

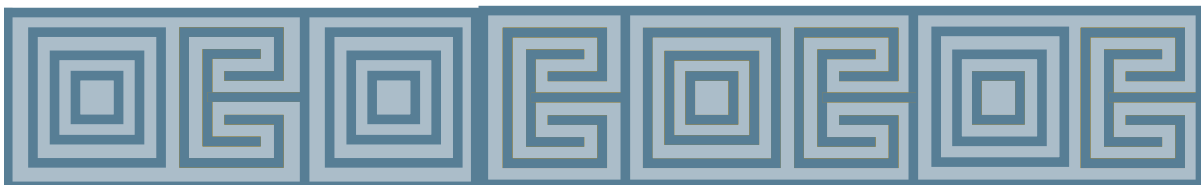


THE SUPREME COURT *of* OHIO

UNAUTHORIZED
PRACTICE OF LAW
Seminar



2014



THE SUPREME COURT *of* OHIO

2014 UPL SEMINAR

Presented by
The Board on the Unauthorized Practice of Law



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TELEPHONE 614.387.9318
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October 28, 2014

Dear Colleagues:

Welcome to the 2014 Seminar on the Unauthorized Practice of Law. On behalf of the Board, I encourage you to engage in today's sessions, ask questions, and share the lessons learned in your work with regard to UPL investigations.


I would like to acknowledge commissioners Julie Hubler and Yale Levy, who organized this seminar. The Board has sponsored quality programs in the past and this year is no exception. You will hear from experienced UPL committee members and Disciplinary Counsel regarding best practices in handling UPL inquiries and investigations. A special thanks to our distinguished faculty who have volunteered their time to share their knowledge and experience in this very unique practice area.

Also, we are privileged to have FBI Agent Kenneth Smith provide training today in connection with domestic terrorists known as sovereign citizens. Some sovereign citizens are known to engage in UPL and Agent Smith will provide valuable information should you encounter sovereign citizens.

It has been an honor serving as the Board's chair for the past year. I thank all of you who serve on UPL committees and conduct investigations. I hope you find the work rewarding as I do. It is an honor and privilege to serve the people of Ohio and the Court on this committee.

Thank you for your attendance and your feedback.

Most sincerely,



John J. Chester, Jr.
Chair





Unauthorized Practice of Law Seminar

October 28, 2014

AGENDA

- | | |
|-------------------------|---|
| 10:15 a.m. | Registration opens |
| 11:00 a.m. | Welcome
Chief Justice Maureen O'Connor |
| 11:10 a.m. -12:10 p.m. | UPL Case Update <ul style="list-style-type: none">• Ken Kraus• Randy Solomon• Kevin Williams |
| 12:10 p.m. – 12:30 p.m. | Break (<i>Boxed Lunches Provided</i>) |
| 12:30 p.m. – 1:30p.m. | Best Practices for UPL Investigations and Prosecutions <ul style="list-style-type: none">• Stacy Solochek Beckman• Jeff Fanger• John Hallbauer• Facilitator: Julie Hubler |
| 1:30 p.m. – 2:00 p.m. | Civil Penalty Review
Yale Levy |
| 2:00 p.m. – 2:15 p.m. | Break |
| 2:15 p.m. – 3:15 p.m. | Sovereign Citizens
Kenneth Smith |



Unauthorized Practice of Law Seminar

October 28, 2014

FACULTY

STACY SOLOCHEK BECKMAN has been an assistant disciplinary counsel of the Supreme Court of Ohio for about 16 years. She previously worked for the law firms of Fuller & Henry and Shumaker, Loop & Kendrick, focusing her practice on environmental litigation and workers' compensation. Solochek Beckman received her Bachelor of Arts from the University of Cincinnati and her Juris Doctor from Capital University Law School. She is a frequent presenter at continuing legal education programs regarding ethics and substance abuse.

JEFFREY J. FANGER is managing member of the law offices of Fanger & Associates LLC, with offices in downtown Cleveland and Highland Heights. He earned his B.A. from George Washington University and his J.D. from Ohio State University College of Law. He started his practice in 1992 in Columbus, Ohio and moved it to Cleveland in 1998. Fanger has worked with the Ohio State Bar Association and Geauga Bar Association to investigate and prosecute cases of unauthorized practice of law. Fanger is a trustee on the Geauga County Bar Foundation and a member of the Ohio State Bar Association's Corporate, Entertainment & Sports and Computer & Technology Law Committees, and also is the corporate law liaison to the Secretary of State. He has served on the Ohio Supreme Court Central UPL Registry Workgroup and the Geauga County Bar Association on its Unauthorized Practice of Law, Constitution, Grievance and the Ipso Jure Committees, and the International Bar Association's Multi-disciplinary Practices Committee in the Corporate Law and Real Estate sections. He recently was honored as a Lifetime Fellow of the Ohio State Bar Foundation. In August 2012, Fanger was nominated as the Geauga County Democratic candidate for prosecutor.

JOHN A. HALLBAUER practices of-counsel to the Cleveland office of Buckley King, LPA. His practice focuses on business litigation, including litigation involving estates and trusts. He has been a member of the Cleveland Metropolitan Bar Association's UPL Committee for more than 30 years, serving several times as chair of that committee, and he has handled numerous UPL cases before the board and the Supreme Court. He obtained his B.A. from Albion College, and his J.D. from Case Western Reserve University.

JULIE PAEK HUBLER is a commissioner on the Board on the Unauthorized Practice of Law and a practicing attorney, licensed in Ohio in both state and federal courts since 1986. She is the managing partner of the law firm of Hubler & Hubler, LLC, Attorneys and Counselors at Law, which primarily focuses on workers' compensation defense, as well as business, real estate, wills and trusts, probate, unemployment compensation and employment law. Hubler also practices in the field of immigration as the central Ohio community needs are growing rapidly. Hubler received her B.A. degree in political science and economics and also an M.B.A. in marketing and management from the University of Cincinnati. She also received her J.D. degree from the Ohio State University

KENNETH A. KRAUS has been the in-house law director for the City of Strongsville, Ohio for more than 12 years, and is responsible for all legal matters for the city. Previously, he had an extensive private practice and was part-time assistant law director and special counsel for Beachwood, Ohio. Early in his career, Kraus served as an assistant U.S. attorney and a federal law clerk in Cleveland. Kraus was appointed by the Ohio Supreme Court to serve as chair of its Board on the Unauthorized Practice of Law during 2010 and 2011. He has served as president of the Cuyahoga County Law Directors Association; and in the past was a trustee of the then-Cleveland Bar Association and co-chairman of its first Symposium on Ethics and Professionalism. Kraus received his BA and JD degrees from the University of Michigan. During recent years, he has lectured on ethics and professional responsibility at Cleveland Marshall School of Law as an adjunct, and for attorneys at various land-use seminars.

YALE R. LEVY is the owner of Levy & Associates, LLC, a law firm based in Columbus, Ohio, representing clients in creditor rights matters in all 88 Ohio counties. Levy graduated Magna Cum Laude from Indiana University, Bloomington, Indiana with a BS in accounting in May 1992 and graduated from The Ohio State University College of Law in May 1995. Levy became a licensed Ohio attorney in November 1995. He is a member of the U.S. Supreme Court Bar and the Ohio Federal Bar for the United States Sixth Circuit Court of Appeals, United States District Court, Southern Division and Northern District, as well as the United States Tax Court.

In 2006, Levy was appointed special counsel to the Ohio Attorney General's Office by Attorney General James Petro, and continues to serve in that capacity. Levy is a member in good standing of the Ohio State Bar Association, Columbus Bar Association, National Association of Retail Collection Attorneys (NARCA), and Ohio Collection Attorney Association (OCAA). He is commissioner on the Ohio Supreme Court Board on the Unauthorized Practice of Law, a board member and pillar chair of NARCA, and a member of the Columbus Jewish Federation Finance Committee.

Chief Justice **MAUREEN O'CONNOR** is the 10th chief justice in Ohio history and is the first woman to lead the Ohio judicial branch. She first joined the Supreme Court of Ohio as an associate justice in January 2003 and was re-elected in November 2008. She was elected chief justice in 2010. Her first statewide judicial election in 2002 made her the 148th justice to the court, the sixth woman to join the court, and gave the court its first-ever female majority. Born in the nation's capital, but raised in Strongsville and Parma, Chief Justice O'Connor's career in public service and the law spans three decades and includes service as a private lawyer, magistrate, common pleas court judge, and prosecutor, as well as lieutenant governor of Ohio from 1998 to 2002.

KENNETH E. SMITH is a Special Agent with the FBI, where he currently is assigned to the Joint Terrorism Task Force, focusing on domestic terrorism. Prior to joining the FBI in 1998, Special Agent Smith served as a police officer for eight years in the City of Indianapolis. He graduated from the FBI Academy in 1998. In addition, he received a B.A. in criminal justice with a double minor in psychology and sociology from Indiana University, Bloomington.

RANDALL SOLOMON is a retired partner of BakerHostetler, where he was a trial lawyer for 40 years, concentrating his practice in the defense of mass toxic tort cases and in commercial, trade secret, professional liability, and construction litigation. Solomon is a fellow in the American College of Trial Lawyers and a past chairman of the litigation section of the Cleveland Bar Association. From 2006 through 2011, he served on the Ohio Supreme Court Commission on the Rules of Practice and Procedure. From 2009 through 2011, Solomon served as the chair of the Rules of Evidence Subcommittee of this commission and, in 2011, he chaired the commission. Solomon currently serves as a commissioner on the Supreme Court's Board on the Unauthorized Practice of Law.

KEVIN WILLIAMS is an attorney with Manley Deas Kochalski and a former commissioner and past chair of the Supreme Court's Board on the Unauthorized Practice of Law. During his career, he served as law clerk to the Honorable Sandra S. Beckwith, United States district judge for the Southern District of Ohio, and to the Honorable Thomas J. Moyer, chief justice of the Ohio Supreme Court. Williams is a former assistant disciplinary counsel of the Ohio Supreme Court and has extensive litigation experience both at the trial level and in oral argument before the Ohio Supreme Court. He was the only attorney in Ohio asked by both the Northern District and Southern District Courts of Ohio to consult on the establishment of foreclosure rules. He was appointed by the Southern District Court of Ohio to the Committee on Foreclosure Procedure. Williams received his bachelor's degree from Kenyon College, *magna cum laude*, and his law degree from The Ohio State University.



The Supreme Court of Ohio

2014 UPL Seminar

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I. UPL Case Update

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Lorain Cty. Bar Assn. v. Zubaidah*, Slip Opinion No. 2014-Ohio-4060.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2014-OHIO-4060

LORAIN COUNTY BAR ASSOCIATION v. ZUBAIDAH ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Lorain Cty. Bar Assn. v. Zubaidah*, Slip Opinion No. 2014-Ohio-4060.]

Unauthorized practice of law—Providing legal advice to and advocating on behalf of criminal defendants—Injunction issued and civil penalty imposed.

(No. 2013-0072—Submitted May 8, 2013—Decided September 25, 2014.)

ON FINAL REPORT by the Board on the Unauthorized Practice of Law of the Supreme Court, No. UPL 11-01.

Per Curiam.

{¶ 1} On March 25, 2011, relator, the Lorain County Bar Association, filed a four-count complaint with the Board on the Unauthorized Practice of Law against respondents, King Ayetey Zubaidah (f.k.a. Gerald McGee) and his Ohio corporation, STAND Inc. The complaint alleged that Zubaidah, who is not licensed to practice law in Ohio, provided legal advice and services to four

defendants during their criminal proceedings. Zubaidah answered the complaint, admitting to a number of the facts asserted but denying the allegations of the unauthorized practice of law. A panel of the board was appointed to hear the case.

{¶ 2} After relator moved to withdraw a joint motion to approve a consent decree because Zubaidah's signature on the proposed decree was invalid, the matter proceeded to a hearing on May 15, 2012. Upon consideration of the testimony of ten witnesses and dozens of exhibits, the panel submitted a report concluding that Zubaidah had engaged in the unauthorized practice of law in each of the four alleged counts.

{¶ 3} The panel recommended a civil penalty of \$5,000 for each count, totaling \$20,000, to be imposed jointly and severally against Zubaidah and STAND. The panel also recommended enjoining Zubaidah and STAND from further engaging in the unauthorized practice of law and assessing respondents for the costs and expenses incurred by the board and bar association. The board adopted the panel's findings of fact, conclusions of law, and recommended penalty.

{¶ 4} Zubaidah filed objections to the board's report with this court, generally asserting that the board's decision was not factually supported. For the reasons stated below, we overrule Zubaidah's objections, and we agree with the board's findings and recommendations. We accordingly enjoin Zubaidah and STAND Inc. from engaging in the unauthorized practice of law, we assess costs, and we order Zubaidah and STAND, jointly and severally, to pay a \$20,000 civil penalty.

Background

{¶ 5} In 1986, the Lorain County Court of Common Pleas convicted Zubaidah of a single count of aggravated trafficking in drugs, imposed a suspended prison sentence of one and a half years, and ordered Zubaidah to serve

five years of probation. Zubaidah was the president of STAND Inc. (Striving Towards a New Day!), a corporation he formed in 2008 inspired by his own experience with the justice system and his research into judicial cases. A stated mission of STAND was “to help change the unfair and partial treatment against minorities in the judicial system.”

{¶ 6} Zubaidah had originally wanted funding for STAND to be able to subsidize legal representation for criminal defendants, but he later abandoned his plan of applying for grants or other funding for legal services. He sought to further STAND’s mission by providing his personal assistance to individuals in his community facing criminal charges. Zubaidah is not admitted to the practice of law in Ohio, has not received any legal training, and does not have a college degree.

{¶ 7} Recipients of Zubaidah’s assistance become STAND “members” after signing a “General Letter of Introduction,” which is a one-page agreement providing that “STAND Inc. will be assisting” the member. No payment is required to be a STAND member. In each of the four matters giving rise to the counts against respondents, the parent of a criminal defendant or the defendant himself requested assistance from Zubaidah during the pendency of the defendant’s proceedings and signed the STAND agreement. All family members who testified regarding the four matters stated that Zubaidah had never claimed to be an attorney, and they were aware that Zubaidah was not an attorney.

The Calhoun Matter

{¶ 8} In September 2008, Dennis Calhoun was arrested and charged with two counts of rape and two counts of gross sexual imposition involving a minor under the age of 13. Attorney David Nehr represented Calhoun. Calhoun’s mother, Terri Blackburn, signed a STAND membership agreement with Zubaidah after she became dissatisfied with Nehr’s representation. Nehr presented a plea offer to Calhoun and advised him to accept it, but after Calhoun insisted on

consulting with his family and other individuals, including Zubaidah, Calhoun rebuffed the plea offer and the case proceeded to trial. After a bench trial in July 2009, Calhoun was found guilty on all four counts. He was ultimately given a prison sentence of 15 years to life and classified as a Tier III sex offender.

{¶ 9} In July 2009, before Calhoun was sentenced, Zubaidah sent a letter to Nehr informing him that Calhoun was “being assisted” by STAND and attaching a copy of the STAND membership agreement signed by Blackburn. Zubaidah alleged that Nehr had been verbally abusive to Blackburn, driving her “to seek other assistance for her son’s freedom,” and that Nehr had emotionally manipulated Calhoun’s family by approaching Calhoun with a plea deal in 2009 after allegedly stating in 2008 that the prosecution did not have evidence to support a conviction. A few days later, Zubaidah sent a second letter accusing Nehr of making insulting statements to Blackburn and of failing to protect Calhoun’s interests. Zubaidah provided copies of these letters to the Office of Disciplinary Counsel and the judge presiding over Calhoun’s proceedings.

{¶ 10} Nehr testified that he believed that Zubaidah’s involvement with Calhoun had a significant negative impact on the case, because Calhoun was more willing to listen to Zubaidah than to Nehr and rejected any legal advice that Nehr provided subsequent to Zubaidah’s involvement. Nehr also testified that in August 2009, he witnessed Zubaidah enter a courthouse holding cell, access to which was restricted to attorneys and court personnel, and proceed to speak with two defendants. In September 2009, Nehr witnessed Zubaidah talking with another of Nehr’s clients in a courtroom hallway. Nehr learned from his client that Zubaidah had approached the client to discuss current and prior criminal proceedings and that Zubaidah had advised the client of what he could do through the legal appellate process to remove prior convictions.

{¶ 11} Nehr conceded that he never heard Zubaidah claim to be an attorney or otherwise held himself out as an attorney. However, Zubaidah’s

“constant presence at court speaking to clients and advising them contrary to their attorney’s advice” led Nehr to believe that Zubaidah was practicing law.

The White Matter

{¶ 12} In December 2008, Eric White was charged with two counts of felonious assault and accompanying firearm specifications. Judge James Miraldi presided over the case and initially appointed James Dorman to represent White. In February 2009, after Dorman withdrew from representation due to disagreements regarding legal strategy, Judge Miraldi appointed J. Anthony Rich to represent White. White’s mother, Gail White, signed a STAND membership agreement with Zubaidah, with the intent that Zubaidah would attend proceedings and provide support for White at times when Gail was unable to travel from her residence in Virginia.

{¶ 13} In July 2009, Zubaidah accompanied Gail to a meeting with Rich, during which Gail urged the pursuit of legal strategies that Rich perceived as involving perjury and bribery. Although Zubaidah did not personally participate in that discussion, Zubaidah’s repeated interventions and White’s actions from that point on led Rich to believe that Zubaidah was providing legal advice to White and his family. Subsequent to Zubaidah’s involvement, White began to ask legal questions and request actions that were not relevant to his defense. White no longer gave credence to Rich’s advice.

{¶ 14} Zubaidah then began to directly interject himself into White’s proceedings. In September 2009, Zubaidah sent a letter to Judge Miraldi, asking the judge to lower the amount of White’s bond. Zubaidah cited the case of another criminal defendant whose bond had been set at a lower amount and argued that the judge should lower White’s bond to the same amount because of the circumstances of White’s case. Zubaidah qualified his arguments by explaining that “Stand Inc. does not act as a lawyer,” but he also explained that the aim of his organization was to provide case comparisons and argue against the

unfair treatment of individual defendants appearing before the court. The court forwarded Zubaidah's letter to Rich and gave Rich the opportunity to present a formal request for a bond reduction, which was then denied in October 2009.

{¶ 15} In December 2009, Zubaidah sent a letter to Rich, accusing him of failing to provide ethical and competent representation to White, citing multiple criminal cases in which the defendants' bonds were set at a lower amount than White's bond, and urging Rich to seek similar treatment for White. Rich withdrew as counsel shortly thereafter due to Zubaidah's interference with the case.

{¶ 16} After a third attorney was appointed to White's case, Zubaidah continued his attempts to advocate for White by sending another letter to Judge Miraldi in January 2010. In it, Zubaidah again explained that he was not an attorney and that he believed it was not the practice of law to provide case comparisons and state what he "might have done differently." The stated purpose of the letter was to express concern regarding White's case "on his behalf" and to advocate for a reduced bond. Zubaidah again cited the case of another criminal defendant and argued that White's bond should be lowered to a similar level. Zubaidah concluded the letter by stating that White would be appearing before the judge in February 2010 and asking Judge Miraldi to reduce White's bond at that time. In March 2010, White pleaded guilty to a reduced charge of one count of felonious assault.

{¶ 17} Both Zubaidah and Gail White testified that Zubaidah was a friend of the family, that he was not an attorney, and that he was not practicing law. Judge Miraldi testified that although Zubaidah claimed he was not practicing law, Zubaidah's letters comparing different criminal cases and advocating for legal results on behalf of a party appeared to constitute the practice of law. Rich testified that although Zubaidah had always claimed not to be an attorney, Zubaidah's advice to White and ex parte letter to Judge Miraldi led Rich to

believe that Zubaidah was practicing law. Based on Zubaidah's citations of inapposite case law and advice regarding irrelevant legal strategies, Rich believed that Zubaidah's involvement was detrimental to the defendant.

The Harris Matter

{¶ 18} In 2008, Isaiah Harris faced a number of charges in three separate cases, all involving the same victim. In May 2008, he was charged with felonious assault and domestic violence. In September 2008, he was charged with domestic violence and violation of a protection order. And in December 2008, he was charged with domestic violence, violation of a protection order, intimidation, kidnapping, rape, and two counts of aggravated burglary. Judge Christopher Rothgery presided over the cases and appointed J. Anthony Rich to represent Harris in all three. Harris personally signed a STAND membership agreement with Zubaidah.

{¶ 19} In February 2009, the court consolidated the three cases pursuant to Harris's request but over Rich's objection. By March 2009, Rich had become extremely concerned with Harris's defiance to his legal advice and certain instances of Harris's behavior that threatened to undermine his own defense. For example, Harris confessed to many of the charged crimes during recorded phone calls to the victim from jail, yet refused to enter a guilty plea to any charges, turning down a favorable plea deal for a three-year prison term that had been offered by the prosecution.

{¶ 20} Harris's consolidated cases were scheduled for a bench trial in May 2009. Two weeks prior to trial, Zubaidah sent a letter to Judge Rothgery, attaching Harris's agreement to allow STAND to "support * * * his involvement with the judicial system." Zubaidah indicated that he had in-depth knowledge about the facts of Harris's case; he defended Harris's actions by explaining that they were born of "intoxicated love emotions" and arguing that Harris was "only guilty of loving [the victim] too much." Zubaidah asserted that "[r]egardless of

his extreme love for [the victim] he wouldn't force her to have sex with him or be a burglar where his three children resided.”

{¶ 21} At Harris's trial, the prosecution played the recordings of Harris explicitly confessing to many of the crimes that he was contesting he committed. Judge Rothgery called a recess and suggested that Rich and Harris regroup in order to repair what appeared to be a breakdown in communication over trial strategy. Rich negotiated with the prosecution for a plea deal for four years in prison, and the judge indicated a willingness to assent to such a deal. Harris again refused to enter a plea and insisted on continuing with the trial. Harris was ultimately convicted of rape, intimidation, three counts of domestic violence, two counts of violating a protection order, and two counts of aggravated burglary, and was sentenced to 23 years and 6 months in prison.

{¶ 22} Zubaidah was in attendance throughout Harris's trial, though testimony conflicted as to Zubaidah's level of participation. Zubaidah and Harris's father testified that Zubaidah did not speak at any point during the trial. Rich testified that during the recess, Zubaidah spoke to Harris in Rich's presence and explicitly advised Harris not to accept the four-year plea deal, contrary to Rich's advice.

{¶ 23} Both Zubaidah and Harris's father testified that Zubaidah was a friend of the family, not an attorney, and was not practicing law. They maintained that Zubaidah's letter to Judge Rothgery was a typical layperson's character reference, seeking to mitigate a defendant's punishment. Judge Rothgery testified that Zubaidah's letter exceeded the boundaries of a mere character letter when it began to assert Harris's lack of guilt based on the specific facts underlying the charges. Upon considering the character letter together with Zubaidah's letter of introduction portraying himself and STAND as representatives of Harris in his legal proceedings, Judge Rothgery believed that the letter constituted legal advocacy. As in the White case, Rich testified that

despite Zubaidah's claims that he is not an attorney, Zubaidah's advice to Harris and ex parte letter to Judge Rothgery led Rich to believe that Zubaidah was practicing law. Rich believed that the much longer prison sentence Harris received after rejecting plea offers made Zubaidah's detriment to Harris's case very clear.

The Bason Matter

{¶ 24} In 2010, Corey Bason was charged with rape and gross sexual imposition of a minor under the age of 13. Bason's mother, Dalphine Bason, signed a STAND membership agreement with Zubaidah. Judge James Miraldi presided over the case. Attorney J. Anthony Rich was appointed to represent Bason but moved to withdraw from that representation before October 2010, supposedly due to complications arising from Zubaidah's interference with the case.

{¶ 25} In November 2010, Zubaidah sent a letter to Judge Miraldi, stating that he was "petitioning the court on behalf of" Bason and asking the judge to reduce Bason's bond. Zubaidah compared Bason's case with that of another criminal defendant's in which bond had been set at a lower amount and argued that the failure to lower Bason's bond constituted a violation of Bason's due-process rights. Zubaidah accused Judge Miraldi of violating the Code of Judicial Conduct and indicated that he was sending a copy of his letter to the Ohio State Bar Association.

{¶ 26} Both Zubaidah and Bason's mother testified that Zubaidah was a friend of the family, that he was not an attorney, and that he was not practicing law. Judge Miraldi testified that Zubaidah's letter, which provided case comparisons and legal arguments on behalf of a particular defendant, appeared to constitute the practice of law.

Other Developments

{¶ 27} In December 2009, the bar association sent a letter to Zubaidah, informing him that multiple attorneys had reported Zubaidah’s conduct. The bar association explained that advising people in pending criminal cases constitutes the unauthorized practice of law. The letter demanded that Zubaidah immediately cease and desist from such prohibited conduct or face civil penalties up to \$10,000 for each offense. Zubaidah sent a response stating that he was not an attorney and did not practice law. Zubaidah stated that he would ignore the letter unless the bar association provided the names of all attorneys who had alleged misconduct.

{¶ 28} In July 2010, prior to initiating a formal action against Zubaidah, the bar association offered to negotiate a resolution with Zubaidah. Although Zubaidah agreed to meet for negotiations, no agreement was reached.

{¶ 29} While formal proceedings were pending before the board, Zubaidah and the bar association conducted a settlement conference in April 2012 in order to negotiate a consent-to-judgment decree. Zubaidah stated on the record during the settlement hearing that he accepted the terms of the decree and that he had signed it of his own free will. However, the decree itself bore the signature “King A. Zubaidah (under duress).” The bar association moved to withdraw the joint motion, stating that it could be reasonably inferred that the decree was not executed voluntarily, and served Zubaidah with a notice of deposition.

{¶ 30} Zubaidah refused to attend his scheduled deposition, communicating through his counsel that he wanted to assert his Fifth Amendment right not to testify due to fear of criminal prosecution. Upon the board’s entry allowing withdrawal of the consent decree, the matter proceeded to a hearing, which Zubaidah attended pursuant to a subpoena.

{¶ 31} At the beginning of the hearing, Zubaidah accused the panel of subjecting him to double jeopardy, and he refused to testify during the bar

association's case in chief, stating that he was asserting his Fifth Amendment right not to testify. However, during Zubaidah's case in chief, he elected to waive his prior invocation of the Fifth Amendment and testified before the board.

The Board's Recommendation

{¶ 32} Upon consideration of the totality of the circumstances presented in the record, the board concluded by a preponderance of the evidence that Zubaidah and STAND had engaged in the unauthorized practice of law in each of the four counts alleged in the complaint. Specifically, the board concluded that respondents engaged in the unauthorized practice of law by contracting with several criminal defendants or their families to assist the defendants in the legal process, providing legal advice to those defendants, indicating special knowledge of the law and ability to develop legal positions and strategies, indicating special knowledge of the judicial system and ability to navigate the defendants through it, sending letters to judges advocating for bond reductions or other results on behalf of the defendants, and drafting letters of advocacy to judges and attorneys that included citations of comparable cases and allegations of violations of the defendants' constitutional rights.

{¶ 33} The board emphasized that many activities similar to portions of Zubaidah's conduct do not necessarily constitute the unauthorized practice of law. For example, challenging the judicial system as a community activist, sending a true character reference letter to a court for purposes of a bond or sentencing decision, or providing nonlegal advice as a friend or relative to a defendant are all appropriate actions that do not individually constitute the unauthorized practice of law and should not be stifled.

{¶ 34} However, the board found that Zubaidah crossed a line into the unauthorized practice of law, as shown by the formal agreements signed by the STAND members that were provided to judges and legal counsel. Given the context in which Zubaidah used these agreements, the board agreed that Zubaidah

was holding himself out to his “clients” as having expertise on legal matters and trial strategy and holding himself out to attorneys and judges as having a contracted right to advocate on behalf of criminal defendants. This, in addition to evidence of Zubaidah’s presentation of legal arguments and advocacy to presiding judges and the giving of legal advice to defendants, supported the conclusion that respondents’ participation in each of the four defendants’ cases far exceeded the bounds of acceptable layperson involvement.

{¶ 35} In light of the foregoing findings, the flagrancy of Zubaidah’s conduct, the significant harm to the defendants’ interests, and Zubaidah’s lack of cooperation throughout the bar association’s involvement, the board adopted the panel’s recommendation of a civil penalty. But after consideration of Zubaidah’s sincere and selfless motives in mitigation of his action, the board agreed with the panel’s recommendation of a civil penalty of \$5,000 for each count rather than the maximum penalty of \$10,000 per count.

Respondent’s Position

{¶ 36} Zubaidah objects to the board’s report and recommendations regarding both himself and STAND. Because STAND is a separate corporate entity and Zubaidah is not a licensed attorney, he cannot represent STAND as a pro se advocate before this court. *See Union Savs. Assn. v. Home Owners Aid, Inc.*, 23 Ohio St.2d 60, 64, 262 N.E.2d 558 (1970). We therefore consider Zubaidah’s arguments only as they relate to him personally.

{¶ 37} Zubaidah’s objections, for the most part, present a medley of bald assertions. He appears to address both legal issues and findings of fact, which we address in turn.

Legal Objections

{¶ 38} Zubaidah asserts that the board’s decision is biased and discriminatory and that it raises questions regarding “Zubaidah’s First Amendment rights of the Constitution, jurisdiction under color, subject matter,

credibility, prosecutorial misconduct, ineffective assistance of counsel and HARM.” Zubaidah has failed to present any arguments or legal authority to support them.

{¶ 39} We recognize that Zubaidah has repeatedly asserted that his conduct does not constitute the unauthorized practice of law, because he has a constitutional right to petition the court. However, he does not explain how the First Amendment right to petition the court for redress of grievances might extend to providing legal assistance to another person.

{¶ 40} Regardless, we have previously held that placing restrictions on a person’s conduct by prohibiting the unauthorized practice of law has only an incidental relationship with free speech and does not implicate that person’s First Amendment rights. *Cincinnati Bar Assn. v. Bailey*, 110 Ohio St.3d 223, 2006-Ohio-4360, 852 N.E.2d 1180, ¶ 13, citing *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 456, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978). An incidental limitation on a First Amendment right might be justified when an important government interest is involved, *see Bellecourt v. Cleveland*, 104 Ohio St.3d 439, 2004-Ohio-6551, 820 N.E.2d 309, ¶ 6, and protecting the public against incompetence in the legal process is such a government interest.

{¶ 41} Criminal defendants have the right to appear pro se, but when they rely on someone else’s expertise, we have a duty to ensure that they are properly represented. We do so by requiring that anyone providing legal assistance must formally meet stringent standards of character and competency before being permitted to practice law in Ohio. Gov.Bar R. I(1).

{¶ 42} Our rules governing the unauthorized practice of law directly refute Zubaidah’s claims. Gov.Bar R. VII. He does not develop any argument as to why our rules should be stricken as unconstitutional, and we find no reason to strike those rules.

Finding of Unauthorized Practice of Law

{¶ 43} Zubaidah primarily maintains that the facts presented at his hearing do not support the conclusion that he has practiced law. He supports this argument by citing the testimony of attorneys Rich and Nehr that Zubaidah never claimed to be an attorney as well as the STAND members' testimony that Zubaidah was not an attorney and was not practicing law. He additionally cites testimony describing isolated portions of Zubaidah's letter on behalf of Isaiah Harris as a character reference. For the reasons articulated below, we reject Zubaidah's objections.

{¶ 44} The Ohio Constitution provides this court with original jurisdiction over the practice of law, whether authorized or unauthorized. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Geauga Cty. Bar Assn. v. Haig*, 129 Ohio St.3d 601, 2011-Ohio-4271, 955 N.E.2d 352, ¶ 2. A person who is not licensed to practice law in Ohio cannot "[c]ommit any act that is prohibited by the supreme court as being the unauthorized practice of law." R.C. 4705.07(A)(3). The unauthorized practice of law occurs when a person who is not admitted to the Ohio bar or otherwise certified to practice law by the Supreme Court provides legal services to another person in this state. Gov.Bar R. VII(2)(A).

{¶ 45} An unauthorized-practice-of-law allegation not supported by an admission must be supported "by other evidence of the specific act or acts upon which the allegation is based." *Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶ 26. We will defer to the panel's determination of the credibility of testimony when "the record does not weigh heavily against the findings of the panel, as adopted by the board." *Disciplinary Counsel v. Robinson*, 126 Ohio St.3d 371, 2010-Ohio-3829, 933 N.E.2d 1095, ¶ 21. The panel may consider and weigh circumstantial evidence in its determination. *Robinson at* ¶ 21 (despite respondent's claim that he did not intend to conceal documents from an opposing counsel and thus that he had not

acted willfully, the court could infer a willful violation based on evidence that he removed documents from his office and did not reveal that the documents were in his possession).

{¶ 46} A person “who purports to negotiate legal claims on behalf of another and advises persons of their legal rights and the terms and conditions of settlement engages in the practice of law.” *Cleveland Bar Assn. v. Henley*, 95 Ohio St.3d 91, 92, 766 N.E.2d 130 (2002). Doing so for free is irrelevant. *Geauga Cty. Bar Assn. v. Canfield*, 92 Ohio St.3d 15, 16, 748 N.E.2d 23 (2001).

{¶ 47} Disclaimers are likewise ineffective: persons who disclose their nonattorney status are not then free to practice law without authorization. *Cincinnati Bar Assn. v. Telford*, 85 Ohio St.3d 111, 113, 707 N.E.2d 462 (1999); *Henley* at 91. Even good intentions do not override the prohibition against the unauthorized practice of law. *See Disciplinary Counsel v. Bukstein*, 139 Ohio St.3d 230, 2014-Ohio-1884, 11 N.E.3d 237, ¶ 6, 21 (though the respondent assisted litigants free of charge and in the spirit of civil-rights advocacy, her provision of legal advice and presentation of legal arguments on behalf of the litigants nonetheless constituted the unauthorized practice of law). *See also People v. Shell*, 148 P.3d 162, 167 (Colo.2006) (distinguishing “permissible activism” from the unauthorized practice of law when a nonattorney community activist prepared legal documents and gave legal advice to specific clients).

{¶ 48} Generally, a person who sends a character-reference letter to a judge on behalf of another person is not engaging in the unauthorized practice of law. Character has been defined as a “generalized description of one’s disposition as it relates to a general trait such as honesty, temperance or peacefulness.” *State v. Reed*, 110 Ohio App.3d 749, 753, 675 N.E.2d 77 (4th Dist.1996). In the criminal context, information about the defendant’s character may assume the form of admissible evidence at trial through character testimony permitted under the Rules of Evidence and also may also serve as evidence, subject to the judge’s

discretion, relevant to the defendant’s sentencing. *See* Evid.R. 401, 404(A)(1), 405; *State v. Dickerson*, 77 Ohio St. 34, 82 N.E. 969 (1907); R.C. 2929.12. Therefore, pure character letters—those without legal arguments identifying and applying law—are evidentiary by nature and do not constitute the practice of law. However, when letters by nonattorneys cross the line from endorsing a person’s character to advocating specific legal positions on behalf of that person, the unauthorized practice of law occurs. *See Henley* (holding that a nonattorney practiced law by writing letters on behalf of his “clients” asking for the resolution and settlement of potential discrimination claims).

{¶ 49} To the extent that a nonparty to litigation might be permitted by a trial or appellate court to present a legal argument, he is limited to furthering his own interests as a nonparty and may not raise issues beyond those already raised by the parties. *See* App.R. 17 (requiring, in addition to consent of the parties or leave of court, that amici curiae identify and advance their own interests related to a particular case); *Wellington v. Mahoning Cty. Bd. of Elections*, 117 Ohio St.3d 143, 2008-Ohio-554, 882 N.E.2d 420, ¶ 53, quoting *Lakewood v. State Emp. Relations Bd.*, 66 Ohio App.3d 387, 394, 584 N.E.2d 70 (8th Dist.1990) (“In general, ‘[a]mici curiae are not parties to an action and may not, therefore, interject issues and claims not raised by the parties’ ”). And despite the laudable desire to seek reform in the criminal system, such a desire cannot be realized by legally advising and advocating on behalf of a criminal defendant without violating our prohibition against the unauthorized practice of law. *Bukstein* at ¶ 12, 20.

{¶ 50} Here, Zubaidah’s actions extended beyond the permissible conduct of endorsing a person’s character, advocating a social issue generally, advancing personal interests, or providing nonlegal advice to a family member. Despite Zubaidah’s good intentions and intermittent disclaimers, his conduct shows a pattern of advocating legal positions on behalf of defendants and providing legal

advice to those defendants, leading to serious consequences for the STAND clients who trusted him.

{¶ 51} Zubaidah held himself out as an advocate with legal expertise to community members, legal professionals, and the judiciary. Zubaidah sought out formal representation relationships with criminal defendants' families and entered into agreements that implied to the signers that he had specialized knowledge of the legal system. Zubaidah repeatedly sent letters to attorneys and to judges on behalf of criminal defendants in pending cases that indicated that STAND would be assisting the defendant and that cited case law, raised legal issues, and asked for legal results.

{¶ 52} Zubaidah also provided legal advice to the criminal defendants involved, as well as to their family members. At least one attorney heard Zubaidah directly give his client legal advice, and the remainder of the defense attorneys who testified believed from their own observations that Zubaidah had given their clients legal advice.

{¶ 53} The board found the attorneys' testimony to be credible, and we defer to this well-supported finding. The legal stances taken by defendants under Zubaidah's counsel, which often directly contradicted the attorneys' recommendations, add strong credibility to the attorneys' belief. Zubaidah's attempt to advocate on behalf of STAND before this court greatly weakens his personal assertions that he has not practiced law at any point; it is clear that he either does not understand or refuses to acknowledge what does and does not constitute the practice of law.

{¶ 54} Zubaidah's conduct strongly invokes the purpose of restricting the practice of law to licensed attorneys: "to protect the public against incompetence [and] divided loyalties * * * often associated with unskilled representation." *CompManagement*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40. The competing legal advice from Zubaidah created, or at a minimum exacerbated,

a divide between the defendants and their defense attorneys: the attorney witnesses testified that Zubaidah played a significant role in eroding the client-attorney relationship, in some cases causing them to withdraw as counsel. As noted by attorney Rich, Zubaidah was able to learn information from the criminal defendants that would be considered confidential in an attorney-client relationship but that Zubaidah could be compelled to disclose by subpoena, creating the potential for “catastrophic consequences” in the defendants’ criminal proceedings. And Zubaidah’s involvement led to actual detrimental consequences for STAND members, most strikingly illustrated by Harris receiving more than 20 additional years of imprisonment by following the legal advice of Zubaidah rather than that of his own defense attorney.

{¶ 55} Given the foregoing, we accept the board’s findings that Zubaidah engaged in the unauthorized practice of law.

Sanction

{¶ 56} We accept the board’s recommendation that we issue an injunction prohibiting Zubaidah and STAND from further engaging in the unauthorized practice of law. After considering the factors listed in Gov.Bar R. VII(8)(B) and UPL Reg. 400(F), which include respondent’s cooperation in the investigation, the number of occasions that the unauthorized practice of law occurred and the flagrancy of the violation, the harm to third parties, and other relevant factors, we accept the board’s recommendation to impose civil penalties as authorized under Gov.Bar R. VII(8)(B).

{¶ 57} (1) The degree of cooperation provided by the respondent in the investigation. Zubaidah impeded the investigation several times: he rejected a cease-and-desist letter from the Lorain County Bar Association; he appeared to agree to a consent decree but then indicated that he was signing the decree “under duress” after his signature; and he refused to appear at a scheduled deposition.

