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Description of document:	Federal Trade Commission (FTC) letter correspondence between FTC and the Funeral industry associations, 2017-2019
Requested date:	27-October-2019
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Posted date:	20-April-2020
Source of document:	Freedom of Information Act Request Office of General Counsel Federal Trade Commission 600 Pennsylvania Avenue, NW Washington, DC 20580 Fax: (202) 326-2477 FTC FOIA Online Portal

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

JAN 07 2020

Re: FOIA-2020-00113
Correspondence between the FTC
and the Funeral Industry
Associations.

This is in response to your request dated October 27, 2019, under the Freedom of Information Act seeking access to all letter correspondence between FTC and the Funeral industry associations from January 1, 2017 to present. In accordance with the FOIA and agency policy, we have searched our records on November 1, 2019, November 4, 2019 December 12, 2019, and December 16, 2019.

We have located 25 pages of responsive records. I am granting partial access to the accessible records. Portions of these pages fall within one or more of the exemptions to the FOIA's disclosure requirements, as explained below.

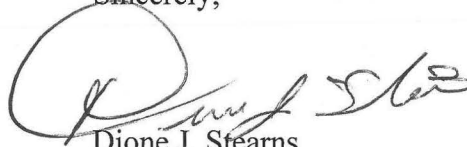
I am denying access to individuals' names and addresses and any other identifying information found in the complaints. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information. *See The Lakin Law Firm v. FTC*, 352 F.3d 1122 (7th Cir. 2003).

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, or via email at FOIAAppeal@ftc.gov, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Chip Taylor at 202-326-3258.

Sincerely,

A handwritten signature in black ink, appearing to read "Dione J. Stearns", is written over a horizontal line. The signature is stylized with a large initial "D" and a prominent "S".

Dione J. Stearns
Assistant General Counsel

MEMORANDUM

TO: Patti Poss
FROM: T. Scott Gilligan
DATE: March 8, 2019
RE: Meetings in 2019

Patti:

Thank you for speaking with me yesterday. Below I have summarized our discussions regarding meetings and presentations in 2019:

1. Meeting on April 4, 2019. We have tentatively set up a meeting at your office on April 4, 2019 at 11:00 am. You were going to check with Lois to make sure that she was available. I believe the main topic of the meeting would be the discussion of the FTC's upcoming review of the Funeral Rule and the schedule for that review.
2. Funeral Rule Compliance Webinar. We discussed your participation in NFDA's annual FTC Funeral Rule Compliance Webinar which is attended by participants in the FROP program and is available to funeral homes around the country. The two-hour Webinar is scheduled for June 13, 2019 at 2:00 pm EDT. As we discussed, the FTC Funeral Rule Coordinator customarily provides a ten to fifteen minute update on the undercover shopping program and the overall compliance rates with the Funeral Rule.
3. October 28-29, 2019 NFDA Convention. NFDA will be holding its annual convention in Chicago, Illinois over the dates of October 27 - 30, 2019. During the mornings of October 28 and October 29, NFDA offers continuing education presentations to attendees. Typically, I have joined with Craig Tregillus in presenting an FTC Funeral Rule compliance workshop of one hour in length on the morning of Monday of the Convention. That would be October 28, 2019 for this year's convention. However, if October 29, 2019 is more convenient for you, we can also do it on that date.

As I explained, the Funeral Service Foundation, which is a 501(c)(3) organization that promotes funeral service education, has customarily paid the travel expenses of the Funeral Rule Coordinator to participate in the Workshop. If you are able to participate in this year's convention, I will inform the Funeral Service Foundation and it will send a letter to you verifying that the Foundation will cover your travel expenses. Please let me know.

Patti, if you have any questions regarding these matters, please let me know.

Scott

Gilligan Law Offices

3734 Eastern Avenue
Cincinnati, Ohio 45226
(513) 871-6332
(513) 871-4749 Fax

T. Scott Gilligan
scott@gilliganlegal.com

Deliver To: Patti Poss **Fax No:** 202-326-3395
FTC

Date: March 8, 2019

Total Pages: 3 (including cover page)

From: T. Scott Gilligan

Re: Meetings with NFDA

Please deliver this information immediately upon receipt to the person named above.
If you do not receive all the pages, please call our office at (513) 871-6332.

Notice: This message and accompanying documents are intended only for the use of the individual or entity to which they are addressed and may contain information that is privileged, confidential. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby warned that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and destroy or return the original message to us at the above address via the U. S. Postal Service. Thank you.



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* Indicates NFDA Member

July 8, 2019

Ms. Patricia Poss

Funeral Rule Coordinator
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Funeral Service Foundation (FSF) a 501(c)(3) non-profit organization serving the funeral service profession invites you to present at the 2019 National Funeral Directors Association (NFDA) International Convention & Expo on Monday, October 28, 2019 at the McCormick Place, Chicago, Illinois. The convention is attended by approximately 4,000 funeral service professionals and individual presentations typically draw 100 to 200 people.

Presentation Details

Presentation FTC Funeral Rule: Reducing Your Risk
Co-Presenter T. Scott Gilligan, NFDA General Counsel
Date Monday, October 28, 2019
Time frame 7:30-8:30 a.m.

