APPENDIX V

SAMPLE ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is entered into as of the __ day of [date], by and between _____, as surviving spouse of _____, ESQ. and Executor-Nominee of the ESTATE OF _____, ESQ. (hereinafter collectively referred to as "Seller") and _____ ("Purchaser"), a New York professional corporation.

W I T N E S S E T H :

WHEREAS, on [date] _____, Esq. ("_____") died in _____, New York (for purposes of this Agreement, the defined term of "Seller" shall include _____); and

WHEREAS, at the time of _____'s death, _____ had in his possession and owned certain Assets (as defined below) which assets are now in the possession of Seller; and

WHEREAS, Seller desires to sell the Assets and Purchaser desires to purchase the Assets.

NOW, THEREFORE, in consideration of the mutual promises and premises contained herein, the sum of One Dollar ($1.00), each to the other paid in hand, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Sale of Assets. In accordance with the terms and conditions contained herein, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all of the Seller's clients records and files pertaining to _____'s client files and matters as such records and files were utilized by _____ in the operation of his practice of law ("Business"). Notwithstanding the foregoing, Purchaser shall have the right to reject any client file which would result in a conflict of interest to Purchaser or for any other reason as determined by Purchaser. In the event Purchaser elects to reject or decline any client matter or file, Purchaser will use its reasonable best efforts to assist the client in engaging substitute legal counsel.

2. Definitions. Whenever used in this Agreement:

(a) "Assets" shall mean those assets of the _____ utilized in the operation of his business and in _____'s possession or under _____'s control on the date of his death, as specifically set forth on **Schedule 2(a) and Schedule 13(g)**, attached hereto and made a part hereof, including but not limited to Seller's client records (in paper and electronic formats), telephone numbers and goodwill.

(b) "Closing Date" means the execution date of this Agreement.

(c) "Closing Place" shall be at the offices of Seller, in _____[city], New York, or such other place as the parties may mutually agree.

(d) "Liabilities" shall mean all liabilities of Seller, including but not limited to, any liabilities to employees of any nature, accounts payable, payroll taxes, promissory notes or liabilities for taxes based on income, sales, use, employment or otherwise.

3. Purchase Price and Allocation.

(a) Purchase Price. The purchase price for the Assets to be purchased hereunder shall be _____ and 00/100 Dollars ($_____) ("Purchase Price").

(b) Allocation. The Purchase Price shall be allocated among the Assets in accordance with **Schedule 3(b)**. Seller and Purchaser jointly shall complete and separately file Form 8594 with their respective federal income tax returns for the tax year in which the Closing Date occurs in accordance with such allocation and the IRS guidelines, and neither Seller nor Purchaser shall, without the written consent of the other, take a position on any tax return or before any governmental agency charged with the collection of any such tax, or in judicial proceeding, that is in any manner inconsistent with the terms of such allocation.

4. Method of Payment. Upon execution of this Agreement, the Purchase Price shall be paid in thirty-six (36) equal monthly installments commencing on the ____ (__) day of _____ 200__ of _____ and 00/100 Dollars ($_____) each and a final payment on the _____ (____) day of _____ 200__ of _____ and 00/100 Dollars ($_____) pursuant to the terms and conditions of a promissory note, attached hereto as **Exhibit A**, and made a part hereof (the "Note"). Interest on the outstanding balance shall be computed at the rate of _____ percent (___%) per annum. An amortization schedule shall be attached as a Schedule to the Note.

5. Exclusion of Seller's Other Assets. Purchaser is not acquiring any right, title or interest in or to the following:

(a) Seller's cash or cash equivalents;

(b) Any personal belongings of Seller;

(c) Seller's Accounts Receivable; and

(d) Seller's office equipment and office supplies.

6. Accounts Receivable. Purchaser shall not purchase, and Seller shall not sell, any right, title, or interest in Seller's accounts receivable ("Accounts Receivable"). Seller shall continue to collect his outstanding Accounts Receivable after the Closing. If, at any time after the Closing Date, Purchaser shall collect or receive any monies, in any manner whatsoever, in payment of any of Seller's Accounts Receivable, Purchaser shall immediately forward such amount(s) to Seller at no cost to Seller.

7. Assumption of Liabilities. Purchaser shall not assume any Liabilities of Seller whether firm or contingent, known or unknown. In addition to the foregoing, Purchaser shall not assume Seller's IOLA accounts. _____ and _____, Esq. were co-signatories on IOLA funds for the benefit of Seller's clients, as such account, client sub-accounts and a general ledger of such are set forth on **Schedule 7**, attached hereto and made a part hereof. **Schedule 7** shall be certified by Seller as to the correctness thereof. Purchaser shall use its reasonable best efforts to comply with the provisions of Disciplinary Rule 9-102(G) of the New York Attorney's Code of Professional Responsibility pertaining to the designation of successor signatories with respect to Seller's IOLA funds provided, however, that Purchaser shall not assume or be liable for any inaccuracies or liability with respect to such accounts. Seller will indemnify and hold Purchaser harmless for any and all liability, cause of action or loss with respect to such IOLA account.

