

IN THE SUPREME COURT OF OHIO

ORIGINAL

OHIO STATE BAR ASSOCIATION
1700 Lake Shore Drive
P.O. Box 16562
Columbus, OH 43216-6562

Alleged Relator

Case No. 09-0966

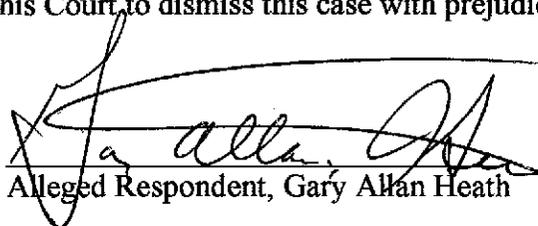
vs.

GARY ALLAN HEATH
6478 Winchester Blvd. #389
Canal Winchester, Ohio 43110

Alleged Respondent

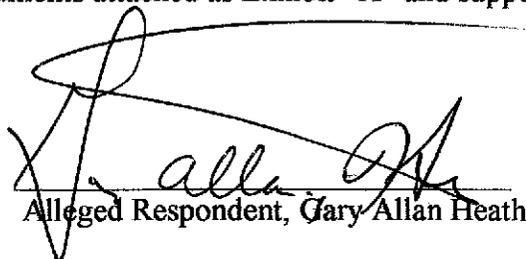
MOTION TO DISMISS WITH PREJUDICE

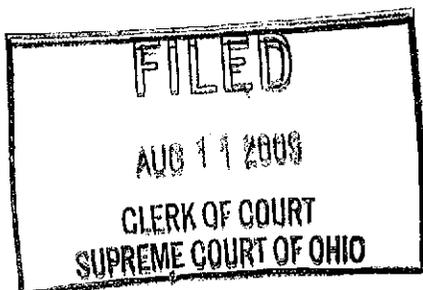
I, Gary Allan Heath, the Alleged Respondent in the above referenced case, hereby file into the record in this case, my statement prepared for my Oral Argument Hearing today, see attached Oral Argument document Exhibit (A), and in addition see Exhibits(B),(C), and(D) and move this Court to dismiss this case with prejudice. A short Memorandum in support follows.


Alleged Respondent, Gary Allan Heath

MEMORANDUM IN SUPPORT

Due to the large number of questions asked by the Justices and their interest in the matter I was unable to express less than half of my Oral Argument as I had prepared. Specifically I would like to point the courts attention to paragraphs 12 & 13 also paragraphs 26 & 27 of the Oral Arguments attached as Exhibit "A" and supporting evidence in Exhibits B,C,D.


Alleged Respondent, Gary Allan Heath



PROOF OF SERVICE

I, Alleged Respondent, Gary Allan Heath, hereby certify that I served a true copy of the above MOTION by Regular Mail Delivery 8/11/2009 to ;

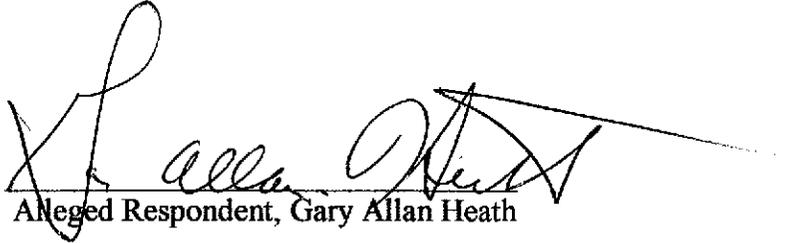
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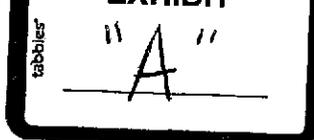
Eugene P. Whetzel(0013216)
Ohio State Bar Association
1700 Lake Shore Drive
P.O. Box 16562
Columbus, OH 43216-6562

Tricia A. Sprankle(0070971)
Kohler & Smith Co., LPA
7650 Rivers Edge Drive, Suite 101
Columbus, OH 43235

Thomas D. Lammers
65 S. Front St. 5th Floor
Columbus, OH 43215

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
D. Allan Asbury, Secretary of the Board
65 S. Front St. 5th Floor
Columbus, OH 43215


