

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

**Bruce A. Brown (aka B. Andrew Brown,
aka Amir Jamal Tauwab)**

Respondent.

CASE NO. 2008-1573

**RELATOR'S ANSWER TO RESPONDENT'S
OBJECTIONS TO THE REPORT AND RECOMMENDATIONS
OF THE BOARD OF COMMISSIONERS ON
THE UNAUTHORIZED PRACTICE OF LAW**

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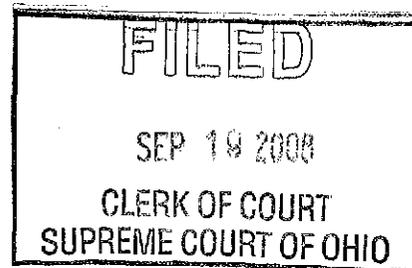


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stationery, business cards and other documents and literature in connection with his name or the name of his business; that the Court require respondent to reimburse the costs and expenses of the board; that the Court impose a total civil penalty of \$50,000; and, that this Court order respondent to show cause why he should not be held in contempt of the injunction entered against him in *Disciplinary Counsel v. Brown*, 99 Ohio St.3d 114, 2003-Ohio-2568, 789 N.E.2d 210. The board dismissed Count Six of relator's complaint and relator has not objected.¹

The board's report was certified to this Court on August 11, 2008. A show cause order was filed on August 19, 2008. Respondent's objections were filed September 8, 2008.² For the reasons set forth herein, this Court should overrule all of respondent's objections and adopt the Findings of Fact and Recommendations of the board.

STATEMENT OF THE FACTS

Introduction

At all times relevant to this complaint, respondent maintained a place of business known as B. Andrew Brown & Associates, LLC at 4403 St. Clair Avenue, Cleveland, Ohio.³ Report at 4, 5. Respondent lists himself as "B. Andrew Brown, Esq." on the letterhead for B. Andrew Brown & Associates, LLC. Id. at 5. Respondent is not and has never been an attorney at law in the state of Ohio admitted under Gov. Bar R.I or

¹ For reasons that are not clear, respondent has devoted a section of his brief to challenging the facts related to Count Six. Given that Count Six was dismissed, relator will not address respondent's assertions regarding Count Six.

² This Court has not yet ordered respondent to show cause why he should not be held in contempt of the injunction entered against him in Case No. 02-1380.

³ On his objections, respondent lists his address as The Illuminating Building, 55 Public Square, Suite 1260, Cleveland, OH 44113.

registered under Gov. Bar R.VI or certified under Gov. Bar R.II, Gov. Bar R.IX or Gov. Bar R.XI. Id. at 4.

Respondent was admitted to the practice of law in the state of New York at the Second Judicial Department in 1985. Id. at 4. By entry of the Supreme Court of New York, Appellate Division, First Department, dated July 30, 1992, respondent was disbarred in New York. *In the Matter of Bruce A. Brown* (1992), 586 N.Y.S.2d 607. Id.

Respondent is the subject two previous decisions by the board. Id. at 5. In case number 91-2, the board found that respondent engaged in the unauthorized practice of law. Id. See *Disciplinary Counsel v. Brown* (1992), 61 Ohio Misc.2d 792. In 2003, this Court found that respondent had again engaged in the unauthorized practice of law. Id. See *Disciplinary Counsel v. Brown*, 99 Ohio St.3d 114.

Respondent has been convicted of multiple felonies in the state of Ohio. Report at 4. In 1991, he pled guilty in Cuyahoga County to the passing of two bad checks and one count of forging a power of attorney. Report at 3. In 1994, respondent was convicted by a jury in Cuyahoga County of 44 third degree felonies: 10 counts of grand theft; eight counts of forgery; eight counts of uttering; and, 18 counts of tampering with records. Id.

In January 2003, respondent pled guilty to an amended 21-count indictment that had been returned against him by the Cuyahoga County Grand Jury. Id. The charges to which respondent pled guilty included: theft (6 counts); false representation as an attorney (6 counts); passing bad checks (7 counts); forgery; and, uttering. Id. In July 2003, respondent pled guilty to two counts of forgery in Portage County. Id.

On June 12, 2006, relator filed a complaint pursuant to Gov. Bar R.VII against respondent alleging six counts of the unauthorized practice of law. Id. at 1. While this case was pending before the board, respondent faced several additional criminal charges in Cuyahoga County including a charge of false representation as an attorney in violation of R.C. 4705.07(A). Id. at 3. On June 20, 2007, respondent pled guilty to one count of passing bad checks (a fifth degree felony). As part of the plea agreement, the state dismissed the R.C. 4705.07 charge, two additional bad check charges, and three theft charges. See *State v. Brown*, Cuyahoga Cty. Case No. CR-07-493521-A. Respondent was sentenced to five years of community control and ordered to make restitution. Id.

This case was heard in Cleveland by a panel of the board in November 2007 and March 2008. Report at 3. Respondent appeared at the hearing and represented himself. Id. At his deposition, during written discovery, and at the hearing, respondent refused to answer relator's questions and invoked his Fifth Amendment right against self-incrimination. Id.

Count One
Georgia Lee Hilliard

Georgia Lee Hilliard died on March 18, 2000 at the age of 77. Id. at 6. On July 12, 2005, five years after Hilliard's death, a "power of attorney" was created purportedly appointing respondent as Hilliard's power of attorney for purposes "of any and all acts

regarding the real property located at 19201 Hathaway Lane, Warrensville Heights, OH 44122.” Id. See, also Relator’s Exb. 11 at 3, 34, 37.⁴

On July 30, 2005, respondent “appeared at the closing for the sale of” 19201 Hathaway Lane, Warrensville Heights, OH 44122, “and executed all documents in his capacity as “Attorney In Fact.” Exb. 11 at 80. At the closing, respondent “was remitted a check” in the amount of \$83,442.09 “in his capacity as [Hilliard’s] Attorney In Fact.” Id. On August 4, 2005, respondent deposited the check from the closing in the amount of \$83,442.09 into his “lawyer trust account” at U.S. Bank. Id. at 3, 8. On August 5, 2005, respondent issued a check from the “trust account” to Hilliard in the amount of \$83,442.09 (“the Hilliard check”). Id. at 3.

On December 16, 2005, respondent filed a complaint against U.S. Bank in the Cuyahoga County Court of Common Pleas, Case No. CV 05 579791. Id. at 2-9.⁵ In his lawsuit, respondent claimed that “pursuant to his duties as *Attorney in Fact* for Hilliard, [he] deposited [\$83,442.09] into his trust account[.]” Id. Respondent further claimed that after he wrote the check to Hilliard, he issued a “*stop payment* order on the check.” Id. He claimed that U.S. Bank “conspired” with Key Bank to pay the Hilliard check notwithstanding his stop payment order and that U.S. Bank “converted” \$29,936.98 to its own use. Id. at 13. Respondent demanded judgment in the amount of \$29,936.98 plus \$150,000 in punitive damages. Id. at 12-15.⁶

⁴ All references to Exhibits are to Relator’s Exhibits.

⁵ Exhibit 11 and Exhibit 63 are complete copies of the court’s file from the lawsuit against U.S. Bank. Exhibit 63 is a certified copy the file and Exhibit 11 is a photocopy of the certified copy. All references are to Exhibit 11 given that it bears Bates’ stamped page numbers for more convenient reference.

⁶ Respondent filed an amended complaint on January 19, 2006. Exb. 11 at 12-15.

On February 15, 2006, Attorney Jason Hollander of the law firm of Ulmer & Berne filed a Notice of Appearance in Case No. CV 05 579791. Id. at 27; Tr. at 206, 208-209.⁷ Unaware at the time that Hilliard was dead, on March 1, 2006, Hollander told respondent that he believed respondent was engaging in the unauthorized practice of law because respondent was acting as the “Attorney In Fact” for Georgia Hilliard, the real party in interest. Tr. at 210-214. On March 2, 2006, respondent filed a “request for leave to file a second amended complaint.” Exb. 11 at 34.

In his request for leave to amend the complaint, respondent claimed that “the gravamen of the case, *sub judice*, has an origin in [respondent’s] capacity as *Attorney In Fact* for Georgia L. Hilliard, pursuant to a duly executed and filed power of attorney.” Id. at 34. Respondent argued that he should be permitted to amend the complaint to add the “attorney in fact” designation because he “must seek any redress warranted herein in the capacity of *Attorney In Fact* for Georgia L. Hilliard.” Id. at 34-35. Respondent claimed that because “the Amended Complaint . . . is bereft of the requisite *Attorney In Fact* capacity designation, it is imperative that the relief sought herein be granted.” Id. at 35.

Shortly after respondent filed his request to amend the complaint, U.S. Bank learned that Hilliard was dead. Tr. at 215. See also Exb. 11 at 51, 84. Thereafter, U.S. Bank filed a Brief in Opposition to respondent’s motion to amend the complaint and a motion for sanctions against respondent. Exb. 11 at 38; Tr. at 215.

In his response to U.S. Bank’s motion for sanctions, respondent claimed that the funds remitted to him at the closing “were given in his capacity as *Attorney In Fact*,”

⁷ All references to “Tr.” are to the transcript of the board hearing.

therefore, according to respondent, he "had a legal obligation, as Hilliard's Attorney in Fact, to seek redress for the unlawful taking of her funds." Id. at 81 (emphasis added).

Respondent claimed that "at all times relevant, he was acting in his capacity as *Attorney In Fact* in receiving and maintaining funds that he believed to be Hilliard's." Id. at 83.

The board concluded that as charged in Count One of relator's complaint, in filing a lawsuit against U.S. Bank as Hilliard's "Attorney in Fact," respondent engaged in the unauthorized practice of law.

Count Two Raymond Buildt

Cindy Paoletta received a letter from respondent dated August 8, 2005. Report at 10. The August 8, 2005 letter was written on stationery bearing the letterhead "B. Andrew Brown & Associates, LLC" and "B. Andrew Brown, Esq." Id. See also Exb. 16. The letter requested payment of an alleged debt from Paoletta to Raymond Buildt. Id. Enclosed with the letter was a photocopy of a "Mechanic's Lien." Id.

Upon receipt of the letter, Paoletta retained Attorney Sergio DiGeronimo to represent her in connection with the Buildt matter. Id. DiGeronimo confirmed that the lien on Paoletta's property had been recorded in Cuyahoga County. Id.

DiGeronimo testified that the recorder's office requires that a mechanic's lien list the identity of the person who prepared the lien. Id. The mechanic's lien contained the following legend:

This document was prepared by:

B.A. Brown
4403 St. Clair Avenue
Cleveland, Ohio 44103
(216) 881-7103

Id. at 11. See also Exb. 59. The affidavit showed a lien on Paolettas' property in the amount of \$45,600. Exb. 59. See also Tr. at 124.

Believing that respondent was an attorney based upon the contents of the letter, the appearance of the letter, and respondent's use of "LLC" and "Esq.", DiGeronimo contacted respondent both by letter and telephone on behalf of Paoletta. Report at 11 and Tr. at 124-125. DiGeronimo addressed his response to "B. Andrew Brown, Attorney at Law." Id. and Exb. 17. The letter referred to Buildt as respondent's "client." Id.

Respondent communicated with DiGeronimo on behalf of Buildt during the months of August and September 2005. Tr. at 125-130; Exbs. 17, 19, 20, 46. During that time, respondent and DiGeronimo engaged in settlement negotiations. Report at 11. Respondent proposed that Paoletta pay money to Buildt in order to resolve the lien. Id. After he viewed the property himself, DiGeronimo told respondent that the lien was fraudulent and he instructed respondent to remove the lien. Tr. at 126.

DiGeronimo received a letter from respondent dated September 16, 2005 enclosing a photocopy of a Satisfaction of Mechanic's Lien that had been filed for the Paoletta property. Report at 11. See also Exb. 20; Tr. at 131. The Satisfaction of Mechanic's Lien bears the following notation:

Prepared by:

B. Andrew Brown & Assoc.

Id. See also Exb. 60, Tr. at 133-134. Prior to receiving the Satisfaction of Mechanic's Lien from respondent, DiGeronimo learned from the Cuyahoga County Prosecutor's Office that respondent is not an attorney. Report at 11.

Exhibit 18 is a letter dated "August 15, 2005" purportedly from respondent to DiGeronimo. The first time DiGeronimo saw Exhibit 18 was in November 2007, two weeks before the hearing. Id. at 12. The letter states, in pertinent part, "Be advised that I am not an attorney, practicing law. I am a collection agent."

According to the board, respondent further engaged in the unauthorized practice of law by preparing the affidavit and satisfaction of mechanic's lien and recording them in Cuyahoga County. The board concluded that in leading DiGeronimo to believe he was an attorney, respondent committed the unauthorized practice of law. The board also determined that respondent's negotiations with DiGeronimo on behalf of Buildt constituted the practice of law.

Count Three Rosa Primous

Rosa Primous, a school teacher for more than 30 years, applied for a home equity loan at Key Bank on Kinsman Rd. in Cleveland. Id. at 13. See also Tr. at 344. At the time of her application, Rex Erusiafe was the manager of Key Bank on Kinsman Rd. Id. See also Tr. at 345-346; Exb. 31. During the application process, Erusiafe told Primous that another person was using her social security number. Id.

Primous and Erusiafe discussed the problems with her social security number and Primous asked Erusiafe if he knew "a lawyer who could handle that, because I didn't have a lawyer." Id. at 14. See also Tr. at 346. In response to her request for a

referral to a lawyer, Erusiafe recommended that Primous hire respondent. Id. See also Tr. at 346, 356-357. Erusiafe gave Primous one of respondent's business cards. Id. Respondent's business card identifies him as "B. Andrew Brown, Esq." and his business as "B. Andrew Brown & Associates LLC." Id. and Exb. 62. Erusiafe told Primous that respondent had previously done some work for him and recommended him "as a lawyer." Id. Primous testified that at that point, it "was clear" to her that respondent "was a lawyer." Id. See also Tr. at 347.

After being referred to respondent, Primous telephoned respondent's office. Id. Primous mentioned respondent by name and asked for "a lawyer who was recommended by a friend to help me in this case." Id. Primous made an appointment with respondent at his office. Id. When she arrived at the office, Primous was ushered into a conference room and met with respondent. Id. See also Tr. at 347-348. Primous testified that she told respondent that "I needed a lawyer and Rex recommended you." Id. and Tr. at 357.

Primous wanted to know more about respondent's background before she was willing to hire him. Id. Respondent gave Primous some information about himself; however, respondent never told Primous that he is not an attorney. Id. Believing that respondent was an attorney, Primous paid respondent a \$250 "retainer fee." Id. See also Tr. at 350. Primous gave respondent information about herself and about the person she believed was using her social security number. Id. See also Tr. at 352, 373. Primous considered the information she gave respondent personal or confidential. Id. See also Tr. at 354-355. Primous believed she was hiring a lawyer to assist her, not a "consumer credit organization." Id. See also Tr. at 358, 376.

