ORIGINAL

No. 2011-1681

In the Supreme Court of Ohio

FROM THE BOARD ON THE
UNAUTHORIZED PRACTICE OF LAW OF THE SUPREME COURT OF OHIO
CASE NO. UPL 09-07

CLEVELAND METROPOLITAN BAR ASSOCIATION
Relator
v.
MICHAEL D. DAVIE
AND
ALPHA LEGAL SERVICES, INC.
Respondents.

OBJECTIONS OF RELATOR CLEVELAND METROPOLITAN BAR ASSOCIATION TO FINAL REPORT OF BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

Donald R. Murphy (0024068)
12800 Shaker Boulevard, Suite 208
Cleveland, Ohio 44120
Office: (216) 991-4883

Attorney for Respondents
Michael D. Davie and Alpha Legal Services, Inc.

John A. Hallbauer (0001076)
Counsel of Record
hallbauer@buckleyking.com
Buckley King
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114
Office: (216) 363-1400
Fax: (216) 579-1020

and

Heather M. Zirke (0074994)
hzirke@clevemetrobar.org
Cleveland Metropolitan Bar Association
1301 East Ninth Street, Second Level
Cleveland, Ohio 44114
Office: (216) 539-5971
Fax: (216) 696-2413

Attorneys for Relator
Cleveland Metropolitan Bar Association

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I. INTRODUCTION/GENERAL OBJECTIONS

Pursuant to Gov. Bar R.VII(16)(B) and the Order to Show Cause entered herein on October 17, 2011, Relator, Cleveland Metropolitan Bar Association (the "CMBA"), objects to the Final Report issued October 4, 2011, by the Board on the Unauthorized Practice of Law ("Board") because the Board did not find an unauthorized practice of law violation in connection with the representation of Cleophus Jones by Respondents Michael D. Davie ("Davie") and Alpha Legal Services, Inc. ("ALS") before the Ohio Parole Board. As demonstrated below, the preparation and filing of the "Memorandum in Support of Inmate Cleophus Jones No. A159-388 Consideration for Parole and Release" ("Memorandum") constituted the unauthorized practice of law by Respondents, as did Davie's appearance before the Ohio Parole Board pursuant to the Memorandum.

II. STATEMENT OF CASE AND FACTS

This matter originated with the filing of a Complaint with the Board on December 23, 2009, by CMBA against Davie and ALS as the Board's Case No. UPL 09-07. A Panel of the Board held a hearing on the matter in Cleveland, Ohio, on January 27, 2011, and on October 4, 2011, the Board issued its Final Report, which was on the same date filed with the Supreme Court and given this Court's Case No. 2011-1681.

The Complaint, which is also Relator's Hearing Exhibit G, stated three specific instances that the CMBA contended constituted the unauthorized practice of law by Respondents. The first involved Tiona Brown, who engaged Respondents for Legal Research, writing and consulting in conjunction with Charles Stevens, who was then in jail or prison. The second involved Katina Singleton, who engaged the Respondents for legal assistance in a custody matter concerning her son in the State of Michigan. In both of those instances, Davie

later claimed that he was not sufficiently paid, and he sued Ms. Brown and Ms. Singleton in separate cases in Cleveland Municipal Court and obtained judgments against them for his unauthorized practice services. The Panel and Board, in finding unauthorized practice by Respondents in these two instances, have ordered Davie to satisfy the judgments of record or face additional fines for every day he fails to do so. In both instances, the Board has also recommended a maximum $10,000.00 civil penalty. Without regard to whether or not the penalties may actually be collectible, Davie's total lack of cooperation in these proceedings was an overwhelming and aggravating factor. That, of course, included Davie's attempt to disrupt unauthorized practice proceedings by suing in Federal Court the Relator, its counsel in this case, the Ohio Supreme Court, the Chair of the Ohio Parole Board, the Chair of the Panel, and others. This is briefly reviewed in pages 20-21 of the Final Report and demonstrated in Relator's Hearing Exhibits II and JJ, consisting of Respondent Davie's Federal Court Complaint and United States District Judge Dan Polster's sua sponte Memorandum and Order dismissing his complaint with the certification that there could be no good faith basis for appeal. Nonetheless, Davie did appeal to the United States Court of Appeals for the Sixth Circuit, where the matter remains technically pending.

The Panel and the Board did not find that the unauthorized practice of law by Respondents was established in the Cleophus Jones matter where Respondents represented an inmate before the Ohio Parole Board. However, as will be demonstrated below, this was because the Panel and the Board focused only on the fact of Davie's admission of non-lawyer status at the actual parole board hearing, rather than analyzing the contents of the documentation that he prepared and filed for its appearance and substance as constituting the practice of law.

III. ARGUMENT

A. PROPOSITION OF LAW. NO. 1

The "evident purpose" of a document to induce persons viewing it to believe it was prepared by an attorney as the term is used in R.C. 4705.07 and Gov. Bar R.VII(2)(A)(4) is a question of law determined from the document prepared by a non-lawyer.

