



homicide, attempted homicide, persistent offender and death penalty cases. The signatories also stated their intention to refuse to accept any further such cases unless the County acceded to their demands, and

authorized the Consortium to take legal action against any signatory who agreed to provide criminal defense services on terms inconsistent with those demanded by the Consortium.

After receiving the document from the Respondents, Clark County agreed to a new contract adopting the payment methodology demanded by the Consortium and substantially increasing reimbursement rates for all homicide, attempted homicide, persistent offender and death penalty cases. The Respondents, by orchestrating the formation of the Consortium and threatening the County with a refusal to deal, have violated Section 5 of the FTC Act.

### **The Proposed Consent Order**

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is modeled after the remedy sought by the Commission and approved by the Supreme Court in *Federal Trade Commission v. Superior Court Trial Lawyers Association*, 493 U.S. 411 (1990), in which the Court held that a boycott among criminal indigent defense attorneys was a per se violation of the antitrust laws, despite the lawyers' claims that the boycott was a political act ostensibly designed to improve the quality of representation by increasing their reimbursement rates. The Court observed that "[n]o matter how altruistic the motives of respondents may have been, it is undisputed that their immediate objective was to increase the price that they would be paid for their services." 493 U.S. at 427.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits the Respondents from entering into or facilitating any agreement between or among any attorneys: (1) to negotiate with payors on any attorney's behalf; (2) to deal, to refuse to deal, or to threaten to refuse to deal with payors; (3) regarding the terms of dealing with any payor; or (4) not to deal individually with any payor.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondents from facilitating exchanges of information between attorneys concerning whether, or on what terms, to deal with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B; and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II contains a proviso clarifying that the order does not prohibit rights to petition government officials, as guaranteed by the First Amendment, nor does the order prohibit the Respondents from providing information or views to the County or its representatives.

Paragraphs III, IV and V impose various obligations on Respondents to report or provide access to information to the Commission to facilitate monitoring Respondents' compliance with the order.

The proposed order will expire in 20 years.