On Primous' behalf, respondent wrote a letter to Robert J. Jatileff of Winthrop, Washington on stationery bearing the letterhead "B. Andrew Brown & Associates, LLC" and "B. Andrew Brown, Esq." Id. at 15. See Exb. 21; Tr. at 350. Respondent's letter to Jatileff states, in part:

Please be advised that this office has been retained to investigate and resolve the matter of your use of a social security number belonging to another individual. Towards that end, be further advised that I will contact the three major credit reporting agencies to ascertain the extent of your improper use of my client's social security number. Subsequent thereto, we will determine whether or not to involve the criminal justice authorities. As you may or may not be aware, your name and vital information has been reported to be associated with a certain social security number ending with 3102.

Exb. 21 at 1.

Using his "B. Andrew Brown & Associates, LLC" stationery, respondent wrote letters to credit reporting services on Primous' behalf. Id. See also Tr. at 351-352; Exb. 21. At all times, Primous believed respondent was a lawyer. Id.

The board concluded that respondent misrepresented his status as a non-attorney to Primous and that he failed to correct her misconceptions regarding his status. Respondent led Primous to believe that she was paying an attorney for legal services. Id. at 17. The board further concluded that respondent knew that Primous wanted to hire an attorney to address her issues and his collection of a "retainer fee" reinforced the idea that an attorney-client relationship existed. Id. The board determined that the actions taken by respondent in combination with his charade for Primous constitute the unauthorized practice of law.

Count Four Mohammad Joseph

Mohammad Joseph met respondent through his “cousin,” Mahmoud Abu-Kaliele while starting a business called King Drive Through, LLC. Report at 18. See also, Tr. at 21-23. Prior to meeting respondent, Joseph had been charged in Lakewood, Ohio, with carrying a concealed weapon (CCW). Id. During the course of forming the business and believing that respondent could provide legal services to him, Joseph discussed his CCW charge with respondent. Id. Respondent told Joseph that he would represent Joseph on the CCW charge in Lakewood Municipal Court. Id. See also Tr. at 30-31.

Joseph testified that respondent told him that his arrest was “most likely discrimination.” Id. According to Joseph, respondent explained that since Joseph’s gun was not loaded and since Joseph had his CCW license with him, his arrest “shouldn’t be a problem; he’ll dismiss [it] the first day.” Id. See also Tr. at 30-31.

Respondent did not appear at Joseph’s first hearing on the CCW charge and the hearing was continued. Id. Shortly before the hearing, respondent told Joseph that he could not be in court that day because he had been in “an accident” and that he was waiting for the police. Id. See also Tr. at 31-35. The next day, respondent advised Joseph that he was going to file a “motion to dismiss” Joseph’s case. Id. Shortly thereafter, respondent then told Joseph that he had “already filed the motion to dismiss” and that he was waiting to hear from the court. Id.

The night before Joseph’s second hearing date, respondent told Joseph that he would be at court. Id. See also Tr. at 33. Just prior to the hearing, respondent falsely

told Joseph that his "law license had expired" and that he needed "\$500 to have it renewed." Id. Joseph went to court alone and the hearing was again rescheduled. Id.

On the date of Joseph's third hearing, Joseph expected respondent to come to court with him. Id. Joseph tried unsuccessfully to contact respondent prior to the hearing. Tr. at 34. Later that day and after respondent failed to come to the hearing, Joseph hired Attorney Harvey McGowan to represent him on the CCW charges. Report at 19. See also Tr. at 35.

The board also concluded that respondent prepared and filed the documents necessary for the establishment of King Drive Through LLC. Report at 19. The undisputed evidence at the hearing established that Joseph agreed that respondent would prepare and file the documents necessary to form the business, prepare and file the state of Ohio application for a liquor license, prepare and file the state of Ohio application to sell lottery tickets, and represent Joseph in Lakewood Municipal Court. See, e.g. Tr. at 24-27.

Respondent signed the Organization/Registration of Limited Liability Company form for King Drive Through, LLC accepting his appointment as agent. "B. Andrew Brown & Associates" is listed as the entity that requests for company documents should be sent. Report at 20. See also Exb. 24 at 10-12. Respondent submitted the form to the Secretary of State and respondent purportedly provided Joseph with the "certificate of registration" that he received from the Secretary of State. Id. See also Exb. 24 at 8-9.

Joseph paid respondent \$1,800 for "representation" on the CCW charges and for services in connection with King Drive Through, LLC. Id. After telling Joseph that he

would refund his money, respondent engaged in a series of fraudulent transactions in which he falsely claimed that he would deposit funds into Joseph's account. Report at 20. Instead of actually refunding the money, respondent wrote checks to Joseph on a closed account registered to "The Bruce Andrew Brown Group, Ltd." Id.

Joseph submitted a claim form and a letter to the Client Security Fund on April 28, 2006. Id. at 21. See also Exb. 24; Tr. at 37-42. When he met respondent and at all times until after the Fund denied his claim, Joseph believed that respondent was an attorney. Id. See also Tr. at 48.

The board concluded that respondent engaged in the unauthorized practice of law by giving Joseph legal advice about his criminal case. Id. The board further concluded that respondent engaged in the unauthorized practice of law by preparing and filing the documents for the establishment of King Drive Through LLC.

Count Five Reginald V. Pierce

Reginald V. Pierce asked an attorney with whom he was acquainted to recommend "an attorney" to file his bankruptcy for him. According to Pierce, that attorney referred Pierce to respondent. Tr. at 163-165. See also Report at 22. Respondent told Pierce that he needed a lawyer to complete his bankruptcy forms and that respondent would "take care of everything" regarding Pierce's bankruptcy. Report at 22. See also Tr. at 173. Pierce believed respondent was a lawyer. Id. See also Tr. at 165, 184-185, 192, 200-201. Respondent never informed Pierce that he was not an attorney. Id.

On October 12, 2005, respondent filed a Chapter 7 bankruptcy petition for Pierce and designated himself as a Bankruptcy Petition Preparer. *Id.* See also Exb. 32 at 2. Simultaneously with filing the petition, respondent filed a "General Power of Attorney" appointing himself as Pierce's "attorney in fact." *Id.* Pierce denies that he executed the "General Power of Attorney" filed by respondent. *Id.* See also Tr. at 173.

Pierce paid respondent \$200 to complete and file his bankruptcy. *Id.* Pierce also paid respondent \$209 for filing fees. *Id.* Respondent converted \$109 of the filing fee to his own use. *Id.* See also Exb. 40; Tr. at 408-409.

Pierce's bankruptcy case was assigned to Hon. Pat E. Morgenstern-Clarren. *Id.* Because she was aware that a General POA had been filed in Pierce's bankruptcy, on October 14, 2005, Judge Morgenstern-Clarren issued an order requiring respondent and Pierce to appear and explain why the petition was filed by a third party and whether any compensation had been paid to respondent for preparing and filing the petition. *Id.* Judge Morgenstern-Clarren initially believed that respondent was a lawyer. *Id.* at 23. See also Tr. at 403.

Respondent appeared before Judge Morgenstern-Clarren on November 17, 2005 without Pierce. *Id.* Respondent falsely told Judge Morgenstern-Clarren that he had not been paid by Pierce. *Id.* See also Tr. at 299; Exb. 57. Respondent never informed Pierce of the order to appear and show cause filed by Judge Morgenstern-Clarren. *Id.*

Pierce's bankruptcy was dismissed because he failed to appear in response to the court's order to show cause. *Id.* Unaware that his bankruptcy had been dismissed, Pierce consulted respondent when his employer began to garnish his wages. *Id.* See also Tr. at 179. Respondent gave Pierce advice regarding the status of his bankruptcy

then made “some calls” purportedly on Pierce’s behalf and the garnishment temporarily stopped. *Id.* Pierce ultimately hired a licensed attorney to file a new bankruptcy petition. *Id.*

The board concluded that respondent exceeded the statutory guidelines for bankruptcy petition preparers and that he acted in the capacity of a legal representative. *Id.* Respondent engaged in the unauthorized practice of law by acting beyond the scope of 11 U.S.C. §110, including filing a forged power of attorney in an attempt to elevate his level of representation, advising Pierce on the status of his bankruptcy, and attempting to stop the wage garnishment. *Id.* at 24.

RELATOR’S ANSWERS TO RESPONDENT’S OBJECTIONS

I.

Respondent’s Pattern and Practice of Holding Out and Inducing Others into Believing He is a Licensed Lawyer is The Unauthorized Practice of Law

At page two of his “response to show cause order,” respondent includes a section titled, “Findings Regarding All Counts.” The arguments in this section make it clear that respondent refuses to acknowledge the extent of the connection between his unrelenting use of the “Esq.,” “J.D.,” and “B. Andrew Brown & Associates, LLC” and the board’s conclusion that he repeatedly engaged in the unauthorized practice of law.

As determined by the board, it is respondent’s persistent and flagrant use of “Esq.,” and “B. Andrew Brown & Associates, LLC” on office stationery and business cards that “induced a federal judge, a practicing lawyer, a school teacher, and a city prosecutor into believing that he was a lawyer.” *Id.* at 31. It is evident that respondent

will not accept the board's conclusion that "[w]hen a person induces others into believing he or she is a licensed lawyer, for the purpose of performing a service for them, the holding out constitutes the practice of law." Id. (emphasis added).

As the panel and the board stated:

[I]t is the Panel's finding and conclusion that a nonlawyer who holds himself or herself out as a lawyer, by use of the terms "Esq.", "Esquire", "J.D.", or otherwise, for the purpose of inducing another to pay for the performance of a service, engages in the unauthorized practice of law.

Id. at 34. The board further stated, "The record in this case produced substantial credible evidence of the Respondent's repeated and purposeful misuse of 'Esq.' for the purpose of inducing people into believing he was a lawyer and into engaging him to perform services for a fee." Id.

As determined by the board, by calculation and design, respondent used "Esq." to induce others into believing he was a lawyer. Respondent was repeatedly hired to perform services by "fraudulent inducement." Id. Based upon his use of "Esq.", respondent was paid by persons who mistakenly believed he was a lawyer.

Respondent's conduct is further evidence of his unwillingness to abide by the laws that govern all Ohioans. As explained by the board, respondent may have been able to engage in some of the activities if he was not holding himself out as an attorney.⁸ It is evident, however, that respondent is unwilling to stop "holding out" despite the fact that he has never been admitted to the practice of law in Ohio.

⁸ The record more than sufficiently establishes that respondent's conduct was the unauthorized practice of law even if respondent had not been holding himself out as a lawyer.

In furtherance of his argument that he should be permitted to continue using “Esq.,” “Esquire,” and/or “J.D.,” respondent makes various unsupported arguments. At page three, number 11, respondent states, “B. Andrew Brown & Associates, LLC is a duly registered Ohio Limited Liability Company, employing the services of, *inter alia*, attorneys. **Record, passim.**” (Italics and emphasis in original). Despite respondent’s claim, there is no evidence in the record that “B. Andrew Brown & Associates, LLC” employs “attorneys.”

Respondent made the identical claim in his opening statement when he was not under oath and not testifying. On cross-examination, respondent was asked about the “attorneys employed” by “B. Andrew Brown & Associates.” Tr. at 574-576. Respondent claimed the Fifth Amendment and refused to answer more than 10 questions regarding the alleged “attorney employees” of “B. Andrews Brown & Associates.” Contrary to respondent’s assertion, there is no evidence in the record regarding any of the purported “employees” of “B. Andrew Brown & Associates, LLC.”

Respondent argues that he should be able to use “J.D.” because he was awarded a juris doctor. This argument should be soundly rejected by this Court. There is no evidence that respondent has ever used “J.D.” or “Esq.” for purposes other than trapping unwitting victims into paying fees for services that he cannot legally perform. Respondent does not even suggest that he will ever stop using fraud to induce innocent people into believing that he is a lawyer. Respondent’s previous conduct should lead this Court to conclude that he will not stop.

In varying forms throughout this case, respondent has asserted that because R.C. 4705.07 “is bereft of Esq. or Esquire or J.D.,” he should be permitted to utilize

those terms without violating R.C. 4705.07. As determined by the board, respondent's claim is completely irrelevant and without merit. Report at 32.

First, this is not a prosecution by the state of Ohio for violating R.C. 4705.07; therefore, respondent's argument is largely irrelevant.⁹ Second, respondent committed the unauthorized practice of law independent of his use of the offending terms. Finally and for reasons that this case makes painfully obvious, Ohio law does prohibit the use of terms such as "Esq., Esquire, of J.D." by a person who is not licensed to practice law. To wit, R.C. 4705.07 states, in relevant part:

(A) No person who is not licensed to practice law in this state shall do any of the following:

(1) Hold that person out in any manner as an attorney at law;

(2) Represent that person orally or in writing, directly or indirectly, as being authorized to practice law;

(3) Commit any act that is prohibited by the supreme court as being the unauthorized practice of law.

(B)(1) The use of "lawyer," "attorney at law," "counselor at law," "law," "law office," or other equivalent words by any person who is not licensed to practice law, in connection with that person's own name, or any sign, advertisement, card, letterhead, circular, or other writing, document, design, the evidence purpose of which is to induce others to believe that person to be an attorney, constitutes holding out within the meaning of division (A)(1) of this section.

(Emphasis added). "Esq.," "Esquire," and "J.D." are "equivalent words" and amount to holding oneself out as an attorney at law.

Every time respondent uses his letterhead, fills out a form, or signs his name with "Esq.," respondent falsely conveys the impression that he is an attorney. Respondent is

⁹ A violation of R.C. 4705.07 is a first degree misdemeanor. R.C. 4705.99.

not an attorney; therefore, there is no reason for him to use “J.D.” or “Esq.” other than to mislead innocent persons into believing that he is authorized to practice law.

The Supreme Court of Florida has been prohibiting such activity since its 1983 decision, *Florida Bar v. Martin* (Fla. 1983), 432 So.2d 54. In *Martin*, the Florida court held that printing, or having printed on his behalf, stationery identifying the non-lawyer respondent as “Reynold Martin, J.D.” constituted the unauthorized practice of law. Similarly, in *Florida Bar v. Warren* (Fla. 1995), 655 So.2d 1131 the Florida court held that non-attorneys are prohibited from using the title “Esquire.” In *In re McDaniel* (Bankr. N.D. Tex. 1999), 232 B.R. 674, the court determined that a non-attorney’s appearance at a creditor’s meeting wearing a suit and tie, carrying a briefcase, and sitting in the front row, was enough to obviate the fact that the non-attorney never expressly stated that he was an attorney.

In support of his use of “Esq.” with his name, respondent cites this Court’s opinion in one of his previous cases. Contrary to respondent’s arguments, however, this Court’s holding was as follows, “Respondent is hereby enjoined from engaging in the unauthorized practice of law in the future.” *Brown*, 99 Ohio St.3d at 116. The *Brown* court added a footnote to that sentence. The footnote states:

Concerned that respondent will return to the unauthorized practice of law, relator also seeks an order precluding respondent from using “J.D.” or “Esq.” in connection with his name and prohibiting respondent from working in any capacity in a law office or for a licensed attorney absent a license to practice law and registration in accordance with the Supreme Court Rules for the Government of the Bar of Ohio. We decline to issue such an order but note that respondent risks contempt for continuing to engage in the unauthorized practice of law.

Id.

The evidence in this case establishes that respondent has continued to engage in the unauthorized practice of law. Respondent has also unabashedly continued to use “J.D.” and “Esq.” in connection with his name. However, contrary to respondent’s belief, this Court’s previous disinclination to issue an order precluding respondent from using “Esq.” is not a grant of immunity against a future finding that respondent’s use of “Esq.” is evidence of his unauthorized practice of law.

