

IN THE SUPREME COURT OF OHIO

GARY A. GREENSPAN, : Case No.: 2008-1568
: :
Plaintiff-Appellee, : On Appeal From the
: Cuyahoga County Court
v. : of Appeals, Eighth
: Appellate District,
THIRD FEDERAL SAVINGS & LOAN : Case No. 07-89850
ASSOCIATION, :
: :
Defendant-Appellant. :

**MERITS BRIEF OF APPELLANT
THIRD FEDERAL SAVINGS & LOAN ASSOCIATION**

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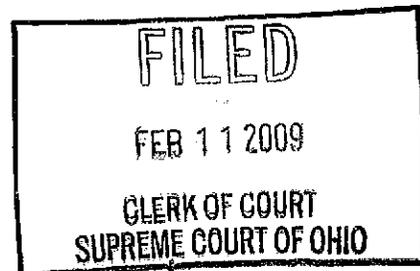


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INTRODUCTION

Appellee Gary A. Greenspan filed this statewide putative class action to recover a \$300 “document preparation” fee that appellant Third Federal Savings & Loan Association charged in connection with his 2002 mortgage loan. Greenspan alleges that Third Federal engaged in the unauthorized practice of law by preparing the documents in connection with that mortgage transaction.

The Eighth District panel below erroneously concluded that this claim could proceed, reversing the trial court’s dismissal of Greenspan’s action. This decision was in error in several critical respects.

First, the General Assembly did not create a private right of action for the unauthorized practice of law until September 15, 2004, and it did not make the cause of action retroactive. The Eighth District panel’s attempt to retroactively “imply” such a cause of action to prior years thus contravenes the General Assembly’s intent.

Second, the Eighth District panel’s rationale for implying this cause of action – that every affirmative defense under Ohio law “inexorably” gives rise to a private right of action – has no basis in law. Indeed, if the Eighth District’s analysis were correct, it would open the door to private causes of action against any person whose profession is regulated by Ohio law even if there are no allegations of fraud, negligence, or breach of contract. Worse, potentially all affirmative defenses, including the statute of frauds, unclean hands, etc., are now causes of action in Ohio. The decision to create a private right of action is the job of the General Assembly, not a single panel of the Eighth District.

Third, the panel’s holding violates this Court’s exclusive jurisdiction over the unauthorized practice of law, permitting Greenspan’s action to proceed before a trial

court without this Court's initial determination as to whether Third Federal engaged in the unauthorized practice of law. This is not a purely academic discussion, but one with tangible repercussions. This Court's duly authorized Board on the Unauthorized Practice of Law recently issued an advisory opinion stating that the very conduct alleged in this action is not the unauthorized practice of law. Had this case first been presented to the Board, it would not have allowed this case to proceed in the first instance.

Fourth, the panel's decision should be reversed because, yet again, the Eighth District has failed to follow its own binding precedent or heed this Court's admonitions that it resolve intradistrict conflicts through en banc proceedings. Just six months before the decision below, another Eighth District panel held that a party may *not* bring an action for damages based on the unauthorized practice of law for document preparation fees in a mortgage loan agreement. *See Crawford v. FirstMerit Mtge. Corp.* (8th Dist.), 2007-Ohio-6074, appeal not accepted, (2008) 117 Ohio St.3d 1478.

Crawford, which was filed by the same class-action attorneys against a different bank, was identical in all respects to this case – the same allegations, the same causes of action, the same class definition. Nonetheless, after acknowledging that its decision directly conflicts with *Crawford*, the panel below (in a 2-1 decision) rejected *Crawford* (a unanimous decision) without invoking the Eighth District's en banc procedures. Doing so violated both this Court's repeated directives to resolve intradistrict conflicts through en banc proceedings and the Eighth District's rule that makes a prior panel's decision binding on future panels absent such an en banc hearing.

This Court should reverse the decision of the Eighth District panel and affirm the trial court's dismissal of Greenspan's action.

STATEMENT OF FACTS

I. Greenspan's Complaint Alleges The Unauthorized Practice Of Law.

Greenspan filed this putative class action against Third Federal on June 13, 2006 in the Cuyahoga Court of Common Pleas, Cuyahoga C.P. No. CV-06-593882. Greenspan seeks to recover a \$300 "document preparation" fee that Third Federal charged in connection with his \$38,000 mortgage loan in 2002. (Cmplt. at ¶6, 7, 19, 22, Supp. at 2; HUD-1 Settlement Statement at 2, Supp. at 7.)

Greenspan alleges that Third Federal engaged in the unauthorized practice of law by preparing certain documents in connection with that loan, and seeks to disgorge the \$300 from Third Federal. (Cmplt. at ¶8-9, Supp. at 2) As the complaint alleges, "Third Federal routinely charges customers a document preparation fee in the sum of approximately \$300 for services performed by clerical personnel in preparing or completing documents relating to the issuance of mortgage loans, * * * even though Ohio law prohibits Third Federal from charging fees for such services performed by non-attorneys." (Cmplt. at ¶12, Supp. at 1.) Greenspan did not file a grievance against Third Federal with the Office of Disciplinary Counsel or contact his local bar association about the matter.

Greenspan, who styles his two causes of action as "money had and received" and "unjust enrichment," seeks to disgorge \$300 from Third Federal for each Ohio putative class member who was charged a document preparation fee in connection with a mortgage after July 2002. (Cmplt. at 4-6, Supp. at 2.) He does not allege that Third Federal failed to disclose the document preparation fee, defrauded him, breached a contract, or otherwise provided deficient or improper loan documents.

II. The Eighth District Affirms The Dismissal Of An Identical Class Action.

A few weeks before filing this case, Greenspan's counsel filed an identical complaint against First Merit Mortgage Corporation, also in the Cuyahoga Court of Common Pleas. *See Crawford v. FirstMerit Mtge. Corp.*, 2007-Ohio-6074, appeal not accepted, (2008) 117 Ohio St.3d 1478. The allegations, causes of action, class definition, and legal arguments were all the same as here: the plaintiff brought a putative class action against a bank to recover the \$300 document preparation fee relating to the issuance of his mortgage loan, arguing that the document preparation constituted the unauthorized practice of law. *Id.* at ¶4-7, 10.

The trial court in *Crawford* dismissed the plaintiff's claims, holding that her claims were an attempt to recover damages for the unauthorized practice of law, and that no private right of action for the unauthorized practice of law existed in 2001, when the plaintiff obtained her mortgage loan. *Id.* at ¶15. The trial court also held that this Court had "exclusive jurisdiction over matters concerning the unauthorized practice of law." *Id.*

A unanimous panel of the Eighth District affirmed, holding that prior to the amendments to R.C. 4705 on September 15, 2004, there was no cause of action for the unauthorized practice of law, and the plaintiff's claims, however styled, were an attempt to bring just such a cause of action. *Id.* at ¶21-22. The panel also held that "a person who claims to have been harmed by conduct alleged to have constituted the authorized practice of law must take his or her claim through the avenues prescribed by the Ohio Supreme Court, because it is the court with exclusive jurisdiction to make that determination." *Id.* at ¶30. This Court declined to hear *Crawford's* appeal.

III. The Trial Court Dismisses Greenspan's Action, And He Appeals.

On December 19, 2006, Third Federal moved for judgment on the pleadings, which the trial court granted on April 26, 2007. The trial court held that that no private right of action existed for the unauthorized practice of law in 2002 when Greenspan's mortgage was issued: "[F]or any claims arising prior to September 15, 2004, there was no private right of action for enforcing either directly or collaterally the unauthorized practice of law." (Apr. 26, 2007 Judgment Entry, App. at 29.) As in *Crawford*, the trial court in this case held that Greenspan's claims were for the unauthorized practice of law, and that this Court has exclusive jurisdiction over the matter.

While Greenspan's appeal was pending, the Eighth District decided *Crawford*. *Crawford* was decided by the Eighth District after the briefing in this case was completed, but before oral argument. Accordingly, Third Federal submitted *Crawford* as supplemental authority. (Dec. 13, 2007 Notice of Supp. Auth., Supp. at 9.) Greenspan's counsel, conceding that the Eighth District recently "affirmed the trial court's decision in a nearly identical case," jointly moved the panel to waive oral argument. (Mar. 13, 2008 Joint Mot. to Waive Oral Arg., Supp at 11.) The motion was granted. (Mar. 19, 2008 Judgment Entry, App. at 30.)

IV. The Eighth District Reverses The Trial Court's Decision Without An En Banc Hearing.

Despite the *Crawford* decision, the Eighth District panel below – in a 2-1 decision – reversed and vacated the trial court's dismissal of Greenspan's complaint on May 22, 2008. Although the panel conceded that "[t]he facts in *Crawford* are almost identical to the case at bar," the panel found that *Crawford* was "simply in error," and that Greenspan could proceed with his action. *Greenspan v. Third Fed. S. & L.* (8th

Dist.), 177 Ohio App.3d 372, 2008-Ohio-3528, 894 N.E.2d 1250, at ¶26. Judge Celebrezze dissented because stare decisis “compelled” him to follow *Crawford*. Id. at ¶30.

V. Third Federal’s Application For Reconsideration Is Denied.

Third Federal filed an application for reconsideration, or alternatively, a motion to certify a conflict on June 2, 2008. Third Federal argued that because *Crawford* is controlling precedent, absent an en banc decision to the contrary, the *Greenspan* panel could not issue a decision in conflict with *Crawford* pursuant to the unambiguous mandates of this Court, the Eighth District’s own rules, and stare decisis.

The Eighth District denied the application without an opinion, and the judgment was journalized on June 25, 2008. (App. at 31.) Third Federal filed an original action in mandamus in this Court, and also timely filed a discretionary appeal, on August 8, 2008. The Court accepted jurisdiction of Third Federal’s discretionary appeal, but dismissed its mandamus action, on December 3, 2008. On January 2, 2009, this Court filed the record of the Court of Appeals, making Third Federal’s merits brief due on or before February 11, 2009.¹

ARGUMENT

Proposition Of Law No. I: A private right of action for the unauthorized practice of law did not exist before September 15, 2004.

Greenspan seeks the disgorgement of a \$300 document preparation fee he paid to Third Federal in connection with his 2002 mortgage loan because the alleged preparation of his legal documents by non-attorneys constituted the unauthorized practice of law. (Cmplt. at ¶2, 8-9, 11, 14, Supp. at 1-3.) The panel below reversed the

¹ See S.Ct.Prac.R. VI(2)(A).

trial court and allowed this claim to proceed, holding that a claim for the unauthorized practice of law was “implied” in the pre-2004 version of R.C. 4705. In so doing, the panel is the first and only court in Ohio to hold that a private remedy for damages existed for the unauthorized practice of law for a claim originating in 2002. That decision was in error.

In fact, the General Assembly did not create a private right of action for the unauthorized practice of law until September 15, 2004. In 2004, the General Assembly enacted several relevant provisions. First, it enacted R.C. 4705.07(A)(3), which states that any person who is not licensed to practice law in Ohio may not “[c]ommit any act that is prohibited by the supreme court as being the unauthorized practice of law.” 2004 Ohio Laws File 104 (Sub.H.B. 38). Second, it enacted R.C. 4705.07(B)(3), which states that “[o]nly the supreme court may make a determination that any person has committed the unauthorized practice of law in violation of division (A)(3) of this section.” *Id.* Third, it enacted R.C. 4705.07(C)(2), which explicitly authorizes a private right of action for litigants only *after* the Ohio Supreme Court makes a determination regarding the unauthorized practice of law:

Any person who is damaged by another person who commits a violation of division (A)(3) of this section may commence a civil action to recover actual damages from the person who commits the violation, upon a finding by the supreme court that the other person has committed an act that is prohibited by the supreme court as being the unauthorized practice of law in violation of that division.