The Ohio Supreme Court simply defines the unauthorized practice of law in Gov. Bar. R. VII(2)(A)(1) as "the rendering of legal services for another by any person not admitted to practice in Ohio under Rule I of the Supreme Court Rules for the Government of the Bar...."

Gov. Bar R. VII(2)(A)(4) specifically includes within the prohibition of the unauthorized practice of law:

> Holding out to the public or otherwise representing oneself as authorized to practice law in Ohio by a person not unauthorized to practice law by the Supreme Court Rules for the Government of the Bar of Prof. Cond. R. 5.5.
>
> For purposes of this section, "holding out" includes conduct prohibited by divisions (A)(1) and (2) and (B)(1) of section 4705.07 of the Revised Code.
>
> Ohio Revised Code Section 4705.07 provides in pertinent part:
>
> (A) no person who is not licensed to practice law in this State shall do any of the following:
>
> ***
>
> (2) Represent that person orally or in writing, directly or indirectly as being authorized to practice law; ...
>
> (B)(1) The use of "lawyer," "attorney at law," "counselor at law," or other equivalent words by any person who is not licensed to practice, in connection with that person's own name, or any sign, advertisement, card, letterhead, circular or other writing, document, or design, <u>the evident purpose of which</u> is to induce others to believe that person to be an attorney, constitutes holding out within the meaning of division (A)(1) of this section. (Emphasis added).

In paragraph 19 at pages 17-19 of the Final Report, the Board reviewed the Cleophus Jones parole hearing matter and, it is respectfully submitted, reached the wrong legal conclusion as to the Respondents' Memorandum's[1] "evident purpose" to induce others to believe that Davie was an attorney or legal representative for Mr. Jones. Relator contends that the "evident purpose" of a document prepared by a non-lawyer is to be determined as a matter of law from the document as an entirety. It is not a determination made from the expressed, self-serving subjective intent of the drafter at a hearing after the fact, nor is it determined by how readily the drafter admits to the pretense when confronted by a person or board to whom the document is submitted. The proper approach to analysis is much like the situation when a court, including a reviewing court, must construe a written contract or other document. The Ohio Supreme Court clearly holds that "the construction of a written contract is a question of law, which [is reviewed] de novo." *In re: All Kelly & Ferraro Asbestos Cases*, 104 Ohio St. 3d 605, 2004-Ohio-7104, 821 N.E. 2d 159 at ¶28.

The Hearing Panel's conclusions about the Memorandum submitted by Davie and ALS to the parole board resulted in a determination by the Panel and the Board that the preparation and submission of the document did not constitute the unauthorized practice of law since Davie did not persist in portraying himself as an attorney at the hearing. Nonetheless, the Board does conclude at page 17 of the Final Report that "Respondents' Memorandum to the parole board caused some participants to mistakenly assume that Respondent Davie was an attorney."

The Panel, and the Board in its Report, characterized the Memorandum as "certainly misleading ... [b]ecause the Memorandum included the terms 'legal service' and

[1] Complaint, Relator's Ex. G at Ex. C p. 44

'professional legal counseling', a 'bar[2] number' and a picture of the scales of justice and one could have easily assumed that an attorney authored the Memorandum." (Id. at p. 17-18). This was far more than "careless drafting," and it could only have been done to give the impression to reasonable people that Respondent Davie and Respondent Alpha Legal Services, Inc. were part of the legal profession. It unquestionably had that effect on members of the parole board. This is graphically described in paragraphs 5 through 8 of the Affidavit of Reverend David Owen attached as Exhibit H to Respondents' Answer and Motion to Dismiss, which itself is Relator's Hearing Exhibit H. At Transcript 36-37, Respondent Davie admitted that he read Rev. Owen's Affidavit and that it was accurate. The Memorandum and the impression it caused at the parole hearing was also addressed at paragraphs 31-34 of Davie's verified Federal Court Complaint (Relator's Hearing Exhibit II), where Davie alleged that this was what caused Mr. Jones to be "flopped" or having any further parole consideration extended for three years. Id. at ¶33.

B. PROPOSITION OF LAW. NO. 2

R.C. 5149.101(B)(6) and Policy No. 105-PBD-06 of the Ohio Department of Rehabilitation and Correction do not and cannot permit non-lawyers to submit extensive written arguments and authority citations on behalf of inmates seeking parole.

As noted at pages 18-19 of the Report, the Panel concluded that the Memorandum prepared by Respondent Davie qualified as "a written statement of an inmate representative as authorized by R. C. 5149.101(B)(6)" and also found it somehow authorized by Ohio Department of Rehabilitation and Correction Policy 105-PDB-06.

[2] R. C. 4705.01 limits the practice of law to those "admitted to the bar by order of the supreme court." Webster's Third New International Dictionary (1971) defines "bar" as "the whole body of barristers or lawyers qualified to practice in any jurisdiction."

The Panel and the Board gave no consideration to just how far the Legislature or the Ohio Department of Rehabilitation and Correction could go in authorizing non-lawyer representation of inmates at Parole Board hearings without unconstitutionally intruding upon the Ohio Supreme Court's power to regulate and define the practice of law under Article IV, Section 2 of the Ohio Constitution.