{¶ 58} (2) The number of occasions that the unauthorized practice of law was committed. Zubaidah committed multiple acts constituting the unauthorized practice of law in each of the four counts charged in this case.

{¶ 59} (3) The flagrancy of the violation. Zubaidah continued with the unauthorized practice of law despite admonitions from attorneys and judges, even after receiving a formal cease-and-desist letter from the bar association. He has been persistently adamant that he has not practiced law.

{¶ 60} (4) Harm to third parties arising from the offense. The consequences of the well-intentioned but unauthorized practice of law are vividly demonstrated by the difference between the proposed but rejected plea agreements and the actual sentences for some of the STAND members. The attorneys working on the cases also suffered the deterioration and termination of their relationship with their clients. As aptly indicated in the board's report, Zubaidah's actions both "undermine[d] public confidence in the judicial system" and caused harm "irreparable in nature" for each criminal defendant.

{¶ 61} (5) Any other relevant factors. Two additional aggravating factors favor a more severe penalty. First, Zubaidah had previously been ordered to cease engaging in the unauthorized practice of law: he remains under a cease-and-desist order issued by this court on April 29, 2011. *Lorain Cty. Bar Assn. v. Zubaidah*, 128 Ohio St.3d 1469, 2011-Ohio-2052, 946 N.E.2d 229. Second, Zubaidah had been informed that the conduct at issue might constitute an act of unauthorized practice of law. The Lorain County Bar Association demanded as early as December 31, 2009, that respondents stop engaging in the unauthorized practice of law, but Zubaidah denied the allegations made in the bar's letter, found the demand to have "no merit," and continued the same conduct.

{¶ 62} One mitigating factor points to a less severe penalty. Zubaidah's conduct resulted from a motive other than dishonesty or personal benefit. Zubaidah did not gain financially from his actions and exhibited a sincere desire

SUPREME COURT OF OHIO

both to help young men in his community and correct perceived inequalities in the legal system.

{¶ 63} Viewing these factors collectively, we believe that the imposition of civil penalties furthers the purposes of Gov.Bar R. VII and that the board's recommended penalty in the amount of \$5,000 for each violation, for a total of \$20,000, is reasonable. We adopt that recommendation.

{¶ 64} We therefore impose a civil penalty of \$20,000 against Zubaidah and STAND Inc. and enjoin both respondents from engaging in the unauthorized practice of law. Zubaidah and STAND Inc. are prohibited from advising any individual involved in a pending legal matter regarding the law or trial strategies, contacting judges presiding over pending legal matters and advocating on behalf of others, and engaging in any other activities that would constitute the unauthorized practice of law. Costs and expenses are taxed to respondents Zubaidah and STAND Inc.

Judgment accordingly.

O'CONNOR, C.J., and O'DONNELL, LANZINGER, KENNEDY, and FRENCH, JJ., concur.

PFEIFER and O'NEILL, JJ., concur in part and dissent in part and would impose a civil penalty of \$4,000 instead of \$20,000.

D. Chris Cook, Lorain County Bar Counsel, for relator.

King Ayettey Zubaidah, pro se.

II. Best Practices

**CLEVELAND METROPOLITAN BAR ASSOCIATION
BY LAWS FOR THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE**

**Article I.
NAME AND MISSION**

- Section 1. The name of this committee shall be The Unauthorized Practice of Law Committee (the "Committee")
- Section 2. The mission of the Unauthorized Practice of Law Committee, in support of both the Cleveland Metropolitan Bar Association and the Supreme Court of Ohio, is to preserve the integrity of the legal system. The UPOL Committee will efficiently and effectively investigate reports of unauthorized legal practice in Ohio, and where necessary, take corrective action including instituting formal proceedings. The Committee exists to safeguard the public from unqualified and unscrupulous individuals practicing law without a license. All activities will be conducted pursuant to all powers, privileges and immunities granted by Gov. Bar R. VII.

**Article II.
MEMBERSHIP**

- Section 1. The membership of the Committee shall be composed of attorneys who are members of the Cleveland Metropolitan Bar Association in good standing who have indicated an interest in serving on the Committee. All members shall be appointed by the President of the Association with approval from the Board of Trustees for the current fiscal year, at the end of which time membership on the Committee will automatically terminate, unless the member is re-appointed for the following fiscal year; provided, however, that a Committee member who is not re-appointed, but who remains an attorney at law in good standing and who is a member of a Trial Committee on a pending, open matter shall, with the member's consent, remain on such Trial Committee and continue as an ex-officio member of the Committee for such purpose.
- Section 2. A Chairperson and a Vice-Chairperson shall be appointed by the President of the Association with approval from the Board of Trustees for each fiscal year. The Chairperson shall preside at Committee meetings, shall be responsible for the submission of annual and/or interim reports to the Association, shall be responsible for reports to the Board of Commissioners on the Unauthorized Practice of Law and/or the Supreme Court, and shall perform other acts or responsibilities as usually pertain to such office, or as directed by the Association. The Vice-Chairperson shall assist the Chairperson with these duties and conduct the meetings in the absence of the Chairperson.

**Article III.
MEMBERSHIP MEETINGS**

- Section 1. Regular meetings of this Committee shall occur at least monthly, at a time and date fixed by the Committee membership, or by the Chairperson, as authorized by the membership.
- Section 2. Special meetings may be called by the Chairperson or Vice Chairperson to deal with interim or emergency matters upon such notice as is practical to Committee members who regularly attend meetings. Interim meetings may be by teleconference.
- Section 3. Five members of the Committee shall constitute a quorum for all regular and special meetings, and all matters decided by vote shall be decided by a majority of those present and voting.

- Section 4. The executive director's liaison shall prepare meeting agendas in consultation with the Chairperson of the Committee. The agenda shall include a listing of all pending matters and the member(s) of the Committee, if any, to whom the matter has been assigned for investigation or report or prosecution. The executive director's liaison shall give notice of the time, place and purpose of meetings to the Committee membership. Notices may be in writing or by e-mail.
- Section 5. The executive director's liaison shall take minutes at Committee meetings and forward to the staff liaison a copy of the minutes for distribution at the next meeting.
- Section 6. Association counsel shall attend Committee meetings whenever possible.

**Article IV.
MISCELLANEOUS PROVISIONS**

- Section 1. The Association shall maintain all records of the Committee and shall determine the appropriate length of time to retain Committee files if not otherwise specified herein.
- Section 2. The Association shall compile and maintain indefinitely a list of persons and entities investigated by the Committee.
- Section 3. All matters coming before the Committee shall be assigned a reference number designating the month and year of commencement and the number of the matter.
- Section 4. Upon information of actions which may constitute the unauthorized practice of law being received by the Association or the Committee, a preliminary determination shall be made at the next Committee meeting as to whether or not the allegations on their face are the subject for further inquiry by the Committee. Information shall not be deemed to be received unless a written, signed report is received bringing the matter to the attention of the Association, unless the Association itself and/or a member of the Committee has public knowledge of the act. If a complaint is received by telephone the complaining party shall be requested to send a letter to the Association setting forth the matters complained of or to appear in person at the Office of the Association, at which time the signed statement shall be obtained. Matters which come to the attention of the Committee through media publication do not require an additional written communication.
- Section 5. The following are the procedures to be used for the handling of all complaints:
- A. The Committee shall determine at its next meeting whether or not the information submitted demonstrates on its face that the acts complained of do not constitute the unauthorized practice of law. If the Committee determines that the acts do not constitute the unauthorized practice of law, that determination shall be communicated by letter to the party or parties who originally referred the matter to the Committee's attention.
 - B. If it is determined by the Committee that the acts appear to constitute the unauthorized practice of law, or if it determined that further investigation is warranted, the Committee shall determine whether the matter is better suited for its own investigation or whether it is more appropriate to refer it to the unauthorized practice of law committee of another bar association or to disciplinary counsel. If it is determined to be a matter for the Committee's own investigation, it shall be assigned by the Chairperson to a member or members of the Committee for investigation.

- C. A report of the investigation shall be made by the investigating member(s) to the Committee no later than 60 days after the date of assignment, unless additional time is needed. If it is then determined by the Committee that the acts complained of do not constitute the unauthorized practice of law, such determination shall be communicated in writing to the party who originally referred the matter to the Committee's attention, and to the person or entity investigated (if contact had been made by the Committee).
- D. If further investigation is warranted before a determination pursuant to Paragraph C can be made, said investigation, which may include one or more depositions, shall be conducted so that a report and recommendation to the Committee can be made within 120 days of original assignment, unless additional time is needed.
- E. The written report of the Committee investigator(s) pursuant to paragraph C and D shall include:
 - (1) The nature of the complaint;
 - (2) The nature of the investigation;
 - (3) The conclusion of the investigator(s); and
 - (4) The recommendation of the investigator(s).
- F. If the Committee determines that reasonable cause exists to warrant a formal proceeding, then the Chairperson of the Committee shall appoint a Trial Committee consisting of at least two members, one of whom shall be designated lead counsel, for preparing a formal complaint for filing before the Board of Commissioners on the Unauthorized Practice of Law, after approval of the complaint by the Board of Trustees of the Bar Association, and for prosecuting the same to conclusion. This may include proceedings for an interim cease and desist order pursuant to Gov. Bar R. VII Section 5(a) if deemed appropriate by the Committee and the Trial Committee.
- G. The member investigating the complaint shall ordinarily be designated as lead counsel. If for any reason the lead counsel is unable to carry out these duties, then the Chairperson shall appoint another member to serve as lead counsel.
- H. All actions involving the particular matter shall be under the direction of lead counsel, who shall attempt to act with the consensus of the Trial Committee; provided, however that no settlement or agreed disposition shall be made unless first submitted to the entire Committee for approval at a regular meeting.
- I. From time-to-time as a matter proceeds, additional Trial Committee members may be appointed by the Chairperson, if requested by the Trial Committee, to fill any vacancy to provide additional staffing. An attorney at law in good standing and member of the Cleveland Metropolitan Bar Association associated with a member of a Trial Committee may assist the Trial Committee and shall be an ex-officio member of the Committee for such purpose.

Article V.
EFFECTIVENESS AND AMENDMENTS TO BY-LAWS

Section 1. These By-Laws or any amendments hereto shall become effective upon approval by both: (1) a majority vote of the Committee members present at a meeting called for that purpose and (2) the Board of Trustees of the Association.

Section 2. Amendments to these By-Laws may be considered at any meeting of the Committee, provided that such proposed amendments shall first have been distributed to the members of the Committee prior to the meeting at which such amendment is to be considered.

Date approved: May 14, 2008
(Committee)

Date approved: May 21, 2008
(Board of Trustees of Cleveland Metropolitan Bar Association)

PROCESSING UPL COMPLAINTS:

1. Complaint comes in, an OSBA file number assigned and the complaint is scanned, entered into the UPL Registry, and a summary of the case information is prepared.
2. Copies of the complaint and summary are emailed to the New Matters Subcommittee: the chair, John MacKay, David Kutik and William Hicks. Copy Gene Whetzel with email.
3. Prepare Acknowledgment Letter to submitter. Check with Gene to see if he wants to send letter of inquiry now or wait until reviewed by the full Committee at the next UPL meeting.
4. Matter is placed on the agenda for the next UPL Committee meeting.
5. At the UPL Committee meeting, a decision is made whether to proceed with investigation or to dismiss the matter. If the Committee determines action should be taken:
 - a. the case is assigned to an investigator.
 - b. Letters sent to Respondent with 14 day response time. (Put response date on calendar)
 - c. The investigator is provided with the case documents for review.
 - d. Case information is added to the in-house "Open Case Log" and the case year log.
6. If it is determined to investigate, the following will occur:
 - a. Letter is sent to the investigator from Mr. Whetzel requesting the investigation proceed and asking that the investigator provide the steps that will be taken in the investigation and the time frame. These time frames should be noted and monitored so that the file is kept updated and to ensure that progress is ongoing.
 - b. Update the UPL registry to reflect the matter is open and an investigation on-going.
 - c. The investigator decides what steps are needed in pursuing the case. If the investigator determines that a formal complaint is warranted, the evidence in the file should be that which is needed to support a Motion for Default Judgment.
 - d. Letters are sent to the parties (respondent & source) to let them know the status.
 - e. The completed investigation report is provided to the Committee at each UPL meeting.
 - f. If prosecution is recommended, a Complaint is drafted by the investigator with the assistance of Gene. At the next UPL committee meeting, a determination is made whether to prosecute. The draft complaint and investigator's report is then submitted to the Board of Governors for authorization to file.
 - g. At this point, the matter is handled the same as any other civil case and the UPL registry kept updated.

- h. If no response is received from the Respondent and the investigation reveals a UPL violation, a Motion for Default is prepared and filed.
 - i. Investigators and prosecutors are reimbursed for any out-of-pocket expenses.
- 7. If it is determined that the matter should be dismissed:
 - a. Letter is sent to the respondent & the source indicating the matter is dismissed.
 - b. Update the UPL registry to reflect that the matter was dismissed.
- 8. Board Complaint must include the following (See UPL Manual for additional information):
 - a. Certification from the Ohio Supreme Court that they respondent is not an attorney licensed in the State of Ohio.
 - b. Copies of Certification are to be served on all Respondents, Respondent's counsel, and Secretary of Board. Original offered as an exhibit at hearing; filed with the Board at conclusion of hearing.
 - c. Complaint shall state "whether the Relator is aware that an underlying complainant or individual is seeking a private remedy pursuant to R.C. 4705.07."
 - d. Send copies of Complaint to Disciplinary Counsel, OSBA UPL Committee, and local bar association from where the complaint originated (Bar Counsel, President or UPL Committee Chair).

The Supreme Court of Ohio

BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

CLEVELAND METROPOLITAN
BAR ASSOCIATION,

Relator,

v.

MICHAEL D. DAVIE

and

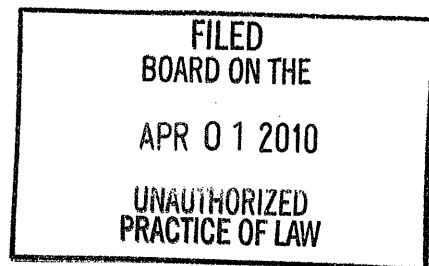
ALPHA LEGAL SERVICES, INC.,

Respondents.

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Case No. UPL 09-07

CASE SCHEDULING ORDER



CASE SCHEDULING ORDER

It is on this 1st day of April, 2010, by the Panel hereby **ORDERED** that counsel and parties proceeding *pro se* are directed to comply with the following:

1). **Case Schedule**

The deadlines and dates set forth herein are firm dates and may not be changed by the parties or counsel without the approval of the Panel Chair.

Assignment of Hearing Panel	3/30/2010	
Initial Status Conference	6/15/2010	10:00 a.m.
Initial Disclosure of Witnesses	7/20/2010	
Discovery Cut Off	10/18/2010	
Dispositive Motion Deadline	11/3/2010	
Pre-hearing Statement/Briefs/ Preliminary and Procedural Motions	11/17/2010	
Pre-hearing Conference	11/30/2010	10:00 a.m.
Hearing Date	12/15/2010	10:00 a.m.

Initial status and pre-hearing conferences will be initiated by telephone, unless otherwise directed by the Panel Chair. The Secretary will confirm the scheduling of a conference call seven business days in advance of the date indicated.

All requests to the Panel must be submitted in writing in the form of a motion.

2). **Filing and Electronic Service**

Service of a filing upon the Board, Panel or Secretary shall be made by mailing or delivery of an original and four copies to the Secretary of the Board on the Unauthorized Practice of Law, 5th Floor, 65 S. Front Street, Columbus, OH 43215. Alternatively, parties may file pleadings and filings, with the exception of hearing exhibits and deposition transcripts, with the Board via email (UPLBoard@sc.ohio.gov) or by fax (614-387-9529) in order to timely comply with filing deadlines.

If a filing is made electronically with the Board, a signed original shall also be contemporaneously mailed to the Board's offices.

Parties with matters before the Board on the Unauthorized Practice of Law are encouraged to serve filings upon opposing counsel and parties via email when feasible.

3). **Hearing Date and Location: December 15, 2010, 10:00 a.m.**, Cleveland, Ohio. Exact hearing location to be determined.

4). **Gov.Bar R. VII and Board Regulations:** Parties are encouraged to read and familiarize themselves with the Supreme Court Rules for the Government of the Bar, Rule VII, and Regulations Governing Procedure on Complaints and Hearings Before the Board on the Unauthorized Practice of Law. A copy of the rules and regulations may be located at www.sc.ohio.gov/UPL.

5). **Discovery:** All discovery in the case shall be served pursuant to the Ohio Rules of Civil Procedure, including the service of discovery by electronic means when applicable. Counsel and parties are expected to confer in good faith in an effort to resolve any discovery dispute before bringing it to the Panel's attention by written motion.

6). **Certificate of Registration:** A relator after the filing of the complaint, shall produce a Certificate from the Supreme Court of Ohio, Office of Attorney Registration, 5th Floor, 65 South Front Street, Columbus, OH 43215, indicating whether any responsive party to the complaint is not admitted to practice law in the State of Ohio, and serve a copy upon all respondents, counsel of record, and the Secretary of the Board, and the original shall be filed by the relator and offered as an exhibit at hearing.

7). **Continuances:** The continuance of a hearing date is a matter within the discretion of the Panel for good cause shown. No party shall be granted a continuance of a hearing date without a written motion from the party or counsel stating the reason for the continuance. The motion shall be filed with the Secretary no later than ten days before the date set for hearing. If the motion is not granted by the Panel Chair, the cause shall proceed as originally scheduled.

8). **Motions:** Upon the filing of a motion by a party, any memorandum in response or in opposition shall be served upon the Secretary and all parties within (21) twenty one days of the filing of the motion, and a reply to the memorandum opposing any motion may be served

within (10) ten days of the filing of the memorandum in opposition, unless directed otherwise by the Panel Chair. Three days shall be added to the prescribed time periods when the motion or responsive memoranda are served by mail.

**FOR THE BOARD ON THE UNAUTHORIZED
PRACTICE OF LAW**


Curtis J. Sybert, Panel Chair 



[LAW FIRM LETTERHEAD]

_____, 2014

Dan J. Jones
Statutory Agent
Legal Practice Service LLC
100 State Road
Cleveland, Ohio 44114

Re: Unauthorized Practice of Law Investigation

Dear Mr. Jones:

I am a member of the Cleveland Metropolitan Bar Association's Unauthorized Practice of Law Committee and, as such, I have been asked to initiate an investigation as to whether Legal Practice Service LLC and persons connected therewith are engaged in the unauthorized practice of law in Ohio, including the rendering of legal services for others in connection proceedings before Ohio courts.

In connection with my investigation, I would like to discuss the operation of Legal Practice Service LLC and any related companies or individuals with company representatives at a mutually convenient time.

Please call me, or have your counsel do so, within ten days from the date of this letter.

Very truly yours,

Sam Smith

SS/ask
1662569_1

June 24, 2013

Ms. Jane Smith
123 Main Street
Cleveland, OH 44113

Subject: Immigration Helper.com

Dear Ms. Smith:

As we discussed during our August 8, 2012 telephone conversation and subsequently during the March 15, 2013 deposition (the “Deposition”), the Cleveland Metropolitan Bar Association's Unauthorized Practice of Law Committee (the “Committee”) has been investigating whether you, directly and/or through the above-named website, have been engaging in the unauthorized practice of law by preparing legal documents and/or providing legal advice to the public.

At the Deposition you stated that the purpose of your Immigration Helper.com business was to provide paralegal services to attorneys, rather than legal services to the general public. You indicated that you have not actually provided any such paralegal services to attorneys. You also indicated that you did not actively market the Immigration Helper.com website and have not provided such “legal services” as advertised on that website to any individual.

Finally, you represented that you have never otherwise provided any legal advice to, or filled out legal documents on behalf of, anyone, and do not intend to do so in the future. You indicated that you are aware of the prohibition against the unlicensed practice of law from the paralegal studies program in which you are enrolled.

Under Ohio law, the practice of law “embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions on proceedings on behalf of clients before judges in courts, and in addition ... the preparation of legal instruments of all kinds, and in general all advice to clients in all actions taken [for] them in matters connected with the law.” Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, syl ¶ 1.

In addition, “[p]ersons not licensed to practice law in Ohio are ... prohibited from

holding themselves out ‘in any manner as an attorney at law’ or from representing that they are authorized to practice law ‘orally or in writing, directly or indirectly.’” Disciplinary Counsel v. Pratt (2010) 127 Ohio St. 3d 293, 297.

The Committee is concerned about a number of representations you made on the Immigration Helper.com website, including “We provide the best legal assistance to our following valuable clients: [...] corporations [...] and individual,”¹ and “Our team of dedicated legal professionals is well-versed in many specialized areas.”² In the Committee’s opinion, such representations may indicate to a layperson that you are holding yourself out as an attorney at law. It is the Committee’s opinion that by holding yourself out as an attorney at law you engage in the unauthorized practice of law, even if you do not actually provide legal advice or services to anyone.

Based on the Committee's investigation, we have not found any evidence that you did actually provide any legal advice or legal services. We also note that the above-referenced website appears to have been shut down. We are therefore willing to resolve the matter without further investigation, provided you sign this letter agreement, and provided that the Committee does not receive allegations of additional violations of unauthorized practice of law in the future.

By signing this letter below, it is to be understood and agreed that:

1. You acknowledge that are not an attorney at law authorized to practice in Ohio or in any other jurisdiction.
2. You agree that you will not in the future hold yourself out to anyone as a lawyer, and will not give legal advice to anyone, whether for compensation or not. You will not attempt to represent anyone in connection with any civil or criminal proceedings, and you will not directly or indirectly represent any party on legal matters, provide any legal advice to any party, prepare any legal documents for any party, or file any documents with any court or agency on behalf of any party, unless and until you become licensed to practice law in the State of Ohio. You agree that you will not otherwise engage in the unauthorized practice of law.
3. You agree that you will not establish or publish any website or other electronic communications or advertise in any periodical publication or printed flyer or card to offer to perform paralegal services for anyone who is not a licensed Ohio attorney
4. If, in the future, should information be obtained that you have engaged in other conduct that appears to the Committee or other authorized investigating body to have involved the unauthorized practice of law, then this letter agreement will be evidence of notification and prior warning, and be used in the subsequent matter for any other appropriate reason.

Upon receipt of a signed copy of this letter indicating your agreement to these terms, the

⁻¹ Immigration Helper.com, “Staff” page, accessed and saved on August 8, 2012, attached hereto as Exhibit A.

⁻² Id., “Services” page, accessed and saved on August 8, 2012, attached hereto as Exhibit B.

Committee will close its file. If we receive allegations that you engaged in the unauthorized practice of law subsequent the date of this agreement, the Committee will re-open its investigation into the above-referenced matter.

Sincerely,

Joseph Volunteer
Member,
Unauthorized Practice of Law
Committee of the Cleveland
Metropolitan Bar Association

I hereby agree to the terms set forth in this document.

Ms. Jane Smith

Date

Mr. John Smith
123 Main Street
Cleveland, OH 44113

July 9, 2014

Subject: Unauthorized Practice of Law

Dear Mr. Smith:

As we discussed during our March 5, 2014 telephone conversation, the Cleveland Metropolitan Bar Association's Committee on the Unauthorized Practice of Law (the "Committee") has been investigating whether you have been engaging in the unauthorized practice of law by appearing in court on behalf of another person after your disbarment.

During our conversation, you told me that you were doing a favor for a friend when you appeared in Cleveland Municipal Court on behalf of Jane Doe but that you no longer practice law and do not intend to do so in the future.

Under Ohio law, the practice of law "embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions on proceedings on behalf of clients before judges in courts, and in addition ... the preparation of legal instruments of all kinds, and in general all advice to clients in all actions taken [for] them in matters connected with the law." Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, syl ¶ 1.

In addition, "[p]ersons not licensed to practice law in Ohio are ... prohibited from holding themselves out 'in any manner as an attorney at law' or from representing that they are authorized to practice law 'orally or in writing, directly or indirectly.'" Disciplinary Counsel v. Pratt (2010) 127 Ohio St. 3d 293, 297.

Based on the Committee's investigation, we have found that you appeared in court on behalf of another and that you were not licensed to practice law in the State of Ohio at the time. However, you have stated that you do not intend to do so again in the future and no additional referrals to the Committee have been made to date.

We are therefore willing to resolve the matter without further investigation, provided you sign this letter agreement, and provided that the Committee does not receive allegations of additional violations of unauthorized practice of law in the future.

By signing this letter below, it is to be understood and agreed that:

1. You acknowledge that you are not an attorney at law authorized to practice in Ohio;
2. You agree that you will not in the future hold yourself out to anyone as a lawyer, and will not give legal advice to anyone, whether for compensation or not. You will not attempt to represent anyone in connection with any civil or criminal proceedings, and you will not directly or indirectly represent any party on legal matters, provide any legal advice to any party, prepare any legal documents for any party, or file any documents with any court or agency on behalf of any party, unless and until you become licensed to practice law in the State of Ohio. You agree that you will not otherwise engage in the unauthorized practice of law.
3. If, in the future, should information be obtained that you have engaged in other conduct that appears to the Committee or other authorized investigating body to have involved the unauthorized practice of law, then this letter agreement will be evidence of notification and prior warning, and be used in the subsequent matter for any other appropriate reason.

Upon receipt of a signed copy of this letter indicating your agreement to these terms, the Committee will close its file. If we receive allegations that you engaged in the unauthorized practice of law subsequent the date of this agreement, the Committee will re-open its investigation into the above-referenced matter.

Sincerely,

Katherine Volunteer
Member,
Unauthorized Practice of Law
Committee of the Cleveland
Metropolitan Bar Association

I hereby agree to the terms set forth in this document.

John Smith

Date

Today's Date

PERSONAL AND CONFIDENTIAL

Grievant's Name and Address

Re: Respondent's Name
File No. ODC Number

Dear Grievant Salutation:

After consideration of your complaint, we have determined that further action will not be taken regarding the allegations that Respondent's Name engaged in the unauthorized practice of law. Please be assured that each and every complaint received by this office is treated with the utmost respect and concern. The complaint that you filed against Respondent's Name was no exception to our policy.

Paragraph Insert

Should we become aware of additional information regarding Respondent's Name activities that might constitute the unauthorized practice of law, we will certainly reopen our investigation. At the present time, this matter is dismissed and our file is closed.

Sincerely,

Attorney Name
Attorney Title

Attorney and Secretary Initials

cc: Respondent's Name

Today's Date

PERSONAL AND CONFIDENTIAL

Grievant's Name and Address

Re: Respondent's Name
File No. ODC Number

Dear Grievant's Name:

Respondent's Name has responded to your allegations. Enclosed is a copy of that response.

We are providing it to you with the opportunity to offer additional information and a response to Mr. Respondent's Last Name's explanation. Because this investigation is limited to the unauthorized practice of law, please limit your response to these issues.

If you choose to reply to Mr. Respondent's Last Name's answer, you must do so in writing. Your response should be received in this office no later than Due Date. If we do not receive your response by that date, we will base our decision on the information received thus far.

Sincerely,

Attorney Name

Attorney Title

Attorney & Secretary Initials

Enclosure

Today's Date

PERSONAL AND CONFIDENTIAL

Eugene Whetzel, Esq.
Bar Counsel
Ohio State Bar Association
1700 Lake Shore Drive
P. O. Box 16562
Columbus, Ohio 43216-6562

Re: Respondent Name
Filing of Formal Complaint

Dear Mr. Whetzel:

Please be advised that we have filed a formal complaint against the above-referenced respondent with the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio.

Pursuant to Gov. Bar R. VII(5)(B), I am also forwarding a copy to the local Bar Association in the county where respondent resides/maintains an office (does business) and for the county from which the complaint arose.

Sincerely yours,

Attorney's Name
Attorney Title

Attorney Secretary Initials

Enclosure

cc: Type Bar Association Here

Today's Date

PERSONAL AND CONFIDENTIAL

Grievant's Name & Add.

Re: Letter of Acknowledgment: UPL

Respondent: Respondent Name
ODCNumber

Dear Grievant Name:

We have received your grievance and are beginning our investigation. We will contact you if we need additional information and you will be advised of our determination after the investigation has been completed.

Thank you for your cooperation.

Sincerely,

Attorney's Name
Attorney Title

Attorney & Secretary Initials

Today's Date

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
PERSONAL AND CONFIDENTIAL

Respondent's Name and Address

Re: UPL Letter of Inquiry
Grievant: Grievant Name
Number: ODC Number

Dear Respondent's Name:

Please be advised that this office has received the enclosed material indicating that you may be engaging in the unauthorized practice of law. Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio requires that the Disciplinary Counsel investigate any such matter brought to its attention. Please be aware that, if necessary, Disciplinary Counsel is authorized to obtain needed information by requiring the appearance of individuals, with requested documents, under subpoena.

Please provide your response by letter postmarked no later than **Due Date**.

Sincerely,

Attorney's Name
Attorney Title

Attorney & Secretary Initials
Enclosure

**THE BOARD ON THE
UNAUTHORIZED PRACTICE OF LAW
OF THE SUPREME COURT OF OHIO**

Disciplinary Counsel,	:	
	:	
Relator,	:	
	:	
vs.	:	<u>PRAECIPE FOR SUBPOENA</u>
	:	<u>DUCES TECUM</u>
Respondent's Name,	:	
	:	Case No. Case Number
Respondent.	:	

TO: Minerva B. Elizaga, Esq., Secretary
Board on the Unauthorized Practice of Law of the Supreme Court of Ohio

It is respectfully requested that, pursuant to Gov. Bar R. VII, § 12, a subpoena duces tecum be issued as follows:

<u>NAME/ADDRESS OF PERSON:</u>	<u>DATE AND TIME OF APPEARANCE:</u>
---------------------------------------	--

Name & Add. of person deposing	Date and Time of Appearance
--------------------------------	-----------------------------

<u>PLACE FOR APPEARANCE:</u>	<u>SERVICE IS REQUESTED BY:</u>
-------------------------------------	--

Office of Disciplinary Counsel 250 Civic Center Drive, Suite 325 Columbus, Ohio 43215-7411 614.461.0256	<input checked="" type="checkbox"/> Special Process Server <input checked="" type="checkbox"/> Certified Mail, Return Receipt Requested
--	--

THE FOLLOWING DOCUMENTATION IS REQUIRED:

All materials of any type in your possession or under your control relating in any way to:
 PARA. INSERT.

**PRODUCTION OF DOCUMENTS PRIOR TO INSERT DATE OF APPEARANCE,
MAY ELIMINATE NEED FOR PERSONAL APPEARANCE.**

Attorney Name (Attorney Registration Number)
Attorney Title

**BEFORE THE BOARD ON THE
UNAUTHORIZED PRACTICE OF LAW OF
THE SUPREME COURT OF OHIO**

DISCIPLINARY COUNSEL
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

RELATOR,

v.

Respondent's Name & Address

RESPONDENT.

:
:
:
:
: **FORMAL COMPLAINT**
: **ALLEGING THE**
: **UNAUTHORIZED PRACTICE**
: **OF LAW (with Certificate**
: **required by Gov. Bar R. VII § 5)**
:
:
:

FORMAL COMPLAINT

NOW COMES relator, Disciplinary Counsel, by and through counsel, and for its complaint states:

1. Respondent, Respondent's Name, is a natural person whose last known address is
Respondent's Address.
2. Respondent is not an attorney in the state of Ohio under Gov. Bar R. I or XII, registered under Gov. Bar R. VI, or certified under Gov. Bar R. II, IX, or XI.
3. Respondent's actions constituted the unauthorized practice of law.

WHEREFORE, relator asks:

- A. For a determination and declaration by the board that respondent had engaged in conduct constituting the unauthorized practice of law in the state of Ohio; and,
- B. For a recommendation by the board to the Supreme Court of Ohio that the court enter a permanent order enjoining respondent from engaging in the state of Ohio in acts the same as or similar to those described herein and from engaging in any other act in the state of Ohio constituting the practice of law unless and until (1) respondent secures from the court, or from the highest court of some other state, territory or other jurisdictional entity of the United States, a license to practice law, and (2) he registers in accordance with the Rules for the Government of the Bar of Ohio.

Respectfully submitted,

Scott J. Drexel (0091467)
Disciplinary Counsel

ADC Name (Registration Number)
ADC Title
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF AUTHORITY

PURSUANT TO GOV. BAR R. VII § 5

I, Scott J. Drexel, Disciplinary Counsel, hereby certify that ADC Name, attorney at law (registration number Registration Number):

1. Is authorized to represent Disciplinary Counsel in the foregoing unauthorized practice of law proceeding; and,
2. Has accepted the responsibility of prosecuting to a conclusion the foregoing unauthorized practice of law proceeding.

I further certify that after investigation, Disciplinary Counsel, believes probable cause exists to warrant a hearing on the foregoing complaint.

Signed at Columbus, Ohio, this _____ day of Type Month & Year.

Scott J. Drexel (0091467)
Disciplinary Counsel

**BEFORE THE BOARD ON THE
UNAUTHORIZED PRACTICE OF LAW OF
THE SUPREME COURT OF OHIO**

In Re: :
Respondent Name : **CASE NO. ODC Number**

Respondent :
: **MOTION FOR DEFAULT**

Disciplinary Counsel :
250 Civic Center Drive, Suite 325 :
Columbus, Ohio 43215-7411 :
Relator :
:

Pursuant to Gov. Bar R.VII(7)(B), relator, Disciplinary Counsel, hereby moves the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio (“the Board”) for a Default Order in the above-captioned matter for the reasons set forth in the following Memorandum.

**MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT
EVIDENCE IN SUPPORT OF COMPLAINT**

Paragraph Insert

Respondent is not an attorney in the state of Ohio under Gov. Bar R. I or XII, registered under Gov. Bar R. VI, or certified under Gov. Bar R. II, IX, or XI. (Exhibit ____)

EFFORTS MADE TO CONTACT RESPONDENT

Paragraph Insert

Paragraph Insert

EXHIBITS

Paragraph Insert

RECOMMENDATION

Relator requests that the Board make a recommendation to the Supreme Court of Ohio that the Court enter a permanent order enjoining respondent from engaging in acts the same as or similar to those described in this motion in the state of Ohio, and in the formal complaint pending before the Board and from engaging in any other act in the state of Ohio constituting the practice of law unless and until (a) respondent secures from the Court, or from the highest Court of some state, territory or other jurisdictional entity of the United States a license to practice law and (b) respondent registers in accordance with the Rules for the Government of the Bar of Ohio.

MITIGATING FACTORS

Paragraph Insert

CONCLUSION

Respondent has engaged in conduct constituting the unauthorized practice of law in the state of Ohio. Relator respectfully requests that the Board grant this motion for default.

Respectfully submitted,

Scott J. Drexel (0091467)
Disciplinary Counsel

Attorney Name Attorney Reg No
Attorney Title
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

Paragraph Insert

STATE OF OHIO)
)
COUNTY OF FRANKLIN) **SS:**

AFFIDAVIT

Paragraph Insert

FURTHER AFFIANT SAYETH NAUGHT.

Attorney Name Attorney Reg Number
Attorney Title

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS Day OF
Month, 2____.

Notary Public

The Supreme Court of Ohio

BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

FILED
BOARD ON THE
SEP 17 2009
UNAUTHORIZED
PRACTICE OF LAW

DISCIPLINARY COUNSEL,

Relator,

v.

ANTHONY LEWIS-JERDINE,

Respondent.

Case No. UPL 09-01

ORDER

This matter came before the Board upon the Settlement Agreement of Relator and Respondent filed on July 27, 2009, Motion to Submit the Settlement Agreement and Addendum to Settlement Agreement filed on August 6, 2009, and Affidavit of Respondent filed on September 14, 2009.

Upon consideration thereof,

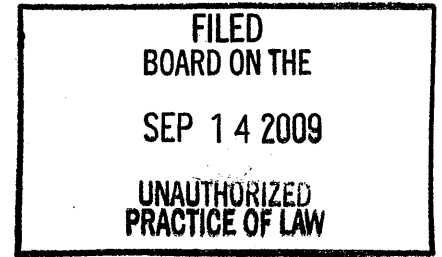
IT IS ORDERED that the Complaint filed in this matter is hereby dismissed pursuant to Gov. Bar R. VII, Sec. 5b(D)(1). The signed Settlement Agreement shall be recorded for reference by the Board pursuant to Gov. Bar R. VII, Sec. 5b(H).

FOR THE BOARD ON THE UNAUTHORIZED
PRACTICE OF LAW



Frank R. DeSantis, Chair

STATE OF OHIO)
) ss:
COUNTY OF Matthias)



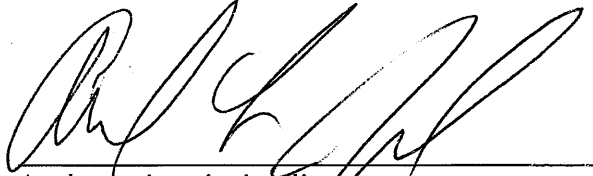
AFFIDAVIT

I, Anthony Lewis Jerdine, having been duly sworn according to the laws of Ohio, hereby depose and say:

- (1) I admit I was engaged in the unauthorized practice of law as set forth in relator's formal complaint.
- (2) I admit the material allegation of the unauthorized practice of law as set forth in relator's formal complaint.
- (3) I agree to cease and desist from engaging in the unauthorized practice of law.
- (4) I acknowledge signing the Settlement Agreement of Relator and Respondent Pursuant to Rule VII Section 5b of the Rules for the Government of the Bar of Ohio, which was filed with the Board of Commissioners on the Unauthorized Practice of Law.
- (5) I acknowledge that relator submitted a Addendum to Settlement Agreement of Relator and Respondent.
- (6) Relator provided me with a copy of the Addendum.

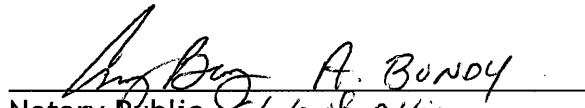
(7) I agree with relator's statements set forth in the Addendum.

FURTHER AFFIANT SAYETH NAUGHT.



Anthony Lewis Jerdine

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS 31 DAY OF
August _____ 2009.



Notary Public, State of Ohio

My commission expires 11-5-2013.

Disciplinary Counsel

THE SUPREME COURT OF OHIO

250 CIVIC CENTER DRIVE, SUITE 325
COLUMBUS, OHIO 43215-7411
(614) 461-0256
FAX (614) 461-7205
1-800-589-5256

DISCIPLINARY COUNSEL

JONATHAN E. COUGHLAN

CHIEF ASSISTANT DISCIPLINARY COUNSEL

LORI J. BROWN

SENIOR ASSISTANT DISCIPLINARY COUNSEL

ROBERT R. BERGER

JOSEPH M. CALIGIURI

ASSISTANT DISCIPLINARY COUNSEL

STACY SOLOCHEK BECKMAN

CAROL A. COSTA

HEATHER L. HISSOM

PHILIP A. KING

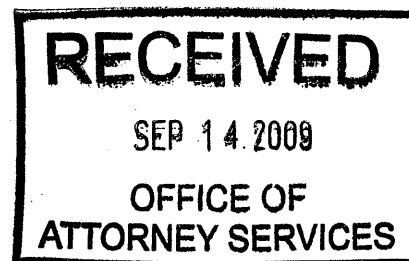
KAREN H. OSMOND

AMY C. STONE

September 14, 2009

PERSONAL AND CONFIDENTIAL

Michelle A. Hall, Esq.
Secretary
Board on the Unauthorized Practice of Law
65 South Front Street
Columbus, Ohio 43215-3431



Re: *Disciplinary Counsel v. Anthony Lewis Jerdine*
Board No. UPL 09-01

Dear Ms. Hall:

Enclosed please find the affidavit of Anthony Lewis Jerdine. As you may recall, the board requested that Mr. Jerdine provide an acknowledgement indicating that he agrees with the terms of the Settlement Agreement of the Relator and Respondent Pursuant to Rule VII Section 5b of the Rules for the Government of the Bar of Ohio and the Addendum to the Settlement Agreement that the parties previously filed in this matter. We hope that Mr. Jerdine's affidavit is responsive to the board's request.

