assertion in the field of prepaid legal services is that 32,000,000 Americans with incomes between \$5,000 and \$15,000 are not able to obtain legal service because they are too expensive.²⁶ These figures are from 1970 data and should be increased to reflect 1975 numbers and Hawaii income experience. The argument that exists as to whether or not these persons need or desire legal services, will be dealt with in chapter 3. In this chapter we will assume that a need and desire does exist for such services and in particular prepaid legal services.

Cost

One of the underlying tenets of prepaid legal services is that it will bring about affordable legal services. Such affordability will come about through the cost spreading of the group and the small monthly payments involved. There can be little argument that these types of cost reduction

PREPAID LEGAL SERVICES AND HAWAII

will occur; however, further cost reduction claims are made for prepaid legal services which may depend on the perspective one takes.

It is said that the bargaining power of the consumer through group action in negotiating group plans will result in a reduction of the price charged for services performed by the attorneys in the plan. Here again the lack of data in the field make comparison difficult and conclusions drawn from such comparisons subject to challenge. With these caveats in mind and with additional rationale presented hereinafter the following table is presented.

AVERAGE COSTS OF DIVORCE AND BANKRUPTCY IN THREE OEO STAFF PROGRAMS AS COMPARED WITH THE SHREVEPORT PLAN AND WISCONSIN JUDICIARE (OEO)²⁷

	Shreveport	Wisconsin Judicare	PTLA	UPLS	CRLS
Divorce	\$258.47	\$182.89	\$27.49	\$38.59	\$58.50
Bankruptcy	\$330.57	\$266.70	\$35.43	\$45.92	\$181.89

PTLA = Pine Tree Legal Assistance (Maine)

UPLS = Upper Peninsula Legal Services (Michigan)

CRLS = Colorado Rural Legal Services

In the above table the Shreveport and the Wisconsin Judicare programs are open panel plans, while the others are closed panel plans. All but Shreveport serve the rural poor. The figures indicate that the closed panel type of plan is less expensive than the open panel type of plan. On the other hand, it should be kept in mind that HMSA and Kaiser medical plans, open and closed panel plans respectively, have quite similar costs. Cost may be a function of size for which unfortunately no comparisons are available.

These figures should not be used to reach a conclusion that freely selected attorneys are overcharging the public, but may indicate that present modes of producing and delivering legal services may be inefficient. For example, as recently as 1966, 53.3 per cent of the attorneys were individual practitioners;²⁸ and, where the closed panel apparently reduces costs as opposed to the open panel is through forced economies of scale.

The closed panel consisting of more than one attorney perhaps can afford to maintain a larger nonlegal staff of

PREPAID PLANS

paralegals to perform initial interviews and utilize labor savings devices like pretyped forms resulting in a smaller overhead per client. The closed panel which services a certain clientele will, within the limits of the plan, develop expertise in those areas covered by the plan. This expertise will as a matter of course reduce the time spent by an attorney on a problem since research and preparation time spent are reduced. Such time savings can be passed on to a member of the plan. As in other businesses, volume also results in cost savings per unit.

In an open panel plan members may go to any attorney in the community as is the present practice. As a result there is little pressure in the open panel plan for the individual attorney to change his methods of practice or to combine with other attorneys.

Effecting Institutional Change

Group action in many areas other than law have effected institutional change or changes in institutional systems. In fact group action--court suits by unions--resulted in the possibility of prepaid and group legal services which is a change in the institutional system of delivering legal services.

Prepaid and group plans, it is argued, will increase the ability of group action to effect change because the group will use the plans to bring class actions to obtain group desires.²⁹ While some institutional change may occur through the use of prepaid and group plans, it does not appear at this time that such change will be extensive.

The reasons that institutional change may not be extensive are to a certain extent inherent in the legal process. In lawsuits the issues are usually narrow and only a small part of the institution or institutional system is challenged. For example, those suits which affect the consumer's or group's choice within the marketplace, such as a challenge to a boilerplate clause in a rental agreement will occur more often than those suits involving environmental protection.³⁰

Another reason that the broader institutional changes may not occur frequently is that the broader the change the group seeks, the more unlikely all members of the group will endorse the action. Further, an institution most likely to be sued--the employer and the labor organization--may as a rule not be sued under existing legal services plans, and may

PREPAID LEGAL SERVICES AND HAWAII

never fall within these plans due to conflict of interest problems.³¹

Many of the plans such as Shreveport appear to exclude class actions of any sort. Also, the other possibility of change, the use of *amicus curiae* briefs are excluded from Shreveport and other plans to the extent such cases do not involve the immediate and direct interests of the member.

The final reason that little change may occur may be answered by the question: "How much change can be effected when the legal services provided on a prepaid basis are only 30 hours a year, per member?"

Load Placed on the Courts

One author has stated that if prepaid and group legal services succeed, the increased contacts with the judicial system due to the subsidization of the plans make it questionable that the judicial system can survive.³² This possibility may exist, but when considered from what is presently known of prepaid and group plans it does not appear likely. Most plans are oriented around and promote preventive law, that is the member of a plan is encouraged to discuss a matter with an attorney before he signs a document or makes a major purchase. Discovery of legal problems before they occur or reach crisis proportions resulting in court actions does not result in overloading the judicial system.

In addition, the so called "annual legal check-up" which most plans encourage their members to have performed will again reveal legal problems at an early state before they develop into court actions. Further, the ability of a plan member to discuss a legal problem that is developing with an attorney will again forestall court action. For example, in landlord-tenant problems the balance of power which has traditionally been in the landlord will be suddenly changed when the landlord receives a letter written by an attorney regarding one of the landlord's tenants.

Finally, the same question must be asked concerning court actions as was asked concerning institutional change. Most plans do not provide for expensive court actions and many of them disallow suits or require a deductible in suits in which the member is the plaintiff. This being the case, unless prepaid and group plans change services provided, the increase in load on the judiciary system is likely to be minimal or there may in fact be a decrease in the load placed on the system as indicated below.

PREPAID PLANS

Employer Savings

An interesting concept which has been presented is that prepaid plans will save the employer of employees having such plans more than the plans themselves cost.³³ The argument is based on the preventive law aspect of these plans. With usage figures for plans ranging between 15 and 30 per cent of the membership, a number of those using the plan may not be faced with a court action. Prevention of court actions reduce absenteeism on the job which would otherwise be necessary in order for the member to obtain his own legal counsel and for court appearances. In addition, employee reductions in productivity, which may otherwise occur due to the emotional stress placed on the employee of having to resolve a legal problem, may be alleviated due to an employee's use of the preventive law aspect of a plan.

Estimates on the number of court cases which would not be necessary if a person had seen an attorney early in the occurrence of a legal problem range to over 50 per cent of all civil litigation. Thus, absenteeism on the job would be reduced and productivity would be increased, since these court appearances would not be required.³⁴ The employer's savings on absenteeism and increased productivity would pay for or equal the cost of contributing to a prepaid legal services plan.

The Legal Profession

If any institution changes due to prepaid and group legal services, it will be the legal profession. The arguments being made by the profession today concerning the possible changes, must be considered, although they should be considered in light of the experience of the medical profession with prepaid and group medical plans. In making such comparison it should be kept in mind that the professions differ; however, the differences may be more imaginary than real.³⁵

The arguments against prepaid and group legal services, particularly closed plans, present the danger of lay interference, the rendering of low quality services, interference with the independence of professional judgment, denial of the long-held traditional values of "freedom of choice", client stealing, advertising, and conflict of interest. All these arguments were raised by the medical profession when faced with the early group and prepaid medical plans to no avail

PREPAID LEGAL SERVICES AND HAWAII

and the medical profession is still alive and well.³⁶ The American Medical Association which was sued by the United States Justice Department due to its effort to prevent group plans, lost. The same is true of the American Bar Association. Group and prepaid medical plans have flourished.

There is apparently no evidence that group and prepaid medical plans furnish low quality services, interfere inappropriately with the professional activities of physicians, or otherwise create problems which the ethical rules of the medical profession are designed to avoid.³⁷ The dangers of lay interference and interference with the independence of professional judgment are faced everyday by attorneys working for government and insurance companies; and, while it has caused problems for these attorneys, they are resolved as they occur. The freedom of choice argument is stated "A client should have the right to choose his own attorney and not be restricted to the attorneys in a closed panel plan." On the other hand, why should a client who chooses to join a closed panel plan not have the freedom to so choose.

A conflict of interest problem revolves around the fact that the attorney is hired, for example, by a union, but he works for the union members. This conflict should not arise, however, where the plan provides that the union member may not use the plan to sue the union--a provision in most plans anyway and a requirement for a Taft-Hartley plan. Other possible conflicts may be similarly handled.

The problems of advertising have been handled by the medical profession and there is no reason why they cannot be handled equally by the legal profession. If client stealing occurs, it is a result of being in a closed panel and that is a choice of the client and not active pursuit of the client by the attorney.

The real influence of prepaid and group plans will be on the methods used by the legal profession to deliver legal services. As indicated, practices necessary to handle volume business will be used. In addition, it appears that there may be fewer and fewer single member and smaller attorney firms due to the necessity of larger groups being required to effectively handle these group and prepaid plans.³⁸

Chapter 3

THE NEED FOR AND INTEREST IN PREPAID LEGAL SERVICES

Much of the literature concerning prepaid legal services either states that a great need for legal services exists among certain income groups or spends considerable time showing why this need exists. While discussion of need may be unavoidable, by the time all the results of the most recent survey performed by the American Bar Association to determine whether or not need exists become available, the number of prepaid and group legal service plans in existence will have increased extensively. The conclusion may be that if the price is right an interest in prepaid legal services exists, whether or not a need is conclusively demonstrated.

National Experience

Nationally the figures used consistently is that 32,000,000 Americans at 1970 income levels between \$5,000 and \$15,000 need legal services.¹ A different method of estimating the number of persons in need of legal services is arrived by the following formula: If the programs for the poor financed by the various governments in attempting to meet the needs of about 20 per cent of the population is added to the estimate of those persons in the upper income brackets comprising approximately 10 per cent of the population who are able to afford to pay for their own legal services, the remaining 70 per cent (100 per cent minus 30 per cent) or 140 million Americans may be concluded to be in need of these services.²

The need for legal services is said to arise because the middle- or working-class citizen not only is the victim of accidents, but as a consumer, taxpayer, voter, employee, parent, investor, and lessee or property owner is beset with situations with legal implications or difficulties. There are little data, however, to support the actual existence of the unmet need for legal services which prepaid and group legal service plans have been proposed to meet. The data apparently do not exist for two reasons (1) in

PREPAID LEGAL SERVICES AND HAWAII

many instances legal problems go unrecognized; and, (2) those who realize they have legal problems are reluctant to seek legal assistance, either because they do not know how to obtain such assistance or they know or believe that the expense of consulting an attorney will be prohibitive.³

The few early studies performed concerning the legal needs of various groups are unfortunately of limited value, either due to the method in which the survey was performed or the groups being surveyed.⁴ Again, the determination of need was one of the reasons for the Shreveport experiment, but as indicated in chapter 2, the results must be considered in the light of the group covered.

In 1971 the American Bar Association formed the Special Committee to Survey Legal Needs to perform a survey. The actual field work on the survey did not begin until October 1973, after choosing a survey research organization and designing a questionnaire of about 175 questions to determine (1) what legal problems the respondent had ever experienced; (2) what resources, if any, were called upon in solving these problems; (3) what experience the respondent had had in consulting an attorney about personal, nonbusiness problems. In addition, respondents were asked questions concerning 6 hypothetical legal problems and their attitudes towards attorneys and the legal system. The survey covered all income levels through in-depth interviews lasting an average of 92 minutes each and queried 2,064 individuals. It took place during the latter part of 1973 and preliminary findings have been released.⁵

Due to the open-ended nature of many of the questions asked in the survey, the answers are still being correlated. Preliminary data released does show the incidence of 34 types of legal problems, the ones being most prevalent involved disagreement with a landlord, disputes about the purchase of a major item of personal property, trouble in securing municipal services, and divorce.⁶ Of unusual frequency, however, were problems concerning discrimination and violation of constitutional rights such as employment discrimination due to age and sex and those concerning personal injury and property damage.⁷

The survey did find that at least 67 per cent of the respondents had been to an attorney at least once in their lifetimes, and of these, 38 per cent had more than one occasion to take problem to an attorney. On the other hand, 19 per cent reported recognizing a legal problem that might be desirable to take to an attorney, but decided not

THE NEED FOR AND INTEREST IN

to do so. The reasons for not going to an attorney are still being correlated.⁸

It was found that referral was the most important way in which respondents found out about attorneys while personal acquaintance was second. Methods of referral utilized, such as bar association referral services or friends, have yet to be determined.⁹

Perhaps more meaningful than estimating need for legal services is interest in obtaining legal services. When asked whether the respondents were interested in joining a prepaid legal services plan, the following results were obtained.

