

**THE SUPREME COURT OF OHIO**

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

**CINCINNATI BAR ASSOCIATION**

Relator,

-vs-

**STUART JANSEN**

and

**AMERICAN MEDIATION & ALTERNATIVE  
RESOLUTIONS**

Respondents.

**09-1663**

CASE NO. UPL 06-07

**MOTION FOR AN ORDER TO SHOW CAUSE**

The Relator, Cincinnati Bar Association, by and through its undersigned counsel, hereby moves the Court for an Order to Show Cause why the Respondents, Stuart Jansen (“Jansen”) and American Medication & Alternative Resolutions (“AMAR”), should not be held in contempt of this Court’s decree and order issued on January 26, 2010 in *Cincinnati Bar Association v. Jansen, et al.* (2010), 124 Ohio St. 3d 272, 2010-Ohio-133. This Motion is based on the accompanying Memorandum and all prior proceedings herein.

Respectfully submitted,



Louis F. Solimine (0014221)  
312 Walnut Street – Suite 1400  
Cincinnati, Ohio 45202  
[louis.solimine@thompsonhine.com](mailto:louis.solimine@thompsonhine.com)  
(513) 352-6700  
Counsel for Relator

**RECEIVED**  
SEP 13 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

**FILED**  
SEP 13 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

**MEMORANDUM IN SUPPORT  
OF MOTION TO SHOW CAUSE**

On August 17, 2006 the Relator commenced this proceeding against the Respondents, alleging that the Respondents had engaged in the authorized practice of law by, *inter alia*, contacting defendants in certain pending collection actions and offering to “mediate” the creditors’ claims in order to “effect a reasonable settlement” with such creditors. The Respondents made such proposals to at least eight defendants. *See Cincinnati Bar Association v. Jansen, et al.* (2010), 124 Ohio St.3d 124, 2010-Ohio-133 ¶¶ 8-10. The Respondents subsequently agreed that its proposals, and ensuing efforts to negotiate settlements on behalf of its clients (i.e., the defendants in the collection actions) constituted the unauthorized practice of law. *Id.* at ¶ 11. The Respondents further agreed, and this Court then ordered, that:

1. The Respondents permanently shall cease and desist from sending on behalf of any client of the Respondents located in the State of Ohio any correspondence, email message, memorandum or any other written or oral communication to any creditor of such client which communication disputes or otherwise calls into question the validity or amount of the creditor’s claim against such client (except only to the extent any such creditor has or may have incorrectly computed the amount of its claim then due).
2. The Respondents shall not otherwise represent debtors in Ohio by advising, counselling or negotiating resolution of their debts with creditors or creditors’ counsel (per *Ohio State Bar Assn. v. Kolodner* (2004), 103 Ohio St.3d 504, 2004-Ohio-5581, [817 N.E.2d 25]) and shall not otherwise engage in the unauthorized practice of law.

*Id.* at ¶¶ 15-16.

The Relator subsequently has discovered that the Respondents have resumed (or never discontinued) activity which, upon information and belief, constitutes the unauthorized practice of law. In particular, the Respondents continue to solicit prospective clients, who have been named as defendants in collection actions, through correspondence and an accompanying “Limited Power of Attorney Appointment” by which the Respondents purportedly offer “to serve

as a mediator or arbitrator and effect a resolution with [the plaintiff].”<sup>1</sup> The Respondents then contact the plaintiff, provide the plaintiff with a signed copy of the Limited Power of Attorney Appointment and propose, on behalf of the defendant, a resolution of the delinquent account.<sup>2</sup>

The Respondents have suggested they do not seek by virtue of the Limited Power of Attorney Appointment to represent the interests of the defendant in the collection case, but rather to serve as a independent mediator or arbitrator. However, upon information and belief, the Respondents: (1) do not ask the plaintiff to sign a Limited Power of Attorney Appointment; (2) do not ask either the plaintiff or the defendant to sign a mediation or arbitration agreement; (3) do not ask the plaintiff to share the costs of the “mediator or arbitrator” (all of which are paid by the defendant); and (4) otherwise do not serve as a truly neutral and independent mediator or arbitrator of the dispute. In other words, the Relator submits that while the Respondents may have made superficial changes to their manner of doing business, they continue to engage in the same unauthorized conduct which this Court specifically has enjoined.