If you have any other concerns or questions, please feel free to contact me. Thank you for your cooperation with this matter.

Sincerely,


Stacy Solochek Beckman
Assistant Disciplinary Counsel

SSB/cm

Enclosure

cc: Anthony Lewis Jerdine

settlement agreement and does not believe that it is appropriate to impose a civil penalty upon respondent in this matter.

MEMORANDUM IN SUPPORT OF RELATOR'S MOTION AND ADDENDUM

Respondent, Anthony Lewis-Jerdine, is not an attorney licensed to practice law in the State of Ohio and is presently incarcerated. (Settlement Agreement, Paragraph 2). On four occasions, all relating to the same matter, respondent prepared and submitted pleadings on behalf of his brother, Darryl Jerdine, who was incarcerated at the time, to the Eighth District Court of Appeals. (Id. at paragraphs 3-7) Upon the motion of Cuyahoga County Court of Common Pleas Judge Bridget McCafferty, the appellate court struck the initial pleading filed by respondent and dismissed Darryl's case in its entirety. (Id. at Paragraph 10). There is no evidence suggesting that respondent provided legal services or otherwise represented anyone other than Darryl in any matter.

Respondent has acknowledged that he engaged in the unauthorized practice of law in this matter and has agreed to cease and desist from similar conduct in the future. (Settlement Agreement, Stipulated Resolution).

Gov. Bar R. VII (8)(B) provides that:

The Board may recommend and the Court may impose civil penalties in an amount up to ten thousand dollars per offense. Any penalty shall be based on the following factors:

- (1) The degree of cooperation provided by the respondent in the investigation;
- (2) The number of occasions that unauthorized practice of law was committed;
- (3) The flagrancy of the violation;

- (4) Harm to third parties arising from the offense;
- (5) Any other relevant factors.

Respondent was entirely cooperative with relator in its investigation of this matter. As previously indicated, respondent's conduct was limited to assisting his incarcerated brother with the preparation of several legal documents in a case that was pending before the appellate court. While respondent's conduct was certainly inappropriate, it was not horribly flagrant. He did not hold himself out to be an attorney on any of the pleadings and did not engage in conduct that was harmful to third persons.

UPL Reg. 400 (F)(3) provides that other relevant factors the board can consider in determining whether a civil penalty is appropriate include aggravating factors. Relator asserts that the following aggravating factor exists, specifically that Respondent's unauthorized practice of law included the preparation of a legal instrument for filing with a court.

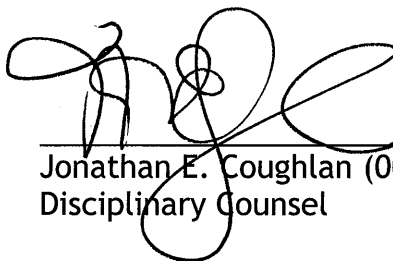
UPL Reg. 400 (F)(4) identifies mitigating factors that board can consider in determining whether a civil penalty is appropriate. Relator asserts that the following mitigating factors exist:

- (a) Respondent has ceased engaging in the conduct alleged in the complaint and agreed to in the Settlement Agreement;
- (b) Respondent has admitted the conduct alleged in the complaint;
- (c) Respondent has admitted that the conduct alleged in the complaint constituted the unauthorized practice of law;
- (d) Respondent has agreed to cease and desist from similar conduct in the future and that an injunction against the future unauthorized practice of law should be imposed; and,

(e) Respondent's conduct was the result of a motive other than dishonesty or personal benefit.

Under these circumstances, relator believes that an order that respondent cease and desist from engaging in similar circumstances is an appropriate remedy in this matter. Relator does not believe that a civil penalty is warranted.

Respectfully submitted,



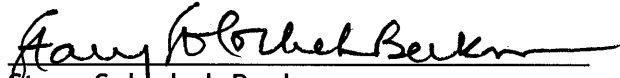
Jonathan E. Coughlan (0026424)
Disciplinary Counsel



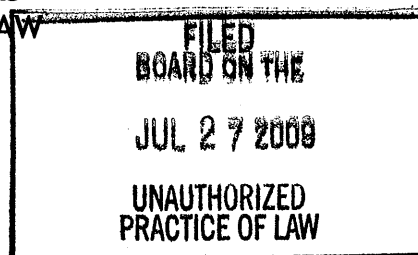
Stacy Solochek Beckman (0063306)
Assistant Disciplinary Counsel
Office of Disciplinary Counsel of
The Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
Telephone (614) 461-0256
Facsimile (614) 461-7205

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Motion to Submit the Settlement Agreement of Relator and Respondent Pursuant to Rule VII Section 5b of the Rules for the Government of the Bar of Ohio and Relator's Addendum to Settlement Agreement of Relator and Respondent was served via U.S. Mail, postage prepaid, upon Anthony Lewis-Jerdine, Inmate No. 642-57004, Northeast Ohio Correctional Center, 2240 Hubbard Road, Youngstown, OH 44505, this 6th day of August 2009.


Stacy Solochek Beckman
Counsel for Relator

BEFORE THE BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW
OF THE SUPREME COURT OF OHIO



Disciplinary Counsel :
250 Civic Center Drive, Suite 325 :
Columbus, Ohio 43215-7411, :

Relator, :

v. : CASE NO. UPL 09-01

Anthony Lewis-Jerdine :
N.E.O.C.C. :
2240 Hubbard Road :
Youngstown, Ohio 44505 :

Respondent. :

SETTLEMENT AGREEMENT OF RELATOR AND RESPONDENT PURSUANT TO RULE VII
SECTION 5b OF THE RULES FOR THE GOVERNMENT OF THE BAR OF OHIO

I. AGREED STIPULATIONS

Relator filed a complaint against respondent, Anthony Lewis-Jerdine, with the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio (the "board") on March 13, 2009. Respondent filed an answer to the allegations on May 28, 2009. Relator and respondent now enter into this Settlement Agreement pursuant to Gov. Bar R. VII (5b).

II. STIPULATED FACTS

1. Respondent, Anthony Lewis-Jerdine, is a natural person who is currently incarcerated at N.E.O.C.C., 2240 Hubbard Road, Youngstown, Ohio 44505.

2. Respondent is not an attorney-at-law in the state of Ohio admitted pursuant to Gov. Bar R. I, registered pursuant to Gov. Bar R. VI or certified pursuant to Gov. Bar R. II, Gov. Bar R. IX or Gov. Bar R. XI.
3. On April 23, 2008, relator received a letter from the Eighth District Court of Appeals indicating that respondent had prepared and filed a handwritten Writ of Mandamus to Compel Stay of Proceedings/Action Injunction Relief on behalf of an inmate, Darryl Jerdine, with the court on March 19, 2008. Darryl Jerdine is respondent's brother.
4. The pleading was signed by respondent as the "authorized representative" of Darryl Jerdine and included respondent's name, inmate number and address at the Cuyahoga County Jail at the bottom of the document.
5. On March 27, 2008, Cuyahoga County Court of Common Pleas Judge Bridget McCafferty filed a Combined Motion to Strike and Dismiss with the appellate court.
6. On April 1, 2008, respondent filed two additional pleadings on Darryl Jerdine's behalf, which he executed as Darryl Jerdine's "authorized representative."
7. On April 8, 2008, respondent filed an Emergency Response to Defendants Response to Strike on Darryl Jerdine's behalf.
8. This pleading was likewise signed by respondent as the "authorized representative" of Darryl Jerdine and included respondent's name, inmate number and address at the Cuyahoga County Jail at the bottom of the document.
9. In the Emergency Response, respondent asserted "[n]ow comes Darryl Jerdine by and through his authorized representative and trustee of express trust hereinafter, trustee attorney-in-fact Anthony Lewis."

10. On April 21, 2008, the appellate court ordered that the writ of mandamus be stricken and that Darryl Jerdine's action be dismissed in its entirety, noting "Since Anthony Lewis is not registered to practice law within the state of Ohio, his preparation and filing of the complaint for a writ of mandamus constitutes the unauthorized practice of law, which mandates that we strike the complaint for a writ of mandamus and dismiss the action in toto."

III. STIPULATED EXHIBITS

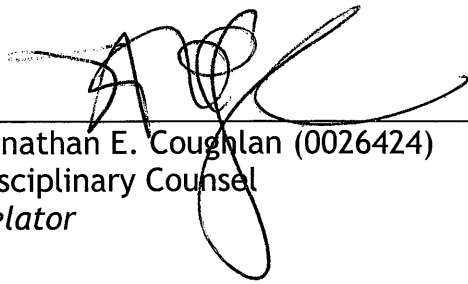
- Exhibit 1 Writ of Mandamus to Compel Stay of Proceeding/Action Injunctive Relief, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-570626, filed March 19, 2008.
- Exhibit 2 Judge McCafferty's Combined Motion to Strike and Dismiss, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-57062, filed March 27, 2008.
- Exhibit 3 Untitled Pleading, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-57062, filed April 1, 2008.
- Exhibit 4 Letter to Clerk, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-57062, filed April 1, 2008.
- Exhibit 5 Emergency Response to Defendants Response to Strike, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-57062, filed April 8, 2008.
- Exhibit 6 Journal Entry, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-57062, filed April 21, 2008.
- Exhibit 7 Journal Entry, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-57062, filed April 21, 2008.
- Exhibit 8 Journal Entry and Opinion, *In Re: Darryl Jerdine*, Eighth District Court of Appeals, Case No. 05-57062, filed April 21, 2008.

IV. STIPULATED RESOLUTION

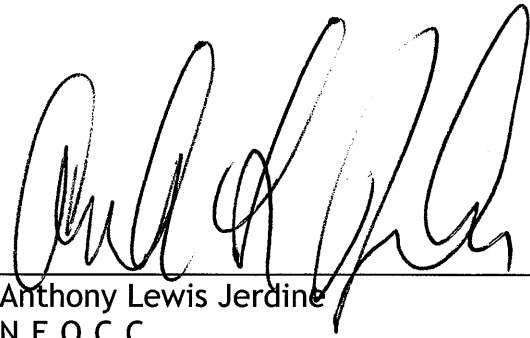
As set forth in Gov. Bar R. VII (5b)(C):

- Respondent admits that he was engaged in the unauthorized practice of law as set forth in relator's formal complaint;
- Respondent admits the material allegation of the unauthorized practice of law as set forth in relator's formal complaint;
- The public is protected from future harm and any substantial injury is remedied by this agreement;
- Respondent agrees to cease and desist from engaging in the unauthorized practice of law;
- This settlement agreement resolves the material allegations of the unauthorized practice of law;
- This settlement agreement does not involve any public policy issues or encroach upon the jurisdiction of the Supreme Court to regulate the practice of law; and,
- This settlement agreement furthers the stated purposes of Gov. Bar R. VII.

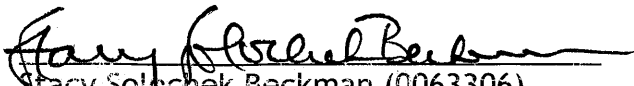
Respectfully submitted,



Jonathan E. Coughlan (0026424)
Disciplinary Counsel
Relator



Anthony Lewis Jerdine
N.E.O.C.C.
2240 Hubbard Road
Youngstown, Ohio 44505
Respondent



Stacy Solochek Beckman (0063306)
Assistant Disciplinary Counsel
Office of Disciplinary Counsel of
The Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215
Telephone (614) 461-0256
Facsimile (614) 461-7205
Counsel for Relator

May 7, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

RE: Allegation of Unauthorized Practice of Law – Every Man

Dear Mr. Doe:

Thank you for your recent Complaint and documents concerning Mr. Man. I am forwarding it to the Chair of the Ohio State Bar Association's Unauthorized Practice of Law Committee for consideration by the Committee.

Please feel free to call me if you have any questions.

Sincerely,

Eugene P. Whetzel
General Counsel

EPW/kak

cc: Chair, Unauthorized Practice of Law Committee

March 31, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

RE: Allegation of Unauthorized Practice of Law – Every Man

Dear Ms. Smith:

Your complaint against Every Man was referred to the Unauthorized Practice of Law Committee of the Ohio State Bar Association for consideration. The Committee determined that this matter warranted further consideration.

To that end, the Committee requests that you please provide an update on the current status of this matter, i.e. anything of a substantive nature that has occurred since September 2013. Enclosed is a self-addressed, stamped envelope for your response. Thank you for your cooperation.

Yours truly,

Eugene P. Whetzel
General Counsel

EPW/kak

cc: Chair, Unauthorized Practice of Law Committee

February 7, 2012

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Allegation of the Unauthorized Practice of Law – ABC Company

Dear Mr. Doe:

I want to first express the appreciation of the Ohio State Bar Association's Unauthorized Practice of Law Committee for your sharing with it the information concerning ABC Company.

After carefully considering this matter, it was the determination of the Committee that the filing of a formal complaint would be a fruitless act at this time since our research indicates that this company is no longer in existence. Thus, the Committee determined that our file on this matter should be closed.

Despite the determination not to pursue this matter, I and the Committee greatly appreciate your bringing the matter to our attention and if you have any questions, please let me know.

Very truly yours,

Eugene P. Whetzel
General Counsel

EPW/th

cc: Chairman, UPL Committee

June 25, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Allegation of Unauthorized Practice of Law – Every Man

Dear Mr. Doe:

After careful consideration of this matter, it was the determination of the Committee that this matter may be more appropriately considered by the Ohio Disciplinary Counsel and therefore the Committee determined that our file on this matter should be closed.

We have forwarded your complaint to the Office of Disciplinary Counsel for their consideration. Should you have any questions, please contact the Office of Disciplinary Counsel, Supreme Court of Ohio, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411 or via telephone at (614) 461-0256 and (800) 589-5256.

Despite the determination not to pursue this matter, the Committee and I greatly appreciate your bringing the matter to our attention.

Very truly yours,

Eugene P. Whetzel
General Counsel

EPW/kk

cc: Chair, Unauthorized Practice of Law Committee

March 25, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Allegation of the Unauthorized Practice of Law – ABC Company

Dear Mr. Doe:

I want to first express the appreciation of the Ohio State Bar Association's Unauthorized Practice of Law Committee for your sharing with it the information concerning ABC Company.

After careful consideration of this matter, it was the decision of the Committee that the filing of a formal complaint alleging the unauthorized practice of law is not warranted in this matter. Thus, the Committee determined that its file on this matter should be closed.

Despite the determination not to pursue this matter, the Committee and I greatly appreciate your bringing the matter to our attention.

Very truly yours,

Eugene P. Whetzel
General Counsel

EPW/kk

cc: Chair, Unauthorized Practice of Law Committee

March 25, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Allegation of the Unauthorized Practice of Law – Every Man

Dear Mr. Doe:

I would like to first express the appreciation of the Ohio State Bar Association's Unauthorized Practice of Law Committee for your sharing with it the information concerning Every Man.

After careful consideration of this matter, it was the determination of the Committee that the facts in this matter did not constitute the unauthorized practice of law. Thus, the Committee determined that our file on this matter should be closed.

Despite the determination not to pursue this matter, the Committee and I greatly appreciate your bringing the matter to our attention.

Very truly yours,

Eugene P. Whetzel
General Counsel

EPW/kk

cc: Chair, Unauthorized Practice of Law Committee

March 25, 2014

ABC Company
1234 Main Street
Columbus, OH 43123

Re: Unauthorized Practice of Law – ABC Company

Dear Mr. Doe:

On April 17, 2013, the Ohio State Bar Association's Unauthorized Practice of Law Committee opened a file and initiated an investigation regarding materials provided to us that indicated your client may be engaging in the unauthorized practice of law.

After considering the matter, it was the determination of the Committee that its file on this matter should be closed and the matter dismissed.

Sincerely,

Eugene P. Whetzel
General Counsel

EPW/kk

cc: Thomas Lammers, Esq.
Chair, Unauthorized Practice of Law Committee

March 26, 2014

ABC Company
1234 Main Street
Columbus, OH 43123

RE: Unauthorized Practice of Law – ABC Company

To Whom It May Concern:

On June 20, 2012, the Ohio State Bar Association's Unauthorized Practice of Law Committee opened a file and initiated an investigation regarding materials provided to us that indicated you may be engaging in the unauthorized practice of law.

After investigating the matter, it was the determination of the Committee that ABC Company is not performing legal work and therefore not engaged in the unauthorized practice of law. Given the foregoing, the Committee determined that the filing of a formal complaint was not warranted and that the file on this matter should be closed.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Eugene P. Whetzel
General Counsel

EPW/kk

cc: Aaron Shank, Esq.

February 23, 2012

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Allegation of Unauthorized Practice of Law

Dear Mr. Doe:

As you know, the Unauthorized Practice of Law Committee of the Ohio State Bar Association has conducted an investigation regarding the allegation that you engaged in the unauthorized practice of law by providing legal services to the public without the supervision of an attorney.

In our meeting with you on October 18, 2011, you acknowledged that you did provide certain services or assistance to the public without the supervision of an attorney in a manner which constituted the unauthorized practice of law.

Although we are of the opinion that the evidence supports a finding that you have engaged in the unauthorized practice of law, we are also of the opinion that you have recognized that you may not provide such services and that the filing of a formal complaint is not warranted at this time.

The Committee has determined that the matter should be dismissed and our file closed.

Sincerely,

Eugene P. Whetzel
General Counsel

EPW/th

cc: Chairman, UPL Committee

March 25, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Unauthorized Practice of Law – ABC Company

Dear Mr. Doe:

I would like to first express the appreciation of the Ohio State Bar Association's Unauthorized Practice of Law Committee for your sharing with it the information concerning ABC Company.

After investigating the matter, it was the determination of the Committee that it would be unable to prove that ABC Company had actually engaged in the unauthorized practice of law in Ohio. Given the foregoing, the Committee determined that the filing of a formal complaint was not warranted and that the file on this matter should be closed.

Despite the decision not to pursue this matter, the Committee and I greatly appreciate your bringing the matter to our attention.

Very truly yours,

Eugene P. Whetzel
General Counsel

EPW/kk

cc: Chair, Unauthorized Practice of Law Committee

November 30, 2011

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Unauthorized Practice of Law – ABC Company and Every Man

Dear Mr. Doe:

I want to first express the appreciation of the Ohio State Bar Association's Unauthorized Practice of Law Committee for your sharing with it the information concerning Every Man and ABC Company.

After investigating the matter, it appears that Mr. Man is currently being prosecuted in Indiana for similar conduct -- apparently such conduct in Indiana constitutes a crime. The sanctions available under Indiana criminal law exceed what are available in Ohio under Gov Bar R VII. Given the foregoing, it was the determination of the Committee that the filing of a formal complaint was not warranted and that our file on this matter should be closed.

Despite the determination not to pursue this matter, the Committee and I greatly appreciate your bringing the matter to our attention.

Sincerely,

Eugene P. Whetzel
General Counsel

EPW/th

cc: Chair, Committee for the Unauthorized Practice of Law

April 2, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Re: Allegation of Unauthorized Practice of Law

Dear Mr. Doe:

This office is counsel to the Unauthorized Practice of Law Committee of the Ohio State Bar Association. In such capacity, we recently received certain materials which potentially indicate that you may be engaged in the unauthorized practice of law. At this point, these are merely claims and, obviously, no determination has been made as to their factual accuracy. Nonetheless, we have determined that a file should be opened in this matter and an investigation initiated. As part of that investigation, we are enclosing for your review copies of the materials which were provided to us and we are requesting your response concerning them.

Please provide me with your written response. Your response should be postmarked no later than **April 15, 2013**.

Sincerely,

Eugene P. Whetzel
General Counsel

EPW/kk

Enclosures

cc: Chairman, Unauthorized Practice of Law Committee

July 9, 2014

Mr. John Doe
1234 Main Street
Columbus, OH 43123

To Whom It May Concern:

This office is counsel to the Unauthorized Practice of Law Committee of the Ohio State Bar Association. In such capacity, we recently received certain information which potentially indicates that you may be engaged in the unauthorized practice of law. At this point, these are merely claims and, obviously, no determination has been made as to their factual accuracy. Nonetheless, we have determined that a file should be opened in this matter and an investigation initiated.

We have appointed Patrick Skilliter, Esq., as the investigator for this matter. His address and telephone number are as follows:

Patrick Skilliter, Esq.
Staff Attorney to the Honorable Pat Sheeran
Franklin County Court of Common Pleas
345 South High Street
Courtroom 4A, Room 4808
Columbus, OH 43215-4577
Bus: (614) 525-4678

Please provide me with your written response. Your response should be postmarked no later than **July 24, 2014**. Thank you for your cooperation with this matter.

Sincerely,

Eugene P. Whetzel
General Counsel

EPW/kk

Enclosures

cc: Chair, Unauthorized Practice of Law Committee
Patrick Skilliter, Esq.

September 6, 2013

Mr. John Doe
1234 Main Street
Columbus, OH 43123

Dear Mr. Doe:

As you know, the Unauthorized Practice of Law Committee of the Ohio State Bar Association (“Committee”) has conducted an investigation regarding the allegation that you engaged in the unauthorized practice of law by providing legal advice and assistance to Urban Meyer. Based on a deposition taken by the Committee’s investigator, Eugene P. Whetzel, as well as other documentation received by the Committee, there is evidence suggesting that you assisted and advised Mr. Meyer in the preparation of a partnership agreement and an operating agreement. By law, such services can only be provided by a licensed attorney.

The Committee believes that the evidence supports a finding that you engaged in the unauthorized practice of law when you assisted Mr. Meyer in the preparation of legal documents. We understand that you contend you and your office staff acted merely as scribes, memorializing agreements and information provided to you by Mr. Meyer. However, we believe you now recognize that you would be improperly providing legal advice if you were to advise clients with respect to the selection or formation of a business entity, or to assist in the preparation of documents with respect thereto, and that you understand the serious consequences of engaging in such actions. Therefore, we feel that this matter can be resolved by this letter, which by your countersignature, you agree to the findings set forth below:

1. You agree that you will not provide legal advice, counsel, or assistance to any client; and
2. You will not directly or indirectly assist any individual or entity in the drafting of legal documents and agreements, or provide advice to them as to which legal documents or agreements may be most appropriate for their circumstances; and
3. You agree that if you fail to comply with this agreement by engaging in acts that constitute the unauthorized practice of law in the future, the Committee may proceed with prosecution of the incidents described in this letter along with any future violations.

Mr. John Doe – Page 2 of 2

Upon receipt of a countersigned copy of this letter indicating your agreement to the terms contained herein, we will close our file.

Very truly yours,

Aaron M. Shank, Esq.
Chair, Unauthorized Practice of Law Committee

Enclosure (self-addressed stamped envelope)

I agree to the terms contained in the above letter.

John Doe

Date



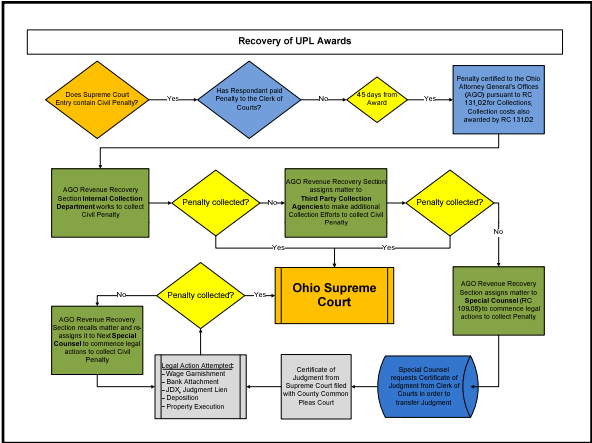
III. Civil Penalty Collections

III.

Civil Penalty
Collections

Board on the Unauthorized Practice of Law

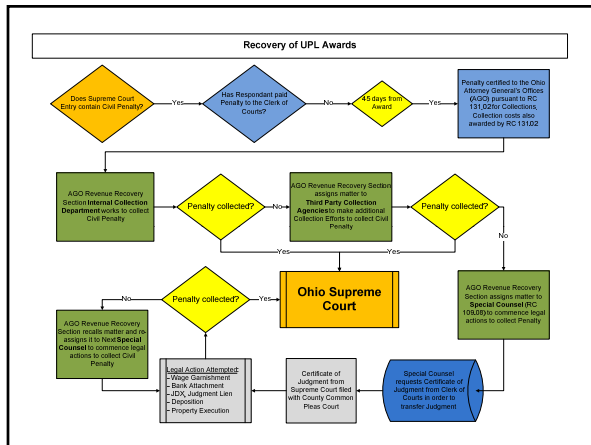
Recovery of UPL Civil Penalties Process





Civil Penalty Provision

It is further ordered that a civil penalty in the amount of \$10,000 is imposed upon respondent. The civil penalty shall be paid to this court by cashier's check or money order on or before 30 days from the date of this order. If respondent fails to pay said civil penalty on or before 30 days from the date of this order, the matter will be referred to the Attorney General for collection, and this court may find respondent in contempt. It is further ordered that respondent is liable for all collection costs pursuant to R.C. §131.02 if the debt is certified to the Attorney General for collection.



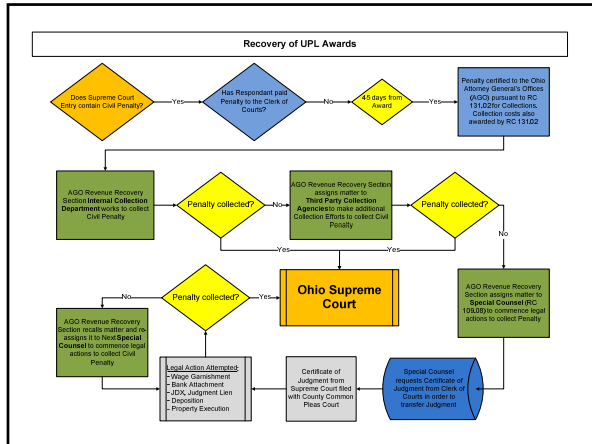
Statute

131.02 Collecting amounts due to state.

(A) * * * whenever any amount is payable to the state, the officer, employee, or agent responsible for administering the law under which the amount is payable shall immediately proceed to collect the amount or cause the amount to be collected and shall pay the amount into the state treasury * * * if the amount is not paid within forty-five days after payment is due, the officer, employee, or agent shall certify the amount due to the attorney general, in the form and manner prescribed by the attorney general, and notify the director of budget and management thereof. * * *

131.02 (cont)

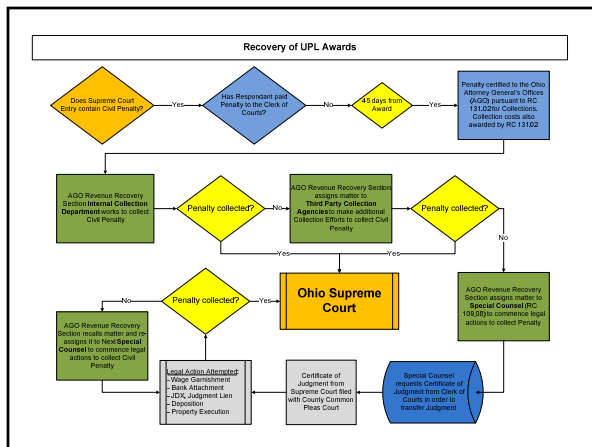
.... The attorney general may assess the **collection cost to the amount certified** in such manner and amount as prescribed by the attorney general.



Statute

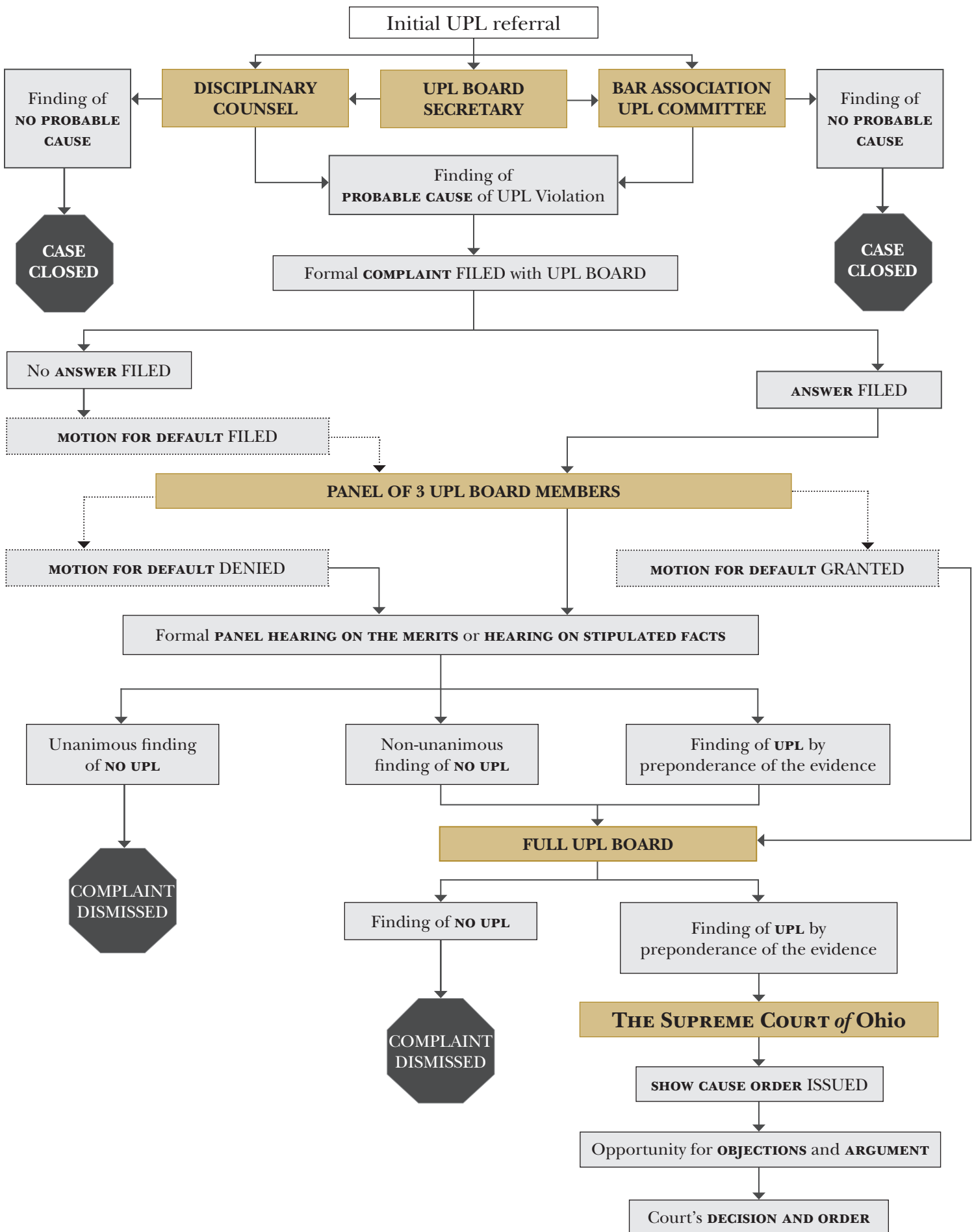
109.08 Special counsel to collect claims.

The **attorney general may appoint special counsel** to represent the state in connection **with all claims** of whatsoever nature **which are certified to the attorney general for collection** under any law or which the attorney general is authorized to collect. Such special counsel shall be paid for their services from funds collected by them in an amount approved by the attorney general.

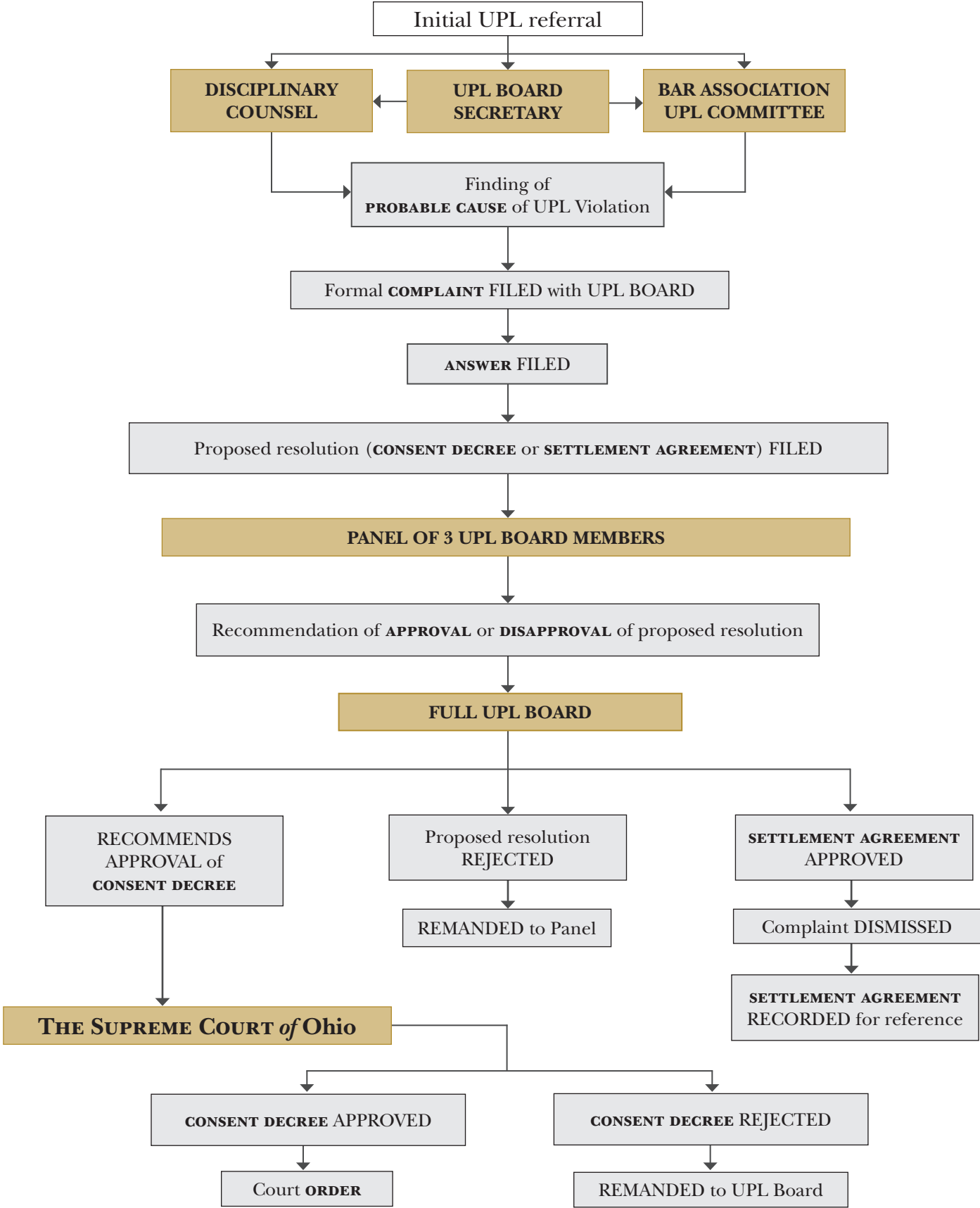




OHIO UPL CASE PROCESS — ADJUDICATED CASES



OHIO UPL CASE PROCESS — PROPOSED RESOLUTION CASES



IV. Sovereign Citizens

IV.

Sovereign
Citizens



SPECIAL
REPORT

2ND EDITION

THE LAWLESS ONES

THE RESURGENCE OF THE SOVEREIGN CITIZEN MOVEMENT



The Lawless Ones: The Resurgence of the Sovereign Citizen Movement

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Key Findings

- **Significant Growth.** The sovereign citizen movement is an extreme anti-government movement whose members believe the government has no authority over them. It began a resurgence of activity, including criminal activity, in 2009 that has shown no signs of stopping. In 2012, the sovereign citizen movement is currently one of the most problematic domestic extremist movements in the United States.
- **Potential for Violence.** Sovereign citizen criminal activity includes violent acts, exemplified recently by the brutal murder of two West Memphis police officers at the hands of a father and son pair of sovereign citizens in May 2010. More violent encounters have occurred between police and sovereign citizens since then. Spontaneous sovereign citizen violence, especially during traffic stops and visits to residences, poses a significant risk to law enforcement officers and public officials.
- **Harassing Liens a Major Problem.** More widespread than violence is a set of tactics known as “paper terrorism,” in which sovereign citizens use legal filings to harass, intimidate, and retaliate against public officials, law enforcement officers, and others. Most common is the filing of bogus liens on the property of perceived enemies. Though a number of laws were passed in the 1990s to deal with this problem, sovereign citizens remain undeterred and continue to file such harassing liens in large numbers.
- **Exploiting the Mortgage/Foreclosure Crisis.** Self-appointed “gurus” in the sovereign citizen movement have actively been exploiting the foreclosure crisis, crisscrossing the country promoting schemes and scams to desperate homeowners, while falsely claiming that such schemes can save people’s homes. Other sovereign citizens are even brazenly seizing homes left empty because of foreclosures and claiming the homes for their own.
- **Infecting Prisons.** As a result of imprisoned sovereign citizens continuing to recruit and teach their ideology while behind bars, a growing number of federal and state prisoners are becoming sovereign citizens or using the “paper terrorism” tactics of the movement to retaliate against judges, prosecutors and others involved in their case. Prison officials have so far had little luck in stemming the growth of this movement in prisons.
- **Growing “Moorish” Movement.** Though the sovereign citizen movement is still largely white (and contains some white supremacist members), in recent years a growing African- American offshoot of the sovereign citizen movement, often called the “Moorish” movement, has been gaining strength, teaching sovereign citizen ideas and tactics to a new pool of potential recruits.

I. Introduction to the 2012 Edition

In recent years, Americans have witnessed a wave of anti-government sentiment sweeping the country. In the mainstream, this manifested itself in anti-incumbent attitudes as well as the growth of movements like the Tea Party.

Out on the fringes of American society, the growth of anti-government sentiment spawned the proliferation of extreme anti-government conspiracy theories and the resurgence of anti-government extremist groups and movements. Of these, the movement that exhibited the most rapid growth of membership and activity—including violent and criminal activity—was the so-called “sovereign citizen” movement.

The sovereign citizen movement, though it has existed for decades, has traditionally garnered so little attention from the media that most Americans are not even aware that it exists, much less that it has a long track record of criminality and violence. Part of the reason for this lack of attention is that the ideology of the movement is complicated, its tactics and activities are unusual, and adherents of the movement typically do not form organized groups that can draw more attention. Usually, the movement operates “under the radar” of public attention; even when attention is drawn to the activities of adherents, the media often does not understand their connection to an organized movement.