Id. The General Assembly also amended the statute to explain the contours of the private right of action, including the damages available to litigants, and the fact that a trial court is bound by the unauthorized practice of law determinations of the Ohio Supreme Court. See *id.*

The panel below would “imply” such a right of action in the pre-2004 version of the statute. But the touchstone of whether a right of action is implied is the intent of the legislature. Unless the General Assembly’s “intent can be inferred from the language of the statute, the statutory structure, or some other source, the essential predicate for implication of a private remedy simply does not exist.” *Thompson v. Thompson* (1988), 484 U.S. 174, 179, 108 S.Ct. 513. See, also, *Fawcett v. G.C. Murphy & Co.* (1976), 46 Ohio St.2d 245, 249, 348 N.E.2d 144 (“[I]t cannot be concluded that the General Assembly by ‘clear implication’ intended to create a civil action for damages for the breach of R.C. 4101.17. This court, therefore, is disinclined to read such a remedy into that section.”), superseded on other grounds by statute; *Culbreath v. Golding Ents., L.L.C.*, 114 Ohio St.3d 357, 2007-Ohio-4278, 872 N.E.2d 284, at ¶20 (where legislature “has not explicitly authorized a private right of action, this court cannot create one by judicial fiat.”).

The panel pointed to nothing in the pre-2004 text of R.C. 4705 or the legislative history of that statute to suggest that a cause of action should be implied. To the contrary, the pre-2004 version of the statute expressly provided for criminal, but not civil, remedies for the unauthorized practice of law. See R.C. 4705.99 (2004) (“Whoever violates section 4705.07 of the Revised Code is guilty of a misdemeanor of the first degree.”); 2004 Ohio Laws File 104 (Sub.H.B. 38). “The General Assembly is presumed to have known that its designation of a remedy would be construed to exclude other remedies, consistent with the statutory construction maxim of *expressio unius est exclusio alterius*.” *Hoops v. United Tel. Co. of Ohio* (1990), 50 Ohio St.3d 97, 101, 553 N.E.2d 252. The General Assembly’s conscious decision to expressly provide for

criminal but not civil remedies is the clearest reflection of the legislature's intent – and precludes any “implied” private right of action for the unauthorized practice of law.²

Moreover, in enacting the 2004 amendments, the General Assembly reiterated that it intended to create a *new* private right of action where one did not previously exist. Sub. H.B. 38, 125th Gen. Assem. at 1 (2004) (R.C. 4705.07 was amended “specifically * * * to provide for the recovery of damages for a violation of the prohibition [of the unauthorized practice of law]”). See, also, *Lynch v. Gallia County Bd. of Commrs.*, 79 Ohio St.3d 251, 254, 1997-Ohio-392, 680 N.E.2d 1222 (“When confronted with amendments to a statute, an interpreting court must presume that the amendments were made to change the effect and operation of the law.”); Norman J. Singer, 1A Statutes & Statutory Constr. (6th Ed. rev. 2000) 22:30, 357-358 (“[T]he mere fact that the legislature enacts an amendment indicates that it thereby intended to change the original act by creating a new right or withdrawing an existing one.”).

Were that not enough, the General Assembly expressly wrote into its amendments to R.C. 4705 that they were *not* retroactive. The statute provides that a private right of action “may be utilized [] only regarding acts that are the unauthorized

² Other states have held that a cause of action for the unauthorized practice of law did not impliedly exist for just this reason. See, e.g., *Linder v. Ins. Claims Consultants, Inc.* (S.C. 2002), 560 S.E.2d 612, 623 (because South Carolina statute authorized criminal sanctions against those engaged in the unauthorized practice of law, court refused to infer private right of action); *Carlson v Roetzel & Andress* (March 27, 2008), D. N.J. No. 3:07-cv-33, 2008 WL 873647, at *7 (same) (interpreting North Dakota law); *Oswell v. Nixon* (Ga. 2005), 620 S.E.2d 419, 421-22 (same); *Baldwin v. Kulch Assocs., Inc.* (D. N.H. 1998), 39 F.Supp.2d 111, 118 (same).

practice of law in violation of division (A)(3) of this section and that occur on or after the effective date of this amendment.” R.C. 4705.07(C)(3) (2009).³

Accordingly, all of the Ohio courts that have analyzed this statutory framework – other than the panel below – have uniformly held that a private cause of action did not exist prior to 2004. See, e.g., *Miami Valley Hospital v. Combs* (2d Dist. 1997), 119 Ohio App.3d 346, 351, 695 N.E.2d 308, appeal not allowed, 79 Ohio St.3d 1491, reconsideration denied, 80 Ohio St.3d 1427 (“[T]he Ohio statute and rules relating to the unauthorized practice of law do not contemplate a private right of action or remedy.”); *Crawford*, 2008-Ohio-3528, at ¶22 (same); *Sarum Mgmt., Inc. v. Alex N. Sill Co.* (9th Dist.), 2006-Ohio-5710, at ¶2, 27, 30 (same).⁴

Proposition of Law No. II: Affirmative defenses are not “inexorably” private causes of action.

The panel below based its conclusion that a private cause of action was implied in the pre-2004 version of the statute on three intermediate court cases that have held that the unauthorized practice of law may be an affirmative defense to a collection action.⁵

³ “It is well-settled law that statutes are presumed to apply prospectively unless expressly declared to be retroactive.” *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, at ¶9.

⁴ Moreover, under Greenspan’s construction of the pre-2004 Revised Code 4705, he is permitted to seek damages that are broader in scope than the remedies available for the private cause of action that was explicitly authorized by the General Assembly in 2004. R.C. 4705.07(C) limits damages to those suffered as a result of the unauthorized practice of law; Greenspan seeks disgorgement of his entire document preparation fee without a showing that he was injured by the alleged unauthorized practice of law.

⁵ *Cocon, Inc. v. Botnick Building Co.* (9th Dist. 1989), 59 Ohio App.3d 42, 570 N.E.2d 303; *Foss v. Berlin* (10th Dist. 1981), 3 Ohio App.3d 8, 443 N.E.2d 197; and *Middleton Assoc. v. Weiss* (June 19, 1997), Cuyahoga App. No. 71416, 1997 WL 337616.

This determination was incorrect. First and foremost, as set forth above, the question of whether a right of action may be implied – particularly where, as here, the action is a creature of statute, not common law – is solely a question of statutory construction and legislative intent. The panel’s “affirmative defense” reasoning has no place in the analysis.

In any event, the panel’s reasoning that “if the law permits one to resist paying a fee for unauthorized legal representation, it inexorably follows that one should be able to recoup a fee incurred under the identical circumstances,” *Greenspan*, 2008-Ohio-3528, at ¶20, is erroneous. Just because something may be asserted as an affirmative defense does not mean it is “inexorably” a cause of action. Many affirmative defenses, including the statute of frauds, equitable estoppel, and unclean hands, exist as affirmative defenses but do not have a corollary private right of action. See, e.g., *Grenga v. Bank One, N.A.*, 7th Dist. No. 04 MA 94, 2005-Ohio-4474, at ¶95 (refusing to allow suit based on statute of frauds); *Transitron Elec. Corp. v. Hughes Aircraft Co.* (D. Mass. 1980), 487 F. Supp. 885, 892-893 (explaining why affirmative defense of misuse of patent does not translate into cause of action).

Moreover, courts have recognized that there is a difference between the affirmative defense of the unauthorized practice of law and a cause of action for the same. To the extent the unauthorized practice of law exists as an affirmative defense – and this Court has not opined on the matter – the affirmative defense exists to prevent the use of the court as a vehicle for unlawful conduct. In the typical case in which the affirmative defense is raised, a party engaged in the unauthorized practice of law brings suit against a defendant to whom he had rendered services. The defendant raises the affirmative defense that the plaintiff’s services constituted the unauthorized practice of

law. Should the court disallow such a defense and order the defendant to pay fees for the services, the court itself would be enforcing unlawful conduct. See, e.g., *Reliable Collection Agency, Ltd. v. Cole* (Haw. 1978), 584 P.2d 107, 112-113. Such use of the court system to reinforce unlawful behavior violates public policy. *Id.*

No such use of the court system to reinforce unlawful conduct exists, however, when a plaintiff attempts to bring a private right of action to recoup fees he has already paid. Instead, when a plaintiff attempts to bring a private right of action to recoup fees already paid, he seeks to obtain the services of the defendant for nothing. Both state and federal courts have recognized that except in circumstances when the judgment of the court will operate to enforce unlawful conduct, courts are guided by the general principle that parties should be prevented from getting something for nothing. *Id.*, citing *Kelly v. Kosuga* (1959), 358 U.S. 516, 520-521, 3 L.Ed.2d 475, 79 S.Ct. 429. In other words, when it is the conduct of the parties themselves (and not the court) that results in payment for services that are unlawful, the parties are bound by their actions. The recipient of the unauthorized services cannot seek to retain the benefits of the services and recoup fees he voluntarily paid.

The Supreme Court of Illinois discussed this distinction in *King v. First Capital Fin. Serv. Corp.* (Ill. 2005), 215 Ill.2d 1, 828 N.E.2d 1155. As here, a group of mortgage holders brought an action against a mortgage issuer, alleging that it had engaged in the unauthorized practice of law in preparing mortgage documents and charging a fee for the service. Arguing for a private right of action, the plaintiffs cited Illinois cases that allowed the use of the affirmative defense of practicing without a license.

The Illinois Supreme Court found the “affirmative defense” decisions inapt because in those cases, “the unlicensed parties were seeking to enforce contracts that

courts determined were void and unenforceable. * * * [T]he courts will not aid a plaintiff who bases his cause of action on an illegal act.” Id. at 1174. In contrast, in *King*, “no misrepresentation was involved and the lenders are not seeking to enforce void contracts. Rather, plaintiffs seek to recover payments voluntarily made with full knowledge as to the nature of the services rendered.” Id. This case is on all fours with *King*; Greenspan alleged no misrepresentations on Third Federal’s behalf, and Greenspan is not attempting to use the court system to enforce unlawful conduct.

Should the Eighth District panel’s decision stand, any affirmative defense would also constitute a cause of action. The decision below would transform affirmative defenses to collection actions by professions regulated under Ohio law, such as architects, *Elephant Lumber Co. v. Johnson* (4th Dist. 1964), 120 Ohio App. 266, 268-269, 202 N.E.2d 189, and real estate brokers, *Maglione v. Wjino* (9th Dist. 1939), 63 Ohio App. 223, 225-226, 25 N.E. 946, into private causes of action, including class actions, even if there are no allegations of fraud, negligence, or breach of contract. For example, instead of the Ohio Board of Examiners of Architects and the Ohio Barber Board handling claims related to the licensing of those professions, see, generally, R.C. 4703 and 4709, trial courts with little expertise in those areas could be flooded with claims relating to the licensing of those professions.

Given that Chapter 47 of the Revised Code regulates more than 50 different professions, *Greenspan* could spawn countless new causes of action and wreak havoc on regulated industries. This unfettered creation of new causes of action would occur absent any express or implied statutory right.

And the potential new causes of action spawned by the decision below are not limited to regulated professions. If affirmative defenses “inexorably” lead to causes of

action, one can expect new litigation based on causes of action for unclean hands, violations of the statute of frauds, equitable estoppel, and the like.

Proposition of Law No. III: This Court has exclusive jurisdiction over the unauthorized practice of law.

The Ohio Constitution provides that “[t]he supreme court shall have original jurisdiction in the following [matters:] * * * Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.” Section 2(B)(1)(g), Article IV, Ohio Const. This provision “confers on the [Ohio Supreme Court] exclusive jurisdiction over all matters related to the practice of law[,]” including matters relating to the unauthorized practice of law. *Disciplinary Counsel v. Alexicole*, 105 Ohio St.3d 52, 2004-Ohio-6901, 822 N.E.2d 348, at ¶8; see, also, *Cleveland Bar Assn. v. Baron*, 106 Ohio St.3d 259, 2005-Ohio-4790, 834 N.E.2d 343, at ¶6 (Ohio Constitution confers Ohio Supreme Court jurisdiction “over all matters relating to the practice of law, including allegations of laypersons practicing law without a license”).