In *Cleveland Bar Assn. v CompManagement, Inc. (CompManagement I)*, 104 Ohio St. 3d 168, 2004-Ohio-6506, 818 N.E. 2d 1181, this Court recognized that it would "retain the exclusive power to regulate, control, and define the practice of law in Ohio" and that it "unquestionably [has] the power to prohibit lay representation before an administrative agency" (¶39). Subsequently, this Court considered *Cleveland Bar Assn. v Comp Management, Inc. (CompManagement II),* 111 Ohio St. 3d 444, 2006-Ohio-6108 857 N. E. 2d 95. It there made an extensive analysis as to the type of non-lawyer representation that might be appropriate before an administrative agency, such as the Industrial Commission, which actually had a long history of allowing such representation by "third-party administrators." Unfortunately, the Panel and the Board gave R.C. 5149.101(B)(6) and Policy No. 105-PBD-06 no such analysis, and they did not analyze the document prepared by Davie for filing in the Cleophus Jones parole board hearing under the standards or considerations contained in *CompManagement II.*

CompManagement II adopted the approach that non-lawyer third party administrators could "offer general claims assistance as long as that assistance does not involve legal analysis, skill, citation, or interpretation." Id. at ¶49. The case precluded " 'argument' in the context of the practice of law [which] involves more than just stating facts; it is a process of analyzing their implications in light of relevant law, and then expounding on them in such a way as to persuade the listener to reach a conclusion not apparent from the facts or ideas themselves."

Id at ¶77. *CompManagement II* noted in its footnote 38 that non-lawyers could not "comment upon or give opinions with respect to the evidence, credibility of witnesses, the nature and weight of the evidence, or the legal significance of the contents of the file." Id. at ¶89 - 90.

R.C. 5149.101(B) merely permits a non-lawyer "to appear and give testimony or to submit written statements." (Emphasis added.) Policy No. 105-PBD-06 is still more clear that what is contemplated is only a non-lawyer's testimony from personal knowledge or written statements from personal knowledge about the applicant for parole – whether the person expresses remorse, has reformed, has renounced violence, has available living arrangements in the community, etc. If Respondents' legal-appearing document and its argumentative nature was as contemplated, the Memorandum's filing and Davie's appearance on behalf of inmate Jones would have not received such an adverse and hostile reaction by the parole board.

The Final Report gives no consideration to the overall argumentative nature of the Memorandum prepared by Davie on behalf of ALS, called "Alpha Legal Services and Consulting, Inc." at the beginning of the Memorandum. (Exhibit C to the Complaint, which is Relator's Exhibit G). The second sentence of the "Preliminary Statement" references "newly discovered evidence," and the third sentence cites two other Ohio Parole Board decisions as legal authority for the release of Jones. In the beginning of the second paragraph of the Preliminary Statement, Davie argues the applicability of the "defendant parity scheme" and fabricates some story about the victim who was murdered by Jones during an armed robbery having previously shot Jones five times. At the top of the second page of the Memorandum, Davie argues about "the unique circumstances of this case" and about "Jones' rule seven violations."

In the "Case History" part of the Memorandum, Davie generally recasts and attempts to reargue Jones' 1980 murder trial in which he was convicted upon a guilty plea. In

the "Offense Details" portion, Davie amplifies upon his unfounded contention that Jones and the murder victim were involved with the same woman and that this caused the murder victim to have had previously shot Jones. That is totally unsupported by the record in Jones' criminal case, including the statement that Jones gave the police in 1980 (Relator's Exhibit DD) and the letter that Jones wrote to the Cuyahoga County Prosecutor in 1991 (Relator's Exhibit EE).

In the second paragraph of the "Offense Details" section, Davie tries to justify why Jones shot Mr. Kaplan and then shot at an off-duty policeman who came upon the crime scene. Divisions III and IV, especially at the beginning of III, contain some argument, but the sections also contain some objective facts about Jones' personal progress and, to that extent, would appear to be permissible under the statute and the rule if they were the sole contents of the Memorandum. However, the footnote at the bottom of page 4, citing an Ohio statute and what might be a sentencing guideline, is clearly legal argument and unauthorized practice.

Section VI is a pure legal argument about the authority of the Ohio General Assembly and what it intended in enacting certain laws. Section VII, entitled "Points to Consider in Mitigation," contains some facts which might well be proper, but arguing "mitigation" is not.

Finally, Section VIII, entitled "Conclusion," gives improper legal citation to some guideline and makes the contention that a partial quotation "holds" something, with a portion of the quotation italicized to emphasize the point Davie was making.

IV. CONCLUSION.

For all the foregoing reasons, Relator Cleveland Metropolitan Bar Association requests that the Court find that Respondents Davie and ALS engaged in the unauthorized practice of law in the Cleophus Jones parole matter. The evident purpose of much of their

Memorandum was to create the impression that Davie was a member of the "bar" and that Respondents were providing legal services and consulting on behalf of Jones. Moreover, the contents of their Memorandum, with all its arguments and legal citations, constitute unauthorized practice of law by non-lawyers under precedents of this Court.