8. Transfer of Client Records. At Closing, Seller shall deliver to Purchaser his files and records (including but not limited to all electronic records related to such files) relating to all clients included on **Schedule 2(a) and Schedule 13(g)** for which Seller has provided services. **Schedule 2(a) and Schedule 13(g)** shall include a list of all client names and all addresses of such clients. Seller and Purchaser shall comply with Disciplinary Rule 2-111 of the New York Attorney's Code of Professional Responsibility (22 NYCRR §1200.15-a) ("DR 2-111") pertaining to the sale of a law practice in all respects, including the written notice to each of Seller's clients. Seller will cooperate with Purchaser and assist Purchaser with obtaining any client consents that may be required in order to transfer any client property to Purchaser.

9. Delivery of Documents.

(a) At the Closing, Seller shall deliver to Purchaser the following:

(i) a bill of sale and an assignment which effectively transfer, assign and convey to Purchaser good and marketable title to all of the Assets free and clear of all mortgages, pledges, liens, security interests, restrictions, or other encumbrances;

(ii) all Assets subject to the terms of this Agreement; and

(iii) all other documents, instruments or writings required to be delivered to Purchaser at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Purchaser may reasonably request.

(b) At the Closing, Purchaser shall deliver to Seller the following:

(i) the Promissory Note;

(ii) cash or a certified check for sales tax pursuant to this Agreement;

(iii) all other documents, instruments or writings required to be delivered to Seller at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Seller may reasonably request.

10. Seller's Representations and Warranties. Seller makes the following representations and warranties to Purchaser, each of which is true and correct on the date hereof, shall remain true and correct to and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by Purchaser, or any knowledge of Purchaser other than as specifically disclosed in the disclosure schedules delivered to Purchaser at the time of the execution of this Agreement, and shall survive the Closing of the transaction provided for herein.

(a) Authority. This Agreement constitutes a valid and binding agreement of Seller in accordance with its terms and does not require any consent, notification to or other action of any person, entity or governmental agency other than filings with respect to sales and other transfer taxes. Seller has complete power to own and to sell, transfer and deliver all assets to be transferred hereunder and instruments to be executed to vest effectively in Purchaser good and marketable title to the Assets.

(b) Effect of Agreement. The execution, delivery and performance of this Agreement by Seller is not conditioned on or prohibited by, and will not conflict with or result in the breach of the terms, conditions or provisions of, or constitute a default under any law applicable to Seller or any agreement or instrument to which Seller is a party or is otherwise subject.

(c) Licenses and Permits. At the time of _____'s death, _____ was in compliance with all permits, licenses, franchises and authorizations necessary for the operation of his law practice (the "Business") as operated and all such permits, licenses, franchises and authorizations were, at the time of _____'s death, valid and in full force and effect. All applications, reports and other disclosures relating to the operation of the Business required by the appropriate governmental bodies have been filed or will have been filed by the Closing in a timely manner.

(d) Assets.

(i) **Schedule 2(a)** hereof contains a complete and accurate list, as of the date hereof, of certain assets owned or leased by Seller which are used or useful in the operation of the Business and which are being purchased by Purchaser.

(ii) On the Closing Date, Seller shall have good and marketable title to all the Assets, free and clear of all mortgages, liens (statutory or otherwise), security interests, claims, pledges, licenses, equities, options, conditional sales contracts, assessments, levies, easements, covenants, reservations, restrictions, exceptions, limitations, charges, encumbrances or any rights of any third parties of any nature whatsoever (collectively, "Liens").

(iii) All tangible assets constituting Assets hereunder are in good operating condition and repair, free from any defects (except such minor defects as do not interfere with the use thereof in the conduct of the normal operations of Seller), have been maintained consistent with Seller's historical practice and are sufficient to carry on the business of Seller as conducted during the preceding twelve (12) months.

(f) Insurance. All of the Assets used or useful in the operation of the Business which are to be conveyed to Purchaser hereunder and which are of an insurable character are insured above deductible limits by financially sound and reputable insurance companies against loss or damage by fires and other risks to the extent and in the manner customary for such assets. Copies of the pertinent insurance policies have been delivered to Purchaser and are in full force and effect. Seller will maintain such insurance between the date hereof and the Closing Date. There are no pending claims. No notice of cancellation or termination has been received with respect to any such policy.