Pursuant to this constitutional mandate, the Ohio Supreme Court has repeatedly acknowledged its “exclusive power to regulate, control, and define the practice of law in Ohio,” including “protect[ing] the public by preventing the unauthorized practice of law.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, at ¶39, 48; see, also, *Ohio State Bar Assn. v. Burdzinski, Brinkman, Czarzasty & Landwehr, Inc.*, 112 Ohio St.3d 107, 110, 2006-Ohio-6511, 858 N.E.2d 372 (same). The Supreme Court has explained that:

[I]t has been methodically and firmly established that the power and responsibility to admit and discipline persons admitted to the practice of law, to promulgate and enforce professional standards and rules of conduct, and to

otherwise broadly regulate, control and define the procedure and practice of law in Ohio rests inherently, originally, and exclusively in the Supreme Court of Ohio.

Shimko v. Lobe, 103 Ohio St.3d 59, 2004-Ohio-4202, 813 N.E.2d 669, at ¶15.

This Court has also created a comprehensive and exclusive procedure to address claims regarding the unauthorized practice of law. See Gov. Bar.R. VII; Section 5(B), Art. IV, Ohio Const. The Rules for the Government of the Bar establish the Board of the Unauthorized Practice of Law of the Supreme Court (the “Board”), and define the unauthorized practice of law. Gov. Bar.R. VII § 1, § 2(A). The Board has specific rules for the filing and service of complaints, holds hearings, receives evidence and testimony, and makes findings and recommendations to the Ohio Supreme Court. *Id.* at §§ 2(B), 5, 7, 8, 10, 13, 14. If the Board determines that a party engaged in the unauthorized practice of law, the Board files a final report with the Ohio Supreme Court. Gov. Bar.R. VII § 7(G). The Supreme Court, in turn, then hears the matter and “enter[s] an order as it finds proper.” Gov. Bar. VII § 19. The Supreme Court may issue an injunction, and/or impose civil penalties and costs. Gov. Bar.R. VII §§ 5a, 8 , 19 .

The Rules for the Government of the Bar unambiguously state that “[a]ll proceedings arising out of complaints of the unauthorized practice of law shall be brought, conducted, and disposed of in accordance with the provisions of this rule.” Gov. Bar.R. VII §4(A). This is the “exclusive remedy” for such claims. *Miami Valley*, 119 Ohio App.3d at 353; *Sarum* at ¶32, 37; see, also, R.C. 4705.07(B)(2) (2009) (“Only the supreme court may make a determination that any person has committed the unauthorized practice of law. * * *”). The Court’s website instructs a person who believes that a someone is engaging in the unauthorized practice of law to contact the

Office of Disciplinary Counsel or the local bar association, not file a class action. See <http://www.sconet.state.oh.us/UPL/faq/uplfaq.asp>.

“Any attempt to circumvent the procedures promulgated by the Supreme Court of Ohio pursuant to its constitutional mandate is an impermissible incursion into [the Supreme Court’s] plenary authority.” *Hecht v. Levin* (1993), 66 Ohio St.3d 458, 464, 1993-Ohio-110, 613 N.E.2d 585. Greenspan may not disregard this Court’s comprehensive scheme for adjudicating claims regarding the unauthorized practice of law. Because this Court never determined that Third Federal’s conduct constituted the unauthorized practice of law, Greenspan should not have been able to proceed with his lawsuit, even had a private cause of action existed in 2002.⁶

If *Greenspan* is allowed to stand, the comprehensive and exclusive framework for addressing the unauthorized practice of law in Ohio would be circumvented. Trial courts would be free to determine whether an action constitutes the unauthorized practice of law without guidance from this Court, in derogation of this Court’s exclusive jurisdiction. This would improperly allow trial courts to make determinations directly contrary to unauthorized practice of law determinations made by the Board.

This concern is not purely academic. On December 12, 2008, after this Court accepted jurisdiction of this appeal, the Board on the Unauthorized Practice of Law for the Supreme Court of Ohio held: “A nonattorney employee may perform the act of completing a standardized form mortgage for his/her bank or lender employer without

⁶ While R.C. 4705.07 now permits a private cause of action, it may proceed only if this Court first determines that the unauthorized practice of law occurred. The trial court “is bound by the determination of the supreme court regarding the unauthorized practice of law and shall not make any additional determinations regarding the unauthorized practice of law.” R.C. 4705.07(C)(2) (2009). Thus, the current statutory framework honors this Court’s exclusive jurisdiction over the unauthorized practice of law.

the supervision of an attorney admitted to practice law in Ohio.” Nonattorney Completion of Mortgage Instruments (Dec. 12, 2008), Adv. Op. UPL 2008-02, at syl. This is because the practice “in Ohio whereby banks and lenders prepare or complete standard form mortgage instruments and related documents through nonattorney in-house lending staff, third party document preparers, and title companies” is “chiefly one of a clerical nature[.]” Id. at 1.

This is precisely the conduct alleged by Greenspan to constitute the unauthorized practice of law. Although the Board’s opinion is advisory, the opinion demonstrates that, had Greenspan properly brought his claims before the Board, his claims would almost certainly have failed on their merits. As the panel’s decision undermines this Court’s exclusive jurisdiction over the unauthorized practice of law, it should be reversed.

Proposition Of Law No. IV: The panel below violated this Court’s mandate and the Eighth District’s own rules by knowingly issuing an opinion that directly conflicts with a prior decision, without holding an en banc proceeding.

The decision below should also be overruled because the panel below improperly issued a decision in conflict with a panel decision from the same district that had been decided just six months earlier, in violation of both this Court’s unambiguous mandates and the Eighth District’s own rules.

This Court has now held on three occasions that appellate districts are “duty-bound” to resolve intradistrict conflicts through en banc proceedings. Most recently, in *McFadden v. Cleveland State Univ.*, 2008-Ohio-4914, at para. two of syl., this Court held that “if the judges of a court of appeals determine that two or more decisions of the court on which they sit are in conflict, they must convene en banc to resolve the

conflict.” See, also, *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, at ¶18; *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, at ¶40.

The panel below expressly held that its decision conflicted with *Crawford*, 2007-Ohio-6074, in which the Eighth District held, in a case involving identical allegations, that there was no cause of action for the unauthorized practice of law prior to the 2004 amendments to Revised Code 4705. *Id.* at ¶21-22. It further held that “a person who claims to have been harmed by conduct alleged to have constituted the authorized practice of law must take his or her claim through the avenues prescribed by the Ohio Supreme Court, because it is the court with exclusive jurisdiction to make that determination.” *Id.* at ¶30. Yet the panel below – which knew that ruling contra to *Crawford* would create an intradistrict conflict – refused to heed this Court’s mandates to consider the matter en banc.

The panel in *Greenspan* also failed to follow its own rules. The Eighth District’s rules provide that that majority opinions by Eighth District panels are binding on the entire Eighth District absent an en banc hearing. “Decisions reached by the majority of a panel sitting as a Court *shall be binding* upon the whole Court.” Article 8(b)(i) of the Standing Resolution of the Rules for the Conduct of Court Work (emphasis added). The Eighth District enacted this rule because there should “not be interpanel conflict among the decisions of this Court.” See Amendment to Article 8(b) (Appendix C to Eighth District Local Rules).

These rules were adopted and are valid pursuant to Section 5(B), Article IV, Ohio Const., Supreme Court Superintendence Rule 5(A), and Appellate Rule 41. Indeed, this Court has explicitly approved Article 8(b). See *In re J.J.*, 2006-Ohio-5484, at ¶18-19. Under Ohio law, a court is bound by its own rules and the mandates of this Court and it

is “not at liberty to bend or ignore them.” *Cincinnati Concession Co. v. Rack* (1st Dist. 1974), 67 Ohio Op.2d 340, 322 N.E.2d 325, 327; see, also, *Cavalry Inv. v. Dzilinski*, 8th Dist. No. 88769, 2007-Ohio-3767, at ¶24 (local rules are “binding” on courts); *Cole v. Cent. Ohio Transit Auth.* (10th Dist. 1984), 20 Ohio App.3d 312, 312, 486 N.E.2d 140 (court is “bound by its own rules”).

Faced with the concededly binding precedent of *Crawford*, the Eighth District panel had two options: follow the controlling precedent of *Crawford*, or hold an en banc hearing. The panel did neither. For this additional reason, the panel’s decision should be reversed.

CONCLUSION

The Court should reverse the decision below, and affirm the trial court’s dismissal of Greenspan’s action.

Date: February 11, 2009

Respectfully submitted,



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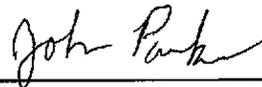
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I certify that a copy of the foregoing was sent by ordinary U.S. mail to the following counsel on this 11th day of February, 2009:

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APPENDIX

Appellant Third Federal Savings & Loan Association gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth District, in Court of Appeals Case No. 07-8950 that was journalized on June 25, 2008.

This case raises substantial constitutional questions and is one of public and great general interest.

Date: August 8, 2008

Respectfully submitted,



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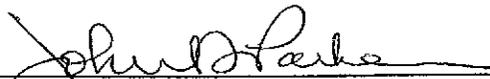
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Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89850

GARY A. GREENSPAN

PLAINTIFF-APPELLANT

vs.

THIRD FEDERAL SAVINGS & LOAN

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-593882

BEFORE: McMonagle, J., Gallagher, P.J., and Celebrezze, J.

RELEASED: May 22, 2008

JOURNALIZED: JUN 25 2008

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CHRISTINE T. McMONAGLE, J.:

Appellant Gary A. Greenspan filed a complaint for money had and received and unjust enrichment against Third Federal Savings and Loan. The gravamen of his claim was that Third Federal charged him, and routinely charged its other mortgage loan customers, a "document preparation fee" of approximately \$300. He further alleged that the preparation of the loan documents constituted the unauthorized practice of law. He sought to recoup monies paid by him for document preparation relating to a \$38,000 loan taken from Third Federal in 2002, and secured upon his real estate by a mortgage. He also sought class certification on behalf of others who had been similarly charged "anytime after June 13, 2001."

Third Federal filed an answer and then moved for judgment on the pleadings under Civ.R. 12(C), which provides that "after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." The trial court subsequently granted Third Federal's motion, ruling that there was no private right of action "for enforcing directly or collaterally the unauthorized practice of law," prior to September 15, 2004. The court further held that for any claims arising after September 15, 2004, there is a private right of action, but that said action "may occur only upon a finding by the Supreme Court that the other person has committed an act that is prohibited

by the Supreme Court as being the unauthorized practice of law.” Greenspan now appeals in a single assignment of error alleging that the trial court erred by granting Defendant’s motion for judgment on the pleadings. The court never addressed the matter of class certification during the pendency of this matter.¹

A Civ.R. 12(C) motion for judgment on the pleadings has been characterized as a “belated” Civ.R. 12(B)(6) motion for failure to state a claim upon which relief can be granted. However, a Civ.R. 12(C) motion is specifically designed for resolving questions of law. *Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St. 3d 574, 2001-Ohio-1287, 752 N.E.2d 267. When considering a motion for judgment on the pleadings, the trial court is required to construe as true all the material allegations of the complaint, and draw all reasonable inferences in favor of the non-moving party. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 63 Ohio Op.2nd 262, 297 N.E.2d 113.

It is important in analyzing this case to note that Greenspan’s complaint alleges that he entered into the questioned loan agreement with Third Federal in July of 2002. On that date, R.C. 4705.07 (the statute prohibiting the unauthorized practice of law) provided simply and in pertinent part that “no

¹Greenspan’s personal claim accrued in 2002; however, he did request class certification for others, some of whose claims would, in fact, be governed by the statute as amended. However, insofar as the class was never certified, there is no relevance whatsoever to the terms of the amendment, except as to the specific language that its terms are not retroactive.

person not licensed to practice law in this state shall hold him or herself out as an attorney at law, represent to others that he is authorized to practice law, or use the title of 'lawyer,' 'attorney at law,' 'counselor at law,' or in any other fashion advertise or hold himself out as a lawyer, attorney or counselor at law."

The statute was substantially amended on September 15, 2004, by the addition of the following language:

"(B) ***

"(2) Only the supreme court may make a determination that any person has committed the unauthorized practice of law in violation of division (A)(3) of this section.

"(C)(1) If necessary to serve the public interest and consistent with the rules of the supreme court, any person who is authorized to bring a claim before the supreme court that alleges the unauthorized practice of law in violation of division (A)(3) of this section may make a motion to the supreme court to seek interim relief prior to the final resolution of the person's claim.