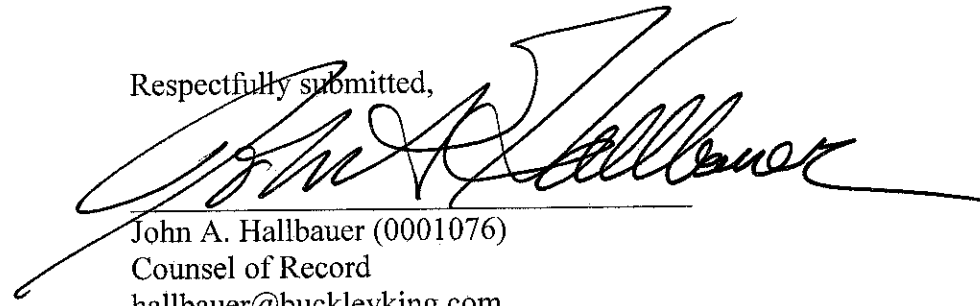
In the Jones matter, the unauthorized practice violations were flagrant and also harmful to Jones, causing or substantially contributing to his being "flopped" for another three years before further parole consideration. A penalty of $10,000.00 should be imposed for the Jones matter.

In other respects, Relator urges the Court to adopt the Final Report of the Board and its recommendations for finding violations by Respondents in the Brown and Singleton matters, assessing joint and several penalties of $10,000.00 in each matter, ordering restitution or refunds of payments, and ordering satisfaction of the judgments that Davie obtained against them with fines of $100.00 per day for delay in making the satisfactions.

Further, as recommended by the Board, Davie and ALS should be permanently enjoined from engaging in any future unauthorized practice of law, including a requirement that Davie only work through and under the direct supervision of a licensed Ohio attorney if he does any work as a paralegal; and that he identify himself as a paralegal on any letter or document generated by him. +Also, it is requested that he be enjoined from using his Ohio State Bar Association paralegal membership number in any document without clearly identifying that it is a paralegal number.

Finally, Respondents should be ordered to pay the costs of these unauthorized practice of law proceedings as finally determined upon conclusion of the matter in the Ohio Supreme Court.

Respectfully submitted,



John A. Hallbauer (0001076)
Counsel of Record
hallbauer@buckleyking.com
Buckley King
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114
Office: (216) 363-1400
Fax: (216) 579-1020

and

Heather M. Zirke (0074994)
hzirke@clevemetrobar.org
Cleveland Metropolitan Bar Association
1301 East Ninth Street, Second Level
Cleveland, Ohio 44114
Office: (216) 539-5971
Fax: (216) 696-2413
Attorneys for Relator Cleveland Metropolitan Bar Association

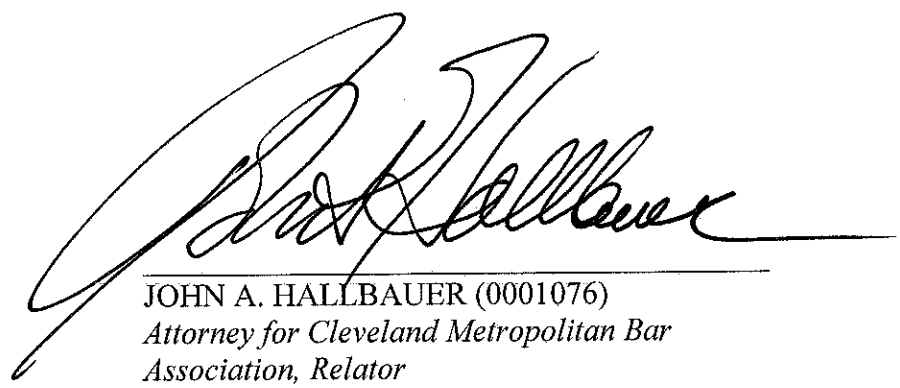
CERTIFICATE OF SERVICE

A copy of the foregoing Objections of Relator Cleveland Metropolitan Bar Association to Final Report of Board on the Unauthorized Practice of Law was served this 4th day of November, 2011 by United States mail, postage prepaid, upon the following:

Donald R. Murphy, Esq.
12800 Shaker Blvd.
Cleveland, Ohio 44120
Counsel of Record for Respondents
Michael D. Davie and Alpha Legal Services, Inc.

and

Minerva B. Elizanga, Secretary
Board on the Unauthorized Practice of Law
The Supreme Court of Ohio
65 South Front Street – 5th Floor
Columbus, Ohio 43215-3431



JOHN A. HALLBAUER (0001076)
Attorney for Cleveland Metropolitan Bar Association, Relator

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The Supreme Court of Ohio

Cleveland Metropolitan Bar Association,
Relator,
v.
Michael D. Davie, and
Alpha Legal Services, Inc.,
Respondents.

Case No. 2011-1681

ORDER TO SHOW CAUSE

The Board on the Unauthorized Practice of Law of the Supreme Court of Ohio has filed a final report in the office of the Clerk of this Court, pursuant to Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio. This final report recommended that the Supreme Court of Ohio issue an order finding that respondents, Michael D. Davie and Alpha Legal Services, Inc., have engaged in the unauthorized practice of law, prohibiting respondents from engaging in the unauthorized practice of law in the future, and providing for the reimbursement of costs and expenses incurred by the board and relator.