In the *Kolodner* case decided in 2004, this Court noted how placing the term “Esquire” after a non-attorney’s name implied a belief that the person was an attorney at law. *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St.3d 504, 505, 2004-Ohio-5581, 817 N.E.2d 25. Enjoining Robert Kolodner from engaging in the unauthorized practice of law, the court ordered:

{¶12} “iii. In all correspondence, letterheads, forms, or written communication used by Respondent for business purposes, Respondent will not in any way convey the impression that he is an attorney and that any name that he is doing business under is not a law firm. [Sic.] In all correspondence, letterheads, forms, or written communication used by Respondent for his business purposes, Respondent will clearly and conspicuously state that he is not an attorney, that his business is not a law firm, and that he cannot provide legal advice, including advice about a person’s rights as a debtor or as a defendant in a lawsuit, or about the terms and conditions of settlement of any dispute[.]”

Id. at 506. For the protection of the public, the decision in this case should subject respondent to the same requirements as Kolodner.

As stated by the board, “[t]he record in this case, and in the earlier *Brown* cases, 99 Ohio St.3d 114 and 61 Ohio Misc.2d 792, establishes the existence of a widespread belief among members of the lay public, as well as the bench and the bar in Ohio, that

the term 'Esq.' and its equivalent indicate lawyer." Report at 31. Most importantly and as the board concluded, "a nonlawyer who holds himself or herself out as a lawyer, by the use of 'Esq.', 'Esquire', 'J.D.' or otherwise, for the purpose of inducing another to pay for the performance of a service, engages in the unauthorized practice of law in Ohio." Id. at 34.

For the foregoing reasons, this Court should reject respondent's arguments and affirm the board's determination that respondent's pattern and practice of holding out and inducing others into believing he is a licensed lawyer, for the purpose of performing a service for them, constitutes the unauthorized practice of law.

II.

The Evidence in Count One Establishes the Unauthorized Practice of Law

In arguments that ignore the facts of Count One, respondent asserts that Civ. R.17 permitted him to file a lawsuit in his capacity as Hilliard's "*Attorney in Fact*." In the alternative, respondent claims that "as the record aptly demonstrates," "he, not Georgia Hilliard, was the party" in the lawsuit he filed against U.S. Bank.

Civ. R.17 is not an "end around" this state's prohibition against the unauthorized practice of law. While Civ. R.17 may have given a legitimate "attorney in fact" standing in a lawsuit related to the sale of Hilliard's property, Civ. R.17 does not confer upon respondent the capacity to file a lawsuit against U.S. Bank for what respondent claims was "the unlawful taking of [Hilliard's] funds." Exb. 11 at 81.

The first lawsuit respondent filed against U.S. Bank designated "Bruce Andrew Brown" as the plaintiff. After speaking with Attorney Jason Hollander and apparently

growing concerned that he may not be the “real party at interest,” respondent asked the court to allow him to amend the pleadings. In his request for leave to amend the complaint, respondent claimed that “the gravamen of the case [against U.S. Bank] . . . has an origin in [respondent’s] capacity as *Attorney In Fact* for Georgia L. Hilliard . . .” Exb. 11 at 34. Respondent argued that he should be permitted to amend the complaint to add the “attorney in fact” designation because he “must seek any redress warranted herein in the capacity of *Attorney In Fact* for Georgia L. Hilliard.” Exb. 11 at 34-35.

Notwithstanding his efforts to create “standing” for the purported “attorney in fact,” the facts of Count One establish respondent engaged in the unauthorized practice of law by suing U.S. Bank as Hilliard’s “attorney in fact.” In his own words, respondent claimed that he deposited the proceeds from the sale of Hilliard’s property into his “trust account.” Exb. 11 at 3. Respondent claimed that he then wrote a check to Hilliard from the “trust account” for the full amount of the sales price. Respondent claimed that after he wrote the check to Hilliard, he instructed U.S. Bank to “stop payment” on the check when it was presented for payment at Key Bank. Respondent claimed that Key Bank and U.S. Bank conspired to pay the check despite respondent’s “stop payment” order.

Notwithstanding the obvious fraud attendant to the entire transaction, the banking “activities” were unrelated to respondent’s limited capacity as Hilliard’s “attorney in fact.” In other words, in the U.S. Bank lawsuit, respondent was ostensibly seeking the return of Hilliard’s funds on behalf of Hilliard. See Exb. 11 at 81. This alleged cause of action seeking the “return of funds” is unrelated to the real estate transaction for which respondent was purportedly designated “attorney in fact.”

As a non-attorney, respondent engaged in the unauthorized practice of law by drafting and filing pleadings on Hilliard's behalf. "[A] power of attorney does not give a person the right to prepare and file pleadings in court for another." *Cuyahoga Cty. Bar Assn. v. Spurlock*, 96 Ohio St.3d 18, 2002-Ohio-2580, 770 N.E.2d 568, at ¶9. "Using a power of attorney 'as a contract to represent another in court violates the laws of Ohio.'" *Fravel v. Stark Cty. Bd. of Revision*, 88 Ohio St.3d 574, 575, 2000-Ohio-430, 728 N.E.2d 393.

As this Court held in *Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 2000-Ohio-288, 724 N.E.2d 402, obtaining a power of attorney from a principal does not insulate a non-attorney from violating the unauthorized practice of law statutes when the non-attorney performs a legal act in representing the principal. The *Coleman* court stated:

[Ohio] law recognizes that a person has the inherent right to proceed *pro se* in any court. But it also prohibits a person from representing another by commencing, conducting, or defending any action or proceeding in which the person is not a party. When a person not admitted to the bar attempts to represent another in court on the basis of a power of attorney assigning *pro se* rights, he is in violation of [R.C. 4705.01]. A private contract cannot be used to circumvent a statutory prohibition based on public policy.

Id. at 157. See also *Richland Cty. Bar Assn. v. Clapp*, 84 Ohio St.3d 276, 1998-Ohio-551, 703 N.E.2d 771.

Respondent's alternative argument is that "he, not Georgia Hilliard, was the party" and that he "can represent himself, *pro-se*, in any action where he is a party." Respondent's assertion is a stark admission that he converted Hilliard's funds to his own use.

As previously set forth, after depositing the real estate sale proceeds, respondent wrote a check to Hilliard from his “trust account.” Respondent tried to stop payment on the check and thereby keep all of the funds in his account. Respondent’s confession that he considers himself the party who could sue the bank for converting those funds amounts to an admission that he never intended for Hilliard to receive funds from the real estate transaction.

In what appears to be an afterthought, respondent asserts that it was error for the board to refer to his bank account as an “IOLTA.” Respondent claims that the record is “devoid of any evidence of an IOLTA account.” On the contrary, in the lawsuit against U.S. Bank, respondent referred to the account as a “trust account,” and respondent attached a bank statement to the complaint as “plaintiff’s exhibit C” indicating that the account was a “lawyer’s trust account,” i.e. an IOLTA. Exb. 11 at 8. Further, as an exhibit to the brief filed by U.S. Bank in opposition to respondent’s motion to amend his complaint, U.S. Bank included a letter from respondent to U.S. Bank.¹⁰ Exb. 11 at 67. The letter states, “Pursuant to the applicable provision of the Ohio Revised Code, I am required to have an IOLTA account. Accordingly, please forward all interest accrued on this account to the Ohio Supreme Court at 30 East Broad Street, Columbus, Ohio 43215. * * * Very Truly Yours, B. Andrew Brown[.]” More importantly, respondent’s assertions regarding the “title” of his bank account are irrelevant to this Court’s determination of whether respondent engaged in the unauthorized practice of law in Count One.

¹⁰ Attorney Jason Hollander testified that he obtained respondent’s letter from his client, U.S. Bank. Tr. at 216-219. There is no evidence in the record that is contrary to Hollander’s testimony.

This Court should reject respondent's claims that he was authorized by Civ. R.17 to file the lawsuit as an "attorney in fact" and affirm the board's conclusion that in filing a lawsuit against U.S. Bank, respondent engaged in the unauthorized practice of law.

III.

Respondent was not acting as a "Collection Agent" for Raymond Buildt

In his objections to Count Two, respondent asserts that he was acting as a "collection agent" and that there is no prohibition in Ohio against nonattorneys acting as collection agents. Respondent's argument ignores the facts and should be rejected.

First, there is no evidence whatever in Count Two that respondent was acting as a "collection agent" in sending the letter to Paoletta. Second, respondent committed the unauthorized practice of law in drafting and filing the liens. Finally, respondent engaged in negotiations attempting to settle a purported legal dispute and thereby engaged in the unauthorized practice of law.

Respondent's first letter to Paoletta was written August 8, 2005. Exb. 16. Conspicuously absent from the letter is anything describing respondent as a "collection agent." The letter begins by stating, "[y]our delinquent account has been turned over to this office for collection by Raymond P. Buildt." Id. The letter continues, "we must demand that payment in full will be made immediately upon receipt of this letter, to eliminate the need for further action on Mr. Buildt's behalf and to satisfy the Mechanic's Lien recently filed by Mr. Buildt (a copy of which is enclosed)." Id. The phrase "collection agent" is not in the letter.

Respondent's letter to Paoletta indicated that respondent had already taken some legal action (by filing the lien) and expressly stated that respondent would decide (on behalf of Buildt) whether "further" legal proceedings would be instituted. By sending his letter to Paoletta on stationery bearing the heading "B. Andrew Brown & Associates, LLC" and identifying himself as "Esq.", respondent conveyed the distinct impression that he had knowledge of Buildt's legal rights and entitlements.

In responding to the August 8, 2005 letter, DiGeronimo referred to respondent as "Attorney at Law." DiGeronimo believed respondent was an attorney representing Buildt until mid-September when DiGeronimo learned from the Cuyahoga County Prosecutor that respondent was not an attorney. Report at 11.

Exb. 18 is a letter dated August 15, 2005 purportedly from respondent to DiGeronimo. DiGeronimo never received the August 15th letter from respondent and never saw the letter until a week or two before he testified at the hearing. That letter states that respondent is "not an attorney" but rather "a collection agent."

Respondent's use of his letterhead for all of the correspondence pertaining to Buildt and Paoletta further defeats respondent's claim that he was acting as a "collection agent." Every time he utilizes his letterhead or signs his name with "Esq.," respondent falsely conveys the impression that he is an attorney. Respondent is not an attorney; therefore, there is no reason for him to use "J.D." or "Esq." other than to mislead innocent persons into believing that he is authorized to practice law.

Respondent also committed the unauthorized practice of law by preparing and filing the affidavit of mechanic's lien. The affidavit was filed in the Cuyahoga County Recorder's Office on August 8, 2005 and showed a lien on Paolettas' property in the

amount of \$45,600. Exb. 59. The Certified Copy of "Affidavit for Mechanic's Lien" obtained from the Recorder's Office clearly shows that the lien was prepared by respondent. See also Tr. at 124. According to DiGeronimo, the Cuyahoga County Recorder would not permit an instrument to be recorded without a designation of who prepared the instrument. Tr. at 159. On or about September 16, 2005, respondent prepared and filed a lien release for the Paolettas' property. Exb. 60. See also Tr. at 132.

In his own words, all of respondent's activities were carried out on behalf of Raymond Buildt. In *Kolodner*, this Court held:

The unauthorized practice of law consists of rendering legal services for another by any person not admitted to practice law in Ohio, see Gov. Bar R.VII(2)(A), and includes representation by a nonattorney who advises, counsels, or negotiates on behalf of an individual or business in the attempt to resolve a collection claim between debtors and creditors. * * * * Injunctive relief prohibiting such unauthorized representation is required for the public's protection, and a civil penalty is appropriate.

Kolodner, 103 Ohio St.3d at 507. Respondent is a non-attorney who acted on behalf of an individual in an attempt to resolve a purported collection claim.

Addressing similar issues, the Supreme Court of Texas held that the preparation and filing of mechanic's liens or lien affidavits constitutes the unauthorized practice of law. *Crain v. Unauthorized Practice of Law Comm. of Supreme Court of Texas* (Tex. 1999), 11 S.W.3d 328 (citing with approval *The Florida Bar v. Carmel* (Fla. 1973), 287 So.2d 305, 307 (nonlawyer enjoined from sending letters threatening to file liens and from preparing and filing liens and releases of liens and held that the conduct constituted the unauthorized practice of law.))

In *Crain*, the court also held that the preparation of lien affidavits, the recording of those affidavits and the releasing of liens, all involve legal instruments affecting title to real property. “The preparation of these documents involves the use of legal skill and knowledge.” *Id.* at 333. Similarly, in *State v. Hunt* (1994), 75 Wash.App. 795, 880 P.2d 96, the court found several instances of the unauthorized practice of law, including but not limited to the preparation of liens.

This court should reject respondent’s claims that he was acting as a “collection agent” and find that he engaged in the unauthorized practice of law as alleged in Count Two.

IV.

Respondent was Not Acting as a “Credit Repair Organization” on Behalf of Rosa Primous.

The essence of respondent’s arguments regarding Count Three is that he was acting as a “credit repair organization” with regard to Rosa Primous. Respondent’s arguments are not supported by any of the facts and must be rejected.

Rosa Primous asked for a referral to an attorney and she was referred to respondent. Primous told respondent that it had been recommended to her that she hire a lawyer. Tr. at 357. At no time did respondent tell Primous that he is not an attorney. Tr. at 354. Primous believed respondent was an attorney performing legal services on her behalf. Tr. at 354-355, 358, 368, 369, 371. Primous believed she was hiring a lawyer to assist her, not a consumer credit organization. Tr. at 358, 376.

On Primous’ behalf, respondent wrote a letter to Robert J. Jatileff of Winthrop, Washington – a complete stranger living thousands of miles away. Respondent’s letter

is filled with threats of legal action – civil and criminal. The letter never mentions that respondent is acting as a “credit repair organization.” The letter is written on stationery bearing the letterhead “B. Andrew Brown & Associates, LLC” and “B. Andrew Brown, Esq.” In that letter, respondent clearly intended to convey the impression that he had knowledge of Primous’ legal rights and entitlements. There is nothing about the stationery or the content of the letter that could be even remotely considered as proof that respondent was acting as a “credit repair organization.”

The same day that he wrote the letter to Jatileff, respondent wrote to Equifax, Transunion, and Experian on “B. Andrew Brown & Associates, LLC” stationery. Again, respondent’s letters stated that his “office has been retained” by Primous to “resolve an issue wherein she was recently denied credit due to the improper use of her social security number by a Robert J. Jateff (sic).”

Primous asked respondent for assistance with a legal matter, i.e. her belief that someone else was using her social security number. The acts of contacting Jatileff and contacting three credit reporting agencies – all on Primous’ behalf, constitutes the unauthorized practice of law. As the Supreme Court of Ohio held in *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, at the syllabus:

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 actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law.

Not only is the record completely devoid of any evidence that Rosa Primous thought respondent was a “credit repair organization,” the record lacks any evidence that respondent was operating as a properly registered and regulated Ohio Credit Services Organization or a “Credit Repair Organization” within the meaning of state or federal law.