Alleged Respondent, Gary Allan Heath



Unauthorized Practice of Law Oral Argument Before the Supreme Court of Ohio, 8-11-09

1. Good morning Justices
2. I am Gary Allan Heath, alleged Respondent in this case.
3. Please excuse my unfamiliarity with these proceedings and reading from my notes, as I have never had a case in court, not even a traffic ticket.
4. If the alleged Relator is making oral argument today I will give my argument for 10 minutes and reserve 5 minutes for rebuttal.
5. I am here by special appearance.
6. I will discuss the merits of this case only from the standpoint of lack of subject matter jurisdiction.
7. The alleged Relators have consistently failed to follow the rules required by the Supreme Court.
8. The alleged Relators have consistently distorted and or falsified the record in this case, which issues I have repeatedly raised. For example, the alleged Relators have at numerous times stated in the record that I filed documents in court. I have never filed any documents in any court.
9. The alleged Relators have filed documents in the record in this case that has my signature forged. I do not know who created these documents. I was unaware of these documents until they were submitted in this case.
10. The alleged Relators, and the Board on Unauthorized Practice have ignored the rules adopted by this Court. Alleged Relators failed to produce documents requested, and failed to answer admissions. Alleged Relators attempted to intimidate me by alleging violation of unauthorized practice under the Revised Code.

11. Alleged Relators do not even understand their own process. They adamantly stated that these proceedings are a matter of law. You know as well as I do that these proceedings are administrative in nature, that this hearing is a review of the administrative record.
12. The RULES FOR THE GOVERNMENT OF THE BAR, Rule 5a(A)(1) requires that, upon receipt of substantial credible evidence demonstrating that an individual has engaged in the unauthorized practice of law and poses an substantial threat of serious harm to the public, the Relator shall, --I emphasize shall--, make notice and file an interim notice to cease and desist, and file a motion with this Court.
13. The alleged Relators have failed to follow this rule. This implies that there is no credible evidence demonstrating that I have engaged in the unauthorized practice of law and pose any threat of any harm to the public.
14. I challenge the jurisdiction of the court, because my understanding is this Courts jurisdiction of the unauthorized practice of law stems from the Constitution of the State of Ohio, article 4, section 5(B), paragraph 2, which states, shall make rules governing the admission to the practice of law and discipline of persons so admitted.
15. I have never been admitted to the practice of law, and I have never made application for the admission to the practice of law, therefore there is no application to this section of the Ohio constitution to me.
16. In addition there is nothing in the record in this case, that even remotely evidences or proves that I did anything to harm the public, which must be a requirement for a judgment, injunction, or sanctions to be imposed on me.
17. This case has to do with nothing more than "the practice of law".

18. In the alternative, even if I were deemed to have done anything construed as the practice of law, which I absolutely deny, there is still no application of the alleged complaint by the alleged Relator to me.
19. Blacks law dictionary defines "practice" as, repeated or customary action, and the exercise of any profession.
20. Blacks law dictionary defines "Profession" as, vocation, calling, occupation, or employment involving special knowledge and compensation for profit.
21. I have never charged nor attempted to charge, nor requested any payment or consideration of any kind for any alleged unauthorized practice of law.
22. In the case file, before you, is a document from the Chicago Bar association, that shows that any legal work done pro-bono does not require a license to practice law in the state of Ohio. Also I have a Notarized affidavit from Daniel Miller in which he clearly states that I was never paid or given anything along with my own affidavit stating the same. I never received any payment or consideration of any kind from Daniel Miller, or anyone else.
23. Furthermore, the Ohio Constitution, Article 4, Section 5(B) states, the Supreme Court shall prescribe rules Governing practice and procedure in all courts of this state, which rules shall not abridge, enlarge, or modify any substantive right. The practice of law is my Substantive right. "The practice of law cannot be licensed by any state", quoted from SCHWARE V. BOARD OF EXAMINERS 353 U.S. 238.
24. The practice of law is a common right. SIMS V. AHERNS 271 South West 720.