On consideration thereof, it is ordered by the court that respondents or relator may show cause why the recommendation of the board should not be confirmed by the court and an appropriate order entered.

It is further ordered that any objections to the findings of fact or recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that the objections and brief in support include proof of service of copies on the secretary of the board and all counsel of record. It is further ordered that an answer brief and proof of service may be filed within 15 days after a brief in support of objections has been filed.

After a hearing on the objections or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings. All case documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

Maureen O'Connor
Chief Justice

10-6-11

THE SUPREME COURT OF OHIO

BOARD ON THE
UNAUTHORIZED PRACTICE OF LAW

CLEVELAND METROPOLITAN BAR ASSOCIATION,	:	
Relator,	:	
v.	:	Case No. **UPL 09-07**
	:	**FINAL REPORT**
MICHAEL D. DAVIE	:	
and	:	
ALPHA LEGAL SERVICES, INC.,	:	
Respondents.	:	

I. PROCEDURAL BACKGROUND

This matter was initiated before the Board on the Unauthorized Practice of Law ("Board") on December 23, 2009, by Relator, the Cleveland Metropolitan Bar Association. The Complaint alleges the unauthorized practice of law against Respondents, Michael D. Davie and Alpha Legal Services, Inc. According to the Complaint, Respondents, through Michael D. Davie, a paralegal who is not licensed to practice law in the state of Ohio, prepared pleadings, appeared at an Ohio Parole Board Hearing and prepared other documents and memoranda of a legal nature on three separate occasions, two of them for financial compensation. Respondent Davie then sued two of the clients and obtained judgments against them for non-payment of his fees. Those parties were unavailable for the hearing of this matter.

Service by certified mail was attempted on two occasions and subsequently failed. On February 17, 2010, the Board Secretary filed instructions for service with the Supreme Court

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naming Harry Smith as process server. On February 23, 2010, Mr. Smith served the Respondents personally at 11811 Shaker Boulevard, Suite 314, Cleveland, Ohio 44120. Soon thereafter, Respondents were granted an extension of time to file an answer. On March 29, a notice of appearance was filed by Attorney Donald R. Murphy (0024068) on behalf of Respondents. In addition, Mr. Murphy simultaneously filed an Answer and Motion to Dismiss.

On March 30, 2010, this matter was assigned to a hearing panel consisting of Commissioners Curtis J. Sybert, Chair, John J. Chester, and James W. Lewis ("the Panel"). On April 13, 2010, Relator filed its brief in opposition to Respondents' Motion to Dismiss. The Panel denied the Motion on May 5, 2010. On June 4, 2010, Respondents filed a Motion for Jury Trial, which Relator opposed on June 25, 2010. Finding that the Board is not authorized to conduct jury trials, the Panel denied Respondents' Motion for Jury Trial on August 9, 2010.

Relator noticed the depositions of witnesses Erica Davie, David Owen, and Donald R. Murphy for October 29, 2010. Erica Davie is Respondent Davie's wife, and David Owen is Davie's father-in-law; both failed to attend the depositions. No legitimate reason was given for their nonattendance. As a result, on November 15, 2010, Relator filed a Motion to Show Cause against Erica Davie and David Owen. Respondents did not oppose the Motion. The Panel, however, determined that it lacked the authority to issue a show cause order and therefore construed the Motion as a motion to compel. The Panel then ordered Mrs. Davie and Mr. Owen to appear for depositions prior to the hearing scheduled in this matter on December 15, 2010. Relator did not attempt the depositions and instead subpoenaed Mrs. Davie and Mr. Owen as hearing witnesses.

On December 6, 2010, Respondents filed a Motion to Stay the Proceedings and/or Continuance of a Hearing Pending a Request to Answer a Federal Question of Law.

Respondents argued a stay was required because Respondent Davie had filed an action under 42 U.S.C. § 1983 against the Supreme Court of Ohio, Panel Chair, and several other defendants in the U.S. District Court for the Northern District of Ohio. Respondent Davie's federal complaint was filed on November 29, 2010, and challenged the Supreme Court of Ohio's jurisdiction and authority to govern the unauthorized practice of law in Ohio and the Board's authority to conduct the scheduled hearing. On December 3, 2010, the U.S. District Court dismissed Respondent Davie's complaint sua sponte and ordered that an appeal could not be taken in good faith. Respondent Davie nevertheless filed an appeal to the Sixth Circuit and an Emergency Motion to Stay the Board Hearing. On January 11, 2011, the Sixth Circuit denied the Emergency Motion. The appeal remains pending.

On December 10, 2010, Respondent Davie filed a Relator's [sic] Request in Error in which he argued the pending appeal justified a stay of the proceedings. The Panel denied the request and then ordered the December 15, 2010, hearing rescheduled to January 27, 2011, due to inclement weather in Cleveland, the location of the hearing.

This matter finally came before the Panel for a hearing on January 27, 2011, at which Respondents were represented by Attorney Murphy.