Federal law requires that a “credit repair organization” provide every consumer with the written statement set forth in 15 U.S.C. §1679c(a). Respondent offered no evidence that he ever provided such a statement to Primous. Federal law requires a contract between the “credit repair organization” and the consumer that meets the requirements of 15 U.S.C. §1679d(b). There is no evidence of a contract between respondent and Primous. Further, respondent’s activities are not permitted under R.C. 4712, the Ohio Credit Services Organization Act. Finally, respondent never registered as a “credit services organization” as required by R.C. 4712.02.

Respondent’s claims that he was operating as a “credit services organization” and his claim that the “Supremacy Clause” prohibits the board from sanctioning him are a ruse. Rosa Primous believed that respondent was an attorney and the activities that respondent undertook on Primous’ behalf amount to the unauthorized practice of law. This Court should reject respondent’s arguments regarding Count Three in their entirety.

V.

**Respondent's Arguments Regarding Count Four
are Irrelevant or Unsupported by Ohio law and the Record**

Respondent first claims that "B. Andrew Brown & Associates, LLC" is in "the business of incorporating and registering business entities." Considering the complete lack of evidence supporting that statement, the emptiness of this claim is astounding. Respondent produced no evidence that anyone other than himself works for or is in any way associated with "B. Andrew Brown & Associates." Respondent's name is the only name on the letterhead. No witness testified about meeting with or receiving advice from anyone else in respondent's office and respondent did not testify.

The relevant documents that are in evidence bear only respondent's name and only respondent's signature.¹¹ See Exb. 78. The record establishes that Joseph agreed that respondent would prepare and file the documents necessary to form the business, prepare and file the state of Ohio application for a liquor license, prepare and file the state of Ohio application to sell lottery tickets, and represent Joseph in Lakewood Municipal Court. Tr. at 26-27. In toto, the evidence in this case

¹¹ A variety of the documents bear a notary's signature. Respondent's assertion that "all attorneys in the State of Ohio are commissioned as Notary Public (sic)," is not only legally incorrect it is irrelevant. The fact that an attorney purportedly notarized Joseph's documents does not in any way establish who prepared the documents that were notarized or that person's relationship to Joseph or to respondent.

establishes and the board so found that respondent incorporated and registered King Drive Through, LLC, i.e. the unauthorized practice of law.¹²

In *Miami Cty. Bar Assn. v. Wyandt & Silvers, Inc.*, 107 Ohio St.3d 259, 838 N.E.2d 655, 2005-Ohio-6430, this Court held that a non-attorney's advice to clients about setting up various businesses, filling out and filing basic forms from the Ohio Secretary of State, and appointing a statutory agent constitutes the unauthorized practice of law. Rejecting Wyandt's argument that he was merely performing a "clerical service," the *Wyandt* court held that Wyandt's "advice to his clients about which business structure they should choose is just what *Gustafson* determined to be the unauthorized practice of law." *Id.* at 261 (citing *Gustafson v. V.C. Taylor & Sons, Inc.* (1941), 138 Ohio St. 392, 397, 20 O.O. 484, 35 N.E.2d 435). This Court enjoined Wyandt "from engaging in the practice of law in Ohio, including the preparation on another's behalf of legal papers necessary to form a business entity under the laws of Ohio." *Id.* at 262. Respondent should be similarly enjoined.

In addition to drafting the King Drive Through, LLC documents, respondent committed the unauthorized practice of law by giving Joseph legal advice about his criminal case. Report at 21. Respondent's efforts to convince this court that Joseph lied or gave "self-serving" testimony about the funds Joseph paid to respondent are factually inaccurate and irrelevant.

¹² In support of his argument, respondent offers this Court a false description of the record. Respondent claims that "a secretary at B. Andrew Brown & Associates, LLC typed the Articles of Organization for King Drive Thru (sic)." Respondent cites to the transcript at page 23. In reality, the testimony at page 23 is Mohammad Joseph stating simply that neither he nor his cousin typed the documents. In addition to the fact that it is irrelevant who typed or notarized the documents, there is no testimony that "a secretary" typed the articles of organization.

Respondent claims that Joseph was aware "at all relevant times," that respondent was not an attorney and cites to page 54 of the transcript. In reality, the transcript at page 54 is respondent cross-examining Joseph about a letter written to respondent by someone else. Nowhere at page 54 does Joseph testify that he knew that respondent was not an attorney. In fact, Joseph testified that he did not learn respondent was not an attorney until after he filed a claim with the Client Security Fund. Tr. at 48. Moreover, the fact that Joseph believed respondent was an attorney only exacerbates respondent's wrongdoing. Joseph knowing the truth would not exonerate respondent from a finding that he engaged in the unauthorized practice of law.

Respondent's claim that the \$1,800 paid by Joseph was "a loan" is both irrelevant and unsupported by the record. Joseph testified repeatedly that the money was "not a loan." See, e.g. Tr. at 37, 49, 57-59, 71. More to the point, Joseph testified that the \$1,800 was "for attorney's fees." Tr. at 73.

This court should overrule the arguments and conclusions of law offered by respondent regarding Count Four in their entirety.

VI.

Respondent was Not Acting as a Non-Attorney Bankruptcy Petition Preparer for Reginald Pierce

Just as with his assertions that he was acting as a "credit repair organization" or a "collection agent," the claim that respondent was a "non-attorney bankruptcy petition preparer," is unsupported by the record and must be rejected. Following a predictable pattern, respondent wanted the board and now wants this court to believe that he

provided services to Reginald Pierce pursuant to a federal statute that permits non-attorneys to provide bankruptcy services to debtors. See Exb. 37, 11 U.S.C. §110.

Yes, there is a federal statute that permits non-attorneys to assist debtors in completing bankruptcy petitions. However, the evidence in this case establishes that respondent not only failed to follow the statute, he masqueraded as an attorney, lied to the bankruptcy judge, and filed a forged power of attorney for Pierce.

The evidence in this case establishes that respondent told Pierce that Pierce needed a lawyer to complete his bankruptcy forms and that Pierce believed respondent was a lawyer. See, e.g. Tr. at 165, 184-185, 192, 200-201. In violation of 11 U.S.C. §110(b)(2)(A), respondent never explained to Pierce that he was purportedly acting as a Non-Attorney Bankruptcy Petition Preparer. Tr. at 170. By merely placing his name on Pierce's petition as a Bankruptcy Petition Preparer, respondent did not fulfill the requirements of the federal statute.

Respondent completed numerous forms for Pierce to sign. Exb. 32; Tr. at 168-172. Pierce gave respondent information regarding his debts and in violation of 11 U.S.C. §110, respondent completed the bankruptcy schedules. Tr. at 178. In violation of 11 U.S.C. §110, respondent collected court fees from Pierce.

In violation of 11 U.S.C. §110, respondent failed to file a petition disclosing any fee received from Pierce within 12 months prior to the filing of the case.¹³ See, e.g. Exb. 40. Respondent's claim that it is somehow meaningful that he wrote a letter to the

¹³ Before the petition was filed, Pierce paid respondent \$200 to complete and file his bankruptcy. Tr. at 167. Pierce also paid respondent \$209 for filing fees. Id. Given that respondent only paid \$100 of the filing fee and has not returned any money to Pierce, it is evident that respondent converted \$109 of the filing fee to his own use. Exb. 40; Tr. at 408-409.

court stating that “he had filed a disclosure of compensation” is preposterous. First, respondent and his letter lack credibility. Second, given that the statute requires that the disclosure form be “filed,” respondent’s letter is insufficient to say the least. Finally, Exhibit 40 proves respondent never filed the form. See, also Tr. at 397, 402 (Judge Morgenstern-Clarren testifying that no disclosure of compensation form was filed in the *Pierce* bankruptcy).

In addition to the fact that respondent did not comply with the federal statute, respondent used stationery bearing the letterhead “B. Andrew Brown & Associates, LLC” and “B. Andrew Brown, Esq.” to communicate with the Bankruptcy Court in response to a show cause order. Exb. 39. See also Tr. at 401. Only respondent appeared at the show cause hearing before Judge Morgenstern-Clarren on November 17, 2005. Tr. at 398. During the hearing, respondent made numerous false and misleading statements to the court regarding his role in *Pierce*’s bankruptcy. For example, respondent falsely claimed that he had not been paid by *Pierce*. Tr. at 399; Exb. 57.

The document that first attracted Judge Morgenstern-Clarren’s attention was the “General Power of Attorney” respondent filed with the bankruptcy court. Exb. 32 at 5. *Pierce* denied that he executed the “General Power of Attorney” filed by respondent; therefore, the document filed by respondent is a forgery. Tr. at 173.

Notwithstanding respondent’s unsupported claims to the contrary, *Pierce*’s bankruptcy was dismissed because he failed to appear in response to the court’s order to show cause. Tr. at 407. Unaware that his bankruptcy had been dismissed, *Pierce* again consulted respondent when his employer began to garnish his wages. Tr. at 179.

Respondent engaged in the unauthorized practice of law by giving Pierce legal advice regarding the status of his bankruptcy. Tr. at 181-182. Respondent then made “some calls” on Pierce’s behalf and the garnishment temporarily stopped. Id. The garnishment started again soon after respondent’s calls. Tr. at 181.

As this Court has previously acknowledged, “Section 110, Title 11, U.S. Code, permits nonattorneys to assist others to a limited extent in preparing certain bankruptcy petition forms.” *Cleveland Bar Assn. v. Boyd*, 112 Ohio St.3d 331, 332, 859 N.E.2d 930, 2006-Ohio-6590. In order to comply with the statute, “[t]he type of compensable services that a bankruptcy petition preparer can render are extremely limited.” *In re Landry* (Bkrtcy.M.D.Fla. 2001), 268 B.R. 301, 304. Moreover, the bankruptcy code expressly contemplates individual states taking legal action against nonattorneys who overstep their authority. See 11 U.S.C. §110(k). “Traditionally, state law defines what constitutes the unauthorized practice of law by bankruptcy petition preparers, like [respondent] who are not licensed attorneys.” *In re Alexander* (N.D. Ohio, 2002), 284 B.R. 626. The authority of this Court extends to enjoining the unauthorized practice of law before federal courts, including bankruptcy courts. *Boyd*, 112 Ohio St.3d at 333 (citations omitted).

In his interaction with Pierce, respondent repeatedly overstepped the activities permitted by 11 U.S.C. §110 and engaged in the unauthorized practice of law. Respondent completed Pierce’s forms; never told him he was a non-attorney; never filed a compensation disclosure form; respondent received funds from Pierce before he paid the entire filing fee; and, respondent telephoned Pierce’s creditors after his wages were garnished. All of those activities as well as the fact that Pierce believed he was

receiving the services of an attorney constitute the unauthorized practice of law. See, e.g. *Ostrovsky v. Monroe (In re Ellingson)* (Bankr.D.Mont. 1999), 230 B.R. 426.

CONCLUSION

Respondent's repeated violation of Ohio law is flagrant and offensive.

Respondent justifies his conduct by claiming to be a "collection agent" a "credit counselor," a Bankruptcy Petition Preparer or claims that he operates as a "business consultant" or a "management consultant." Nothing respondent says or does can insulate him from the truth – respondent has repeatedly engaged in the unauthorized practice of law. The flagrancy of respondent's conduct is starkly apparent in his unremitting use of his letterhead and "Esq." Respondent should be hereafter enjoined from the unauthorized practice of law.

The harm resulting from respondent's conduct is evident. Respondent's filing of a lawsuit against U.S. Bank led to U.S. Bank defending itself through counsel against completely baseless allegations. In Counts Two, Three, and Four, Cindy Paoletta, Rosa Primous, and Mohammed Joseph all believed they were dealing with an attorney. All of them took action based upon their beliefs. Each was damaged by respondent's false portrayal and unauthorized practice of law. In Count Five, the bankruptcy court was forced to devote time to addressing respondent's unauthorized activities. Judge Morgenstern-Clarren was forced to take time away from her responsibilities to address respondent's deception. Reginald Pierce's bankruptcy petition was dismissed because of respondent's actions.

Respondent has been the subject of two previous UPL findings – one by the board and one by this Court. Respondent has been convicted of false representation as an attorney. Respondent's previous activity resulted in a disciplinary case against a licensed attorney. See *Disciplinary Counsel v. Willis*, 96 Ohio St.3d 142, 2002-Ohio-3614, 772 N.E.2d 625. Respondent has shown no signs of remorse or acceptance of the obvious evidence against him. In contrast, respondent appears to have no qualms about continuing on his damaging and deceptive course of conduct.

Civil penalties of varying amounts are imposed by this Court in order to further the purpose of Gov. Bar R.VII. Recidivism is considered as a factor in determining the amount of the penalty. See *Wyandt*, 107 Ohio St.3d 259 (court affirmed board's reliance on Wyandt's recidivism as justification for the civil penalty). In *Cincinnati Bar Assn. v. Bailey*, 110 Ohio St.3d 223, 852 N.E.2d 1180, 2006-Ohio-4360, the court stated that Donald Bailey's delay in cooperating combined with the length of time that he had been engaging in the unauthorized practice of law justified a \$50,000 civil penalty. In *Cincinnati Bar Assn. v. Thomas*, 109 Ohio St.3d 89, 2006-Ohio-1930, 846 N.E.2d 31, the board recommended a \$5,000 penalty for each count against William Thomas. The *Thomas* court reduced the penalty to a total of \$5,000 based upon the fact that Thomas was deposed twice during the relator's investigation and "candidly admit[ed] many of the facts underlying relator's investigation. From his testimony, we are convinced that [Thomas] did not understand, despite his years of experience as a legal assistant, the extent to which he had overstepped the bounds of that role." *Id.* at 92.

In contrast, no evidence of a lack of understanding exists in this case.

Respondent denies having engaged in unlawful conduct. Respondent did not submit to a deposition nor did he provide relator with any of the information requested during discovery. As recommended by the board, respondent should be assessed the maximum civil penalty of \$50,000.

Relator asks that this court affirm the board's recommendation and enter a permanent order enjoining respondent from engaging in acts the same as or similar to those described herein and from engaging in any other act 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.

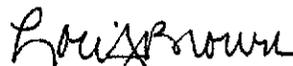
Finally, relator asks that as the board recommended, this Court's order include the following restrictions:

- In all correspondence, advertisements, letterheads, forms, website, internet or other written communication used by respondent, respondent shall not in any way convey the impression that he is an attorney. By the terms of this order, respondent shall not use the terms "Esq.," "J.D.," "attorney at law," "Esquire," "lawyer," "counselor at law" or other equivalent words, in connection with respondent's name at anytime in any form.
- In all correspondence, advertisements, letterheads, forms, website, internet or other written communication used by respondent for any purpose, respondent will clearly and conspicuously state that he is not an attorney, that his business is not a law firm, and that he cannot provide legal advice.

Respectfully submitted,



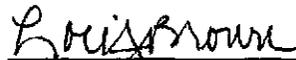
Jonathan E. Coughlan (0026424)
Disciplinary Counsel



Lori J. Brown (0040142)
First Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256

Certificate of Service

I hereby certify that the foregoing was served via U.S. Mail, postage prepaid, this 19th day of September 2008 upon Bruce Andrew Brown, The Illuminating Building, 55 Public Squire, Suite 1260, Cleveland, OH 44113 and upon D. Allan Asbury, Esq., Secretary, Board of Commissioners on the Unauthorized Practice of Law, Supreme Court of Ohio, 65 S. Front Street, Columbus, OH 43215-3431.