The travel days for this meeting are Sunday, October 27 and Monday, October 28, 2019. Sara Moss, NFDA Senior Education Coordinator, is available to answer any questions via email at smoss@nfda.org.

Reimbursement Details

- Roundtrip economy class airfare from Washington D.C. to Chicago
- Hotel Expenses for one night: Location to be determined
- Per diem \$100
- Ground transportation allowance
- Convention Registration

Please submit all expenses with their original receipts for reimbursement to:

Julie A. Bernard

Accounts Payable/Resource Manager, National Funeral Directors Association
13625 Bishop's Drive
Brookfield, WI 53005-6607
Phone: 262-814-1537 Fax: 262-789-6977
jbernard@nfda.org

With sincere appreciation,

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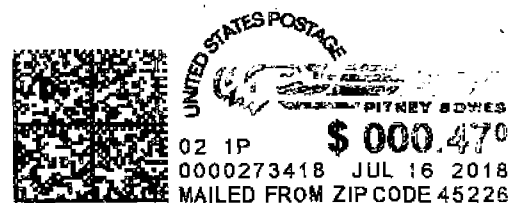
Bob Arrington
Funeral Service Foundation 2018-19 Chair



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2734 Eastern Avenue
Cincinnati, Ohio 45226

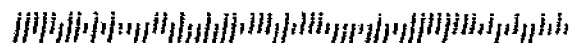
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Mr. Craig Tregillus
Division of Marketing Practices
Federal Trade Commission
6th and Pennsylvania Avenues
Washington D.C. 20580

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July 16, 2018

VIA E-MAIL AND U.S. MAIL

Mr. Craig Tregillus
Division of Marketing Practices
Federal Trade Commission
6th and Pennsylvania Avenues
Washington, D.C. 20580

RE: Casket Handling Fees

Dear Craig:

As General Counsel for the National Funeral Directors Association (NFDA), my office previously sent you a letter outlining certain issues that NFDA is requesting the FTC to examine in its upcoming review of the Funeral Rule. One issue that was not included in that letter, but which NFDA is requesting the FTC to examine, is whether the Rule should be amended to allow funeral providers to recover their costs when they handle third party caskets.

As we are both aware, the FTC amended the Funeral Rule in 1994 to prohibit funeral providers from charging any type of fee to recoup the costs of the funeral provider in coordinating and receiving third party caskets. Even though there is additional staff time involved in handling third party merchandise, the FTC believed it was too difficult to determine when a reasonable fee for those services crosses the line into a penalty imposed against a consumer for using a third party casket. So the FTC took the simpler approach and banned all fees intended to recoup funeral home costs in handling third party merchandise.

To its credit, the FTC Staff has attempted to shift some of the costs of handling third party caskets from funeral providers to sellers and shippers of third party caskets. In the April 19, 2010 Staff Advisory Opinion 10-1, the FTC Staff expressed its position that the Funeral Rule does not require a funeral provider to unload a third party casket, uncrate the casket, or dispose of its packaging. While Staff Advisory Letter 10-1 was helpful, it still fell short of allowing a funeral provider to recoup the costs of handling third party caskets for two reasons.

First, when funeral homes are confronted with shippers that will not uncrate a third party casket and/or haul away the packaging, the funeral home has no way to force the shipper to take the required action. The funeral provider may not reject the third party casket nor can it pass on

its costs to the consumer. Additionally, there is no legal obligation on the shipper to uncrate the casket or haul away the packaging. Therefore, while FTC Staff Advisory Opinion 10-1 relieved the funeral director of the legal obligation to uncrate the casket and dispose of packaging materials, it does not provide any practical option when the shipper refuses to perform either of these tasks. In that case, the funeral home will have to undertake these actions and not be compensated for its services.

Secondly, while the funeral home may be able to avoid the expense of uncrating the casket and disposing of packaging material in some cases, it will have the costs of coordinating the delivery of caskets in all cases. Even in cases where delivery comes off seamlessly, there is staff time involved in arranging the date and time of delivery and meeting the shipper. Moreover, in cases where shipment issues may arise, such as shipping delays or incorrect or damaged caskets being delivered, funeral homes are required to expend substantial time in completing the delivery of third party caskets.

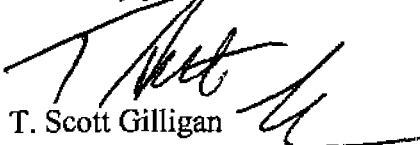
Banning all costs recovery for funeral home services provided in handling third party caskets because the FTC Staff feels it is difficult to judge what an appropriate fee may be is an abdication of the FTC's responsibilities. Oftentimes, consumer protection agencies like the FTC are called upon to make judgement calls regarding what is unfair or deceptive. On an issue such as this one where the FTC can measure costs, this is not too difficult of a challenge.