"(2) Any person who is damaged by another person who commits a violation of division (A)(3) of this section may commence a civil action to recover actual damages from the person who commits the violation upon a finding by the supreme court that the other person has committed an act that is prohibited by the supreme court as being the unauthorized practice of law in violation of that

division. The court in which that action for damages is commenced is bound by the determination of the supreme court regarding the unauthorized practice of law and shall not make any additional determinations regarding the unauthorized practice of law. The court in which the action for damages is commenced shall consider all of the following in awarding damages to a person under division (C)(2) of this section:

“(a) The extent to which the fee paid for the services that constitute the unauthorized practice of law in violation of division (A)(3) of this section exceeds the reasonable fees charged by licensed attorneys in the area in which the violation occurred;

“(b) The costs incurred in paying for legal advice to correct any inadequacies in the services that constitute the unauthorized practice of law in violation of division (A)(3) of this section;

“(c) Any other damages proximately caused by the failure of the person performing the services that constitute the unauthorized practice of law to have the license to practice law in this state that is required to perform the services;

“(d) Any reasonable attorney’s fees that are incurred in bringing the civil action under division (C)(1) or (2) of this section.

“(3) Divisions (C)(1) and (2) of this section apply, and may be utilized, only regarding acts that are the unauthorized practice of law in violation of division

(A)(3) of this section *and that occur on or after the effective date of this amendment.*" (Emphasis added.)

Third Federal interprets this amendment as standing for the proposition that prior to September 15, 2004, there was no cause of action for the unauthorized practice of law, and that the cause of action was created for the first time, by this amendment.

However, prior to September 15, 2004, three significant cases were litigated in reference to R.C. 4705.07. The first of these was *Foss v. Berlin* (1981), 3 Ohio App.3d 8, 443 N.E.2d 197. In *Foss*, the Tenth District held that "although plaintiff's actions in drafting the contract constituted the unauthorized practice of law, such conduct is available to defendant as a defense only should plaintiff attempt to profit from the unauthorized practice itself, by attempting to charge defendant a fee for drafting the contract."² *Id.* at 10.

Some eight years later, in *Cocon, Inc. v. Botnick Bldg. Co.* (1989), 59 Ohio App.3d 42, 570 N.E.2d 303, Cocon represented Botnik Building Company at a tax valuation hearing before the Summit County Board of Revision, and, for its services, charged Botnik \$17,811.45. When Botnik refused to pay, Cocon sued,

²The court found that the plaintiff was not attempting to profit from the unauthorized practice of law; rather, that he sought "compensation for selling real property as a broker," and, accordingly, the judgment of the trial court was affirmed.

and the trial court found that because Cocon had engaged in the unauthorized practice of law as prohibited by R.C. 4705.01, summary judgment should be granted to Botnik. The Ninth District affirmed and held summary judgment appropriate.

Another eight years later, the Eighth District was heard upon this very same issue. In *Middleton and Assoc. v. Weiss* (June 19, 1997), Cuyahoga App. No. 71416, Judge David Matia, joined by Judges Nahra and Dyke, addressed the same issue raised by *Cocon*, i.e., whether a non-lawyer who represented someone before the Board of Revision could collect a fee for that representation. The Eighth District reached the same conclusion as did the Ninth and Tenth Districts, and affirmed the trial court's dismissal of Middleton's claim for fees:

These three cases constitute more than just a "walk down memory lane." They clearly establish that over a span of twenty-three years before the amendment of R.C. 4705.07 in 2004, there was common law recognition that proof that a plaintiff had engaged in the unauthorized practice of law was, in fact, a defense to a suit for fees.

The question we have before us today concerns the corollary issue, i.e., whether a plaintiff may recoup fees already paid from one who engaged in the unauthorized practice of law. Try as we might, we can conclude nothing but that this is a distinction without a difference; if the law permits one to resist paying

a fee for unauthorized legal representation, it inexorably follows that one should be able to recoup a fee incurred under the identical circumstances.

The trial court in this matter relied solely upon *Miami Valley Hospital v. Combs* (1997), 119 Ohio App.3d 346, 695 N.E.2d 308, in support of its conclusion that the amended statute created the first, and only, private cause of action for unauthorized practice of law.

In *Miami Valley Hosp.*, a defendant, attempting to avoid a balance due to a hospital after exhaustion of her health insurances, alleged that a collection agency (which was not a party to the lawsuit) had engaged in the unauthorized practice of law in its attempt to collect monies from her. While the opinion contains dicta that there is no private right of action for “enforcing [sic] the unauthorized practice of law,” the facts are wholly distinguishable from the matter before us, because the allegation of unauthorized practice of law did not involve anyone who was a party to the action. Further, *Miami Valley Hosp.* neither cites, recognizes, or distinguishes the cases from the Eighth, Ninth, and Tenth Districts, which clearly hold that the prohibition against the unauthorized practice of law occurring prior to 2004 could be enforced by a refusal to permit the wrongdoer to collect fees for its activities.

In its judgment granting Third Federal’s motion for judgment on the pleadings, the trial court stated: “[f]or any claims arising prior to September 15,

2004 [the date of the amendment] there was no private right of action for enforcing either directly or collaterally the unauthorized practice of law [citing *Miami Valley Hosp. v. Combs*].” This statement is in error; there were at least three cases, one of which, *Middleton and Assoc.*, arose within the trial court’s own district.

It should also be noted that the pleadings in this case do not directly make a claim for the “unauthorized practice of law;” the causes of action here are entitled “monies had and received” and “unjust enrichment.” Both of these claims for relief are equitable in nature. “Unauthorized practice of law” was merely the means by which appellant asserted these equitable claims; the “unauthorized practice of law” was never asserted as an independent cause of action.

In sum, R.C. 4705.07, as amended in 2004, does not, by its very terms, apply retroactively. Hence, the holding of the trial court that “there has been no finding by the Supreme Court that Third Federal Savings and Loan has committed an act that is prohibited by the Supreme Court as being the unauthorized practice of law” is irrelevant, because pre-2004, there was no requirement that the Supreme Court first make such a finding before a private cause of action could be recognized.

Appellee filed as supplemental authority from the Eighth District, *Crawford v. First Merit Mtge. Corp.*, Cuyahoga App. 89193, 2007-Ohio-6074. The

facts in *Crawford* are almost identical to the case at bar: Crawford borrowed money from FirstMerit in 2001 and was charged a document preparation fee which Crawford alleged was the “unauthorized practice of law” and for which she sought restitution. Crawford likewise sought certification as a class action; the record is not clear as to the requested parameters of the requested class; nonetheless, as in the instant case, the issue of class certification was never resolved. FirstMerit filed a Civ.R. 12(C) motion for judgment on the pleadings, contending that “only the Ohio Supreme Court could consider a complaint that raised the issue of the unauthorized practice of law.” *Id.* at 3. The appellate court concluded that “a person who claims to have been harmed by conduct alleged to have constituted the unauthorized practice of law must take his or her claim through the avenues prescribed by the Ohio Supreme Court, because it is the court with exclusive jurisdiction to make that determination.” *Id.* at 11. This finding is simply in error for reasons we have previously addressed. The requirement that the supreme court first find an “unauthorized practice of law” before a separate cause of action can arise, quite simply, does not apply to acts committed before September 15, 2004.

Additionally, *Foss*, *Cocon*, and *Middleton and Assoc.*, from the Tenth, Ninth, and Eighth Districts respectively, none of which have been overruled (or

even criticized), all hold that a defendant in a lawsuit may resist a demand for fees charged by one who has engaged in the unauthorized practice of law.

The only issue before us then is: if, prior to 2004, one was permitted to defend a demand for fees sought by another who generated those fees by the unauthorized practice of law, may one likewise seek a return of fees paid prior to 2004 from one who has generated those fees by the unauthorized practice of law? We discern no difference, answer affirmatively, and, accordingly, reverse the decision of the trial court granting judgment on the pleadings, and remand this matter to the trial court for further proceedings.

Appellant's assignment of error is sustained.

Reversed and remanded.

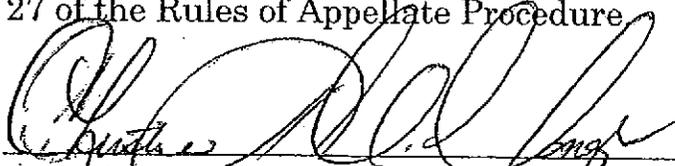
It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule

27 of the Rules of Appellate Procedure



CHRISTINE T. McMONAGLE, JUDGE

SEAN C. GALLAGHER, P.J., CONCURS
FRANK D. CELEBREZZE, JR., J., DISSENTS
WITH SEPARATE DISSENTING OPINION

FRANK D. CELEBREZZE, JR., J., DISSENTING:

I respectfully dissent. As the majority concedes, the facts of this case are almost identical to those in *Crawford v. FirstMerit Mortgage Corp.*, Cuyahoga App. No. 89193, 2007-Ohio-6074. Based on the doctrine of stare decisis, I feel compelled to follow this court's decision in *Crawford*, which holds that R.C. 4705.07 places within the exclusive jurisdiction of the Ohio Supreme Court the determination that the alleged conduct constitutes the unauthorized practice of law. Appellants here did not first seek such a determination; therefore, they cannot succeed on the merits of their claims. Accordingly, I would affirm the lower court's decision.

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89193

GLORIA A. CRAWFORD

PLAINTIFF-APPELLANT

vs.

FIRSTMERIT MORTGAGE CORPORATION

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-593477

BEFORE: Rocco, J., Celebrezze, A.J., and Kilbane, J.

RELEASED: November 15, 2007

JOURNALIZED: NOV 26 2007

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**FILED AND JOURNALIZED
PER APP. R. 22(E)**

NOV 26 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY: [Signature] DEP.

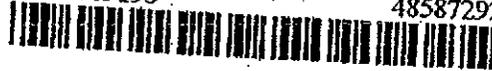
**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED**

NOV 15 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY: [Signature] DEP.

CA06089193

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

KENNETH A. ROCCO, J.:

Plaintiff-appellant Gloria A. Crawford appeals from the trial court's decision to grant judgment to defendant-appellee FirstMerit Mortgage Corporation ("FirstMerit") on the pleadings filed in this case.

Crawford presents two assignments of error. She argues that the trial court wrongly concluded based upon the pleadings that it lacked subject matter jurisdiction over her claim for relief. She further argues that the trial court's "alternative" theory of dismissal, viz., that she failed to state a claim upon which relief could be granted, also was incorrect.

This court disagrees with Crawford's arguments. Consequently, the trial court's order of judgment in favor of FirstMerit is affirmed.

Crawford filed this action on June 7, 2006 as a class action against FirstMerit "to recover document preparation fees charged for services performed by clerical personnel in preparing or completing legal documents relating to the issuance of mortgage loans." Crawford alleged that in spite of the fact that "Ohio law prohibits Firstmerit [sic] from charging fees for such services performed by non-attorneys," FirstMerit nevertheless "routinely charges customers" those fees.

Crawford's complaint asserted that in connection with her June 2001 mortgage loan, FirstMerit charged her a \$300 fee for "document preparation"

which was done by "agents or employees of Firstmerit [sic] who are not attorneys licensed to practice law." She asserted that "common questions of law and fact" included, inter alia, whether "agents or employees" of FirstMerit who prepared those "legal documents*** were not licensed to practice law," and whether the fee for such services performed by non-attorneys "is prohibited by Ohio law."

Based upon these assertions, Crawford presented two claims against FirstMerit for fees charged to its mortgage loan customers: 1) "money had and received," i.e., FirstMerit "should not be allowed to retain" fees that are "prohibited by Ohio law;" and, 2) unjust enrichment.

In its answer, FirstMerit admitted it charged Crawford a \$300 fee in connection with her loan. FirstMerit asserted that the forms to which the fee applied were drafted by a "third party" to assure those forms complied with state and federal law, and that its employees merely "input borrower-specific information into those forms in advance of a loan closing." It denied the remainder of the pertinent allegations.