Occasionally the sovereign citizen movement does come to public attention, usually through a shocking act such as standoff or shootout. In 2010, such an act occurred. On May 20, 2010, a 45-year-old sovereign citizen with Ohio and Florida connections, Jerry Kane, was driving along I-40 in eastern Arkansas when he was pulled over by West Memphis, Arkansas, police officers running a drug interdiction operation.

Kane, travelling with his 16-year-old son, Joseph, a dedicated disciple of his father’s extreme theories, exited the mini-van and began talking to, then arguing with, the officers. Joseph Kane then jumped out of the mini-van with an AK-47, opening fire on the unsuspecting officers almost immediately, hitting one officer 11 times and the other 14 times, killing them both. Ninety minutes later, after authorities located the Kane’s vehicle, a second shootout occurred, in which the Crittenden County sheriff and his chief deputy were both wounded, and the Kanes were killed.

Shortly after this tragic incident, the Anti-Defamation League released the first edition of this report, designed to draw attention to the growing tide of sovereign citizen activity and violence across the country and to explain the current trends and tactics within the movement.

Unfortunately, in the nearly two years since the West Memphis shootout and the report’s release, the sovereign citizen movement has shown no signs of slowing down. Instead, from every quarter, there have been more violent confrontations, more threats and acts of intimidation and harassment, and more scams and frauds.

Because of the continued threat that this extreme movement poses to the safety and well-being of law

enforcement officers, public officials, and the public at large, the Anti-Defamation League has issued a new and updated version of *The Lawless Ones*, showing many of the most recent criminal incidents that have come out of the sovereign citizen movement and highlighting the main trends of the movement.

The resurgence of the sovereign citizen movement has already caused problems across the country. If the movement's growth is allowed to continue unchecked, further acts of violence are inevitable, putting government officials, law enforcement officers, and private citizens all at risk. An even larger number of people will fall victim to sovereign citizen acts of harassment and intimidation, as well as to their frauds and scams. This report should serve as a warning call.

II. Sovereign Citizen Ideology

The sovereign citizen movement began in the early 1970s with a single group, the Posse Comitatus, but its ideology did not really mature until the 1980s, when a serious recession and simultaneous farm crisis created a ready pool of potential recruits. The Posse expanded and a number of other, similar groups formed around the country. By the end of the decade, the Posse had died away but the movement it helped create lived on. During the mid to late 1990s, the sovereign citizen movement received another burst of energy, forming scores of vigilante “common law courts.”

As it evolved, the sovereign citizen movement developed an ideology centered on a massive conspiracy theory. Though different sovereign theorists all have their own varying versions of this conspiracy, including exactly when it started and how it manifested itself, the theories all share the belief that many years ago an insidious conspiracy infiltrated the U.S. government and subverted it, slowly replacing parts of the original, legitimate government (often referred to by sovereigns as the “de jure” government) with an illegitimate, tyrannical government (the “de facto” government).

As a result, sovereign citizens believe that today there are really two governments: the “illegitimate” government that everyone else thinks is genuine and the original government that existed before the conspiracy allegedly infiltrated it. They claim allegiance to the original government and disdain the “illegitimate” one. To them the original government was a utopian minimalist government which never interfered with the citizenry; in their fantasy history of the United States, they believe that people followed “God’s laws” rather than “man’s laws.”

Sovereign citizens (adherents may also refer to themselves by such terms as “constitutionalists,” “freemen,” and “state citizens”) make many efforts to separate themselves from the “illegitimate” government. Some will even renounce their U.S. citizenship (by which they intend only to renounce any ties with the “illegitimate” government, not the country itself). Very common is for sovereign citizens to use punctuation in their name—such as commas, colons, and semi-colons—to separate their first and middle names (their “Christian appellation”) from their last name, which many think is their “government-given” name. Thus Michigan militia leader Mark Koernke, when he also became a sovereign citizen, began writing his name as “Mark Gregory,, Koernke.”

Sovereign citizens believe that the “illegitimate government,” largely through the 14th Amendment, enslaved all Americans by creating a special class of citizenship, “citizens of the United States,” members of which would have no rights—only whatever privileges the government deigned to grant them. The government tricked Americans into becoming “citizens of the United States” by offering them privileges, such as driver’s licenses and Social Security, which were actually hidden contracts with the government through which Americans unknowingly gave away their sovereignty.

Sovereign citizens believe that Americans can tear up these so-called contracts, regain their sovereignty and become immune to the “illegitimate” government, which they claim has no jurisdiction over them.

As a result, sovereign citizens eschew taxes, Social Security, and almost all licenses, registrations and permits. Many sovereign citizens even believe that using zip codes is a contract with the “illegitimate” government and thus will use special forms of address that they think allows them to avoid a contract while still getting their mail delivered. Representative examples taken from actual sovereign citizen documents include (names, street names and numbers have been changed):

John Doe
c/o 110 West 15th Street, #20-P Austin, Texas
Republic
Postal Zone 78705/tdc

John Doe
c/o 1379 S. Lipton Avenue #140
Tucson, Arizona state
Postal Zone 85719/tdc

John Doe
c/o 12000 N. Peachtree Road
Grants Pass, Oregon near Postal Zone 97527

Jane Doe
Postal Zone Exempt Non Domestic c/o:
2300 Everett Rd., T.D.C. Kapa’a, Kaula’I,
Hawaii, (u.S.A.)
near (96746) C. F.

John Doe
2nd Judicial District
4389 W. Ave. #123
Lancaster, California Republic

Jane Doe, Sui Juris
Non-Resident, Non-Domestic Delivery c/o
HC 24, Box 142
Witt Springs, Arkansas Republic
United States of America

The result of sovereign citizen ideology is that its adherents believe the government (including police and the judicial system) has no jurisdiction over them. To give a typical example, in April 2010 in Brush, Colorado, after several traffic and other violations, David Hemby told the Brush City Council that he wasn’t subject to city ordinances because he was a “sovereign citizen.” Sovereigns also are attracted to setting up their own parallel governmental institutions (such as their own courts or grand juries or even law enforcement agencies) in opposition to those of the “illegitimate” government.

Sovereign citizens can rationalize disobeying or ignoring virtually any law or regulation, major or minor. This, combined with their antagonistic attitude towards government, can put them on a collision course with virtually any form of authority. For example, in February 2012, a Chelan County, Washington, jury convicted sovereign citizen Robert Stewart of seven counts of animal cruelty and unsafe confinement of horses, as well as one count of second degree criminal trespass. In September 2011, the Humane Society had seized five horses from Stewart that were suffering from malnutrition and injury; one later had to be put down. A month later, Stewart walked onto the property of the director of the Humane Society to take photographs of her home. Stewart, who believes local authorities have no jurisdiction over him, had claimed that they could not prosecute him because he was a sovereign citizen.

Many sovereign citizens refuse to stop engaging in their clashes with government even after repeated run-ins with the law. For example, Tampa, Florida, sovereign citizen Emilio Ippolito was convicted in 1998 of obstruction of justice and sending threatening letters to federal officials and was sentenced to 11

years in federal prison. His daughter, also a sovereign citizen, was similarly convicted and actually died in prison. However, after his release, Ippolito, who is 85 years old, went right back to sovereign citizen activities and was arrested twice in 2011, once for impersonating a public officer and once for practicing law without a license.

III. Organization of the Sovereign Citizen Movement

The sovereign citizen movement is unusual in that, unlike many other extreme movements, it is not generally oriented around groups. Though sovereign citizen groups do form, and sometimes certain types of sovereign citizen groups even become popular for a time, the default structure of the sovereign citizen movement is that of a large mass of individuals or loosely aligned and informal/ad hoc groups, led by a number of sovereign citizen “gurus,” who provide leadership and inspiration as well as new sovereign citizen ideas and tactics.

The Sovereign Citizen Guru

Gurus may refer to themselves by a variety of terms (such as “constitutional scholar,” “private attorney general,” etc.; the list is endless), often claiming to be some sort of legal or constitutional expert (though there are few if any actual attorneys in the movement, as the movement believes they are illegitimate). Though some may have other jobs, many are full-time gurus, making a living by selling materials and holding seminars. Some will offer their services as “legal consultants,” while others will also engage in scams and frauds. Some do all of these things simultaneously. When sovereign citizen groups do form, they will sometimes be teams of sovereign citizen gurus working together, such as TeamLaw of Colorado, a collection of several sovereign citizen presenters.

The most common guru activity is the seminar, often held in hotel meeting rooms and sometimes attended by hundreds of people, from long-time sovereign citizens to potential recruits. For example, in 2010, sovereign citizen guru Tim Turner and some of his disciples organized “America Can Be Free” seminars, usually with the help of local sovereign citizens, ostensibly offering people the chance to “free yourself from the debt prison” for the admittance price of \$405 and one pre-1964 Silver Dollar (sovereign citizens believe that only gold and silver constitute “constitutional” money, so this is a symbolic gesture). They held a “4-Day Super Advanced Enforcement Seminar” in Seattle, Washington, from May 20-23, 2010, then followed it up with another seminar on May 29-30 near Boise, Idaho, which they advertised would actually be held in a conference room of the Meridian, Idaho, Police Department. Similar seminars are regularly held in most areas of the country by various sovereign citizen gurus.

Since the 1980s, some sovereign citizens have even started their own “law schools.” One of the first to emerge was the “Barrister’s Inn School of Common Law” out of Boise, Idaho. It no longer exists, but one of its leaders still runs the eponymous George Gordon School of Law out of Isabella, Missouri. Other sovereign citizen “law schools” operating today include the Texas-based “Freedom School” and the Minnesota-based “Erwin Rommel School of Common Law.”

There are scores of sovereign citizen gurus across the United States. Some, such as Richard James McDonald of California (or “Sir Richard James, McDonald,” as he often refers to himself) and

David Wynn Miller of Wisconsin (or “PLENIPOTENTIARY-JUDGE: David-Wynn: Miller”), have been prominent gurus for decades. Others, such as Jerry Kane, the man involved in the West Memphis shootings, are newer to the scene.

Among a few of the other more prominent gurus active today are Winston Shrou, Tim Turner, Sam Kennedy, Jean Keating, and Jack Smith; they may hold seminars around the country. New gurus constantly emerge. One individual, Robert Kelly of Oregon, has long occupied a special role in the movement, as the publisher of the *Americans Bulletin*, a bimonthly newspaper that acts as the “New York Times” of the sovereign citizen movement. Many new sovereign citizen theories first see print there.

The most influential sovereign citizen gurus are the ones who contribute new lore to the sovereign citizen canon, coming up with new pseudo-legal and pseudo-historical theories. Most sovereign gurus, though, repackage and repeat already existing sovereign citizen theories, or create variations of them. When Roger Elvick, an elder statesman in the sovereign citizen movement, came up with a package of new theories in 1999 that he called “redemption,” within only months a number of gurus were holding “redemption” seminars around the country, a practice that continues to this day. One such disciple, Winston Shrou of Oregon, has now become a “master” of his own, and a variety of lesser gurus now offer seminars based on his ideas (Kane was one such).

Some gurus, though, have theories so arcane that few others could ever easily repeat them. Perhaps the best example is David Wynn Miller, who has actually created (and uses) a completely alternative grammar for the English language, which he claims allows him to master the judicial system. Or, as Miller puts it on his Web site, “FOR THIS PLENIPOTENTIARY-JUDGE: David-Wynn: Miller's-KNOWLEDGE OF THESE CORRECT-SENTENCE-STRUCTURES-COMMUNICATION-SYNTAX-LANGUAGE=(C.-S.-S.-C.-S.-L.) IS WITH THE CLAIMS BY THE QUANTUM-LANGUAGE-SYNTAX-NOW-TIME-FACTS.”

Sovereign Citizen Groups

In addition to gurus and their followers, sovereign citizen groups do emerge from time to time. Often they are informal groups of sovereign citizens in a particular geographic area, who meet together to share ideas or sometimes host a travelling guru. Sometimes they may give themselves names, such as a “constitutional study group” (not to be confused with similarly named groups started by Tea Party-type activists).

Occasionally sovereigns may form other types of groups. One of the more common types is a group that duplicates, resembles, or emulates a governmental entity. In the 1980s, for example, a Utah sovereign citizen named Walt Mann started the “township” movement, urging people to form their own independent “townships.” In the 1990s, vigilante “common law courts” became extremely popular in the sovereign citizen movement, with over a hundred forming. A few common law courts still exist today, such as the “Sovereign People’s Court for the United States” in Nevada, which has had over 100 people attend some of its meetings in recent years. Various sovereign citizens may dub themselves “private postmasters” or “private attorneys general.”

In the 2000s, no one such type of group has predominated. Some sovereign citizens, most notably a

group called Guardians of a Free Republic, have tried to create their own “grand jury” system (a sovereign citizen tactic dating back to the 1980s), arguing that such entities can nullify any law or judicial ruling. The most popular sovereign citizen group in the U.S. today is a spin-off of the Guardians led by Alabama-based guru Tim Turner (aka James Timothy Turner). Calling itself the Republics for the united States of America (lower case “u” intentional on their part) or RuSA, the group is a loose collection of Turner followers and local sovereign citizen groups. Larger sovereign citizen groups tend to be unstable and fractious.

One recent innovation, which may or may not prove popular, has been promoted by a few gurus, notably James Thomas McBride of Ohio. This is the so-called “Three Notary Panel.” This is an expansion of an older sovereign notion that notary publics actually have extensive powers, of which most people are entirely unaware, using the “Notary Protest Process.” Three notaries can form a special panel, or a sovereign citizen may select three notaries to form such a panel to help him or her, and when the panel convenes, it may subpoena people, authorize bogus liens, rule laws unconstitutional, and more. As a result, in some places, sovereign citizens are attempting to become notaries, to avail themselves of this “power.” As with so many other recent sovereign citizen tactics, its advocates often suggest these notary panels can be used to fight mortgage foreclosure.

Sovereign Citizens on the Internet

As is true for most types of extremist movements, the sovereign citizen movement has come to rely heavily on the Internet for propaganda, recruitment, and funds. The Internet is particularly important to sovereign citizen gurus, as it gives them an inexpensive and reliable way to introduce people to their pseudo-legal theories and to promote their seminars and products (such as instructional manuals, form templates, and DVDs). It also is useful for sovereign citizen con artists to reach gullible victims. As a result, an increasing number of sovereign citizen gurus create their own Web sites.

From the perspective of rank-and-file or prospective sovereign citizens, the Internet is full of discussion forums and other venues where sovereign citizens can exchange information about strategies, their own experiences, their favorite mentors, and more. In the past few years, a number of sovereign citizens have aggressively exploited the new social media, utilizing social networking Web sites such as Facebook to connect and recruit, and video hosting services like YouTube to market various gurus and their theories. Sovereign citizen videos in particular are becoming increasingly common on-line; many gurus will even put up videos of a sample seminar, or portion of it, to market themselves and their theories. Sovereign citizens may also film traffic stops or other encounters with police, then upload the videos to the Internet.

In addition to these more or less standard ways for extremists to exploit the Internet, sovereign citizens have used the Internet in less common ways as well. For example, they have taken advantage of the recent emergence of document hosting sites (essentially like YouTube but for PDF files) to upload thousands of documents, especially templates and examples of various sovereign citizen paperwork. It is easy in 2012 to find downloadable templates that allow people to declare themselves sovereign citizens, file bogus liens on perceived enemies, or engage in other harassing or intimidating letters and filings.

They have also turned to the Internet to try to help solve a perennial problem that sovereign citizens

face: county and state officials refusing to accept and file their bogus documents. Although unfortunately some county recorder offices and secretary of state offices continue to accept all sovereign citizen filings, no matter what problems they may cause (sometimes out of ignorance, sometimes because of state law, but often out of a fear of being sued), a growing number of governmental recording/filing agencies now refuse to accept such pseudo-legal documents, thus stymieing the harassing or other intentions of the sovereign citizens trying to file them.

As a result, several on-line entities have emerged to accept sovereign citizen filings as “third party recording entities.” The National Republic Registry, for example, out of Mansfield, Texas, bills itself as “YOUR Solution to Hassle Free Public Recording.” GetNotice is a similar site operating from Fort Collins, Colorado; so too is America’s Public Record, based in Scottsdale, Arizona.

IV. Composition and Makeup of the Sovereign Citizen Movement

The loose and unorganized nature of the sovereign citizen movement makes its size difficult to gauge, but it is clear that its membership is well into the tens of thousands, at the very least. The composition of its membership is somewhat easier to determine.

Personality Types

Though an individual may get involved in the sovereign citizen movement for any number of reasons, three types of people turn up again and again when one examines its membership:

- People who are financially stressed. Whether the stress is due to unemployment, bankruptcy, creditors, spousal or child support, tax problems or something else, the desperation that comes with financial troubles can be a powerful motivator. Though many different extremist movements have tried to take advantage of economic troubles over the years to recruit new adherents, the sovereign citizen movement has an advantage in that it doesn't just offer people targets to blame for their woes (the banks, the illegitimate government, etc.), but it can also seem to offer relief in the form of a variety of pseudo-legal "solutions" that offer almost magical ways to get out of foreclosure, debt, or other financial troubles.
- People who are angry at government, especially government regulation. Some people develop intense antipathy toward government rules and regulations, from property codes to tax laws. Every unsuccessful encounter with the government simply makes them angrier. Consequently, when they encounter the sovereign citizen movement, with its alleged ways to get around laws and regulations, as well as tools of retaliation against government officials, they find the movement very attractive.
- Con artists and people who want "something for nothing." The sovereign citizen movement is full of theories that promise people quick riches or other seemingly magical benefits, from being able to eliminate a mortgage to be able to hide one's income in a series of trusts and make it immune to government scrutiny. As a result, the movement appeals powerfully to people who are always seeking a quick buck or something for nothing. It also appeals to con artists and confidence men and women who can use the movement's theories to create schemes to attract money from the greedy or the innocent alike.

Demographics

Demographically, most sovereign citizens tend to be middle-aged or older. Many of the leaders of the movement are in their 60s and 70s. This has sometimes caused law enforcement officers to underestimate a sovereign's potential for violence, as there are fewer elderly violent offenders in general, but unfortunately there have been many armed confrontations between police and older sovereign citizens. However, the resurgence of the movement in the past several years have brought in a lot of new adherents, including young ones. The majority of sovereign citizens are male, but there is a sizable female minority and even a few female sovereign citizen gurus.

In its early decades, the sovereign citizen movement was overwhelmingly white. Indeed, a number of its founders and pioneers were explicit white supremacists. Today, there are still some white supremacists in the movement, typically followers of Christian Identity, a racist and anti-Semitic religious sect whose anti-government beliefs are often compatible with movements such as the militia, tax protest and sovereign citizen movements.

However, since the 1990s, the percentage of non-white sovereign citizens has increased substantially. The basic ideology of the movement is inherently anti-government, rather than white supremacist; moreover, it is infinitely adaptable to different circumstances. As a result, there are Asian sovereign citizens, Hispanic sovereign citizens, and so forth. Many members of the native Hawaiian secessionist movement are sovereign citizens.

It is among African-Americans, though, that the sovereign citizen movement has really seen growth over the past 15 years or so, so much so that an entire sub-movement of African-American sovereign citizens, who often describe themselves as "Moors," "Moorish," or "Mu'urish," has developed. The Moorish movement started as a mixture of ideas from the sovereign citizen movement and a religious sect called the Moorish Science Temple (MST). The movement has expanded beyond MST members to include other African-Americans (and, oddly, a few whites), while there are many MST members who do not adhere to sovereign citizen ideology at all, but there remain many connections between the Moorish movement and the MST.

The Moorish movement arose in the 1990s in northeastern cities and southeastern rural areas, which still tend to be its areas of strength. Adherents subscribe to all of the popular traditional sovereign citizen theories, but have added additional, Afro-centric pseudo-legal theories, such as the notion that a 1787 treaty between the United States and Morocco somehow gives "Moors" in the United States a set of special privileges and immunities. Ironically, most Moorish movement members have no idea that their ideology is descended from an extreme right-wing belief system created in part by white supremacists (though Moors frequently will cooperate with white sovereign citizens).

The tactics that Moorish movement adherents engage in are essentially identical to those practiced by other sovereign citizens. A few recent examples illustrate this:

- Elyria, Ohio, March 2012: Moorish sovereign citizen Kareen Tucker received a sentence of 25 years in prison on robbery, drug and kidnapping charges for a 2010 incident in which he and two other men kidnapped a man, then held his girlfriend and her three children at gunpoint

while demanding money. During his trial, Tucker, who defended himself, claimed that he had “diplomatic immunity” and that, because the Uniform Commercial Code allegedly governed law in the United States, he couldn’t face criminal charges because he did not have a “contract” with the state of Ohio.

- Akron, Ohio, May 2011: Moorish sovereign citizen Chico Rhasiatry of Akron, Ohio, was convicted for unauthorized practice of law, criminal trespassing and obstructing official business. Rhasiatry had introduced himself as “counsel” during the trial of another Moorish adherent, Demond El-Muur, and told the judge that El-Muur was an “Aboriginal” whose case had to be heard in a Moorish jurisdiction. Prior to his sentencing, he was found in contempt for again trying to represent someone and sentenced to a month in jail for this new offense.
- Detroit, Michigan, March 2010: A Detroit resident, Andre Frank Hardy, led police on an extensive chase rather than pull over for a traffic stop for expired plates (Hardy also allegedly had six outstanding warrants and a suspended license). Taken into custody, Hardy told police that, as a member of the Moorish Nation, the U.S. government had no authority over him.
- Newport News, Virginia, March 2010: A Newport News, Virginia, sovereign, Amun Asaru Heh-El, was brought to court to face four counts of driving without a license. Heh-El allegedly told the judge that he was not under the authority of the United States, and subsequently left the courtroom during a recess before the trial began (coincidentally, that afternoon the judge had to deal with a white sovereign citizen couple over a different issue).

A number of African-American sovereign citizens are also involved with fringe religious groups of different types. The most common such group, of course, is the MST. The Georgia-based “Nuwaubian Nation” is another fringe religion with a number of sovereign citizen members. From time to time, adherents of the Nation of Islam may also become sovereign citizens. One African American sovereign citizen in Tennessee claimed in March 2010 that he was a follower of Yahweh ben Yahweh, leader of the Nation of Yahweh, a black separatist religious sect.

This trend is not, however, limited to African-American sovereign citizens. Some white sovereign citizens also belong to fringe religious groups. In recent years, for example, some members of the polygamist Fundamentalist Church of Latter Day Saints, a controversial and radical offshoot of the Mormon church, have sported sovereign citizen license plates.

Prisoners as Sovereign Citizens

Since the 1990s, hundreds, possibly thousands, of sovereign citizens have been sent to county jails or state or federal prisons. Though imprisoned, many of them have seen no need to curtail their sovereign citizen activities. Some sovereign citizens have continued their paper terrorism tactics

from behind bars, while a number of them have also been teaching the ideology of the sovereign citizen movement to other prisoners.

As a result, over the last ten years, a wave of prison-based sovereign citizen activity has swept the country, much of it generated by “traditional” criminals such as drug dealers or thieves, some of whom have actually become sovereign citizens themselves, with others simply trying some sovereign citizen tactics because they have been told they would work. In the mid to late 2000s, for example, as uncovered by an in-depth investigation by the Washington Monthly, a number of inner city Baltimore drug dealers have used sovereign citizen arguments during their trials. One public defender described it as “an infection that was invading our client population of pre-trial detainees.”

Some recent examples include:

- Southport Correctional Facility, Chemung County, New York, 2010: Prison officials charged sovereign citizen inmate Jose A. Fuentes with impermissible filing of documents, copyrighting his name and disobeying a direct order following their discovery that Fuentes, in a letter to his wife, directed his spouse to file harassing Uniform Commercial Code documents against corrections employees. He was found guilty of the charges; in 2011, a New York appeals court confirmed the conviction.
- Marion, Illinois, April 2010: Daniel Petersen, one of the leaders of the Montana Freeman, who engaged in an 81-day standoff with the federal government in 1996, was sentenced to 7½ years in prison for filing bogus liens against three federal judges. Petersen was still in federal prison at the time he filed the liens, serving out the 15-year prison sentence handed to him by U.S. District Judge John Coughenour, one of the victims of Petersen’s liens. Petersen’s full scheme reveals the ingenuity and energy of sovereign citizens. He not only filed liens against the federal judges, but also issued bounties for their arrests. Then he created a phony company and recruited other inmates to invest in it, promising them large sums of money after he collected the money (\$100 trillion, plus interest, he told them) that the government allegedly owed him.
- Queens, New York, March 2009: A Queens County court declared “null and void” a series of bogus liens placed on Queens prosecutors who had been involved in the case of Ronald Thompson, a convicted murderer serving a 20 years to life sentence at Sing Sing. Declaring that the prosecutors had violated his “copyright” by using his name without his permission, he claimed they owed him more than \$1 million.
- Miami, Florida, May 2009: Miami resident Marlon T. Moore was arrested for filing tax forms that claimed a total return of \$14 trillion. Moore had recently been released from federal prison after serving a six-year sentence on money laundering charges. According to a former fellow prisoner, Moore and another inmate, Willie Cameron, had become sovereign citizens while in a federal prison near Orlando. Cameron also allegedly filed a fraudulent return, but only for \$53,000 or so; he was also arrested.
- Terre Haute, Indiana, April 2008: Russell Dean Landers, another imprisoned member of the Montana Freeman, was sentenced to an additional 15 years in prison; Landers was one of

three federal inmates who had demanded millions of dollars from prison officials for using their “copyrighted” names without their permission. They were convicted of conspiracy and mailing threatening communications with the intent to extort.

Law Enforcement

Amazing as it may seem, especially given that police are among the most common targets of sovereign citizens, sometimes even current or former law enforcement officers can get lured into the sovereign citizen movement. Though this is rare, in the past few years there have unfortunately been several such incidents, including:

- Sarasota, Florida, May 2011: The Sarasota Police Department fired officer Tom Laughlin because of his alleged involvement in the sovereign citizen movement. In the spring of 2010, reportedly at the urging of his older brother, Jimmy, a sovereign citizen adherent, Laughlin had filed documents claiming that he was an “American National Sovereign” and no longer a citizen of the United States. A few months later, the two brothers were involved in a traffic stop in St. Augustine, following which Jimmy sent demands to the state trooper who had pulled him over for over \$8 million in “penalties.” Jimmy Laughlin was charged with extortion, though those charges were later dropped. However, he was arrested on fraud charges for attempting to pay off a significant credit card debt using a bogus sovereign citizen “straw man” account. The two brothers also filed other sovereign citizen filings. Following these incidents, the Sarasota police opened an internal investigation on Tom Laughlin that resulted eventually in his firing. Laughlin appealed his firing to the Civil Service Board, but abandoned the attempt during his May 2011 hearing.
- Minneapolis, Minnesota, May 2010: Former Minneapolis police officer Douglas Earl Leiter received a 10 year sentence for his role as the leader of a sovereign citizen/tax protest group called Common Law Venue, which taught people how to use bogus trusts to evade taxes.
- Las Vegas, Nevada, March 2010: Jan Lindsey, a retired FBI agent from Henderson, Nevada, pleaded guilty to a felony count of tax evasion for evading \$109,000 in personal income taxes. Lindsey was one of four sovereign citizens and tax protesters arrested by the FBI in May 2009 following a three-year investigation into money laundering, tax evasion, and illegal weapons.

Exporting Sovereign Citizenship

The sovereign citizen movement originated in the United States and for many years was present nowhere else. In the mid to late 1990s, however, the sovereign citizen movement and its cousin tax protest movement began to appear in Canada, primarily the western provinces of British Columbia, Alberta, and Saskatchewan. It was both imported into Canada by Canadians who had become exposed to sovereign citizen theories and exported to Canada by American sovereign citizen gurus who saw Canada as an easy way to expand their seminar audiences. David Wynn Miller was one such American guru who held seminars in Canada, at least until Canadian authorities banned him from the country. As a result, the movement now has a fairly strong presence in Canada—a presence that has experienced a resurgence in recent years just as the American sovereign citizen movement has.

More recently, sovereign citizen activists have been trying the same thing with regard to Australia and New Zealand. Despite the great distances, sovereign citizen guru Winston ShROUT has held seminars in Perth, Brisbane, and Adelaide in the past couple of years. David Wynn Miller has also held seminars in Australia—and has been banned from the country in the past, though despite this he apparently scheduled a major multi-city tour of Australia for the summer of 2010. Sovereigns now have at least a foothold in Australia and New Zealand.

The newest target for the sovereign citizen movement has been Great Britain. In early 2010, sovereign citizen guru Winston ShROUT visited London, while would-be British sovereign citizens have been imbibing the ideology from the Internet. Since then, some British sovereign citizens have already uploaded YouTube videos portraying or describing traffic stop encounters with British police.

One sovereign citizen-related incident has even become “international.” In January 2011, a federal grand jury in Nashville, Tennessee, issued a 21-count indictment against a British gun company owner, Guy Savage, and four Americans for allegedly engaging in illegal overseas arms sales. The American defendants subsequently reached plea deals with the government, but Savage decided instead to represent himself and use sovereign citizen arguments and tactics in his defense, including sending the federal court a demand for nearly \$250 million, claiming that the court—and indeed, the U.S. government—was a “legal fiction.” The U.S. government is attempting to extradite Savage from Great Britain to stand trial in the United States.

V. Sovereign Citizen Tactics: Paper Terrorism

The array of tactics that sovereign citizens utilize is diverse and ever-changing. Some sovereign citizen tactics date all the way back to the 1970s, while others are brand-new. Sovereign citizen gurus probably read more statutes and codes than most attorneys or legal scholars, but they do so for entirely different reasons and in very different ways. They look for passages they can misuse, recast, take out of context, or exploit. Any phrase or definition can become fodder for a new pseudo-legal argument.

The most common sovereign citizen tactics fall into the realm of what has come to be termed “paper terrorism.” Paper terrorism involves the use of bogus legal documents and filings, or the misuse of legitimate ones, to intimidate, harass, threaten, or retaliate against public officials, law enforcement officers, or private citizens. Acts of paper terrorism can range from simple and straightforward acts, such as frivolous lawsuits, to more complex strategies, such as filing fraudulent IRS forms alleging that the victim has been paid large sums of money, in order to “sic” the IRS on him or her.

Bogus Liens

Among the oldest paper terrorism tactics is the use of bogus or nuisance liens filed on the property of victims (often law enforcement officers or public officials). This has the effect of clouding the title of homes or other property belonging to the victim, who must hire an attorney to clear the title, at considerable expense in time and money. Despite dozens of laws passed in different states in the 1990s and 2000s to deal with the problem, it still is a very effective tactic, and commonly used by sovereign citizens.

Some of the many recent incidents include:

- Spokane, Washington, March 2012: A federal judge sentenced federal jury sovereign citizen Ronald James Davenport of Chewelah, Washington, to 41 months in prison after his conviction in November 2011 on four counts of filing more than \$20 billion in bogus liens against government officials. The victims had all been involved in a civil case against Davenport for unpaid taxes.
- Devine, Texas, February 2012: Podiatrist and sovereign citizen Donald Robinson of Devine, Texas, pleaded guilty in state district court to fraudulent filing of a financial statement for filing a lien on the home of a local police officer following a traffic stop. He was sentenced to two years of probation and 100 hours of community service. He had previously spent time in federal prison for filing false income tax returns.
- Baltimore, Maryland, February 2012: A federal judge sentenced Maryland sovereign citizen and tax protester Andrew Isaac Chance to 65 months in prison for filing a \$1.3 billion lien against a federal prosecutor (as well as a similar lien against a state prosecutor) involved in tax-related cases against him.

- Skagit County, Washington, January 2012: Sovereign citizen and tax protester Timothy Garrison received a 42-month federal prison sentence for his involvement in a tax fraud scheme. He had also filed more than \$500 million in bogus liens against a variety of public officials following a traffic stop.
- Minneapolis/St. Paul, Minnesota, January 2012: Thomas Wayne Eilertson and Lisa Joan Connery Eilertson were charged with filing more than \$100 billion in bogus liens against a variety of local public officials. Thomas faces 30 criminal counts, while Lis faces 47. The couple allegedly filed the liens while being foreclosed upon and evicted from their home in 2009-2010.
- Albany, New York, December 2011: Former IBM engineer and sovereign citizen activist Richard Ulloa was sentenced in December 2011 to five years in federal prison for filing \$4 trillion of bogus liens and other retaliatory and harassing filings against a variety of police, judges, government employees and private citizens. He and his followers even created their own “court” and issued bogus indictments against people and threatened to arrest them. Ulloa was also ordered to pay \$63,401 in restitution to Ulster County and a local credit union.
- Boerne, Texas, December 2011: Podiatrist and sovereign citizen Donald E. Robinson was indicted for allegedly filing a bogus lien on property owned by a Boerne police officer who had issued Robinson a citation during a 2009 traffic stop. The trial was scheduled for February 2012, but Robinson did not wait for the trial in order to become active. When he received a copy of the indictment, he wrote “accept for value—return for fraud” on the document (a standard sovereign citizen pseudo-legal notion) and sent it back, which resulted in his arrest in June 2011 for tampering with a government record. In a two-hour-long trial held in December 2011, in which Robinson represented himself, the jury deliberated for a mere six minutes before convicting him. He was sentenced to 14 days in prison. Robinson had previously served four months in federal prison for filing false income tax returns. In February 2012, he pleaded guilty to fraudulent filing of a financial statement (the lien charge) and was sentenced to two years deferred adjudication probation and 100 hours of community service.
- Mineral Bluff, Georgia, October 2011: Georgia Bureau of Investigation agents arrested sovereign citizen Robert Eugene Stephens of Mineral Bluff, Georgia, on 12 criminal counts related to a series of bogus liens Stephens allegedly filed against a variety of state and local officials, including a county clerk, a local judge and her secretary, the county tax commissioner, the Speaker of the Georgia House of Representatives, and others. Stephens allegedly called his liens “maritime liens.”
- Pensacola, Florida, September 2011: Sovereign citizen Mark D. Leitner received a 30-month federal prison sentence in Pensacola, Florida, in September 2011 for filing bogus liens against a variety of federal prosecutors, agents, and other officials who were involved in a 2010 criminal case against Leitner for tax fraud. Leitner had filed bogus maritime liens against the property of the victims and claimed that each victim owed him almost \$48.5 billion. Leitner was already serving a five-year sentence after being convicted in the 2010 case.

- Highland, New York, August 2011: Sovereign citizen Jeffrey Burfeindt received a six-month prison sentence after pleading guilty to mail fraud for filing \$736 billion in bogus liens against local police and government officials. The liens followed an incident in which he and another sovereign citizen, Ed Parenteau, were arrested for trespassing at a foreclosed-upon home. Parenteau was previously convicted in May 2011 and sentenced to 21 months in prison.
- Daytona Beach, Florida, June 2011: Sovereign citizen Patricio E. Sanchez filed a harassing lien for \$350,000 against a local judge and two attorneys who had been involved in a foreclosure case against Sanchez. As a result, Sanchez was jailed for almost half a year for contempt of court.
- Ogden, Utah, May 2011: Sovereign citizen Harvey Douglas Goff was indicted in federal court on 14 counts related to 77 bogus liens he allegedly filed against government entities and employees. He also allegedly mailed documents to state and local officials demanding payment of more than \$53 trillion in “damages.” These incidents followed a March 2010 traffic stop in which he allegedly claimed “diplomatic immunity.” Goff was charged with obstruction of justice, impeding internal revenue laws, fictitious obligations, attempt to commit mail fraud, mailings in furtherance of a scheme and artifice to defraud.
- Birmingham, Alabama, October 2010: Jefferson County sheriff’s deputies arrested father and son sovereign citizens Donald Joe Barber and Donald Jason Barber on charges of intimidating a witness (Donald Joe) and possession of a forged instrument (Donald Jason, who also faced other apparently unrelated charges). The charges allegedly stemmed of “actions” taken by the Barbers against various police and government officials, including alleged threats as well as filing bogus liens, such as a \$15 million lien against a local judge.
- Colorado Springs, Colorado, September 2010: A federal judge sentenced Ronald Roy Hoodenpyle to a year in prison and two years of supervised release following a conviction for filing a bogus lien against an IRS employee for \$1,160,000.

Other Harassing Attempts

In addition to bogus liens, sovereign citizens have developed a large repertoire of tactics to intimidate, threaten, and retaliate against people, ranging from involuntary bankruptcy filings to a wide variety of threats and extortions to bogus criminal complaints. Some recent examples of these tactics include:

- Polk County, Florida, October 2011: Polk County, Florida, authorities charged members of a local sovereign citizen group with simulating legal process. The most prominent member, Jacob Franz Dyck, 72, had achieved notoriety for filing sovereign deeds on houses he did not own and for allegedly setting up trusts that would ostensibly protect other people’s property from foreclosure or seizure. The charges stemmed from an incident involving Gary Chenot of Lakeland, one of Dyck’s followers, who had outstanding vehicle loans and a mortgage on his home. Chenot allegedly placed the vehicles and home into trusts that Dyck created. Chenot, Dyck, and another person, Kim Clayton Perry, allegedly began sending various pseudo-legal

documents, including some from a common law court (a common sovereign tactic in the 1990s), apparently in order to get a bank to cease trying to reclaim one of the vehicles. In connection with this case, Chenot has been charged with grand theft, resisting an officer, and attempting to influence, intimidate or hinder law enforcement duties. Dyck has been charged with simulating the legal process. Perry and another person, Khamma Inthavong, have also been charged with simulated legal process.

- Talladega County, Alabama, January 2011: Two Alabama sovereign citizens were indicted on felony warrants from South Carolina for conspiracy and using sham legal process to intimidate or hinder a state or local official. The defendants, Gary Wayne Presley and Michael Donald Wilsey, were part of a sovereign citizen group called the Central Assemblies Union of the Several States of the Union of the States of the United States of America. Wilsey was also part of the Little Shell Pembina Band sovereign citizen group, a fictitious Native American tribe.
- Casper, Wyoming, October 2010: After sovereign citizen Ed Corrigan was found guilty of contempt in October 2010 for refusing to fix a variety of health and safety code violations on his property outside Casper, a sovereign citizen group calling itself a “Wyoming Grand Jury” allegedly met to re-hear the case, with sovereign citizen John Lee Cotton serving as the vigilante jury’s foreman. These “jurors” subsequently tried to file a presentment criminally charging four local government officials and judges for violating their oaths of office. “At this point,” Cotton told one reporter, “we have no strong arm of the law to back us up; but that day will come.”

VI. Sovereign Citizen Tactics: Counterfeit Documents and Entities

Sovereign citizens are some of the most brazen counterfeiters around. They create fake license plates, drivers' licenses, vehicle registrations, insurance cards, identification cards, and passports. Even more ambitiously, sovereign citizens have created fictitious financial instruments, such as "sight drafts" and "bills of exchange;" fictitious countries, colonies, and even Native American tribes; fictitious law enforcement agencies and more. They are constantly engaged in ways to create spurious forms of documentation and authority to help them avoid the reach of the actual government.

Fictitious Documents and Identification

One sovereign citizen fad that has been sweeping the country in recent years is the notion of "diplomatic immunity," in which sovereigns declare themselves "diplomats" and their homes as "embassies." Once they have done so, they will create or procure their own "Diplomatic Agent" identity cards and attempt to use them in various circumstances, such as traffic stops.