It is interesting to note that other government agencies make these types of calls routinely. For example, Section 1721.20 of the Ohio Revised Code, a copy of which is enclosed, prohibits cemeteries from imposing any type of direct or indirect charge pertaining to the delivery and installation of third party burial vaults, "except when such charge is for services actually performed, or expenses actually incurred in the aid of installation." The statute further charges the Ohio Cemetery Dispute Resolutions Commission with enforcing Section 1721.20 of the Ohio Revised Code. This law protects consumers against being penalized for buying third party vaults while also allowing cemeteries to recover their costs in handling and servicing third party vaults. There is no reason the Funeral Rule could not contain a similar provision.

On behalf of NFDA, we are requesting the FTC to examine the issue of funeral home costs in handling third party merchandise and appropriate measures for funeral homes to recover those costs.

Please let me know if you have any questions.

Sincerely yours,


T. Scott Gilligan

1721.20 Charge for delivery or installation of burial vault.

No person, partnership, association, or corporation or officers, agents or employees thereof, shall directly or indirectly make or collect any charge pertaining to the delivery or installation of a burial receptacle in a cemetery for human remains, except when such charge is for service actually performed, or expense actually incurred in aid of said installation.

Charges under this exception shall be equal for similar services in the same cemetery.

Effective Date: 10-29-1953 .

From: Scott Gilligan
To: Poss, Patricia H.
Subject: FTC Review of the Funeral Rule
Date: Friday, August 30, 2019 4:48:59 PM
Attachments: DOC083019-08302019133637.pdf

Patti: Attached is a letter concerning the issue of amending the Funeral Rule to require the mandatory posting of GPLs to funeral home websites. Let me know if you have any questions. Have a great Labor Day weekend. Scott

-----Original Message-----

From: Gilligan Law Office [<mailto:gilligan@gilliganlegal.com>]
Sent: Friday, August 30, 2019 4:37 PM
To: Scott Gilligan
Subject: Send data from MFP12217581 08/30/2019 13:36

Scanned from MFP12217581
Date:08/30/2019 13:36
Pages:12
Resolution:200x200 DPI

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August 30, 2019

VIA E-MAIL
VIA US MAIL

Ms. Patricia H. Poss
Federal Trade Commission
Bureau of Consumer Protection
Division of Marketing Practices
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Availability of Online Funeral Price Information

Dear Patti:

As you will recall, we met on April 4, 2019 to discuss, among other things, the upcoming review of the Funeral Rule. For your convenience, I have attached the two letters I have previously sent to Craig Tregillus on Funeral Rule issues that NFDA believes should be part of the review process.

During our meeting, we discussed the proposal by the Funeral Consumer Alliance that the Funeral Rule should be amended to require each funeral provider to post its General Price List (GPL) on its funeral home website. As you will recall, I cited the fact that online businesses already exist that are providing this price information. In that regard, I would ask you to visit www.funeralocity.com which provides funeral home price information to consumers for free. By simply listing a city or zip code on the funeralocity.com website, a consumer can see prices for services for funeral homes in a five mile radius, ten mile radius, twenty-five mile radius, or fifty mile radius from the consumer's location.

If you examine the funeralocity.com website, you will see that it provides prices for full service cremations, direct cremations, traditional funeral service with burial, and simple burial. Therefore, a consumer wishing to compare prices for traditional funerals with burial in their area can, with a few computer clicks, pull up and compare the traditional funeral prices from dozens of funeral homes.

The other feature you will see with the funeralocity.com website is that the consumer can click on any funeral home and by selecting the "View More" option, the consumer is given an itemized breakdown of all services comprising the funeral/cremation they selected. As an example, I have enclosed a printout of a Full Service Cremation for Gilligan Funeral Home in Cincinnati, which is owned by my cousins. The printout shows what is disclosed under a full service cremation. It includes itemized prices for the eight services that comprise a full service cremation and a total price for the service.

Gilligan Law Offices

Ms. Patricia H. Poss
Federal Trade Commission
August 30, 2019
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Obviously, it will be far easier for a consumer looking to compare funeral home prices for a full service cremation to go to the funeralcity.com website and with a few clicks have side-by-side comparisons for funeral homes in the consumer's area. The alternative would be for the consumer to access multiple funeral home websites, locate their price information, identify which services are needed for a full service cremation, record the prices for those eight items, add those prices up, and then compare them doing the same calculation for other funeral homes. It is doubtful that many consumers have the ability, time or inclination to undertake such an exercise.

The Funeral Consumer Alliance has proposed that the FTC amend the Funeral Rule to require funeral homes to post their GPLs on their websites. Putting aside the threshold legal arguments surrounding this proposal, there are substantial issues as to whether consumers are seeking this information and whether they would use it. Given that websites like funeralcity.com are already providing this information as a free online service in a format that does the comparison shopping for the consumer, the FTC needs to examine during the Funeral Rule review the following issues:

- (1) What percentage of funeral consumers seeks price information before selecting a funeral home?
- (2) Of those consumers who seek price information, what are their preferred methods of obtaining that information?
- (3) How easy or difficult is it for consumers who seek price information to obtain it?
- (4) What evidence is there to show that a substantial number of consumers are unable to obtain funeral price information because the majority of the funeral homes do not post their GPLs online?