FirstMerit raised several affirmative defenses which included failure "to state a claim upon which relief could be granted" and "there is no private right of action under Ohio law for the unauthorized practice of law."

On September 21, 2006 FirstMerit filed a Civ.R. 12(C) motion for judgment on the pleadings. It argued that Crawford's claims were actually a single claim

over which the trial court lacked subject matter jurisdiction. FirstMerit contended that only the Ohio Supreme Court could consider a complaint that raised the issue of the unauthorized practice of law.

Crawford responded to FirstMerit's motion. She argued that since Ohio law prohibited FirstMerit from charging a fee "for legal work performed by nonlawyers," FirstMerit had been unjustly enriched and should not be permitted to retain that money. Crawford further asserted that entertaining a suit for "restitution" brought by a person who paid such a fee would not interfere with the Ohio Supreme Court's jurisdiction over the unauthorized practice of law, since the supreme court considered only "punishment" and "prevention," whereas she sought "compensation."

FirstMerit filed a reply brief, reminding the trial court of Section 2(B)(1)(g), Article IV of the Ohio Constitution, which confers on the supreme court "exclusive jurisdiction over all matters related to the practice of law."

Subsequently, Crawford filed in the trial court a "submission of supplemental authority." While acknowledging the recent enactment of R.C. 4705.07 did not apply to her claims because the conduct at issue occurred prior to the statute's effective date, she nevertheless asserted the statute's passage "confirm[ed] the Plaintiff's standing to bring a private cause of action to pursue

a substantive claim to recover money based upon conduct involving the unauthorized practice of law***.”

Crawford, however, failed to address the statutory language that first mandated a finding by the supreme court that a person has engaged in the unauthorized practice of law before a civil suit for damages against that person could proceed. FirstMerit corrected this oversight in its responsive brief to Crawford's submission.

On December 6, 2006, the trial court issued a lengthy judgment entry granting FirstMerit's motion for judgment on the pleadings.

The trial court determined that Crawford's complaint sought restitution for legal services performed by non-lawyers, but in Ohio at the time of her mortgage loan, no private right of recovery for the unauthorized practice of law existed. The court additionally found that the language of R.C. 4705.07 served to confirm the Ohio Supreme Court's exclusive jurisdiction over matters concerning the unauthorized practice of law. Therefore, the court concluded that it lacked jurisdiction to consider Crawford's claims.

As an aside, the trial court stated that even if it had jurisdiction to consider Crawford's claims, she failed to state a claim upon which relief could be granted. The court came to this conclusion based on its "belief" from the pleadings that FirstMerit had not engaged in the unauthorized practice of law.

The trial court ultimately dismissed Crawford's claims with prejudice.

Crawford appeals from the trial court's decision with two assignments of error.

"I. The trial court erred by dismissing the complaint for lack of subject matter jurisdiction.

II. The trial court erred by holding, alternatively, that the complaint fails to state a claim upon which relief can be granted."

Crawford argues that the trial court incorrectly concluded that it could not consider a claim seeking to recover a fee charged by a non-lawyer for legal services, because adjudication of such a claim "does not impinge upon the Ohio Supreme Court's jurisdiction." This court disagrees.

In construing a Civ.R. 12(C) motion for judgment on the pleadings, the court must construe as true all material allegations in the complaint, along with all reasonable inferences to be drawn therefrom. *Peterson v. Teodosio* (1973), 34 Ohio.St.2d 161, 165-66. The determination of the motion is restricted solely to the allegations in the pleadings. *Id.* The motion must be granted if the court finds, beyond doubt, that the plaintiff can prove no set of facts in support of her claim that would entitle her to the relief requested. *Sarum Mgt. v. Alex N. Sill Co.*, Summit App. No. 23167, 2006-Ohio-5710, ¶6.

"[F]or purposes of analysis, the form of the relief sought is not dispositive." *Miami Valley Hosp. v. Combs* (1997), 119 Ohio App. 3d 346 at 351. Crawford sought relief, in whatever form, based upon a claim that, in preparing mortgage loan documents, FirstMerit's clerical workers were engaged in the unauthorized practice of law. Thus, Crawford sought a determination that FirstMerit engaged prohibited conduct. The Ohio Supreme Court is "the only entity with the authority to determine whether the alleged conduct actually constituted the unauthorized practice of law." *Sarum Mgt. v. Alex N. Sill Co., Inc.*, supra, ¶34.

R.C. 4705.01 states, in relevant part, that "[n]o person shall be permitted to practice as an attorney***unless the person has been admitted to the bar by the supreme court in compliance with its prescribed***rules." Furthermore, the supreme court is given exclusive jurisdiction by the Ohio Constitution over all matters that pertain to the practice of law. The statute is not intended to provide a private remedy for violations. *Miami Valley Hosp. v. Combs*, supra.

Indeed, the rules implementing it "reveal an explicit intent to deny a private remedy, or to restrict any remedy to the procedures contained in the rules. Implementation of the prohibition against the unauthorized practice of law is covered by Gov.Bar R. VII, which establishes a Board***and further details certain procedures for investigation and prosecution of proceedings arising from complaints***. Each bar association in the state is allowed to

establish a committee on the unauthorized practice of law, and both these committees and Disciplinary Counsel are required to investigate***. If warranted by the investigation, a formal complaint is filed with the board, which***sends its findings and recommendations to the Ohio Supreme Court.***[T]he Supreme Court can issue whatever orders it deems proper***.” Id. at 352. The foregoing procedure is “the exclusive avenue for complaints.” Id.

The above analysis conducted by the Montgomery Court of Appeals remains persuasive in light of the recent enactment of R.C. 4705.07. Pursuant to subsection (B)(2), “the determination whether a person has committed the unauthorized practice of law in violation of division (A)(3) is solely within the purview of the Ohio Supreme Court.” *Sarum Mgt. Inc. v. Alex N. Sill Co.*, supra, ¶28.

Subsection (C)(2) now allows a civil action to recover damages from the violator, but only after “a finding by the supreme court that the violator actually committed an act that is prohibited by the supreme court as being the unauthorized practice of law.” Id., ¶29. Thus, the statute does not proscribe “certain types of conduct,” it simply “provides the framework for a private right of action***.” Id.

The Ohio Supreme Court recently has reiterated its exclusive jurisdiction to evaluate whether a person is engaged in the unauthorized practice of law in *Cleveland Bar Assn. v. Compmanagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108. At ¶¶22-24. Therein, the court made the following observations:

“Gov.Bar R. VII(2)(A) defines the unauthorized practice of law as the rendering of legal services for another by any person not admitted to the practice in Ohio,’ and [the supreme court] retains broad authority to define the practice of law.***Although the general law defining the practice of law is well settled, this court has not yet set forth the specific standards for proving an allegation of unauthorized practice of law.”

In that case, the supreme court decided, for the benefit of the bar association, to do so. After a careful analysis of the facts of the case, the court admonished the bar association that “an allegation that an individual or entity has engaged in the unauthorized practice of law must be supported by either an admission or other evidence of the specific act or acts upon which the allegation is based.”

Based upon the language used by the supreme court, this court cannot find the trial court erred in granting judgment in favor of FirstMerit on the pleadings filed in this case. A person who engages in the practice of law in Ohio must be licensed by the supreme court; otherwise, he or she ordinarily cannot obtain

compensation for "legal" services rendered to another. *Middleton & Assoc. v. Weiss* (June 19, 1997), Cuyahoga App. No. 71416; *Cocon, Inc. v. Botnick Bldg. Co.* (1989), 59 Ohio App.3d 42; cf., *Foss v. Berlin* (1981), 3 Ohio App.3d 8.

By that same token, a person who claims to have been harmed by conduct alleged to have constituted the unauthorized practice of law must take his or her claim through the avenues prescribed by the Ohio Supreme Court, because it is the court with exclusive jurisdiction to make that determination. *Disciplinary Counsel v. Alexicole, Inc.*, 105 Ohio St.3d 52, 2004-Ohio-6901; *Fravel v. Stark Co. Bd. of Revision*, 88 Ohio St.3d 574, 2000-Ohio-430.

Crawford additionally argues that the trial court erred in opining that her complaint failed to state a claim upon which relief could be granted. This was an issue raised by FirstMerit as an affirmative defense to her action.

The trial court's "belief" that FirstMerit's employees were not engaged in the practice of law, however, does not render its resolution of FirstMerit's Civ.R. 12(C) motion for judgment on the pleadings reversible. An appellate court must affirm a judgment if it is correct. *Oglesby v. Columbus* (Feb. 8, 2001), Franklin App. No. 00AP-544. The trial court merely commented that, in its view, an alternative basis for the same result existed.

Accordingly, for the foregoing reasons, Crawford's first and second assignments of error are overruled.

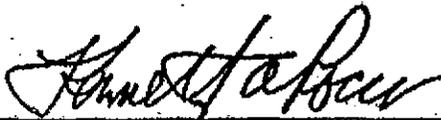
The trial court's order is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



KENNETH A. ROCCO, J.

FRANK D. CELEBREZZE, JR., A.J. and
MARY EILEEN KILBANE, J. CONCUR

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

GARY A. GREENSPAN

Appellant

COA NO.
89850

LOWER COURT NO.
CP CV-593882

-vs-

COMMON PLEAS COURT

THIRD FEDERAL SAVINGS & LOAN

Appellee

MOTION NO. 406788

Date 03/19/2008

Journal Entry

JOINT MOTION BY BOTH PARTIES TO WAIVE ORAL ARGUMENT SCHEDULED ON APRIL 7, 2008,
IS GRANTED.

RECEIVED FOR FILING

MAR 19 2008

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY CEC DEP.

Judge CHRISTINE T. MCMONAGLE, Concur

Judge FRANK D. CELEBREZZE, JR., Concur



Presiding Judge
SEAN C. GALLAGHER

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NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

ARTICLE IV: JUDICIAL

ARTICLE IV: JUDICIAL

JUDICIAL POWER VESTED IN COURT.

§1 The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.

(1851, am. 1883, 1912, 1968, 1973)

ORGANIZATION AND JURISDICTION OF SUPREME COURT.

§2 (A) The Supreme Court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the Supreme Court in the place and stead of the absent judge. A majority of the Supreme Court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The Supreme Court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;
- (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The Supreme Court shall have appellate jurisdiction as follows:

- (a) In appeals from the courts of appeals as a matter of right in the following:
 - (i) Cases originating in the courts of appeals;
 - (ii) Cases in which the death penalty has been affirmed;
 - (iii) Cases involving questions arising under the constitution of the United States or of this state.
- (b) In appeals from the courts of appeals in cases of

felony on leave first obtained.

- (c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed.
- (d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;
- (e) In cases of public or great general interest, the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, and may review and affirm, modify, or reverse the judgment of the court of appeals;
- (f) The Supreme Court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the Supreme Court.

(C) The decisions in all cases in the Supreme Court shall be reported together with the reasons therefor.

(1851, am. 1883, 1912, 1944, 1968, 1994)

ORGANIZATION AND JURISDICTION OF COURT OF APPEALS.

§3 (A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo
- (f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify,

ARTICLE IV: JUDICIAL

or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgement that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B)(2) of the article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(1968, am. 1994)

ORGANIZATION AND JURISDICTION OF COMMON PLEAS COURT.

§4 (A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas court of all counties in the district, as may be provided by law. Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise

such powers as are prescribed by rule of the Supreme Court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

(1968, am. 1973)

POWERS AND DUTIES OF SUPREME COURT; RULES.

§5 (A)(1) In addition to all other powers vested by this article in the Supreme Court, the Supreme Court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court

(2) The Supreme Court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with

ARTICLE IV: JUDICIAL

the clerk of each house of the General Assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the General Assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the Supreme Court. The Supreme Court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the Supreme Court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing or disqualification matters involving judges of courts established by law.

(1968, am. 1973)

ELECTION OF JUDGES; COMPENSATION.

§6 (A)(1) The chief justice and the justices of the Supreme Court shall be elected by the electors of the state at large, for terms of not less than six years.

(2) The judges of the courts of appeals shall be elected by the electors of their respective appellate districts, for terms of not less than six years.