	<u>Per Cent of Respondents</u>
Interested in joining if cost were as much as:	
\$12 a month.....	6.2
\$6 a month.....	16.1
\$3 a month.....	23.6
Don't know/not sure.....	6.0
Not interested if cost were as much as \$3 a month.....	47.6
No answer.....	0.5 ¹⁰

This question was followed by one asking the respondents if it made any difference to them who sponsored the plan. Forty-seven per cent indicated it would and 48 per cent indicated it would not with the rest either not answering or responding did not know.¹¹ Those respondents answering that it would make a difference who sponsored a prepaid plan were given a choice as to which sponsor they would most prefer to run such a plan and then listing their next preference and so on. The answers were as follows:

<u>Group</u>	<u>Rated First</u>
Bar association.....	17.1
Employer.....	11.5
Some other group.....	8.9
Government.....	8.6
Don't know.....	4.0
Sponsorship makes no difference.....	48.4
No answer.....	1.5 ¹²

PREPAID LEGAL SERVICES AND HAWAII

It appears from the preliminary results of the survey that both need and interest do exist for legal services.

Another indication of interest or use of legal services is that those persons in plans tend to make more use of the plan benefits each year the plan is in effect.¹³

Additionally, widespread endorsement by labor unions throughout the county is a further indication of interest. The American Federation of Labor and Congress of Industrial Organizations endorsed prepaid plans at a 1973 convention. The United Auto Workers adopted a similar resolution endorsing plans in 1972.¹⁴ The most active union whose plans resulted in United States Supreme Court cases upholding them is the Laborer's union. The National Education Association is another organization actively endorsing prepaid plans.¹⁵ Finally, both the Teamsters and the American Federation of State, County and Municipal Employees either have plans or have shown an interest in plans.

National interest has resulted in the formation of the National Consumer Center for Legal Services by consumer groups and trade unions to promote prepaid legal services plans for middle- and low-income citizens. The Center provides a lobbying operation in Washington and acts as a clearing house and public information center concerning prepaid legal services. The Center will also provide technical assistance to groups wishing to develop their own plans. Member organizations include the AFL-CIO, the Consumer Federation of America, the NAACP, the National Council of Senior Citizens, the National Education Association, the National Rural Electrification Association, the United Automobile Workers, and the Cooperative League of the USA.¹⁶

Another organization established to meet the demand for information and assistance in the development and evaluation of legal services and delivery systems is The Resource Center for Consumers of Legal Services established in 1975. The board of directors include representatives from labor, law, and consumer organizations.¹⁷

The American Bar Association has long been interested in prepaid and group plans as evidenced by the formation of the Special Committee on Prepaid Legal Services in 1965. In 1974 the American Bar Association formed the American Prepaid Legal Services Institute to provide a vehicle for continuous attention to the needs of attorneys and the public as the field of prepaid legal services develops and expands. The Institute seeks to increase the availability of legal

THE NEED FOR AND INTEREST IN

services to the public by encouraging the development and formation of prepaid legal services plans.¹⁸

The Futures Group, a private research organization, is performing a study to analyze the social and economic impacts which would result from the widespread adoption of prepaid legal services plans. The study is being performed under a grant from the National Science Foundation and may be completed by the end of 1975. A byproduct of the study is publication in conjunction with the National Consumer Center for Legal Services of an excellent handbook on how to start a prepaid legal services plan available without charge.

The insurance industry has kept close watch over the development of prepaid legal services through the National Association of Insurance Commissioners. Several insurance companies have designed prepaid plans and some have cooperated in the administration of existing plans.

Nationally, two monthly periodicals are being published providing extensive coverage of activity in the group and prepaid legal services field.¹⁹

Auto Clubs are again interested in providing legal services²⁰ and the National Credit Union Administration is reviewing its rules governing federal credit unions with a view towards possible amendment in order to allow more active participation in the formation of prepaid plans.²¹

On the national level, then, it may be concluded that there is a great deal of interest both on the part of members of the bar and consumers in the formation of prepaid legal service plans. *[See appendix D for names and addresses of national groups interested in prepaid and group legal services.]*

Hawaii

In Hawaii there are approximately 200,000 persons in income levels between \$7,000 and \$20,000,²² which is the approximate equivalent of the 1970 national figures of \$5,000 to \$15,000. Additionally, there are approximately 130,000 persons with incomes over \$15,000 but less than \$75,000 who may be interested in a prepaid legal service plan.²³ In addition to these persons a number of those eligible for legal aid may enter a prepaid legal services plan through a union or other organization and forego assistance from legal aid.

PREPAID LEGAL SERVICES AND HAWAII

In order to determine if there was any interest in Hawaii concerning prepaid legal services, the Legislative Reference Bureau surveyed labor unions, credit unions, and other selected organizations which might have an interest in sponsoring prepaid plans. [See appendix E for questionnaire and results.]

A great deal of interest was evidenced by labor unions and to a lesser extent, credit unions. Very little interest was evidenced by other organizations. Of the slightly more than half of the labor unions answering, 35 of 61, 74 per cent of the unions knew of prepaid legal services; 40 per cent of them had looked into prepaid legal services; 9 per cent expected to have a plan within 1 year; and 17 per cent expected to have a plan within 3 years. When queried whether their members were interested in prepaid plans, 34 per cent thought the members were very interested and 23 per cent thought that it was a necessity for their members to have prepaid legal service plans.

Of the 53 out of the 64 credit unions answering our survey, 30 per cent were aware of prepaid legal services and 10 per cent had looked into prepaid plans. Only 2 per cent expected to have a plan within 1 year, but 11 per cent expected to have plans within 3 years. When the credit unions were queried whether their members were interested in prepaid plans, 10 per cent thought the members were very interested and 13 per cent thought it was a necessity that their members have prepaid legal service plans. [See appendix F for 1 type of credit union plan.]

Other indications of interest in Hawaii is the formation of a Special Committee on Prepaid Legal Services by the Hawaii Bar Association. The Special Committee will consider and recommend changes to the *Code of Professional Responsibility* for Hawaii attorneys to expedite implementation of prepaid legal services plans.

Local 1186 of the IBEW, the Pacific Electrical Contractors Association, and other signatories representing the construction industry have established a plan subject to the Taft-Hartley Act.²⁴ Also, the Hawaii State Teachers Association has established a pilot group legal service program.

In the insurance field, the Stonewall Insurance Company has had an approved legal services insurance policy on file with the Department of Regulatory Agencies since April 1973. Additionally, supplemental schedules for the policy were most recently filed in March of 1974.²⁵ Apparently no attempt has been made to sell this policy in Hawaii.

THE NEED FOR AND INTEREST IN

The Associated Students of the University of Hawaii has had an ongoing group legal service plan since November 1970. The 1974 contract provided that an attorney would be on campus 6 hours each week during the 1974-75 school term to render advice and consultation to students. The attorney was paid \$8,000 for his services.²⁶

During the 1974-75 school term over 500 students, some with multiple problems, were serviced. The most numerous areas of concern were landlord-tenant (11.2 per cent) and debtor-creditor (10.4 per cent) problems. Consumer protection problems and domestic problems each constituted 9 per cent of the student problems. The remaining subjects presented were on criminal, tort, tax, and corporate matters.

Students with fee producing cases were referred to other attorneys in Honolulu.²⁷

The only other known group for which civil as opposed to criminal statistics are available is the Legal Aid Society of Hawaii which serviced 10,000 persons of an estimated 120,000 eligible for service during the first 9 months of 1975.²⁸ The areas of concern of legal aid clients were in many instances similar to those of university students.

Thirty-four per cent of the cases concerned domestic problems; 16.6 per cent debtor-creditor and employment problems; and 9.5 per cent landlord-tenant problems. In addition, 23 per cent concerned governmental problems on welfare, social security, worker's compensation, veterans administration, unemployment insurance, and similar concerns.²⁹

In summary, it appears that interest in prepaid and group legal services exists in Hawaii. It also appears that a sizable group of persons who may not now be provided legal services would benefit from and may need these plans.

Although the populations served by the Associated Students of the University of Hawaii group plan and the Legal Aid Society of Hawaii are not representative of the population of Hawaii as a whole, the legal problems--debtor-creditor, landlord-tenant, and domestic--being solved for these persons may be faced by the community at large. The services provided by prepaid and group legal service plans as presently constituted would benefit persons with these problems.

Chapter 4

STATE REGULATION OF PREPAID LEGAL SERVICES

The overwhelming majority of the states contacted by the Legislative Reference Bureau have no legislation concerning prepaid legal services. In most of these states the only activity taking place is study by the bar association of the state.

For prepaid legal service plans in those states without statutes, some regulation occurs when the state insurance commissioner rules that prepaid legal service plans are insurance and therefore are subject to insurance laws. In other states, regulation of these plans, to date, has been left with the bar associations to regulate through the *Code of Professional Responsibility*. Prior to the adoption of the 1975 amendments to the *Code*, at least twelve states required the registration of prepaid and group legal service plans with their Supreme Court.¹ Under the 1975 amendments to the *Code* each organization offering prepaid or group legal services is required to file:

*...with the appropriate disciplinary authority at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.*²

In addition to the above, the *Code* regulates the activities of attorneys in general and, as set forth in chapter 1, there is minimal regulation of the prepaid plans themselves. It should be noted that the American Bar Association *Code* and amendments thereto are only recommendations which must be formally adopted by a state in order to be operative within the state.

In those states considering regulation of prepaid legal services plans as insurance, regulation depends on the definition of insurance in the state as determined by statute or case law.

PREPAID LEGAL SERVICES AND HAWAII

If insurance is defined to mean a contract to pay money or its equivalent to indemnify the insured for the destruction, loss, or injury of something in which he has an interest, prepaid legal services may be insurance. If, on the other hand, the definition emphasizes the concept that the event which causes loss must be fortuitous (accidental) or beyond the control of the parties, then prepaid legal services may not be insurance.³ For example, in plans covering will drafting such drafting would not involve a fortuitous circumstance since the event is in control of the person requesting the will. In plans covering a member who is a defendant, a fortuitous event is involved since the plan member is unable to control when he becomes a defendant.

In a National Association of Insurance Commissioners survey of the states on this question, from 35 responses, about 40 per cent of the insurance commissioners thought reimbursement for a fortuitous event would be required in order to be insurance, 40 per cent thought it would be insurance with or without a fortuitous event, and 20 per cent did not know.⁴

Existing Legislation

Although most of the states surveyed are still studying the problems raised by prepaid and group legal services or waiting for the state bar association to suggest or request legislation, some states have enacted legislation.

a. California

California has enacted a statute allowing the formation of nonprofit corporations to administer plans to defray the cost of legal services. These corporations must meet certain requirements (1) the attorneys furnishing the services must comply with the Rules of Professional Conduct of the State Bar of California; (2) membership in the corporation and an opportunity to render the legal services on a uniform basis must be available to all active members of the State Bar; (3) voting by proxy and cumulative voting are prohibited; and (4) a certificate from the State Bar showing compliance with the previous requirements must be issued to the corporation.⁵

STATE REGULATION

b. Georgia

The 1975 session of the Georgia legislature enacted an extensive statute to cover prepaid legal services plans.⁶ The new statute will require all sponsors of prepaid plans, other than insurance companies, legal aid, or other services for the indigent, or employer-employee plans covered by the federal Employee Retirement Income Security Act (ERISA), to obtain a license from the Georgia Insurance Commissioner. The Act provides for minimum requirements to be contained in each plan, requires approval of the rates, premiums, or membership fees to be charged by the plan, allows and controls advertising and solicitation, sets minimum capital requirements, provides for the filing of an annual statement with the insurance commissioner, and requires examination of the books, records, and vouchers of the plan at least once every three years by the commissioner.

c. Minnesota and Wisconsin

Both Minnesota⁷ and Wisconsin⁸ have amended their insurance statutes to allow the sale of legal expense insurance or to allow insurance for attorney fees, court costs, witness fees, and incidental expenses incurred in connection with the use of the professional services of an attorney.

d. Oregon

Oregon has enacted a law providing that certain sections of their insurance code apply to legal service contractors and adds specific requirements to be met by legal service contractors (a nonprofit corporation sponsored by or intimately connected with a group of attorneys).⁹ The specific requirements provide for the distribution of income upon liquidation, establishes capital or surplus requirements of not less than \$25,000 and, in addition, requires the filing of a surety or other satisfactory bond in the amount of \$50,000 as a guarantee of due execution of policies. All schedules and premium rates for legal service to be used are to be filed with the insurance commissioner.

e. Texas

Texas has enacted two statutes in this area. The first, enacted in 1973, allowed the creation of up to five prepaid legal services programs between the Classroom Teachers Association and the State Bar of Texas as pilot programs.¹⁰

PREPAID LEGAL SERVICES AND HAWAII

The statute exempted the pilot programs from the insurance code but required each program to:

- (1) Have a fidelity bond for those officers of the organization authorized to manage funds;
- (2) Comply with the Disciplinary Rules of the *Code of Professional Responsibility*;
- (3) Allow any person participating in the program freedom of choice in terms of choosing an attorney; and
- (4) Inform each member of the program services, the total annual cost to the individual member or beneficiary, and the required compliance of the program to the Act.