In requesting comments on these issues, NFDA would hope that the FTC Staff would emphasize the need for statistically valid survey data. In past reviews of the Funeral Rule, the FTC Staff has stated that amendments to the Funeral Rule should be supported by methodologically sound quantitative studies and expert testimony as opposed to anecdotal evidence. (See Staff Report to the Federal Trade Commission on the Mandatory Review of the Funeral Industry Practices Trade Regulation Rule, pp. 21-23 (April, 1988).

Please let me know if you have any questions regarding this matter. We look forward to working with the FTC Staff on review of the Funeral Rule.

Sincerely yours,



T. Scott Gilligan

TSG/khp

Enclosures

cc: NFDA Board of Directors
Christine Pepper

Gilligan Law Offices

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November 19, 2017

Mr. Craig Tregillus
Division of Marketing Practices
Federal Trade Commission
6th and Pennsylvania Avenues
Washington, D.C. 20580

RE: Proposed Issues under the Funeral Rule Review

Dear Craig:

During the upcoming Federal Trade Commission (FTC) review of the Funeral Rule, NFDA is requesting that the FTC Staff include the following issues in the review:

1. **Distribution of the General Price List.** No Funeral Rule issue has been more troublesome for the funeral profession or more problematic for FTC enforcement than the trigger for giving out the General Price List (GPL) to consumers. Section 453.2(b)(4)(i)(A) of the Funeral Rule requires a funeral provider to give a GPL to a person who inquires in person about funeral goods, services, arrangements, or the prices of these items offered by the funeral provider. The GPL must be given "upon beginning discussion of" any of those items.

As NFDA has pointed out since the Funeral Rule was first reviewed back in 1988, Section 453.2(b)(4)(i)(A) is ambiguous and vague. Read literally, it would require a funeral provider to give out a GPL to anyone who casually mentions a funeral arrangement or a funeral service. Although the FTC Staff has informally assured funeral providers that despite the imprecise wording, it will only enforce those GPL distribution requirements in a consumer setting, that does not ameliorate the fact that the trigger is impermissibly vague and overbroad.

Starting as far back as 1985, there has been a clear incongruity between the wording of the Funeral Rule and how the FTC Staff has stated it will be enforced. For example, if at the time the body is removed from the place of death, a consumer asks a funeral director about the availability of the funeral home for a visitation, it is clear under the wording of the Funeral Rule that this is a discussion of a funeral service. As soon as that discussion starts, the funeral provider must hand out a GPL to the consumer.

Yet, in the Final Compliance Guidelines for the Funeral Rule issued in 1985, the FTC Staff stated in the same scenario as above that the funeral provider would not have to give out the GPL under those circumstances unless the funeral director was willing at that time to commit to the visitation. 50 Fed.Reg. 28062, 28071 (July 9, 1985).

Gilligan Law Offices

Mr. Craig Tregillus
November 19, 2017
Page 2

During the first review of the Funeral Rule from 1988 through 1994, the FTC Staff, when confronted with this same issue, opined that the funeral profession had misinterpreted the GPL distribution requirements. To clear up the confusion as to when a GPL had to be distributed, the FTC Staff proposed a revision to Section 453.2(b)(4)(i) that "would clarify the GPL 'timing' requirement by breaking down the term 'funeral arrangements' into component parts, namely discussions of 'prices' or of the 'selection' of funeral goods or services, including selection of the overall type of funeral service or disposition." (Final Staff Report at 163).

In that regard, the FTC Staff recommended that the subsection be reworded as follows:

"(i) Give a printed or typewritten price for retention to persons who inquire in person about the prices or the selection of funeral goods or services. The funeral provider must offer the list upon beginning discussions either of prices or of the selection of any funeral goods or funeral services, including the overall type of funeral service or disposition, whichever discussion occurs first. The requirement applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law, except in certain special cases. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement that providers given consumers the GPL." Id.

The FTC Staff's recommendation to revise the language of Section 453.2(b)(4)(i) to focus on a discussion of price or selection being the trigger for the GPL distribution was a worthwhile attempt to clear up the confusion between how the Rule is worded and how it is enforced. NFDA is requesting that the FTC re-examine the Staff's recommendation made over 25 years ago as a means to resolve this lingering problem.

2. **Casket and Outer Burial Container Price Lists**. As stated above, NFDA believes a price list distribution requirement that is triggered by a discussion of price or a selection of goods or services solves the long standing compliance issue surrounding price list distribution while providing consumers with sufficient access to price information. Although the distribution of the Casket Price List (CPL) and Outer Burial Container Price List (OBCPL) have not been the subject of longstanding confusion as the GPL has, in recent years NFDA and the FTC Staff have battled over the proper interpretation of Section 453.2(b)(2)(i). As you are aware, the FTC Staff believes that a CPL must be distributed to an individual before he or she is seated in an arrangement office that contains a casket display. NFDA has countered that Section 453.2(b)(2)(i) would not require that unless the person had "inquired in person about the offering of caskets".