II. PANEL'S FINDINGS OF FACT

1. Relator is authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in Ohio. Gov. Bar. VII(4) and (5).

2. Respondents are not, and never have been, attorneys admitted to the practice of law in Ohio under Gov.Bar R. I, registered under Gov.Bar R. VI, or certified under Gov.Bar R. II, Gov.Bar R. IX, or Gov.Bar R. XI. Respondents are also not admitted to the practice of law in another state. (Compl. ¶ 3; Tr. 18; Relator's Ex. FF and GG.)

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3. Respondent Davie formed, owns, operates, controls and does business as ALS. (Compl. ¶ 3; Davie Dep. 27.)

4. Respondent Davie was sent to prison in "approximately 1992 or 1993" from both Cuyahoga and Summit counties for an admitted "array of charges stemming from attempted murder to aggravated burglary to aggravated robbery." Davie was sentenced to 33 to 75 years and served a total of 14 years. (Tr. 21; Relator's Ex. E and Z.)

5. Respondent Davie was paroled in 2006 by Chief Parole Board Officer Cynthia Mausser. (Tr. 22.)

6. Respondent ALS's former business address was 11900 Shaker Boulevard, Suite 101, Shaker Heights, OH. 44120. (Tr. 23.)

7. At all times relevant to this matter, Respondent Davie's residence address was 3367 Milverton Road, Shaker Heights, OH. 44120. (Tr. 22.)

8. At all times relevant to this matter, Respondent Davie was registered with the Ohio State Bar Association as a paralegal member #101919, and owned the business known as Alpha Legal Services, Inc. (Tr. 29; Respondent's Ex. 1.)

9. Respondent Davie testified at the hearing as follows (Davie Tr. 18):

> Q. Okay. Did you attend any law school?
>
> A. Yes.
>
> Q. Where?
>
> A. Blackstone School of Law.
>
> Q. What is Blackstone School of Law?
>
> A. Blackstone School of Law is a school that provides paralegal education through correspondence courses.

Count One - Tiona Brown / DeCharles Stephens Matter

10. On or about March 1, 2008, Tiona Brown contracted in writing with Respondents to provide the following services for $1,500: "Interviews, Legal Research [and] Preparation of Pretrial Motion to Suppress." Brown secured these services on behalf of her boyfriend, DeCharles Stephens, who was at the time incarcerated on a pending felony charge. Davie prepared the written contract, which does not name an attorney. Davie testified that Brown contacted him directly about this matter. (Davie Tr. 48; Relator's Ex. G.)

11. Respondent Davie visited Stephens in jail, where he discussed Stephens' criminal case with him, including which plea to enter, and performed the legal research for a motion to suppress for filing with the court on Stephens' behalf. (Tr. 137-9; Davie Dep. 41-2; Relator's Ex. G.)

12. Respondent Davie testified that during this time Stephens was represented by a public defender or court appointed attorney; however, Davie never communicated with that attorney, or attorneys, nor did he claim to have acted under the supervision of such attorney or attorneys. (Tr. 151-2.)

13. Instead, Respondent Davie testified that all the legal research and other work that he performed in the Tiona Brown/Stephens matter was supervised by Attorney Sebraien M. Haygood. Davie also testified that Stephens was not represented in the criminal case by Attorney Haygood, but by a public defender or court-appointed attorney. (Davie Dep. 31; Tr. 152.)

14. According to the Supreme Court of Ohio Attorney Directory, Attorney Sebraien Michael Haygood, formerly of P.O. Box 201967, Shaker Heights, OH 4410, died on June 26, 2008. (Relator's Ex. HH.)

15. Respondent Davie testified in his deposition that Attorney Haygood was not present during the initial intake Davie performed in the Stephens case and that Haygood did not accompany Davie on any of Davie's visits with Stephens in jail. Davie also testified that to his knowledge Tiona Brown did not have any communications or phone calls with Attorney Haygood. (Davie Dep. 41-2.)

16. Respondents failed to produce documentary proof that Attorney Haygood supervised any of the legal research, drafting of legal documents, or other activities in the Tiona Brown/Stephens matter, or that Attorney Haygood ever represented Stephens. Respondent Davie claims that such documentation was lost when Respondents were evicted from their office. However, while Davie testified at the January 27, 2011, hearing that the eviction was "four years ago," which would have been 2007, his contract with Tiona Brown is dated March 1, 2008. (Davie Dep. 42, 49; Tr. 66; Relator's Ex. G.)

17. Attorney Haygood's name does not appear in any documentation that was available to Respondents prior to Relator's filing of the unauthorized practice of law Complaint against them.

18. Respondent Davie's father-in-law is Bishop David Lee Owens. Bishop Owens is involved in an organization by the name of Genesis Community Improvement Corporation, which helps parolees reintegrate into society. At all times relevant to this action, Respondents and Bishop Owens shared an office together. (Tr. 25, 55.)

19. Bishop Owens testified at the hearing that he could not recall ever meeting Attorney Haygood and had never seen Attorney Haygood in the office he shared with Respondents. (Tr. 65.)