Lori J. Brown
Counsel for Relator

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

Appendix A

DISCIPLINARY COUNSEL,
RELATOR,
v.
BRUCE A. BROWN (aka B. ANDREW
BROWN, aka AMIR JAMAL
TAUWAB),
RESPONDENT.

08-1573

Case No. UPL 06-06

FINAL REPORT

FILED
AUG 11 2008
CLERK OF COURT
SUPREME COURT OF OHIO

I. PROCEDURAL BACKGROUND

On June 12, 2006, the Relator, Disciplinary Counsel, filed a Complaint against Respondent Bruce A. Brown, aka B. Andrew Brown, aka Amir Jamal Tauwab, alleging six counts of unauthorized practice of law. The Respondent filed his Answer on June 26, 2006. The matter was assigned to a Panel consisting of James W. Lewis - Chair, James E. Young and Patricia A. Wise.

In response to a January 5, 2007 Notice for Deposition served by the Relator, the Respondent filed a Notice of Intent to Not Attend Deposition on January 12, 2007 and a Motion for Order of Protection on January 16, 2007. On January 19, 2007, the Panel overruled the motion and ordered the Respondent to make himself available for a deposition conducted by the Relator and to answer or respond to each question posed to him by the Relator.

The Respondent subsequently filed a Request for Declaratory Judgment on January 19, 2007, seeking a statement that his assertion of the Fifth Amendment privilege against self-incrimination during these proceedings could not result in a negative inference. The Panel

denied the request on January 31, 2007. The Respondent also filed a Motion to Terminate or Limit Examination on January 26, 2007, which was later denied by the Panel on February 23, 2007. In its February 23 Order the Panel renewed its direction to the Respondent to attend a deposition noticed by the Relator. Preceding its February 23, 2007 Order, the Panel had ordered the parties on February 2, 2007 to brief the applicability of the Fifth Amendment privilege to the Respondent's future testimony.

The Relator made additional attempts to notice the Respondent for a deposition. On February 26, 2007, the Relator filed a Notice for Deposition, an Amended Notice on March 9, 2007, and a Second Amended Notice on March 9, 2007. In the interim, the Respondent filed a new Request for Order of Protection on February 26, 2007 and an Amended Request for Order of Protection on February 27, 2008. On March 12, 2007, the Panel again ordered the Respondent to follow its January 19, 2007 order with regard to the taking of his deposition. The Respondent attended his deposition on March 19, 2007.

The Respondent subsequently filed a Motion for Leave and a Motion for Summary Judgment *Instante* on March 12, 2007, which were denied as untimely.

On March 16, 2007, the Panel continued the original hearing date in the matter on the motion of the Relator due to the indictment of the Respondent in Cuyahoga County and a pending court date. The indictment included charges of False Representation as an Attorney pursuant to R.C. 4705.07(A). The Respondent entered into a plea agreement and the prosecutor dropped the R.C. 4705.07(A) charges as part of the agreement.

During the pendency of this case, the Respondent filed two actions in two different forums in an effort to suspend these proceedings. In the first action, the Respondent filed a Complaint in Prohibition against the Panel Chair and Board in the Supreme Court on February

23, 2007. The Panel Chair and Board filed a Motion to Dismiss on March 21, 2007, which was later granted by the Supreme Court on May 2, 2007. *State ex. rel. Bruce Andrew Brown v. James W. Lewis, et. al.*, Case No. 2007-0354

The Respondent also filed a Verified Complaint for a Preliminary Injunction and Motion for Temporary Restraining Order against the Panel Chair and the Board on February 27, 2007, in Federal District Court for the Northern District of Ohio. The Board and Panel Chair filed a Memorandum Contra to the Motion for Temporary Restraining Order on March 5, 2007 and the court denied the Respondent's requests on March 9, 2007. *Bruce Andrew Brown v. James W. Lewis, et. al.*, Case No. 1:07CV567, Judge Boyko.

Brown represented himself *pro se* throughout this action. He did not meaningfully participate in discovery. At a discovery deposition taken by Relator on January 22, 2007, and also at the hearing of this matter, Brown refused to answer Relator's questions under oath by invoking his constitutional privilege against self-incrimination. Brown asserted as grounds for his refusal to testify that he was under controlled release or probation for a conviction for committing the unauthorized practice of law and that proof of an additional act of unauthorized practice of law in the pending action (whether or not the alleged wrongful act occurred before or after his criminal conviction) would result in his incarceration. (Tr. 558-60)

The hearing in this matter was held on November 29-30, 2007 and March 13, 2008, in Cleveland. At the close of hearing the parties filed Proposed Findings of Fact and Conclusions of Law with the Panel on April 8, 2008.

II. GENERAL FINDINGS OF FACT

At the hearing the Respondent testified that his legal name is Amir Jamal Tauwab and that "professionally" he "use(s)" the name Bruce Andrew Brown (Tr. 557), as well as Bruce Brown, Bruce A. Brown and B. Andrew Brown. (Tr. 557-58). The Respondent is not and has never been an attorney at law in the state of Ohio. (Exb. 1, Certificate of Attorney Services Division, Supreme Court of Ohio, Richard A. Dove, March 8, 2007)

The Respondent was admitted to the practice of law in the state of New York at the Second Judicial Department in 1985. By entry of the Supreme Court of New York, Appellate Division, First Department, dated July 30, 1992, the Respondent was disbarred from the practice of law in New York. *In the Matter of Bruce A. Brown* (1992), 586 N.Y.S.2d 607. (Tr. 9)

The Respondent has been convicted of multiple felony crimes in the state of Ohio. In 1991, the Respondent pled guilty in Cuyahoga County to the passing of two bad checks and one count of forging a power of attorney. In 1994, he was convicted in Cuyahoga County of 44 third degree felonies: 10 counts of grand theft; eight counts of forgery; eight counts of uttering; and, 18 counts of tampering with records. In or about January 2003, the Respondent pled guilty in Cuyahoga County to a 21-count indictment: theft (6 counts); false representation as an attorney (6 counts); passing bad checks (7 counts); forgery; and, uttering. In or about June 2003, the Respondent pled guilty to two counts of forgery in Portage County. (Admitted¹)

During the pendency of this action the Respondent also faced several unrelated charges including a charge of False Representation as an Attorney pursuant to R.C. 4705.07(A). On March 16, 2007, the Respondent entered into a plea agreement and the prosecutor dropped the R.C. 4705.07(A) charges as part of the agreement.

¹ "Admitted" references allegations that the Respondent admitted to in his Answer to Relator's Complaint.

The Respondent was previously involved in two other actions decided by the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio ("the Board"). In case number UPL 91-2, the Board found that he engaged in the unauthorized practice of law. See *Disciplinary Counsel v. Brown* (1992), 61 Ohio Misc.2d 792. In 2003, the Supreme Court of Ohio found that the Respondent had again engaged in, and was enjoined against committing, further acts of the unauthorized practice of law. *Disciplinary Counsel v. Brown*, 99 Ohio St.3d 114, 2003-Ohio-2568, where the Court, in a per curiam opinion concluded:

Respondent is hereby enjoined from engaging in the unauthorized practice of law in the future.¹ All expenses and costs are taxed to respondent.

FN 1 Concerned that respondent will return to the unauthorized practice of law, relator also seeks an order precluding respondent from using "J.D." or "Esq." in connection with his name and prohibiting respondent from working in any capacity in a law office or for a licensed attorney absent a license to practice law and registration in accordance with the Supreme Court Rules for the Government of the Bar. We decline to issue such an order but note that respondent risks contempt for continuing to engage in the unauthorized practice of law.

In addition, in 2002, a lawyer was publicly reprimanded for aiding and abetting the Respondent in the unauthorized practice of law in *Disciplinary Counsel v. Willis*, 96 Ohio St.3d 142, 2002-Ohio-3614.

At the time of the filing of this action the Respondent maintained a place of business known as B. Andrew Brown & Associates, LLC, at The Brownhoist Building, located at 4403 St. Clair Avenue, NE, in Cleveland, Ohio 44103-1125. He holds himself out as "B. Andrew Brown, Esq." on the letterhead for "B. Andrew Brown & Associates."

III. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. COUNT ONE

FINDINGS OF FACT

Ms. Georgia Hilliard died March 18, 2000. (Exb. 11, p. 51) A Power of Attorney dated July 12, 2005 purportedly appointed Respondent as attorney in fact for Ms. Hilliard relating to the sale of certain of her real property. (Tr. 215; Exb. 11, pp. 12-15, 34-37) Proceeds of \$83,442.09 were received upon the sale of that property. *Id.* That amount was placed into a U.S. Bank IOLTA account designated as belonging to Respondent. *Id.* Respondent filed an action against U.S. Bank related to the proceeds from sale of the Hilliard property. *Id.*

Much of the testimony presented by Relator in support of its First Count against Respondent was based on U.S. Bank records. The sole witness presenting those records on behalf of U.S. Bank was Ms. Valerie Wright, who testified that part of her job responsibilities as a U.S. Bank District Operations Manager include authenticating documents created or maintained by U.S. Bank. (Tr. 265, 269) However, Ms. Wright expressly stated that she is “not records custodian” of U.S. Bank documents. (Tr. 286) Ms. Wright testified that documents responsive to a subpoena would be processed in Minnesota. (Tr. 271-72, 295)

Her further testimony demonstrated significant issues with the documents submitted. For example, Ms. Wright admitted that although Bank signature cards should not be signed if they are blank on one side, that did sometimes happen in her experience. (Tr. 300-01, 313). Ms. Wright stated that she was “confused” by some of the documents in the records she testified about, even though she sees those types of documents “quite often” in her job. (Tr. 317, 319)

At one point, Ms. Wright testified that she brought the “entire branch file.” (Tr. 332) However, she then testified that certain documents “should” have been in the “branch file,” but were not. (Tr. 332) Ms. Wright further testified that she previously provided documents to another individual related to the accounts at issue, and that those documents were no longer in her possession. (Tr. 327-28) She was then instructed by the Panel to make an additional search for all documents that may have been part of the file. (Tr. 334-35, 338-39)

After Ms. Wright returned with additional documents, she again admitted that certain documents were not included in the files that “should be” and that those should be “maintained in the normal course of business.” (Tr. 448). She also admitted that based on the documents she did have, the procedures followed regarding the accounts at issue were “improper.” (Tr. 450-451)

After much discussion about what had and had not been copied by the witness prior to her return, the witness enumerated many things that had not been copied (including a “little records folder,” “some correspondence” and a fax transmittal). The witness was again directed to go back and make a complete copy of everything in the files. (Tr. 451-457)

Upon returning yet again the next day, Ms. Wright testified that she was “perplexed” and again “confused” at the contents of a new file she had provided because it had “some other things mixed in it.” (Tr. 534)

On her fourth and final trip to the witness stand on the final day of testimony, Ms. Wright was once again forced to admit that a document (a copy of a check) that was responsive to the subpoena, and which should have been included in the documents she provided, was missing. (Tr. 660-61) Nor did she know why. (Tr. 661). The Panel finally ruled that the documents she had attempted to authenticate were inadmissible.

Respondent consistently maintained that the Bank's documents were "spurious," "false," and "fraud on the part of the bank." (Tr. 17, 104-05, 107, 111, 246, 285)

CONCLUSIONS OF LAW

On four separate trips to the witness stand, although Ms. Wright initially testified that the records presented were "complete," she was then forced to admit that some documents were missing, and that the records were confusing, perplexing, improper, and "mixed in." *Supra*.

Relator was never required to subpoena the complete file regarding Respondent's bank records, nor to present the complete file, either to Respondent or as evidence, as Relator's counsel noted several times. Relator argued that Relator should be permitted to offer as exhibits only what Relator's counsel determined to offer. While true, this misses the relevant points entirely. The determinative issue regarding this evidence, which Relator failed to understand, is that the witness was never able to properly authenticate the records. Based on Ms. Wright's testimony on each occasion, it does not appear that U.S. Bank complied with the subpoenas issued by Relator, but more importantly, Ms. Wright was not qualified to present the records as a "records custodian" or as a "qualified witness."

Relator had ample time between the first two days of hearings on November 29-30, 2007 and the final day on March 13, 2008 to obtain the appropriate records, and to provide a witness who could authenticate the records. But, on the final day, Ms. Wright appeared again, and was again forced to admit that a particular document which should have been included was missing, and that she did not know why. (Tr. 660-61)

The type of records presented in the course of Ms. Wright's testimony would ordinarily be admissible as evidence pursuant to the hearsay exception for records of regularly conducted

business activity. (Evid. R. 803(6)). To be admissible under this exception, however, the records must be reliable, “as shown by the testimony of the custodian or other qualified witness” and are admissible “unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.” *Id.* Ms. Wright’s testimony clearly demonstrated that she was not a qualified witness, and her own admissions regarding the records demonstrated a complete lack of trustworthiness in both the source of the information and the circumstances of preparation. Relator did not file a Motion for Reconsideration regarding the Panel’s ruling excluding the Bank’s records as evidence after the hearing.

Relator’s difficulties regarding the U.S. Bank records aside, however, Count One still demonstrates an instance of the unauthorized practice of law by Respondent. In filing a lawsuit against the U.S. Bank as Georgia L. Hilliard’s “Attorney in Fact,” Respondent engaged in the unauthorized practice of law. R.C. 4705.01 provides:

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned . . . unless the person has been admitted to the bar by order to the supreme court in compliance with its prescribed and published rules.

Ohio law is clear that a party cannot use a power of attorney designation to circumvent this black letter law:

The law recognizes that a person has the inherent right to proceed *pro se* in any court. But it also prohibits a person from representing another by commencing, conducting, or defending any action or proceeding in which the person is not a party. **When a person not admitted to the bar attempts to represent another in court on the basis of a power of attorney assigning pro se rights, he is in violation of [R.C. 4705.01].**

Disciplinary Counsel v. Coleman, 88 Ohio St.3d 155, 2000-Ohio-288 (emphasis added). The Supreme Court affirmed this proposition:

We reject Spurlock's argument that he was authorized to prepare a pleading on behalf of Degan because she gave him a power of attorney . . . **a power of attorney does not give a person the right to prepare and file pleadings in court for another.**

Cuyahoga County Bar Association v. Spurlock, 96 Ohio St.3d 18, 2002-Ohio-2580 (emphasis added).

Respondent engaged in the unauthorized practice of law by filing the action against U.S. Bank. No U.S. Bank records are needed to prove that fact.