In 1975 Texas enacted provisions allowing nonprofit corporations to provide legal service plans and allowing insurance companies to provide legal service contracts.¹¹ The law requires all forms and rates to be approved by the State Board of Insurance. The corporations are required to have at least 200 persons who have applied for legal services, the application fee, and at least one month's payment for services as a condition for doing business, other than soliciting. Each corporation is required to have participating attorneys in a sufficient number to be determined by the State Board. Officers are required to be bonded in a sum of not less than \$25,000 each or a blanket bond.

Proposed Legislation

The few states which have considered but not passed legislation have for the most part concerned themselves with authorizing nonprofit corporations to sell prepaid legal services or allowing the sale of prepaid legal services as insurance under the insurance statutes.¹² Maryland and South Carolina, however, have considered legislation not otherwise introduced in other states.

a. Maryland

Maryland is considering legislation which would give every family in the state access to comprehensive legal services.¹³ The bill would allow each Maryland resident up to

STATE REGULATION

\$750 a year for such services. The bill provides for an open panel plan, but allows residents to opt out of the plan for a private plan.

The bill allows for consultation and advice up to \$100 a year or \$25 a visit; and, office work up to \$250 and litigation up to \$400 a year. Exclusions from service are similar to those provided in other plans.

An appropriation, not to exceed \$10,000,000 each year, is made to a fund to pay for services. If the consumer wishes to opt out of the state plan, the comptroller is to determine the average contribution to the fund of each Maryland taxpayer and to pay to the private plan that amount out of the fund. The cost of the bill is estimated to \$4 per resident a year.¹⁴

When a claim is made on the fund, the consumer is required to pay a proportionate amount of the fee based on the net taxable income. For example, if the consumer's net taxable income is between \$7,000 and \$7,999 the consumer would pay 7 per cent of the fee. The percentage paid is increased 1 per cent for each \$1,000 of income. A minimum payment by the consumer of 3 per cent is required and a maximum payment of 75 per cent is also established. No maximum is apparently placed on the income a consumer may earn.

b. South Carolina

South Carolina is considering a bill to require all prepaid legal services to be regulated by the insurance commissioner, no matter what form the provisions take.¹⁵ The bill allows any insurance company and any other company developing a plan to submit the plan for approval to the insurance commissioner. The definition of legal care insurance covers every type of open or closed panel plan for any type of group. All policies or arrangements concerning legal care insurance or legal services to any group, must be approved by the insurance commissioner. The commissioner may disapprove a policy if in his judgment its issuance would be prejudicial to the interests of the policyholders or if it contains provisions which are unjust, unfair, or inequitable. Certain provisions concerning legal service coverage are required. Schedules of rates must be filed with the commissioner, although the commission is not required to approve the rates. All persons covered by the bill are required to maintain reserves in an amount which may be prescribed by the commissioner. All group legal service arrangements, including referral services, are also placed under the jurisdiction of the commissioner.

Model Acts

There are, as yet, no suggested legislation by those persons most interested in the development of prepaid legal services, such as the National Consumer Center for Legal Services or the American Bar Association. Two proposals do exist however. One was developed by an attorney while in law school and the other by the National Association of Insurance Commissioners (NAIC). The first was proposed in 1973 and the NAIC Model Act was given interim approval in June of 1974. Neither of the proposals have been adopted, nor was there any evidence of their introduction in any of the states forwarding their legislation.

a. An Act to Regulate Group Legal Services Plans¹⁶

This four-title proposal is extensive and pervasive. No discussion for or against the Act was found, nor were any endorsements or opposition by any group discovered. The first title requires registration of all manner of prepaid plans with the state insurance commissioner with extensive informational filings concerning the plan. Title II provides for the formation of profit and nonprofit group legal services corporations to sponsor group legal plans.

Title III provides for regulation of the prepaid plans. Regulation includes the authority to regulate premiums charged, contract requirements, reserve funds, and the maintenance of books and records. Inspection of the books and records by the commissioner is required every three years. Further, the commissioner is allowed to examine relevant books, records, and client files in order to insure quality legal services. Inspection may be made with the permission of the client; or, without permission of the client after the attorney deletes personal identifying material. Grievance procedures are required to be placed in each plan in order to settle disputes between the sponsor, members, and attorneys in the plan. Premium schedules shall be filed with and approved by the commissioner. Both premiums and attorney fees are subject to regulation.

Title IV provides miscellaneous provisions setting forth the powers and duties of the commissioner and his investigatory powers. It provides the conduct of attorneys shall be subject to the *Code of Professional Responsibility* and the sponsors and insurers of the plans shall be subject to the State Unfair and Deceptive Practices Act.

STATE REGULATION

b. NAIC Model Act¹⁷

The NAIC Model Act was adopted on an interim basis in June 1974 with review and possible change to be suggested until December 1974. The June 1974 version is reviewed, since there is apparently no later version. The proposed law has drawn vigorous opposition from the National Consumer Center for Legal Services and the National Education Association.¹⁸

The Model Act treats all types of prepaid plans as insurance and subjects them to the supervision of the insurance commissioner. It does exempt plans in which little or no money changes hands (advice and consent plans with further service provided through fee reduction) and union or employee association legal services provided in matters relating to employment and occupation.

All persons are required to apply for a certificate of authority from the insurance commissioner prior to transacting business. The certificate may be granted upon the satisfaction of the commissioner of certain conditions. Among these conditions are the adequacy of capital and surplus considered in relation to the schedule of rates and other information filed. The commissioner may require a surety bond or other guarantee of performance. The certificate of authority is only good for 1 year on a renewable basis. Insurance companies are covered by this Act in addition to state insurance laws.

Each contractual obligation to provide legal services shall be covered by a policy which is required to contain certain information. The standards by which the commissioner may disapprove the policy are set forth. The rates charged are required to meet generally accepted insurance principles, but are not limited to the actuarial computations. Schedules of compensation paid attorneys or beneficiaries are to be filed with and approved by the commissioner.

Annual reports and financial statements are required. The State Unfair and Deceptive Practices Act is applied to the sale of plans. Violations of the *Code of Professional Responsibility* are to be reported by the commissioner to the attorney general for reference to the Supreme Court of the state.

State insurance fees and premium taxes are applied to all persons subject to the Act.

Chapter 5

PRESENT PROBLEMS IN THE DEVELOPMENT OF PREPAID LEGAL SERVICES

Even though the formation of prepaid legal service plans under the Taft-Hartley Act has been clarified and the American Bar Association's *Code of Professional Responsibility* has been amended so as not to discriminate between open and closed panel plans, there still exist areas which need clarification or amendment.

Nationally

* At the national level the formation of a prepaid legal service plan may involve antitrust regulation and taxation questions.

a. Antitrust Regulation¹

The Antitrust Division of the Department of Justice has stated two chief concerns about the operation of prepaid legal service plans.

First, the plans should not contain price-fixing mechanisms that would set or control legal fees in a broad segment of the market. Until recently the legal profession was doubtful whether any provisions of the federal antitrust act applied to any of its fee practices. In determining that the antitrust acts do apply to bar association minimum fee schedules, however, the United States Supreme Court has established that antitrust laws, at least in part, do apply to certain practices of the legal profession.²

In the case of prepaid legal services a question may arise in a bar association open panel plan if the bar association, directly or indirectly, regulates or establishes the fees to be charged clients in the plan. These activities may constitute illegal price fixing.³ In order to avoid this possibility, the implementation and administration of these plans should be left to the consumer. Prices may then be established by the consumers which the attorneys may accept or reject.⁴

PREPAID LEGAL SERVICES AND HAWAII

In closed panel plans consumers generally set prices by negotiation which seems to avoid the price fixing problem. Further, most present closed panel plans do not affect a broad segment of the legal services market. The same anti-trust questions may arise, however, when large closed panel plans come into being.

Secondly, the Antitrust Division is concerned that bar associations, with their great influence in setting the rules of professional conduct, do not suggest rules that would give an unfair or anti-competitive advantage to the development of open panel over closed panel plans.

In this instance the issue is monopoly. The bar associations or the legal profession control the delivery of legal services, but prohibitions in the Sherman Act⁵ and Clayton Act⁶ against unreasonable restraint of trade forbid practices that place unfair restrictions on competition so that one type of plan dominates the market. These prohibitions were the ground upon which the Antitrust Division based its objection to the 1974 amendments to the American Bar Association's *Code of Professional Responsibility*. The 1974 amendments apparently favored open panel plans over closed panel plans by allowing an unfair advertising advantage to open panel plans.⁷

b. Income Tax Considerations⁸

Under the federal *Internal Revenue Code* specific provision is made for the exemption of group and prepaid medical plans and activities relating to these plans; however, no such provision is made for group or prepaid legal service plans. As a result, three questions exist for prepaid plans:

- (1) What is the tax status of the fund created to pay for the provision of legal services?
- (2) How is the taxability to the employee of contributions made to the plan on his behalf by the employer to be treated?
- (3) Is the value of any benefits received taxable to the employee or member of a plan?

Employer contributions made on behalf of his employees to a plan appear to be deductible as ordinary and necessary expenses of a trade or business under section 162 of the *Internal Revenue Code*.

The taxability of the funds themselves involve two questions--those established under the Taft-Hartley Act and

PRESENT PROBLEMS

others. Taft-Hartley Act funds have been customarily granted tax exempt status under section 501(c)(9) of the *Internal Revenue Code* which provides exemptions to associations providing "...for payment of life, sick, accident or other benefits...." While arguably "other benefits" would include legal service plans, this is not the present position of the Internal Revenue Service.⁹

The tax status of non-Taft-Hartley Act funds is no clearer. Two operating plans, one of which is the Shreveport Plan, have been granted the status of educational and charitable organizations under section 501(c)(3) and are granted exemptions thereunder. The Shreveport Plan which received foundation assistance took two years to receive the concurrence of the Internal Revenue Service as to nontaxable status. The California Lawyers Service, an open panel plan, sought exemption under section 501(c)(4) as a social welfare organization and was turned down on the grounds that the primary purpose of the Service was to advance the business opportunities of the member attorneys.¹⁰

Without statutory exemption, all moneys accumulated--contributions by employers and/or employees minus the expenses and benefits distributed--would be income in each taxable year received which, together with any earnings on the fund's principal, would most likely be subject to the federal income tax.¹¹ Such taxation would of course increase the operating costs of these plans as opposed to health benefit plans.

The second and third tax questions relate to the taxability to an employee of an employer's contributions to a plan and the taxability of benefits received thereunder. What treatment they should receive is unclear under the *Internal Revenue Code*.

Section 61 of the *Code* and regulations thereunder may be read to include both contributions and benefits as income to the employee. On the other hand section 105 of the *Code* provides that amounts (benefits) received through accident or health insurance, directly or indirectly, as reimbursement to the taxpayer for expenses incurred by him for medical care are nontaxable. Section 106 of the *Code* provides that gross income does not include contributions of an employer to an accident or health plan for his employees. Due to the specific exemption for accident and health plans and the lack of exemption for prepaid legal service plans, combined with the definition of gross income, the proper treatment contributions and benefits should receive under the *Code* is not clear. They could well be taxable to the employee or plan member.¹²

PREPAID LEGAL SERVICES AND HAWAII

In order to insure tax treatment for prepaid legal service plans equal to the tax treatment given health plans, so far as employee or plan member treatment is concerned, bills to amend the *Code* have been introduced during the last two sessions of Congress.¹³

Credit Unions

Federal Credit Unions are subject to the Federal Credit Union Act which is administered by the National Credit Union Administration.¹⁴ Present rules and regulations of the Administration do not allow federal credit unions to form or participate in prepaid legal plans; however, they may facilitate voluntary participation of their members in a plan through a third party. Federal Credit Unions may inform members of the plan, but they may not make membership lists or credit union stationery available to a third party for this purpose. Premiums may be checked off to the third party with written authorization of the member, although the credit union may not act as an agent for the third party.¹⁵

Without actively seeking members for a legal services plan, it is difficult to gain enough members to make a plan worthwhile. The National Credit Union Administration is presently in the process of liberalizing their rules which will allow freer access by their members to group or prepaid plans.¹⁶

Hawaii

In Hawaii there are several areas in need of clarification.

a. Tax Considerations

Since Hawaii's income tax laws are based upon federal income tax provisions, the tax treatment of prepaid legal service plans may follow whatever trend develops nationally. On the other hand, since all of the federal income tax problems are subject to interpretation, the state department of taxation could interpret the federal law favorable to prepaid legal plans for state tax purposes.

Taxation under the general excise tax law may occur, since the law does not clearly exempt prepaid legal service activities.

PRESENT PROBLEMS

Section 237-23(a)(6), *Hawaii Revised Statutes*, exempts corporations, associations, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, while paragraph (7) thereof exempts business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare. Faced with the decisions of the Internal Revenue Service that prepaid legal services in the instance of the California Lawyers Service¹⁷ are not a social welfare activity; and grudging acceptance of the Shreveport Plan, and one other, as a charitable or educational activity, the Hawaii Department of Taxation could find that prepaid activities of nonprofit corporations are taxable.