(g) Litigation. There is as of the date hereof no suit, action or legal administrative arbitration or other proceeding or governmental investigation (including workers' compensation claims) pending or threatened against the Seller, including without limitation, any malpractice suit, action or legal proceeding against Seller.

(h) Taxes. Seller has duly filed with the appropriate federal, state and local governmental agencies all tax returns and reports which are required to be filed by Seller, and has paid in full all taxes (including interest and penalties) owed by Seller arising prior to the Closing Date. Seller is not a party to any pending action or proceeding, nor, to the best knowledge of Seller, is any action or proceeding threatened, by any governmental authority for assessment or collection of taxes, and no claim for assessment or collection of taxes has been asserted against Seller.

(i) Contracts. Each contract, agreement, lease and commitment to which Seller is a party is in full force and effect and constitutes a valid and binding obligation of, and is legally enforceable in accordance with its terms against, the parties thereto. There are no leases that affect any of the Assets.

(j) Financial Statements. Seller has delivered to Purchaser true and complete copies of the income tax returns of Seller relating to the operation of the Business consisting of tax returns as of December 31, of the three (3) most recent years, and the related statements of income and cash flows since such dates (the "Recent Balance Sheet"). All of such financial statements (including all notes and schedules contained therein or annexed thereto) are true, complete and accurate, have been prepared in accordance with Seller's historical practices applied on a consistent basis, have been prepared in accordance with the books and records of Seller, and fairly present, in accordance with Seller's historical practices, the assets, liabilities and financial position, the results of operations and cash flows of Seller as of the dates and for the years and periods indicated. Seller shall prepare his 2001 Form 1040 Schedule "C" and any interim statements in accordance with his historical practice and shall deliver the same to Purchaser immediately upon completion.

(k) Accounts Payable. There are no accounts payable of the Seller regarding the Business.

(l) Client Relations. There exists no condition or state of facts or circumstances involving the Seller's clients that Seller can reasonably foresee could adversely affect the Business after the Closing Date. To Seller's knowledge, the Business may be maintained after the date hereof in the same manner in all respects (financial and otherwise) as at the time of _____'s death.

(m) Absence of Certain Changes. Since [date], Seller has operated the business in the ordinary course consistent with historical practice.

(n) Absence of Undisclosed Liabilities. Except as and to the extent specifically disclosed in the Recent Balance Sheet, Seller does not have any liabilities relating to the operation of the Business.

(o) General Representation and Warranty. Neither this Agreement nor any other document furnished by Seller in connection with this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements contained herein or therein not misleading in any material respect. There is no fact or circumstance known to Seller which materially adversely affects, or in the future, as now reasonably foreseeable, is likely to materially adversely affect the condition (financial or otherwise), properties, assets, liabilities, business, operations or prospects of the Business which has not been set forth in this Agreement or the schedules hereto.

(p) Disclosure. No representation or warranty by Seller in this Agreement, nor any statement, certificate, schedule, document or exhibit hereto furnished or to be furnished by or on behalf of Seller pursuant to this Agreement or in connection with the transactions contemplated hereby, contains or shall contain any untrue statement of material fact or omits or shall omit a material fact necessary to make the statements contained therein not misleading.

11. Representations, Warranties and Covenants of Purchaser. Purchaser does hereby represent and warrant that:

(a) Organization of Purchaser. Purchaser is duly organized, validly existing, and in good standing under the laws of the State of New York. Purchaser has full power and authority to own its assets and to carry on its business as presently conducted.

(b) Authority to Purchase. Purchaser has all necessary right, authority and power to execute and deliver this Agreement and to consummate the transaction contemplated hereunder. The execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder (i) have been duly and validly authorized by the shareholders and directors of Purchaser and no other corporate or other approvals are required and (ii) to Purchaser's knowledge, will not materially violate any provision of law and will not conflict with, result in a breach of any of the terms, conditions or provisions of, or constitute a default (or an event which with the giving of notice or the lapse of time or both would constitute a default) under or pursuant to any corporate charter, bylaw, indenture, note, mortgage, lease, license, permit, agreement or other instrument to which Purchaser is a party. When executed and delivered by Purchaser, this Agreement is a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms.

(c) Litigation. There is no litigation pending or threatened against Purchaser.

(d) Accuracy of Representations and Warranties on the Closing Date. Each of the representations and warranties set forth in this Paragraph 11 shall be true and correct as of the Closing Date with the same force and effect as though made at and as of the Closing Date.

12. Rights of Indemnification.

(a) Survival of Covenants, Warranties and Representations. All covenants, agreements, representations and warranties of the parties under this Agreement, in any Schedule or certificate or other document delivered pursuant hereto, shall remain effective through and shall survive the Closing Date as provided for herein regardless of any investigation at any time made by or on behalf of Purchaser or of any information Purchaser may have with respect thereof.