Some recent examples include:

- Indianapolis, Indiana, November 2011: Indianapolis police pulled over a sovereign citizen, Mark Osborn, who allegedly claimed that he did not have to have a driver's license or register his motorcycle. Instead, Osborn showed officers an identification card that proclaimed Osborn a "diplomat." Local reporters discovered that vehicles on his property had license plates that read "Free State Republic." Following the traffic stop, Osborn demanded that Indiana pay him \$1.6 million in gold or silver coins. In April 2012, Osborn was arrested again by Indianapolis police on a number of charges for allegedly still driving his SUV with his "Free State Republic" plates.
- Austin, Texas, October 2011: Sovereign citizen Randall Kelton of Austin, Texas, received a one-year prison sentence and a \$4,000 fine for impersonating a licensed investigations company officer in order to give evidence to a grand jury on behalf of Robert Fox, a sovereign citizen guru and leader of the so-called "House of Israel." Kelton represented himself in the trial, which is common for sovereign citizens.
- Norfolk, Virginia, September 2011: Roland Lee Morrison, aka Rashid Muhammad, a "Moorish" sovereign citizen, was convicted of two counts of fraudulent assertion of diplomatic immunity following a 2010 open container incident in which Morrison proclaimed to police that he had "sovereign immunity" and presented a Moorish diplomatic identification card as his ID. In December 2011, he was sentenced to time served (more than a year in jail).
- Arab, Alabama, September 2011: Officers from the Arab, Alabama, Police Department arrested a sovereign citizen, Soni Dale Jackson, following a traffic stop. Jackson had

allegedly been using a bogus identification card that claimed he was actually Soni Dale Carlee. Jackson also pulled out a common sovereign citizen document called a Public Servant's Questionnaire and demanded the officer fill it out. According to a statement that Jackson made in an on-line forum in November 2011, Jackson told the officer he had no driver's license but had a "Common Law Identification Card." Jackson also claimed that he had made a "common law name change" to "Soni-Dale: Carlee."

- Bartlett, Tennessee, July 2011: Sovereign citizen Joseph Augustine Dattilo, Jr., of Indiana was arrested on several traffic charges related to driving with a home-made "United States" tag on his vehicle. In court, Dattilo contended that the court had no jurisdiction over him, that he was not required to have a car registration or driver's license, and that he did not need car insurance because he had a "\$10 million bond." The judge fined him.
- Front Royal, Virginia, July 2011: Front Royal police officers arrested Randy Linamen of Manassas following a traffic stop in which Linamen reportedly tried to give police a "Kingdom of Heaven" driver's license instead of a legitimate one. Linamen also allegedly attempted to drive away during the traffic stop, but was prevented from doing so by police. He was charged with driving after revocation as a habitual offender. After police found a gun and ammo in the vehicle, he was also charged with being a felon in possession of a firearm.
- Hollidaysburg, Pennsylvania, July 2011: The state police arrested Don Ralph Ickes, Jr., of Osterburg, Pennsylvania, on charges of resisting arrest, disorderly conduct, and various motor vehicle violations following a traffic stop because Ickes' vehicle was allegedly displaying a bogus license plate issued by the Embassy of Heaven, an Oregon-based sovereign citizen group that has marketed bogus plates, drivers licenses and vehicle registrations to the sovereign citizen movement since the 1990s. Ickes allegedly refused to cooperate during the traffic stop and ended up being dragged from the vehicle by the state trooper.
- Vay, Idaho, June 2011: After police stopped a vehicle on I-90 for allegedly carrying a homemade license plate, they discovered that the driver, sovereign citizen Alexander Duncan Campbell, had a loaded 9mm pistol inside. Campbell was arrested and charged with carrying a weapon without a license and failure to purchase a driver's license. He was also subsequently arrested for a failure to appear in court charge on another driver's license incident in 2008 in another county.
- Staunton, Virginia, May 2011: Sovereign citizen Michael Creath Jones of Hanover, Virginia, was charged with five misdemeanors following a traffic stop in Staunton, Virginia. Jones had been pulled over by a Virginia state trooper for allegedly having a license plate that had been modified with phrases such as "private use." During the stop, Jones allegedly refused to cooperate with the trooper. He was charged with resisting arrest, obstructing justice, driving without a license, operating an uninsured vehicle and driving with defective equipment.

Fictitious Financial Instruments

Because most sovereign citizens claim that paper money is unconstitutional, with gold and silver the only lawful forms of currency, they find it easy to rationalize creating their own forms of paper money, claiming they are at least as legitimate as Federal Reserve Notes. Sovereign citizens have engaged in this tactic since the early 1980s and it is still common today. Over the years, sovereign citizens have called such fictitious financial instruments by a variety of names, including certified money orders, comptroller's warrants, bills of exchange, and sight drafts, among others. Currently popular are "bond promissory notes" or "bonded promissory notes." Some recent incidents include:

- Kansas City, Missouri, February 2012: Sovereign citizen Danny Ray Hardin received a 10-year federal prison sentence after being convicted of 21 counts of mail fraud and creating fictitious financial instruments for selling \$100 million in bogus "promissory notes" as part of the "Private Bank of Danny Ray Hardin." The notes were used by purchasers largely to pay off mortgages. At the time of his 2010 indictment, Harbin was already in prison. His probation for an earlier conviction had been revoked after he tried to arrest the lieutenant governor of Kansas for "violating the Constitution."
- Hammond, Indiana, December 2011: Christopher Cannon, a sovereign citizen from Gary, Indiana, was convicted in federal court for using 181 counterfeit bills to buy large-screen televisions in Hobart in 2010. During his trial, Cannon claimed the government had no jurisdiction over him. The counterfeit currency was made from \$5 bills that had been made to look like \$50 bills. "Traditional" counterfeiting is rather rare in the sovereign citizen movement, which usually prefers to create entirely fictitious financial instruments with titles such as "bills of exchange" or "promissory notes."
- Bakersfield, California, October 2011: A federal jury convicted Michael Ioane of Atwater, California, of conspiracy to defraud the U.S. and of four counts of presenting fictitious documents to the U.S. Ioane was involved with Acacia Corporate Management and First Amendment Publishers, which marketed bogus trusts to people as ways to avoid paying taxes. Ioane also created fictitious financial instruments called "Bills of Exchange" to send to the IRS to eliminate tax debt. A codefendant, Vincent Steven Booth, previously pleaded guilty in 2010.
- Kansas City, Missouri, June 2011: Husband and wife defendants Roderick Moore and Amber Catrece Moore of Kansas City were sentenced in federal court to, respectively, 13 months in prison and three years of probation. Earlier in the year, Roderick Moore had pleaded guilty to one count of mail fraud and his wife to conspiracy to commit wire fraud. Roderick Moore had created a popular sovereign citizen fictitious financial instrument, a "Registered Bonded Promissory Note," to pay off over \$200,000 in debts. Amber Moore had filed bogus liens against several government officials or entities.

Fictitious Law Enforcement Entities

Some of the most troubling counterfeit entities that sovereign citizens establish are fictitious law enforcement agencies. Sovereign citizens have declared themselves members of the Constitution Rangers, Republic of Texas Rangers, u. S. [sic] marshals, Civil Rights Task Force, and more. Sovereigns who purport to represent such agencies often have identification cards, badges, and sometimes even accoutrements such as police raid jackets. Using these props, sovereign citizens have attempted to get past courtroom security, to extricate themselves from encounters with police, and even to intimidate or “interrogate” others. The most popular current fictitious law enforcement agency is probably the “County Rangers,” which has appeared in a number of states (along with a variant, the so-called “American Rangers”).

Among recent examples of such items are the following:

- Spanaway, Washington, November 2011: Kenneth Leaming, a sovereign citizen from Spanaway, Washington, was charged with three charges related to filing a series of bogus liens in 2010 and 2011 against federal judges, prosecutors and law enforcement officers that totaled around \$225 billion. Leaming, formerly a Thurston County deputy sheriff, is one of the leaders of the so-called “County Rangers,” a fictitious law enforcement agency created by the sovereign citizen movement that has been growing in popularity. In the past, Leaming has been involved with other sovereign citizen groups, including the Civil Rights Task Force (another fictitious law enforcement agency) and the Little Shell Pembina Band of North America, a fictitious Native American tribe. He had allegedly filed the liens in response to conflicts with authorities over a previous criminal case in which he was convicted.
- San Antonio, Texas, October 2011: Police arrested sovereign citizen Gregory Brent Davis in October 2011 in San Antonio on charges of impersonating a peace officer and unlawfully carrying a weapon for allegedly pretending to be a Texas Ranger. He had previously been arrested on the same charges in August 2011. In the earlier instance, he had allegedly been allowed into a rodeo without paying admission by claiming to be a “colonel of Rangers;” in the later instance, he allegedly entered a bank while wearing a badge and carrying a gun. Davis is part of the Republic of Texas, a large and long-running Texas-based sovereign citizen group, which has had a history of adherents posing as fictitious Texas Rangers.
- Kerrville, Texas, October 2010: A local judge sentenced two sovereign citizens, father and son, for impersonating police officers. Both persons, Charles Tiller III and Charles Tiller IV, are members of the so-called Republic of Texas, a large sovereign citizen group based in that state. Charles Tiller III was charged earlier in the year with a felony count of impersonating a public servant after he had allegedly identified himself as a constable while trying to order a badge. He received a sentence of three years of probation and a \$2,000 fine. His son, Charles Tiller IV, was charged with falsely identifying himself as a peace officer for allegedly putting a sign on his vehicle identifying it with a star and the phrase

“Bexar County Sheriff’s Department.” He pleaded no contest and was sentenced to two years’ probation and an \$800 fine. Kerrville has historically been a hotspot in Texas for the sovereign citizen movement.

- Eureka, Montana, June 2010: U.S. customs officials in Montana ordered a Canadian sovereign citizen living in the United States to leave the country after he pleaded guilty to charges of domestic abuse. The man, Donald Roy Fehr, was also part of a sovereign citizen group that dubbed itself the “County Rangers.” Fehr had allegedly made threatening telephone calls to a local justice of the peace and had begun to show up at local government meetings wearing a uniform sporting a badge, and carrying a pistol.

Fictitious Nations, Quasi-Nations and Tribes

Members of the sovereign citizen movement, in order to escape the jurisdiction of a government they believe is illegal, frequently try to create their own fictitious governmental or quasi-governmental entities, largely in an attempt to avoid authority. For example, in the 1990s, a group of sovereign citizens invented a fictitious British colony, the “British West Indies,” and manufactured and sold realistic looking license plates that purported to come from this colony.

This tactic continued in the 2000s, surging along with the rest of the sovereign citizen movement beginning in 2009. To give just one example from among many, in Harrison, New York, in May 2011, Harrison police officers arrested sovereign citizen Jason R. Mack for second-degree criminal impersonation for allegedly providing “Moorish” identification documents, including an “Indigenous Government ID – Tax Exempt” that identified Mack as an “aboriginal MINISTER Cherokee Choctaw Native.” Another card claimed that its bearer was exempt from taxation because he was a “minister.”

In the 21st century, such tactics have not abated. Notable examples of fictitious tribes include:

- Little Shell Pembina Band of North America. Perhaps the most “successful” such attempt was the creation in 2003 of a fictitious Native American tribe dubbed the Little Shell Pembina Band of North America, which quickly spread across the United States. In 2010, some of its original members have dropped out, but the concept itself has remained very popular, and Little Shell related incidents regularly pop up, many of them involving frauds or scams of various kinds (see frauds and scams section). To give one recent example, two Little Shell members, Gregory Allen Davis and Michael Howard Reed of North Dakota, were sentenced in February 2011 for filing \$3.4 million in bogus liens against a federal judge and federal prosecutors in 2009. Reed received a nine year sentence, Korman a sentence of three years and five months. They were arrested after Reed threatened a judge who refused to dismiss federal drug charges against two other Little Shell members and Davis filed a bogus lien against another judge and against an acting U.S. Attorney for not dismissing a firearms charge against Reed. They were subsequently convicted of conspiring to file and filing false liens against federal officials; Reed was also convicted of obstruction of justice.

“Little Shell” adherents now use several different variations of the original name of the group. However, they are unrelated to the similarly-named Montana-based Little Shell Tribe, which is not a sovereign citizen group.

- Washitaw Nation/Empire. This sovereign citizen group emerged in Louisiana and Texas in the mid-1990s. It is one of several sovereign citizen groups that are essentially Moorish in nature but also claim “native” status. Washitaw members claim they are descendants of the ancient mound-builders of the Mississippi Valley. Members have created license plates, diplomatic identification cards and similar fictitious sovereign citizen documents. Although in the 1990s the Washitaw was essentially a single group, by the end of that decade it had become more of a concept and today there are a number of completely independent “Washitaw” sovereign citizen groups across the country. In April 2010, a Washitaw member in Greensboro, North Carolina, Tornello Fontaine Pierce El-Bey, sued the city for \$7 million, claiming that a police officer had violated his rights during a March 2010 traffic stop. When stopped, El-Bey told the officer he was not a U.S. citizen and tried to present a diplomatic identification card instead of a drivers’ license. El-Bey also claimed a copyright violation for his name appearing on the ticket the officer issued.
- United Nations of Turtle Island (UNOTI). UNOTI is based primarily in east Tennessee, western North Carolina, and northern Georgia, although “members” have been found as far away as California. UNOTI has been creating bogus license plates, driver’s licenses and similar documents since around 2003.
- Sovran Nations Embassies of Mother Earth (also known as Sovran Unity Nations). Sovran is a group that started up recently in Montreal in Canada, but has now spread to a number of places in Canada and the United States, with contact points in California, Arkansas, Montana, and Hawaii. One of their Montana contact points is in the tiny town of Roundup, famous in 1995-1996 for being one of two towns housing the Montana Freemen.
- Wampanoag Nation, Tribe of Grayhead, Wolf Band. This small group emerged in the 2000s in eastern Utah (unrelated to the legitimate Mashpee Wampanoag Nation in Massachusetts), issuing driver’s licenses and filing lawsuits against a variety of public officials and law enforcement officers, including a \$250 million lien against a Uintah County prosecutor. In May 2008, a federal judge ordered a \$63,000 civil judgment against four of its organizers, ordering them to stop their “complete sham.”

VII. Sovereign Citizen Tactics: Frauds and Scams

For decades, the sovereign citizen movement has been home to hundreds of con artists and tricksters who use the language and pseudo-legal theories of the movement to beguile people into giving them their money. It is not uncommon for successful sovereign con artists to get more than a million dollars out of their schemes; several of the largest sovereign-involved scams have raked in over a hundred million dollars.

Among the most common type of sovereign scams are pyramid schemes, other investment schemes, bogus trust scams, real estate fraud, and various types of tax frauds. However, sovereign citizens have engaged in more esoteric scams as well, ranging from immigration fraud to malpractice insurance fraud. Some sovereign scam artists will target anybody, while others actually primarily target adherents of the sovereign citizen movement themselves, in a form of affinity fraud.

Any sort of debt can also potentially be fodder for a sovereign citizen scheme: student loans, car loans, credit card debts, etc. In March 2010, for example, eight operators (from Oregon, Washington, New York and Florida) of a sovereign citizen and tax protest group called Pinnacle Quest International were convicted of tax fraud, wire fraud and money laundering charges. Among their various enterprises was Financial Solutions, operated by Arthur Merino of Renton, Washington, which charged victims thousands of dollars to “eliminate” their credit card debt. Many victims were forced into bankruptcy after discovering the scheme did not work.

Some recent examples of sovereign citizen scams include:

- Erie, Pennsylvania, July 2012: A federal judge in Erie, Pennsylvania, sentenced tax protester, sovereign citizen, and Erie County Councilman Ebert G. Beeman to 12 months and one day in prison following his conviction on eight counts of Social Security fraud. Beeman allegedly used a fake name to fraudulently obtain a Social Security number, then used it to apply for jobs, credit cards, and a car loan. Beeman has had other legal problems as well, including a long-running battle with the IRS for \$2.1 million in unpaid income taxes, penalties, and interest. In that case, Beeman unsuccessfully represented himself, using sovereign citizen pseudo-legal arguments. In October 2011, FBI agents seized property owned by Beeman to help repay the debt. In November, Beeman was found guilty of violating a federal court order directing him to vacate the properties seized by the IRS; federal authorities had allegedly found him hiding in the bathroom of one of the properties. Beeman has also been cited at least eight times for driving without a license. He mailed two such citations to a local judge with the words “refuse for cause” written on them—a common sovereign citizen tactic.
- Ventura County, California, March 2012: Ventura County sheriff’s deputies arrested Sharon Palmer, James Cecil Stewart, and Eugenie Victoria Bloch on charges of conspiracy to commit a crime, money laundering, grand theft, and failure to file an income tax return. James Stewart was a sovereign citizen who signed his name with sovereign punctuation as

“James-Cecil: Stewart.” In a February 2012 document purporting to be a signed “statement under oath” by Stewart, he claimed that the state of California had no jurisdiction over him. The defendants ran businesses such as Healthy Family Farms and the Rawesome Food Club, which allegedly illegally produced and sold unpasteurized or “raw” milk (for which they were charged in August 2011). Prosecutors charged that they stole more than \$1.5 million from investors in the business.

- Las Vegas, Nevada, October 2011: Samuel Davis, a prominent sovereign citizen “guru,” received a federal prison sentence of 57 months in Las Vegas, Nevada, for his role in a \$1.3 million money laundering scheme. He was also ordered to serve three years of supervised release and to pay almost \$100,000 in restitution. Davis pleaded guilty in March 2011. A co-defendant, Shawn Talbot Rice, remained a fugitive for months until his capture in December 2011 following a brief standoff.
- Maui, Hawaii, May 2011: Five sovereign citizens were indicted by a federal grand jury for their involvement in a tax and mortgage fraud scheme. The defendants, Mahealani Ventura-Oliver, John D. Oliver, Pilioloha K. Teves, Leatrice Lehua Hoy, and Peter Hoy, were charged with 25 counts of fraud, money-laundering and tax-related charges. Using several groups, they had allegedly collected nearly \$500,000 in fees from 2008-2010 for a “debt assistance program” that they claimed could eliminate mortgage, credit card, and other debts. They had also allegedly prepared false income tax filings and issued fictitious financial instruments such as bonds, promissory notes, and money orders. The sovereign citizen movement has long been active in Hawaii, where it is often associated with segments of the native Hawaiian independence movement.
- Indianapolis, Indiana, August 2010: An Indianapolis jury found sovereign citizen Walter Eugene Lunsford guilty of multiple counts of fraud and theft for attempting to use Federal Reserve routing numbers in a scheme to get free cars from an Indianapolis car dealership for himself and his friends. Lunsford’s scam was initially successful when he tried it, but failed when all of his friends showed up at the car dealership on the same day to repeat his tactic, one of them even allegedly offering to “buy” a car for one of the employees of the dealership. He received a two year sentence of home detention after agreeing to help federal and state investigators.

Mortgage/Foreclosure Schemes

Of the many sovereign schemes active today, some of the most troubling are schemes purporting to allow victims to save their homes or property from foreclosure. They are especially troubling because they target desperate property owners and can potentially take their last dime and at the same time insure that they will lose their property. None of their schemes actually have the ability to save property from foreclosure.

Such schemes date back to the serious recession and farm crisis of the early to mid-1980s, and regularly reappear. From 2003-2006 a major wave of sovereign citizen mortgage scams swept the United States, with more than a half dozen major groups (some operating as multi-level marketing schemes so that they had hundreds of “associates”) offering what they dubbed “mortgage

elimination.” Victims would pay thousands of dollars to have their mortgages “eliminated” within four to six months, only the “elimination” would never actually occur. Although consumer alerts from a variety of federal and state sources helped to stem this tide of scams, only a relatively few perpetrators were ever prosecuted. One group that was investigated and successfully prosecuted was the California-based Dorean Group, whose leaders, Kurt Johnson and Dale Scott Heineman, were convicted of 35 counts of mail fraud in 2008 and sentenced to 25 and nearly 22 years in prison, respectively.

Since the foreclosure crisis broke in late 2008, a new wave of mortgage-related sovereign citizen schemes has appeared, as sovereign citizen gurus around the country have leapt to take advantage of a large pool of people newly worried about saving their homes from seizure. Many, perhaps most, sovereign citizen gurus have rushed to add mortgage-related material to their seminars. “Our plan is really simple,” explains the Web site of one such entity, the Debt Free Sovereign Trust, operating in Washington state and British Columbia. “To eliminate your debts, we simply assume your debts....All debts arising from privately created money or ‘digitally created’ money can be eliminated.” The cost? Only \$1,000 for “expenses.”

A mortgage scheme in Hawaii charged considerably more. In late 2008, the FBI began investigating a mortgage elimination ring that charged victims between \$2,500 and \$10,000 to attend seminar and meetings where people were given special \$1 million “Royal Hawaiian Treasury Bonds” that they could allegedly use to pay off their mortgages (a sovereign citizen tactic dating back to the 1980s), though they would have to make payments to the mortgage elimination ring for a while. Of course, the bonds turned out to be worthless.

Many gurus do not themselves offer to eliminate people’s mortgages or save their homes, but rather market schemes or instructions as to how people can do it on their own. The gurus make less money, taking in seminar and materials fees and sometimes perhaps acting as “consultants,” but probably believe they face less risk of criminal prosecution.

Sovereign citizens have come up with a variety of pseudo-legal ways to attempt to “protect” their property. One such tactic, which dates back to the early 1980s, is attempting to use gold or silver coins to purchase properties or interfere with their resale. The theory behind such attempts rests on the sovereign citizen belief that paper money holds no value and only gold or silver actually is valid money. For example, in 2008, three Pennsylvania sovereign citizens—Victor Balleta of Allentown, Michael Proetta of Whitehall Township, and Michael Reis of Bethlehem—attempted to purchase foreclosed property with gold and silver coins. When outbid, they challenged the bids. Proetta explained that the other bidders “made an unlawful money bid in credit in opposition to my lawful money bid. I was the only lawful bidder and therefore the only bidder.” The men might not have been trying to obtain the properties for themselves but trying to hinder the banks’ ability to re-sell the properties by challenging their ownership (as actually happened; it was not until 2010 that their suit was dismissed).

Another ancient sovereign tactic given new life in recent years is the notion of putting a lien on one’s own property because of the “sweat equity” an owner has put into it. The theory is that no other creditor can take the property until the owner’s lien has been satisfied. As one Michigan-based Moorish sovereign citizen group, the Moorish Republic Trust, puts it, “Under common law,

life experience has value. The idea is that you have lived, worked, played, laughed, cried, in other words, you have put yourself into the property, and the property owes you as a result.” The Moorish Republic Trust suggests that the figure of \$3,000 per year of ownership is an “uncontestable” figure; they generously offer to help people, presumably for a fee, prepare such “common law liens.” However, the courts have ruled that such self-targeted liens are illegitimate.

Most common has been the resuscitation of the notion of the “land patent.” Sovereign citizens take historical and legal references to an old legal concept (land patents are how the federal government historically transferred title of public lands to private ownership) and imbue it with the magical quality of being able to protect one’s property from creditors and foreclosure. Along with the related concept of “allodial titles,” the “land patent” concept dates at least as far back as the early 1980s in the sovereign citizen movement—and has been struck down by the courts many times. In recent years it has seen new life, as sovereign citizens across the country have begun promoting the notion and offering instructions—for a price.

“The mortgage industry doesn’t want anyone to know about land patents,” claims one Web site promoting the tactic. According to these promoters, “a land patent claim has never successfully [been] challenged in court.” How are more people are not aware of land patents? Because “state and local authorities are in collusion to ensure that this information never reaches the public.”

Many sovereign citizens have rushed to become land patent promoters, including people one might not ordinarily associate with such schemes. One example is Rita Granberry, a model who helped parley stints on the Howard Stern radio show into a career as a nude model. Of Afro-Italian descent, Granberry recently became involved with the Moorish movement, changed her last name to Granberry-El, and even delivered presentations (one of which was uploaded to YouTube) promoting the notion of land patents.

Granberry-El has a lot of company. In fact, not only are sovereign citizens heavily involved in promoting the notion of land patents, but the idea has now slipped the bounds of the movement and some non-sovereign con artists have also recently picked up on the scheme.

Some sovereign citizens have been taking advantage of the foreclosure crisis in a very different way: by appropriating for themselves homes in foreclosure. Typically, sovereign citizens would identify foreclosed-upon homes whose occupants had been evicted but which had not yet been resold by the bank. They would then file bogus deeds, change the locks, and move in. The more ambitious would actually become de facto landlords by renting out the seized properties to others. Sovereign citizen “squatting” incidents have occurred in every region of the country.

Some recent sovereign citizen mortgage scam and “squatting” incidents include:

- Memphis, Tennessee, March 2012: A federal grand jury indicted sovereign citizen Devitoe Farmer on three counts of theft of government property after Farmer allegedly used bogus quit-claim deeds in an attempt to take possession of foreclosed houses from government agencies or government-backed housing lenders. According to news reports, Farmer claimed that since 1933, federal law has prevented government agencies and banks from possessing property. He may also face state charges.

- Appleton, Wisconsin, March 2012: Erik Hudson (aka Kabir Bey) of Appleton, Wisconsin, was convicted of criminal property slander after using a bogus warranty deed to seize a foreclosed-on home and then renting it out—a popular sovereign citizen tactic in recent years. Hudson, a member of the Moorish offshoot of the sovereign citizen movement, told the judge, “I’m not in a state of mind of Wisconsin, I’m in a state of mind of Moorish America.”
- DeKalb County, Georgia, October 2011: A DeKalb County grand jury indicted Susan Weidman, Ian Greye, Giulio Greye, and Mathew Lowery on charges related to a “squatting” scheme, in which the defendants allegedly seized and occupied vacant foreclosed-upon houses in four different Georgia counties. Weidman, the alleged ringleader, was indicted on state racketeering charges. The suspects, at least some of them self-declared sovereign citizens, have decided to represent themselves in court.
- Charlotte, North Carolina, October 2011: Mecklenburg County authorities reported a rash of filings—more than 200—from Moorish sovereign citizens who allegedly claimed that their group membership gave them the right to claim vacant homes for their own. In one reported case, two individuals entered a dwelling and claimed that they now had a deed for the house. Several people have been arrested in connection with some of these incidents, including Kenneth William Lewis, charged with obtaining property by false pretenses, possessing stolen goods, breaking and entering and trespassing; and Asaru Aalim Ali, charged with breaking and entering and trespassing.
- Tucson, Arizona, September 2011: A federal grand jury in Tucson indicted two sovereign citizens, Marshall Home and Margaret Elizabeth Broderick, for an alleged mortgage fraud scheme. They were charged with 10 counts of mail fraud, bankruptcy fraud, and wire fraud. Home and Broderick, associated with the ‘Individual Rights Party’ and the ‘Mortgage Rescue Service,’ allegedly charged people \$500 to “help” people facing foreclosure. However, their rescue services reportedly consisted of bogus sovereign citizen filings, such as an involuntary petition of bankruptcy against the U.S. government. They also allegedly registered as trade names the formal names of government-sponsored loan organizations Fanny Mae and Freddie Mac, then used those names to file fraudulent deeds on property owned by those organizations and transfer them to the Independent Rights Party (following which, they would allegedly rent out the properties).
- Chicago, Illinois, August 2011: Cook County officials discovered that a Moorish sovereign citizen or sovereign citizen group allegedly filed bogus deeds on more than 30 Chicago-area homes and properties with an estimated worth of more than \$10 million. Many of the deeds listed the Moorish Science Temple of America and/or Noble Drew Ali (the group’s long-dead founder) as the owner. However, MSTA officials have claimed to have had nothing to do with the deeds and that the MSTA itself was being victimized by this.
- Mullica Township, New Jersey, July 2011: Police in Mullica Township, New Jersey, arrested Moorish sovereign citizen Jolanda S. Bordley-Jackson-El for allegedly stealing a foreclosed home worth \$300,000. As has been typical in such cases, Bordley-Jackson-El

allegedly filed a bogus deed to the house, then changed the locks and utilities. She was charged with theft by deception and forgery.

VIII. Sovereign Citizen Tactics: Threats, Takeovers and Violence

Sovereign citizens engage in harassing tactics such as bogus liens, as well as a variety of scams and frauds, but as the West Memphis shootout involving Jerry and Joseph Kane tragically demonstrated, they are willing to resort to violence as well.

Indeed, threats and ultimatums, attempted “citizens arrests” and takeovers of government or other buildings, and acts of violence, especially during traffic stops and residence visits, are common among the sovereign citizen movement, making them a serious officer safety threat as well as a potential threat to public officials and private citizens in the communities in which they operate.

In addition to the West Memphis shootout, other recent incidents include:

- Valparaiso, Indiana, July 2012: A Michigan truck driver and sovereign citizen, Martin J. Jonassen, 55, was convicted of kidnapping and obstruction of justice in September 2011 for allegedly kidnapping his 21-year old daughter in September 2011 from her Missouri home in order to take her to his home in Michigan. According to court documents, his daughter had never been to school and had only read books about religion, history and the government that had been approved by her father. The woman escaped while they were travelling through Portage, Indiana. Jonassen recaptured her, but not before residents saw her running naked through the streets and reported the incident to police. Jonassen was arrested when police found the two together. Jonassen has been charged with federal kidnapping charges, as well as local charges of felony confinement. Following his arrest, he filed a petition with the federal and local courts, stating that they had not proven they had any jurisdiction over him as a sovereign citizen of Michigan. He was also subsequently charged with two counts of obstruction of justice for trying to get his daughter to change her testimony. At a court hearing, he pleaded not guilty “under duress” and claimed that he was “a man of the land, born of the land.” He represented himself during trial.
- Fairbanks, Alaska, June 2012: Alaska militia leader and sovereign citizen Schaeffer Cox and two other defendants, Coleman Barney and Lonnie Vernon, were convicted of a variety of charges related to a plot to kill state and federal officials. Cox, the ringleader, was convicted of 9 of the 11 charges against him, including conspiracy to murder, solicitation to murder and seven weapons charges. The three defendants, and two others, all belonging to either a local militia group, sovereign citizen group, or others, were arrested in Fairbanks, Alaska, in March 2011, on state and federal weapons and other charges related to an alleged plot to kill Alaska state troopers and other state and federal officials.
- Colleyville, Texas, February 2012: A Tarrant County jury sentenced sovereign citizen James M. Tesi of Hurst, Texas, to 35 years in prison after convicting him of aggravated assault on a public servant with a deadly weapon. Tesi was wounded in July 2011 during a shootout with police in the town of Colleyville, near Fort Worth. Prior to the shooting, Tesi, who signs his name “James-Michael: Tesi” and calls himself a “true natural living

being,” had been involved with several previous incidents with police in Arlington and Colleyville. In February 2010, Arlington police stopped Tesi and cited him for failure to wear a seatbelt. Tesi allegedly refused to pay the fine, claiming that the police and court had no jurisdiction over him. Because of the nonpayment, an arrest warrant was issued. The following December, Colleyville police stopped him for speeding, then arrested him because of the Arlington warrant. After alleged continued non-cooperation, Colleyville itself eventually issued an arrest warrant for Tesi. In July 2011, a Colleyville police officer spotted Tesi’s car. When Tesi allegedly refused to pull over, the officer followed Tesi home. After getting out of his vehicle, Tesi allegedly fired at the officer, who returned fire and wounded Tesi in the face and foot.

- Valencia, California, February 2012: Self-declared sovereign citizen Vahe Ohanian was arrested after entering a sheriff’s station in Santa Clarita Valley and allegedly threatening deputies there, telling them he would return with a shotgun. According to police, in postings on a social networking site Ohanian also threatened to hurt one of the officers.
- Daytona Beach, Florida, February 2012: Self-declared sovereign citizen Laurine Sue Arnold was convicted of kidnapping her grandson in 2011 from the home of her sister, who was acting as a temporary guardian. The child was eventually found in a Hare Krishna temple in another town. Arnold, who was out on bail following her arrest, did not show up for the final days of her trial, and a warrant has been issued for her arrest.
- Denver, Colorado, February 2012: Sovereign citizen Matthew O’Neill, of Kremmling, Colorado, pleaded guilty to providing false information related to a terrorism offense after being arrested for sending a package with white powder to the Colorado Department of Revenue. The powder, which caused the evacuation of the building, turned out to be baking soda.
- Phoenix, Arizona, January 2012: Police arrested Michael Crane in connection with the murder/robbery of an elderly Paradise Valley couple in January; Crane is also the prime suspect in another robbery/murder that occurred soon after. In his initial court appearance, Crane attempted to use sovereign citizen arguments, including saying that he wanted to “reserve my right to Uniform Commercial Code 1-207 and Uniform Commercial Code 1-103.”
- Glengary, West Virginia, January 2012: Police investigating a mobile home fire in Glengary, West Virginia, discovered a gruesome scene: the burned bodies of David Hutzler and his 9-year-old son James. Even more disturbing was their discovery that both had been shot in the head, apparently as part of a murder-suicide. According to the Southern Poverty Law Center, Hutzler had been an active member in the prominent sovereign citizen group Republic for the united [sic]States of America and a later breakaway group called the Vandalia Solution.
- Sumter County, Florida, January 2012: Sovereign citizen Brody Whitaker, who once referred to himself as the “Grandson of God,” received a sentence of life in prison after being found guilty of two counts of attempted murder of a Florida state trooper.

Whitaker engaged state police in a high-speed chase and shootout in 2010 before escaping to Connecticut, where he was eventually caught. As is common for sovereign citizen defendants, Whitaker acted as his own attorney.

- Albuquerque, New Mexico, January 2012: Albuquerque police fatally shot sovereign citizen Mark Macoldowna of Ruidoso, New Mexico, during a close-range shootout that occurred when they responded to the robbery of a Catholic church. Two alleged accomplices, who do not appear to have been sovereign citizens, were arrested and charged with conspiracy to commit armed robbery and conspiracy to commit kidnapping.
- Seattle, Washington, December 2011: Redmond resident and sovereign citizen David Myrland, 53, was sentenced to three years in federal prison following his conviction on threat charges. Following a traffic stop in Kirkland, Washington, in which his car was impounded, Myrland issued a series of threatening “citizens’ arrest warrants” to the mayor of Kirkland and others. In a letter to the mayor, Myrland wrote that she should prepare for a visit from “50 armed men and women” would come to arrest her and that she should not resist. Charges were filed against him in September 2010. Other sovereign citizens from around the country also sent threatening letters related to Myrland’s case, including one from Texas that informed a King County prosecutor that it was “lawful for a private citizen to use deadly force in attempting to apprehend a fleeing felon.” Myrland is connected to several prominent sovereign citizen groups in the Pacific Northwest.
- Lakota, North Dakota, November 2011: Sovereign citizen Rodney Brossart and four of his adult children, Alex, Thomas, Jacob, and Abby, were arrested following the end of a months-long standoff near Lakota, North Dakota. The standoff began after local deputies arrived at the 3500-acre Brossart ranch to serve a search warrant regarding another rancher’s cattle allegedly on their property. Brossart allegedly refused to return the cattle and told deputies that if they came on his property they wouldn’t be coming back. He and his daughter were arrested for an alleged physical confrontation; later that evening, when officers returned to the property, the three sons allegedly confronted them with rifles and threatened the officers. They were arrested the next morning, but the family refused to show up for a hearing on August 26, holing up on their property instead. Rodney Brossart has been charged with one count of terrorizing, one count of theft of property, one count of criminal mischief, one count of failure to comply with estray order, and one count of preventing arrest. Months of negotiation followed their failure to appear, without success, but authorities eventually arrested them while avoiding further violence. The three brothers were charged with terrorizing and bail jumping; the sister with simple assault and bail-jumping charges, as well as a misdemeanor harassment charge. Susan Brossart was charged with lying to authorities who asked her about guns on the property.
- Oregon, October 2011: A so-called “de jure Grand Jury,” a self-proclaimed sovereign citizen pseudolegal entity, sent “indictments” to all district attorneys in Oregon. The alleged charges included treason, kidnapping, and slave trafficking. The documents moreover called on “provost marshals” to arrest the officials and suggested that in some cases the death penalty might be appropriate.

- Page, Arizona, June 2011: Sovereign citizen William Foust of Page, Arizona, was shot to death by a Page police officer after a physical confrontation. The officer was responding to a domestic violence call at a business owned by Foust. By the time the officer arrived at the business, Foust had left, but he returned as the officer was talking to the woman who had made the 911 call. According to police, Foust was confrontational. When the officer and Foust left the building, their encounter became physical and Foust allegedly attempted to grab the officer's Taser. The officer shot Foust, mortally wounding him. The officer had received minor injuries. Foust was an active sovereign citizen and "Chief Justice" for Arizona for the sovereign citizen group Republic for the United States of America. He had made many sovereign citizen filings in the past and had occasionally gotten in minor legal troubles related to his sovereign citizen actions.
- Ensley, Florida, June 2011: Sovereign citizen Larry Wayne Kelly was arrested in June 2011 for shooting at a seafood market with an AK-47 in Ensley, Florida. According to police, Kelly became angry with the seafood store after employees informed him that it had no crawfish for sale. Kelly called them 11 times then went to the store in his truck, where he allegedly opened fire at the front of the store with an AK-47. He then led police on a car chase before eventually crashing his car, following which he was taken into custody. Kelly's vehicle reportedly had a homemade license plate on it at the time and he told officers after being arrested that he was a sovereign citizen and did not have to obey them. In the past, he had filed a number of pseudo-legal sovereign citizen documents.
- Charlotte County, Florida, April 2011: Authorities arrested two sovereign citizens, Robert Chapman and John Ridge Emery III, for allegedly giving a judge an envelope marked "bio-hazard" containing a mysterious substance. The incident caused the entire building to have to be evacuated. According to police, Chapman drove Emery to the Charlotte County Justice Center and gave him an envelope containing a suspected chemical agent to give to the judge overseeing a hearing for Emery on traffic-related offenses. Both men were charged with the manufacture, possession, delivery, or attempted use or threatened use of a weapon of mass destruction. An analysis of the substance in the envelope marked "biohazard" revealed that it was not, in fact, hazardous. In December 2011, Chapman filed a pro se motion demanding that his case be dismissed and that the state pay him \$115 million in "restitution," claiming in the motion that "if you do not file this motion, you are a traitor to the basis this country was established on."



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605 Third Avenue
New York, NY 10158-3560
www.adl.org





LEGAL RESEARCH DEPARTMENT

Holly L. Gleason, Supervisor

MEMORANDUM

TO: Judge O'Grady
FROM: Kim Briscoe
RE: Sovereign citizen issues
DATE: February 22, 2013

Brief summary of the "sovereign citizen" phenomenon

The sovereign citizen movement,¹ while scattered and organized only sporadically, nevertheless relies on a core set of general beliefs. Sovereign citizens believe that at some time in the past, the "natural" or "common" law largely prevented the government from interfering in the lives of citizens.² They believe that the freedoms won during the American Revolution have been betrayed by tyrannical forces³ that now control the financial and government institutions of the country, including the courts. They refer to the established government as "de facto" government, and to imagined legitimate "common law" institutions as "de jure" authority.⁴

Sovereign citizens support their beliefs by exposing "hidden" history that has supposedly been kept from the public, including arcane laws that may be used to combat the "de facto" government. For example, sovereign citizens usually believe that the Fourteenth Amendment to

¹ The people in the movement call themselves by a large variety of names: the common law movement, redemptionists, posse comitatus, freemen, constitutionalists, patriots, etc. I will refer to them in this memo by the term "sovereign citizens", a descriptor that addresses the ideological heart of the movement.

² E.g., Sovereign Services, *Understanding Common Law* (1994), available at <http://www.friendsoffreedom.com/Writings/CommonLaw.html> (accessed Jan. 13, 2013).