The Respondents further have suggested that their business practices previously have been determined by the Board of Commissioners on the Unauthorized Practice of Law (the “Board of Commissioners”) not to be the unauthorized practice of law. *See Cuyahoga County Bar Association v. Andrew Margles and American Mediation & Alternative Resolutions*, Case No. UPL 03-08 (December 22, 2004).<sup>3</sup> That decision does not cite, however, and evidently did not take into account, the decision of the Ohio Supreme Court in *Ohio State Bar Ass’n v. Kolodner*, 103 Ohio St.3d 504, 2004-Ohio-5581, which was decided very shortly before the

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<sup>1</sup> Representative examples of such solicitations are attached hereto as Exhibits A-1 and A-2. Relator has reason to believe that many more letters of this sort have been sent by the Respondents to prospective clients.

<sup>2</sup> Representative examples of such correspondence are attached hereto as Exhibits B-1 and B-2. Again, the Relator has reason to believe that many more letters of this sort have been sent by the Respondents to creditors of the Respondents’ clients.

<sup>3</sup> A copy of the *Margles* decision is attached hereto as Exhibit C.

Board of Commissioner's decision in *Margles*. In any event, the Relator cannot reconcile the *Margles* and *Kolodner* decisions and is of the view the Supreme Court's ruling in *Kolodner* – which, the Relator submits, prohibits the Respondents' business practices – must take precedence.

For the foregoing reasons, the Relator requests that this Court enter an order instructing the Respondents to show cause why they should not be held in contempt of this Court's January 26, 2010 decree and order. The Relator further requests that any such order also instruct the Respondents to show cause why the Court should not impose, in accordance with Gov. Bar R. VIII (A), an appropriate civil penalty for each offense.

Respectfully,



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Louis F. Solimine (0014221)  
312 Walnut Street – Suite 1400  
Cincinnati, Ohio 45202  
[louis.solimine@thompsonhine.com](mailto:louis.solimine@thompsonhine.com)  
(513) 352-6700  
Counsel for Relator

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for an Order to Show Cause was served by regular U.S. Mail, this 12th day of September, 2011 upon:

Geoffrey Stern, Esq.  
Kegler, Brown, Hill & Ritter Co., L.P.A.  
65 East State Street, Suite 1800  
Columbus, Ohio 43215  
Counsel for Respondents



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Louis F. Solimine

786335.1

**American Mediation & Alternative Resolutions**

9475 Kenwood Road Suite 9  
Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
toll free 1-877-936-9600  
www.americanmediation.us

Thursday, February 11, 2010

Stephen V. Cross  
11004 Main St.  
Cincinnati, OH 45241

Reference: Velocity Investments, L. L. C. vs. Stephen V. Cross

Civil Suit No. **A-1001233**, Hamilton County

Dear Stephen:

I may have some good news for you concerning the above matter which will not require you to appear in court.

We are not connected with those who filed this suit against you.

You will soon be served (if not already) with a *Court Summons* and timing is very important.

You should contact my office at 513-936-9600 or at the toll free number listed above. Your call will be confidential.

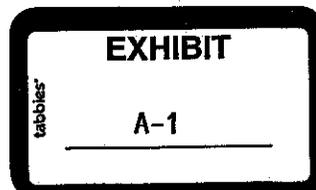
My office hours are 8:30am to 5:00pm weekdays.

Sincerely,



Stuart J. Jansen  
Managing Director  
Tri-State Regional Office

Note: If this matter is resolved, or if you presently have an attorney and/or wish to defend this matter in court, please disregard this letter.



