

OFDA BOARD OF DIRECTORS' LEGAL REPORT

JANUARY 22, 2020, MEETING

1. WAITING FOR THE FTC. Although FTC Funeral Rule Coordinator Patti Poss indicated at the NFDA Convention in October that the FTC would begin its review of the Funeral Rule by the end of 2019, New Year's came and went without an announcement of the review. The FTC is committed to reviewing its trade regulation rules every ten years and in its Regulatory Review Schedule published in the Federal Register on May 2, 2019, it listed the Funeral Industry Practices Rule for review in 2019. Looks like it missed its own deadline.

Currently, the Commission has 10 ongoing reviews of its 64 rules and guides. Occasionally, as a result of those reviews, it will repeal an outdated or unnecessary rule or guide. For example, in 2018-19, it repealed a trade regulation rule on deceptive advertising on the size of viewable TV picture screens and a guide on nursery industry practices. It is doubtful the FTC would repeal the Funeral Rule.

2. MECHEM UPDATE. The law firm for Huntington Bank reported that they filed the lawsuit on October 15, 2019 with the Cuyahoga County Probate Court seeking permission to disperse the Ohio Mechem Trust to 82 funeral homes and 11 surviving preneed consumers. David Bloomfield, the attorney for Huntington, reported that they have received waivers from 81 funeral homes of the 82 funeral homes. Huntington has filed for summary judgement against the one funeral home that is holding out.

As for the 11 consumers, they had problem tracking down 3 of them. One has since died and they are still trying to serve the other two. The court indicated it wants to hold a conference in March or April of this year to discuss how to proceed.

3. GOLD CROSS. As you will recall, Green Funeral Home filed suit against Rhonda Chandler and Gold Cross Funeral Plans because of their failure to distribute trust funds on preneed contracts that Green Funeral Home had performed and to transfer preneed funds to the OFDA Master Trust as requested by Green Funeral Home. Although the lawsuit was filed in October, 2019, the attorney for Green Funeral Home has informed me that Rhonda Chandler is still avoiding service of the complaint. The law firm will obtain service by publication in a newspaper.

There has been one meaningful development in the case. Michelle Rafeld of the fraud and enforcement section from the Ohio Department of Insurance reached out to the attorneys for Green Funeral Home and wants to set up a joint meeting with the Ohio Board of Embalmers and Funeral Directors. The attorneys will keep us informed of any new developments.

4. OHIO RECIPROCITY BILL. One of the hottest state legislative issues around the country is eliminating hurdles to reciprocity for licensed occupations. Fifty years ago, only 5% of the working population required a license to ply their trade or profession. That figure has risen to 25% of the working population today. Many legislatures, especially those with a more conservative bent, are looking to reduce the administrative barriers imposed by “excessive licensing”.

A major step in this process was undertaken by Arizona last year when it enacted the nation’s first Universal Licensing Recognition Law. That law requires that most Arizona licensing boards shall provide reciprocity to anyone who relocates to Arizona and who has had a license in good standing for at least one year in another state.

Ohio is now jumping on the reciprocity bandwagon. SB 246 and HB 432 were introduced late last year and would impact most licensed trades and professions in Ohio, including funeral service. The bill would require licensing boards and agencies to extend reciprocity to any licensee from another state if that person has held substantially the same or similar license in that state for at least one year and is in good standing. The board or agency may require the out-of-state applicant to take an Ohio laws test and to meet any criminal background or financial responsibility requirements.

Unlike Arizona’s statute, the Ohio bill does not require the applicant for reciprocity to relocate and become a resident of the state. Therefore, funeral directors, embalmers and crematory operators in neighboring states who have held licenses for at least a year could apply for similar licenses in Ohio. Any licensee granted a reciprocal license would be fully subject to the Ohio Board of Embalmers and Funeral Directors, would have to comply with CE requirements, and would have to pay all license fees.

If passed, the bill would be unilateral. In other words, there would not be a requirement that other states afford Ohio licensees the same relaxed reciprocity as Ohio is providing to out-of-state licensees. In addition, the bill provides that if a state does not license a certain trade or profession, but Ohio does, the Ohio licensing board or agency must recognize three years of experience as qualifying for reciprocity. For example, if a state does not have a crematory operators permit, Ohio would still grant a crematory operators permit to an applicant from that state as long as he or she had three years experience as a crematory operator.

Obviously, the passage of this bill could become the basis for watering down Ohio’s stringent educational requirements for funeral and embalming licensing. The bill could allow individuals with no more than a high school education and a year of experience in another state to become an Ohio licensed funeral director without complying with Ohio’s bachelor degree and apprenticeship requirements. This could lead to an argument that the bachelor degree and apprenticeship requirements should be eliminated since individuals from out-of-state that lack these educational/apprenticeship requirements are considered “qualified” under Ohio law to be licensees.

5. OFDA PROPOSES MORATORIUM ON PAST VIOLATIONS. OFDA PROPOSES MORATORIUM ON PAST VIOLATIONS. Under Section 4717.04(A)(9), the Ohio Board of Embalmers and Funeral Directors is given authority to set fines for several violations of funeral laws and regulations. That statute imposes a dollar cap of \$5,000 for first violations and a dollar cap of \$10,000 for second or subsequent violations.

Under the authority granted to it, the Board has set out in Regulation 4717-12-01 a schedule of fines for various offenses. For a first offense, the fines may range from \$500 to \$5,000. But, for a second or subsequent violation, the range significantly jumps up to a minimum of \$7,500 to a maximum of \$10,000.

OFDA will be contacting the Board to request that it support legislation that would only count violations that occur within the past five years for purposes of setting fines. In addition, OFDA will request the Board to revise Regulation 4717-12-01 to give it more flexibility with the amount of fines for second violations.