A similar situation exists for plans subject to the Taft-Hartley Act which establish a trust to operate a prepaid plan. Section 237-23(a)(5), *Hawaii Revised Statutes*, provides an exemption to union trusts for "...providing for the payment of death, sick, accident, or other benefits to the members...." As in the federal income tax area a decision must be made whether or not to include prepaid legal services within the ambit of "other benefits".

b. Insurance Regulation

One of the ongoing problems facing prepaid legal service plans is whether they are a form of insurance and therefore subject to insurance regulation and all the actuarial and capital requirements and the taxation of premiums which flow from such regulation.

It appears that plans subject to the Employees Retirement Income Security Act of 1974 (ERISA)¹⁸ are exempt from insurance regulation under the ERISA provision which states:

*...neither an employee benefit plan..., nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for the purposes of any law of any state purporting to regulate insurance companies, insurance contracts, banks, trust companies or investment companies.*¹⁹

This would exempt any prepaid legal service plan established for employees by either the employer, the employees, or by both. Insurance companies, however, would still be subject to existing regulations in other areas.²⁰

PREPAID LEGAL SERVICES AND HAWAII

Prepaid legal service plans involving groups which are not identified as an employer or employee group such as credit unions would not fall within the provisions of ERISA. It also appears that public sector unions, those unions subject to chapter 89, *Hawaii Revised Statutes*, are not covered by ERISA.²¹

These plans and others, however, may be subject to insurance regulation under section 431-3, *Hawaii Revised Statutes*, which provides in subsection (a):

Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.

The possibility of insurance regulation of prepaid legal service plans occurs due to the phrase "...whereby one undertakes to indemnify another...." Indemnify may be defined as an undertaking to compensate for damage or loss sustained, expense incurred, etc., or to give security against (future damage or liability) without loss.²² The purpose of prepaid legal service plans is to collect the cost of legal services in advance for which the member is entitled to a fixed amount of such services. Under some plans the member is reimbursed or indemnified directly by the plan, while in others the attorney is paid directly, a form of indirect indemnification to the member.

Further, subsection (b) of section 431-3, *Hawaii Revised Statutes*, provides that certain contracts are not considered insurance and includes therein employer/employee plans in which contributions are made:

...to the cost of nonoccupational disability benefits, medical attention, treatment, or hospitalization for the employee or members of his family unless such plan is underwritten by an insurer....

Because of the similarity of prepaid legal service plans and prepaid medical plans, the exemption of prepaid medical plans from insurance without a parallel exemption for prepaid legal services may lead to the regulation of prepaid legal services as insurance.

While some state courts are finding that prepaid legal services are not insurance²³ and other states have by statute or interpretation applied the insurance law to a prepaid legal service plans,²⁴ the situation in Hawaii is unclear.

PRESENT PROBLEMS

If prepaid plans are treated as insurance, they may fall within the definition of general casualty insurance which includes insurance against the legal liability of the insured.²⁵ In such a case, the plans may be required to have paid-up capital stock or surplus in an amount not less than \$300,000.²⁶ In addition to capital requirements, rate filings and approvals must be obtained and fees and premium taxes must be paid.

c. Code of Professional Responsibility

The present Hawaii *Code of Professional Responsibility* was adopted by the Hawaii Supreme Court in 1970 and is based on the *Code* recommended by the American Bar Association in 1969. Since its adoption, none of the *Code* provisions pertinent to prepaid services has been amended.

During this period the American Bar Association worked at least 4 years to amend its 1969 *Code* in order to allow and encourage the formation of prepaid legal services plan. In February of 1975 acceptable amendments were made to the *Code*, which have not as yet been adopted by Hawaii.

The Hawaii *Code* as did the 1969 American Bar Association neither recognizes nor encourages prepaid or group legal services.²⁷ By not recognizing prepaid and group plans, many of the activities of attorneys in these plans, such as notifying the members of the name of the attorney and cooperation of the attorney in the formation of such plans, may be found to be a violation of the *Code* as it exists in Hawaii.

Chapter 6

FINDINGS AND RECOMMENDATIONS

PART I. FINDINGS

The Office of the Legislative Reference Bureau finds that prepaid legal service plans have developed during the last 10 years into a viable method of delivering legal services to the public. On a national level prepaid and group legal service plans have met and overcome numerous obstacles and are multiplying each year.

In their development, prepaid legal service plans have been promoted as a solution to the problem of delivering legal services to persons above the poverty level, but not, at least theoretically, wealthy enough to afford or willing to spend money for a private attorney. Historically, however, the first group plans were formed by Merchants Protective Associations to provide members with legal advice and consultation on all personal, business, and private matters, both civil and criminal. Later plans were offered to automobile clubs. Although these organizations lost the first court cases concerning the legality of group legal plans, since prepaid and group plans have now been sanctioned by the United States Supreme Court, it would seem that these organizations, in addition to those persons of lower income, may also be forming prepaid and group plans.

Nationally the leaders advocating prepaid and group plans have been labor and credit unions. The Legislative Reference Bureau surveyed Hawaii labor and credit unions and found appreciable interest in prepaid legal service plans. Seventeen per cent of the labor unions and 11 per cent of the credit unions expect to have prepaid legal service plans within 3 years. Thus, it appears that labor and credit unions will be the leaders in Hawaii as they have been nationally. Although only 1 prepaid legal service plan and 1 pilot group plan were discovered in Hawaii, other plans will undoubtedly proliferate as further developments occur at the national level and if statutory clarification is forthcoming in Hawaii.

On the national level the Taft-Hartley Act has been amended to allow the use of union funds and the formation of

joint trust funds by employers and employees for furnishing union members prepaid legal services. Congress has also enacted the Employees Retirement Income Security Act of 1974 which appears to preempt much of the state statutory and bar association regulation of prepaid legal service plans formed by employers, employees, or both.

PART II. RECOMMENDATIONS

The recommendations made in this part are pursuant to the direction of the legislature to make recommendations "needed to expedite the development of prepaid legal services program in the State of Hawaii,...."¹ With this direction in mind and cognizant of the need to protect the consumer in the operation of such legal service plans, the following recommendations are made.

Tax Changes

It was noted in chapter 5 that the national income tax laws do not provide the same nontaxable treatment to prepaid legal service plans as accorded to prepaid medical plans. While the national tax laws may be favorably interpreted or statutorily changed, given the usual 1 to 5 year delay in the adoption of federal income tax changes in Hawaii, it is recommended that Hawaii's income tax law be amended to provide that:

- (1) Taft-Hartley Act funds and nonprofit organizations providing prepaid benefits be exempt from income taxation.
- (2) Employer's contributions to a plan and benefits from a plan to the employee be treated as nontaxable income to the employee.

Further, a legislative resolution should be sent to Congress to urge amendment of the income tax statutes to exempt prepaid legal service activities from taxation.

In the area of general excise taxation, it is not clear that either a nonprofit organization or a Taft-Hartley Act trust furnishing prepaid legal services is exempted from taxation, although they would be exempt if they were

FINDINGS AND RECOMMENDATIONS

furnishing medical or similar benefits. This doubt should be clarified by exempting such activities from the general excise tax.

Regulation as Insurance or as Prepaid Legal Services

Although most employer, employee, and joint prepaid plans are apparently preempted from state regulation under insurance or other statutes by the Employees Retirement Income Security Act of 1974 (ERISA), many other organizations may be offering these plans which could be subject to insurance statutes.

In the area of regulation the legislature has three choices.

ONE: The legislature can choose not to regulate prepaid legal service plans at all, but to let consumer groups protect themselves against attorney groups through contracts between each other; and, to allow consumer groups and attorney groups to protect themselves against defaults by third party administrators who collect funds, make payments, and administer the plans.

This choice may be made by exempting prepaid legal service plans from any manner of insurance regulation. It does seem feasible that consumer groups would be able to protect themselves against attorney groups, since they would have contractual rights and the *Code of Professional Responsibility* in their favor.

When a third party administrator intervenes, however, this choice is subject to greater doubt. The third party administrator may not be subject to the *Code of Professional Responsibility* and the contract would not afford protection against unfair business practices or embezzlement.

In the field of prepaid legal services, particularly where a third party administrator is involved, large amounts of money may be accumulated and there may be fair-practices and mail-solicitation problems. Due to these possibilities some protection should be provided the consumer without overburdening the growth of and experimentation in prepaid legal service plans.

TWO: The second alternative is to make no amendments to the insurance statutes and allow prepaid legal service

PREPAID LEGAL SERVICES AND HAWAII

plans to be treated as insurance, if the insurance commissioner so interprets the insurance statutes.

The position of the National Association of Insurance Commissioners (NAIC) is that prepaid legal service plans should be treated as insurance whether or not sold by insurance companies.² The argument of the NAIC is that all persons in the field should be treated alike and plans sold by companies other than insurance companies should not be given an advantage over plans sold by insurance companies. Why this argument should be adopted for prepaid legal service plans, while it is not true of prepaid medical plans is not explained; nor does it seem persuasive since medical plans are sold by insurance companies subject to insurance regulation and by nonprofit companies (Kaiser) which are not subject to insurance regulation.³ Consumer organizations and unions are against the NAIC proposed Model Act.⁴

This alternative does have several advantages. The problems which may be caused by a third party administrator are covered by the insurance statutes or the NAIC Model Act. State tax problems are obviated, since insurance companies pay a premium tax and are exempt from the state income and general excise tax.⁵

The disadvantages of this alternative are the high capital requirements--\$300,000 paid-in capital stock or surplus if the plans are treated as general casualty insurance. Increased costs would also result from premium taxes and administrative costs.

Application of this alternative to a plan such as that of the Amalgamated Clothing Workers of America of Chicago would stifle such a plan. In that plan there are approximately 6,000 union members paying \$24 a year or approximately a total of \$204,000 a year directly to the law firm. Almost all of the funds are used for benefits, while the costs of administration are apparently shared by the union and the law firm and not charged to the plan.

Since prepaid legal services is still in the development and experimentation stage, this alternative does not appear to allow free growth of such services. Secondly, since prepaid legal service plans in many forms are not clearly insurance, the insurance commissioner might rule that some or all are not subject to regulation. Finally, any such ruling could be subject to court challenge. The last two objections could, of course, be overcome by specifically applying insurance statutes to prepaid legal service plans or by adopting the NAIC Model Act.

FINDINGS AND RECOMMENDATIONS

THREE: The third and recommended alternative is to provide enough regulation to protect the consumer, but to allow continued growth and experimentation with prepaid legal service plans.

This alternative would exempt the plans sponsored by organizations other than insurance companies from insurance regulation. These plans should, however, be subject to the following requirements:

- (1) All plan documentation should be filed with the Department of Regulatory Agencies prior to implementation of the plan.
- (2) All plans should be specifically subject to chapter 480, Monopolies; Restraint of Trade; chapter 481, part I, Unfair Practices Act; chapter 481A, Uniform Deceptive Trade Practices Act; and chapter 481B Unfair and Deceptive Practices, *Hawaii Revised Statutes*.
- (3) Protection should be given to any accumulation of funds made under a plan.
- (4) The Department of Regulatory Agencies should be allowed to inspect the books and documents of any plan and required to do so every three years or the plans should be required to submit a statement of a certified public accountant that their books have been audited.

This alternative would not add appreciably to the cost of administering a plan, it would provide protection to the consumer while allowing for growth and experimentation in the field, and it would clarify any doubts concerning the application of insurance statutes to plans sponsored by organizations other than insurance companies.

Code of Professional Responsibility

The *Hawaii Code of Professional Responsibility* is based on the *Code* recommended by the American Bar Association in 1969. None of the amendments concerning prepaid legal services have been adopted, although they are being studied by the Special Committee on Prepaid Legal Services of the Hawaii Bar Association.

The failure to adopt the most recent amendments suggested by the American Bar Association would hinder the

PREPAID LEGAL SERVICES AND HAWAII

growth of prepaid legal services in Hawaii. Because the *Code of Professional Responsibility* is adopted and amended by the Hawaii Supreme Court, a legislative resolution requesting early consideration and adoption of proper amendments and encouraging early action by the Hawaii Bar Association and the Hawaii Supreme Court would expedite the implementation of prepaid legal services in Hawaii.

Consumer Education

Prepaid plans providing legal services at a lower cost may meet one of the two reasons why it is difficult to determine whether a need for legal services exists; that is, the cost of such services is either known or believed to be excessive and this discourages their use.

The second reason, however, i.e. the failure to recognize legal problems when they occur will only be partially met by prepaid legal services. Groups will be educated by the plans to use the preventative aspect of law instead of waiting until a court case arises. Plans will also educate groups on the benefits offered and their use.

Both recognition of legal problems and prepaid legal services, however, could be furthered by consumer education programs undertaken by the Hawaii Bar Association and the Department of Education. As one paper has pointed out:

*It is astounding that in as legalistic a country as the United States, nowhere in the educational system does one get a working knowledge of the law as part of a general education.*⁶

This failure could be overcome by directing the Department of Education to expand the subject matter of required courses to include information concerning at least the problems most often faced by citizens, such as landlord-tenant, consumer, and domestic problems and to provide an understanding of the functioning of the court system.