20. Because Attorney Haygood is deceased and the other participating witnesses were unavailable for the hearing, none of Respondents' claims concerning Attorney Haygood's

alleged supervision of their activities in the Brown / Stephens matter can be independently confirmed or denied.

21. By Respondent Davie's own admissions, Respondents drafted a legal document for, and consulted directly with, an incarcerated felony defendant concerning the plea he should enter in his case at a time when the man was being represented by a court-appointed attorney who was not supervising the activities of Respondents. (Tr. 137-9, 152-3; Davie Dep. 41-2; Relator's Ex. G.)

22. Davie prepared an itemized invoice on an Alpha Legal Services, Inc., form and sent the invoice to Tiona Brown demanding payment of $1,400 for services rendered. Davie testified that the invoice covered both his time and Attorney Haygood's time. Davie also testified, however, that he did not pay Attorney Haygood any portion of the funds Davie received from Brown. The invoice refers to attorney supervision, but fails to identify the attorney or the services, if any, the attorney performed. (Relator's Ex. G; Davie Dep. 41; Tr. 125.)

23. In a letter accompanying his invoice dated April 8, 2008, Davie wrote to Tiona Brown outlining the work he had done for her, in response to her request to terminate their contract: "*** I elected to give you that benefit on the grounds that upon my legal research on Mr. Stephens' IV Amendment violation issue, status reports to you, jail visits and interviews with Mr. Stephens, he could not seem to make up his mind as to what course of action he wanted to take. Although he did elect to take a guilty plea, I think that the information that I provided him and the defense not only put him in a favorable position to negotiate a no-contest plea for one year, but it also places him in a favorable position to get a reversal on appeal on the IV Amendment issue." (Relator's Ex. G.)

24. Tiona Brown refused to pay Respondents' fee and Respondent Davie sued her in Cleveland Municipal Court to collect it. Davie's pro se complaint avers that he "worked to bring forth favorable results in the criminal matter of Charles Stephens." Attorney Haygood is not a plaintiff in this action and is not mentioned in the complaint or the accompanying exhibits. (Relator's Ex. G.)

25. During this collection litigation, a Cleveland Municipal Court magistrate found that Davie's activities in this (and another) case constituted the unauthorized practice of law. Another judge (or magistrate) later found that the parties had not raised the UPL issue in the collection case and that the Municipal Court did not have jurisdiction to consider it, and thus held for those reasons the initial magistrate should not have ruled on the UPL issue. (Relator's Ex. G, H, and I.)

26. Contrary to Respondents' contention at the hearing, the second Municipal Court ruling did not constitute a "reversal" of the first magistrate's finding of a UPL violation. Relator contends, and the Panel finds, that Davie's own actions gave rise to, and support, the allegation of unauthorized practice of law, not the magistrate's findings. (Relator's Ex. I.)

Count Two - Katina Singleton / Anthony Singleton Matter

27. Katina Singleton and Anthony Singleton engaged the services of Respondents for legal assistance in a custody battle concerning a son in the State of Michigan. (Comp. Ex. B; Davie Aff. 1.)

28. Respondent Davie testified that during his initial conference with Katina Singleton, Attorney Haygood was not present. (Davie Dep. 30.)

29. The engagement letter between Respondents and Katina Singleton was executed on or about April 22, 2008, and states that the following legal services would be provided for a $3,500

fee: "Answer To Motion For Full Custody" and "Motion For Continuance." The agreement fails to indicate that the case would be supervised by Attorney Haygood or any other attorney. The agreement also provides that ALS was the "Service Provider" and that the customer understood that ALS "is not in any way conditioned upon an attorney agreeing to have [ALS] assistance." (Respondent's Objection To The Magistrate's Decision, Ex. A; Relator's Ex J.)

30. In the Singleton custody matter, Respondent Davie filed a memorandum in a Michigan court, signed by Katina Singleton, entitled "Defendant's Answer and Motion for MCR 2.116 (C)(8) Dismissal of Plaintiff's Motion for Full Legal and Physical Custody." Respondent Davie testified that the memorandum was prepared by the late Attorney Haygood and that Davie only did the legal research for the memorandum. Attorney Haygood's name does not appear in the memorandum. (Comp. Ex. C; Relator's Ex. G; Tr. 42.)

31. Respondent Davie further testified that all supporting documents which accompanied the memorandum, as well as a Motion for Continuance signed by Katina Singleton, were prepared and supervised by Attorney Haygood. (Tr. 44.)

32. Respondent Davie filed suit in Cleveland Municipal Court on behalf of ALS after the Singletons failed to pay his invoice for $3,000.00. Davie stated in an affidavit, "Plaintiff rendered Defendant the requested services and worked to bring forth a favorable result in the custody matter of Prude v. Singleton 98-836323DM, State of Michigan, Third Judicial Circuit, Wayne County." (Comp. Ex. B; Relator's Ex. G; Davie Aff. 2.)

33. The complaint filed by Respondents for collection of fees made no mention of Attorney Haygood's supervision of Respondents' work. (Tr. 44; Relator's Ex. G.)

