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1.0 Law & Legal CLE Credit – A/V Approval #1063046

Recording Date – May 10, 2017

Recording Availability – January 31, 2018

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue - Suite 700 Seattle, WA	Wednesday, May 10, 2017	12:00 PM to 1:15 PM	Is Your Of Counsel Agreement a Franchise?

AGENDA

12:00 PM Introductions/Lunch

12:10 PM Presentation: ‘Is Your Of Counsel Agreement a Franchise?’, by Howard R. Morrill, Morrill Franchise Law

The Franchise Investment Protection Act, like other state franchise statutes, defines a franchise and has been applied in settings that presumably surprised the parties.

- History
- What is a franchise?
- Consequences
- Application of FIPA to Hypothetical Of Counsel arrangements

1:15 PM Evaluations & Adjourn

SPEAKER BIOGRAPHY:

Howard R. Morrill – Morrill Franchise Law - Howard is a graduate of the University of Washington’s JD/MBA program and has been in private practice in the Seattle area since 1987. His practice has always included franchise law and litigation. He is a member of the ABA Forum on Franchising and has served as editor of the franchise section of the Washington Lawyer’s Practice Manual since 2004. Howard’s article, “The Unintentional Franchise”, was published in the March, 2003 edition of the *Washington State Bar News*, and he is a frequent CLE presenter, commentator, consultant and expert on franchise law and practice issues.

HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- ❖ Go to the "mywsba" website at www.mywsba.org/.
- ❖ Log in.
- ❖ Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
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Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

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IS YOUR OF COUNSEL AGREEMENT A FRANCHISE?

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R.C.W. 19.100.010(6)-A Franchise has Three Elements

"Franchise" means:

(a) An agreement, express or implied, oral or written, by which:

(i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(ii) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

(b) The following shall not be construed as a franchise within the meaning of this chapter:

(i) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;

(ii) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;

(iii) Any motor vehicle dealer franchise subject to the provisions of chapter [46.70 RCW](#).

1. Marketing Plan-R.C.W. 19.100.010(11)

"Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:

- (a) Price specifications, special pricing systems or discount plans;
- (b) Sales or display equipment or merchandising devices;
- (c) Sales techniques;
- (d) Promotional or advertising materials or cooperative advertising;
- (e) Training regarding the promotion, operation, or management of the business; or
- (f) Operational, managerial, technical, or financial guidelines or assistance.

2. Trademark/Trade name

“[Substantial association] with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate.”



3. Franchise Fee—R.C.W. 19.100.010(8)

"Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) The purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

Non-Waiver

R.C.W. 19.100.220(2)

Any agreement, condition, stipulation or provision, including a choice of law provision, purporting to bind any person to waive compliance with any provision of this chapter or any rule or order hereunder is void. A release or waiver executed by any person pursuant to a negotiated settlement in connection with a bona fide dispute between a franchisee and a franchisor, arising after their franchise agreement has taken effect, in which the person giving the release or waiver is represented by independent legal counsel, is not an agreement prohibited by this subsection.

R.C.W. 19.100.180(2)(g)

For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to: . . .

Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.