The Hawaii Bar Association should undertake a program of public education concerning prepaid legal services, the law, the use of attorneys, the court system and the services offered by the Hawaii Bar to the citizens of the State. To quote an ethical consideration of the Hawaii Bar contained in the *Code of Professional Responsibility*:

The need of members of the public for legal services is met only if they recognize their

FINDINGS AND RECOMMENDATIONS

legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their legal problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.⁷

FOOTNOTES

Chapter 1

1. Florian Bartosic and Jules Bernstein, "Group Legal Services as a Fringe Benefit: Lawyers for Forgotten Clients Through Collective Bargaining," 59 Va. L. Rev. 410, 416.

Definitions of GLS are many and varied. The ABA Special Committee on Availability of Legal Services has offered the following:

Plans by which legal services are rendered:

- (1) To individual members of a group identifiable in terms of some common interest,
- (2) By a lawyer provided, secured, recommended, or otherwise selected by:
 - (a) The group, its organization, or its officers; or by
 - (b) Some other agency having an interest in obtaining legal services for members of the group.

ABA SPECIAL COMM. ON AVAILABILITY OF LEGAL SERVICES, REPORT TO ABA HOUSE OF DELEGATES (1968).

The Group Legal Services Committee of the California State Bar has defined GLS as:

Legal services performed by an attorney for a group of individuals who have a common problem or problems, or who have joined together as a means of best bargaining for a predetermined position, or who have voluntarily formed, or become members of an association with the aim that such association shall perform a service to its members in a particular field or activity, or through common interest it appears that the organization can gain a benefit to the members as a whole.

Examples of such organizations are labor unions, employer organizations, trade associations, teachers' groups, civil service employees or any body politic, members of a social club or of an automobile club, fraternal organizations, and numerous other such associations. Included also may be groups who associate themselves for the purpose of establishing a plan of prepaid legal services to be rendered to individual members thereof, whether or not the members have a common interest in a certain field of activity.

1964 Progress Report, California State Bar Group Legal Services Committee, 39 Cal. St. B.J. 639, 661 (1964).

2. Beverly C. Moore, "Prepaid Legal Services in Perspective: An Overview" in *Collected Materials on Prepaid Legal Services* (Virginia: Special Committee on Prepaid Legal Services of the Virginia State Bar, January 1973), p. 1.

3. Bartosic and Bernstein, pp. 428-29.

4. "Revised Handbook on Prepaid Legal Services," ABA Special Committee on Prepaid Legal Services (Chicago: American Bar Association, 1972) (hereinafter *Revised Handbook*). Recommendation of the ABA Special Committee on Prepaid Cost Insurance that the name of the committee be changed to the Special Committee on Prepaid Legal Services.

5. James Wu, *Prepaid Legal Services: Perspective for Connecticut* (Connecticut: Connecticut General Assembly, 1974), p. 1.

6. *In re Gill*, 104 Wash. 160, 176 P. 11 (1918); *State ex. rel. Lundin v. Merchants Protective Corporation*, 105 Wash. 12, 177 P. 694 (1919); *People ex. rel. Lawyers' Institute of San Diego v. Merchants Protective Corp.*, 189 Cal. 531, 209 P. 363 (1922).

7. *People ex. rel. Chicago Bar Association v. Motorists Association of Illinois*, 354 Ill. 595, 188 N.E. 827 (1933); *Rhode Island Bar Association v. Automobile Service Association*, 55 R.I. 122, 179 A. 139 (1935); see Bulleit, "The Automobile Clubs and the Courts," 5 Law and Contemp. Prob. 22 (1938); contra *In Re Thebodeau*, 295 Mass. 374, 3 N.E. 2d 749 (1936).

8. *Ryan v. Pennsylvania Railroad Company*, 268 Ill. App. 364 (1932); *In Re Petition of the Committee on Rule 28 of the Cleveland Bar Association*, 15 Ohio L. Abs. 106 (Ct. App. 1933); *In Re O'Neill*, 5 F. Supp. 465 (E.D.N.Y. 1933); *Hildebrand v. State Bar of California*, 18 Cal. 2d. 816, 117 P. 2d 860 (1941); *Hildebrand v. State Bar of California*, 36 Cal. 2d 504, 225 P. 2d 508 (1950); *Doughty v. Gills*, 37 Tenn. App. 63, 260 S.W. 2d 379 (Ct. App. 1952); *In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N.E. 2d 163 (1958).

9. 371 U.S. at 429.

10. 377 U.S. at 8.

11. Brief of the American Bar Association as *amicus curiae* in support of petition for rehearing at 12, petition denied, 377 U.S. 960.

12. 401 U.S. at 585-86.

13. "Committee Report--Group Legal Services," 39 J. St. Bar Cal. 639, 652 (1964).

14. *Revised Handbook*, pp. 1-5.

15. See e.g., Frederick G. Fisher, Jr., "Future Options of the Private Bar in the Field of Prepaid Legal Services," 58 Mass. L.Q. 243, 255 (1973).

16. For an excellent comparison of open versus closed panels see, Edwin L. Gasperini and Max Schorr, "Prepaid Group Legal Services--Where We Are," 45 N.Y.S.B. 69, 75 (1973).

17. Id.

18. Charles H. Baron and Garrick F. Cole, "Real Freedom of Choice for the Consumer of Legal Services," 58 *Mass. L.Q.* 253, 256 (1973).
19. *Id.*
20. *Id.*
21. Bartosic and Bernstein, p. 427.
22. Barlow F. Christensen, *Lawyers for People of Moderate Means: Some Problems of Availability of Legal Services* (Chicago: American Bar Foundation, 1970), p. 134.
23. Baron and Cole, p. 259.
24. Bartosic and Bernstein, p. 428; Baron and Cole, p. 257.
25. Baron and Cole, p. 257.
26. Bartosic and Bernstein, pp. 432-33.
27. Gasperine and Schorr, p. 75.
28. Baron and Cole, p. 258.
29. For an extended discussion, see Lyman M. Tondel, Jr., "The New ABA Ethic," and Robert J. Connerton, "The New ABA Ethic: Comments," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), pp. 64-75.
30. Robert J. Connerton, "The New ABA Ethic: Comments," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), p. 72.
31. *Trends in Legal Services*, Sept. 1974, p. 1.
32. U.S. Congress, Senate Committee on Judiciary, Subcommittee on Representation of Citizen Interest, *Hearings on Recent Developments in Prepaid Legal Service Plans*, 93d Cong., 2nd Sess., 1974, p. 2.
33. *Group Legal Review*, Feb. 1975, p. 1.
34. *Trends in Legal Services*, Mar. 1975, p. 1. In particular new Disciplinary Rule 2-103(D) reads:

A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm except as permitted in DR 2-101(B). However, this does not prohibit a lawyer or his partner or associate or any other lawyer affiliated with him or his firm from being recommended, employed, or paid by, or co-operating with, one of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm if there is no interference with the exercise of independent professional judgment in behalf of his client:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide nonprofit community organization.

(c) Operated, or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association.

(4) Any bona fide organization that recommends, furnishes, or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised, or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

(b) Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate, or affiliated lawyer.

(c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected, or approved by the organization for the particular matter involved; and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected, or approved would be unethical, improper, or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(f) The lawyer does not know or have cause to know that such organization is in violation of applicable

laws, rules of court, and other legal requirements that govern its legal service operations.

(g) Such organization has filed with the appropriate disciplinary authority at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

A New Ethical Consideration 2-33 was adopted which reads:

As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to co-operate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence, and devotion to the interests of individual clients. An attorney so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent, professional representation of the interests of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

35. "House passes revised prepaid Code amendments--ending a year long debate," *American Bar News*, Apr. 1975, p. 4.
36. Danny Jones, "The Necessity for the General Practitioner to Reorganize for Group Practice," *Prepaid Services and Beyond* (Chicago: American Bar Association, 1974), pp. 80, 82.
37. 29 U.S.C. 302(c).
38. A mandatory bargaining item means that the employer is required to bargain over the item once it is placed on the bargaining table. If there is a failure to reach an

agreement, the union is free to strike over that issue. Robert J. Connerton, "Legislation at the National Level," *Prepaid Legal Services* (Chicago: American Bar Association, 1973), pp. 89-90.

It is not clear at this time whether legal services will be a mandatory item of bargaining. Connerton states it is at p. 92. The United States Senate Committee on Labor and Public Welfare, however, indicates in Senate Report No. 93-139 on S. 1423, 1973, that whether or not an item is mandatory is decided by the courts or the National Labor Relations Board unless otherwise stated in the law as is the case with child care centers.

To date no decisions regarding legal services has been found; therefore, it is unknown whether or not legal services will be a mandatory bargaining item.

39. The text of the amendment reads:

The provision of the section shall not be applicable . . . with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: *Provided*, That the requirements of clause (B) of the proviso to clause (B) of this subsection shall apply to such trust funds: *Provided further*, That no such legal service shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under subchapter II of this chapter or this chapter; and (B) in any proceeding where a labor organization would be prohibiting from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

40. Public Law 93-406; 29 U.S.C. 1001 et. seq.
41. 29 U.S.C. 1002(1).
42. 29 U.S.C. 1003.
43. 29 U.S.C. 1144.
44. *Trends in Legal Services*, Sept. 1974, p. 4.
45. For an extended discussion of ERISA, see "The Effect of ERISA on Prepaid Legal Services," 27 *Baylor L. Rev.* 566 (1975).

While the coverage of ERISA is extensive, some employer/employee plans may not be covered thereunder. For example, proposed regulations provide that a plan with less than 100 participants which provides benefits in a specified manner is exempt from certain provisions of ERISA. In addition to this partial exemption, the

proposed regulations provide for the total exemption of certain plans. The extent of preemption may also be questioned in areas not regulated by ERISA. ERISA specifically deals with reporting, disclosure, and fiduciary responsibility and administration and enforcement. ERISA does not appear to cover participation, vesting, and funding for prepaid plans. Certain plans are also excepted from the coverage of ERISA, such as governmental plans, church plans, plans maintained solely for the purpose of complying with applicable worker's compensation and unemployment compensation laws or disability insurance laws, and excess benefit plans.

Chapter 2

1. *Trends in Legal Services*, Nov. 1974, p. 3.
2. Philip J. Murphy, "A Vision of the Future," *Trial, The National Legal Magazine*, Mar./Apr. 1975, p. 13.
3. Much of the discussion in this section regarding the formation of plans has been taken from: The Futures Group and The National Consumer Center for Legal Services, *Prepaid Legal Services: How to Start a Plan* (Washington, D.C.: 1975), pp. 19-34.
4. The ABA's Special Committee on Availability of Legal Services developed a checklist of basic points to consider when formulating a prepaid-legal-service program. This checklist applies to an open-panel system.
 - I. Purposes and Objectives of the Program
 - A. To improve the availability of all lawyers to that section of the public which is between the poverty group and the wealthy
 - B. To preserve a free choice of lawyers by the public
 - C. To develop the relation of lawyer-client in a non-crisis or non-litigation situation; i.e., preventive law
 - D. To improve the prospect of obtaining quality legal services economically
 - II. Who Will Receive Legal Services
 - A. Single individuals
 - B. Local groups with a single common interest; e.g., local union, lodge, association
 - C. Multi-unit groups; e.g., employees of all local bottlers, credit unions, trade associations
 - D. Nationwide groups; e.g., all employees of the Federal Postal Corporation, all employees of General Motors, all members of Consumers Union
 - III. Who Will Provide the Services
 - A. All lawyers who enroll in a panel
 - B. All lawyers within a given jurisdiction
 - C. Any lawyer of law firm anywhere
 - IV. Expert Services Needed to Develop Program
 - A. Legal counsel
 - B. Program designers and administrators
 1. Actuary/consultant
 2. Administrator
 - a. Own salaried employee

- b. Administration firm hired on contract basis
- V. Establishing the Program
 - A. Benefits
 1. Scope or limitation
 - a. Matters related to employment or common interest of the group
 - b. All individual legal problems
 - c. Exclusions and deductibles
 - (1) Suits against employer
 - (2) Contingent fee cases
 - (3) Specific areas of law (probate, divorce, etc.)
 - (4) Status of plaintiff or defendant
 - (5) Business matters
 - (6) Matters covered by insurance or other means (group plan)
 - (7) Filling out tax returns
 - (8) "Shopping"*
 - B. Method of financing
 1. By direct remittance from individual member
 2. By third party out of member's funds
 3. By third party on behalf of member
 - a. As fringe benefit contributed directly by employer to prepaid plan administrator
 - C. Structure of operating entity
 1. Nonprofit corporation
 2. A charitable trust
 3. A bar association
 4. An insurance company
 - D. Data requirements
 1. Plan identification
 - a. Calendar year
 - b. Plan identification number
 2. Insured member information
 - a. Name
 - b. Social Security number
 - c. Birth date
 - d. Birth date
 - e. Employment date
 - f. Plan membership date
 - g. Status code (beginning of year)
 - h. Status code (end of year)
 - i. Compensation
 - j. Type of member; e.g., union, hourly, salaried
 - k. Employer code
 - l. Place of employment
 - m. Residence
 - n. Marital status (name of spouse, Social Security number, birth date)
 - o. Family data (names of children, sex, birth date)
 3. Claim information
 - a. Name of attorney
 - b. Nature of practice
 - c. Size of firm
 - d. Claimant identification number
 - e. Date claim initiated
 - f. Type of claim
 - g. Source of claim
 - h. Duration of claim
 - i. Status of claim at beginning of year
 - j. Status of claim at end of year
 - k. Procedures utilized
 - (1) Consultation
 - (2) Investigation-research
 - (3) Document work
 - (4) Motions filed

- (5) Court appearance
- l. Resolution of claim
- m. Amount of claim
- n. Amount covered by plan

*I.e., duplication of the same services or advice--so called because the individual is seen as "shopping around."