**LIMITED POWER OF ATTORNEY APPOINTMENT**

NAME OR COMPANY: Stephen V. Cross  
ADDRESS: 11004 Main St. Cincinnati, OH 45241

I hereby grant to American Mediation this limited power of attorney, giving unto American Mediation full power to carry out the singular purpose for which this power is granted: To serve as a mediator or arbitrator and effect a resolution with:

**CREDITOR: Velocity Investments, L. L. C.**

The undersigned agree either party may cancel this relationship at any time upon giving reasonable notice. No legal advice or opinions can or will be provided under this agreement.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Authorized signature for  
Stephen V. Cross

BY: \_\_\_\_\_  
Stuart Jansen for American Mediation

**American Mediation & Alternative Resolutions**

9475 Kenwood Road Suite 9  
Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
1-877-936-9600  
www.americanmediation.us

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Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
toll free 1-877-936-9600  
www.americanmediation.us

Tuesday, April 13, 2010

Janet E. Schmer  
1025 Hickok Ln.  
Cincinnati, OH 45238

Reference: Target National Bank vs. Janet E. Schmer  
Civil Suit No. **10CV-09598**, Hamilton County

Dear Janet:

I may have some good news for you concerning the above matter which will not require you to appear in court.

We are not connected with those who filed this suit against you.

You will soon be served (if not already) with a *Court Summons* and timing is very important.

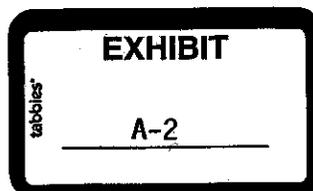
You should contact my office at 513-936-9600 or at the toll free number listed above. Your call will be confidential.

My office hours are 8:30am to 5:00pm weekdays.

Sincerely,

  
Stuart J. Jansen  
Managing Director  
Tri-State Regional Office

Note: If this matter is resolved, or if you presently have an attorney and/or wish to defend this matter in court, please disregard this letter.



**LIMITED POWER OF ATTORNEY APPOINTMENT**

NAME OR COMPANY: Janet E. Schmer  
ADDRESS: 1025 Hickok Ln. Cincinnati, OH 45238

I hereby grant to American Mediation this limited power of attorney, giving unto American Mediation full power to carry out the singular purpose for which this power is granted: To serve as a mediator or arbitrator and effect a resolution with:

**CREDITOR: Target National Bank**

The undersigned agree either party may cancel this relationship at any time upon giving reasonable notice. No legal advice or opinions can or will be provided under this agreement.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Authorized signature for  
Janet E. Schmer

BY: \_\_\_\_\_  
Stuart Jansen for American Mediation

**American Mediation & Alternative Resolutions**

9475 Kenwood Road Suite 9  
Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
1-877-936-9600  
[www.americanmediation.us](http://www.americanmediation.us)

**CONFIDENTIAL FAX TRANSMITTAL SHEET**

American Mediation & Alternative Resolutions  
9475 Kenwood Road Suite 9  
Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
www.americanmediation.us

Message: 2 Pages Total (including POA)

Date: Monday August 16, 2010 **FAXED**

**To: Cindy**

ph: 866-609-5621 x 7214 f: 586-983-7468

From: Stuart Jansen  
Reference: Asset Acceptance, L. L. C. vs Karen L. Turner  
Last four SSN: 2121

Dear Cindy,

If you would be receptive to a mediated resolution based solely on the financial component of the above, we are submitting the following for your consideration and response. American Mediation is a non-attorney alternative resolution firm. A power of attorney authorization is attached.

Karen L. Turner has an outstanding obligation for the approximate principal debt of \$2,276.39, plus other fees.

The following is according to our interview with Karen L. Turner:

Ms. Turner states she fell behind on her payments for this and other debts when her husband was injured at work and has not been able to work since then. She regrets she does not have the resources to pay this debt in full. However, if possible, she would like to make arrangements to get help from her family in an effort to quickly retire this issue.

Proposed resolution: Ms. Turner states she would be able to raise as much as \$1400, if that amount would be sufficient to satisfy this issue. She states, if her offer is acceptable, she would be able to make this one time, lump sum payment on, or before 8/30/2010.

Condition requested: Upon completion of payment terms, this issue satisfied in full.