³ The stories of when and how this occurred vary considerably. For some, the betrayal occurred when the Articles of Confederation were given over in favor of the new Constitution. See Alan Lewis Painter, *The Constitution Versus the Articles of Confederation* (Nov. 11, 2010), available at <http://www.wethepeopleforpeace.org/upload/ArticlesOfConfederationVsConstitution.pdf> (accessed Jan. 15, 2013). Others believe the change occurred during or shortly after the civil war. See *Sovereign Citizenship*, available at <http://www.sovereign-citizenship.net/home.html> (accessed Jan. 15, 2013).

⁴ Anti-Defamation League, *The Lawless Ones: The Resurgence of the Sovereign Citizen Movement*, page 3 (2012), available at http://www.adl.org/learn/sovereign_movement/sovereign_citizens_movement_report_2012_edition.pdf (accessed Jan. 15, 2013).

the federal constitution was either never ratified or was ratified under duress, and that it is a tool to remove the sovereign rights of the people by creation of a lesser “U.S. Citizen” status in return for privileges.⁵ They believe that that they can avoid becoming “Fourteenth Amendment Citizens” by refusing to “contract” with the government “corporation.”⁶ Sovereign citizens therefore often refuse to participate in even the most basic government operations – paying taxes, registering automobiles, obtaining driver licenses or social security cards, using paper money, etc.⁷ Their belief in the ubiquity of contract results in their use of the Uniform Commercial Code in inappropriate situations, because they believe that the requirements of state and local laws are merely contractual obligations. A sovereign citizen may sign his driver license “without prejudice,” because he believes that under UCC 1-308 he has reserved the right to drive without subjecting himself to the terms of the government’s “contract.”⁸

These beliefs, easily dismissed when held by a few individuals, have become much more problematic for our society, and the court system, because they are held by increasing numbers of people who have joined together in a movement to spread and utilize them. The nationwide phenomenon has existed at least since the 1970s, and has increased markedly with the economic downturn of the past several years. An estimated 300,000 people ascribe to these beliefs.⁹ Courts faced with activity from sovereign citizens must not only address the legal arguments set

⁵ E.g., Original Intent, *The 14th Amendment Clarified*, available at <http://www.originalintent.org/edu/14thamend.php> (accessed Jan. 15, 2013).

⁶ E.g., *South Euclid v. Carroll*, 8th Dist. No. 54245, 4 (Oct. 6, 1988).

⁷ *The TRUTH About the 14TH AMENDMENT or Who Are YOU, REALLY?*, available at http://usa-the-republic.com/revenue/true_history/Chap6.html (accessed Jan. 15, 2013).

⁸ UCC 1-308, codified in Ohio as R.C. 1301.308, states, “A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as ‘without prejudice,’ ‘under protest,’ or the like are sufficient.” This provision was 1-207 in previous versions of the UCC, and is still often cited in sovereign citizen documents. E.g., *State ex rel. McGrath v. Gilligan*, 8th Dist. No. 83884, 2005-Ohio-619, ¶10-12 (criminal defendant seeks to apply UCC reservation of rights on driver’s license to object to the jurisdiction of the court).

⁹ Randy Ludlow, *Ballot boycott planned by ‘sovereign citizens’* (Oct. 27, 2012), available at <http://www.dispatch.com/content/stories/local/2012/10/27/ballot-boycott-planned-by-sovereign-citizens.html> (accessed Jan. 15, 2013).

forth in litigation, but must be alert to criminal activity that sometimes accompanies these theories. Some sovereign citizens are willing to defend their beliefs with violence.¹⁰ Ohio's sovereign citizens are no different in this respect,¹¹ so the threat of violence is legitimate.

For several reasons, courts should be prepared to counter the arguments made by sovereign citizens, despite the futility of convincing the sovereign citizen litigant. First, a sovereign citizen's tactics can cause delays in the court's regular business. *E.g.*, *South Euclid v. Carroll*, 8th Dist. No. 54245, 4 (Oct. 6, 1988) (court allowed the defendant in a red light case a two hour oral hearing on jurisdiction). Second, the tactics used by sovereign citizens may throw off the normal routines of the court sufficiently to create reversible error. Finally, it is important to respond decisively and confidently to these issues when they are raised in open court. As patently illegitimate as these ideas may sound to most people, these ideas spread by word of

¹⁰ National Consortium for the Study of Terrorism and Responses to Terrorism, *Terrorist Organization Profile: Montana Freemen*, available at http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=3406 (accessed Jan. 13, 2013); FBI Counterterrorism Analysis Section, *Sovereign Citizens A Growing Domestic Threat to Law Enforcement* (September, 2011), available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens> (accessed Jan. 15, 2013). Even more disturbingly, there is evidence that some leaders of the movement are pushing for a more organized and confrontational approach to the perceived illegitimacy of government power. FBI Counterterrorism Analysis Section, *Recent Sovereign Citizen Extremist Targeting of Law Enforcement Highlights Potential for Violence during Traffic Stops* (June 1, 2012), available at <http://info.publicintelligence.net/FBI-SovereignCitizensTargetingLEOs.pdf> (accessed Jan. 15, 2013). The violence committed by some sovereign citizens is not limited to 'front-line' targets such as police officers or judges, but extends to all court staff. *E.g.*, Southern Poverty Law Center, *Common law victims*, available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/1998/spring/common-law-victims> (accessed Feb. 20, 2013) (county recorder was beaten, stabbed, and sodomized with a gun in her home by sovereign citizens telling her to "do her job" after she had refused to file fraudulent lien papers for them).

¹¹ Sovereign citizens have been involved in several violent and sometimes deadly interactions with Ohio law enforcement. Anti-Defamation League, *Collision Course: Ohio Police Officer Slain by Anti-Government Extremist*, available at http://www.adl.org/learn/safety/safety_bulletin.asp (accessed Jan. 15, 2013). More recently, two Ohio sovereign citizens killed two law enforcement officers in a shootout following a traffic stop, before they were killed. Dan Harris, *Deadly Arkansas Shooting By 'Sovereigns' Jerry and Joe Kane Who Shun U.S. Law* (July 1, 2010), available at <http://abcnews.go.com/WN/deadly-arkansas-shooting-sovereign-citizens-jerry-kane-joseph/story?id=11065285#.ULzx8jrkpIE.email> (accessed Jan. 15, 2013). In addition to these well-publicized cases, newspaper articles and case law are replete with examples of sovereign citizen individuals who are willing to confront the state violently when given the opportunity. *E.g.* Tom Meyer, *Anti-government sovereign citizens on the rise in Ohio*, available at <http://origin.wkyc.com/news/investigative/article/160458/230/Investigator-Exclusive-Anti-government-sovereign-citizens-on-the-rise-in-Ohio-> (accessed Feb. 20, 2013) (napalm bomb and explosives found in Cuyahoga County); *State v. Martz*, 5th Dist. No. 96 CA 27, 3 (June 9, 1997) (sovereign citizen stopped for a traffic offense grabbed officer's gun, and after a standoff, several guns and thousands of rounds of ammunition were found in his vehicle).

mouth. When a judge fails to respond to these arguments, responds dismissively, or responds with a lack of confidence, people of a susceptible mindset may be persuaded that the sovereign citizen arguments have some legitimate substance.

Creation of the state and validity of the state Constitution and laws

Sovereign citizens sometimes believe that Ohio's statehood was never officially accomplished, rendering Ohio still a part of the Northwest Territory.¹² As a result, they believe that Ohio's constitution and statutes are not legitimate law, and sovereign citizens will often raise obsolete law, such as the Northwest Ordinance of 1787, in support of their positions.¹³

Statehood

The federal Constitution provides for the admission of new states by Congress. U.S. Constitution, Article IV, Section 3. On April 30, 1802, the U.S. Congress passed 2 Stat. 173, the enabling act for the formation of Ohio. *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 462, 715 N.E.2d 1062 (1999). This act authorized the inhabitants "to form for themselves a constitution and State government * * * and the said State, when formed, shall be admitted into the Union upon the same footing with the original States in all respects whatever."

Under this authority, a state constitution was adopted on November 29, 1802. This formation was officially recognized by the U.S. Congress on February 19, 1803, with the passage of 2 Stat. 201, recognizing that "the people of the eastern division of the territory northwest of the river Ohio did, on the twenty-ninth day of November, one thousand eight hundred and two, form for themselves a constitution and State government, and did give to the said State the name of the 'State of Ohio,' in pursuance of * * * [the enabling act], whereby the said State has

¹² E.g., *South Euclid v. Carroll*, 8th Dist. No. 54245, 6-9 (Oct. 6, 1988).

¹³ E.g., *Walton v. Old Republic Ins. Co.*, 3d Dist. No. 16-90-29, 4 (Jan. 6, 1992). The Northwest Ordinance was originally the law of the territory, but according to its own terms was later subject to the federal Constitution, and became a nullity when Ohio became a state. Northwest Ordinance, Article IV; *State ex rel. Walton v. Hunter*, 53 Ohio St.3d 269, 559 N.E.2d 1362 (1990); *Strader v. Graham*, 51 U.S. 82 (1850).

become one of the United States of America” and providing for “the due execution of the laws of the United States within the State of Ohio.”¹⁴

State statutes

Article II, Section 1 of the Ohio constitution confers legislative authority in Ohio on the General Assembly and on the people of Ohio through the initiative and referendum process. “[S]tatutes are presumed to be constitutional unless shown beyond a reasonable doubt to violate a constitutional provision.” *Beagle v. Walden*, 78 Ohio St.3d 59, 61, 676 N.E.2d 506 (1997), quoting *Fabrey v. McDonald Police Dept.*, 70 Ohio St.3d 351, 352, 639 N.E.2d 31 (1994).

Sovereign citizens may argue that a statute is invalid because it does not contain an enacting clause as required by the Ohio Constitution, Article II, Section 15(B).¹⁵ This argument “[confuses] the actual text of the bills passed by the General Assembly with the portions of those bills which are reprinted in the Ohio Revised Code. Each of the Ohio Revised Code provisions under which defendant was convicted were enacted as part of larger bills. A review of these bills reveals that each begins with the enacting clause.” *State v. Tate*, 10th Dist. No. 98AP-759, 9-10 (Apr. 20, 1999).

Municipal ordinances

Article 18, Section 3 of the Ohio Constitution provides that “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their

¹⁴ When Ohio prepared for its 150th anniversary, the organizers wanted an exact “date of statehood” that could be utilized for the celebrations. Was it the date that the state constitution was adopted? The date of the U.S. Congress’ confirmation of statehood? Ohio therefore requested that Congress declare a date of statehood, and in 1953 Congress complied, giving the date as March 1, 1803, the first meeting of the general assembly. *Baker v. Commissioner*, 37 T.C.M. (CCH) 307 (1978), *aff’d*, 639 F.2d 787 (9th Cir.1980). Sovereign citizens seize on these events as evidence that Ohio was not a state as of this 1953 declaration. This supposed late or non-existent statehood is seized on to show that Ohio (with several other states) was not capable of casting a vote for ratification of the 16th Amendment to the U.S. Constitution in 1911. The 16th Amendment confers congressional authority to levy federal income taxes.

¹⁵ *E.g.*, *State v. Johnson*, 10th Dist. No. 97APC12-1697, 2-3 (Aug. 11, 1998).

limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

Many municipalities require that like state statutes, ordinances must contain an enacting clause. Sovereign citizens may raise the omission of an enacting clause as proof that an ordinance lacks validity, and as with this argument when raised regarding state statutes, they are erroneously confusing the measures actually passed with the portions of those enactments as published. *State v. Bulatovich*, 10th Dist. No. 97APC11-1547, 2-3 (Sept. 15, 1998).

Jurisdiction of the Franklin County Municipal Court

Sovereign citizens often object to the jurisdiction of the court. The most common objections are that the court is illegally operating under admiralty or military jurisdiction, or that the United States Supreme Court is the only court with jurisdiction to hear the case.

Admiralty jurisdiction

Sovereign citizens often believe that the state’s courts are operating under “admiralty jurisdiction” that has been unconstitutionally extended to civil and criminal matters.¹⁶ Despite the terminology used by sovereign citizens, admiralty jurisdiction is merely jurisdiction over cases involving admiralty law. “Admiralty jurisdiction embraces those actions ‘done upon and relating to the sea and waters navigable therefrom.’” *Bank of N.Y. v. Markos*, 10th Dist. No. 04AP-426, 2004-Ohio-6451, ¶ 6, quoting *Faulhaber v. Indus. Comm.*, 64 Ohio App. 405, 29 N.E.2d 58 (6th Dist.1940), quoting 1 American Jurisprudence, 550, Section 9. Although state courts do sometimes handle admiralty issues, unless a body of water features prominently in some aspect of the case, the Court will not address admiralty law.

Military jurisdiction

¹⁶ E.g., *State v. Schaeffer*, 12th Dist. No. CA92-04-038, 5 (Apr. 12, 1993).

The presence of a yellow fringed flag in the courtroom is often viewed as evidence that the court is operating under admiralty or military law, or even foreign law.¹⁷ Neither 4 U.S.C. 1 nor President Eisenhower's Executive Order 10834, both oft-cited for the proposition that yellow fringe denotes a military jurisdiction or a "flag of war,"¹⁸ even mention fringe. In the 1920s, the issue of the propriety of fringe on a U.S. flag was in fact contested, and the Attorney General at the time confirmed that a fringe or decorative border surrounding the flag is not a part of it, and has no effect, either heraldic or legal. *McCann v. Greenway*, 952 F.Supp. 647, 651 (W.D.Mo.1997), citing 34 Op.Atty.Gen. 483, 484-486 (1925). No challenge to a court's jurisdiction based on flag fringe has ever been upheld. "Jurisdiction is a matter of law, statute, and constitution, not a child's game wherein one's power is magnified or diminished by the display of some magic talisman." *Id.*

U.S. Supreme Court jurisdiction

Sovereign citizens sometimes argue that state courts do not have jurisdiction over suits against them by government entities, because jurisdiction rests in the U.S. Supreme Court.¹⁹ This notion arises from the U.S. Constitution, Article III, Section 2, cl. 2, which provides that "[i]n all cases * * * in which a State shall be a Party, the Supreme Court shall have original jurisdiction." However, Clause 2 merely allocates to the Court either original or appellate jurisdiction over the cases described in Clause 1, it does not create new jurisdictional authority. *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 464, 65 S.Ct. 716, 89 L.Ed. 1051 (1945). This limitation may be seen when reading the two full provisions together:

¹⁷ *E.g.*, *State v. Martz*, 5th Dist. No. 96 CA 27, 3 (June 9, 1997).

¹⁸ American Patriot Friends Network, *Get That Gold Fringe Off My Flag*, available at <http://www.apfn.org/apfn/flag.htm> (accessed Jan. 16, 2013).

¹⁹ *E.g.*, *South Euclid v. Carroll*, 8th Dist. No. 54245, 11 (Oct. 6, 1988).

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Constitution, Article III, Section 2, cl. 1-2. Thus federal jurisdiction, as created by Clause 1, does not extend to cases between a state and one of the state's own citizens, unless it contains an issue arising under the federal Constitution or laws. Therefore the U.S. Supreme Court does not possess original jurisdiction over these cases merely because a government entity is a party.

Correct sources of the court's jurisdiction

These fundamental misunderstandings regarding the sources of legitimacy and authority of the state courts can be addressed with a very basic examination of jurisdictional precepts. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute. * * * It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." (Citations omitted.) *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). In contrast, state courts are courts of general jurisdiction. *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 716 (6th Cir.2011).

Article IV, Section 1 of the Ohio Constitution, allows for the establishment of other courts inferior to the Supreme Court of Ohio "as may from time to time be established by law".

Article IV, Section 18 provides that judges of those courts created by the legislature will have the powers and jurisdiction assigned by law. Under Article IV, Section 15 these laws are created by a two-thirds vote of the state legislature. The legislature duly established the Franklin County Municipal Court and defined its territorial jurisdiction in R.C. 1901.01 and R.C. 1901.02.

R.C. Chapter 1901 established the municipal courts' subject matter jurisdiction. R.C. 1901.20 creates jurisdiction over municipal ordinance violations, misdemeanor criminal cases, and parking offenses. R.C. 1901.18(A) confers jurisdiction over actions at law or equity based on contract, actions for personal judgment or sale on personal property collateral, enforcement of judgments, actions in replevin, actions for forcible entry and detainer, public nuisance, vicious dogs, and domestic violence protection orders. This section also creates jurisdiction over environmental division cases. R.C. 1901.18(A)(2) confers subject matter jurisdiction concurrent with the court of common pleas over actions at law for recovery of money or personal property. R.C. 1901.18(A)(1) allows municipal courts subject matter jurisdiction concurrent with that of the county courts in trespass to property and boundary disputes under R.C. 1907.05.

Diplomatic immunity and other immunity arguments

Because of their beliefs regarding Fourteenth Amendment citizenship and their removal from it, sovereign citizens often argue that they are immune in some way from the operation of law, including the court's jurisdiction.²⁰ Nevertheless, the term "person" as used in any statute, unless otherwise specified, includes "an individual, corporation, business trust, estate, trust, partnership, and association." R.C. 1.59(C). Regarding criminal liability, R.C. 2901.11(A)(1) establishes that "a person is subject to criminal prosecution and punishment in this state if any of the following occur: The person commits an offense under the laws of this state, any element of

²⁰ *E.g.*, Common Law Court U.S.A., *Application For A Writ of Habeas Corpus Ad Subjiciendum*, available at <http://www.civil-liberties.com/commonlaw/CLCUSAindex.htm> (accessed Feb. 6, 2013) (a model filing that purports to revoke U.S. Citizenship). *See also South Euclid v. Carroll*, 8th Dist. No. 54245, 3 (Oct. 6, 1988).

which takes place in this state.” The Cleveland Municipal Court has responded to claims of immunity or alternative citizenship.

Defendant is a citizen of this state unless and until he establishes residency in another state, or in another, country. He is a citizen of the United States unless and until he undertakes those steps provided under federal law for revocation of citizenship, and, incidentally, subjects himself to deportation. Clearly, defendant wishes to have his cake of citizenship and eat it too. He wishes to live in this state, drive on its roads, walk on its paths, be protected by its Constitution, laws, courts and officers, and enjoy all of its rights and blessings, while shirking its responsibilities--including the responsibility to pay his lawful debts. This is repugnant to both the letter and spirit of the law, and this the court will not permit him to do. (Citations omitted.)

State v. Bob Manashian Painting, 121 Ohio Misc.2d 99, 2002-Ohio-7444, 782 N.E.2d 701, ¶ 28 (M.C.).

Due process

Substantial amounts of a court’s time may be taken up in ensuring that the due process rights of sovereign citizens are adequately protected. Because of their beliefs regarding the status of the nation’s history and laws, sovereign citizens sometimes invoke due process rights that do not exist. The legal sources for these supposed due process rights are often unstated or specious. Sovereign citizens may cite obsolete law such as the Northwest Ordinance, misapply valid law such as the UCC, or fabricate quotes from otherwise valid statutes or precedents.²¹ More importantly, the novel behavior of sovereign citizens commonly poses several troubling situations to which a Court must respond while preserving due process rights.

Disruptive behavior

The background beliefs of sovereign citizens often preclude cooperation with even the simplest requirements of civil or criminal proceedings. For instance, sovereign citizens sometimes refuse to speak, stand in the judge’s presence, or even enter the courtroom.

²¹ *E.g., South Euclid v. Carroll*, 8th Dist. No. 54245, 3-5 (Oct. 6, 1988).

A judge may handle consistent disruptions after warnings in at least three ways. “[I]n the case of particularly obstreperous defendants, it is permissible for the court to: (1) bind and gag the defendant; (2) cite the defendant for contempt; or (3) remove the defendant from the courtroom.” *State v. Chambers*, 10th Dist. No. 99AP-1308 , 9-10 (July 13, 2000), citing *Illinois v. Allen*, 397 U.S. 337, 343-344, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). In *Allen*, the court stressed that these three alternative strategies do not exhaust the permissible actions by a judge confronted with a disruptive litigant. Ohio’s criminal procedure rules also contemplate the absence of a criminal defendant if required to avoid disruption of the proceedings. Crim.R. 43(B). Preservation of the defendant’s rights may require utilization of technology such as closed-circuit television and provision for regular communication between the defendant and his attorney. However, “as soon as the defendant is willing to conduct himself consistently with decorum and respect inherent in the concept of courts and judicial proceedings”, a defendant must be allowed to return. *State v. Brown*, 5th Dist. No. 2003-CA-01, 2004-Ohio-3368, ¶ 75-78, citing *Allen* at 343.

Moreover, a litigant who has chosen to proceed pro se may forfeit the right to continue without counsel if the pattern of serious disruption continues despite warnings. *State v. Timson*, 10th Dist. No. 87AP-1212, 11 (May 25, 1989), citing *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), fn. 46. *Accord Cominsky v. Malner*, 11th Dist. No. 98-L-242, 16-17, (Dec. 29, 2000) (volatile manner and threats against attorneys and staff were sufficient to deny right to self-representation). The trial court may remove the defendant from the proceedings and allow standby counsel to represent the defendant until the court is satisfied that the defendant can resume his self-representation without risk of future disruption. *State v. Mizell*, 1st Dist. No. C-070750, 2008-Ohio-4907, ¶ 31.

Competency issues

The theories and obstructionist behavior of sovereign citizens sometimes raise the issue of competency.²² A competency hearing is constitutionally required if there are sufficient “indicia of incompetency” in the record to cast doubt on the defendant's competency to stand trial. *State v. Barton*, 108 Ohio St.3d 402, 2006-Ohio-1324, 844 N.E.2d 307, ¶ 57. Such indicia include “medical reports, specific references by defense counsel to irrational behavior, or the defendant's demeanor during trial.” *State v. Thomas*, 97 Ohio St.3d 309, 2002-Ohio-6624, 779 N.E.2d 1017, ¶ 37. In addition, R.C. 2945.37(B) provides that a competency hearing must be held if requested by the prosecution or the defense before trial, or after trial has commenced for good cause shown.

The competency status of a sovereign citizen is as variable as that of other defendants. A defendant is incompetent to stand trial if “the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense.” R.C. 2945.37(G). In particular, the court should ensure that experts performing competency evaluations are aware of the sovereign citizen phenomenon and take these subcultural beliefs into account in their evaluations. *State v. Sisouvanh*, 175 Wn.2d 607, 624-625 (Wash. 2012). Shared subcultural beliefs will not ordinarily serve as the basis for a

²² *E.g.*, *United States v. Sandoval*, 365 F. Supp.2d 319 (E.D.N.Y. 2005) (sovereign citizen defendant found incompetent based on his beliefs. Despite evidence that these were shared subcultural beliefs, the court found that the defendant's holding to those principals against his own interests moved beyond volitional behavior into incompetency); *United States v. Lupi*, M.D.Florida No. 8:05-cr-131-T-30MSS (September 5, 2007) (defendant found competent based on the government's submission of new information showing delusional beliefs were not unique and internal, but were common sovereign citizen beliefs); *State v. Freeman*, 7th Dist. No. 08 MA 81, 2009-Ohio-3052, ¶ 111-115 (behavior at trial was insufficient to merit a new competency evaluation).

finding of delusional thinking under current psychiatric diagnostic criteria. *Wood v. Thaler*, 787 F. Supp.2d 458, 490-497 (W.D. Tex. 2011).

Occasionally courts may also choose to evaluate the competency of a pro se litigant for self-representation. *State v. McQueen*, 10th Dist. No. 09AP-195, 2009-Ohio-6272, ¶ 17-18, citing *Indiana v. Edwards*, 554 U.S. 164, 174-177, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008). This inquiry requires a different, and possibly higher, standard of competency than competency to stand trial. *Edwards* at 176 (“an individual may well be able to satisfy *Dusky*’s mental competence standard, for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel.”). A court may engage in a competency evaluation and deny self-representation if a litigant with serious mental illness is found incompetent to proceed pro se, but courts are not required to engage in such evaluations. *State v. Griffin*, 10th Dist. No. 10AP-902, 2011-Ohio-4250, ¶ 20. Mere failure to maintain proper decorum is insufficient to render a litigant incompetent for self-representation. *Id.* at ¶ 23.

Refusal to plead

In accord with a refusal to make any agreement with the government, or because they maintain that they are not the actual individual charged, sovereign citizens sometimes refuse to plead to criminal charges.²³ If a criminal defendant refuses to plead, the court must enter a plea of not guilty on behalf of the defendant. Crim.R. 11(A).

Refusal to accept or waive jury trial

A sovereign citizen may refuse to either request a jury trial or waive the right to a jury trial. In such a case, the court has a duty to preserve the defendant’s right to a jury trial by entering a jury demand on the defendant’s behalf. *State v. Tate*, 10th Dist. No. 98AP-759, 15-16

²³ *E.g.*, *State v. Tate*, 10th Dist. No. 98AP-759, 8 (Apr. 20, 1999).

(Apr. 20, 1999). The defendant is thereafter free to withdraw the demand and waive his right to a jury trial at any time before the jury reaches a verdict. *Id.*

Refusal to utilize or cooperate with legal counsel

Sovereign citizens often refuse to accept representation by attorneys,²⁴ or experience crippling conflicts with appointed counsel. As mentioned above, the right to proceed pro se has limitations, and a court may refuse to allow self-representation if the behavior of a pro se litigant is seriously disruptive or the litigant is not competent to proceed pro se. Similarly, the constitutional right to counsel has defined limitations that a court may encounter more frequently in sovereign citizen cases. There is no right to appointed counsel in civil litigation. *Disciplinary Counsel v. Cotton*, 115 Ohio St.3d 113, 2007-Ohio-4481, 873 N.E.2d 1240, ¶ 15, fn. 6. In criminal cases, the defendant has no right to their choice of appointed counsel. *State v. Cowans*, 87 Ohio St.3d 68, 72, 717 N.E.2d 298 (1999). A defendant has no constitutional right to determine trial tactics and strategy of counsel. *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 150. Most importantly for sovereign citizen cases, there is no right to lay counsel. *State v. Tate*, 10th Dist. No. 98AP-759, 14-15 (Apr. 20, 1999).

Sovereign citizens often attempt to employ as a legal representative a person who is not licensed to practice law, sometimes denominated as an “attorney in fact” or “next friend”. The Supreme Court of Ohio is charged by the Ohio constitution with regulating the practice of law in this state. Ohio Constitution, Article IV, Section 2, (B)(1)(g). The Supreme Court of Ohio

²⁴ The original draft of the federal Bill of Rights included several amendments that were not eventually ratified by the states, including a draft Thirteenth Amendment. Sovereign citizens often believe that this amendment was actually ratified but thereafter suppressed by the de facto government. They believe that this amendment, which prohibited citizenship of those accepting titles of nobility or honors, prohibits the use of the term “esquire” by U.S. citizens. They believe that attorneys are therefore not citizens and are prohibited from holding office, and that use of an attorney may result in loss of sovereign status. Furthermore, they believe that this amendment prohibits immunity for judges and other government employees. See David Dodge, *The Missing 13th Amendment* (August 1, 1991), available at <http://freedom-school.com/truth/10/missing13th.htm> (accessed Jan. 16, 2013). Oddly, the actual U.S. Constitution, Article I, Section 10 prohibits states from issuing titles of nobility, removing the necessity to posit a “missing” amendment if the purpose is merely to impugn the legitimacy of attorneys.

restricts legal practice to attorneys regulated and licensed by the state. Gov.Bar R. VII(2). R.C. 4705.01 also prohibits lay representation. This restriction is in place “to protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

A sovereign citizen may produce a contract or power of attorney to show that a lay representative has been given the right to “stand in” for the sovereign citizen in their pro se capacity.²⁵ However, “[a] private contract cannot be used to circumvent a statutory prohibition based on public policy.” *Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 158, 724 N.E.2d 402 (2000). There is no right to representation by a layperson. *State v. Matthews*, 10th Dist. No. 85AP-59, 2 (June 13, 1985). Therefore, despite its name, “a general power of attorney does not grant authority to prepare and file papers in court on another person’s behalf. Such legal representation can be undertaken only in compliance with applicable licensure requirements.” *Lorain County Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, ¶ 18.

Unauthorized practice of law may also occur when filings are prepared or signed in a representative capacity by a lay person. ““The practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to * * * in general all advice to clients and all action taken for them in matters connected with the law.”” *Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, ¶ 7 (2005), quoting *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650 (1934), paragraph one of the syllabus.

²⁵ E.g., *Ohio State Bar Assn. v. Jackim*, 121 Ohio St.3d 33, 2009-Ohio-309, 901 N.E.2d 792, ¶ 5-9 (finding unauthorized practice occurs because of long-recognized distinctions between an “attorney-in-fact” created by a grant of power of attorney and an “attorney-at-law” licensed by the state to practice before the courts).

In criminal cases, the constitutional right to counsel mandates a very careful approach to the issue of legal counsel when it arises, because the sovereign citizen's abnormal responses to these normally routine matters can easily compromise a trial. Courts should specifically be alert to two issues: waiver of counsel, and the respective roles played by the defendant and any counsel or stand-by counsel present. These issues arise because of the unwillingness of many sovereign citizens to clearly indicate whether they wish to proceed with or without the representation of counsel. Courts should be prepared to clarify and enforce the choice between representation by an attorney and proceeding pro se.

A defendant may proceed pro se if he "knowingly, intelligently, and voluntarily waives his right to counsel." *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, ¶ 24, quoting *State v. Gibson*, 45 Ohio St.2d 366, 377, 345 N.E.2d 399 (1976). Nevertheless, a request for self-representation must be timely and unequivocal. *State v. Gordon*, 10th Dist. No. 03AP-281, 2004-Ohio-2644, ¶ 28-29, citing *State v. Vrabel*, 99 Ohio St.3d 184, 194, 2003-Ohio-3193, 790 N.E.2d 303 (request to proceed pro se was properly denied when made after voir dire, on the first day of trial evidence). Accord *United States ex rel. Maldonado v. Denno* (C.A.N.Y. 1965), 348 F.2d 12, 15 (once trial has started with defendant represented by counsel, the right to proceed pro se is sharply curtailed); *United States v. Martin* (C.A.6, 1994), 25 F.3d 293, 296 (courts may balance the right to proceed pro se against considerations of judicial delay).

A valid waiver must be "made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter." *Martin* at ¶ 40, quoting *Gibson* at 377, quoting *Von Moltke v. Gillies*, 332 U.S. 708, 724, 68 S. Ct. 316, 92 L. Ed. 309 (1948). Although Crim.R.

44(C) requires a written waiver for serious offenses, the Ohio Supreme Court has stated that if unable to do so, it is harmless error to instead create “substantial compliance” with this requirement, “by making a sufficient inquiry to determine whether the defendant fully understood and intelligently relinquished his or her right to counsel” as required for a valid waiver under *Gibson*. *Id.* at ¶ 38.

If a defendant does proceed pro se, trial courts may appoint standby counsel, sometimes referred to as shadow counsel, to “aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant’s self-representation is necessary.” *Id.* at ¶ 28, quoting *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) fn. 46. Standby counsel can be appointed “even over objection by the accused”. *Id.* at ¶ 28. However, while defendants have either the right to counsel or the right to proceed pro se, they do not have the right to both at the same time. *Id.* at ¶ 31-34. This “hybrid” representation is impermissible, and it is reversible error if a court allows a defendant to serve as co-counsel to an attorney representing him.

A cautionary example exists in *State v. Litten*, 174 Ohio App.3d 743, 2008-Ohio-313, 884 N.E.2d 654 (10th Dist.). In *Litten*, the court reviewed a case in which the defendant wished to proceed pro se with standby counsel. The trial court engaged in an extensive colloquy with the defendant regarding the ramifications of proceeding pro se. The court presented him with a written waiver of representation, but the defendant refused to sign, saying, “I will not sign any document to give up my rights.” The court therefore stated that the defendant would be represented by counsel, and the court would disregard filings not signed by counsel. However, as the case proceeded, although the attorney conducted voir dire and made trial objections, the defendant made opening and closing statements, made trial objections, and cross-examined the

witnesses. The defendant's conviction was reversed because he clearly acted as co-counsel, creating an impermissible "hybrid" representation.

In summary, courts must be very careful to engage in a thorough colloquy regarding the implications of waiver with any defendant that indicates a preference to proceed pro se. *State v. Suber*, 154 Ohio App.3d 681, 687, 2003-Ohio-5210, 798 N.E.2d 684 (10th Dist.), citing *State v. Fair*, 10th Dist. No. 96APA01-63, 7 (Sept. 17, 1996) (the court should conduct a "penetrating and comprehensive examination" of all of the circumstances of waiver). If the crime is a serious one, a written waiver should be secured if possible. The court may refuse to allow self-representation for reasons of serious disruptive behavior or competency. Finally, no matter which choice the defendant makes, the court should enforce the proper roles for the defendant and any attorney to avoid hybrid representation.

Demand for a bill of particulars

Sovereign citizens may demand a bill of particulars from the prosecution. Crim.R. 7(E) requires that upon timely request by the defendant, the prosecution must deliver a bill of particulars, "setting up specifically the nature of the offense charge and of the conduct of the defendant alleged to constitute the offense." *Accord State v. Fowler*, 174 Ohio St. 362, 364, 189 N.E.2d 133 (1963) (noting the right to a bill of particulars applies equally to misdemeanor and felony cases). However, sovereign citizens often use these requests to ask inappropriate legal questions, in the hope that the answers will show a lack of jurisdiction or illegitimate charges.²⁶

The purpose of a bill of particulars is "to elucidate or particularize the conduct of the accused alleged to constitute the charged offense. *** A bill of particulars is not designed to provide the accused with specifications of evidence or to serve as a substitute for discovery."

²⁶ *E.g.*, *State v. Tate*, 10th Dist. No. 98AP-759, fn. 2 (Apr. 20, 1999) (questions included inquiry into the military, martial law, or admiralty venue of the offense and whether the prosecution would admit that the Ohio river was a navigable waterway.)

(Citations omitted.) *State v. Sellards* (1985), 17 Ohio St.3d 169, 171, 478 N.E.2d 781. The prosecution is under no obligation to provide extraneous information or answer legal questions that are not properly required in a bill of particulars. *State v. Tate*, 10th Dist. No. 98AP-759, 6 (Apr. 20, 1999).

Substantive legal doctrines

Inalienable right to travel

The right to travel freely, both between states and within a state, is a fundamental right. *State v. Burnett*, 93 Ohio St.3d 419, 428, 755 N.E.2d 857 (2001). Sovereign citizens often assert this right as a defense against state requirements for driver licensing, insurance, license plate registration, and prohibitions on drunk driving.²⁷ However, the right to travel should not be “inappropriately convoluted” with the privilege of motor vehicle operation. *State v. Kelley*, 11th Dist. No. 1677, 24 (July 31, 1987). The U.S. Supreme Court has made it clear that “the use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent * * * to insure competence and due care on the part of its licensees and protect others using the highway.” *State v. Kelley*, 11th Dist. No. 1677, 23 (July 31, 1987) quoting *Reitz v. Mealey*, 314 U.S. 33, 36, 62 S. Ct. 24, 86 L. Ed. 21 (1941). These appropriate regulations include requirements for driver licensing and license plate registration. *Mt. Vernon v. Young*, 2006-Ohio-3319, ¶ 64.

Driving a motor vehicle on a public roadway is only one form of travel. [A requirement for driver licensing] does not prevent Appellant from engaging in interstate or intrastate travel by walking, running, taking a bus, a train, a bicycle or an airplane. Appellant is free to go anywhere he wishes. He is merely restricted to do so by utilizing forms of travel in which he is not the driver of a motor vehicle.

²⁷ *E.g. Mt. Vernon v. Young*, 5th Dist. No. 2005CA000045, 2006-Ohio-3319 (court held motor vehicle operation is a privilege, not a right).

State v. Stuber, 3d Dist. No. 1-02-13, 2002-Ohio-3394, ¶ 11. The state may also restrict travel through prohibitions on drunk driving. *State v. Tanner*, 15 Ohio St.3d 1, 5, 472 N.E.2d 689 (1984).

Application of UCC

In accord with their beliefs regarding the commercial nature of interactions with the government, sovereign citizens attempt to insert UCC provisions into their filings, claim rights of due process under the UCC, and utilize UCC section numbers and phrases in filings and on official documents.²⁸

The Uniform Commercial Code, codified in R.C. Title 13, is merely a codification of certain specific areas of commercial law, and is not applicable in criminal proceedings, family law proceedings, or tax proceedings. R.C. 1301.103. *State v. Blacker*, Dist. No. 10 CA 30, 2011-Ohio-570, ¶ 18 (UCC not applicable in criminal actions); *Wyper v. Wyper*, 6th Dist. No. L-99-1378, 7 (Dec. 15, 2000) (UCC not applicable, marriage and divorce not a simple matter of contract); *Callison v. Huelsman*, 168 Ohio App. 3d 471, 2006-Ohio-4395, 860 N.E.2d 829, ¶ 11 (2d Dist.) (property taxes).

Challenge to jurisdiction or refusal to answer because another entity, i.e. the straw man, has been named

One of the more convoluted theories advanced by sovereign citizens involves the notion of an alternate entity, often called the straw man, who is a bureaucratized version of themselves that the government has created.²⁹ Sovereign citizens often challenge actions against them on

²⁸ Phrases such as “Refuse for cause”, “Refusal for fraud”, “Notice of dishonor”, and “Notice of protest” may be printed or stamped on official documents. *E.g.*, *Muhammad v. United States Dep’t of the Treasury*, 167 Ohio Misc.2d 1, 2010-Ohio-6722, 962 N.E.2d 393, ¶ 6 (M.C.).

²⁹ The theory set forth is that the federal government at some point in its history went bankrupt, and to gain monetary resources, agreed to securitize birth certificates and sell them to the international banking community. While the details of the theory are hallucinatory, the gist is that a securitized entity has thus been created for every person with a birth certificate. Sovereign citizens believe that by manipulating their relationship with this straw man, they can gain advantages and escape obligations that would otherwise apply to them. *See e.g. Your straw man*

the basis that the state has no claim upon them, but only upon the straw man.³⁰ This refusal to accept personal jurisdiction may take the form of pleading “on behalf of the debtor” or “on behalf of the defendant”.³¹

A court need not delve into a discussion of the theories behind a defendant’s objection that he is not named in the complaint. A claim that the defendant is not the person charged should be supported by valid evidence. If the defendant does not produce such evidence, the objection or motion should be overruled. If the defendant shows that a misnomer exists, the civil and criminal rules of procedure provide for amendment. Under Civ.R. 15(C), a plaintiff can amend to correct a misnamed defendant, so long as the proper defendant has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense and he knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. In criminal cases, Crim.R. 7(D) similarly allows the indictment, information, or complaint to be amended to reflect a misnomer. *State v. Patrick*, 4th Dist. No. 94CA02, 5 (Sept. 8, 1994).

Allodial titles and land patents

Sovereign citizens may attempt to defeat claims against them by asserting that they possess a land patent or “allodial title” on their real property. Originally, land patents were a grant of land to a private individual by the government. Sovereign citizens may assert that a land patent brings them outside the jurisdiction of laws, contractual obligations, or taxes. If a legitimate original land patent does not exist, sovereign citizens sometimes fabricate their own

(Strawman) is an artificial person, available at <http://freedom-school.com/aware/your-straw-man-is-an-artificial-person.html> (accessed Jan. 18, 2013). From this theory arises the sovereign citizen practice of peculiar name spellings, and refusal to answer to a name spelled in any other way, to avoid joint identity with the straw man.