(b) Indemnification of Purchaser. Seller shall defend, indemnify and hold Purchaser harmless from and against (1) any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or relative to (A) the operation or ownership of the Business or the Assets prior to or on the Closing Date, irrespective of when asserted and (B) a breach of any of Seller's representations, warranties or covenants hereunder, and (2) any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses (including reasonable attorneys' fees) incident to any of the foregoing.

(c) Indemnification of Seller. Purchaser shall defend, indemnify and hold Seller harmless from and against (1) any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or relative to (A) the operation or ownership of the Business or the Assets on and after the Closing Date and (B) a breach of any of Purchaser's representations and warranties hereunder, and (2) any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses (including reasonable attorneys' fees) incident to any of the foregoing.

(d) Summary of Obligations. The obligations and rights of the parties under this Paragraph 12 shall survive the Closing Date and shall be binding upon and inure to the benefit of their respective successors and assigns.

13. Additional Agreements of Seller.

(a) Conduct of Business Pending the Closing Date. Seller shall use its best efforts to preserve for Purchaser its present relationships with clients and others having business relationships with Seller that pertain to the Business. Seller will immediately notify Purchaser if there is the loss or expected loss or other disruption of any relationship between Seller and a vendor, customer or employee.

(b) No Material Contracts. Seller shall not enter into any contract or commitment pertaining to the Business, except contracts or commitments which are in the ordinary course of business and consistent with past practice and are not material to the Business (individually or in the aggregate).

(c) Maintenance of Insurance. Seller shall maintain all of the insurance related to the Business and the Assets in effect as of the date hereof and shall procure such additional insurance as shall be reasonably requested by Purchaser.

(d) Maintenance of Property. Seller shall use, operate, maintain and repair all assets of Seller which are defined herein as Assets in a normal business manner.

(e) No Negotiations. Seller shall not directly or indirectly (through a representative or otherwise) solicit or furnish any information to any prospective buyer, commence, or conduct presently ongoing, negotiations or discussions with any other party or enter into any agreement with any other party concerning the sale of the Business or the Assets or any part thereof, and Seller shall immediately advise Purchaser of the receipt of any such acquisition proposal.

(f) Disclosure. Seller shall have a continuing obligation to promptly notify Purchaser in writing with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in the disclosure schedules, but no such disclosure shall cure any breach of any representation or warranty which is inaccurate. In the event that Seller discovers a breach and notifies Purchaser pursuant to this Paragraph 13(f), Seller shall have three (3) days to cure such breach.

(g) Open Matters. The client files and matters described on **Schedule 13(g)** shall be considered ongoing matters for which _____ was providing services at the time of his death. Such matters and the clients (and client records) for whom such matters were being performed shall be included in the terms of this Agreement. Subject to Purchaser's right to exclude any clients hereunder and the client's right to obtain other counsel, Purchaser agrees to cooperate with Seller and the professional staff of _____ in bringing such matters to a conclusion. Seller and Purchaser shall cooperate in notifying such clients that Seller has transferred his Business to Purchaser and shall advise such clients in the same manner as the notice to be delivered pursuant to Paragraph 21 below. For services rendered for such Open Matters, Purchaser shall charge an hourly rate of _____ and 00/100 Dollars ($_____.00) for attorney services and _____ and 00/100 Dollars ($____.00) for paralegal services. In the event that Seller has been previously paid by such clients, the amount of any services shall be offset against the Purchase Price set forth hereunder. In such an event Purchaser shall provide Seller with an itemization of the services provided, the time incurred on

such matters and the cost of such time. In the event such matter shall include additional services outside the scope of the client's agreement with the Seller, the Purchaser shall negotiate a separate fee arrangement with the client.

(h) Seller's Independent Contractor. Except in the case of death or disability, for a period of not less than _____ (___) months, _____, shall provide services to Purchaser in the same manner and to the same extent as provided to _____ prior to the date of his death, in order to assist Purchaser in the acquisition of assets hereunder and the transition of _____'s practice to Purchaser. Purchaser shall be responsible for the compensation of _____ during this ____ (__) month period with respect to such services.

14. Conditions Precedent to Purchaser's Obligations. The obligation of Purchaser to consummate the transactions contemplated hereunder is subject to the satisfaction at or prior to the Closing of the following (unless waived in writing by Seller):

(a) Representations, Warranties and Covenants. The representations, warranties and covenants of Seller contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as though made at and as of the Closing Date, except for changes contemplated by this Agreement.

(b) Performance. Seller shall have complied with all agreements, obligations, covenants and conditions required by this Agreement to be met, performed or complied with by it prior to or at the Closing.