To resolve this dispute, NFDA is requesting the Commission to examine whether Section 453.2(b)(2)(i) should be modified along the lines that the FTC Staff recommended during the first

Gilligan Law Offices

Mr. Craig Tregillus
November 19, 2017
Page 3

review of the Funeral Rule. By tying the distribution of a CPL to price or selection of a casket, we would solve the compliance issue and protect the consumer. In that regard, NFDA would propose that Section 453.2(b)(2)(i) be reworded as follows:

“Funeral providers must provide a casket price list to: (a) any person who requests in person for price information about caskets or alternative containers; and (b) any person who selects a casket or alternative container from the funeral provider in person. In the latter case, the casket price list must be provided prior to the selection of caskets or alternative containers by the person.”

Another issue that the FTC should examine is whether the CPL and OBCPL should even be required by the Funeral Rule. In that regard, consider that in 2016, cremation was the selected form of disposition in 50.2% of the 2.6 million deaths in the United States. While no exact figure exists as to the number of urns that were purchased for the 1.3 million cremations, it is safe to estimate that at least 1 million urns were purchased in the U.S. last year. Even though the Funeral Rule does not require an urn price list or any disclosure regarding urn prices, there is no evidence of complaints from the consumers purchasing those 1 million urns that funeral providers are not disclosing urn prices or displaying a full range of urns.

The fact that the market for urns functions well without regulation under the Funeral Rule raises the question of whether the markets for caskets and outer burial containers would also function equally as well without Funeral Rule regulation. Today's casket market is radically different from the market that existed when the Rule was promulgated in 1982. At that time, burial was the predominant form of disposition and the funeral home was the sole source of caskets.

All of that has changed. Today, burial is selected in only 43.5% of U.S. deaths. Additionally, there are numerous online companies and retailers, including Walmart and Costco, selling caskets to the public. Price competition in this market is very aggressive. Moreover, there are already thousands of consumers who purchase caskets and outer burial containers from online and retail outlets without ever receiving a CPL or OBCPL.

The FTC Staff's reluctance to allow changes to the CPL or the requirements for its distribution is based upon its belief that funeral consumers will not be informed of less expensive caskets unless the funeral home is required to present a CPL to the consumer upon any discussion of caskets. The retail and online competition for casket sales undermined that argument long ago since a funeral home that does not offer a full price selection of caskets risks losing a sale. Moreover, if the FTC Staff continues to see this as an issue, a far simpler solution is simply to require a funeral home to list its least expensive casket on the GPL.

Given the radical transformations in the markets for caskets and outer burial containers over the past 35 years, NFDA is requesting that the FTC Staff seek information on whether there is a continuing need for the Funeral Rule to require the offering of the CPL and OBCPL.

Gilligan Law Offices

Mr. Craig Tregillus
November 19, 2017
Page 4

3. **Variable Basic Services Fee.** One of the sixteen itemized fees that the Funeral Rule sets forth in Section 453.2(b)(4)(ii) is the basic services of funeral directors and staff. Pursuant to that Section, the price for the basic services fee may be “expressed either as the flat fee, or as the price per hour, mile or other unit of computation.”

Despite the fact that the Funeral Rule allows funeral homes to charge a basic service fee that will vary depending upon the number of hours spent by the funeral director to arrange and coordinate the funeral and disposition, the FTC Staff has opined on several occasions that the basic services fee must be a flat fee (see Staff Opinion 09-01). Much of the discussion regarding the necessity of a flat basic services fee arose in the context of discount packages where the FTC staff has found that the entire basic services fee must be charged for every funeral (other than the alternate services of direct cremation, immediate burial, and forwarding or receiving remains). The FTC Staff has never cited any provision in the Funeral Rule that supports that conclusion and, as noted above, it is inconsistent with the wording of the Rule which expressly allows a variable basic service fee based upon an hourly charge. With the amount of the basic services fee determined by the number of hours the funeral director and staff works to arrange and coordinate the funeral, the basic services fee will vary greatly from funeral to funeral.

NFDA recently noted in an exchange with the FTC Staff how this flat basic services fee requirement penalizes consumers and suppresses funeral home innovation. The case in point was a low-cost funeral provider in Oregon that had a \$1,250 basic services fee. The provider offered direct cremation at \$725 and a direct cremation with a one hour visitation at \$820. This option provided the family a simple brief visitation for only \$95. However, the Oregon Funeral Board, with the support of the FTC Staff, found that the funeral provider violated the flat basic services fee requirement of the Funeral Rule by not charging its full \$1,250 basic services fee. Even though the funeral home was only offering a simple one hour visitation, the FTC Staff opined that it was required to charge at least \$1,250. Obviously, for a family of limited means, this would deprive them of the opportunity to have a simple visitation offered by the Oregon funeral provider.

The flat basic services fee restricts the ability of funeral homes to provide low price options. It also penalizes consumers who opt for simple services by making them pay the same fee as consumers who select more elaborate services. In addition, as noted above, it is inconsistent with the wording of the Funeral Rule which allows funeral providers to charge on an hourly basis, thereby resulting in a different basic services fee depending upon the time expended by the funeral director and staff.

NFDA would request that the FTC examine as part of the Funeral Rule review the benefits and costs that the flat basic services fee requirement imposes upon consumers and funeral providers.