5. American Bar Association, *Code of Professional Responsibility*, Disciplinary Rule 2-103(D)(4) (e), (hereinafter *Code*, DR).
6. Murphy, p. 13.
7. *Code*, DR 2-103(D)(4)(d).
8. *Code*, DR 2-103(D)(4)(e).
9. *Code*, DR 2-103(D)(4)(a).
10. David Weinstein, "The Future of the Legal Profession--Part 2," *Juris Doctor*, Sept. 1975, pp. 19, 22.
11. *Id.* at 21.
12. U.S. Congress, Senate, Committee on Judiciary, Subcommittee on Representation of Citizen Interest, *Hearings on Recent Developments in Prepaid Legal Service Plans*, 93d Cong., 2nd Sess., 1974, p. 2.
13. Except as noted discussion of the Shreveport Plan was taken from Shreveport Bar Association, *Laborers Local Union 229; Prepaid Legal Service Plan, A Compilation of the Basic Documents*, p. 22. For other sources of information on Shreveport see, F. Marles, R. Hallauer, and R. Clifton, *The Shreveport Plan: An Experiment in the Delivery of Legal Services* (Chicago: American Bar Association, 1974); R. Hallauer, "The Shreveport Experiment in Prepaid Legal Services," 2 *J. of Legal Studies* 223 (1973); J. Getman, "A Critique of the Shreveport Experiment," 3 *J. of Legal Studies* 487 (1974).
14. Ralph W. Jackson, "A Brief Review of Existing Data of Legal Needs Among Middle Income Americans," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), p. 9.
15. F. Marles, R. Hallauer, and R. Clifton, *The Shreveport Plan: An Experiment in the Delivery of Legal Services* (Chicago: American Bar Foundation, 1974), pp. 91-95.
16. Henry A. Politz, "Laborer's Local 229, Shreveport, Louisiana," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), p. 57. Average family unit is used due to the constant change in union personnel and those covered by the plan.
17. *Id.* at 58.
18. *Id.*
19. Julius G. Getman, "A Critique of the Shreveport Experiment," 3 *J. of Legal Studies* 487 (1974).
20. Discussion taken from: Charles Harris, "Utah Prepaid Legal Services Plan," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), pp. 32-39; Joseph Novak, "How the Utah Prepaid Legal Services Plan Operates," 60 *A.B.A.J.* 1081; the Utah Prepaid Legal Services Plan.
21. Discussion taken from: the Michigan Education Association Legal Services Corporation Prepaid Legal Services Plan and summarization prepared by the State Bar of Michigan.
22. Discussion taken from: Avrum R. Dannen, "The Plan of the Chicago Joint Board of the Amalgamated Clothing Workers," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), pp. 48-55; the Group Legal Service Plan (Revised) of the Amalgamated Clothing Workers; Letter from Eugene Crane to Richard F. Kahle, Jr., August 5, 1975; Letter from Eugene Crane to the American Bar Association, December 17, 1974.
23. Discussion taken from: David Clayman and Victor Smedstad, "Laborers Local 423," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), pp. 20-31; the plan of the Laborers Local 423, Legal Service.
24. Discussion taken from: Legal Services and Expenses Indemnification Insurance Policy, Stonewall Insurance Company, filed with the Hawaii Department of Regulatory Agencies, approved April 30, 1973 and Supplemental Schedules of Benefits LS13 and LS14 filed and approved April 6, 1974.
25. Robert J. Connerton, "Legislation Affecting Prepaid Legal Services, Legislation at the National Level," *Prepaid Legal Services* (Chicago: American Bar Association, 1973), p. 92.
26. Ralph N. Jackson, "A Brief Review of Existing Data on the Extent of Legal Needs Among Middle Income Americans," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), p. 8.
27. Florian Bartosic and Jules Bernstein, "Group Legal Services as a Fringe Benefit: Lawyers for Forgotten Clients Through Collective Bargaining," 59 *Va. L. Rev.* 410, 430. The computations for the table were made as follows:

First, estimates of the average time of both the attorney, and the other personnel involved were obtained from program directors and/or administrators. The dollar value of this time was computed on the basis of average annual salaries (within each program), using the assumption that the lawyer's work-week is a 35 hour week, despite the fact that staff attorneys in these programs often put in ten or more hours beyond this. To the resulting figures were added the cost of filing fees and court costs, where they are paid by the program, and a prorated figure representing indirect costs. Thus, the formula is: the cost of professional and nonprofessional time plus fees plus indirect costs.
28. *Id.*, at 430, 431.

29. Peter H. Schuck, "The Possibility of Effecting Institutional Changes," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), p. 109.
30. *Id.* at 112-113.
31. *Id.* at 113.
32. Clara Ann Bowler, "Prepaid Legal Services and the Alternative Practice of Law," 51 *Chi.-Kent L. Rev.* 41, 53-54.
33. *Trends in Legal Services*, Mar. 1975, p. 6.
34. *Id.*
35. For a comparison of such differences, see Garrick F. Cole, "Will the History of Health Plans on Cost and on Quality Controls Repeat Itself in Legal Services," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), p. 135.
36. *Id.* at 141.
37. *Id.*
38. David Weinstein, "The Future of the Legal Profession--Part 2," *Juris Doctor*, Sept. 1975, p. 19.
13. "Quintet: The Usage and Cost of Five Operating Plans," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), pp. 19-62.
14. *Trends in Legal Services*, Jun. 1974, p. 9.
15. *Primer* at 8.
16. *Trends in Legal Services*, Jun. 1974, p. 9.
17. *Group Legal Review*, Sept. 1975, p. 3.
18. *Alternatives: Legal Services and the Public*, Dec. 1974, p. 8.
19. *Trends in Legal Services* published by Editorial Services, 1523 L Street, N.W., Washington, D.C. 20005 for \$50 a year and *Group Legal Review* published by the National Consumer Center for Legal Services, 1302 18th Street, N.W., Washington, D.C. 20036 for \$15 a year for individuals and \$100 a year for organizations. Organization members receive a special bulletin which consists of complete copies and text of the latest publications, studies, court decisions, plan reports, and limited technical advice in establishing prepaid plans.
20. *Group Legal Review*, Aug. 1975, p. 3.
21. *Group Legal Review*, Jun. 1975, p. 3.
22. Estimated from Hawaii, Department of Taxation, *Hawaii Income Patterns, 1972, Individuals* (Honolulu, 1975), p. 16.
23. *Id.*

Chapter 3

1. Ralph N. Jackson, "A Brief Review of Existing Data on the Extent of Legal Needs Among Middle Income Americans," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), p. 8.
2. The American Bar Association Special Committee on Prepaid Legal Services, *A Primer of Prepaid Legal Services*, ed. Philip J. Murphy (Chicago: 1974), p. 7 (hereinafter cited as *Primer*).
3. Florian Bartosic and Jules Bernstein, "Group Legal Services as a Fringe Benefit: Lawyers for Forgotten Clients Through Collective Bargaining," 59 *Va. L. Rev.* 410, 417 (1973).
4. See Preble Stolz, *The Legal Needs of the Public: A Survey Analysis* (Chicago: American Bar Foundation, 1968).
5. Barbara A. Curran and Francis O. Spalding, *The Legal Needs of the Public* (Chicago: American Bar Foundation, 1974).
6. *Id.* at 68.
7. *Id.* at 68-72.
8. *Id.* at 79-98.
9. *Id.*
10. *Id.* at 91.
11. *Id.*
12. *Id.* at 92.
24. The plan is funded by a 2 cents an hour contribution by the employer. The plan is collecting funds, but has not been activated pending an opinion from the Internal Revenue Service concerning the tax aspects of the plan. See also, advertisement for an in-house attorney to provide certain legal services under a Taft-Hartley Prepaid Legal Fund. *Honolulu Advertiser*, Sept. 18, 1975, p. D-7.
25. Legal Services and Expenses Indemnification Insurance Policy, Stonewall Insurance Company, filed with the Hawaii Department of Regulatory Agencies, approved April 30, 1973.
26. University of Hawaii contract no. HC-1073 between the Associated Students of the University of Hawaii and Ian L. Mattoch, Attorney at Law, July 3, 1974.
27. Report submitted to the Associated Students of the University of Hawaii by Ian L. Mattoch, Attorney at Law pursuant to University of Hawaii contract no. HC-1073, 1974.
28. *Pacific Business News*, Oct. 20, 1975, p. 27.
29. Statistics submitted by the Legal Aid Society of Hawaii to the Legislative Reference Bureau, Sept. 22, 1975.

Chapter 4

1. *Trends in Legal Services*, Oct. 1974, p. 3.
2. American Bar Association, *Code of Professional Responsibility*, sec. DR 2-103(D)(4)(g).
3. James Wu, *Prepaid Legal Services: Perspective for Connecticut* (Connecticut: Office of Legislative Research, 1974), p. 13.
4. William B. Pugh, "Insurance Regulation, Problems of Regulation," *Prepaid Legal Services* (Chicago: American Bar Association, 1973), p. 111.
5. *Calif. Corp. Code*, sec. 9201.2.
6. *Georgia*, Act 684, 1975 legislative session.
7. *Minn. Stat. Ann.*, sec. 60A.06, subdivision 1(15); 60A.07, subdivisions 5a, 5b, and 5c; 60A.08, subdivision 10.
8. *Wis. Stat. Ann.*, sec. 201.04.
9. *Oregon Laws*, 1973, Act 97.
10. *Texas*, Act 582, 1973 legislative session.
11. *Texas*, S.B. No. 28, 1975 legislative session.
12. *Connecticut*, substitute H.B. No. 5141, 1975 legislative session, allowing the sale of prepaid insurance by nonprofit corporations and insurance companies; *Illinois*, S.B. No. 558, 1975 legislative session, providing that legal expenses are a class of insurable risk which may be written by insurers; *Massachusetts*, H.B. No. 2503, 1975 legislative session, similar to Georgia Act 684; *New Jersey*, S.B. No. 726, 1974 legislative session, allowing formation of nonprofit corporations to sell legal services; *New York*, S. 1001-D, 1975 legislative session, allowing the sale of legal service insurance; *North Carolina*, H.B. No. 996, 1975 legislative session, allowing formation of a nonprofit corporation to sell prepaid legal services.
13. *Maryland*, H.B. No. 1110 and S.B. No. 980, 1975 legislative session.
14. *Trends in Legal Services*, Mar. 1975, p. 1.
15. *South Carolina*, H.B. No. 2059, 1975 legislative session.
16. Garrick F. Cole, "An Act to Regulate Group Legal Service Plans," 11 *Harv. J. Legis.* 68 (1973).
17. *Trends in Legal Services*, Jul. 1974, pp. 5-8.
18. *Id.* at 1.
- 1973), pp. 138-155; Richard K. Decker, "The Federal Finger of the Antitrust Division," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), pp. 123-128; L.M. Cornish Jr. and Craig M. Cornish, "Group Legal Services Today," 14 *Washburn L.J.* 31, 37-42 (1975).
2. *Goldfarb v. Virginia State Bar Association*, 43 U.S.L.W. 4723 (1975).
3. L.M. Cornish Jr. and Craig M. Cornish, "Group Legal Services Today," 14 *Washburn L.J.* 31, 42.
4. *Id.*
5. 15 U.S.C. secs. 1-7.
6. *Id.*, sec. 12 et. seq.
7. *Cornish and Cornish* at 38. For example, the California Lawyers Service, an open panel plan, has requested and received a business review letter from the Department of Justice. The letter raised serious antitrust questions about both the fee schedule and the state bar rules, *Trends in Legal Services*, Sept. 1974, p. 3.
8. For further treatment, see Stephen J. Martin, "Federal Taxation Problems of Prepaid Legal Services," *Prepaid Legal Services* (Chicago: American Bar Association, 1973), pp. 128-137; Florian Bartosic and Jules Bernstein, "Group Legal Services," 59 *Va. L. Rev.* 410, 450-459 (1973).
9. Florian Bartosic and Jules Bernstein, "Group Legal Services," 59 *Va. L. Rev.* 410, 455.
10. *Group Legal Review*, Dec. 1974, p. 1.
11. Bartosic and Bernstein at 454.
12. *Group Legal Review*, Dec. 1974, p. 2.
13. HR 14894, 93d Cong. 2d Sess. (1974); HR 3025, 94th Cong. 1st Sess. (1975).
14. 12 U.S.C. 1751 et. seq. While there is a State enabling law, *Hawaii Rev. Stat.*, ch. 410, no state credit unions have been chartered.
15. 12 CFR sec. 721.2.
16. *Trends in Legal Services*, Jun. 1975, p. 8.
17. The California Lawyers Service decision may be an anomaly, but the Internal Revenue Service has not to date been receptive to the exemption of any prepaid plans.
18. 29 U.S.C. sec. 101 et. seq.
19. 29 U.S.C. sec. 1144.
20. Even in the regulation of insurance companies and the effect of ERISA thereon is not totally clear, see *Trends in Legal Services*, May 1975, p. 3. Clarification may occur upon the issuance of regulations by the United States Department of Labor.
21. 29 U.S.C. secs. 1001(32), 1003. ERISA does not cover government plans which include a

Chapter 5

1. For further treatment, see "Antitrust Questions in Prepaid Legal Plans," *Prepaid Legal Services* (Chicago: American Bar Association,

plan established by a state government for its employees. ERISA also does not cover employer or employee organizations not engaged in commerce or industry.