25. I have raised numerous other issues and arguments on my behalf and challenged the jurisdiction of the Board on the Unauthorized Practice of Law in this matter in the record. And raised numerous other issues and arguments and fatal inconsistencies of the alleged Relator and the Board on the Unauthorized Practice of Law and I stand on the record as I submitted.
26. Lastly, as a result of the harassment by the bar association, in this case, you have my assurance I will never in the remotest way even think about attempting to assist anyone in any legal manner in the future.
27. Therefore, based on the record and the evidence therein, this case must be dismissed.
28. Thank you.

EXHIBIT

"B"

Rule 7

RULES FOR THE GOVERNMENT OF THE BAR

(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 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.

(b) File a motion with the Supreme Court requesting that the Court order respondent to immediately cease and desist engaging in the unauthorized practice

of law. The posed finding and other in order. Evidence be attached may include and desist o Practice of shall include by relator to of relator's i shall include at the most to the relator

(2) After and desist c dum opposi of the Rules The respon dum any rel

(B) Upon orandum op enter an or engaging in final disposi icated on th may order piate. If may enter cease and d of law prior relator's m Practice of

(C)(1) Th modification motion with filed within order, unless Supreme C The motion evidence as substantial copy of the on the rela the date th motion. T the motion time for fili

(2) In a (C)(1) of th requesting order, alle elapsed sir has failed predicated order. A respondent days from response t

PRÆCIPE

gagee (or trustee) the right and power, on default in the payment of the debt secured, to advertise and sell the mortgaged property at public auction (but without resorting to a court for authority), satisfy the creditor out of the net proceeds, convey by deed to the purchaser, return the surplus, if any, to the mortgagor, and thereby divest the latter's estate entirely and without any subsequent right of redemption. *Capron v. Attleborough Bank*, 11 Gray (Mass.) 493; *Appeal of Clark*, 70 Conn. 195, 39 A. 155.

POYNDING. See *Poining*.

POYNINGS' ACT. An act of parliament, made in Ireland, (10 Hen. VII. c. 22, A.D. 1495;) so called because Sir Edward Poynings was lieutenant there when it was made, whereby all general statutes before then made in England were declared of force in Ireland, which, before that time, they were not. 1 *Broom & H.Comm.* 112.

PRACTICABLE, PRACTICABLY. Practicable is that which may be done, practiced, or accomplished, that which is performable, feasible, possible; and the adverb *practicably* means in a practicable manner. *Streeter v. Streeter*, 43 Ill. 165; *Lauck v. Reis*, 310 Mo. 184, 274 S.W. 827, 832; *Unverzagt v. Prester*, 339 Pa. 141, 13 A.2d 46, 48.

PRACTICAL. A practical construction of a constitution or statute is one determined not by judicial decision, but practice sanctioned by general consent. *Bloxham v. Consumers' Electric Light, etc., Co.*, 36 Fla. 519, 18 So. 444, 29 L.R.A. 507, 51 Am.St.Rep. 44.

***PRACTICE.** Repeated or customary action; habitual performance; a succession of acts of similar kind; habit; custom; usage; application of science to the wants of men; the exercise of any profession. *Marker v. Cleveland*, 212 Mo.App. 467, 252 S.W. 95, 96; *Columbia Life Ins. Co. v. Tousey*, 152 Ky. 447, 153 S.W. 767, 768.

The form or mode or proceeding in courts of justice for the enforcement of rights or the redress of wrongs, as distinguished from the substantive law which gives the right or denounces the wrong. The form, manner, or order of instituting and conducting a suit or other judicial proceeding, through its successive stages to its end, in accordance with the rules and principles laid down by law or by the regulations and precedents of the courts. The term applies as well to the conduct of criminal actions as to civil suits, to proceedings in equity as well as at law, and to the defense as well as the prosecution of any proceeding. *Wells Lamont Corp. v. Bowles*, Em.App., 149 F.2d 364, 366.

Practice of a profession implies a continuing occupation, and a practitioner of veterinary science is one who habitually held himself out to the public as such. *Beaver Brook Resort Co. v. Stevens*, 76 Colo. 133, 230 P. 121, 122.