(3) The judges of the courts of common pleas and the divisions thereof shall be elected by the electors of the counties, districts, or, as may be provided by law, other subdivisions, in which their respective courts are located, for terms of not less than six years, and each judge of a court of common pleas or division thereof shall reside during his term of office in the county, district, or subdivision in which his court is located.

(4) Terms of office of all judges shall begin on the days fixed by law, and laws shall be enacted to prescribe the times and mode of their election.

(B) The judges of the Supreme Court, courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law, shall, at stated times, receive for their services such compensa-

tion as may be provided by law, which shall not be diminished during their term of office. The compensation of all judges of the Supreme Court, except that of the chief justice, shall be the same. The compensation of all judges of the courts of appeals shall be the same. Common pleas judges and judges of divisions thereof, and judges of all courts of record established by law shall receive such compensation as may be provided by law. Judges shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or of the United States. All votes for any judge, for any elective office, except a judicial office, under the authority of this state, given by the General Assembly, or the people shall be void.

(C) No person shall be elected or appointed to any judicial office if on or before the day when he shall assume the office and enter upon the discharge of its duties he shall have attained the age of seventy years. Any voluntarily retired judge, or any judge who is retired under this section, may be assigned with his consent, by the chief justice or acting chief justice of the Supreme Court to active duty as a judge and while so serving shall receive the established compensation for such office, computed upon a per diem basis, in addition to any retirement benefits to which he may be entitled. Laws may be passed providing retirement benefits for judges.

(1968, am. 1973)

REPEALED. PROBATE COURTS.

§7

(1851, am. 1912, 1947, 1951, rep. 1968)

REPEALED. PROBATE COURT; JURISDICTION.

§8

(1851, rep. 1968)

REPEALED. JUSTICES OF THE PEACE.

§9

(1851, rep. 1912)

REPEALED. OTHER JUDGES; ELECTION.

§10

(1851, rep. 1968)

REPEALED. CLASSIFICATION OF SUPREME COURT JUDGES.

§11

(1851, rep. 1883)

ARTICLE IV: JUDICIAL.

REPEALED. VACANCIES, HOW FILLED.

§12

(1851, am. 1912, rep. 1968)

VACANCY IN OFFICE OF JUDGE, HOW FILLED.

§13 In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and has qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy shall have occurred; provided, however, that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term.

(1851, am. 1942)

REPEALED. REFERRED TO COMPENSATION AND INELIGIBILITY FOR OTHER OFFICE FOR SUPREME COURT JUSTICES AND COMMON PLEAS JUDGES.

§14

(1851, rep. 1968)

CHANGING NUMBER OF JUDGES; ESTABLISHING OTHER COURTS.

§15 Laws may be passed to increase or diminish the number of judges of the Supreme Court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided.

(1851, am. 1912)

REPEALED. CLERKS OF COURT ELECTIONS.

§16

(1851, rep. 1933)

JUDGES REMOVABLE.

§17 Judges may be removed from office, by concurrent resolution of both houses of the General Assembly, if two-thirds of the members, elected to each house,

concur therein; but, no such removal shall be made, except upon complaint, the substance of which shall be entered on the journal, nor, until the party charged shall have had notice thereof, and an opportunity to be heard.

(1851)

POWERS AND JURISDICTION OF JUDGES.

§18 The several judges of the Supreme Court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

(1851)

COURTS OF CONCILIATION.

§19 The General Assembly may establish courts of conciliation, and prescribe their powers and duties; but such courts shall not render final judgment in any case, except upon submission, by the parties, of the matter in dispute, and their agreement to abide such judgment.

(1851)

STYLE OF PROCESS, PROSECUTION, AND INDICTMENT.

§20 The style of all process shall be, "The state of Ohio;" all prosecutions shall be carried on, in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio."

(1851)

SUPREME COURT COMMISSION.

§[21]22 A commission, which shall consist of five members, shall be appointed by the governor, with the advice and consent of the Senate, the members of which shall hold office for the term of three years from and after the first day of February, 1876, to dispose of such part of the business then on the dockets of the Supreme Court, as shall, by arrangement between said commission and said court, be transferred to such commission; and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in said court; and the members of said commission shall receive a like compensation for the time being, with the judges of said court. A majority of the members of said commission shall be necessary to form a quorum or pronounce a deci-

ARTICLE V: ELECTIVE FRANCHISE

sion, and its decision shall be certified, entered, and enforced as the judgments of the Supreme Court, and at the expiration of the term of said commission, all business undisposed of shall by it be certified to the Supreme Court and disposed of as if said commission had never existed. The clerk and reporter of said court shall be the clerk and reporter of said commission, and the commission shall have such other attendants not exceeding in number those provided by law for said court, which attendants said commission may appoint and remove at its pleasure.

Any vacancy occurring in said commission, shall be filled by appointment of the governor, with the advice and consent of the Senate, if the Senate be in session, and if the Senate be not in session, by the governor, but in such last case, such appointment shall expire at the end of the next session of the General Assembly. The General Assembly may, on application of the Supreme Court duly entered on the journal of the court and certified, provide by law, whenever two-thirds of such [each] house shall concur therein, from time to time, for the appointment, in like manner, of a like commission with like powers, jurisdiction and duties; provided, that the term of any such commission shall not exceed two years, nor shall it be created oftener than once in ten years.

(1875)

JUDGES IN LESS POPULOUS COUNTIES; SERVICE ON MORE THAN ONE COURT.

§23 Laws may be passed to provide that in any county having less than forty thousand population, as determined by the next preceding federal census, the board of county commissioners of such county, by a unanimous vote or ten percent of the number of electors of such county voting for governor at the next preceding election, by petition, may submit to the electors of such county the question of providing that in such county the same person shall serve as judge of the court of common pleas, judge of the probate court, judge of the juvenile court, judge of the municipal court, and judge of the county court, or of two or more of such courts. If a majority of the electors of such county vote in favor of such proposition, one person shall thereafter be elected to serve in such capacities, but this shall not affect the right of any judge then in office from continuing in office until the end of the term for which he was elected.

Elections may be had in the same manner to discontinue or change the practice of having one person serve in the capacity of judge of more than one court when once adopted.

(1965)

ARTICLE V: ELECTIVE FRANCHISE

WHO MAY VOTE.

§1 Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.

(1851, am. 1923, 1957, 1970, 1976, 1977)

BY BALLOT.

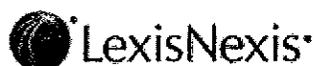
§2 All elections shall be by ballot.

(1851)

NAMES OF CANDIDATES ON BALLOT.

§2a The names of all candidates for an office at any election shall be arranged in a group under the title of that office. The General Assembly shall provide by law the means by which ballots shall give each candidate's name reasonably equal position by rotation or other comparable methods to the extent practical and appropriate to the voting procedure used. At any election in which a candidate's party designation appears on the ballot, the name or designation of each candidate's party, if any, shall be printed under or after each candidate's name in less prominent type face than that in which the candidate's name is printed. An elector may vote for candidates (other than candidates for electors of president and vice-president of the United States, and other than candidates for governor and lieutenant governor) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.

(1949, am. 1975, 1976)



1 of 1 DOCUMENT

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*** RULES CURRENT THROUGH NOVEMBER 15, 2008 ***
*** ANNOTATIONS CURRENT THROUGH DECEMBER 31, 2007 ***

Ohio Rules Of Appellate Procedure
Title III General Provisions

Ohio App. Rule 41 (2008)

Review Court Orders which may amend this Rule.

Rule 41. Rules of courts of appeals

(A) The courts of appeals may adopt rules concerning local practice in their respective courts that are not inconsistent with the rules promulgated by the Supreme Court. Local rules shall be filed with the Supreme Court.

(B) Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

HISTORY: Effective 7-1-94; Amended, eff 7-1-97.

NOTES:

Staff Notes

7-1-97 AMENDMENT

RULE 41 RULES OF COURTS OF APPEALS

The 1997 amendment renumbered this rule from *App. R. 31* to *App. R. 41*; there was no change to the title or text of the rule. *App. R. 31* is now reserved for future use.

Cross-References to Related Statutes

Local rules of practice, *RC § 2501.08*.

Ohio Rules

For Local Rules of the Courts of Appeals, see RULES GOVERNING THE COURTS OF OHIO.

Law Review

Local rules of court. J. Patrick Browne. *13 Akron L. Rev.* 277 (1979).

Ohio Gov. Bar. Rule VII

Retrieve State Legislative Impact® (\$)

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*** RULES CURRENT THROUGH NOVEMBER 15, 2008 ***
*** ANNOTATIONS CURRENT THROUGH DECEMBER 31, 2007 ***

Supreme Court Rules For The Government Of The Bar Of Ohio
Effective February 28, 1972
(Amended and re-adopted as amended, effective July 1, 1983)
Complete with amendments through July 1, 2008

Ohio Gov. Bar. Rule VII (2008)

Review Court Orders which may amend this Rule.

Rule VII. Unauthorized Practice Of Law

Section 1. Board on the Unauthorized Practice of Law.

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

(B) Annually, the Court shall designate one commissioner as chair of the Board. A commissioner may be reappointed as chair, but shall not serve as chair for more than three consecutive one-year terms. The Administrative Director or his or her designee shall serve as the Secretary of the Board. The chair or the Secretary may execute administrative documents on behalf of the Board. The Secretary may execute any other documents at the direction of the chair.

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

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

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

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

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

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

Section 2. Jurisdiction of Board.

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(A) The unauthorized practice of law is the rendering of legal services for another person by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the Supreme Court Rules for the Government of the Bar of Ohio.

(B) The Board shall receive evidence, preserve the record, make findings, and submit recommendations concerning complaints of unauthorized practice of law.

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

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

Advisory opinions shall be public and distributed by the Board.

(D) Referral of Procedural Questions to Board.

In the course of an investigation, the chair of the unauthorized practice of law committee of a bar association or Disciplinary Counsel may direct a written inquiry regarding a procedural question to the chair of the Board. The inquiry shall be sent to the Secretary of the Board. The chair and the Secretary shall consult and direct a response.

Section 3. Referral for Investigation.

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

Section 4. Application of Rule.

(A) All proceedings arising out of complaints of the unauthorized practice of law shall be brought, conducted, and disposed of in accordance with the provisions of this rule. A bar association that permits the membership of any attorney practicing within the geographic area served by that association without reference to the attorney's area of practice, special interest, or other criteria and that satisfies other criteria that may be established by Board regulations may establish an unauthorized practice of law committee. Members of bar association unauthorized practice of law committees shall be attorneys admitted to the practice of law in Ohio. Unauthorized practice of law committees and Disciplinary Counsel may share information with each other regarding investigations and prosecutions. Such discussions shall be confidential and not subject to discovery or subpoena. Unauthorized practice of law committees may conduct joint investigations and prosecutions of unauthorized practice of law matters with each other and with Disciplinary Counsel.

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

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

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

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

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

counsel to represent relator in the action as fully and completely as if designated by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of this Court.

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

Section 5a. Interim Cease and Desist Order.

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

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

(b) Simultaneously file a motion with the Supreme Court and the Board on the Unauthorized Practice of Law requesting that the Court order respondent to immediately cease and desist engaging in the unauthorized practice of law. The relator shall include, in its motion, proposed findings of fact, proposed conclusions of law, and other information in support of the requested order. Evidence relevant to the requested order shall be attached to or filed with the motion. The motion shall include a certificate detailing the attempts made by relator to provide advance notice to the respondent of relator's intent to file the motion. The motion also shall include a certificate of service on the respondent at the most recent address of the respondent known to the relator. Upon the filing of a motion with the Court and the Board, proceedings before the Court shall be automatically stayed and the matter shall be deemed to have been referred by the Court to the Board for application of this rule.

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

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

(C) Upon consideration of the Commissioner's Report, or if no memorandum in opposition is filed, the Supreme Court may enter an order that the respondent cease and desist engaging in the unauthorized practice of law, pending final disposition of proceedings before the Board, predicated on the conduct threatening the serious harm or may order other action as the Court considers appropriate.