³⁰ *E.g.*, *State v. Bradford*, 4th Dist. No. 08CA3053, 2009-Ohio-1864, ¶12-17 (claiming court had no jurisdiction over him because the name in the indictment was in all caps and therefore named another entity).

³¹ *E.g.*, *State v. Freeman*, 2009-Ohio-3052, ¶ 94.

private “land patent.”³² The process of asserting a land patent is sometimes called “bringing the patent forward”³³ or styled as a “quiet title” action.³⁴

Privately created “land patents” have no significance, as stated by the U.S. District Court in *Hilgeford v. Peoples Bank*:

[T]he "land patent" attached to plaintiffs' various filings is a grant of a land patent from the plaintiffs to the plaintiffs. It is, quite simply, an attempt to improve title by saying it is better. The court cannot conceive of a potentially more disruptive force in the world of property law than the ability of a person to get "superior" title to land by simply filling out a document granting himself a "land patent" and then filing it with the recorder of deeds. Such self-serving, gratuitous activity does not, cannot and will not be sufficient by itself to create good title.

Hilgeford v. Peoples Bank, Portland, 607 F.Supp. 536, 538 (N.D.Ind.1985), as quoted by *Leach v. Bldg. & Safety Eng. Div.*, 993 F.Supp. 606, 607 (E.D.Mich.1998). Sovereign citizens may also create land patents to assert a right or priority in real property they do not actually own.³⁵

Occasionally, the owner of a property can trace title back to an original land patent granted by the federal government. The presence of a federal land patent by itself does not create federal jurisdiction, as is sometimes argued by sovereign citizens. *Leach* at 607, citing *Shultic v. McDougal*, 225 U.S. 561, 569-570, 32 S.Ct. 704, 556 L.Ed. 1205 (1912). There is also no authority for the proposition that property originally granted via land patent is exempt from state property law. “On the contrary, * * * the land thus conveyed was generally subject to state law thereafter.” *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 676, 94 S.Ct. 772, 39 L.Ed.2d 73 (1974) (J. Rehnquist, concurring). *Accord Fifth Third Bank v. Jones-Williams*, 10th Dist. No. 04AP-935, 2005-Ohio-4070, ¶ 36 (land patents are merely conveyances). Applicable

³² E.g., *Fifth Third Bank v. Jones-Williams*, 10th Dist. No. 04AP-935, 2005-Ohio-4070, ¶ 8.

³³ Alan Kreglow, *Can a Land Patent SAVE YOUR HOME? - Even if you are NOT in foreclosure?*, available at http://www.fourwinds10.net/siterun_data/government/corporate_u_s/news.php?q=1330367720 (accessed Jan. 17, 2013).

³⁴ E.g., *Hilgeford v. Peoples Bank, Portland*, 607 F. Supp. 536, 538 (N.D.Ind.1985).

³⁵ E.g., *Ali Salaam El v. Mortgage, Ltd.*, E.D.Mich. No. 2:08-cv-12330, 5-6 (July 6, 2009).

laws include state property taxes. *Jokinen v. Lake County Bd. of Revision*, 10th Dist. No. 87AP-713, 1-3 (Feb. 25, 1988); *Callison v. Huelsman*, 168 Ohio App. 3d 471, 2006-Ohio-4395, 860 N.E.2d 829, ¶ 9-10 (2d Dist.). Zoning regulations are also applicable. *Hynes v. Charter Twp. of Waterford*, 6th Cir. No. 97-1829, 5-7 (Oct. 6, 1998).

Tactical devices

Demand for a copy of the judge’s bond or oath of office

A sovereign citizen may demand to “see” a judge’s oath of office or performance bond, in the hopes that failure to produce such evidence will result in a case being thrown out or postponed, or a conviction overturned.³⁶ In general, the judges of this court are not required to post a performance bond. 22 Ohio Jurisprudence 3d, Courts and Judges, Section 38 (2012). Judges are required to take an oath of office as described in R.C. 3.23. A judge must then transmit a certificate of oath to the municipal court clerk and to the Supreme Court. R.C. 3.23.

Judge’s certificates of oath are available through a public records request, and have no bearing on the proceedings on the court’s docket. A party wishing to challenge the authority of a judge may not do so by collateral attack in another proceeding. *State v. Hill*, 2d Dist. No. 24966, 2012-Ohio-5210, ¶ 22, citing *Stiess v. State*, 103 Ohio St. 33, 41, 132 N.E. 85 (1921). “Those challenges must instead be made in an original action *in quo warranto* to determine whether the judge had a valid title to [the judge’s] office.” *Id.* Furthermore, “an irregularity in the appointment of a judge does not render [the] judicial actions void. A judge having ‘colorable’ authority is deemed a de facto judge with all the power and authority of a proper de jure judge.” (Citations omitted.) *State ex rel. Evans v. Shoemaker*, 10th Dist. No. 02AP-671, 2003-Ohio-757, ¶ 14. *Accord Spears v. DeWeese*, 102 Ohio St.3d 202, 2004-Ohio-2364, 808 N.E.2d 389, ¶ 5.

³⁶ *E.g., Spears v. DeWeese*, 102 Ohio St.3d 202, 2004-Ohio-2364, 808 N.E.2d 389, ¶ 5 (seeking to overturn conviction based on purported lack of timely oath of office).

“Common Law” courts and sham legal process

Some in the sovereign citizen movement have taken refuge from de facto government by creating extra-legal common law governments, such as common law courts and townships.³⁷ The “common law” concept they reference is different from the concept in standard legal practice. Instead, “common law” courts purport to re-establish the imagined de jure legal system, predominantly county-based, that protects citizens from the dominance of de facto state and federal governments.³⁸ Common law courts have been used to bring charges, including treason, against those who offend members of the movement. Trials in absentia have been held, resulting in sentences that include death.³⁹ More commonly, sovereign citizens issue documents ordering public officials or party opponents to pay large sums as punishment for a purported offense.⁴⁰

Courts must respond seriously to documents received from sham courts. Judges may be the first authorities to become aware of the use of sham legal process, intimidation, harassment, extortion, and conspiracy. Such actions should be reported to law enforcement.

Redemption

Sovereign citizens often believe that through a bureaucratic process of “redemption” they may attain control of the securitized value of the straw man described above. Redemption consists of registering certain papers with the government to notify the government and creditors

³⁷ Mark Pitcavage, *Common Law and Uncommon Courts: An Overview of the Common Law Court Movement*, available at <http://archive.adl.org/mwd/common.asp> (accessed Feb. 5, 2013).

³⁸ *E.g.*, Common Law Court U.S.A., *Litigation from the Common Law Court, U.S.A.*, available at <http://www.civil-liberties.com/commonlaw/changeCitizenship.htm> (accessed Feb. 6, 2013) (this website sets out rules of procedure for a Common Law court and model forms that may be filed).

³⁹ Mark Pitcavage, *Common Law and Uncommon Courts: An Overview of the Common Law Court Movement*, available at <http://archive.adl.org/mwd/common.asp> (accessed Feb. 5, 2013).

⁴⁰ *E.g.*, *BMI Fed. Credit Union v. Burkitt*, 10th Dist. No. 09AP-1024, 2010-Ohio-3027, ¶ 5-6 (“certificate of Foreign Judgment” filed with the court in which common law panel of notaries purported to enter judgment against appellant’s creditor for several million dollars); *State v. Roten*, 149 Ohio App.3d 182, 2002-Ohio-4488, 776 N.E.2d 551 (12th Dist.) (man presented public officials with documents “that purported to be judgments, or indictments, or instruments requiring payment of large sums if they did not release appellant's father or failed to respond”).

that you are a sovereign citizen and entitled to your “straw man” and its assets.⁴¹ Once a sovereign citizen redeems his straw man, he can access the “Treasury Direct Account” purportedly held by the US Treasury and containing the security assets.⁴² This account is then accessed by passing fraudulent bills of exchange, checks, and money orders (“sight drafts”).⁴³ People outside of the movement may become involved in passing these instruments as victims of sovereign citizen scams.⁴⁴ Courts should recognize and report attempts to utilize these fraudulent instruments to law enforcement.

Acceptance for value

In a related phenomenon, sovereign citizens who believe they have completed the redemption process may “accept for value” any document given to them, such as a bill, a subpoena, or a traffic ticket.⁴⁵ The citizen unilaterally assigns a value to their acceptance of the document, and those amounts are supposedly credited to the “Treasury Direct Account.” The sovereign citizen then pays bills and debts with fraudulent instruments drawing on this account.⁴⁶

Acceptance for value is also used as a harassment technique. If the entity that issued a document, for example, a police officer who issues a traffic ticket, does not credit the “account” with the funds demanded, the sovereign citizen may bring suit against the issuing entity for

⁴¹ *E.g.*, Redeem the Truth, *U.C.C. Redemption Services*, available at http://redeemthetruth.com/Redemption_Services.html (accessed Feb. 6, 2013) (offering fee-based instruction or assistance in filing the necessary forms).

⁴² *E.g.*, *In re Harrison*, 390 B.R. 590, (Bankr.N.D.Ohio 2008) (sovereign citizen attempted to discharge amounts owed in bankruptcy by redeeming straw man and accessing treasury account). *See also*, Barton Albert Buhtz, *UCC/Redemption Process*, available at <http://www.thesnipestrial.com/buhtz.htm> (accessed Feb. 6, 2013).

⁴³ *E.g.*, *State v. Lutz*, 8th Dist. 80241, 2003-Ohio-275, ¶ 3 (defendant attempted to pay for a Cadillac with a documentary draft, and when challenged regarding its legitimacy, advised the dealership to call the Secretary of the Treasury).

⁴⁴ Federal Bureau of Investigation, *Common Fraud Schemes*, available at <http://www.fbi.gov/scams-safety/fraud/fraud#rsbf> (accessed Feb. 5, 2013).

⁴⁵ *E.g.*, American Connection, *What Does Accepted for Value Mean?*, available at <http://mhkeehn.tripod.com/Accepted4Value.pdf> (accessed Feb. 6, 2013).

⁴⁶ *E.g.*, *BMI Fed. Credit Union v. Burkitt*, 10th Dist. No. 09AP-1024, 2010-Ohio-3027, ¶ 5-6. Freedom School, *Acceptance for Value – Reality Check*, available at <http://freedom-school.com/reading-room/update-on-discharge-of-debt-12-18-06.pdf> (accessed Feb. 6, 2013) (website document sets forth underlying theory of acceptance for value, and provides sample cover letters and wording to be used when doing so).

fraud, breach of contract, etc.⁴⁷ In addition, a sovereign citizen may file fraudulent IRS forms to report the “income” that the issuing entity supposedly received, equivalent to the “value” of the acceptance.⁴⁸ If sovereign citizens utilizing the acceptance for value scheme engage in any of the offenses associated with these activities, such as fraud, harassment, forgery, etc., courts should report the activities to law enforcement.

Fraudulent liens, bankruptcy filings, or tax filings against public officers and others

Sovereign citizens are well-known for malicious actions against people who incur their anger, particularly court and law enforcement officers. In addition to the fraudulent IRS filings discussed above, they may purport to be a creditor and file liens or begin involuntary bankruptcy proceedings against their perceived enemies.⁴⁹

Proactive strategies for addressing concerted “sovereign” activities

There are several strategies that a court may adopt to lessen the impact that sovereign citizens have on the court’s ability to conduct its business. If a litigant engages in extensive non-meritorious verbal objections, the court may require that all objections be submitted in writing. *State v. Lutz*, 8th Dist. No. 80241, 2003-Ohio-275, ¶ 134. A court may limit the time allowed for direct testimony. *Id.* at ¶ 142-144. If a litigant objects to a time limitation, a proffer of intended evidence can be made and considered by the court. *Id.* If it appears that the court’s business may be delayed by extensive argument or disruption by a litigant, to the extent allowable under the revised code and the rules of procedure, the court may choose to move that case to the end of the docket that day or continue it to a new day.

⁴⁷ *Id.*

⁴⁸ *E.g.*, *State v. Walls*, 8th Dist. No. 93942, 2010-Ohio-3317, ¶ 7 (inmate targeted judge and clerk by submitting false IRS income reporting forms).

⁴⁹ *E.g.*, *State v. Lutz*, 8th Dist. No. 80241, 2003-Ohio-275, ¶ 46 (criminal defendant threatened to file involuntary bankruptcy against the complainant).

Courts may also engage in education and enforcement efforts to reduce the volume of frivolous and harassing activities conducted by sovereign citizens. Law enforcement agencies have increased efforts to detect the criminal offenses that are often committed as a part of sovereign citizen activities.⁵⁰ Courts should be mindful of these efforts and engage in a concerted effort to report criminal activity when appropriate. Specifically, courts are in a strategic position to identify the use of sham legal process, intimidation, harassment, extortion, conspiracy, and patterns of corrupt activity, and they must establish a policy to take seriously any attempt to threaten officers of the court. Other frequently seen offenses may include forgery, tampering with records, identity fraud, and securing writings by deception. The court should also utilize its own powers to punish contempt, sanction frivolous conduct under Civ.R. 11, and report the unauthorized practice of law.

Finally, the court may consider adopting prophylactic measures to decrease the effectiveness of sovereign citizen tactics. The court should learn to recognize sovereign citizen filings, and reject filings that violate state or local rules, or that are obviously bogus.⁵¹ A court may communicate with the prosecutor's office and others who have been targeted by sovereign citizen tactics to remind them of the ability to bring suits to assign vexatious litigator status.⁵² Judges' organizations such as the Ohio Judicial Conference may target frivolous and harassing

⁵⁰ *E.g.*, Heidi Beirich, *Two North Carolina Detectives Build Program for Dealing with 'Sovereign Citizens'*, available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/fall/dealing-with-sovereigns> (accessed Feb. 19, 2013) (detailing comprehensive efforts by Greensboro's police intelligence squad to monitor and counteract local sovereign citizen activities).

⁵¹ Charles Taylor, *Counties on the alert for 'sovereign citizens'*, available at <http://www.naco.org/newsroom/countynews/Current%20Issue/8-8-11/Pages/Countiesonthealertfor%E2%80%98sovereigncitizens%E2%80%99.aspx> (accessed Feb. 20, 2013); Jeff Collins, *Sovereign citizens inspire rise in real estate filings*, available at <http://www.oeregister.com/articles/sovereign-378636-county-mortgage.html> (accessed Feb. 20, 2013).

⁵² *See* R.C. 2323.52. Vexatious litigator status may even be appropriately assigned based on a litigant's behavior in a single action. *Roo v. Sain*, 10th Dist. No. 04AP-881, 2005-Ohio-2436, ¶ 18.

actions by suggesting appropriate legislation, such as criminal sanctions for filing of false liens and documents.

If you have any questions or require additional assistance, please contact me by e-mail at briscoek@fcmclerk.com, by telephone at 5849, or in person on the 9th Floor. I am generally available Monday through Friday from 9:00 – 3:00.

V. Appendix

RULE VII. UNAUTHORIZED PRACTICE OF LAW

Section 1. Board on the Unauthorized Practice of Law.

(A) There shall be a Board on the Unauthorized Practice of Law of the Supreme Court consisting of thirteen commissioners appointed by the Court. Eleven commissioners shall be attorneys admitted to the practice of law in Ohio and two commissioners shall be persons not admitted to the practice of law in any state. The term of office of each commissioner shall be three years, beginning on the first day of January next following the commissioner's appointment. Appointments to terms commencing on the first day of January of any year shall be made prior to the first day of December of the preceding year. A commissioner whose term has expired and who has an uncompleted assignment as a commissioner shall continue to serve for the purpose of that assignment until the assignment is concluded before the Board, and the successor commissioner shall take no part in the proceedings of the Board concerning the assignment. No commissioner shall be appointed for more than two consecutive three-year terms. Vacancies for any cause shall be filled for the unexpired term by the Justice who appointed the commissioner causing the vacancy or by the successor of that Justice. A commissioner appointed to a term of fewer than three years to fill a vacancy may be reappointed to not more than two consecutive three-year terms.

(B) The Board shall each year elect an attorney commissioner as chair and vice-chair. A commissioner may be reelected as chair, but shall not serve as chair for more than two consecutive one-year terms. A commissioner may be reelected as vice-chair, but shall not serve as vice-chair for more than two consecutive one-year terms. The Administrative Director or his or her designee shall serve as the Secretary of the Board. The chair, vice-chair, or the Secretary may execute administrative documents on behalf of the Board. The Secretary may execute any other documents at the direction of the chair or vice-chair.

(C) Commissioners shall be reimbursed for expenses incurred in the performance of their official duties. Reimbursement shall be paid from the Attorney Services Fund.

(D) Initial appointments for terms beginning January 1, 2005, shall be as follows:

(1) One attorney and one nonattorney shall be appointed for terms ending December 31, 2005. Commissioners appointed pursuant to this division shall be eligible for reappointment to two consecutive three-year terms.

(2) Two attorneys shall be appointed for terms ending December 31, 2006. Commissioners appointed pursuant to this division shall be eligible for reappointment to two consecutive three-year terms.

(3) One attorney shall be appointed for a term ending December 31, 2007. A commissioner appointed pursuant to this division shall be eligible for reappointment to one three-year term.

(4) Thereafter, appointments shall be made pursuant to division (A) of this section.

(E) For the initial appointment beginning January 1, 2011, one nonattorney shall be appointed for a term ending December 31, 2013. A commissioner appointed pursuant to this division shall be eligible for reappointment to one three-year term.

Section 2. Jurisdiction of Board.

(A) The unauthorized practice of law is:

(1) The rendering of legal services for another by any person not admitted to practice in Ohio under Rule I of the Supreme Court Rules for the Government of the Bar unless the person is:

(a) Certified as a legal intern under Gov. Bar R. II and rendering legal services in compliance with that rule;

(b) Granted corporate status under Gov. Bar R. VI and rendering legal services in compliance with that rule;

(c) Certified to temporarily practice law in legal services, public defender, and law school programs under Gov. Bar R. IX and rendering legal services in compliance with that rule;

(d) Registered as a foreign legal consultant under Gov. Bar R. XI and rendering legal services in compliance with that rule;

(e) Granted permission to appear pro hac vice by a tribunal in a proceeding in accordance with Gov. Bar R. XII and rendering legal services in that proceeding;

(f) Rendering legal services in accordance with Rule 5.5 of the Ohio Rules of Professional Conduct (titled "Unauthorized practice of law; multijurisdictional practice of law").

(2) The rendering of legal services for another by any person:

(a) Disbarred from the practice of law in Ohio under Gov. Bar R. V;

(b) Designated as resigned or resigned with disciplinary action pending under former Gov. Bar R. V (prior to September 1, 2007);

(c) Designated as retired or resigned with disciplinary action pending under Gov. Bar R. VI.

(3) The rendering of legal services for another by any person admitted to the practice of law in Ohio under Gov. Bar R. I while the person is:

- (a) Suspended from the practice of law under Gov. Bar R. V;
- (b) Registered as an inactive attorney under Gov. Bar R. VI;
- (c) Summarily suspended from the practice of law under Gov. Bar R. VI for failure to register;
- (d) Suspended from the practice of law under Gov. Bar R. X for failure to satisfy continuing legal education requirements;
- (e) Registered as retired under former Gov. Bar R. VI (prior to September 1, 2007).

(4) Holding out to the public or otherwise representing oneself as authorized to practice law in Ohio by a person not authorized to practice law by the Supreme Court Rules for the Government of the Bar or Prof. Cond. R. 5.5.

For purposes of this section, “holding out” includes conduct prohibited by divisions (A)(1) and (2) and (B)(1) of section 4705.07 of the Revised Code.

(B) The Board shall receive evidence, preserve the record, make findings, and submit recommendations concerning complaints of unauthorized practice of law except for complaints against persons listed in division (A)(3) of this section, which shall be filed in accordance with the disciplinary procedure set forth in Gov. Bar R. V.

(C) The Board may issue informal, nonbinding advisory opinions to any regularly organized bar association in this state, Disciplinary Counsel, or the Attorney General in response to prospective or hypothetical questions of public or great general interest regarding the application of this rule and the unauthorized practice of law. The Board shall not issue advisory opinions in response to requests concerning a question that is pending before a court or a question of interest only to the person initiating the request. All requests for advisory opinions shall be submitted, in writing, to the Secretary with information and details sufficient to enable adequate consideration and determination of eligibility under this rule.

The Secretary shall acknowledge the receipt of each request for an advisory opinion and forward copies of each request to the Board. The Board shall select those requests that shall receive an advisory opinion. The Board may decline to issue an advisory opinion and the Secretary promptly shall notify the requesting party. An advisory opinion approved by the Board shall be issued to the requesting party over the signature of the Secretary.

Advisory opinions shall be public and distributed by the Board.

(D) *Referral of Procedural Questions to Board.* In the course of an investigation, the chair of the unauthorized practice of law committee of a bar association, Disciplinary Counsel, or the Attorney General may direct a written inquiry regarding a procedural question to the Board chair or vice-chair. The inquiry shall be sent to the Secretary. The chair or vice-chair and the Secretary shall consult and direct a response.

Section 3. Referral for Investigation.

The Board may refer to the unauthorized practice of law committee of the appropriate bar association, Disciplinary Counsel, or the Attorney General any matters coming to its attention for investigation as provided in this rule.

Section 4. Application of Rule.

(A) All proceedings arising out of complaints of the unauthorized practice of law shall be brought, conducted, and disposed of in accordance with the provisions of this rule except for complaints against persons listed in Section 2(A)(3) of this rule, which shall be filed in accordance with the disciplinary procedure set forth in Gov. Bar R. V. A bar association that permits the membership of any attorney practicing within the geographic area served by that association without reference to the attorney's area of practice, special interest, or other criteria and that satisfies other criteria that may be established by Board regulations may establish an unauthorized practice of law committee. Members of bar association unauthorized practice of law committees shall be attorneys admitted to the practice of law in Ohio. Unauthorized practice of law committees, Disciplinary Counsel, and the Attorney General may share information with each other regarding investigations and prosecutions. This information shall be confidential and not subject to discovery or subpoena. Unauthorized practice of law committees may conduct joint investigations and prosecutions of unauthorized practice of law matters with each other, Disciplinary Counsel, and the Attorney General.

(B) The unauthorized practice of law committee of a bar association or Disciplinary Counsel shall investigate any matter referred to it or that comes to its attention and may file a complaint pursuant to this rule. The Attorney General may also file a complaint pursuant to this rule. The Board, Disciplinary Counsel, the president, secretary, or chair of the unauthorized practice of law committee of a bar association, and the Attorney General may call upon an attorney or judge in Ohio to assist in any investigation or to testify in any hearing before the Board as to any matter as to which he or she would not be bound to claim privilege as an attorney. No attorney or judge shall neglect or refuse to assist in any investigation or to testify.

(C) By the thirty-first day of January of each year, each bar association, Disciplinary Counsel, and the Attorney General shall file with the Board, on a form provided by the Board, a report of its activity on unauthorized practice of law complaints, investigations, and other matters requested by the Board. The report shall include all activity for the preceding calendar year.

(D) For complaints filed more than sixty days prior to the close of the report period on which a disposition has not been made, the report shall include an expected date of disposition and a statement of the reasons why the investigation has not been concluded.

Section 5. The Complaint; Where Filed; By Whom Signed.

(A) A complaint shall be a formal written complaint alleging the unauthorized practice of law by one who shall be designated as the respondent. The original complaint shall be filed in the office of the Secretary and shall be accompanied by thirteen copies plus two copies for each respondent named in the complaint. A complaint shall not be accepted for filing unless it is signed by one or more attorneys admitted to the practice of law in Ohio who shall be counsel for the relator. The complaint shall be accompanied by a certificate in writing signed by the president, secretary or chair of the unauthorized practice of law committee of any regularly organized bar association, Disciplinary Counsel, or the Attorney General, who shall be the relator, certifying that counsel are authorized to represent relator and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute a representation that, after investigation, relator believes probable cause exists to warrant a hearing on the complaint and shall constitute the authorization of counsel to represent relator in the action as fully and completely as if designated by order of the Supreme Court with all the privileges and immunities of an officer of the Court. The Attorney General may serve as co-relator with any regularly organized bar association or Disciplinary Counsel.

(B) Upon the filing of a complaint with the Secretary, the relator shall forward a copy of the complaint to Disciplinary Counsel, the unauthorized practice of law committee of the Ohio State Bar Association, and any local bar association serving the county or counties from which the complaint emanated, except that the relator need not forward a copy of the complaint to itself.

Section 5a. Interim Cease and Desist Order

(A)(1) Upon receipt of substantial, credible evidence demonstrating that an individual or entity has engaged in the unauthorized practice of law and poses a substantial threat of serious harm to the public, Disciplinary Counsel, the unauthorized practice of law committee of any regularly organized bar association, or the Attorney General, which shall be referred to as the relator, shall do both of the following:

(a) Prior to filing a motion for an interim cease and desist order, make a reasonable attempt to provide the individual or entity, who shall be referred to as respondent, with notice, which may include notice by telephone, that a motion requesting an interim order that the respondent cease and desist engaging in the unauthorized practice of law will be filed with the Supreme Court and the Board.

(b) Simultaneously file a motion with the Supreme Court and the Board requesting that the Court order respondent to immediately cease and desist engaging in the unauthorized practice of law. The relator shall include, in its motion, proposed findings of fact, proposed conclusions of law, and other information in support of the requested order.

Evidence relevant to the requested order shall be attached to or filed with the motion. The motion shall include a certificate detailing the attempts made by relator to provide advance notice to the respondent of relator's intent to file the motion. The motion also shall include a certificate of service on the respondent at the most recent address of the respondent known to the relator. Upon the filing of a motion with the Court and the Board, proceedings before the Court shall be automatically stayed and the matter shall be deemed to have been referred by the Court to the Board for application of this rule.

(2) After the filing of a motion for an interim cease and desist order the respondent may file a memorandum opposing the motion in accordance with Rule XIV of the Rules of Practice of the Supreme Court of Ohio. The respondent shall attach or file with the memorandum any rebuttal evidence and simultaneously file a copy with the Board. If a memorandum in opposition to the motion is not filed, the stay of proceedings before the Supreme Court shall be automatically lifted and the Court shall rule on the motion pursuant to division (C) of this section.

(B) Upon the filing of a memorandum opposing the motion for an interim cease and desist order, the Board chair or the chair's designee ("commissioner") shall set the matter for hearing within seven days. A designee shall be an attorney member of the Board. Upon review of the filings of the parties, the commissioner will determine whether an oral argument or an evidentiary hearing shall be held based upon the existence of any genuine issue of material fact. Within seven days after the close of hearing, the commissioner shall file a report, including the transcript of hearing and the record, with the Supreme Court recommending whether or not an interim cease and desist order should be issued. Upon the filing of the commissioner's report, the stay of Supreme Court proceedings shall be automatically lifted.

(C) Upon consideration of the commissioner's report required by division (B) of this section, or if no memorandum in opposition is filed, the Supreme Court may enter an order that the respondent cease and desist engaging in the unauthorized practice of law, pending final disposition of proceedings before the Board, predicated on the conduct posing a substantial threat of serious harm to the public, or may order other action as the Court considers appropriate.

(D)(1) The respondent may request dissolution or modification of the cease and desist order by filing a motion with the Supreme Court. The motion shall be filed within thirty days of entry of the cease and desist order, unless the respondent first obtains leave of the Supreme Court to file a motion beyond that time. The motion shall include a statement and all available evidence as to why the respondent no longer poses a substantial threat of serious harm to the public. A copy of the motion shall be served by the respondent on the relator. The relator shall have ten days from the date the motion is filed to file a response to the motion. The Supreme Court promptly shall review the motion after a response has been filed or after the time for filing a response has passed.

(2) In addition to the motion allowed by division (D)(1) of this section, the respondent may file a motion requesting dissolution of the interim cease and desist order, alleging that one hundred eighty days have elapsed since the entry of the order and the relator has failed to file

with the Board a formal complaint predicated on the conduct that was the basis of the order. A copy of the motion shall be served by the respondent on the relator. The relator shall have ten days from the date the motion is filed to file a response to the motion. The Supreme Court promptly shall review the motion after a response has been filed or after the time for filing a response has passed.

(E) The Rules of Practice of the Supreme Court of Ohio shall apply to interim cease and desist proceedings filed pursuant to this section.

(F) Upon the entry of an interim cease and desist order or an entry of dissolution or modification of such order, the Clerk of the Supreme Court shall mail certified copies of the order as provided in Section 19(E) of this rule.

Section 5b. Settlement of Complaints; Consent Decrees

(A) As used in this section:

(1) A “settlement agreement” is a voluntary written agreement entered into between the parties without the continuing jurisdiction of the Board or the Supreme Court.

(2) A “consent decree” is a voluntary written agreement entered into between the parties, approved by the Board, and approved and ordered by the Supreme Court. The consent decree is the final judgment of the Supreme Court and is enforceable through contempt proceedings before the Court.

(3) A “proposed resolution” is a proposed settlement agreement or a proposed consent decree.

(B) The proposed resolution of a complaint filed pursuant to Section 5 of this rule, prior to adjudication by the Board, shall not be permitted without the prior review of the Board, the Supreme Court, or both. Parties contemplating the proposed resolution of a complaint shall file a motion to approve settlement agreement or motion to approve consent decree, whichever is applicable, with the Secretary. The motion shall be accompanied by:

(1) A proposed settlement agreement or a proposed consent decree that is signed by the respondent, respondent’s counsel, if the respondent is represented by counsel, and the relator and contains a stipulation of facts and waiver of notice and hearing as stated in Section 7(H) of this rule;

(2) A memorandum in support of the proposed resolution that demonstrates the resolution complies with the factors set forth in division (C) of this section and makes a recommendation concerning civil penalties based upon the factors set forth in Section 8(B) of this rule and Regulation 400(F) of the Regulations Governing Procedure on Complaints and Hearings Before the Board on the Unauthorized Practice of Law;

- (3) An itemized statement of the relator's costs or a statement that no costs have been incurred.

The voluntary dismissal of a complaint filed pursuant to Civ. R. 41(A) in conjunction with a proposed resolution is subject to the requirements of this section.

(C) The Board shall determine whether a proposed resolution shall be considered and approved by either the Board or the Supreme Court based on the following factors:

- (1) The extent the proposed resolution:
 - (a) Protects the public from future harm and remedies any substantial injury;
 - (b) Resolves material allegations of the unauthorized practice of law;
 - (c) Contains an admission by the respondent to material allegations of the unauthorized practice of law as stated in the complaint and a statement that the admitted conduct constitutes the unauthorized practice of law;
 - (d) Involves public policy issues or encroaches upon the jurisdiction of the Supreme Court to regulate the practice of law;
 - (e) Contains an agreement by the respondent to cease and desist the alleged activities;
 - (f) Furthers the stated purposes of this rule;
 - (g) Designates whether civil penalties are to be imposed in accordance with Section 8 of this rule;
 - (h) Assigns the party responsible for costs, if any.
- (2) The extent the motion to approve settlement agreement or consent decree and any accompanying documents comply with the requirements of division (B) of this section;
- (3) Any other relevant factors.

(D) Review by the Board

(1) Upon receipt of a proposed resolution, the Board chair shall direct the assigned hearing panel to prepare a written report setting forth its recommendation for the acceptance or rejection of the proposed resolution. The Board shall vote to accept or reject the proposed resolution. Upon a majority vote to accept a settlement agreement, an order shall be issued by

the Board chair or vice-chair dismissing the complaint. Upon a majority vote to accept a consent decree, the Board shall prepare and file a final report with the Supreme Court in accordance with division (E)(1) of this section.

(2) The refiling of a complaint previously resolved as a settlement agreement pursuant to this section shall reference the prior settlement agreement, and proceed only on the issue of the unauthorized practice of law. The case shall be presented on the merits and any previous admissions made by the respondent to allegations of conduct may be offered into evidence.

(E) Review by the Court

(1) After approving a proposed consent decree, the Board shall file an original and twelve copies of a final report and the proposed consent decree with the Clerk of the Supreme Court. A copy of the report shall be served upon all parties and counsel of record. Neither party shall be permitted to file an objection to the final report.

(2) A consent decree may be approved or rejected by the Supreme Court. If a consent decree is approved, the Court shall issue the appropriate order.

(3) A motion to show cause alleging a violation of a consent decree and any memorandum in opposition shall be filed with both the Supreme Court and the Board. The Board, upon receipt of the motion and memorandum in opposition, by panel assignment shall conduct either an evidentiary hearing or oral argument hearing on the motion, and by a majority vote of the Board submit a final report to the Court with findings of fact, conclusions of law, and recommendations on the issue of whether the consent decree was violated. Neither party shall be permitted to file objections to the Board's report without leave of Court.

(F) Rejection of a Proposed Resolution

(1) A complaint will proceed on the merits pursuant to this rule if a proposed resolution is rejected by either the Board or the Supreme Court. Upon rejection by the Board, an order shall be issued rejecting the proposed resolution and remanding the matter to the hearing panel for further proceedings. Upon rejection by the Court, an order shall be issued remanding the matter to the Board with or without instructions.

(2) A rejected proposed resolution shall not be admissible or otherwise used in a subsequent proceeding before the Board.

(3) No objections or other appeal may be filed with the Supreme Court upon a rejection by the Board of a proposed resolution.

(4) Any panel member initially considering a proposed resolution and voting with the Board on the rejection of the proposed resolution may proceed to hear the original complaint.

(G) The parties may consult with the Board through the Secretary concerning the terms of a proposed resolution.

(H) All settlement agreements approved by the Board and all consent decrees approved by the Supreme Court shall be recorded for reference by the Board, bar association unauthorized practice of law committees, and Disciplinary Counsel.

(I) This section shall not apply to the resolution of matters considered by an unauthorized practice of law committee, Disciplinary Counsel, or the Attorney General before a complaint is filed pursuant to Section 5 of this rule.

Section 6. Duty of the Board Upon Filing of the Complaint; Notice to Respondent.

The Secretary shall send a copy of the complaint by certified mail to respondent at the address indicated on the complaint with a notice of the right to file, within twenty days after the mailing of the notice, an original and thirteen copies of an answer and to serve copies of the answer upon counsel of record named in the complaint. Extensions of time may be granted, for good cause shown, by the Secretary.

Section 7. Proceedings of the Board after Filing of the Complaint.

(A) *Hearing Panel.*

(1) After respondent's answer has been filed, or the time for filing an answer has elapsed, the Secretary shall appoint a hearing panel consisting of three commissioners chosen by lot. At least two members of the hearing panel shall be attorney commissioners. The Secretary shall designate one of the commissioners chair of the panel, except that a nonattorney commissioner shall not be chair of the panel. The Secretary shall serve a copy of the entry appointing the panel on the respondent, relator, and all counsel of record.

(2) A majority of the panel shall constitute a quorum. The panel chair shall rule on all motions and interlocutory matters. The panel chair shall have a transcript of the testimony taken at the hearing, and the cost of the transcript shall be paid from the Attorney Services Fund and taxed as costs.

(3) Upon reasonable notice and at a time and location set by the panel chair, the panel shall hold a formal hearing. Requests for continuances may be granted by the panel chair for good cause. The panel may take and hear testimony in person or by deposition, administer oaths, and compel by subpoena the attendance of witnesses and the production of books, papers, documents, records, and materials.

(B) *Motion for Default.* If no answer has been filed within twenty days of the answer date set forth in the notice to respondent of the filing of the complaint, or any extension of the answer date, relator shall file a motion for default. Prior to filing, relator shall make reasonable efforts to contact respondent.

A motion for default shall contain at least all of the following:

- (1) A statement of the effort made to contact respondent and the result;
- (2) Sworn or certified documentary *prima facie* evidence in support of the allegations of the complaint;
- (3) Citations of any authorities relied upon by relator;
- (4) A statement of any mitigating factors or exculpatory evidence of which relator is aware;
- (5) A statement of the relief sought by relator;
- (6) A certificate of service of the motion on respondent at the address stated on the complaint and at the last known address, if different.

The hearing panel appointed pursuant to division (A) of this section shall rule on the motion for default. If the motion for default is granted by the panel, the panel shall prepare a report for review by the Board pursuant to division (E) of this section. If the motion is denied, the hearing panel shall proceed with a formal hearing pursuant to division (A) of this section.

The Board chair or vice-chair may set aside a default entry, for good cause shown, and order a hearing before the hearing panel at any time before the Board renders its decision pursuant to division (F) of this section.

(C) *Authority of Hearing Panel; Dismissal.* If at the end of evidence presented by relator or of all evidence, the hearing panel unanimously finds that the evidence is insufficient to support a charge or count of unauthorized practice of law, or the parties agree that the charge or count should be dismissed, the panel may order that the complaint or count be dismissed. The panel chair shall give written notice of the action taken to the Board, the respondent, the relator, all counsel of record, Disciplinary Counsel, the unauthorized practice of law committee of the Ohio State Bar Association, and the bar association serving the county or counties from which the complaint emanated.

(D) *Referral by the Panel.* If the hearing panel is not unanimous in its finding that the evidence is insufficient to support a charge or count of unauthorized practice of law, the panel may refer its findings of fact and recommendations for dismissal to the Board for review and action by the full Board. The panel shall submit to the Board its findings of fact and recommendation of dismissal in the same manner as provided in this rule with respect to a finding of unauthorized practice of law pursuant to division (E) of this section.

(E) *Finding of Unauthorized Practice of Law; Duty of Hearing Panel.* If the hearing panel determines, by a preponderance of the evidence, that respondent has engaged in the unauthorized

practice of law, the hearing panel shall file its report of the proceedings, findings of facts and recommendations with the Secretary for review by the Board. The report shall include the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with the proceedings.

(F) *Review by Entire Board.* After review, the Board may refer the matter to the hearing panel for further hearing or proceed on the report of the prior proceedings before the hearing panel. After the final review, the Board may dismiss the complaint or find that the respondent has engaged in the unauthorized practice of law. If the complaint is dismissed, the dismissal shall be reported to the Secretary, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the hearing panel.

(G) *Finding of Unauthorized Practice of Law; Duty of Board.* If the Board determines, by a preponderance of the evidence, that the respondent has engaged in the unauthorized practice of law, the Board shall file the original and twelve copies of its final report with the Clerk of the Supreme Court, and serve a copy of the final report upon all parties and counsel of record, Disciplinary Counsel, the unauthorized practice of law committee of the Ohio State Bar Association, and the bar association of the county or counties from which the complaint emanated. The final report shall include the Board's findings, recommendations, a transcript of testimony, if any, an itemized statement of costs, recommendation for civil penalties, if any, and a certificate of service listing the names and addresses of all parties and counsel of record.

(H) *Hearing on Stipulated Facts.* A stipulation of facts and waiver of notice and hearing, mutually agreed and executed by relator and respondent, or counsel, may be filed with the Board prior to the date set for formal hearing. If a stipulation and waiver are filed, the parties are not required to appear before the hearing panel for a formal hearing, and the hearing panel shall render its decision based upon the pleadings, stipulation, and other evidence admitted.

The stipulation of facts must contain sufficient information to demonstrate the specific activities in which the respondent is alleged to have engaged and to enable the Board to determine whether respondent has engaged in the unauthorized practice of law.

The waiver of notice and hearing shall specifically state that the parties waive the right to notice of and appearance at the formal hearing before the hearing panel.

Section 8. Costs; Civil Penalties.

