

IN THE SUPREME COURT OF OHIO

OHIO STATE BAR ASSOCIATION

Relator

v.

JOHN ALLEN, et. al.

Respondents

Case No. 2004-2150

**RELATOR'S BRIEF IN OPPOSITION TO
MOTION TO DISMISS
OF RESPONDENT JOHN ALLEN**

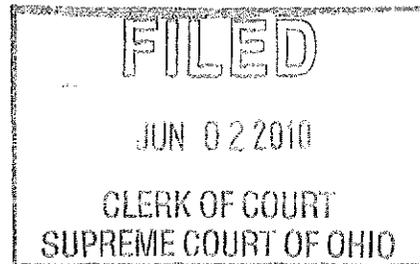
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Now comes Relator, the Ohio State Bar Association, by and through undersigned counsel and hereby submits this brief in opposition to Respondent's Motion to Dismiss filed with this honorable Court.

The Ohio Constitution Article 4 Section 2 (B)(1)(g), vests with The Supreme Court of Ohio original jurisdiction to govern admission to the practice of law, the discipline of persons so admitted and all other matters relating to the practice of law.

Pursuant to that authority, The Supreme Court of Ohio through the promulgation of the Supreme Court Rules for the Government of the Bar of Ohio sets forth the requirements for Admission to the Practice of Law in Ohio (Rules I – III).

Respondent correctly sets forth in his Motion that an attorney must take the oath of office as required by Gov. Bar R. I, Section 8. Respondent, however, incorrectly states in his brief that "a certificate of the oath shall be endorsed upon licensure." Pursuant to Gov. Bar R. I, Section 8(C), "Following administration of the oath, the Court shall present the applicant with a certificate of admission." It is in fact the issuance of the certificate that constitutes the license to practice law in the state of Ohio. Respondent states in his Motion that "all the attorneys that were asked could not produce a certificate to verify licensure." Relator is unaware what attorneys were asked by Respondent but to the best of Relator's knowledge and belief every attorney currently admitted to practice in Ohio has received a certificate upon acceptance into the bar of the state of Ohio. This certificate is commonly displayed in the offices of attorneys and is readily identifiable.

Respondent would somehow proffer the opinion that attorneys in Ohio are not licensed to practice law. This is simply inaccurate and has no basis in fact or law and is in direct conflict with the Ohio Constitution and the Rules Governing the Bar of Ohio.

Respondent confuses the Ohio State Bar Association with the Bar of Ohio. The Bar of Ohio is overseen and managed by The Supreme Court of Ohio. The Ohio State Bar Association is a voluntary, non-profit professional association. Many of the members of the Ohio State Bar Association are licensed members of the Ohio Bar but not all of them are (some are, for example, paralegals). Likewise, many members of the Ohio Bar are members of the Ohio State Bar Association but not all of them are and there is no requirement that they be such.

Respondent further refers in his brief to the Ohio State Bar Foundation. This is yet another organization that is separate and distinct from the Ohio Bar and again is not relevant to the matter before this Court. Respondent simply is tossing about legal jargon in an attempt to obfuscate and confuse the issues before the Court.

Respondent then goes on to state the preposterous position that the U.S. Supreme Court has “stated a long time ago that ‘The practice of law CAN NOT be licensed by any state/States.’” Respondent cites “*Schware v. Board of Examiners*, 353 U.S. 238, 239 United States Reports” and *Sims v. Aherns*, 271 S.W. 720 (1925) as support for his position.

The *Schware* case decides whether or not a state may deny an applicant the opportunity to take the bar examination based upon the applicant’s poor moral character. Based upon Mr. Schware’s prior involvement with the Communist Party in the 1950’s, the state of New Mexico denied him admission to the practice of law. He had, however, attended law school and had met all of the other requirements for admission. The Supreme Court held in *Schware* that “[a] State cannot exclude a person from the practice of law or from any other occupation in any manner or for reasons that contravene the Due

Process or Equal Protection Clause of the Fourteenth Amendment.” The Court goes on to find that “[a] State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant’s fitness or capacity to practice law. Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory.”

The Respondent’s claim that somehow the *Schware* case prevents a state from licensing the practice of law is simply wrong. The *Schware* decision prevents a state from establishing criteria that fail to have a reasonable basis or that are discriminatory.

The *Sims* case cited by the Respondent was a case decided by the Supreme Court of Arkansas not the Supreme Court of the United States and therefore is not binding on The Supreme Court of Ohio. Further, the *Sims* case is entirely about the power of the legislature to tax an occupation. It has nothing to do with the authority of The Supreme Court of Ohio to admit persons to the practice of law.

Finally, Respondent cites Corpus Juris Secundum Vol. 7, Section 4 Attorney & Client and quotes a section that simply addresses an attorney’s general duty to his client and as an officer of the Court. Respondent’s citation of this section seems again to constitute little more than puffery whereby Respondent tosses language into his Motion in an effort to obfuscate and confuse.

Respondent's argument seems to be that The Supreme Court of Ohio and the State of Ohio do not have the authority to regulate the practice of law and therefore the Relator's Motion to Show Cause should be dismissed.

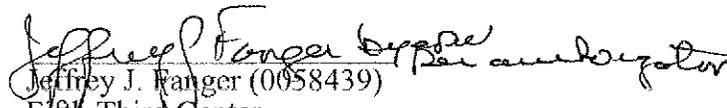
Respondent is simply wrong and the case law and arguments presented by Respondent do not support the position Respondent has advocated. The power to regulate the practice of law is vested in The Supreme Court of Ohio by the Ohio Constitution. The Ohio Constitution is limited only by the United States Constitution and absent a factual showing that the State of Ohio has regulated the practice of law in a manner that is inconsistent with the fourteenth amendment of the U.S. Constitution, the regulation of the practice of law by the State of Ohio is proper.

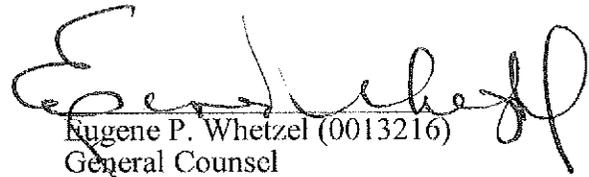
Respondent has made no showing or asserted any facts to support a violation of the U.S. Constitution's Fourteenth Amendment. In fact the very case that Respondent cites in his Motion makes it clear that states are permitted to regulate the practice of law absent discriminatory or baseless criteria for admission.

WHEREFORE, for the foregoing reasons, Relator Moves this Honorable Court to deny Respondent's Motion to Dismiss and Relator prays for all allowable fees and costs, and for such other and further relief as is necessary and proper.

Respectfully Submitted,

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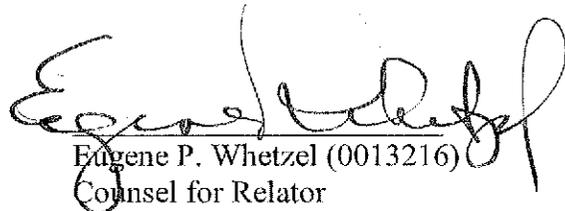
Certificate of Service

I hereby certify that a copy of the foregoing Brief in Opposition was served upon the following by ordinary U.S. Mail on this 2nd day of June 2010:

John Allen
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and

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