4. **Price Ranges.** The Funeral Rule currently requires funeral homes to quote price ranges for caskets, outer burial containers, direct cremation and immediate burial. On the General Price List, the funeral home must list a price range for its lowest and highest priced caskets and a price range for its highest and lowest priced outer burial containers. Both price ranges must also be

Gilligan Law Offices

Mr. Craig Tregillus
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accompanied by a mandatory disclosure informing consumers that a complete price list will be provided at the funeral home.

With direct cremation and immediate burial, the funeral home is required to quote price ranges of its lowest and highest priced options for these alternate services. In addition, funeral homes are required to list the price of each direct cremation for each alternative container it offers for sale as well as the price of an immediate burial for each casket it offers for sale. Because of the number of caskets most funeral homes offer for sale, the FTC has informally informed funeral providers that they will not enforce this latter requirement with regard to immediate burial.

NFDA believes there is absolutely no consumer benefit in listing the upper levels of these assorted price ranges. Knowing the price of the most expensive casket and/or burial vault does not help a consumer select a particular funeral home or a specific casket or vault. The upper price range is universally ignored by consumers and only serves as a requirement that can trip up a funeral provider that fails to update its price ranges.

The same conclusion applies to the upper price range for direct cremation and immediate burial. No consumer wants to know what is the highest priced direct cremation or immediate burial because these services will never be selected. In most cases, the only relevant price for direct cremation and immediate burial consumers is what is the least expensive price for these two services.

NFDA would recommend that the Funeral Rule be revised to provide that funeral homes must list on its GPL the least expensive casket and outer burial container that it offers for sale. With regard to direct cremation, funeral homes should list the price of a direct cremation when the consumer provides the container and the price of the direct cremation with the least expensive container the funeral home offers for sale. With immediate burial, the requirement would be the same.

NFDA would request the FTC to examine the elimination of the price ranges noted above and simplification of the price listings for direct cremation and immediate burials.

5. **Cash Advances.** The Funeral Rule requires a funeral home to disclose on the Statement of Funeral Goods and Services Selected any cash advance item that has been marked up. Using the mandatory disclosure that states "We charge you for our services in obtaining (specified marked up cash advance items)", a funeral home informs consumers which particular items have been marked up. In addition, a mark-up is not just a surcharge imposed by the funeral home, but it also includes any rebates, commissions, and trade or volume discounts that the funeral home receives on a cash advance item, but does not subsequently pass on to the consumer.

The theory behind disclosing that there has been a mark-up on a cash advance item is that the consumer, having learned that the cash advance item has been marked up, may decide to decline the item and obtain it on their own. However, there is no evidence to support this theory. This appears to be a disclosure that is of no value to the consumer. NFDA would request the FTC to

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include in its review an analysis of what consumer benefits, if any, are provided by this disclosure on the Statement of Funeral Goods and Services Selected.

The second aspect of the cash advance requirement that NFDA would ask the Commission to examine is the inclusion of rebates, commissions, and trade or volume discounts as marked up cash advance items. Even if one were to accept the premise that disclosing marked up cash advance items to a consumer allows the consumer to purchase the items themselves, thereby avoiding the mark-up and pocketing the savings, that premise is inapplicable to trade and volume discounts, commissions or rebates. Consumers who decide to purchase cash advance items on their own will not recoup a savings since the volume and trade discounts, rebates and commissions the funeral home receives on the cash advance items are not going to be paid to the consumer. So, the consumer is being misled by this mandatory disclosure into thinking that they will recoup the markup by purchasing items themselves, when that is not the case. The end result is that the consumer goes through the trouble of purchasing the items themselves and recoups no savings, while the funeral home loses out on the commission, rebate or discount. This is a disclosure that not only imposes a regulatory burden while delivering no consumer benefit, but actually misleads the consumer. NFDA would request the Federal Trade Commission to include in its review the question of whether these cash advance mark-ups should include rebates, commission, and trade or volume discounts.

6. **Immediate Burial.** The alternative services of forwarding of remains, receiving of remains, direct cremation, and immediate burial were designed to provide basic handling, transportation and disposition of the remains without any ceremonies or memorial services. However, for reasons that are not known, the Funeral Rule's definition of immediate burial includes a "graveside service". Yet, it is very unusual for families who opt for immediate burial to ever request a graveside service. NFDA would ask the Commission to include in its review a recommendation to redraft the definition of immediate burial to eliminate the graveside service so it is consistent with the three alternative services in not requiring a family to purchase a ceremony that few opt for.

7. **Required Purchase Exemption.** Section 453.4 prohibits funeral providers from requiring consumers to purchase funeral goods and services. However, Section 453.4(b)(2)(ii) provides that a funeral home does not violate Section 453.4 by refusing to comply with a request for a combination of goods or services which would be impossible, impractical or excessively burdensome to provide. The wording of this exception is too narrow to address most situations when a purchase is required because of practical necessity.

The way the exemption is worded, it only allows the funeral provide to refuse to provide combinations of goods and services. However, most of the situations faced by the funeral provider are when the consumer wants to avoid purchasing an item that is a necessity. For example, the FTC Staff has ruled that a funeral provider may require embalming if a body is to be publicly viewed. When a consumer balks at paying for embalming with a public viewing, this is not covered by the current exemption. Likewise, the FTC Staff allows a funeral home to require a casket for an immediate burial. Again, this would not be covered by Section 453.4(b)(2)(ii). The exemption

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needs to be expanded to cover those situations where a funeral provider requires the consumer to purchase an item that is a necessary component of the funeral services they want to buy.