B. COUNT TWO

FINDINGS OF FACT

Cindy Paoletta received a letter dated August 8, 2005 from B. Andrew Brown. The letter requested payment of an alleged debt by Ms. Paoletta to Raymond P. Buildt and enclosed an Affidavit For Mechanic's Lien by Mr. Buildt on property owned by Ms. Paoletta. The August 8, 2005 letter was written on stationery bearing the letterhead "B. Andrew Brown & Associates, L.L.C." and "B. Andrew Brown, Esq." (Exb. 16)

Ms. Paoletta retained Sergio DiGeronimo, Attorney at Law, to represent her in connection with the Buildt matter. (Tr. 121-122) Mr. DiGeronimo confirmed that Mr. Buildt's mechanic's lien had in fact been filed with the Cuyahoga County Recorder. Mr. DiGeronimo, whose practice includes real estate transactional work, also opined that in his experience the Recorder's Office requires that a mechanic's lien list the identity of the person who prepared the lien. (Tr. 121, 123-124) The mechanic's lien filed with the Cuyahoga County Recorder's Office contained the following legend:

“This document was prepared by:
B. A. Brown
4403 St. Clair Avenue
Cleveland, Ohio 44103
(216) 881-7103” (Exb. 59)

Based upon the letter from Respondent to Ms. Paoletta, Mr. DiGeronimo concluded that Respondent was an attorney. (Tr. 125) Mr. DiGeronimo wrote back to Respondent in a letter dated August 12, 2005 addressed to “B. Andrew Brown, Attorney at Law” (Exb. 17) The letter advised Respondent that Mr. DiGeronimo represented Ms. Paoletta and her husband and referred to Mr. Buildt as “your client.” Mr. DiGeronimo then had conversations with Respondent. (Tr. 125) Respondent and Mr. DiGeronimo engaged in settlement negotiations. Respondent proposed the payment of money to Mr. Buildt to resolve the controversy. Mr. DiGeronimo then went to the property and looked at it. Respondent’s proposal was not well received by Mr. DiGeronimo or his clients. (Tr. 129-130)

Mr. DiGeronimo received a letter dated September 16, 2005 enclosing a copy of a Satisfaction of Mechanic’s Lien which had been filed for the Paoletta property. (Exb. 20; Tr. 131) The Satisfaction of Mechanic’s Lien filed with the Cuyahoga County Recorder’s Office bears the notation:

“Prepared by:
B. Andrew Brown & Assoc.” (Exb. 60; Tr. 133-134)

Prior to receiving the Satisfaction of Mechanic’s Lien, Mr. DiGeronimo learned from the Cuyahoga County Prosecutor’s Office that Respondent was not admitted in Ohio. (Tr. 127-128, 132) Exhibit 18 is a letter dated August 15, 2005 from B. Andrew Brown to Mr. DiGeronimo. The letter provides in part: “Be advised that I am not an attorney, practicing law. I am a collection agent.” Mr. DiGeronimo testified that he did not receive that letter in August 2005.

The first time he saw it was November 2007, approximately two weeks before the Board hearing. (Tr. 127) The Panel accepts the testimony of Mr. DiGeronimo.

CONCLUSIONS OF LAW

Respondent led Mr. DiGeronimo to believe that Respondent was an attorney. Mr. DiGeronimo's conclusion was based upon the August 8, 2005 letter from Respondent bearing the letterhead "B. Andrew Brown & Associates, L.L.C." and "B. Andrew Brown, Esq." (Exb. 16) By leading Mr. DiGeronimo to believe that he was in fact an attorney at law, Respondent committed the unauthorized practice of law. See *Disciplinary Counsel v. Robson*, 116 Ohio St.3d 318, 2007-Ohio-6460.

In *Geauga Cty. Bar Assn. v. Canfield*, a former lawyer prepared a contract for the sale of real property for others. Even though the former attorney copied the document from a form book and did not charge a fee, the Supreme Court ruled that the conduct constituted the unauthorized practice of law. 92 Ohio St.3d 15, 2001-Ohio-138. Here, Respondent prepared an Affidavit For Mechanic's Lien and Satisfaction of Mechanic's Lien on behalf of Mr. Buildt. Those documents were provided to Ms. Paoletta, Mr. DiGeronimo and filed with the Cuyahoga County Recorder. By doing so, Respondent committed the unauthorized practice of law.

The Supreme Court has recently considered on several occasions whether negotiation constitutes the unauthorized practice of law. In *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St.3d 504, 2004-Ohio-5581, the Court found the unauthorized practice of law where the respondent advised, counseled and represented various debtors, as well as negotiating the settlement of their claims and drafting settlement agreements. In *Cleveland Bar Assn. v. Henley*, 95 Ohio St.3d 91, 2002-Ohio-1628, the respondent was found to have engaged in the

unauthorized practice of law by, *inter alia*, attempting to negotiate the settlement of claims of alleged discrimination. In *Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, the Court held that a third-party administrator could convey settlement offers from an employer when acting pursuant to an Industrial Commission Resolution. *Id.* at ¶¶ 50-62. In *Ohio State Bar Assn. v. Burdzinski, Brinkman, Czarzasty & Landwehr, Inc.*, 112 Ohio St.3d 107, 2006-Ohio-6511, the Court found that nonlawyers could participate in collective bargaining. The Court held:

Respondents here are not negotiating the settlement of a legal dispute, nor are they negotiating a business or real-estate contract in which all elements of the contract are negotiable. Rather, there is a clearly defined scope of allowable subjects for negotiation. Because of the close federal regulation and the limited subjects for negotiation, we conclude that respondents' conducting of negotiations on behalf of their clients with employees or employees' representatives during collective bargaining is not the practice of the law. *Id.* at ¶ 20.

Here, Respondent engaged in negotiations attempting to settle a legal dispute in August 2005 involving his client and the client of an attorney-at-law, Sergio DiGeronimo. As such, Respondent committed the unauthorized practice of law.

C. COUNT THREE

FINDINGS OF FACT

Rosa Primous, a school teacher, applied for a home equity loan at Key Bank on Kinsman Road in Cleveland. (Tr. 344) At the time of her application, Rex Erusiafe was the bank's branch manager. (Tr. 345-46; see also Relator's Exb. 31) During the application process and after reviewing her credit report, Erusiafe told Primous that another person was using her social

security number. (Tr. 346) Primous and Erusiafe discussed the problem and she asked him if he knew "a lawyer who could handle that, because I didn't have a lawyer." (Tr. 346) In response to her request for a referral to a lawyer, Erusiafe recommended that she hire the Respondent and gave her one of the Respondent's business cards. (Tr. 346, 356-57) The Respondent's business card identifies him as "B. Andrew Brown, Esq." and his business as "B. Andrew Brown & Associates LLC." (Exb. 62) Erusiafe told her the Respondent had previously done some work for him and recommended him "as a lawyer." (Tr. 356, 369) At this point "[i]t "was clear" to Primous that the Respondent "was a lawyer." (Tr. 347)

As a result of Erusiafe's referral to the Respondent, Primous phoned for an appointment with him at his St. Clair Avenue office (asking for "a lawyer who was recommended by a friend to help me in this case", mentioning the Respondent by name) and when she arrived for her appointment there, accompanied by a friend, they were ushered into a conference room where the Respondent met with them. (Admitted; Tr. 347-48) Primous told the Respondent, "I needed a lawyer and Rex recommended you." (Tr. 357) She also handed or showed the Respondent the business card that Erusiafe had given to her. (Tr. 356-57) Before hiring the Respondent, Primous wanted to know more about him and he discussed his background. (Tr. 357) At no time did the Respondent inform Primous that he was not a lawyer. (Admitted; Tr. 354) Believing the Respondent to be a lawyer, Primous provided him with some information about herself and the person Erusiafe said was using her social security number. (Tr. 352-53) Primous considered the information personal or confidential. (Tr. 354-55) She did not believe she was hiring a consumer credit organization to assist her. (Tr. 357, 376) Primous paid the Respondent a \$250 "retainer fee" believing he was an attorney. (Tr. 350)

On July 14, 2005, the Respondent wrote a letter on Primous' behalf to Robert J. Jatileff of

Winthrop, Washington, on stationery bearing the letterhead "B. Andrew Brown & Associates, LLC" and "B. Andrew Brown, Esq." (Admitted; Exb. 21, 88, Exb. B; Tr. 350) The letter stated, in part, "Please be advised that this office has been retained to investigate and resolve the matter of your use of a social security number belonging to another individual. Towards that end, be further advised that I will contact the three major credit reporting agencies to ascertain the extent of your improper use of my client's social security number. Subsequent thereto, we will determine whether or not to involve the criminal justice authorities." "Ms. Rosa Primous" was an indicated recipient of the letter. (Exb. 21, Exb. B) By writing letters setting forth Primous' legal position with regard to the allegedly fraudulent use of her social security number, and by threatening legal action on her behalf, the Respondent engaged in the unauthorized practice of law.

On July 14, 2005, using his "B. Andrew Brown & Associates, LLC/B. Andrew Brown, Esq." stationery, the Respondent wrote letters to the three major credit reporting services on Primous' behalf. (Tr. 351-352; Exb. 21, Exbs. C, D and E) At all times Primous believed the Respondent was a lawyer performing legal services on her behalf. (Tr. 354-55, 358, 368-69, 371) By doing so, the Respondent engaged in the unauthorized practice of law.

At the hearing the Respondent cross-examined Primous at length using certain documents, over Relator's objection, which he had not previously disclosed on discovery. Among those were three letters that he claimed he authored and mailed to Primous: a July 25, 2005 letter referencing an enclosed a copy of her Equifax Consumer Credit Report stating that only her name appeared thereon (Exb. Q); a July 26, 2005 letter with an enclosed credit report from TransUnion, which did not contain Jatleff's name (Exb. P); and a July 28, 2005 letter referencing an enclosed a credit report from Experian stating that additional documentation was needed.

(Exb. O) Primous did not recall receiving these letters from the Respondent (Tr. 351-53, 358-63), but taken together they indicate that at least two of the credit reports did not contain the name Robert J. Jateff, the person who was supposedly using Primous' social security number. The Respondent intimated during his cross-examination (Tr. 364) that his efforts were the reason the man's name was not on her credit reports; however, no independent evidence established that the man's name ever did actually appear on any of Primous' credit reports. The Respondent stated in his July 26, 2005 letter to her (Exb. P) that the information received from TransUnion "combined with that we recently received from Equifax causes me to believe that a mistake occurred when you were advised that Mr. Jateff was using your Social Security Number." Thus it may be that Jateff's name never did appear on any of Primous' credit reports and that no one named Jateff was using her social security number, as Erusaife had led her to believe.

During the Respondent's cross-examination of Primous, he attempted to elicit from her additional information about what Erusaife had told her about the legal work he (the Respondent) had previously performed. Primous did not recall any specific details but the Respondent persisted with his cross-examination and at one point asked her, "Did he discuss that I had done a bankruptcy for his wife?" (Tr. 369) The question itself raises concerns about the existence of the Respondent's prior relationship with Erusaife and suggests another potential UPL violation on the Respondent's part, if in fact he "had done a bankruptcy" for Erusaife's wife.

When Primous later returned to the bank to complete her transaction she learned that Erusaife was no longer employed there. (Tr. 366) Primous later tried to contact the Respondent but he did not return her calls or return any portion of her \$250 retainer fee. (Tr. 353-55)

In summary, the Panel finds that (1) Erusaife told Primous that she needed the services of a lawyer; (2) at that time Erusaife believed, or at least told Primous he believed, that the

Respondent was a lawyer who had done previous legal work for him; (3) Erusaife gave her one of the Respondent's "Esq." business cards, which further led her to believe the Respondent was a lawyer; (4) Primous later telephoned the Respondent's office for an appointment, saying that the Respondent had been recommended to her as being a good lawyer; (5) when she met in person with the Respondent she told him she had been referred to him by Erusaife as a "good lawyer" and asked the Respondent to discuss his background with her but he said nothing to correct her understanding that he was a lawyer; (6) the Respondent then obtained from Primous personal and confidential information, which she provided on the belief he was a lawyer; (7) Respondent advised Primous that he would proceed to address her problem in two stages, first by contacting the man who was supposedly using her social security number and then by contacting credit agencies on her behalf; (8) using his "B. Andrew Brown & Associates, LLC/B. Andrew Brown, Esq." stationery, he wrote a letter on her behalf to a Mr. Jateff stating that he had been "retained to investigate and resolve the matter of your use of a social security number belonging to another individual" and threatening possible legal action against him; (9) he charged Primous a \$250 "retainer fee" for these services and (10) at all times Primous believed the Respondent was an attorney, that the services he recommended to her were being performed by an attorney, and that she had paid an attorney to perform them.

CONCLUSIONS OF LAW

The Panel concludes that Respondent's misrepresentation and failure to correct Primous' misconception constitutes the unauthorized practice of law. Respondent's failure to correct Primous' understanding of his status as an attorney led Primous to believe that she was paying an attorney to provide her with legal services. Primous' intention and desire to hire an attorney to

resolve her situation was evident from her initial meeting with Respondent. Respondent's collection of a retainer fee reinforced the idea that an attorney-client relationship had been established. The misrepresentation that continued as a result of Respondent's actions constitutes the unauthorized practice of law.

D. **COUNT FOUR**

FINDINGS OF FACT

Mohammad Joseph and his cousin, Mahoud Khalil, attempted to start a business known as King Drive Through, LLC. (Tr. 21-23, 62) Prior to meeting Respondent, Mr. Joseph had been charged in Lakewood, Ohio with carrying a concealed weapon ("CCW"). (Tr. 29) During the course of forming the business and believing that Respondent could provide legal services to him, Mr. Joseph discussed his CCW charge with Respondent. (Tr. 29-34) Respondent told Mr. Joseph that he would represent Mr. Joseph on the CCW charge in court. (Tr. 31)

The Respondent analyzed the CCW charge and advised Mr. Joseph that the charge should be dismissed.

Q And what did Mr. Brown say to you when you told him that you had been charged with CCW?

A He told me it's most likely as a discrimination. You had your license on you, you had your gun. My gun was not loaded, so by the law it shouldn't be in the holster or cannot be in the holster. He told me it shouldn't be a problem, he'll dismiss out the first day.

(Tr. 30-31)

The Respondent did not appear for Mr. Joseph's scheduled court hearing. Rather, he told Mr. Joseph that he had been in an accident on the way to court. The case was continued. (Tr.

31-34) The next day Respondent advised Mr. Joseph that Respondent would file a motion to dismiss. Later Respondent told Mr. Joseph that the motion to dismiss had been filed and that Mr. Joseph would not have to go to court.

Q And on the next date, the other date that they gave you, did you talk to Mr. Brown and what did he tell you?

A Yes, actually by the next day I talked to Mr. Brown, he told me it wouldn't be a problem. "I'm going to have to do something else." He said he's going to do like a motion to dismiss or something. This way I didn't even have to go to court. So he told me he's going to go file a motion to dismiss.

I talked to him. He told me he already filed. He said, "Don't even worry about it. You're not going to have to go to court." He said they'll call him back or something or other, tell him the answer. Either I still have to go to court or the motion to dismiss was accepted.

(Tr. 32-33; See also Tr. 35)

The hearing was in fact rescheduled. Respondent was supposed to appear with Mr. Joseph. Approximately a half hour before the hearing, Respondent called Mr. Joseph to tell him that he needed \$500 "because he found out that his [law] license was expired and he needed \$500 to renew his license." (Tr. 33-34) Mr. Joseph went to court alone that day and the hearing was again rescheduled. (Tr. 33-34) Respondent told Mr. Joseph that he would appear for the third rescheduled hearing. He however did not appear and Mr. Joseph obtained an attorney to represent him. (Tr. 34-35)

Respondent prepared and filed the necessary documents for the establishment of the business to be known as King Drive Through, LLC. Although Mr. Joseph concedes that he does not know who actually filled out the form for the Organization/Registration of Limited Liability Company (Tr. 64-65), the undisputed testimony is that Respondent agreed to prepare and file the necessary documentation for the incorporation of King Drive Through, LLC, as well as "do" the

liquor license and lottery applications. (Tr. 24-27) Mr. Joseph and Respondent sat together and jointly filled out the application to sell lottery tickets, which was then typed up by Respondent's secretary. (Tr. 24-25) Moreover, Respondent signed the Organization/Registration of Limited Liability Company form for King Drive Through, LLC accepting his appointment as agent and "B. Andrew Brown & Associates" is listed as the person to whom requests for copies of company documents should be addressed. (Exb. 24, pp. 10-12) In addition, Exhibit 24, p. 8 is a copy of the letter from Respondent to the Ohio Secretary of State enclosing the Organization/Registration of Limited Liability Company for King Drive Through, LLC. Exhibit 24, p. 9 is a letter dated September 23, 2005 from Respondent to Mr. Joseph enclosing the "Certificate of Registration" for King Drive Through, LLC received from the Ohio Secretary of State.