The **default date** of this case filing is on or about **8/30/2010**. In the meantime, it is our hope a resolution can be reached, as referenced above. We look forward to your timely response as to the terms acceptable, or any alternative suggestions you may have to bring this matter to a quick resolution for the benefit of both parties.

Sincerely,



Stuart Jansen  
Managing Director  
Cincinnati Regional Office

**EXHIBIT**  
tabbles  
B-1

**LIMITED POWER OF ATTORNEY APPOINTMENT**

NAME OR COMPANY: Karen L. Turner  
ADDRESS: 8750 Cottonwood Dr. Cincinnati, OH 45231

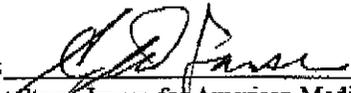
I hereby grant to American Mediation this limited power of attorney, giving unto American Mediation full power to carry out the singular purpose for which this power is granted: To serve as a mediator or arbitrator and effect a resolution with:

**CREDITOR: Asset Acceptance, L. L. C.**

The undersigned agree either party may cancel this relationship at any time upon giving reasonable notice. No legal advice or opinions can or will be provided under this agreement.

DATE: 8-4-10

BY:   
Authorized signature for  
Karen L. Turner

BY:   
Stuart Jansen for American Mediation

**American Mediation & Alternative Resolutions**

9475 Kenwood Road Suite 9  
Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
1-877-936-9600  
www.americanmediation.us

**CONFIDENTIAL FAX TRANSMITTAL SHEET**

American Mediation & Alternative Resolutions  
9475 Kenwood Road Suite 9  
Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
www.americanmediation.us

Message: 2 Pages Total (including POA)

Date: Friday, November 12, 2010

**To: James Colabianchi, Jr., Esq.**

ph: 440-234-1166 f: 866-364-3358

From: Stuart Jansen  
Reference: Portfolio Recovery Assoc. vs Terri Bobak  
File No:

Dear Mr. Colabianchi,

If you would be receptive to a mediated resolution based solely on the financial component of the above, we are submitting the following for your consideration and response. American Mediation is a non-attorney alternative resolution firm. A power of attorney authorization is attached.

Terri Bobak has an outstanding obligation for the approximate principal debt of \$1,295.61, plus other fees. The following is according to our interview with Terri Bobak:

Ms. Bobak states she fell behind on her payments for this debt when her husband's income was reduced by half. She respectfully requests an opportunity to make monthly payments, within her new budget constraints, to resolve this issue. Ms. Bobak reports she is currently repaying back federal and city taxes, but has been unable to make repayment arrangements on \$35,000 in other consumer debt.

Net monthly income: \$2000.

Fixed Expenses: Rent/mortgage \$984, combined utilities \$250, phone \$65, auto insurance \$77, credit cards \$0 (balance \$35,000), federal back taxes \$150 (balance owed \$4000), city back taxes \$100 (balance owed \$400).  
Total \$1626. Plus other COL expenses.

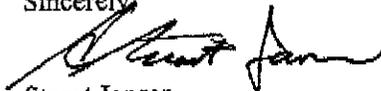
Payment request: Monthly payments of \$100 beginning 11/25/2010, and continuing on the same day of each successive month.

Conditions Requested:

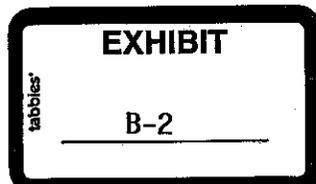
1. Repayment amount based on the principal debt, plus court cost, plus statutory interest.
2. Payment terms as outlined on your standard agreement form.
3. A 5 day due date grace period.
4. Upon completion of payment terms, this issue satisfied in full.

It is our hope a resolution can be reached, as referenced above. We look forward to your timely response as to the terms acceptable.