(c) Absence of Litigation. No litigation shall have been commenced or threatened, and no investigation by any government entity shall have been commenced against Purchaser or Seller or any of the affiliates, officers or directors of any of them, with respect to the transactions contemplated hereby.

(d) Satisfactory Due Diligence Review. Purchaser shall have completed by the Closing Date a due diligence review satisfactory to Purchaser with respect to, among other matters, the business, operations, assets, contracts, legal compliance and future prospects of the Business, all of which shall be confidential and not disclosed to any third party by Purchaser.

15. Conditions Precedent to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated hereunder are subject to satisfaction at or prior to the Closing of the following (unless waived in writing by Purchaser):

(a) Representations, Warranties and Covenants. The representations, warranties and covenants of Purchaser contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as though such representations, warranties and covenants were made at and as of such time.

(b) Performance. Purchaser shall in all material respects have complied with all agreements, obligations and conditions required by this Agreement to be met, performed or complied with by it prior to or at the Closing.

(c) Delivery of Purchase Price. Purchaser shall have delivered to Seller the Note.

(d) Litigation. No Litigation shall have been commenced or threatened, and no investigation by any Government Entity shall have been commenced, against Purchaser or Seller with respect to the transactions contemplated hereby; provided that the obligations of

Seller shall not be affected unless there is a reasonable likelihood determined by Purchaser that as a result of such action, suit, proceeding or investigation, Seller will be unable to transfer the Assets in accordance with the terms set forth herein.

16. Endorsement Reporting Coverage. Seller agrees to maintain, at its expense, professional liability insurance coverage or reporting endorsement coverage of insurance for the term commencing on the date of Closing and continuing thereafter for a period of time not less than the applicable statute of limitations for any legal services provided by Seller pursuant to Section 214(6) of the New York State Civil Practice Rules and Procedures, prior to or following closing.

17. Expenses. Whether or not the transaction contemplated herein is consummated, each party hereto shall bear all costs and expenses incurred by it in connection with this Agreement and the transactions contemplated hereby.

18. Notices. Any notice or other communication required or permitted hereunder shall be sufficiently given if labeled conspicuously in bold letters "PERSONAL AND CONFIDENTIAL", and mailed personally or sent by registered or certified mail, postage prepaid, or by facsimile transmission or telex immediately confirmed in writing sent by registered mail or certified mail, postage prepaid, addressed, in the case of the Seller to:

PERSONAL AND CONFIDENTIAL

Estate of _____, Esq.

c/o _____

_____

_____

_____

or in the case of the Purchaser to:

_____

_____

_____

Attn: _____

or to such other person or address as shall be furnished in writing by any party to the others prior to the giving of the applicable notice of communication, and such notice or communication shall be deemed to have been given as of the date so delivered or sent.

19. Employees. Purchaser shall not be required to employ any employees of Seller and Seller shall be responsible for the termination of any employees it does not desire to retain following Closing. To the extent Purchaser desires, it shall have the opportunity to interview any of Seller's employees or independent contractors, including _____, for possible employment by Purchaser upon such terms and conditions as Purchaser determines. Such interviews shall take place prior to Closing with the consent of Seller, which shall not be unreasonably withheld.

20. Right of Set-Off. In the event Purchaser suffers any loss for which Seller is obligated to indemnify Purchaser hereunder, and Seller for any reason fails or refuses to pay the same, Purchaser shall have as the means of recovery for any loss (in addition to any other remedies at law or in equity), the right to set-off against any sums due to Seller pursuant to this Agreement. Purchaser's right of set-off shall not be subject to any order of priority, and shall be exercisable in such amounts (not to exceed the amounts of any such loss) and in such manner as Purchaser in its reasonable discretion may determine.

21. Client Letter. Upon execution of this Agreement, Purchaser and Seller, in accordance with DR 2-111 shall provide written notice to Seller's clients, in form and substance of **Exhibit B**, attached hereto and made a part hereof, at Purchaser's expense, of Purchaser's acquisition of Seller's practice of law. Such written notice shall include information regarding:

(a) The client's right to retain other counsel or to take possession of the file;

(b) The fact that the client's consent to the transfer of the client's file or matter to the Purchaser will be presumed if the client does not take any action or otherwise object within ninety (90) days of the sending of the notice, subject to any court rule or statute requiring express approval by the client or a court;

(c) The fact that agreements between the Seller and the Seller's clients as to fees will be honored by the Purchaser;

(d) Proposed fee increases, if any; and

(e) The identity and background of the Purchaser and Purchaser's employees, including principal office address, bar admissions, number of years in practice in the state, whether Purchaser, or any employee of Purchaser, has ever been disciplined for professional misconduct or convicted of a crime, and whether Purchaser currently intends to re-sell the practice.