It may include pleading, but is usually employed as excluding both pleading and evidence, and to designate all the incidental acts and steps in the course of bringing matters pleaded to trial and proof, and procuring and enforcing judgment on them.

Practice of law. Not limited to appearing in court, or advising and assisting in the conduct of litigation, but embracing the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. *State v. Chamberlain*, 132 Wash. 520, 232 P. 337, 338. It embraces all advice to clients and all actions taken for them in matters connected with the law. *Rhode Island Bar Ass'n v. Lesser*, 68 R.I. 14, 26 A.2d 6, 7.

Practice of medicine. The discovery of the cause and nature of disease, and the administration of remedies, or the prescribing of treatment therefor. *State v. Heffernan*, 40 R.I. 121, 100 A. 55, 60. Statutes, regulating the "practice of medicine" and providing penalties for failure to comply therewith, include all who practice the art of healing, *State v. Collins*, 178 Iowa, 73, 159 N.W. 604, 607, and diagnosing, prescribing and treating ailments are constituent parts of "practice of medicine." *People v. T. Wah Hing*, 79 Cal.App. 286, 249 P. 229, 230.

PRACTICE COURT. In English law. A court attached to the court of king's bench, which heard and determined common matters of business and ordinary motions for writs of *mandamus*, prohibition, etc. It was usually called the "bail court." It was held by one of the puisne justices of the king's bench.

PRACTICES. A succession of acts of a similar kind or in a like employment.

PRACTICKS. In Scotch law. The decisions of the court of session, as evidence of the *practice* or custom of the country. *Bell*.

PRACTITIONER. He who is engaged in the exercise or employment of any art or profession.

PRÆCEPTORES. Lat. Masters. The chief clerks in chancery were formerly so called, because they had the direction of making out remedial writs. 2 *Reeve, Eng.Law*, 251.

PRÆCEPTORIES. In feudal law. A kind of benefices, so called because they were possessed by the more eminent templars whom the chief master by his authority created and called "*Præceptores Templi*."

PRÆCIPE. Lat. In practice. An original writ, drawn up in the alternative, commanding the defendant to do the thing required, or show the reason why he had not done it. 3 *Bl.Comm.* 274.

A slip of paper upon which the particulars of a writ are written. It is lodged in the office out of which the required writ is to issue. *Wharton, Dict.*

Also an order, written out and signed, addressed to the clerk of a court, and requesting him to issue a particular writ.

PRÆCIPE IN CAPITE. When one of the king's immediate tenants *in capite* was deforced, his writ of right was called a writ of "*præcipe in capite*."

PROFESSIONAL

requisite, capital, is itself the product of labor. Its instrumentality in production is therefore, in reality, that of labor in an indirect shape. Mill, Pol. Econ.; Wharton.

PRODUCTION FOR COMMERCE. Within Fair Labor Standards Act includes production of goods which, at time of production, employer, according to normal course of his business, intends or expects to move in interstate commerce immediately following initial sale. Fair Labor Standards Act of 1938, §§ 6, 7, 29 U.S.C.A. §§ 206, 207. Hill v. Jones, D.C.Ky., 59 F.Supp. 569, 572.

PRODUCTION OF SUIT. In pleading. The formula, "and therefore [or thereupon] he brings his suit," etc., with which declarations always conclude. Steph.Pl. 428, 429. In old pleading, this referred to the production by the plaintiff of his *secta* or suit, i. e. persons prepared to confirm what he had stated in the declaration. The phrase has remained; but the practice from which it arose is obsolete. 3 Bla.Comm. 295.

PROFANE. Irreverent toward God or holy things; written or spoken; acting or acted, in manifest or implied contempt of sacred things. Town of Torrington v. Taylor, 59 Wyo. 109, 137 P.2d 621, 624; Duncan v. U. S., C.C.A.Or., 48 F.2d 128, 133. That which has not been consecrated. Dig. 11, 7, 2, 4.

PROFANE PLACE. A place which is neither sacred nor sanctified nor religious. Dig. 11, 7, 2, 4.