Mr. Joseph paid Respondent \$1,800 for representation in connection with the CCW case and for services in connection with the startup of King Drive Through, LLC. (Tr. 31) Respondent told Mr. Joseph that he would repay the \$1,800 to Mr. Joseph's bank account. A check was drawn on an account registered to "The Bruce Andrew Brown Group, Ltd." in the amount of \$1,800 payable to Mohammad Joseph. That check was deposited to Mr. Joseph's account pursuant to an endorsement on the back of the check containing Mr. Joseph's name. Mr. Joseph, however, testified that he did not sign the check. Respondent's account however had been closed and the check was not honored. A second check for \$1,850 was written on the same account and also bore the endorsement of Mr. Joseph on the back. Mr. Joseph testified that he did not sign that check either. That check was also not honored. (Tr. 44-48) See Exb. 24, pp. 14 and 15.

Mr. Joseph filed a claim with the Supreme Court's Client's Security Fund seeking a return of money given to Respondent. See. Exb. 24, pp. 1 and 2. That claim was denied on the grounds that Respondent was not an attorney admitted to practice in Ohio. (Tr. 38-39, 48) Mr. Joseph did not learn that Respondent was not an attorney until he was notified by the Supreme Court Client Security Fund. (Tr. 48)

CONCLUSIONS OF LAW

In general, the practice of law includes rendering of legal advice. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 193 N.E. 650, at paragraph one of the syllabus. Respondent engaged in the unauthorized practice of law by giving Mr. Joseph legal advice about his criminal case.

The drafting of documents by a layperson on another's behalf and which create a business entity is the unauthorized practice of law. *Columbus Bar Assn. v. Verne*, 99 Ohio St.3d 50, 2003-Ohio-2463. Respondent contracted with Mohammad Joseph to provide legal services in connection with a criminal charge pending against Mr. Joseph and in connection with Mr. Joseph's efforts to start a business known as King Drive Through, LLC and accepted compensation for such services. Respondent engaged in the unauthorized practice of law by preparing and filing the necessary documents for the establishment of King Drive Through, LLC. These documents included the Organization/Registration of Limited Liability Company as well as the documentation necessary to obtain a liquor license and to apply for the right to sell lottery tickets.

E. COUNT FIVE

FINDINGS OF FACT

On October 12, 2005, the Respondent filed a Chapter 7 bankruptcy petition for Reginald V. Pierce and designated himself as a Bankruptcy Petition Preparer. (Exb. 32, p.2) Pierce was referred to Respondent after asking a local attorney for a recommendation for an attorney to assist him in filing a bankruptcy petition. (Tr. 163-65) Upon first meeting Pierce, the Respondent told him that he needed a “lawyer” to complete his bankruptcy forms and that Respondent would “take care of everything” relative to the bankruptcy. (Tr. 165, 173, 184-85, 192, 200-1) Pierce believed that the Respondent was an attorney. (Tr. 165) The Respondent never informed Pierce that he was not an attorney. (Tr. 166) Simultaneously with the filing of the bankruptcy petition, the Respondent also filed a “General Power of Attorney”, appointing himself as Pierce’s “attorney in fact”. (Exb. 32, p. 5) Pierce denied that he executed a power of attorney as filed by the Respondent. (Tr. 173). Pierce paid Respondent \$200 to complete and file the bankruptcy in addition to \$209 for filing fees. (Tr. 167) The Respondent converted \$109 of the filing fee for his own use. (Exb. 40, Tr. 408-09) A bankruptcy petition preparer cannot collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition. 11 U.S.C. §110(g)

The case was assigned to Judge Morgenstern-Clarren who immediately issued a show cause order requiring the Respondent and Mr. Pierce to appear and explain why the petition was filed by a third party and whether any compensation was paid to Respondent for preparing and filing the bankruptcy case. Judge Morgestern-Clarren testified that she typically issues a show cause order in any case filed with a general power of attorney to verify the relationship. (Tr.

394) Judge Morgenstern-Clarren testified that she initially believed the Respondent was an attorney. (Tr. 403)

The Respondent appeared before Judge Morgenstern-Clarren on November 17, 2005 without Pierce and falsely claimed that he had not been paid by him for his services. (Tr. 299, Exb. 57) The Respondent never informed Pierce of the judge's order to appear. (Tr. 174)

Mr. Pierce's case was eventually dismissed by Judge Morgenstern-Clarren because he failed to appear in response to the court's order to show cause. Mr. Pierce was unaware of the dismissal, and consulted the Respondent when his wages began to be garnished by his employer. (Tr. 179) Respondent in turn gave Pierce advice regarding the status of the bankruptcy case and made several calls to temporarily stop the garnishment. (Tr. 180-81) Pierce ultimately sought the services of a licensed attorney to file a new bankruptcy petition. (Tr. 202)

CONCLUSIONS OF LAW

Section 110, Title 11 of the US Bankruptcy Code permits non-attorneys to prepare ordinary petitions for bankruptcy on behalf of others pursuant to specific guidelines. See *Cleveland Bar Ass'n v. Boyd*, 112 Ohio St.3d 331, 2006-Ohio-6590.

Here, the Respondent exceeded the statutory guidelines for bankruptcy petition preparers because he began to act in the capacity as a legal representative. In addition, the Respondent, while not disclosing to Pierce he was not licensed to practice law, filed a general power of attorney without proper authorization, all in an attempt to represent Pierce as his legal representative in the proceedings.

The Respondent eventually failed in his effort to represent Pierce before the bankruptcy court, and in failing to restrict his activities to those permitted by Section 110, eventually caused

Pierce's case to be dismissed.

Section 2(B)(1)(g), Article IV of the Ohio Constitution confers on the Supreme Court original jurisdiction over all matters related to the practice of law, including allegations of laypersons practicing law without a license. "[E]xcept to the limited extent necessary for the accomplishment of the federal objectives," the Supreme Court is also authorized to enjoin the unauthorized practice of law before federal courts in this state. *Sperry v. Florida ex rel. Florida Bar* (1963), 373 U.S. 379, 402, 83 S.Ct. 1322.

The unauthorized practice of law consists of rendering legal services for another by any person not admitted to practice in Ohio. Gov. Bar R. VII(2)(A). Only a licensed attorney may provide legal advice, file pleadings and other legal papers in court, and manage court actions on another's behalf. *Cleveland Bar Ass'n v. Baron*, 106 Ohio St.3d 259, 2005-Ohio-4790; *Akron Bar Ass'n v. Greene*, 77 Ohio St.3d 279, 1997-Ohio-298. The Respondent engaged in the unauthorized practice of law by acting beyond the permissible scope of a bankruptcy petitioner, including filing a forged general power of attorney in an attempt to elevate his level of representation, acting on Pierce's behalf to temporarily stop a garnishment, and advising Pierce, incorrectly, of the status of the bankruptcy after the case had been dismissed and Pierce's wages were garnished.

F. COUNT SIX

FINDINGS OF FACT

On October 12, 2005, the Respondent filed a Chapter 7 bankruptcy petition for Theresa Delaney, designating himself as a bankruptcy petition preparer on Delaney's bankruptcy petition.

(Admitted; Exb. 41, p. 2) The petition requested that Delaney be allowed to pay the required bankruptcy fee in installments. The Respondent also filed a "General Power of Attorney" with the bankruptcy court appointing himself, "B. Andrew Brown, Esq. of Cleveland, Ohio," as Delaney's "attorney in fact." Delaney's bankruptcy case was assigned to Hon. Arthur I. Harris. (Admitted; Exb. 41, Tr. 478) Linda M. Battisti, an attorney employed by the United States Trustee's Office Justice, also was assigned to the case. (Tr. 458-59) Battisti testified that the proper role of a bankruptcy petition preparer is purely clerical, basically that of a typist. (Tr. 463-64) The petition preparer must file and sign a disclosure statement that contains the preparer's social security number and the amount of the fee being charged to the petitioner. (Tr. 464) The preparer's fee cannot be paid until the bankruptcy filing fee is paid in full. (Tr. 465-66) The Respondent did not file a disclosure of Bankruptcy Petition Preparer fees in Delaney's bankruptcy case. (Exb.41; Tr. 476) However, it was alleged that Delaney paid the Respondent a \$200 preparer's fee. (Tr. 476-77)

The fact the petition requested that the filing fee be paid in installments caused Battisti to be concerned that a preparer's fee had been, or might be, paid contrary to law. (Tr. 473-75)

The General Power of Attorney also raised concerns with Battisti. (Tr. 467) Delaney appeared on December 8, 2005 for her 341 creditors' meeting, but because she did not bring photo identification with her, the meeting was continued to December 13, 2005. (Exb.41, p. 25; Tr. 467-68) Delaney failed to appear for the December 13, 2005 creditors' meeting. (Exb.41 p. 26; Tr. 468-69) As a consequence, on or about January 4, 2006, the United States Trustee filed an amended notice of motion to dismiss Delaney's bankruptcy petition. (Exb.41, p. 28; Tr. 469) On January 11, 2006, Delaney filed an unsigned document in the United States Bankruptcy Court indicating that she had received legal advice from the Respondent regarding her appearance for

her creditors' meeting. (Exb.41, p. 33; Tr. 470) On January 13, 2006, Delaney filed a second document in the United States Bankruptcy Court indicating that she had received legal advice from the Respondent regarding her appearance for the creditors' meeting. (Exb. 41, p. 34; Tr. 470) The documents filed by Delaney on January 11 and January 13, 2006 caused Battisti to begin an investigation of the Respondent. (Tr. 470) Ultimately, Battisti filed an adversary action against him, seeking the imposition of fines and the disgorgement of the preparer's fees that he allegedly had been paid by Delaney. On February 24, 2004, the United States Bankruptcy Trustee, Saul Eisen, filed a motion for an oral examination (deposition) of Delaney pursuant to Bankruptcy Rule 2004. (Exb. 41, p. 39; Tr. 472-73) On March 7, 2006, Eisen filed a complaint for injunctive relief, turnover of fees and imposition of fines against the Respondent. (Exb. 41, p. 45; Exb. 76; Tr. 473) The allegations of the unauthorized practice of law against the Respondent in the three-count complaint were based upon communications between the Department of Justice and Delaney. (Tr. 473-74)

Based upon the filing of the adversary proceeding against the Respondent, Relator contends that the Department of Justice had concluded that the Respondent had engaged in the unauthorized practice of law by providing legal advice to Delaney. (Exb. 41, p. 45; Exb. 76)

Delaney was noticed to appear for an oral examination, which Battisti described as a "deposition" taken in bankruptcy proceedings (Tr. 472) The main purpose of the deposition was to determine whether the Respondent had been paid a \$200 preparer's fee and not disclosed it in conjunction with the filing of the petition. (Tr. 473)

The Respondent advised Battisti that he could not appear for Delaney's first scheduled deposition due to medical problems his mother was experiencing, and the deposition was rescheduled. (Tr. 491)

Delaney later appeared and gave sworn testimony at a deposition held in the bankruptcy case on September 18, 2006. (Exb. 42; Tr. 479-80.) The Respondent did not attend this deposition and the reason why he did not became an issue in the pending unauthorized practice of law action.

The Relator served Delaney with a subpoena to attend and testify at the pending unauthorized practice hearing but she failed or refused to appear, or to contact the Relator. (Tr. 86-89)

Inasmuch as Delaney did not appear for and was unavailable as a witness the hearing in this UPL action (Tr. 484-85), the admissibility of Delaney's deposition testimony therefore became essential to proof of the Relator's sixth alleged count. The Respondent objected to the introduction of Delaney's deposition testimony under Evid. R. 804(B)(1) on grounds that he did not receive notice of the deposition and therefore was not present and unable to cross-examine her. (Tr. 480-481)

Evid. R. 804(B)(1) reads:

“(B) Hearsay exceptions.

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony.

Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. Testimony given at a preliminary hearing must satisfy the right to confrontation and exhibit indicia of reliability.” (Emphasis added)

The testimony adduced from Battisti and Brown during an extensive voir dire examination of both witnesses revealed that Battisti had not issued a written notice of deposition to Brown for

the second Delaney deposition. Battisti testified that she “would have” given Brown oral notice by telephone, as she said was her customary practice, but she could not specifically recall doing so in this case. (Tr. 493-494, 497) She testified that she thought it unusual that Brown was not in attendance at the deposition, based on his past appearances in the case, including his attendance at his own deposition, but she proceeded to conduct the Delaney deposition in his absence. (Tr. 495) Some time after the Delaney deposition was taken, Battisti telephoned the Respondent to settle the adversary action in exchange for his approval and signature on a consent decree in which he agreed not to commit future unauthorized practice of law violations while not admitting any past violations, and the Respondent eventually agreed to this proposed resolution. (Exb. 43, 68). However, at no time during these settlement discussions was the Delaney deposition mentioned. (Tr. 506, 507, 511-512, 515, 520) Although the Respondent admitted that he knew Battisti intended to depose Delaney, he testified that he did not learn that the deposition actually had been conducted until the deposition transcript was provided to him by the Relator on discovery in this action. (Tr. 500, 503, 507)

The Respondent also argues that he did appear for his own deposition during the bankruptcy case, although he refused to testify on Fifth Amendment grounds. (Tr. 478) His appearance for deposition was offered as circumstantial proof that he appeared in the bankruptcy case whenever he was noticed to appear. (Tr. 500)

In testifying against the admission of the Delaney deposition transcript into evidence, the Respondent argued (Tr. 501) that Federal Rule of Civil Procedure 30 (depositions by oral examination) requires that written notice of the deposition be given to the other parties in the action. Section (b)(1) of that Rule reads:

“(b) Notice of the Deposition; Other Formal Requirements.

(1) *Notice in General.* A party who wants to depose a person by oral questions must give

reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.” (Emphasis added.)

Although the Relator established that Delaney was unavailable as a witness at the hearing of this unauthorized practice of law action, and that the factual and legal issues addressed in the deposition were essentially the same as those being litigated in the pending unauthorized practice of law action before the Board, the Panel concluded that the evidence was insufficient to establish that the Respondent received notice of the Delaney deposition in compliance with Fed. R. Civ. P. 30 (b)(1). Accordingly, the Panel ruled the Delaney deposition testimony inadmissible. (Tr. 521) Proof of the substance of the unauthorized practice of law violations alleged against the Respondent in Count Six required Delaney’s testimony. In absence of that testimony, Count Six could not be proved and is hereby dismissed.