22. Entire Agreement. It is understood and agreed that all understandings and agreements heretofore made between the parties hereto are merged in this Agreement which alone fully and completely expresses the agreement between the parties hereto and that this Agreement has been entered after full investigation, neither party relying upon any statement or representation which is not herein contained. This Agreement may not be changed or terminated orally.

23. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

24. Binding Provisions. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, assigns and all other successors-in-interest.

25. Sales Tax. Purchaser shall pay any sales tax due and payable by reason of the consummation of the transaction herein contemplated. Payment for the taxes shall be made by Purchaser to Seller who shall remit such sales tax to the appropriate taxing authority. Purchaser shall indemnify Seller for any and all sales taxes paid by Seller by reason of consummating this transaction.

26. Headings. The paragraph and clause headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

27. Miscellaneous.

(a) Waiver of Conditions. Any party may, at his or its option, waive in writing any or all of the conditions herein contained to which his or its obligations hereunder are subject.

(b) Variation and Amendment. This Agreement may be varied or amended at any time by joint action of the Seller and Purchaser.

(c) Assignment. This Agreement may not be assigned by Seller or Purchaser without the prior written consent of the other party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and seals the date and year first above written.

PURCHASER:

_____

By:

_____, Vice President

SELLER:

ESTATE OF _____, ESQ.

By:

_____, Surviving Spouse and Executor-Nominee

EXHIBIT A

PROMISSORY NOTE

$_____

_____,
New York
_____ __, 200__

FOR VALUE RECEIVED, _____, a New York professional corporation, its successors and assigns ("Maker"), hereby promises to pay to the order of _____, as surviving spouse of _____**, ESQ.** and Executrix-Nominee of the **ESTATE OF** _____**, ESQ.**, his heirs, representatives, successors and assigns ("Holder"), in immediately available funds, the sum of _____ and 00/100 Dollars ($_____), plus interest, payable in _____ (___) equal monthly installments commencing on the ____ (___) day of _____ 200__of _____ and 00/100 Dollars ($_____) each and a final payment on the _____ (____) day of _____ 200__ of _____ and 00/100 Dollars ($_____). Interest shall be computed on the outstanding principal balance at _____ percent (__%) per annum. Installments under this Note shall be made in accordance with the amortization schedule attached hereto as **Schedule 1**, and made a part hereof.

1. **Acceleration Upon Default.** At the option of the Holder, this Note shall become immediately due and payable upon the occurrence of any of the following events of default:

(a) The failure of Maker to make payment of the principal or interest due under this Note within ten (10) days after receipt by Maker of written notice from Holder that an installment is past due;

(b) The insolvency of Maker, the appointment of a receiver of its assets, or the institution of any involuntary proceeding under any bankruptcy or insolvency law relating to the relief of debtor for the readjustment or relief of any indebtedness of Maker, whether as a reorganization, composition, extension or otherwise, which involuntary proceeding is not terminated, dismissed or concluded in a manner not adverse to Maker within ninety (90) days of the commencement of such proceeding; or

(c) The filing by Maker of an application or an assignment for the benefit of creditors or for taking advantage of the same under any bankruptcy or insolvency law.

2. **Prepayment.** Maker shall have the right to prepay all or any portion of the principal balance due under this Note at anytime without premium or penalty. Except as set forth above, Holder shall not have any the right to require prepayment of the principal balance due under this Note.

3. **Waiver.** No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver of any right or remedy on one occasion shall not be construed as a waiver of any right or remedy on any future occasion.

4. **Attorneys' Fees.** The Holder shall be entitled to collect all costs and reasonable attorneys' fees incurred by Holder in enforcing his rights under this Note.

5. **Notice.** All notices, demands and requests given or required to be given by any party hereto to the other party shall be made in writing and shall be deemed to have been properly given, made or served only if sent by registered or certified mail, postage prepaid, addressed to the other party his or its last known address, or such other address as the parties shall give prior notice.

6. **Negotiability.** This Note is fully negotiable and may be assigned, transferred or set over by Holder or Maker.

7. **Reference.** Any reference herein to the Holder shall be deemed to include and apply to any subsequent holder of this Note. Any reference herein to the Maker shall be deemed to include and apply to every person now or hereafter liable upon this Note.

8. **Jurisdiction.** This Note shall be deemed to have been made under and shall be governed by the laws of the State of New York in all respects, including matters of construction, validity and performance and none of its terms or provisions may be waived, altered, modified or amended except as Holder may consent thereto in writing duly signed for and on his behalf.

9. **Right of Setoff.** Maker shall be entitled to the right of setoff against any or part of any installment due Holder hereunder for any sums owing or hereafter becoming payable to Maker from or by Holder for any reason whatsoever in accordance with the Asset Purchase Agreement by and between Maker and Holder dated January __, 200__.