22. *The Random House Dictionary of the English Language, College Edition* (New York: Random House, 1969), p. 676.
23. *Group Legal Review*, Mar. 1975, p. 4, May 1975, p. 1.
24. James Wu, *Prepaid Legal Services: Perspective for Connecticut* (Connecticut: Office of Legislative Research, 1974), pp. 13-18.
25. *Hawaii Rev. Stat.*, sec. 431-11(13).
26. *Hawaii Rev. Stat.*, sec. 431-88.
27. Compare in particular *Hawaii Code* provisions DR 2-101(B), 2-103(B), 2-103(C), 2-103(D), 2-104(A)(2) and (3), with the 1975 version of the *Code* adopted by the American Bar Association. The most important provision of the *Hawaii Code* 2-103(D) is set forth below and may be compared with the 1975 *Code* provision at footnote 34 of chapter 1.

(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office:

(A) Operated or sponsored by a bona fide non-profit community organization.

(B) Operated or sponsored by a governmental agency.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists. the general bar of the geographical the general bar of the geographical area in which the association exists.

(5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only if the following conditions are met:

(A) The primary purposes of such organization do not include the rendition of legal services.

(B) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.

(C) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

(D) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter.

Chapter 6

1. Hawaii, Senate Concurrent Resolution No. 54, House Draft No. 1, Regular Session of 1975.
2. William B. Pugh, "The State Insurance Commissioners," *Prepaid Legal Services and Beyond* (Chicago: American Bar Association, 1974), pp. 129-134.
3. *Hawaii Rev. Stat.*, sec. 431-3.
4. *Trends in Legal Services*, Jul. 1974, p. 1.
5. *Hawaii Rev. Stat.*, secs. 237-23(a)(4), 431-318, 431-320, 431-338.
6. Laura Nader and Linda R. Singer, *Law in the Future: What are the Choices?* Papers prepared for Conference Sponsored by the State Bar of California, Hotel Del Coronado, San Diego, California, Sept. 12-14, 1975, p. 35.
7. Ethical Consideration 2-1, Hawaii, *Code of Professional Responsibility*, sec. EC 2-1.

Appendix A

SHREVEPORT PLAN

FOUR YEAR CLAIMS SUMMARY

January 1971 - January 1975

GENERAL		1971		1972		1973		1974		Per Cent Average
(A)	Members certified for usage	108		76		74		105		
(B)	Percentage of usage (family unit)	20%		14%		14%		20%		
(C)	Files closed with fee charged	31		56		65		92		
A N A L Y S I S O F C L A I M S P A I D										
CATEGORIES OF CASES		No.	%	No.	%	No.	%	No.	%	
(A)	Domestic Relations	14	45.2	7	12.5	10	15.4	28	30.5	26
(B)	Automobile (all inclusive)	5	16.2	14	25.0	25	38.5	24	26.1	26
(C)	Retail credit & consumer problems	2	6.4	4	7.2	3	4.6	6	6.5	6
(D)	Bankruptcy	2	6.4	5	9.0	--	--	5	5.5	6
(E)	Successions	1	3.2	7	12.5	2	3.1	4	4.3	6
(F)	Unemployment Compensation	--	--	8	14.2	1	1.5	1	1.1	4
(G)	Workmen's Compensation	--	--	2	3.5	2	3.1	1	1.1	2
(H)	Tort	--	--	--	--	1	1.5	--	--	$\frac{1}{4}$
(I)	Criminal	--	--	3	5.3	13	20.0	18	19.5	11
(J)	Juvenile	1	3.2	--	--	--	--	--	--	1
(K)	Real Property	5	16.2	5	9.0	7	10.8	4	4.3	10
(L)	General Contract Problems	--	--	1	1.8	--	--	--	--	$\frac{1}{4}$
(M)	Insurance (other than auto)	--	--	--	--	1	1.5	--	--	$\frac{1}{4}$
(N)	Administrative Law	--	--	--	--	--	--	1	1.1	$\frac{1}{4}$
(O)	Unknown	1	3.2	--	--	--	--	--	--	--
		31	100%	56	100%	65	100%	92	100%	

Appendix B

LABORERS' LEGAL SERVICE

STATISTICAL REPORT

	<u>1972</u>	<u>1973</u>	<u>1974</u>
I. <u>Criminal</u>			
Misdemeanor	18.3%	12.9%	14.1%
Traffic	17.5%	23.0%	21.9%
Juvenile	2.0%	1.6%	2.3%
Felony (to indictment)	3.3%	5.6%	4.9%
Miscellaneous	--	--	.3%
<i>TOTALS</i>	<u>41.1%</u>	<u>43.1%</u>	<u>43.5%</u>
II. <u>Civil</u>			
Automobile	1.2%	2.6%	3.8%
Bankruptcy	2.0%	2.0%	3.2%
Bureau of Motor Vehicles	1.1%	3.2%	2.3%
Civil Rights	--	.1%	.1%
Collection Defense	11.9%	9.1%	3.3%
Consumer Complaint	3.3%	2.0%	1.9%
Contract	--	--	1.5%
Divorce	8.8%	6.5%	8.4%
Domestic	3.3%	3.4%	2.2%
Garnishment	--	.2%	.1%
Insurance	1.5%	1.2%	2.2%
Internal Revenue Service	.5%	1.2%	.7%
Juvenile	--	.2%	--
Landlord-Tenant	.6%	.7%	1.2%
Personal Injury	--	.4%	.9%
Probate	8.1%	8.5%	6.7%
Property Damage	.9%	1.6%	.6%
Real Estate	3.7%	4.0%	5.3%
Replevin	1.2%	.7%	.3%
Small Claims	.1%	--	--
Social Security	--	.1%	.2%
Tort	--	--	.6%
Trusteeship	.3%	--	.2%
Miscellaneous	1.4%	1.9%	2.7%
<i>TOTALS</i>	<u>49.9%</u>	<u>49.6%</u>	<u>48.4%</u>
III. Workmen's Compensation	8.5%	6.2%	7.1%
Unemployment Compensation	.5%	.9%	.6%
Social Security	--	.2%	.3%
Garnishment	--	--	.1%
<i>TOTALS</i>	<u>9.0%</u>	<u>7.3%</u>	<u>8.1%</u>

Appendix C

STONEWALL INSURANCE COMPANY

SCHEDULE OF BENEFITS

(Endorsement to Legal Services and Expenses Indemnification Insurance Policy Form LS1P)

The Company will indemnify the payments of the following actually incurred expenses for the legal services indicated. The amounts indicated are the maximum amounts (in the aggregate) applicable to the specified type of service that may be incurred during the limitation period specified below on this endorsement.

COVERAGES

MAXIMUM BENEFITS

(A) <u>Preventive Law</u>	
Consultation with a practicing attorney of insured's choice, up to four half-hour consultations during any limitation period, subject to a maximum of \$25.00 per consultation.	\$100.00
In the event that consultation leads to a claim for benefits covered under coverages B, C, or D no benefits will be payable under Coverage (A) Preventive Law.	
(B) <u>Criminal Law</u>	
(No coverage shall apply to any charges arising out of traffic violations or vehicular offenses except as specifically described in Item (B) 4. Traffic.)	
1. <u>Misdemeanors:</u>	
(a) Arranging and release on bail, Arraignment, Court Appearance, and Plea Negotiation	\$125.00
(b) Trial, maximum two day @ \$150.00 per day	\$300.00
2. <u>Felony:</u>	
(a) Arranging and release on bail, Arraignment, Court Appearance, and Plea Negotiation	\$200.00
(b) Trial, maximum four days @ \$150.00 per day	\$600.00
3. <u>Juvenile:</u>	
Court Appearance, Plea Negotiation and Trial	\$100.00
4. <u>Traffic:</u>	
Coverage limited to the Named Insured and spouse and for the following offenses:	
(i) Traffic violation involving driving while under the influence of intoxicants or drugs	
(a) Arrange bail, Court Appearance, and Plea Negotiation (\$10.00 Deductible)	\$100.00
(b) Trial, maximum one day (\$10.00 Deductible)	\$75.00
(ii) Reckless or careless driving	
(a) Arrange bail, Court Appearance, and Plea Negotiation (\$10.00 Deductible)	\$75.00
(b) Trial, maximum one day (\$10.00 Deductible)	\$75.00
(C) <u>Civil Actions</u>	
1. Where Insured is a party defendant in any court and the ad damnum in pleadings exceed the limit of any applicable liability insurance policy, total benefit, in any limitation period.	\$75.00
2. Where Insured is a party defendant or respondent in any other court or forum.	\$75.00
There shall be no coverage for any case in which the Insured is a party plaintiff whether on a contingency fee basis or otherwise, unless specifically covered under Coverage (D) General Legal Services.	
(D) <u>General Legal Services</u>	
1. Bankruptcy, maximum	\$175.00
2. Marital Relations	
(a) Divorce (dissolution of marriage), including filing complaint, default hearing, interlocutory and final decree	\$175.00
(b) Initial order to show cause	\$60.00
(c) Preparation of answer in an action for divorce or separate maintenance, including responsive affidavit.	\$60.00
(d) Appearance at temporary hearing and financial hearing preparation of any necessary orders opposing action for contempt or for a restraining order including responsive affidavits appearance at hearing, and preparation of final order if required.	\$75.00
3. Adoptions	\$125.00
4. Real Estate	\$50.00
5. Change of Name:	
(a) First person	\$60.00
(b) Each additional person	\$15.00
6. Wills:	
(a) Will	\$25.00
(b) Husband and Wife Wills	\$35.00
(c) Codicil to a Will	\$10.00

MAXIMUM BENEFITS

(Policy Limits)

With respect to each named Insured inclusive of the Insureds included by definition with such person, the maximum total benefits payable under this insurance during any 12 months period commencing with the date of the event of consultation or use of legal services giving rise to the first eligible claim by an Insured hereunder, shall be \$2,500.00.

LIMITATION PERIOD

Each of the coverages provided herein is limited as to maximum benefits payable therefor during any 12 months period, which is referred to as the "Limitation Period". Such period for each coverage shall be measured from the date of the event of consultation or other use of legal services giving rise to the first eligible claim under the specified coverage by an Insured.

Appendix D

The following are addresses of groups particularly interested in prepaid or group plans and who will give assistance or advice.

National Consumer Center for Legal Services
1302 18th Street, N.W.
Washington, D.C. 20036

The Resource Center for Consumers of
Legal Services
1302 18th Street, N.W.
Washington, D.C. 20036

Philip J. Murphy, Staff Director
Special Committee on Prepaid Legal Services
205 East Carrillo Street
Santa Barbara, California 93101

William T. Kirby, President
American Prepaid Legal Services Institute
3220 Prudential Plaza
Chicago, Illinois 60601

The Futures Group
124 Hobron Avenue
Glastonbury, Connecticut 06033

Appendix E

Labor Unions
(38 of 61 Replying)

LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 004
Honolulu, Hawaii 96813

PREPAID LEGAL SERVICES QUESTIONNAIRE

(Please Circle One Answer, except as otherwise directed)

1. Was your organization aware of prepaid legal services prior to this letter?

YES 26 (74.3%) NO 6 (17.1%) No Reply 3 (8.6%)

2. Has your organization looked into prepaid legal services?

YES 14 (40.0%) NO 17 (48.6%) No Reply 4 (11.4%)

If yes, please check one or more (all applicable).

- | | |
|---|----------|
| a. The executive board has discussed prepaid legal service plans at board meetings. | <u>8</u> |
| b. The organization has corresponded with other organizations concerning such plans. | <u>5</u> |
| c. The organization has had people talk to the membership about creating a plan. | <u>5</u> |
| d. The organization has contacted a consulting firm regarding the establishment of a plan. | <u>1</u> |
| e. The organization has contacted an attorney to discuss the furnishing of legal services under a plan. | <u>8</u> |
| f. The organization has taken a membership vote on establishing a plan. | <u>3</u> |
| g. Other (please specify) <u>Exploratory discussion; Negotiating; Talk with International Affiliate; Prepaid Legal Fund established August 15, 1975</u> | <u>4</u> |

3. In your opinion, the interest of the members of your organization in prepaid legal service plans is:

Very interested 12 (34.3%) Slightly interested 6 (17.1%) Uninterested 2 (5.7%)
Don't know 12 (34.3%) No reply 3 (8.6%)

4. In your opinion, the need of the members of your organization for prepaid legal services is a:

Necessity 8 (22.9%) Luxury 2 (5.7%) Convenience 11 (31.4%) Don't know 11 (31.4%)
No reply 3 (8.6%)

5. Does your organization plan to implement a prepaid legal service plan within the next 1 2 3 4 or more years?

1 year 3 (8.6%) 2 years 1 (2.9%) 3 years 2 (5.6%) 4 or more years 5 (14.3%)
Don't know 11 (31.4%) No 3 (8.6%) No reply 10 (28.6%)

LRB-PLSQ1 7/22/75

Appendix E

Credit Unions
(53 of 64 Replying)

LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 004
Honolulu, Hawaii 96813

PREPAID LEGAL SERVICES QUESTIONNAIRE

(Please Circle One Answer, except as otherwise directed)

1. Was your organization aware of prepaid legal services prior to this letter?

YES 16 (30.2%) NO 37 (69.8%) No Reply 0

2. Has your organization looked into prepaid legal services?

YES 5 (9.4%) NO 46 (86.8%) No Reply 2 (3.8%)

If yes, please check one or more (all applicable).

