

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2   In The Matter of Petition of                   )  
3   Express Lien, d/b/a Levelset,                )  
4   Pursuant to SCR 42.5                         )  
   \_\_\_\_\_)

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Elizabeth A. Brown  
Clerk of Supreme Court

5                   **RESPONSE AND RECOMMENDATIONS**

6           The State Bar of Nevada (“State Bar”) hereby provides its Response and  
7   Recommendations pursuant to the Nevada Supreme Court Order entered April 26,  
8   2022, regarding Petitioner’s application filed pursuant to Supreme Court Rule  
9   (“SCR”) 42.5 (Group legal services activities) to the State Bar for review.

10           **1. Introduction**

11           Express Lien, d/b/a Levelset (“Petitioner”), contracts with attorneys in  
12   multiple states who provide legal services to plan members (“Participants”) who  
13   pay membership fees.

14           Participants have access to attorneys who agree to provide legal  
15   consultations and selected services at no additional charge and other services at  
16   discounted rates.

17           According to its Petition and attachments thereto, Petitioner derives its  
18   revenue from membership fees. Participating attorneys do not pay Petitioner any  
19   portion of fees received from clients.

20   ///

1       **2. Conditional Recommendation to Approve**

2           Petitioner’s proposed pre-paid group legal plan appears to substantially  
3 comply with SCR 42.5. Therefore, the State Bar recommends that the plan be  
4 *conditionally approved* provided Petitioner agrees to amend its proposed contract  
5 between Petitioner and participating Nevada attorneys as required by SCR  
6 42.5(5)(c).

7       **3. Group Legal Service Categorization**

8           As a threshold issue, Petitioner’s plan qualifies as a group legal service in  
9 concept. Petitioner’s plan offers its members access to a lawyer for no additional  
10 fee or at discounted rates, there is no fee sharing or profit generated between the  
11 lawyer and the plan related to legal services rendered, and the lawyers who  
12 provide services under the plan are pre-determined. As such, the plan qualifies as  
13 a group legal service in concept.

14           However, SCR 42.5(5) mandates that an organization which desires to  
15 participate in a legal services plan must comply with various stated requirements.

16       **4. Marketing**

17           Pursuant to SCR 42.5(5)(a), lawyers associated with such an organization  
18 cannot solicit legal services in violation of any Rules of Professional Conduct.  
19 This prohibition would presumably deal primarily with Rule of Professional  
20 Conduct 7.3 (Communication with Prospective Clients).

1       Petitioner stated that it shall be marketed through an internet website which  
2 will not include the names of any associated attorneys.

3       Accordingly, it appears that under this guideline, Petitioner would comply  
4 with SCR 42.5(5)(a).

### 5       **5. Petitioner Deriving Profits**

6       SCR 42.5(5)(b) states that an organization “shall not derive a profit or  
7 commercial benefit for the rendition of the legal services of the lawyer.”

8       This Court has previously addressed the issue of profits when considering  
9 the application of American Prepaid Legal Services, Case No. 17132 (1987). In  
10 its Order, this Court ruled that it is permissible under Supreme Court Rules for a  
11 group legal service plan to make a profit from the sale of prepaid legal service  
12 agreements, and cooperation between Nevada attorneys and petitioner would not  
13 violate SCR 42.5(5)(b).

14       This Court noted that although the group legal plan provider might make a  
15 profit from the sales of prepaid legal service agreements, it had no direct interest in  
16 the amount of legal services provided by attorneys.

17       A review of similar plan agreements certified to date by this Court appears  
18 to show that this is the standard to be used in determining whether a group access  
19 plan is considered “for profit.”

20     ///

1 In its Petition, Petitioner stated that it will derive revenue solely from  
2 membership fees, not from the legal services provided by an attorney.

3 Accordingly, it appears that under this guideline, Petitioner would comply  
4 with SCR 42.5(5)(b).

## 5 **6. Insurance Regulation**

6 This Court has consistently required in matters of group legal services that  
7 the Petitioner obtain a statement of some type from the Nevada Commissioner of  
8 Insurance that Petitioner's proposed operation would comply with Nevada's  
9 insurance regulation statutes.

10 If the Insurance Commissioner finds the plan constitutes transfer of risk  
11 sufficient to constitute insurance, it may only be sold by a licensed insurance  
12 broker.

13 In its Petition, Petitioner states that it is not an insurance company. In  
14 addition, Petitioner provided a finding from the state Department of Business and  
15 Industry, Division of Insurance, that its plan would not constitute insurance.

## 16 **7. Changes Needed in Written Agreement with Attorney**

17 SCR 42.5(c) requires group legal services to comply with specific  
18 requirements before being permitted to operate. Included in those requirements is  
19 specific language which must be included in the written agreement with the  
20 individual attorney.

1 In its petition, Petitioner apparently believes that its proposed Provider  
2 Attorney Agreement (“PAA”) would comply with SCR 42.5 mandates. The State  
3 Bar respectfully disagrees. Although Petitioner did an admirable job attempting to  
4 draft an acceptable attorney agreement, the following changes are needed to  
5 comply with SCR 42.5(5)(c).

6 The following conditions are required to be included in the attorney  
7 agreements:

8 A. SCR 42.5(5)(c)(2):

9 “No unlicensed person will provide legal services under the arrangement.”

10 Language in the PAA deals with the requirement that an attorney must be  
11 licensed to practice law in the applicable jurisdiction. However, Petitioner did not  
12 include the above specific language stating that no unlicensed person will provide  
13 legal services.

14 B. SCR 42.5(c)(5):

15 “All parties agree that in providing legal services, the lawyer must comply  
16 with all the disciplinary rules contained in the code and all other rules of the  
17 court.”

18 The PAA states that the attorney will comply with the “duties,  
19 responsibilities and obligations” required when representing a client. However,  
20

1 specific language regarding the necessity of complying with disciplinary rules is  
2 also required.

3 C. SCR 42.5(c)(7):

4 “Any publicity given by the organization to its members will not describe  
5 the lawyer beyond giving his name, address, and telephone number and such other  
6 information as may be required to facilitate the access of member to the services of  
7 the lawyer; and any publicity disseminated by the organization to non-members  
8 will not identify the lawyer.”

9 The Petition refers to SCR 42.5(c)(7) requirements regarding publicity, but  
10 no such language is in PAA and, therefore, should be added to the agreement.

11 D. SCR 42.5(c)(8):

12 “The agreement will be terminated in the event of any substantial violation  
13 of the foregoing provisions.”

14 The PAA contains generic language about automatic termination upon “the  
15 material breach” of the agreement.

16 However, the above language is needed to place both parties on notice that  
17 the agreement *shall* be terminated if substantial violations of conditions required  
18 by SCR 42.5(c) occur.

19 ///

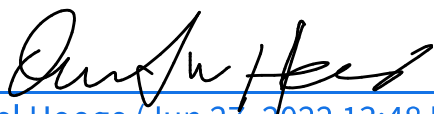
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1       **8. Conclusion**

2           Based upon the foregoing, the State Bar recommends that the plan be  
3 *conditionally approved* provided Petitioner agrees to amend its proposed contract  
4 between Petitioner and participating Nevada attorneys as required by SCR  
5 42.5(5)(c).

6  
7           Dated this 27<sup>th</sup> day of June, 2022.

8                               STATE BAR OF NEVADA

9                                 
10           By: Daniel Hooge (Jun 27, 2022 13:48 PDT)

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