IV. RESPONDENT’S CONTINUED COURSE OF CONDUCT IN HOLDING HIMSELF OUT AS AN ATTORNEY, OR ONE QUALIFIED TO PRACTICE LAW, TO THE PUBLIC CONSTITUTES THE UNAUTHORIZED PRACTICE OF LAW

In this action, the Respondent argued that the use of “Esq.” by a nonlawyer does not violate Ohio common or statutory law and he cited as authority, in part, the Supreme Court’s ruling against him in *Disciplinary Counsel v. Brown*, 99 Ohio St.3d 114, 2003-Ohio-2568, where the Court, in a *per curiam* opinion, concluded:

Respondent is hereby enjoined from engaging in the unauthorized practice of law in the future. ¹ All expenses and costs are taxed to respondent.

FN 1 Concerned that respondent will return to the unauthorized practice of law, relator also seeks an order precluding respondent from using "J.D." or "Esq." in connection with his name and prohibiting respondent from

working in any capacity in a law office or for a licensed attorney absent a license to practice law and registration in accordance with the Supreme Court Rules for the Government of the Bar. We decline to issue such an order but note that respondent risks contempt for continuing to engage in the unauthorized practice of law.

The Respondent contends that even after considering all of his prior disciplinary actions and other violations of law, including his repeated acts of unauthorized practice of law, the Supreme Court declined to prohibit even his use of the term "Esq." The Respondent's proven conduct in this action places his interpretation of the *Brown* decision squarely to the test, as demonstrated by his own cross-examination of Federal Bankruptcy Court Judge Morgenstem-Clarren (Tr. 412-13):

Q Does Footnote 1 state that the Supreme Court declined to prohibit Bruce Brown from using esquire with his name?

A It says what it says. It says that the Relator asked the Court to preclude you from using JD or e-s-q in connection with your name and to prohibit you from working in any capacity in a law office or for a licensed attorney without a license to practice law and registration.

The Court goes on to say that they declined to issue that order, but noted that you risk contempt for continuing to engage in the unauthorized practice of law.

Q Correct. So there is nothing in this case as you see it prohibiting me from using e-s-q with my name?

MS. BROWN: Objection. The document speaks for itself. We're not going to ask a Federal Bankruptcy Judge to interpret the order of the Ohio Supreme Court.

THE CHAIRPERSON: Could you repeat the question, please?

(Question read.)

THE CHAIRPERSON: I believe it's a fair question.

A I don't read this as prohibiting you from using the word esq. so long as you do not engage in the unauthorized practice of law.

Q Did I engage in the unauthorized practice of law?

MS. BROWN: Objection.

THE CHAIRPERSON: That's asking for a conclusion and I'll sustain your objection.

The Respondent further advanced his interpretation of the use of "Esq." during the Reginald Pierce bankruptcy matter, the deputy clerk for the court issued an "order on debtor(s) to appear and show cause" On November 15, 2005, the Respondent sent a letter to the Deputy Clerk in response on stationary bearing the letterhead "B. Andrew Brown & Associates, LLC", and "B. Andrew Brown, Esq.". (Tr. 404; Exb. 36, p.3)

In response to the November 15th letter, Mara Doganiero, law clerk to Judge Morgenstern-Clarren wrote a letter to the Respondent on November 28, 2005 on behalf of the judge asking for clarification of his admission status to the Northern District Court, a prerequisite to appearing in Bankruptcy Court, since his letter to the deputy clerk indicated that he was an attorney and the Clerk's office had no record of his admission to the bar.

The Respondent responded to the clerk's letter on November 30th and specifically indicated that the Supreme Court had ruled in *Disciplinary Counsel v. Brown* (2003), that it was not improper for him to use the suffixes J.D., or Esq. after his name.

The record in this case, and in the earlier *Brown* cases, 99 Ohio St.3d 114 and 61 Ohio Misc.2d 792, establishes the existence of a widespread belief among members of the lay public, as well as the bench and the bar in Ohio, that the term "Esq." and its equivalents indicate lawyer. In this case, by using the term "Esq." on his office stationery and business cards, the Respondent induced a federal judge, a practicing lawyer, a school teacher and a city prosecutor into believing that he was a lawyer. The Respondent committed these acts after being expressly admonished by the Supreme Court that his future use of "Esq." placed him at risk of being in contempt of the injunction issued against him in *Disciplinary Counsel v. Brown* (2003). The record in this case produced substantial credible evidence of the Respondent's repeated and purposeful misuse of

“Esq.” for the purpose of inducing people into believing he was a lawyer and into engaging him to perform services for a fee.

The Respondent further argues that R.C. 4705.07 does not prohibit his use of the term “Esq.” and that because he is not being prosecuted for violating that statute, the Board cannot find him liable for committing the unauthorized practice of law. The determination of an entity other than this Board not to prosecute the Respondent for a violation of R.C. 4705.07 is irrelevant to this proceeding and does not determine whether the Respondent engaged in the unauthorized practice of law. *Respondent’s Answer*, p. 7.

When a nonlawyer holds himself or herself out as a lawyer by the use of “Esq.” for the purpose of inducing others into performing services for a fee, that person commits the unauthorized practice of law. *Disciplinary Counsel v. Brown* (2003), *supra*.

The Supreme Court of Ohio recently held that a law school graduate engaged in the unauthorized practice of law by posing as a licensed lawyer. *Disciplinary Counsel v. Robson*, 116 Ohio St. 3d 318, 2007-Ohio-6460. When a person induces others into believing he or she is a licensed lawyer, for the purpose of performing a service for them, the holding out constitutes the unauthorized practice of law.

In this case, some of the services the Respondent performed, or agreed to perform, after holding himself out as a lawyer were services that a nonlawyer might lawfully perform in absence of fraudulent inducement. Such conduct may nevertheless constitute the unauthorized practice of law.

In many circumstances activities permissibly performed by laypersons can constitute the practice of law when performed by a lawyer when acting as a lawyer, or by a purported lawyer. Ohio and other jurisdictions have recognized this theory in a variety of contexts, most often

involving suspended lawyers, lawyers pursuing business activities with nonlawyers, or malpractice.

For example, a lawyer who prepared an income tax filing and simultaneously advised a client as to her rights to a refund was found to be acting professionally as a lawyer. *In re Carr's Estate* (1952), 371 Pa. 520, 92 A.2d 213. In a similar case, a court considered that assistance in filling out income tax returns was generally not the practice of law, but when performed by a lawyer, the lawyer is professionally bound to address legal problems presented by the completion of simple paperwork. *State v. Willenson*, 20 Wis. 2d 519, 522-23 (Wis. 1963).

In California, a suspended lawyer continued to engage in work as a real estate broker and prepared deeds, mortgages and releases for his clients. The court held that the activities were the practice of law, regardless whether the same work could permissibly be performed by one not admitted to the bar. *Crawford v. State Bar of California*, 54 Cal. 2d 659 (Cal. 1960).

The Supreme Court of Ohio has addressed this issue in the context of a disciplinary case involving a lawyer who shared referrals and fees with a lay industrial commission practitioner. The lawyer respondent argued that since laypersons were permitted to practice before the commission, a lawyer representing the same client could share fees with the lay practitioner. The court disagreed and stated that “[t]here are many areas in which personal services do not constitute the practice of law when done by a layman but which are the practice of law when performed by an attorney, e.g., work in the fields of income tax and trademarks.” *Columbus Bar Association v. Agee* (1964), 175 Ohio St. 443, 446. *Accord Gmerek v. State Ethics Commission*, 751 A.2d 1241 (Pa. 2000) (citing *Agee*, lawyers performing legislative lobbying work through their law firms may be regulated as practicing law); *Comm. v. Mahoney*, 402 N.W.2d 434 (Iowa, 1997) (tax preparation and labor negotiation is not necessarily the practice of law, but when

performed by a licensed lawyer constitutes the practice of law.); and *State v. Butterfield*, 172 Neb. 645, 111 N.W.2d 543 (1961) (activities including the selecting and filling out forms and preparing tax returns constitute the practice of law when performed by a suspended or disbarred lawyers, even though laymen may perform such activities without engaging in the unauthorized practice of law).

Modern recognition of this concept is also identified in multi-jurisdictional practice considerations. In the Ohio Rules of Professional Conduct, Rule 5.5(c)(4), a lawyer may engage in negotiations, investigation, or other non-litigation activities that arise out of the lawyer's practice in a jurisdiction in which he/she is licensed. Comment 13 to the rule characterizes the legal services under this rule as "both legal services and services that nonlawyers perform but that are considered the practice of law when performed by lawyers." (Emphasis added).

In summary, it is the Panel's finding and conclusion that a nonlawyer who holds himself or herself out as a lawyer, by use of the terms "Esq.", "Esquire", "J.D." or otherwise, for the purpose of inducing another to pay for the performance of a service, engages in the unauthorized practice law in Ohio.

V. PANEL RECOMMENDATIONS

The Panel recommends that the Supreme Court of Ohio issue an Order finding that the Respondent engaged in the unauthorized practice of law.

The Panel further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.

The Panel further recommends that the Supreme Court of Ohio issue a further Order

prohibiting Respondent from using the terms “Esq.,” “Esquire”, “J.D.” or otherwise on stationery, business cards and other documents and literature in conjunction with his name or business name.

The Panel further recommends that the Supreme Court of Ohio require the Respondent to reimburse the costs and expenses incurred by the Board and Relator in this matter.

The Panel recommends the imposition of a civil penalty of \$10,000 on Counts 1, 2, 3, 4, and 5 of the Complaint, for a total penalty of \$50,000.

The Panel has considered the relevant, aggravating and mitigating factors for the imposition of civil penalties in this case pursuant to Gov. Bar R. VII(8)(B) and UPL Reg. 400 and is of the opinion a civil penalty of \$50,000 is warranted in this case.

The Respondent, while ultimately participating in the hearing of this matter, initially demonstrated an unwillingness to recognize the Board’s and Court’s jurisdiction. The two legal challenges filed in both state and Federal court to the proceedings generally questioned the jurisdiction and authority of these bodies and caused significant delay in these proceedings. Gov. Bar R. VII, §(8)(B)(5).

The Respondent’s conduct in this case also demonstrated a degree of flagrancy not presented before to this Board. Despite being before this Board on three separate occasions since 1992 based on very similar allegations, he has continued to engage in a pattern of deception and chicanery in a deliberate and unlawful attempt to engage in the practice of law. Gov. Bar. R. VII, §8(B)(3).

The Respondent has previously engaged in and been ordered by the Supreme Court to cease engaging in the practice of law. UPL Reg. 400(F)(3)(a)-(b). The Respondent, probably better than most Respondents, has a unique understanding as a former attorney as to what

constitutes the practice of law.

His conduct in the instant case resulted in harm to numerous individuals who believed he was an attorney-at-law, relied upon him for assistance, and then faced detrimental outcomes to their legal needs because of the unqualified and incompetent assistance, if any, that he provided. Gov. Bar. R. VII, §8(B)(2),(4). In each instance the Respondent benefited financially from the services he performed. UPL Reg. 400(F)(3)(d).

Lastly, the Respondent has engaged in this case in a pattern of conduct that has “allowed others to mistakenly believe that he . . . was admitted to practice law in the State of Ohio.” UPL Reg. 400(F)(3)(g). This conduct permitted the Respondent to lure persons that would not have sought his services if they fully understood that he was not an attorney-at-law. Respondent’s failure to affirmatively state this fact in each instance was deceptive.

The Panel further finds that the Respondent’s proven actions under Counts 1, 2, 3, 4, and 5 of Relator’s Complaint constitute violations of the Supreme Court of Ohio’s injunction in *Disciplinary Counsel v. Brown* (2003), *supra*. It is the Panel’s further recommendation that, in addition to imposing the other sanctions proposed in this opinion, the Supreme Court order the Respondent to show cause why he should not be held in contempt of the injunction issued against him in *Disciplinary Counsel v. Brown* (2003), *supra*.

VI. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio formally considered this matter on June 30, 2008. The Board adopted the findings of fact, and conclusions of law of the Panel. The Board further adopted all of the recommendations of the Panel including its recommendation regarding the imposition of a civil

penalty.

The Board recommends that the Supreme Court of Ohio issue an Order finding that the Respondent engaged in the unauthorized practice of law on Counts 1, 2, 3, 4 and 5 of the Relator's Complaint.

The Board further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.

The Board further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondent from using the terms "Esq.," "Esquire", "J.D." or otherwise on stationery, business cards and other documents and literature in conjunction with his name or business name.

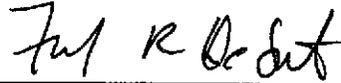
The Board further recommends that the Supreme Court of Ohio require the Respondent to reimburse the costs and expenses incurred by the Board and Relator in this matter.

The Board recommends the imposition of a civil penalty of \$10,000 on Counts 1, 2, 3, 4, and 5 of the Complaint, for a total penalty of \$50,000.

The Board further recommends that in addition to imposing the other sanctions proposed herein, the Supreme Court order the Respondent to show cause why he should not be held in contempt of the injunction issued against him in *Disciplinary Counsel v. Brown* (2003), *supra*.

VII. STATEMENT OF COSTS

Attached as Exhibit A is a statement of costs and expenses incurred to day by the Board and Relator in this matter.



Frank R. DeSantis, Chair
Board on the Unauthorized Practice of Law

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

Exhibit "A"

STATEMENT OF COSTS

Disciplinary Counsel v. Bruce A. Brown

Case No. UPL 06-06

Reporting and Transcript Services – Fincun & Mancini	3775.00
Commissioner reimbursements	
James W. Lewis	279.51
Patricia A. Wise	478.74
James E. Young	8.00
TOTAL	\$4541.25

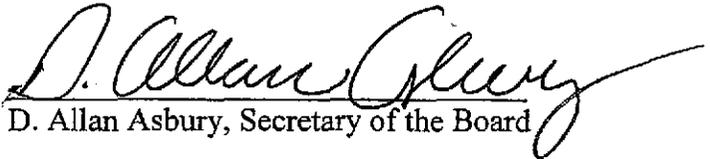
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 9th day of August, 2008: Jonathan E. Coughlan, Esq., Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Lori J. Brown, Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Bruce A. Brown, The Brownhoist Building, 4403 S. Clair Avenue, Cleveland, OH 44103; Ohio State Bar Association, 1700 Lake Shore Drive, P.O. Box 16562, Columbus, OH 43216-6562; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; The Cleveland Metropolitan Bar Association, 1301 East Ninth St., 2nd. Level, Cleveland, OH 44114-1253.


D. Allan Asbury, Secretary of the Board

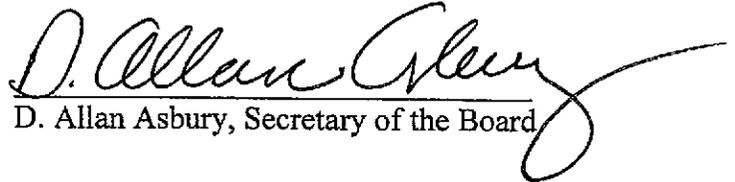
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 11th day of August, 2008: Jonathan E. Coughlan, Esq., Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Dr., Suite 325, Columbus, OH 43215; Lori J. Brown, Esq., First Assistant Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Dr., Suite 325, Columbus, OH 43215;; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215; Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204; The Cleveland Metropolitan Bar Association, 1301 E. Ninth St., 2nd Level, Cleveland, OH 44114-1253


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D. Allan Asbury, Secretary of the Board