- | | |
|---|----------|
| a. The executive board has discussed prepaid legal service plans at board meetings. | <u>2</u> |
| b. The organization has corresponded with other organizations concerning such plans. | <u>3</u> |
| c. The organization has had people talk to the membership about creating a plan. | <u>0</u> |
| d. The organization has contacted a consulting firm regarding the establishment of a plan. | <u>0</u> |
| e. The organization has contacted an attorney to discuss the furnishing of legal services under a plan. | <u>2</u> |
| f. The organization has taken a membership vote on establishing a plan. | <u>0</u> |
| g. Other (please specify) _____ | <u>2</u> |

3. In your opinion, the interest of the members of your organization in prepaid legal service plans is:

Very interested 5 (9.4%) Slightly interested 5 (9.4%) Uninterested 2 (3.8%)
Don't know 41 (77.4%) No reply 0

4. In your opinion, the need of the members of your organization for prepaid legal services is a:

Necessity 7 (13.2%) Luxury 3 (5.7%) Convenience 13 (24.5%) Don't know 30 (56.6%)
No reply 0

5. Does your organization plan to implement a prepaid legal service plan within the next 1 2 3 4 or more years?

1 year 1 (1.9%) 2 years 2 (3.9%) 3 years 4 (7.5%) 4 or more years 4 (7.5%)
Don't know 12 (22.6%) No 12 (22.6%) Maybe 1 (1.9%) No reply 17 (32.1%)

LRB-PLSQ1 7/22/75

Appendix E

Other Organizations
(8 of 19 Replying)

LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 004
Honolulu, Hawaii 96813

PREPAID LEGAL SERVICES QUESTIONNAIRE

(Please Circle One Answer, except as otherwise directed)

1. Was your organization aware of prepaid legal services prior to this letter?

YES 3 (37.5%) NO 5 (62.5%) No Reply 0

2. Has your organization looked into prepaid legal services?

YES 0 NO 8 (100.0%) No Reply 0

If yes, please check one or more (all applicable).

- | | |
|---|----------|
| a. The executive board has discussed prepaid legal service plans at board meetings. | <u>1</u> |
| b. The organization has corresponded with other organizations concerning such plans. | <u>0</u> |
| c. The organization has had people talk to the membership about creating a plan. | <u>0</u> |
| d. The organization has contacted a consulting firm regarding the establishment of a plan. | <u>0</u> |
| e. The organization has contacted an attorney to discuss the furnishing of legal services under a plan. | <u>0</u> |
| f. The organization has taken a membership vote on establishing a plan. | <u>0</u> |
| g. Other (please specify) _____ | <u>0</u> |

3. In your opinion, the interest of the members of your organization in prepaid legal service plans is:

Very interested 0 Slightly interested 1 (12.5%) Uninterested 2 (25.0%)
Don't know 4 (50.0%) No reply 1 (12.5%)

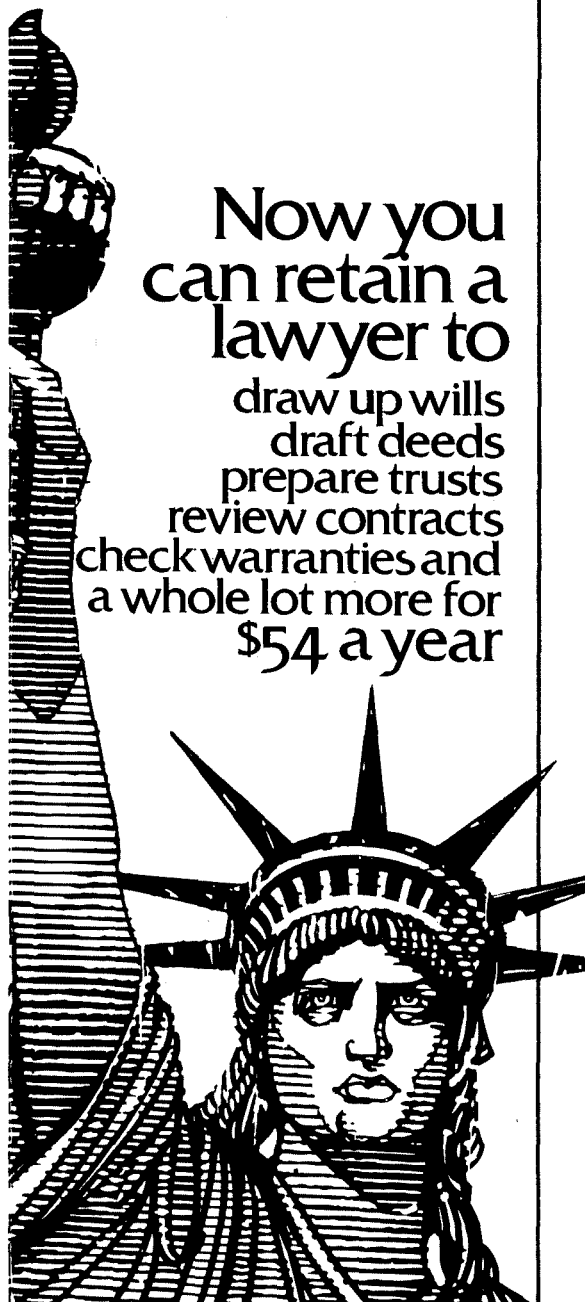
4. In your opinion, the need of the members of your organization for prepaid legal services is a:

Necessity 0 Luxury 2 (25.0%) Convenience 1 (12.5%) Don't know 4 (50.0%)
No reply 1 (12.5%)

5. Does your organization plan to implement a prepaid legal service plan within the next 1 2 3 4 or more years?

No 6 (75.0%) No reply 2 (25.0%)

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**Now you
can retain a
lawyer to
draw up wills
draft deeds
prepare trusts
review contracts
check warranties and
a whole lot more for
\$54 a year**

Helps take the financial worry out of legal fees

It's estimated that 70% of all Americans are either under-represented or are not represented at all by a lawyer.

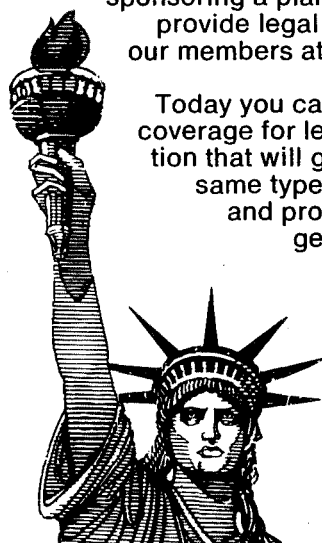
Cost is probably the main reason this majority does without legal counsel. However, the wrong advice, or no advice can be a lot more costly in the long run.

Especially when people end up losing their cases because they weren't represented. Maybe you know someone that happened to.

A helping plan.

Your credit union realizes the problem. That's why we're sponsoring a plan which will provide legal services to our members at prices you can afford.

Today you can purchase coverage for legal protection that will give you the same type of security and protection you get by buying health coverage.



**PERSONAL
LEGAL
SERVICES**

The cost. It stands to reason that by pooling the risk, you end up with a lower cost per person. You pay only \$54 a year for the Single Plan or \$66 a year for the Family Plan. The latter covers the member, spouse, and all unmarried, dependent children under 18 years of age. For that fee, you can receive over \$1,700 worth of legal help a year. Quite a return on your investment. The following explains the coverages you get for your money.

Coverage A: GENERAL COVERAGE

Maximum Payable Per Covered Family Group is \$250 per Contract Year

- (1) One-half hour advice and consultation (Rate is per visit with three visits per year covered).....\$20.00
- (2) Drafting or review of residential or apartment lease.....30.00
- (3) Simple will including execution.40.00
- (4) Reciprocal simple will including execution.60.00
- (5) Preparing and filing creditor's claim in bankruptcy.20.00
- (6) Representation of the Buyer or Seller of residential property, (including examination of Title Insurance Company's commitment or Torrens certificate of title).130.00
- (7) Name change.75.00
- (8) Will with trust provisions including execution, not including marital deduction provisions.100.00
- (9) Reciprocal will with trust provisions, including execution, not including marital deductions.150.00
- (10) Preparation and supervising execution of inter vivos trusts, not including marital deduction provisions.100.00
- (11) Adoption including adoption through placement agency.200.00
- *(12) Uncontested divorce; separate maintenance; annulment; (no action regarding alimony, child support, property division, etc.).....250.00

*Coverage A(12) shall not become effective until one year after the Effective Date of Individual Coverage.

Coverage B: GENERAL COVERAGE

Maximum Payable Per Covered Family Group is \$250 Per Contract Year

- (1) Document drafting or review of contracts, settlements or releases.\$35.00
- *(2) Separation agreements: includes initial conferences, negotiations, explanation of applicable law, drafting of agreement, and final conference re-execution.....\$100.00

*(3) Contested divorce; separate maintenance; annulment; (where action is required relative to maintenance, child support, property division, etc., including trial time). 250.00
 *Coverages B(2) and B(3) shall not become effective until one year after the Effective Date of Individual Coverage.

Coverage C: JUDICIAL PROCEEDING FOR DEFENDANT OR RESPONDENT

CIVIL MATTERS

- (1) District Court or Circuit Court (State) and Federal Court (non-bankruptcy)
 - (a) From \$00.01 to \$500.00.....Plan Pays 100%
 - (b) From \$500.01 to \$1,000.00
 - Plan Pays 60%
 - (c) From \$1,000.01 up Plan Pays Nothing
- (2) All other courts (State)
 - \$200.00 Maximum

CRIMINAL MATTERS

- (3) District Court or Circuit Court (State) and Federal Court \$140.00 Maximum
- (4) All other courts (State)
 - \$100.00 Maximum

TRAFFIC OFFENSES

- (5) Moving violations where conviction of the alleged offenses may lead to an assessment of points which will directly result in license revocation.....\$100.00 Maximum

OTHER

- (6) Court costs, witness fees, deposition costs, expert fees and examinations
 - (a) District Court or Circuit Court and Federal Court \$100.00 Maximum
 - (b) All other courts \$30.00 Maximum

Free choice of counsel. You can hire any attorney licensed to practice law. The choice is yours.

In addition, a number of area lawyers have agreed to participate in this plan. You'll get a list of those lawyers when you sign up for this coverage.

These participating lawyers guarantee to charge only the fees stipulated under Plan A. For Plans B and C, these lawyers agree to charge reasonable rates which these plans may or may not cover in total.

When hiring participating or non-participating lawyers, you should find out from your attorney if there will be any additional charge beyond the maximum provided by this program.

Filing a claim. When you enroll, you'll receive a claim form. Simply take it along when you have business with your attorney. He will then complete the form and return it to the plan's administrator.

If you use a participating lawyer, the administrator will pay the amount of his fee covered under this plan at the conclusion of your case. In the event you choose a non-participating lawyer, you'll personally receive the amount covered to pay him.

Exclusions.

This contract excludes payment for the following: Claims against the employer, labor union, credit union, or the underwriting insurance company of the insured.

Pending legal matters or controversies which existed prior to the effective date of coverage.

Disputes between two or more insureds within the covered family group.

Court costs, expenses, and fees for services not performed by attorneys.

Fines, assessments, damages, and penalties.

Filing out and filing income tax returns.

Class actions, interventions, or amicus curiae filings.

Cases where insurance is payable to the insured for legal actions, services, or advice when they involve a duplication of the same services or advice previously obtained.

Contingent fee cases and domestic relations matters not included in the Schedule of Benefits.

No coverage for corporate work, business pursuits, partnerships, patents, copyrights, motor vehicle torts, bankruptcies, decedents' estates, or traffic violations which will not directly cause the loss of the covered member's drivers license.

Sign up for this valuable coverage now

Until now, you probably have had no way to protect yourself financially against expensive legal matters. Today you do.

How to enroll.

Simply complete the Legal Services Application Form. Your coverage will start the first day of the month following receipt of the premium. Then you can rest easier.

Certificate and policy controlling.

Eligibility, terms, and exclusions may vary from state to state. When you enroll, you'll receive a certificate. It and the policy will be controlling in all cases. Please read it over and retain it in your insurance portfolio.