(A) *Costs.* As used in Section 7(G) of this rule, "costs" includes both of the following:

(1) The expenses of relator, as described in Section 9 of this rule, that have been reimbursed by the Board;

(2) The direct expenses incurred by the hearing panel and the Board, including, but not limited to, the expense of a court reporter and transcript of any hearing before the hearing panel.

“Costs” shall not include attorney’s fees incurred by the relator.

(B) *Civil Penalties.* The Board may recommend and the Supreme Court may impose civil penalties in an amount up to ten thousand dollars per offense. Any penalty shall be based on the following factors:

- (1) The degree of cooperation provided by the respondent in the investigation;
- (2) The number of occasions that unauthorized practice of law was committed;
- (3) The flagrancy of the violation;
- (4) Harm to third parties arising from the offense;
- (5) Any other relevant factors.

Section 9. Expenses.

(A) *Reimbursement of Direct Expenses.* A bar association and the Attorney General may be reimbursed for direct expenses incurred in performing the obligations imposed by this rule. Reimbursement shall be limited to costs for depositions, transcripts, copies of documents, necessary travel expenses for witnesses and volunteer attorneys, witness fees, subpoenas, the service of subpoenas, postal and delivery charges, long distance telephone charges, and compensation of investigators and expert witnesses authorized in advance by the Board. There shall be no reimbursement for the costs of the time of other bar association or Attorney General personnel or attorneys in discharging these obligations.

An application for reimbursement of expenses, together with proof of the expenditures, shall be filed with the Secretary. Upon approval by the Board, reimbursement shall be made from the Attorney Services Fund.

(B) *Annual Reimbursement of Indirect Expenses.* A bar association may apply to the Board prior to the first day of February each year for partial reimbursement of other expenses necessarily and reasonably incurred during the preceding calendar year in performing their obligations under this rule. The Board, by regulation, shall establish criteria for determining whether expenses under this section are necessary and reasonable. The Board shall deny reimbursement for any expense for which a bar association seeks reimbursement on or after the first day of May of the year immediately following the calendar year in which the expense was incurred. Expenses eligible for reimbursement are those specifically related to unauthorized practice of law matters and include the following:

- (1) The personnel costs for the portion of an employee’s work that is dedicated to this area;

(2) The costs of bar counsel retained pursuant to a written agreement with the unauthorized practice of law committee;

(3) Postal and delivery charges;

(4) Long distance telephone charges;

(5) Local telephone charges and other appropriate line charges included, but not limited to, per call charges;

(6) The costs of dedicated telephone lines;

(7) Subscription to professional journals, law books, and other legal research services and materials related to unauthorized practice of law;

(8) Organizational dues and educational expenses related to unauthorized practice of law;

(9) All costs of defending a lawsuit relating to unauthorized practice of law and that portion of professional liability insurance premiums directly attributable to the operation of the committees in performing their obligations under this rule;

(10) The percentage of rent, insurance premiums not reimbursed pursuant to division (B)(9) of this section, supplies and equipment, accounting costs, occupancy, utilities, office expenses, repair and maintenance, and other overhead expenses directly attributable to the operation of the committees in performing their obligations under this rule, as determined by the Board and provided that no bar association shall be reimbursed in excess of three thousand five hundred dollars per calendar year for such expenses. Reimbursement shall not be made for the costs of the time of other bar association personnel, volunteer attorneys, depreciation, or amortization. No bar association shall apply for reimbursement or be entitled to reimbursement for expenses that are reimbursed pursuant to Gov. Bar R. V(3)(D).

(C) *Quarterly Reimbursement of Certain Indirect Expenses.* In addition to applying annually for reimbursement pursuant to division (B) of this section, a bar association may apply quarterly to the Board for reimbursement of the expenses set forth in divisions (B)(1) and (2) of this section that were necessarily and reasonably incurred during the preceding calendar quarter. Quarterly reimbursement shall be submitted in accordance with the following schedule:

Reimbursement for the months of:	Due by:
January, February, and March	May 1
April, May, and June	August 1
July, August, and September	November 1
October, November, and December	February 1 (with annual reimbursement request)

Any expense that is eligible for quarterly reimbursement, but that is not submitted on a quarterly reimbursement application, shall be submitted no later than the appropriate annual reimbursement application pursuant to division (B) of this section and shall be denied by the Board if not timely submitted. The application for quarterly reimbursement shall include an affidavit with documentation demonstrating that the unauthorized practice of law committee incurred the expenses set forth in divisions (B)(1) and (2) of this section.

(D) *Audit.* Expenses incurred by bar associations and reimbursed under divisions (A), (B), and (C) of this section may be audited at the discretion of the Board or the Supreme Court and paid out of the Attorney Services Fund.

(E) *Availability of Funds.* Reimbursement under divisions (A), (B), and (C) of this section is subject to the availability of moneys in the Attorney Services Fund.

Section 10. Manner of Service.

Whenever provision is made for the service of any complaint, notice, order, or other document upon a respondent or relator in connection with any proceeding under this rule, service may be made upon counsel of record for the party personally or by certified mail.

If service of any document by certified mail is refused or unclaimed, the Secretary may make service by ordinary mail evidenced by a certificate of mailing. Service shall be considered complete when the fact of mailing is entered in the record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery.

Section 11. Quorum of Board.

A majority of the commissioners shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board.

Section 12. Power to Issue Subpoenas.

In order to facilitate any investigation and proceeding under this rule, upon application by Disciplinary Counsel, the unauthorized practice of law committee of any regularly organized bar association, respondent, relator, or the Attorney General, the Secretary, the Board chair or vice-chair, and the hearing panel chair may issue subpoenas and cause testimony to be taken under oath before Disciplinary Counsel, the unauthorized practice of law committee of any regularly organized bar association, the Attorney General, a Board hearing panel, or the Board. All subpoenas shall be issued in the name and under the seal of the Supreme Court and shall be signed by the Secretary, the Board chair or vice-chair, or the hearing panel chair and served as provided by the Rules of Civil Procedure. Fees and costs of all subpoenas shall be provided from the Attorney Services Fund and taxed as costs.

The refusal or neglect of a person subpoenaed or called as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of the Supreme Court and may be punished accordingly.

Section 13. Depositions.

The Secretary, the Board chair or vice-chair, and the hearing panel chair may order testimony of any person to be taken by deposition within or without this state in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

Section 14. Conduct of Hearing.

The hearing panel shall follow the Rules of Civil Procedure and Rules of Evidence wherever practicable, unless a provision of this rule or Board hearing procedures and guidelines provide otherwise. The panel chair shall rule on evidentiary matters. All evidence shall be taken in the presence of the hearing panel and the parties except where a party is absent, is in default, or has waived the right to be present. The hearing panel shall receive evidence by sworn testimony and may receive additional evidence as it determines proper. Any documentary evidence to be offered shall be served upon the adverse parties or their counsel and the hearing panel at least thirty days before the hearing, unless the parties or their counsel otherwise agree or the hearing panel otherwise orders. All evidence received shall be given the weight the hearing panel determines it is entitled after consideration of objections.

Section 15. Records.

The Secretary shall maintain permanent public records of all matters processed by the Board and the disposition of those matters.

Section 16. Board May Prescribe Regulations.

Subject to the prior approval of the Supreme Court, the Board may adopt regulations not inconsistent with this rule.

Section 17. Rules to Be Liberally Construed.

Amendments to any complaint, notice, answer, objections, or report may be made at any time prior to final order of the Board. The party affected by the amendment shall be given reasonable opportunity to meet any new matter presented by the amendment. This rule and regulations relating to investigations and proceedings involving complaints of unauthorized practice of law shall be liberally construed for the protection of the public, the courts, and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations and complaints whether the conduct involved occurred prior or subsequent to the enactment or amendment of this rule.

Section 18. Records and Proceedings Public.

All records, documents, proceedings, and hearings of the Board relating to investigations and complaints pursuant to this rule shall be public, except that deliberations by a hearing panel and the Board shall not be public.

Section 19. Review by Supreme Court of Ohio; Orders; Costs.

(A) *Show Cause Order.* After the filing of a final report of the Board, the Supreme Court shall issue to respondent an order to show cause why the report of the Board shall not be confirmed and an appropriate order granted. Notice of the order to show cause shall be served by the Clerk of the Supreme Court on all parties and counsel of record by certified mail at the address provided in the Board's report.

(B) *Response to Show Cause Order.* Within twenty days after the issuance of an order to show cause, the respondent or relator may file objections to the findings or recommendations of the Board and to the entry of an order or to the confirmation of the report on which the order to show cause was issued. The objections shall be accompanied by a brief in support of the objections and proof of service of copies of the objections and the brief on the Secretary and all counsel of record. Objections and briefs shall be filed in the number and form required for original actions by the Rules of Practice of the Supreme Court of Ohio, to the extent such rules are applicable.

(C) *Answer Briefs.* Answer briefs and proof of service shall be filed within fifteen days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required for original actions by the Rules of Practice of the Supreme Court of Ohio, to the extent such rules are applicable.

(D) *Supreme Court Proceedings.*

(1) After a hearing on objections, or if objections are not filed within the prescribed time, the Supreme Court shall enter an order as it finds proper. If the Supreme Court finds that respondent's conduct constituted the unauthorized practice of law, the Court shall issue an order that does one or more of the following:

(a) Prohibits the respondent from engaging in any such conduct in the future;

(b) Requires the respondent to reimburse the costs and expenses incurred by the Board and the relator pursuant to this rule;

(c) Imposes a civil penalty on the respondent. The civil penalty may be imposed regardless of whether the Board recommended imposition of the penalty pursuant to Section 8(B) of this rule and may be imposed for an amount greater or less than the amount recommended by the Board, but not to exceed ten thousand dollars per offense.

(2) Payment for costs, expenses, sanctions, and penalties imposed under this rule shall be deposited in the Attorney Services Fund established under Gov. Bar R. VI, Section 8.

(E) *Notice.* Upon the entry of any order pursuant to this rule, the Clerk of the Supreme Court shall mail certified copies of the entry to all parties and counsel of record, the Board, Disciplinary Counsel, and the Ohio State Bar Association.

(F) *Publication.* The Supreme Court reporter shall publish any order entered by the Supreme Court under this rule in the *Ohio Official Reports*, the *Ohio State Bar Association Report*, and in a publication, if any, of the local bar association in the county in which the complaint arose. The publication shall include the citation of the case in which the order was issued. Publication also shall be made in a local newspaper having the largest general circulation in the county in which the complaint arose. The publication shall be in the form of a paid legal advertisement, in a style and size commensurate with legal advertisements, and shall be published three times within the thirty days following the order of the Supreme Court. Publication fees shall be assessed against the respondent as part of the costs.

[Not analogous to former Rule VII, effective October 20, 1975; amended effective April 13, 1977; November 6, 1978; April 25, 1983; July 1, 1983; November 30, 1983; June 6, 1988; January 1, 1989; January 1, 1990; January 1, 1992; January 1, 1993; January 1, 1995; June 16, 2003; January 1, 2005; November 1, 2007; January 1, 2008; September 1, 2008; September 1, 2010; January 1, 2011; January 1, 2013.]

RULE VIII. Clients' Security Fund.

Section 1. Establishment of Fund.

(A) There shall be a Clients' Security Fund of Ohio consisting of amounts transferred to the fund pursuant to this rule and any other funds received in pursuance of the fund's objectives. The purpose of the fund is to aid in ameliorating the losses caused to clients and others by defalcating members of the bar acting as attorney or fiduciary, and this rule shall be liberally construed to effectuate that purpose. No claimant or other person shall have any legal interest in the fund or right to receive any portion of the fund, except for discretionary disbursements directed by the Board of Commissioners of the Clients' Security Fund of Ohio, all payments from the fund being a matter of grace and not right.

(B) The Supreme Court shall provide appropriate and necessary funding for the support of the Clients' Security Fund from the Attorney Registration Fund. The Clerk of the Supreme Court of Ohio shall transfer funds to the Clients' Security Fund at the direction of the Court.

Section 2. Board of Commissioners of the Clients' Security Fund of Ohio; Administrator; Chair.

(A) **Creation; Members.** There is hereby created a Board of Commissioners of the Clients' Security Fund of Ohio consisting of seven members appointed by the Supreme Court, at least one of whom shall be a person not admitted to the practice of law in Ohio or any other state. The Court shall designate one member as chair and one member as vice-chair, who shall hold such office for the length of their term. All terms shall be for a period of three years commencing on the first day of January. No member shall serve more than two consecutive three-year terms. The Board shall have its principal office in Columbus.

(B) **Administrator.** There shall be an Administrator of the Board of Commissioners of the Clients' Security Fund. The Court shall appoint and fix the salary of the Administrator. If the Administrator is an attorney admitted to practice in Ohio, he or she shall not engage in the private practice of law while serving in that capacity. The Administrator shall be the secretary to the Board. The Administrator shall appoint, with the approval of the Court, staff as required to satisfactorily perform the duties imposed by this rule. The Court shall fix the compensation of personnel employed by the Administrator.

(C) **Powers of the Board.** The Board shall do all of the following:

- (1) Investigate applications by claimants for disbursement from the fund;
- (2) Conduct hearings relative to claims;
- (3) Authorize and establish the amount of disbursements from the fund in accordance with this rule;

(4) Adopt rules of procedure and prescribe forms not inconsistent with this rule.

(D) Powers of the chair.

(1) The chair of the Board shall be the trustee of the fund and shall hold, manage, disburse, and invest the fund, or any portion of the fund, in a manner consistent with the effective administration of this rule. All investments shall be made by the chair upon the approval of a majority of the Board. Investments shall be limited to short-term insured obligations of the United States government, deposits at interest in federally insured banks or federally insured savings and loan institutions located in the state of Ohio, and in no-front-end-load money market mutual funds consisting exclusively of direct obligations of the United States Treasury, and repurchase agreements relating to direct Treasury obligations, with the interest or other income on investments becoming part of the fund. Annually and at additional times as the Supreme Court may order, the chair shall file with the Supreme Court a written report reviewing in detail the administration of the fund during the year. The fund shall be audited biennially by the Auditor of State at the same time as the Supreme Court's regular biennial audit. The Supreme Court may order an additional audit at any time, certified by a certified public accountant licensed to practice in Ohio. Audit reports shall be filed with the Board, which shall send a copy to the Supreme Court. The report shall be open to public inspection at the offices of the Board.

(2) The chair and vice-chair of the Board shall file a bond annually with the Supreme Court in an amount fixed by the Supreme Court.

(3) The chair of the Board shall have the power and duty to render decisions on procedural matters presented by the Board and call additional meetings of the Board when necessary.

(4) The vice-chair of the Board shall exercise the duties of the chair during any absence or incapacity of the chair.

(E) Meetings. The Board shall meet at least two times a year, in Columbus and at other times and locations as the chair designates.

(F) Expenses. Expenses for the operation of the Board as authorized by this rule shall be paid from the fund, including bond premiums, the cost of audits, personnel, office space, supplies, equipment, travel, and other expenses of Board members.

Section 3. Eligible Claims.

For purposes of this rule, an eligible claim shall be one for the reimbursement of losses of money, property, or other things of value that meet all of the following requirements:

(A) The loss was caused by the dishonest conduct of an attorney admitted to the practice of law in Ohio when acting in any of the following capacities:

- (1) As an attorney;
- (2) In a fiduciary capacity customary to the practice of law;
- (3) As an escrow agent or other fiduciary, having been designated as an escrow agent of fiduciary by a client in the matter or a court of this state in which the loss arose or having been selected as a result of a client-attorney relationship.

(B) The conduct was engaged in while the attorney was admitted to the practice of law in Ohio and acting in his capacity as an attorney admitted to the practice of law in Ohio, or in any capacity described in division (A) of this section.

(C) On or after the effective date of this rule, the attorney been disbarred, suspended, or publicly reprimanded, has resigned, or has been convicted of embezzlement or misappropriation of money or other property and the claim is presented within one year of the occurrence or discovery of the applicable event. The taking of any affirmative action by the claimant against the attorney within the one-year period shall toll the time for filing a claim under this rule until the termination of that proceeding. In the event disciplinary or criminal proceedings, or both, can not be prosecuted because the attorney can not be located or is deceased, the Board may consider a timely application if the claimant has complied with the other conditions of this rule.

(D) The claim is not covered by any insurance or by any fidelity or similar bond or fund, whether of the attorney, claimant, or otherwise.

(E) The claim is made directly by or on behalf of the injured client or his personal representative or, if a corporation, by or on behalf of itself or its successors in interest.

(F) The loss was not incurred by any of the following:

- (1) The spouse, children, parents, grandparents or siblings, partner, associate, employee, or employer of the attorney, or a business entity controlled by the attorney. The Board may, in its discretion, recognize such a claim in cases of extreme hardship or special or unusual circumstances.

- (2) An insurer, surety or bonding agency or company, or any entity controlled by any of the foregoing;

- (3) Any governmental unit.

(G) A payment from the fund, by way of subrogation or otherwise, will not benefit any entity specified in division (F) of this section.

Section 4. Dishonest Conduct.

For purposes of this rule, dishonest conduct consists of wrongful acts or omissions by an attorney in the nature of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value.

Section 5. Maximum Recovery.

The Board shall determine the maximum amount of reimbursement to be awarded to a claimant. No award shall exceed seventy-five thousand dollars.

Section 6. Conditions of Payment; Attorney Fees.

(A) As a condition to payment, the claimant shall execute any interest, take any action, or enter into any agreements as the Board requires, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the Board in prosecuting claims or charges against any person. Any amounts recovered by the Board through an action shall be deposited with the fund.

(B) No attorney fees may be paid from the proceeds of an award made to a claimant under authority of this rule. The Board may allow an award of attorney fees to be paid out of the fund if it determines that the attorney's services were necessary to prosecute a claim under this rule and upon other conditions as the Board may direct.

Section 7. Claims Procedure.

(A) **Forms.** The Board shall provide forms for the presentation of claims to Disciplinary Counsel, all bar associations, and to any other person upon request. The Board shall create a complaint form for the use of claimants that shall include, but not be limited to the name and address of the claimant, the name and last known address of the attorney against whom the claim is made, the date of the alleged wrongful act, a clear and simple statement describing the wrongful act, the amount of the claimed loss, and a statement as to whether other affirmative action has been taken as described in Section 3(C) of this rule. A claim shall be considered as filed on the date the Board receives written notification of the claim, even in the absence of the prescribed form. However, completion of the formal application may subsequently be required by the Board.

(B) **Notice.** Upon receipt of a claim against an attorney, the secretary of the Board shall notify the attorney by certified mail, when possible, of the fact of its filing. All parties shall be notified of any action taken by the Board with respect to a claim.

(C) Investigation; Cooperation With Disciplinary Counsel and Local Bar Associations.

(1) The Board shall investigate or cause to be investigated all claims received under this rule.

(2) At the request of the Board, Disciplinary Counsel and local bar associations authorized to investigate attorney discipline complaints under Gov. Bar R. V shall make available to the Board all reports of investigations and records of formal proceedings in their possession with respect to any attorney whose conduct is alleged to amount to dishonest conduct under this rule. Where the information sought is the subject of a pending investigation or disciplinary proceeding required by Gov. Bar R. V to be confidential, disclosure shall not be required until the termination of the investigation or disciplinary proceeding, or both.

(3) Where the Board receives a claim that is ineligible because disciplinary proceedings have not been undertaken, the Board shall hold the claim in abeyance, forward a copy of the claim to Disciplinary Counsel for further action, and advise the claimant that these procedures have been undertaken and that disciplinary action is a prerequisite to eligibility under this rule. If filed within the time limits prescribed in Section 3(C) of the rule, the claim shall be considered timely regardless of the time it is held in abeyance pending the outcome of disciplinary proceedings. Disciplinary Counsel shall advise the Board as to the disposition of the complaint.

(D) Hearings; Subpoenas.

The Board may conduct hearings for the purpose of resolving factual issues. Upon determining that any person is a material witness to the determination of a claim made against the fund, the Board, chair, or vice-chair shall have authority to issue a subpoena requiring the person to appear and testify or produce records before the Board. All subpoenas shall be issued in the name and under the Seal of the Supreme Court, signed by the chair, vice-chair, or Administrator, and served as provided by law.

(E) Confidentiality.

All claims filed under this rule and all records obtained by the Board pursuant to this rule shall be confidential. If an award is made under this rule, the award, the name of the claimant, the name of the attorney, and the nature of the claim may be disclosed.

(F) Consideration of Claims.

The Board, in its sole discretion, but on the affirmative vote of at least four members, shall determine the eligible claims that merit reimbursement from the fund and the amount, time, manner, conditions, and order of payments of reimbursement. No award may include interest from the date of the award. In making each determination, the Board shall consider, among other factors set forth in this rule, all of the following:

(1) The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims that are likely to be presented;

(2) The amount of the claimant's loss as compared with the amount of losses sustained by other eligible claimants;

(3) The degree of hardship suffered by the claimant as a result of the loss;

(4) The degree of negligence, if any, of the claimant that may have contributed to the loss.

(5) Any special or unusual circumstances.

To preserve the fund, the board may adopt rules implementing a sliding scale whereby eligible claims are compensable at fixed percentages of the total loss but not to exceed the maximum award allowed by this rule.

The determination of the Board shall be final.

[Not analagous to former Rule VIII, effective January 1, 1976; amended effective June 15, 1981; November 17, 1982; July 1, 1983; May 13, 1985; July 29, 1987; October 1, 1989; January 1, 1990; January 1, 1993; December 1, 1996; October 20, 1997; April 13, 1998; August 1, 2003.]

**REGULATIONS GOVERNING PROCEDURE ON COMPLAINTS AND
HEARINGS BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE
OF LAW**

UPL Reg. 100 Title, Authority and Application

(A) These regulations shall be known as the Regulations Governing Procedure on Complaints and Hearings Before the Board on the Unauthorized Practice of Law and shall be cited as “UPL Reg. ____.”

(B) The following regulations are adopted by the Board on the Unauthorized Practice of Law pursuant to Gov.Bar R. VII(16) of the Rules for the Government of the Bar of Ohio, with the prior approval of the Supreme Court of Ohio.

(C) Pursuant to Gov.Bar R. VII(14), the Board applies the Ohio Rules of Civil Procedure and Rules of Evidence whenever practicable, unless a provision of Gov.Bar R. VII, these regulations, or Board procedure provide otherwise. Local rules of court are not applicable to matters before the Board.

UPL Reg. 200 Case Management; Practice and Procedure

201 Case Schedule

(A) After assignment of the Hearing Panel, the Secretary of the Board in consultation with the Panel Chair shall issue a case scheduling order to all parties or their counsel as set forth in this regulation. The case schedule shall be served upon the parties no more than seven days after the time to plead or otherwise defend the complaint has elapsed. The case schedule shall at a minimum establish deadlines for certain case events and may be adjusted by the Panel Chair or for good cause shown:

Assignment of Hearing Panel	0
Hearing Date	266 days after assignment
Initial Telephone Status Conference	30 days after assignment
Initial Disclosure of Witnesses	80 days after assignment, or upon request of either party
Discovery Cut-off	60 days before hearing
Pre-Hearing Statement/Briefs	40 days before hearing

(B) At the discretion of the Panel Chair, the following events may also be established:

- Dispositive Motion Deadline
- Motions on Preliminary or Procedural Issues Deadline
- Decisions on Motions
- Stipulations of Facts and/or Law
- Supplemental Disclosure of Witnesses
- Final Pre-Hearing Conference

(C) Any complaint filed by an Unauthorized Practice of Law Committee or the Disciplinary Counsel shall state whether the relator is aware that an underlying complainant or individual is seeking a private remedy pursuant to R.C. 4705.07. Upon receipt of the complaint, the Secretary shall designate the case accordingly and inform the Panel Chair, who will have the discretion to accelerate the case management schedule and hearing date.

202 Motions; Dispositive Motions

(A) Upon the filing of a motion and unless ordered otherwise by the Panel Chair, any memorandum in opposition shall be filed within twenty-one days after the filing of the motion. The response shall be served upon the Secretary and all adverse parties or their counsel. Unless directed otherwise by the Panel Chair, any reply to the memorandum in opposition shall be filed within ten days of the filing of the memorandum in opposition. Three days shall be added to the prescribed time periods when the motion or responsive memoranda are served by mail.

(B) Any motion, including but not limited to a motion for summary judgment, a motion for judgment on the pleadings, and a motion to dismiss, that seeks to determine the merits of any claim or defense as to any or all parties shall be considered a dispositive motion. A voluntary dismissal under Civ.R. 41 is not a dispositive motion for purposes of this regulation. All dispositive motions shall be filed no later than the date specified in the case schedule. Pursuant to Civ.R. 56(A), leave is granted in all cases to file summary judgment motions between the time of service of the complaint and the dispositive motion date, unless the Panel Chair dictates otherwise by setting a different date. If a dispositive motion date was not established in the initial case schedule, leave of the Panel must be obtained pursuant to Civ.R. 56(A). Parties shall file their summary judgment motion at the earliest practical date during the pendency of the case.

(C) The Panel Chair may order the simultaneous filing of motions and memoranda in opposition without provision for reply.

203 Pre-hearing Procedure

203.1 Pre-hearing Statements, Motions, and Briefs

(A) In all cases pending hearing, all parties shall prepare and serve upon the Secretary, with a copy to all opposing counsel, a final pre-hearing statement forty days prior to the assigned hearing date. The final pre-hearing statement shall at a minimum contain:

- (1) A brief statement of the facts and identification of claims and defenses;
- (2) The factual and legal issues which the cause presents;
- (3) For relator, its position on whether the facts and circumstances of the case warrant imposition of a civil penalty and if the relator seeks the imposition of a civil penalty, the relator shall specify the amount of the civil penalty it is requesting and identify the unique facts and circumstances that it believes warrant imposition of the civil penalty requested; and,
- (4) For respondent, an indication of whether there is opposition to any request for imposition of a civil penalty and the existence of evidence in mitigation;
- (5) The estimated days required for hearing.

(B) Parties shall separately prepare and serve upon the Secretary, with a copy to all opposing counsel, forty days prior to the assigned hearing date:

- (1) Stipulations of fact or law, if any;
- (2) A listing of all witnesses with a brief summary of expected testimony; a copy of all available opinions of all persons who may be called as expert witnesses;
- (3) A listing of all exhibits expected to be offered into evidence, except exhibits to be used only for impeachment, illustration, or rebuttal.

(C) Forty days prior to the hearing date, all other motions (other than dispositive motions), pleadings, filings or hearing briefs intended to be offered at the hearing shall be served upon the Secretary and opposing parties. A response to any motion, brief or other filing shall be served according to UPL Reg. 202(A). The required pre-hearing statement may be included as part of any hearing brief.

(D) All documentary evidence to be offered at hearing shall be served upon the Secretary, adverse parties or their counsel at least thirty days before hearing pursuant to Gov.Bar R. VII(14).

(E) There is reserved to each party, upon application to the Panel and for good cause shown, the right at the hearing to:

- (1) offer additional exhibits, file additional pleadings;
- (2) supplement the list of witnesses to be called; and,
- (3) call such rebuttal witnesses as may be necessary, without prior notice to opposing parties.

204 Certificate of Registration

After filing a complaint alleging the unauthorized practice of law, relator shall produce a Certificate from the Supreme Court of Ohio, Office of Attorney Registration, indicating whether any responsive party to the complaint is not admitted to practice law in the State of Ohio, and serve a copy upon all respondents, counsel of record, and the Secretary of the Board, and the original shall be offered as an exhibit at hearing and filed with the Board by the relator at the conclusion of hearing.

205 Final Pre-hearing Conferences

(A) No later than sixty days before hearing, a party may file a request for a pre-hearing conference with the Panel. The request may be granted by the Panel Chair. The Panel Chair may also establish a pre-hearing conference date consistent with the initial case scheduling order. A pre-hearing conference with the parties shall at a minimum attempt to accomplish the following objectives:

- (1) Simplification of the issues;
- (2) Necessity of amendment to the pleadings;
- (3) Resolution of outstanding discovery issues;
- (4) Identification of anticipated witnesses;
- (5) The possibility of obtaining:
 - (i) stipulations of fact or law;
 - (ii) stipulations of the admissibility of exhibits;
- (6) Such other matters as may expedite the hearing;
- (7) Confirmation of the final hearing date and venue.

(B) At the discretion of the Panel Chair, a pre-hearing conference may be held by telephone, and may be continued from day to day. Counsel and parties should be prepared to discuss the matters contained in this regulation. At the conclusion of the pre-hearing conference, the Panel Chair may enter an order setting forth the action taken and the agreements reached, which order shall govern the subsequent course of proceedings.

206 Electronic Filing (Reserved)

207 Continuances

(A) The continuance of a hearing date is a matter within the discretion of the Panel for good cause shown. No party shall be granted a continuance of a hearing date without a written motion from the party or counsel stating the reason for the continuance. The motion shall be filed with the Secretary no later than ten days before the date set for hearing. If the motion is not granted by the Panel Chair, the cause shall proceed as originally scheduled.

(B) When a continuance is requested due to the unavailability of a witness at the time scheduled for hearing, the Panel may consider the feasibility of permitting testimony pursuant to Civ.R. 32.

208 Subpoenas and Orders for Testimony

(A) To compel the testimony of a witness at the hearing, requests for the issuance of subpoenas pursuant to Gov.Bar R. VII(12) shall be made in writing and filed with the Secretary no later than ten days before the date on which a complaint has been set for hearing.

(B) To compel the testimony of a witness whose testimony will be offered at the hearing via deposition pursuant to Civ.R. 32, requests for orders for testimony pursuant to Gov.Bar R.VII(13) or the issuance of subpoenas pursuant to Gov.Bar R. VII(12) shall be made in writing and filed with the Secretary no later than thirty days before the date on which a complaint has been set for hearing.

209 Post-hearing Procedure of the Panel and Board

(A) A Panel Report shall be submitted to the Secretary within sixty days of the filing of the transcript for consideration at the next regularly scheduled meeting of the Board. The Secretary, at the request of the Panel Chair, may extend the date for the filing of the Panel Report with the Board.

(B) The Final Report of the Board shall be filed with the Court by the Secretary no later than thirty days after the conclusion of the Board's review, approval and adoption of whole or part of the Panel's report. After consideration by the Board, the Chair may be granted the authority by the Board to prepare and file the Final Report.

(C) Failure by the Board to meet the time guidelines set forth in these regulations shall not be grounds for dismissal of the complaint.

UPL Reg. 300 Regulation for the Issuance of Advisory Opinions

300.1 Procedure for Issuance

(A) Pursuant to Gov.Bar R. VII(2)(C) of the Supreme Court Rules for the Government of the Bar of Ohio, the Board on the Unauthorized Practice of Law may issue informal, non-binding Advisory Opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio regarding the unauthorized practice of law and issues implicated by R.C. 4705.01, 4705.07 and 4705.99. Requests for an Advisory Opinion may be submitted to the Board by Disciplinary Counsel or an Unauthorized Practice of Law Committee of a Local or State Bar Association.

(B) The Chair of the Board shall appoint three or more members of the Board to serve on an Advisory Opinion Subcommittee. The Advisory Opinion Subcommittee is a regular standing subcommittee of the Board. The subcommittee shall meet prior to each regularly scheduled Board meeting. The Chair will appoint one subcommittee member to serve as Chair of the Advisory Opinion Subcommittee. Each subcommittee member shall serve for a period of one year from the date of appointment and shall be eligible for re-appointment by the Chair.

(C) Requests for an Advisory Opinion shall be submitted in writing to the Secretary of the Board on the Unauthorized Practice of Law. The request for Advisory Opinion shall be in writing and state in detail to the extent practicable the operative facts upon which the request for Opinion is based, with information and detail sufficient to enable adequate consideration and determination of eligibility under these regulations. The request shall contain the name and address of the requester. A summary of the rules, opinions, statutes, case law and any other authority which the inquirer has already consulted concerning the questions raised should also be included in the request. A letter acknowledging the receipt of the request will be sent to the requester.

(D) The procedure for review of a request for Advisory Opinion shall be as follows:

(1) The Advisory Opinion Subcommittee shall review all requests for Advisory Opinion submitted by Disciplinary Counsel or an Unauthorized Practice of Law Committee of a Local or State Bar Association.

(2) The Advisory Opinion Subcommittee shall, within its discretion, accept or decline a request for an Advisory Opinion.

(3) In making such determination, the subcommittee shall be governed by Gov.Bar R. VII(2)(C) and respond only to prospective or hypothetical questions of public or great general interest regarding the application of Gov.Bar R. VII and the unauthorized practice of law. The subcommittee shall decline requests that concern a question that is pending before the Court, decided by the Court, or a question of interest only to the person initiating the request. If the subcommittee determines that adequate authority already exists to answer the inquiry posed, the requester will be advised of the applicable authority and no Opinion will be issued.

(4) If any member of the subcommittee requests the declination of the Advisory Opinion be considered by the full Board, such request will be presented to the full Board for consideration at the next business meeting. If the subcommittee unanimously declines a request for Advisory Opinion, such determination shall be final.

(E) The requester of an Advisory Opinion will be notified of the Board's determination to accept or decline a request.

(F) If a request for Advisory Opinion is accepted for consideration, the subcommittee will complete the process of researching, drafting and review as expeditiously as possible, preferably within two to six months after selection of the request. The subcommittee shall be empowered to request and accept the voluntary services of a person licensed to practice law in this state when the subcommittee deems it advisable to receive written or oral advice or assistance in research and analysis regarding the question presented by the requester.

(G) Conflict of Interest. Subcommittee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed Advisory Opinion or subcommittee recommendation or any other conflict of interest or an appearance of a conflict of interest that should prevent them from participating. However, no action of the subcommittee will be invalid where full disclosure has been made to the Chair of the Board and the Chair has not decided that the member's participation was improper.

(H) Each draft Opinion approved by majority vote of the subcommittee will be sent to the full Board on the Unauthorized Practice of Law for review approximately two weeks prior to the next Board meeting. Upon review, Board members may direct comments, suggestions, or objections to the Chair of the subcommittee.

(I) If objections are received, the draft Opinion will be placed on the agenda for discussion at the Board meeting. If no objections are received, the draft

Opinion will be adopted by a majority vote of the Board at the Board meeting. Minor or non-substantive changes are not considered as objections to a draft Opinion.

(J) A copy of the Adopted Advisory Opinion will be issued to the requester. Copies of the issued Opinions will be submitted for publication in the *ABA/BNA Lawyers Manual on Professional Conduct*, the *Ohio State Bar Association Report*, and other publications or electronic communications as the Board deems appropriate. Copies of issued Opinions will be forwarded to the Law Library of the Supreme Court of Ohio, County Law Libraries, Office of Disciplinary Counsel, Local and State Bar Associations with Unauthorized Practice of Law Committees.

(K) Issued Opinions shall not bear the name of the requester and shall not include the request letter. However, the requester's name and the request letter are not confidential and will be made available to the Bar, Judiciary, or the public upon request.

300.2 Procedure for Maintenance

(A) A copy of each Advisory Opinion will be kept in the Board's offices.

(B) An Advisory Opinion that becomes withdrawn, modified, or not current will be marked with an appropriate designation to indicate the status of the opinion.

(C) The designation "Withdrawn" will be used when an Opinion has been withdrawn by the majority vote the Board. The designation indicates that an Opinion no longer represents the advice of the Board.

(D) The designation "Modified" will be used when an Opinion has been modified by a majority vote of the Board. The designation indicates that an Opinion has been modified by a subsequent Opinion.

(E) The designation "Not Current" will be used at the discretion of the Board to indicate that an Opinion is not current in its entirety. The designation that an Opinion is no longer current in its entirety may be used to indicate a variety of reasons such as subsequent amendments to rules or statutes, or developments in case law.

(F) Other designations, as needed, may be used by majority vote of the Board.

(G) The Advisory Opinion index will include a list identifying the Opinions as "Withdrawn," "Modified," or "Not Current," and other designations as decided by the Board.

UPL Reg. 400

Guidelines for the Imposition of Civil Penalties

(A) Each case of unauthorized practice of law involves unique facts and circumstances.

(B) At the hearing and at the end of its case-in-chief, relator shall set forth its position on the imposition of a civil penalty. Relator shall specify the amount of the civil penalty it is requesting and identify the factors, circumstances, and aggravating factors, if any, that warrant imposition of the requested civil penalty.

(C) At the hearing respondent shall contest any request for imposition of a civil penalty. Evidence that is offered by respondent in mitigation shall be introduced as part of the respondent's case-in-chief .

(D) In determining whether to recommend the imposition of a civil penalty, the Board shall consider all relevant facts and circumstances, as well as precedent established by the Supreme Court of Ohio and the Board.

(E) In each case where the Board finds by a preponderance of the evidence that respondent has engaged in the unauthorized practice of law, the Board shall discuss in its final report to the Supreme Court any of the factors set forth in Gov.Bar R. VII(8)(B):

"(B) Civil Penalties. The Board may recommend and the Court may impose civil penalties in an amount up to ten thousand dollars per offense. Any penalty shall be based on the following factors:

(1) The degree of cooperation provided by the respondent in the investigation;

(2) The number of occasions that unauthorized practice of law was committed;

(3) The flagrancy of the violation;

(4) Harm to third parties arising from the offense;

(5) Any other relevant factors."

(F) As part of its analysis of "other relevant factors" pursuant to Gov.Bar R.VII(8)(B)(5), the Board may consider:

- (1) Whether relator has sought imposition of a civil penalty and, if so, the amount sought.
- (2) Whether the imposition of civil penalties would further the purposes of Gov.Bar R. VII.
- (3) Aggravation. The following factors may be considered in favor of recommending a more severe penalty:
 - (a) Whether respondent has previously engaged in the unauthorized practice of law;
 - (b) Whether respondent has previously been ordered to cease engaging in the unauthorized practice of law;
 - (c) Whether the respondent had been informed prior to engaging in the unauthorized practice of law that the conduct at issue may constitute an act of the unauthorized practice of law;
 - (d) Whether respondent has benefited from the unauthorized practice of law and, if so, the extent of any such benefit;
 - (e) Whether respondent's unauthorized practice of law included an appearance before a court or other tribunal;
 - (f) Whether respondent's unauthorized practice of law included the preparation of a legal instrument for filing with a court or other governmental entity; and
 - (g) Whether the respondent has held himself or herself out as being admitted to practice law in the State of Ohio, or whether respondent has allowed others to mistakenly believe that he or she was admitted to practice law in the State of Ohio.
- (4) Mitigation. The following factors may be considered in favor of recommending no penalty or a less severe penalty:
 - (a) Whether respondent has ceased engaging in the conduct under review;
 - (b) Whether respondent has admitted or stipulated to the conduct under review;
 - (c) Whether respondent has admitted or stipulated that the conduct under review constitutes the unauthorized practice of law;
 - (d) Whether respondent has agreed or stipulated to the imposition of an injunction against future unauthorized practice of law;
 - (e) Whether respondent's conduct resulted from a motive other than dishonesty or personal benefit;
 - (f) Whether respondent has engaged in a timely good faith effort to make restitution or to rectify the consequences of the unauthorized practice of law; and

(g) Whether respondent has had other penalties imposed for the conduct at issue.

UPL Reg. 500-900 (Reserved)

UPL Reg. 1000 Effective Date

(A) These regulations shall be effective June 1, 2006.





THE SUPREME COURT *of* OHIO

OFFICE OF ATTORNEY SERVICES

65 SOUTH FRONT STREET COLUMBUS, OHIO 43215-3431