MAKER

By:_____

_____, Vice President

Attach as Schedule 1 amortization schedule

EXHIBIT B

CLIENT LETTER

EXHIBIT "B"

CLIENT LETTER advising that Selling Attorney's practice has been transferred to Buyer and satisfying other requirements of DR 2-111

Re: [Name of Case]

Dear [Name]:

As you aware from my previous correspondence to you, I have arranged to transfer ownership of my practice to [*Name of Buyer*]. That transaction [was completed] [will be completed] on [date of conveyance]. His office address and his phone, fax and e-mail addresses are [state addresses separately].

In accordance with the provisions of our Code of Professional Responsibility, please be assured that both I and [Name of Buyer] have carefully maintained whatever confidences and secrets you have imparted to me and that he and I shall continue to do so as long as he continues to represent you, and permanently thereafter should you decide at any time to select another attorney to represent you in this matter.

Please also be assured that those terms of fee payment that you and I agreed upon at the time of my original retention, or that may thereafter have been agreed upon between us, shall continue to be honored by the [Buyer] and cannot be increased by reason of the transfer of your file unless specifically otherwise permitted within the terms of our retainer agreement with you or as otherwise specifically agreed to between you and [the Buyer].

I am certain that [the Buyer] will continue to serve you professionally and well and that your file will continue to be in good hands. Please feel free to communicate with him/her just as you have with me. Thank you for allowing me to be of service to you.

Very truly yours,

[If the client, having previously been notified of the selling attorney's intent to transfer the client's file or matter to the Buyer, has not responded to the Seller's request to provide his or her consent, or lack of it, within the ninety day period prescribed in DR 2-111(C)(2), this letter should include the following:

> Although I previously notified you of my intent to transfer your file to [the Buyer] and asked that you provide me with your written consent or disapproval, I have not received your written response. Accordingly, pursuant to the provisions of Disciplinary Rule 2-111(C)(2) of New York's Code of Professional Responsibility, I presume that you consent to the transfer.]

I have read this letter and agree in all respects to be bound by its terms.

_____

[Buyer]

SCHEDULE 2(a)

ASSETS

The following Assets shall be included in the sale from Seller to Purchaser:

1. Seller's goodwill
2. Seller's Active Files (see attached list)
    a. Corporate
    b. General Partnerships
    c. Limited Liability Companies
    d. Limited Partnerships
    e. Real Estate Matters
    f. Estate Administration Files
    g. Will Files
3. Seller's Special Holdings (see attached list)
    a. Client's original wills retained by seller for safekeeping
    b. Client's Corporate Minute Books and Limited Liability Company Minute Books retained by seller for seller for safe keeping
    c. Miscellaneous Records

SCHEDULE 3(b)

ALLOCATION OF PURCHASE PRICE

Client Records,
Intangibles and Goodwill

$_____

SCHEDULE 7

IOLA ACCOUNT DETAIL

Attach Bank Account Information (accounts, locations, signators, balances, list of clients and allocation of funds among designated clients).

SCHEDULE 13(g)

OPEN MATTERS

See attached.

Set forth all client matters which are considered open and ongoing by Selling Attorney

APPENDIX V-1

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

[optional language in brackets]

The undersigned for and on behalf of itself, its affiliates, subsidiaries and agents, including without limitation,_____, [an attorney engaged in the practice of law in the state of New York] [a New York professional corporation engaged in the practice of law], (the "Disclosing Party") has developed certain confidential and proprietary information in both written form and oral form ("Confidential Information"), which has been and is being disclosed to the undersigned for the sole purpose of entering into discussions regarding possible future business and professional relationships.

In consideration of the Disclosing Party's disclosure of the Confidential Information to the undersigned, its officers and directors and all affiliates (hereinafter "Recipient") the undersigned agrees as follows:

1. **Disclosure of Confidential Information**.

(a) The Recipient hereby acknowledges that all documents and information owned or developed by the Disclosing Party or pertaining to the Disclosing Party which has or will come into Recipient's possession or knowledge, unless Recipient provides the Disclosing Party with independent verification to the contrary within fifteen (15) days of the original receipt of such information, is Confidential Information and therefore:

(i) is proprietary to the Disclosing Party having been designed, developed and accumulated at great expense over lengthy periods of time; and

(ii) is secret, confidential and unique, and constitutes the exclusive property of the Disclosing Party.

(b) Excluded from the Confidential Information is any submission or disclosure:

(i) that can be demonstrated by documentation to have been public information or generally available to the public prior to Recipient's receipt of such Confidential Information from the Disclosing Party;

(ii) that can be demonstrated by documentation to have been in Recipient's possession prior to receipt thereof from the Disclosing Party; and

(iii) that becomes part of the public information or generally available to the public such as by publication or otherwise, other then as a result of a disclosure by Recipient in breach of this Agreement.