In that regard, NFDA would recommend that the FTC ask for comments on the expansion of those exemptions. NFDA would propose that Section 453.4(b)(2)(ii) be reworded as follows:

“(ii) a funeral provider shall not violate this Section by requiring the purchase of a good or service that is a practical necessity or by failing to comply with a request for a combination of goods or services which would be impossible, impractical or excessively burdensome to provide.”

Along with that revised Section, the definition of “practical necessity” would be added to the definition section of the Funeral Rule and would provide as follows:

“*Practical necessity.* A good or service is a “practical necessity” if, in the absence of such good or service, it would be impossible, impractical, or excessively burdensome for the funeral provider to provide the funeral or disposition services.”

8. **Posting Price Lists Online.** The Funeral Consumer Alliance is advocating that the Funeral Rule be amended to require funeral providers to post their GPLs on their websites. Given that no other business or profession is required by law to post prices on their website, NFDA sees no legal basis upon which the FTC could find that the failure to post prices online constitutes an unfair or deceptive act or practice.

Nevertheless, NFDA is interested in exploring with the FTC proposals to incentivize funeral homes to post price lists online. Many funeral homes already post prices or price lists on their website. Perhaps to encourage more funeral homes to do so, the Funeral Rule could exempt funeral homes that post price lists from price disclosure requirements under the Rule. In the alternative, the funeral home that voluntarily posts prices on their website could be subject to a different set of price disclosure requirements under the Funeral Rule. NFDA would request that the FTC Staff ask for comments on whether the Funeral Rule should provide incentives to funeral homes to post price lists on their website and what those incentives should be.

If the FTC Staff has any questions regarding the issues we have set forth in this letter, please contact me. NFDA looks forward to working with the FTC Staff on during these issues review of the Funeral Rule.

Sincerely yours,

T. Scott Gilligan

cc: NFDA Board of Directors
Christine Pepper
Lesley Witter

Gilligan Law Offices

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T. Scott Gilligan
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July 16, 2018

VIA E-MAIL AND U.S. MAIL

Mr. Craig Tregillus
Division of Marketing Practices
Federal Trade Commission
6th and Pennsylvania Avenues
Washington, D.C. 20580

RE: Casket Handling Fees

Dear Craig:

As General Counsel for the National Funeral Directors Association (NFDA), my office previously sent you a letter outlining certain issues that NFDA is requesting the FTC to examine in its upcoming review of the Funeral Rule. One issue that was not included in that letter, but which NFDA is requesting the FTC to examine, is whether the Rule should be amended to allow funeral providers to recover their costs when they handle third party caskets.

As we are both aware, the FTC amended the Funeral Rule in 1994 to prohibit funeral providers from charging any type of fee to recoup the costs of the funeral provider in coordinating and receiving third party caskets. Even though there is additional staff time involved in handling third party merchandise, the FTC believed it was too difficult to determine when a reasonable fee for those services crosses the line into a penalty imposed against a consumer for using a third party casket. So the FTC took the simpler approach and banned all fees intended to recoup funeral home costs in handling third party merchandise.

To its credit, the FTC Staff has attempted to shift some of the costs of handling third party caskets from funeral providers to sellers and shippers of third party caskets. In the April 19, 2010 Staff Advisory Opinion 10-1, the FTC Staff expressed its position that the Funeral Rule does not require a funeral provider to unload a third party casket, uncrate the casket, or dispose of its packaging. While Staff Advisory Letter 10-1 was helpful, it still fell short of allowing a funeral provider to recoup the costs of handling third party caskets for two reasons.

First, when funeral homes are confronted with shippers that will not uncrate a third party casket and/or haul away the packaging, the funeral home has no way to force the shipper to take the required action. The funeral provider may not reject the third party casket nor can it pass on

its costs to the consumer. Additionally, there is no legal obligation on the shipper to uncrate the casket or haul away the packaging. Therefore, while FTC Staff Advisory Opinion 10-1 relieved the funeral director of the legal obligation to uncrate the casket and dispose of packaging materials, it does not provide any practical option when the shipper refuses to perform either of these tasks. In that case, the funeral home will have to undertake these actions and not be compensated for its services.

Secondly, while the funeral home may be able to avoid the expense of uncrating the casket and disposing of packaging material in some cases, it will have the costs of coordinating the delivery of caskets in all cases. Even in cases where delivery comes off seamlessly, there is staff time involved in arranging the date and time of delivery and meeting the shipper. Moreover, in cases where shipment issues may arise, such as shipping delays or incorrect or damaged caskets being delivered, funeral homes are required to expend substantial time in completing the delivery of third party caskets.

Banning all costs recovery for funeral home services provided in handling third party caskets because the FTC Staff feels it is difficult to judge what an appropriate fee may be is an abdication of the FTC's responsibilities. Oftentimes, consumer protection agencies like the FTC are called upon to make judgement calls regarding what is unfair or deceptive. On an issue such as this one where the FTC can measure costs, this is not too difficult of a challenge.