Sincerely,



Stuart Jansen  
Managing Director - Cincinnati



**LIMITED POWER OF ATTORNEY APPOINTMENT**

NAME OR COMPANY: Terri Bobak  
ADDRESS: 515 Douglas Dr Miamisburg, OH 45342

I hereby grant to American Mediation this limited power of attorney, giving unto American Mediation full power to carry out the singular purpose for which this power is granted: To serve as a mediator or arbitrator and effect a resolution with:

**CREDITOR: Portfolio Recovery Assoc.**

The undersigned agree either party may cancel this relationship at any time upon giving reasonable notice. No legal advice or opinions can or will be provided under this agreement.

DATE: 11/8/10

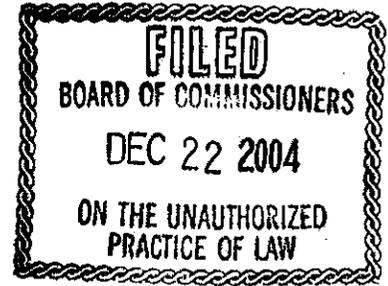
BY: *Terri Bobak*  
Authorized signature for  
Terri Bobak

BY: *Stuart Jansen*  
Stuart Jansen for American Mediation

**American Mediation & Alternative Resolutions**

9475 Kenwood Road Suite 9  
Cincinnati, OH 45242  
Phone: 513-936-9600 Fax: 513-936-9605  
1-877-936-9600  
www.americanmediation.us

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



CUYAHOGA COUNTY BAR ASSOCIATION, :  
Relator, :

v. :

ANDREW MARGLES :

and :

AMERICAN MEDIATION & :  
ALTERNATIVE RESOLUTIONS, :  
Respondents. :

CASE NO. UPL 03-08

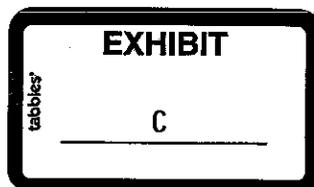
ORDER

On October 3, 2003, the Cuyahoga County Bar Association, Relator, filed a Complaint with the Board of Commissioners on the Unauthorized Practice of Law ("Board") against Respondents, Andrew Margles and American Mediation & Alternative Resolutions ("American Mediation"), pursuant to Gov. Bar R. VII. The Complaint alleges that Mr. Margles and American Mediation were engaged in the unauthorized practice of law by representing Joan Y. Alan in a debtor/creditor dispute. Respondents deny that they were engaged in the unauthorized practice of law.

STATEMENT OF FACTS

This matter was presented to the Board on stipulated facts.

Andrew J. Margles was admitted to practice law in Ohio in 1976. After surgery and illness, Mr. Margles registered as an inactive attorney pursuant to the Supreme Court Rules for the Government of the Bar of Ohio. At all times relevant to this matter, Mr. Margles was registered as inactive.



Mr. Margles is sole proprietor of Respondent, American Mediation, an unincorporated business in Cleveland, Ohio.

Respondents offer mediation services on behalf of debtors who are the subject of a creditor collection proceeding. Respondents access public records to compile a pool of potential clients for their services. The potential clients are defendants in collection proceedings. Once a debtor/client agrees to use Respondents' services, Mr. Margles interviews the debtor/client, "and determines what an acceptable resolution may be." Stipulated Facts, Paragraph 8 (hereinafter Stip. Facts ¶ \_\_\_\_). The debtor/client then signs a "Limited Power of Attorney Appointment" form. The "Power of Attorney Appointment" form provides, "It is understood that no legal advice or opinions are being provided."

The debtor/client often pays an up-front fee, which is refundable if an acceptable resolution is not reached. No payments are made by the creditor to Respondents.

After the debtor/client signs the Power of Attorney, Mr. Margles contacts the collection attorney's firm. Mr. Margles provides a copy of the Power of Attorney Appointment form and "offers an initial starting point for consideration between the parties." Stip. Facts. ¶ 10.

If the debtor/client wishes to assert a defense or asks questions regarding the statute of limitations or other legal issues, Mr. Margles advises the individual to contact an attorney. Stip. Facts ¶ 12.

### CONCLUSIONS OF LAW

Relator must prove by a preponderance of evidence that Respondents engaged in the unauthorized practice of law, Gov.Bar R. VII § 8(A). The unauthorized practice of law has been defined for Ohio as "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 VII . . ."