PROFANELY. In a profane manner. In Pennsylvania, a technical word in indictments for the statutory offense of profanity. Updegraph v. Com., 11 Serg. & R. (Pa.) 394.

PROFANITY. Irreverence towards sacred things; particularly, an irreverent or blasphemous use of the name of God; punishable by statute in some jurisdictions. Orf v. State, 147 Miss. 160, 113 So. 202. Cason v. Baskin, 155 Fla. 198, 20 So.2d 243, 247, 168 A.L.R. 430.

PROFECTITIUS. Lat. In the civil law. That which descends to us from our ascendants. Dig. 23, 3, 5.

PROFER. In old English law. An offer or proffer; an offer or endeavor to proceed in an action, by any man concerned to do so. A return made by a sheriff of his accounts into the exchequer; a payment made on such return. Cowell.

PROFERT IN CURIA. L. Lat. (Sometimes written *profert in curiam*.) He produces in court. In old practice, these words were inserted in a declaration, as an allegation that the plaintiff was ready to produce, or did actually produce, in court, the deed or other written instrument on which his suit was founded, in order that the court might inspect the same and the defendant hear it read. The same formula was used where the defendant pleaded a written instrument.

In modern practice. An allegation formally made in a pleading, where a party alleges a deed, that he shows it in court, it being in fact retained in his own custody. Steph.Pl. 67. But by virtue of

the allegation, the deed is then constructively in possession of the court. 6 M. & G. 277; Tucker v. State, 11 Md. 322; Germain v. Willgus, 67 F. 597, 14 C.C.A. 561. The profert of any recorded instrument, as letters patent, is equivalent to annexing a copy. American Bell Tel. Co. v. Southern Tel. Co., C.C.Ark., 34 F. 803. This result does not occur, however, in the case of other documents, such as a note. Waterhouse v. Sterchi Bros. Furniture Co., 139 Tenn. 117, 201 S.W. 150, 151.

Profert and oyer are abolished in England by the Common Law Procedure Act, 15 & 16 Vict. c. 76; and a provision exists, 14 & 15 Vict. c. 99, for allowing inspection of all documents in the possession or under the control of the party against whom the inspection is asked. 25 E. L. & E. 304. In many of the states profert has been abolished, and in some instances the instrument must be set forth in the pleading of the party relying upon it.

PROFESS. To make open declaration of, to make public declaration or avowal. Wristen v. Wristen, Tex.Civ.App., 119 S.W.2d 1104, 1106.

PROFESSION. A public declaration respecting something. Cod. 10, 41, 6.

A vocation, calling, occupation or employment involving labor, skill, education, special knowledge and compensation or profit, but the labor and skill involved is predominantly mental or intellectual, rather than physical or manual. Maryland Casualty Co. v. Crazy Water Co., Tex.Civ.App., 160 S.W.2d 102, 104. The method or means pursued by persons of technical or scientific training. Board of Sup'rs of Amherst County v. Boaz, 176 Va. 126, 10 S.E.2d 498, 499.

The term originally contemplated only theology, law, and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill. Aulen v. Triumph Explosive, D.C.Md., 58 F.Supp. 4, 8.

In ecclesiastical law. The act of entering into a religious order. See 17 Vin.Abr. 545.

PROFESSIONAL. A term applied in the Immigration Law, 8 U.S.C.A. § 137c, to an alien instrumental musician who is of distinguished merit and ability or is a member of a musical organization of distinguished merit and is applying for admission as such. It is opposed to amateur, and as used in the statute refers to one who pursues an art and makes his living therefrom. U. S. ex rel. Liebmann v. Flynn, D.C.N.Y., 16 F.2d 1006, 1007; U. S. v. Commissioner of Immigration at Port of New York, C.C.A.N.Y., 298 F. 449, 450.

PROFESSIONAL EMPLOYMENT. Within the meaning of a statute authorizing actions for misconduct or neglect, professional services by an attorney are not limited to litigation, but include giving advice, managing a business, devising plans, and making collections, and the employment may be recognized as professional, although including services not ordinarily classed as professional services; whether the attorney is professionally employed depending on the relations and mutual understanding of what was said and done, and on all the facts and circumstances of