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

(2) In addition to the motion allowed by division (D)(1) of this section, the respondent may file a motion requesting dissolution of the interim cease and desist order, alleging that one hundred eighty days have elapsed since the entry of the order and the relator has failed to file with the Board a formal complaint predicated on the conduct that was the basis of the order. A copy of the motion shall be served by the respondent on the relator. The relator shall have ten days from the date the motion is filed to file a response to the motion. The Supreme Court promptly shall review the motion after a response has been filed or after the time for filing a response has passed.

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

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

Section 5b. Settlement of Complaints; Consent Decrees

(A) As used in this section:

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

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

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

(B) (1) The proposed resolution of a complaint filed pursuant to Gov. Bar R. VII, Section 5, prior to adjudication by the Board, shall not be permitted without the prior review of the Board, or the Court, or both. Parties contemplating the proposed resolution of a complaint shall file a motion with the Secretary of the Board. The voluntary dismissal of a Complaint filed pursuant to Civ.R. 41(A) in conjunction with a proposed resolution is subject to the requirements of this section.

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

(1) The extent the agreement is submitted in the form of a proposed consent decree;

(2) The admission of the respondent to material allegations of the unauthorized practice of law as stated in the complaint;

(3) The extent the public is protected from future harm and any substantial injury is remedied by the agreement;

(4) Any agreement by the respondent to cease and desist the alleged activities;

(5) The extent the settlement agreement resolves material allegations of the unauthorized practice of law;

(6) The extent the agreement involves public policy issues or encroaches upon the jurisdiction of the Supreme Court to regulate the practice of law;

(7) The extent the settlement agreement furthers the stated purposes of Gov. Bar R. VII;

(8) Any other relevant factors.

(D) Review by the Board

(1) Upon receipt of a proposed resolution, the Board chair shall direct the assigned hearing panel to prepare a written report setting forth its recommendation for the acceptance or rejection of the proposed resolution. The Board shall vote to accept or reject the proposed resolution. Upon a majority vote to accept a settlement agreement, an order shall be issued by the Board chair dismissing the complaint. Upon a majority vote to accept a consent decree, the Board shall prepare and file a final report with the Court in accordance with division (E)(1) of this section.

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

(E) Review by the Court

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

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

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

(F) Rejection of a Proposed Resolution

(1) A complaint will proceed on the merits pursuant to Gov. Bar R. VII if a proposed resolution is rejected by either the Board or the Court. Upon rejection by the Board, an order shall be issued rejecting the proposed resolution and

remanding the matter to the hearing panel for further proceedings. Upon rejection by the Court, an order shall be issued remanding the matter to the Board with or without instructions.

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

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

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

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

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

(I) This regulation shall not apply to the resolution of matters considered by an unauthorized practice of law committee or the Office of Disciplinary Counsel before a complaint is filed pursuant to Gov. Bar R. VII, Section 5.

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

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

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

(A) Hearing Panel.

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

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

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

(B) Motion for Default.

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

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

(1) A statement of the effort made to contact respondent and the result;

(2) Sworn or certified documentary *prima facie* evidence in support of the allegations of the complaint;

(3) Citations of any authorities relied upon by relator;

(4) A statement of any mitigating factors or exculpatory evidence of which relator is aware;

(5) A statement of the relief sought by relator;

(6) A certificate of service of the motion on respondent at the address stated on the complaint and at the last known address, if different.

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

The chair of the Board may set aside a default entry, for good cause shown, and order a hearing before the hearing

panel at any time before the Board renders its decision pursuant to division (F) of this section.

(C) Authority of Hearing Panel; Dismissal.

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

(D) Referral by the Panel.

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

(E) Finding of Unauthorized Practice of Law; Duty of Hearing Panel.

If the hearing panel determines, by a preponderance of the evidence, that respondent has engaged in the unauthorized practice of law, the hearing panel shall file its report of the proceedings, findings of facts and recommendations with the Secretary for review by the Board. The report shall include the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with the proceedings.

(F) Review by Entire Board.

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

(G) Finding of Unauthorized Practice of Law; Duty of Board.

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

(H) Hearing on Stipulated Facts.

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

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

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

Section 8. Costs; Civil Penalties.

(A) Costs.

As used in section 7(G) of this rule, "costs" includes both of the following:

- (1) The expenses of relator, as described in Section 9 of this rule, that have been reimbursed by the Board;
- (2) The direct expenses incurred by the hearing panel and the Board, including, but not limited to, the expense of a court reporter and transcript of any hearing before the hearing panel.

"Costs" shall not include attorney's fees incurred by the relator.

(B) Civil Penalties.

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

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

Section 9. Expenses.

(A) Reimbursement of Direct Expenses.

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

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

(B) Annual Reimbursement of Indirect Expenses.

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

- (1) The personnel costs for the portion of an employee's work that is dedicated to this area;
- (2) The costs of bar counsel who is retained pursuant to a written agreement with the unauthorized practice of law committee;
- (3) Postal and delivery charges;
- (4) Long distance telephone charges;
- (5) Local telephone charges and other appropriate line charges included, but not limited to, per call charges;
- (6) The costs of dedicated telephone lines;
- (7) Subscription to professional journals, law books, and other legal research services and materials related to unauthorized practice of law;
- (8) Organizational dues and educational expenses related to unauthorized practice of law;
- (9) All costs of defending a law suit relating to unauthorized practice of law and that portion of professional liability insurance premiums directly attributable to the operation of the committees in performing their obligations under this rule;
- (10) The percentage of rent, insurance premiums not reimbursed pursuant to division(B)(9) of this section, supplies and equipment, accounting costs, occupancy, utilities, office expenses, repair and maintenance, and other overhead expenses directly attributable to the operation of the committees in performing their obligations under this rule, as determined by the Board and provided that no bar association shall be reimbursed in excess of three thousand five hundred dollars per calendar year for such expenses. Reimbursement shall not be made for the costs of the time of other bar association personnel, volunteer attorneys, depreciation, or amortization. No bar association shall apply for reimbursement or be entitled to reimbursement for expenses that are reimbursed pursuant to Gov. Bar R. V, Sec. 3(D).

(C) Quarterly Reimbursement of Certain Indirect Expenses.

In addition to applying annually for reimbursement pursuant to Section 9(B), a bar association may apply quarterly to the Board for reimbursement of the expenses set forth in Section 9(B)(1) and (2) that were necessarily and reasonably

incurred during the preceding calendar quarter. Quarterly reimbursement shall be submitted in accordance with the following schedule: [Click here to view image.](#)

Any expense that is eligible for quarterly reimbursement, but that is not submitted on a quarterly reimbursement application, shall be submitted no later than the appropriate annual reimbursement application pursuant to division (B) of this section and shall be denied by the Board if not timely submitted. The application for quarterly reimbursement shall include an affidavit with documentation demonstrating that the unauthorized practice of law committee incurred the expenses set forth in Section 9(B)(1) and (2).

(D) Audit.

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

(E) Availability of Funds.

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

Section 10. Manner of Service.

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

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

Section 11. Quorum of Board.

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

Section 12. Power to Issue Subpoenas.

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

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

Section 13. Depositions.

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

Section 14. Conduct of Hearing.

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

Section 15. Records.

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

Section 16. Board May Prescribe Regulations.

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

Section 17. Rules to be Liberally Construed.

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

Section 18. Records and Proceedings Public.

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

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

(A) Show Cause Order.

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

(B) Response to Show Cause Order.

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

(C) Answer Briefs.

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

(D) Supreme Court Proceedings.

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

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

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

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

(2) Payment for costs, expenses, sanctions, and penalties imposed under this rule shall be deposited in the Attorney Registration Fund established under Gov. Bar R. VI, Section 7.

(E) Notice.

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

(F) Publication.

The Supreme Court Reporter shall publish any order entered by the Supreme Court under this rule in the *Ohio Official Reports*, the *Ohio State Bar Association Report*, and in a publication, if any, of the local bar association in the county in which the complaint arose. The publication shall include the citation of the case in which the order was issued. Publication also shall be made in a local newspaper having the largest general circulation in the county in which the complaint arose. The publication shall be in the form of a paid legal advertisement, in a style and size commensurate with legal

advertisements, and shall be published three times within the thirty days following the order of the Supreme Court. Publication fees shall be assessed against the respondent as part of the costs.

History:

Amended, eff 11-30-83; 6-6-88; 1-1-89; 1-1-90; 1-1-92; 1-1-93; 1-1-95; 6-16-03; 1-1-05; 11/01/07; 01/01/08, 09/01/08.

Baldwin's Ohio Revised Code Annotated Currentness
Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4705. Attorneys (Refs & Annos)
→ 4705.01 Practice of law; prohibitions

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, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. Except as provided in section 4705.09 of the Revised Code or in rules adopted by the supreme court, admission to the bar shall entitle the person to practice before any court or administrative tribunal without further qualification or license.

No sheriff shall practice as an attorney at law in any court of this state, and no clerk of the supreme court or court of common pleas, or the deputy of either, shall practice in the particular court of which that person is clerk or deputy.

No coroner in a county with a population of one hundred seventy-five thousand one or more who elects not to engage in the private practice of medicine pursuant to section 325.15 of the Revised Code shall practice as an attorney at law during the period in which the coroner may not engage in the private practice of medicine.

No judge of any court of record in this state shall engage in the practice of law during the judge's term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in section 1901.11 of the Revised Code.

A judge may complete any business undertaken by the judge in the United States district court, the United States circuit court of appeals, or the supreme court of the United States prior to the judge's election as judge.

4705.02 Suspension or removal of an attorney for conduct involving moral turpitude

The supreme court, court of appeals, or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. Such suspension or removal shall operate as a suspension or removal in all the courts of the state. The clerk of court upon such suspension or removal shall send a copy thereof to the supreme court, the court of appeals, and to the federal court of the district in which said attorney resided at the time of trial for such action as is warranted. Judges of such state courts are required to cause proceedings to be instituted against an attorney, when it comes to the knowledge of any judge or when brought to his knowledge by the

bar association of the county in which such attorney practices that he may be guilty of any of the causes for suspension, removal, or reprimand.

4705.021 Notice of default on child support orders

(A) As used in this section:

(1) "Disciplinary counsel" means the disciplinary counsel appointed by the board of commissioners on grievances and discipline of the supreme court under the Rules for the Government of the Bar of Ohio.

(2) "Certified grievance committee" means a duly constituted and organized committee of the Ohio state bar association or of one or more local bar associations of the state that complies with the criteria set forth in rule V, section 3 of the Rules for the Government of the Bar of Ohio.

(3) "Child support order" has the same meaning as in section 3119.01 of the Revised Code.

(B) If an individual who has been admitted to the bar by order of the supreme court in compliance with its published rules is determined pursuant to sections 3123.01 to 3123.07 of the Revised Code by a court or child support enforcement agency to be in default under a support order being administered or handled by a child support enforcement agency, that agency may send a notice listing the name and social security number or other identification number of the individual and a certified copy of the court or agency determination that the individual is in default to the secretary of the board of commissioners on grievances and discipline of the supreme court and to either the disciplinary counsel or the president, secretary, and chairperson of each certified grievance committee.

4705.03 Proceedings against attorney

Before an attorney at law is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, such attorney shall be allowed a reasonable time to collect and present testimony in his own defense, and he shall be heard by himself or counsel.

4705.04 Review of proceedings

In case of suspension or removal of an attorney at law by the court of common pleas, an appeal on questions of law may be had to the court of appeals, and the sentence of either the court of common pleas or the court of appeals, may be reviewed on appeal on questions of law in the supreme court. If such suspended or removed attorney shall desire a modification of the decree of suspension or removal, he shall file a written motion therefor in the court which entered such decree.

4705.05 Expenses and costs

The court in which charges or written motion is filed in accordance with sections 4705.03 and 4705.04 of the Revised Code, shall allow to the persons appointed to file and prosecute the charges, or to resist the modification of any decrees, for their services in either case, a reasonable sum, not exceeding one hundred dollars, to each person, together with the costs and expenses incurred by him in such proceedings. The amounts allowed shall be paid from the county treasury of the county wherein such proceedings are had, upon the warrant of the county auditor. If such charges or motion is filed in the supreme court, such allowances shall be paid from the state treasury.