Gov.Bar R. VII § 2(A). The Ohio Supreme Court has noted that in practicing law, a licensed attorney generally engages in three principal types of professional activity:

"These types are legal advice and instructions to clients to inform them of their rights and obligations; preparation for clients of documents and papers requiring knowledge of legal principles which is not possessed by an ordinary laymen; and appearance for clients before public tribunals . . ."

*Sharon Village Ltd. v. Licking County Bd. of Revision, et al.* (1997), 78 Ohio St.3d 479, 481, 678 N.E.2d 932.

While Mr. Margles was admitted to practice law in Ohio in 1976, he did not have active status at the time of the events under review.

The issue here is not whether Respondents provide true mediation services<sup>1</sup> but whether they are engaged in the unauthorized practice of law. Even if the activities of Respondents constituted negotiation on behalf of their clients instead of mediation, that fact alone would not give rise to the unauthorized practice of law. See *West Coast Industrial Relations Association, Inc. v. Superior Beverage Group* (1998), 127 Ohio App.3d 233, 240-41, 712 N.E.2d 770. In every case in which the Ohio Supreme Court has found the unauthorized practice of law in connection with a negotiation by a nonactive attorney, there has always been some improper act beyond mere negotiation.

In *Cincinnati Bar Association v. Cromwell* (1998), 82 Ohio St.3d 255, 695 N.E.2d 243, the Supreme Court adopted the findings and conclusions of the Board and issued an injunction. The Court found that a non-lawyer who contacted insurance companies to negotiate settlements, and who in the process drafted a proposed settlement agreement, was engaged in the unauthorized practice of law.

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<sup>1</sup>Typically, a person providing mediation services is a neutral in the matter subject to mediation. The American Bar Association Uniform Mediation Act, does not preclude someone with a relationship with a party from serving as a mediator if there is a full disclosure. See Uniform Mediation Act § 9(a)(2)(g) (2002).

In *Akron Bar Association v. Bojonel* (2000), 88 Ohio St.3d 154, 724 N.E.2d 401, the Court found the unauthorized practice of law and issued an injunction. There, a non-lawyer contacted adverse parties on behalf of clients attempting to negotiate a settlement. In the process, the respondent discussed legal theories and litigation procedures with counsel for the opposing parties.

In *Cleveland Bar Association v. Henley* (2002), 95 Ohio St.3d 91, 766 N.E.2d 130, the Court again found the unauthorized practice of law and issued an injunction. The Court held that when a non-lawyer negotiates on behalf of someone else and purports to advise his client on the client's legal rights, the non-lawyer has engaged in the unauthorized practice of law.

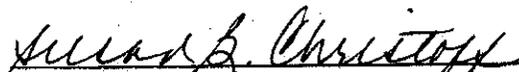
Here the stipulated facts fail to demonstrate that Respondents provided any legal advice nor did they create any documents on behalf of their clients for use in connection with the alleged debt at issue. Accordingly, there is not sufficient evidence to find the unauthorized practice of law.

This matter is therefore dismissed.

  
\_\_\_\_\_  
RALPH E. DILL, CHAIR  
Board of Commissioners on the  
Unauthorized Practice of the Law

## CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Report was served by certified mail upon the following this 22<sup>nd</sup> day of November, 2004: Cuyahoga County Bar Association, 1240 Leader Building, 526 Superior Avenue, Cleveland, OH 44114; Harry J. Jacob, III, Esq., Cuyahoga County Bar Association, 1240 Leader Building, 526 Superior Avenue, Cleveland, OH 44114; Andrew Margles, 27600 Chagrin Blvd., Ste. 460, Cleveland, OH 44122; American Mediation and Alternative Resolutions, 27600 Chagrin Blvd., Ste. 460, Cleveland, OH 44122; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Ohio State Bar Association, Unauthorized Practice of Law Committee, 1700 Lake Shore Drive, Columbus, OH 43204.

  
Susan B. Christoff, Secretary to the Board