2. **Use of Confidential Information.**

(a) Recipient shall not use any of the Confidential Information for any purpose other than for the exclusive purpose set forth above. Recipient agrees that the Confidential Information will not be used in any way detrimental to the Disclosing Party and that such information will be kept confidential by Recipient and its agents; provided, however, that (i) any of such information may be disclosed to such representatives of Recipient who need to know such information for the specific purposes set forth above (it being understood that Recipient's directors, officers, employees, affiliated entities, accountants, legal counsel and

representatives shall be informed by Recipient of the confidential nature of such information and shall agree to treat such information confidentially in accordance with the terms set forth herein) and (ii) except as otherwise provided in this Agreement (including Paragraph "3" below), no disclosure of such information may be made by Recipient or its representatives to any other person or entity without the prior written consent of the Disclosing Party.

[(b) Any of Recipient's employees, officers, directors, agents and/or representatives granted access to any Confidential Information provided by the Disclosing Party will each be required to agree to the provisions of, and shall sign a copy of, this Agreement.]

3. **Required Disclosure**. In the event Recipient should be requested or required (by oral questions, interrogations, requests for information or documents, subpoena, civil investigative demand or similar process or as otherwise required by law ("demands")) to disclose Confidential Information supplied to it in the course of Recipient's dealing with the Disclosing Party, the Recipient will provide the Disclosing Party with prompt notice of such requests so that the Disclosing Party may, at its own cost and expense, seek an appropriate protective order; in the event no such protective order is timely obtained, Recipient is permitted to comply with such demands.

4. **Indemnification and Injunctive Relief**. Recipient agrees to indemnify the Disclosing Party against all losses, damages, claims or expenses incurred or suffered by the Disclosing Party as a result of Recipient's breach of this Agreement. Recipient acknowledges that the Confidential Information it will obtain is unique and of a confidential and proprietary nature and that a breach of the terms of this Agreement will be wrongful and may cause irreparable injury to the Disclosing Party. Therefore, in addition to all remedies of law or equity, the Disclosing Party shall be entitled, as a matter of right, to injunctive relief enjoining and restraining Recipient and each and every other person or entity concerned thereby from continuing to act (or failing to act) in violation of the terms hereof. Recipient shall be liable for any and all damages (whether direct, indirect, consequential or otherwise) resulting from any breach of this Agreement.

5. **Return of Information**. Immediately upon the request of the Disclosing Party, all documentation and records of any nature and kind delivered to Recipient, its directors, officers, employees, accountants, legal counsel, representatives and affiliates shall be promptly returned and all copies of all such documentation, records, etc., made by any person or entity shall be promptly destroyed.

6. **Publicity**. Without the prior written consent of the Disclosing Party, the Recipient will not disclose to any person (a) that the Recipient has entered into discussions regarding possible future business and professional relationships with the Disclosing Party, (b) that the Recipient has received Confidential Information from the Disclosing Party, or (c) any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.

7. **Acknowledgments of Recipient**. Recipient acknowledges that the Disclosing Party is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or any other information concerning the Disclosing Party provided or prepared by or for the Disclosing Party and neither the Disclosing Party nor any of its officers, directors, employees, stockholders, owners, affiliates or agents, will have any liability to the Recipient resulting from the Recipient's use of the Confidential Information.

8. **Termination**. This Agreement shall expire six (6) months from the date hereof ("Term"). Upon expiration of the Term of this Agreement:

(a) all Confidential Information previously received by Recipient, and not previously returned, shall be promptly returned to the Disclosing Party in accordance with Paragraph "5" above; and

(b) all of the terms and conditions of this Agreement pertaining to the disclosure of Confidential Information shall remain in full force and effect in accordance with this Agreement.

9. **Waiver**. It is further understood and agreed that no failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, not will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. **Governing Law**. This Agreement shall be interpreted and governed under the laws of the State of New York and each party hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of New York for any action, suit or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby.

11. **Notices**. All notices or documents required pursuant to this Agreement shall be effective if forwarded by certified or registered mail, return receipt requested addressed to the principal office of the party to such parties last know mailing address.

12. **Entire Agreement/Modification**. This Agreement represents the entire agreement between the parties hereto with respect to its subject matter and specifically supersedes any oral or written agreements heretofore entered into by the parties respecting the same. This Agreement may not be altered or modified without the express written consent of the parties.

IN WITNESS WHEREOF, the undersigned have executed this Confidentiality and Non-Disclosure Agreement the ____ day of _____, 2005.

RECIPIENT:

(signing individually and on behalf of any entity)

By:

Name:

Title:

DISCLOSING PARTY:

_____