4705.06 Liability of attorneys; prosecution

If a suit is dismissed for the nonattendance of an attorney at law practicing in any court of record, it shall be at his costs, if he has not a just and reasonable excuse. He shall be liable for all damages his client sustains by such dismissal, or any other neglect of his duty, to be recovered in any court of record. Such attorney receiving money for his client, and refusing or neglecting to pay it when demanded, shall be proceeded against in a summary way, on motion, before any court of record, either in the county in which the judgment on which such money has been collected was rendered, or in the county in which such attorney resides, in the same manner and be liable to the same penalties as sheriffs and coroners are for money received on execution.

4705.07 False representation as attorney; interim relief; civil actions

(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, or design, the evident 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.

(2) Only the supreme court may make a determination that any person has committed the unauthorized practice of law in violation of division (A)(3) of this section.

(C)(1) If necessary to serve the public interest and consistent with the rules of the supreme court, any person who is authorized to bring a claim before the supreme court that alleges the unauthorized practice of law in violation of division (A)(3) of this section may make a motion to the supreme court to seek interim relief prior to the final resolution of the person's claim.

(2) Any person who is damaged by another person who commits a violation of division (A)(3) of this section may commence a civil action to recover actual damages from the person who commits the violation, upon a finding by the supreme court that the other person has committed an act that is prohibited by the supreme court as being the unauthorized practice of law in violation of that division. The court in which that action for damages is commenced is bound by the determination of the supreme court regarding the unauthorized practice of law and shall not make any additional determinations regarding the unauthorized practice of law. The court in which the action for damages is commenced shall consider all of the following in awarding damages to a person under division (C)(2) of this section:

(a) The extent to which the fee paid for the services that constitute the unauthorized practice of law in violation of division (A)(3) of this section exceeds the reasonable fees charged by licensed attorneys in the area in which the violation occurred;

(b) The costs incurred in paying for legal advice to correct any inadequacies in the services that constitute the unauthorized practice of law in violation of division (A)(3) of this section;

(c) Any other damages proximately caused by the failure of the person performing the services that constitute the unauthorized practice of law to have the license to practice law in this state that is required to perform the services;

(d) Any reasonable attorney's fees that are incurred in bringing the civil action under division (C)(1) or (2) of this section.

(3) Divisions (C)(1) and (2) of this section apply, and may be utilized, only regarding acts that are the unauthorized practice of law in violation of division (A)(3) of this section and that occur on or after the effective date of this amendment.

4705.08 Compensation for procurement of legal services prohibited--Repealed

4705.09. Attorneys to establish interest-bearing trust accounts; certain client funds; transmittal of interest to legal aid fund; rules of professional conduct

(A)(1) Any person admitted to the practice of law in this state by order of the supreme court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for purposes of depositing client funds held by the attorney, firm, or association that are nominal in amount or are to be held by the attorney, firm, or association for a short period of time, with any bank, savings bank, or savings and loan association that is authorized to do business in this state and is insured by the federal deposit insurance corporation or the successor to that corporation, or any credit union insured by the national credit union administration operating under the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1751, or insured by a credit union share guaranty corporation established under Chapter 1761. of the Revised Code. Each account established under this division shall be in the name of the attorney, firm, or association that established and is maintaining it and shall be identified as an

IOLTA or an interest on lawyer's trust account. The name of the account may contain additional identifying features to distinguish it from other trust accounts established and maintained by the attorney, firm, or association.

(2) Each attorney who receives funds belonging to a client shall do one of the following:

(a) Establish and maintain one or more interest-bearing trust accounts in accordance with division (A)(1) of this section or maintain one or more interest-bearing trust accounts previously established in accordance with that division, and deposit all client funds held that are nominal in amount or are to be held by the attorney for a short period of time in the account or accounts;

(b) If the attorney is affiliated with a law firm or legal professional association, comply with division (A)(2)(a) of this section or deposit all client funds held that are nominal in amount or are to be held by the attorney for a short period of time in one or more interest-bearing trust accounts established and maintained by the firm or association in accordance with division (A)(1) of this section.

(3) No funds belonging to any attorney, firm, or legal professional association shall be deposited in any interest-bearing trust account established under division (A)(1) or (2) of this section, except that funds sufficient to pay or enable a waiver of depository institution service charges on the account shall be deposited in the account and other funds belonging to the attorney, firm, or association may be deposited as authorized by the Code of Professional Responsibility adopted by the supreme court. The determinations of whether funds held are nominal or more than nominal in amount and of whether funds are to be held for a short period or longer than a short period of time rests in the sound judgment of the particular attorney. No imputation of professional misconduct shall arise from the attorney's exercise of judgment in these matters.

(B) All interest earned on funds deposited in an interest-bearing trust account established under division (A)(1) or (2) of this section shall be transmitted to the treasurer of state for deposit in the legal aid fund established under section 120.52 of the Revised Code. No part of the interest earned on funds deposited in an interest-bearing trust account established under division (A)(1) or (2) of this section shall be paid to, or inure to the benefit of, the attorney, the attorney's law firm or legal professional association, the client or other person who owns or has a beneficial ownership of the funds deposited, or any other person other than in accordance with this section, section 4705.10, and sections 120.51 to 120.55 of the Revised Code.

(C) No liability arising out of any act or omission by any attorney, law firm, or legal professional association with respect to any interest-bearing trust account established under division (A)(1) or (2) of this section shall be imputed to the depository institution.

(D) The supreme court may adopt and enforce rules of professional conduct that pertain to the use, by attorneys, law firms, or legal professional associations, of interest-bearing trust accounts established under division (A)(1) or (2) of this section, and that pertain to the enforcement of division (A)(2) of this section. Any rules adopted by the supreme court under this authority shall conform to the provisions of this section, section

4705.10, and sections 120.51 to 120.55 of the Revised Code.

4705.10 Conditions for handling interest-bearing trust accounts

(A) All of the following apply to an interest-bearing trust account established under authority of section 4705.09 of the Revised Code:

(1) All funds in the account shall be subject to withdrawal upon request and without delay, or as soon as is permitted by federal law;

(2) The rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity qualifications, such as those offered in the form of certificates of deposit, may be obtained by a person or law firm establishing the account if there is no impairment of the right to withdraw or transfer principal immediately.

(3) The depository institution shall be directed, by the person or law firm establishing the account, to do all of the following:

(a) Remit interest or dividends, whichever is applicable, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice, less reasonable service charges, to the treasurer of state at least quarterly for deposit in the legal aid fund established under section 120.52 of the Revised Code;

(b) Transmit to the treasurer of state, upon its request, to the Ohio Legal Assistance Foundation, and the depositing attorney, law firm, or legal professional association upon the attorney's, firm's, or association's request, at the time of each remittance required by division (A)(3)(a) of this section, a statement showing the name of the attorney for whom or the law firm or legal professional association for which the remittance is sent, the rate of interest applied, the accounting period, the net amount remitted to the treasurer of state for each account, the total remitted, the average account balance for each month of the period for which the report is made, and the amount deducted for service charges;

(4) The depository institution shall notify the office of disciplinary counsel or other entity designated by the supreme court on each occasion when a properly payable instrument is presented for payment from the account, and the account contains insufficient funds. The depository institution shall provide this notice without regard to whether the instrument is honored by the depository institution. The depository institution shall provide the notice described in division (A)(4) of this section by electronic or other means within five banking days of the date that the instrument was honored or returned as dishonored. The notice shall contain all of the following:

(a) The name and address of the depository institution;

(b) The name and address of the lawyer, law firm, or legal professional association that maintains the account;

(c) The account number and either the amount of the overdraft and the date issued or the amount of the dishonored instrument and the date returned.

(B)(1) The statements and reports of individual depositor information made under divisions (A)(3) and (4) of this section are confidential and shall be used only for purposes of administering the legal aid fund and for enforcement of the rules of professional conduct adopted by the supreme court.

(2) A depository institution may charge the lawyer, law firm, or legal professional association that maintains the account with fees associated with producing and mailing a notice required by division (A)(4) of this section but shall not deduct such fees from the interest earned on the account.

4705.15 Definitions; contingent fee agreement to be in writing; closing statement

(A) As used in this section:

(1) "Contingent fee agreement" means an agreement for the provision of legal services by an attorney under which the compensation of the attorney is contingent, in whole or in part, upon a judgment being rendered in favor of or a settlement being obtained for the client and is either a fixed amount or an amount to be determined by a specified formula, including, but not limited to, a percentage of any judgment rendered in favor of or settlement obtained for the client.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim that is subject to sections 2307.71 to 2307.80 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.

(B) If an attorney and a client contract for the provision of legal services in connection with a claim that is or may become the basis of a tort action and if the contract includes a contingent fee agreement, that agreement shall be reduced to writing and signed by the attorney and the client. The attorney shall provide a copy of the signed writing to the client.

(C) If an attorney represents a client in connection with a claim as described in division (B) of this section, if their contract for the provision of legal services includes a contingent fee agreement, and if the attorney becomes entitled to compensation under that agreement, the attorney shall prepare a signed closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under that agreement. The closing statement shall specify the manner in which the compensation of the attorney was determined under that agreement, any costs and expenses deducted by the attorney from the judgment or settlement involved, any proposed division of the attorney's fees, costs, and expenses with referring or associated counsel, and any other information that the attorney considers appropriate.

4705.99 Penalties

Whoever violates division (A)(1) or (2) of section 4705.07 of the Revised Code is guilty of a misdemeanor of the first degree.

END OF DOCUMENT

APPENDIX C

EIGHTH DISTRICT COURT OF APPEALS
AMENDMENT TO ARTICLE 8(b) OF STANDING
RESOLUTION EN BANC CONFERENCE

Whereas, it is desirable that there not be interpanel conflict among the decisions of this Court;

Whereas, all efforts should be made to reconcile conflicting decisions of this Court so that the rule of *stare decisis* may be confidently predicted and followed; and

Whereas, this Court has the inherent power to determine en banc the rule of law that will govern decisions in this District. See Textile Mills Corp. v. Comm'r, 314 U.S. 326 (1941).

Now therefore, be it resolved that Article 8(b) of the Standing Resolution of the Rules for the Conducting of Court Work, adopted by this Court on August 3, 1976, is hereby reaffirmed, restated and amended as follows:

8(b)(i) Decisions reached by the majority of a panel sitting as a Court shall be binding upon the whole Court. Questions arising out of such decisions may be resolved by the Administrative Judge convening the Court to sit en banc to resolve the issues involved in the manner prescribed below.

(ii) In the event the assigned panel hearing an appeal determines that it is necessary to overrule a previous decision of this Court, or to issue a decision in conflict therewith, any judge on the assigned panel shall request the Administrative Judge to call an en banc conference of the Court to consider the issue. The parties will be requested to file supplemental briefs on the conflicting issues. Briefs are limited to not more than ten pages. Fifteen copies of the briefs shall be filed pursuant to a briefing schedule set by the Administrative Judge. Oral rehearing en banc will not be allowed except by majority vote of the en banc court.

(iii) Following receipt of the supplemental briefs, if any, the Administrative Judge shall call an en banc conference to take place at the earliest convenient date, which may be at the regular monthly judges' meeting. Notice of the en banc conference will be accompanied by a proposed opinion of the panel as well as the court's previous decisions in question, relevant decisions of other appellate districts, supplemental and original briefs of the parties, and such other materials essential to display the conflicting considerations. A discussion of the issues will take place at the en banc conference with a view to reconciling same. A majority decision reached by the full en banc court will be binding upon the whole Court in the District.

(iv) If the en banc majority agrees with the recommendation of the assigned panel to overrule a previous decision of this Court, the Administrative Judge shall designate a judge from the assigned panel to draft an En Banc Opinion and Journal Entry. If an en banc majority determines to adhere to a previous decision of this Court, the Administrative Judge shall designate a judge from the en banc majority to draft the En Banc Opinion. The En Banc Opinion and Journal Entry shall be circulated among all of the judges of the Court for comment or dissent in accordance with customary practice. The En Banc Opinion will contain an appropriate reference to this Resolution and upon release will contain a request for publication.

[Adopted effective September 1, 1996; amended effective September 3, 2003.]