It is interesting to note that other government agencies make these types of calls routinely. For example, Section 1721.20 of the Ohio Revised Code, a copy of which is enclosed, prohibits cemeteries from imposing any type of direct or indirect charge pertaining to the delivery and installation of third party burial vaults, "except when such charge is for services actually performed, or expenses actually incurred in the aid of installation." The statute further charges the Ohio Cemetery Dispute Resolutions Commission with enforcing Section 1721.20 of the Ohio Revised Code. This law protects consumers against being penalized for buying third party vaults while also allowing cemeteries to recover their costs in handling and servicing third party vaults. There is no reason the Funeral Rule could not contain a similar provision.

On behalf of NFDA, we are requesting the FTC to examine the issue of funeral home costs in handling third party merchandise and appropriate measures for funeral homes to recover those costs.

Please let me know if you have any questions.

Sincerely yours,

T. Scott Gilligan

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Gilligan Funeral Homes

📍 2926 Woodburn Ave. Cincinnati, OH 45206 ➡ Send



Connect with this funeral home

Your Name

Your Contact Phone Number

Email

Who are you planning for?

☐ Myself ☐ Someone Else

[Contact Funeral Home](#)

Service types

Full Service Cremation	\$4,145 ⓘ
Basic Services	\$1,450
Embalming	\$695
Dressing & Casketing	\$250
Viewing & Visitation	\$695
Funeral Service	\$495
Transfer to Funeral Home	\$200
Additional Transfer Costs (not included in package)	\$2.00 per mile
Transfer to Crematory	Included
Crematory Fee	\$360 ⓘ
Direct Cremation	\$2,210
Traditional Full Service Burial	\$4,235
Simple Burial	\$3,170



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

November 4, 2019

VIA EMAIL

Sara Moss
National Funeral Directors Association
13625 Bishop's Drive
Brookfield, WI 53005

VIA Email smoss@nfda.org :

I appreciate the opportunity to participate in the recent NFDA Convention held on October 28, 2019.
The event was enjoyable and productive.

Attached are my receipts for the trip. Based on our agreement, the amount to be reimbursed to the Federal Trade Commission is . This amount is itemized in the table below. Amounts paid in-kind are also provided as applicable; however, they DO NOT need to be reimbursed and are for informational purposes only.

	To Be Reimbursed	Amount paid in-kind (if applicable)
Transportation	266.51	
Hotel		Approx. \$229
Meals and Incidental Expenses		
Other	134.15	
TOTAL	\$ 400.66	

FTC strongly encourages Electronic Funds Transfer (EFT) as the preferred method of payment. Please contact finance@ftc.gov for banking information to pay by EFT.

When payment to the FTC by EFT is not possible, make payment to the Federal Trade Commission and send payment directly to the Financial Operations Division in the Financial Management Office at:

Federal Trade Commission
Financial Operations Division, Room 790
Attn:
600 Pennsylvania Avenue, NW
Washington, DC 20580

Thank you in advance for your assistance in this matter.

Sincerely,

(b)(6)

Patricia Poss

Enclosure

Copy: Financial Operations (finance@ftc.gov)

External Expense Report

Revised (01/03/2019)

IMPORTANT: Please review the Association policy on reimbursement of expenses. Failure to comply with these policies may result in a substantial delay of reimbursement. Your signature is **REQUIRED** for reimbursement.

Click on left side of the cell to type in a specific cell. Use Tab key or mouse to move between cells (Enter key will not work).

Name: Patricia Poss
Company: Federal Trade Commission
Address: 600 Pennsylvania Avenue
City: Washington **State:** DC **Zip Code:** 20580
Phone: 2023262413 **Fax:** 2023263395 **Email:** pposs@ftc.gov

Please Make Check Payable to: Federal Trade Commission

Purpose of Trip: NFDA International Convention Speak **Location:** Chicago

Attach receipts as prescribed by association policy (see other side)

Dates of Travel	10/27/2019	10/28/2019				Total
Airfare/Baggage Fee	\$266.51	\$0.00				\$ 266.51
Taxi/Shuttle	\$15.90					\$ 15.90
Parking/Tolls	\$50.00	\$68.25				\$ 118.25
Enter # of miles						\$ 0.00
Gratuities						\$ 0.00
Lodging						\$ 0.00
Breakfast						\$ 0.00
Lunch						\$ 0.00
Dinner						\$ 0.00
Miscellaneous						\$ 0.00

Miscellaneous listing: Who, What, When, Where, Why

Total: \$ 400.66

(b)(6)

11/4/2019

Signature

Date

Bishop's Drive
WI 53005-6607

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FUNERAL
DIRECTORS
ASSOCIATION

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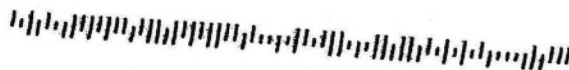


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8528

Patricia Poss
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington DC 20580

20580-



Dear Patti,

Thank you for sharing your time and expertise with us in Chicago! We strive to provide top notch education, and your workshop delivered an excellent learning experience for our attendees. Thank you for helping to make Convention a huge Success!

Kind regards,

Sara and Carmella



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