34. Respondent Davie, on behalf of ALS, stated in his sworn affidavit that "Defendants represented that they could not meet the expense that an attorney would charge but could meet

Plaintiff's billing costs at a reduced rate of $125.00 per hour having totaled 20 hours including other out of pocket expenses..." (Relator's Ex. G.)

35. Respondent Davie testified at the hearing that the entire amount for which he sued the Singletons was for the benefit of and in the name of Michael Davie. Attorney Haygood was neither a party to the suit nor an intended beneficiary of any proceeds of the suit. (Tr. 44.)

36. After the original magistrate in the Singleton collection case ruled that Respondent Davie was practicing law without a license, Davie filed an objection to the magistrate's decision and filed it with the Cleveland Municipal Court. (Tr. 46; Relator's Ex. J.)

37. Page three of Respondent Davie's objection to the magistrate's decision states, "In the present case, Plaintiff's [sic] was supervised in the Defendant's administrative-custody matter by Donald R. Murphy, Esq." Later, in his deposition and hearing testimony, Davie argued that he made a "typo" in using Donald R. Murphy's name and that he meant to identify his supervising counsel as Attorney Haygood. The objection also states, "[t]he case was handled in a professional manner and successfully resolved to Defendant's satisfaction." In footnote 3 of the objection, Davie states that he assists pro se parties, which contradicts his assertion that he works under the supervision of attorneys. (Tr. 46; Respondent's Objection to the Magistrate's Decision p.4.)

38. In response to Relator's discovery requests, the only documentation that Respondents could supply in regard to the Singleton matter was that which was previously filed with the court. (Davie Dep. 25.)

Count Three - Cleophus Jones / Parole Hearing

39. Cleophus Jones and Respondent Davie first met while in prison. Both Jones and Davie participated in a paralegal correspondence course while incarcerated. The activities alleged as

UPL violations occurred after Davie was released from prison. (Davie Dep. 26; Tr. 17, 19, 105; Relator's Ex. B; Respondents' Ex. 5.)

40. Respondent Davie testified that Jones asked him for assistance in "typing" a document for consideration at Jones' hearing before the Ohio Adult Parole Board. Davie stated that Jones sent him a handwritten letter with information and that Davie typed the document in question. (Davie Dep. 48.)

41. Respondent Davie stated that the handwritten correspondence he received from Jones was lost during the eviction from his office. (Davie Dep. 27.)

42. Davie stated that an attorney did not supervise the preparation of the document that Davie typed for Jones. (Davie Dep. 28.)

43. The document typed by Davie in the Jones matter was entitled "Memorandum in Support of Inmate Cleophus Jones No. A159-388 Consideration for Parole Release." (Davie Dep. 26; Relator's Ex. K.)

44. The Memorandum, dated November 9, 2008, was signed by Respondent Davie with the following information in the signature line: "Alpha Legal Service, Inc., 11900 Shaker Blvd., Suite 102, Cleveland, OH 44120, Michael Davie (Bar#101919), On Behalf of Cleophus Jones, Inmate Number A159-388." The Memorandum does not identify Davie as a paralegal or indicate that the "Bar#" after his name is Davie's Ohio State Bar Association paralegal membership number. The memorandum also appears on "Alpha Legal Service, Inc., Professional Legal Consulting" letterhead with a picture of the scales of justice. (Relator's Ex. G.)

45. Cleophus Jones's parole hearing took place on June 19, 2009. Davie attended the hearing on Jones's behalf. Also in attendance was Davie's father-in-law, Bishop David Lee Owens,

representing Genesis Community Improvement Corporation. Bishop Owens did not know Jones before the hearing. (Tr. 25, 55, 57, 59.)

46. Tracy Allan Regas, Assistant Prosecuting Attorney, Cuyahoga County, was assigned to contest Jones's parole request. Assistant Prosecutor Regas met Respondent Davie at Jones's parole hearing. (Tr. 70, 74.)

47. Inmates are not present during "full board" parole hearings. Assistant Prosecutor Regas testified that under normal circumstances an attorney from the office of the Ohio Public Defender represents the inmate at the hearing. (Tr. 84, 86.)

48. Assistant Prosecutor Regas testified that he initially believed that Respondent Davie was Jones's attorney, but during the hearing it became clear to him that Davie was not an attorney. Also, according to Regas, Davie never stated in the hearing that he was an attorney. Regas's testimony undermined Relator's (hearsay) contention that the parole board hearing officer thought Davie was an attorney. In addition, Davie testified that the hearing officer personally knew him to be an ex-convict. (Tr. 81, 82, 88.)

III. PANEL'S CONCLUSIONS OF LAW

1. The Supreme Court of Ohio has original jurisdiction regarding 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 Constitution; *Royal Indemnity Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 617; *Judd v. City Trust & Sav. Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288. Accordingly, the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567,at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

2. The Court regulates the unauthorized practice of law in order to "protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation." *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

3. The unauthorized practice of law is the rendering of legal services for another by any person not admitted or otherwise registered or certified to practice law in Ohio. Gov.Bar R. VII(2)(A).

4. With limited exception, a corporation may not give legal advice, directly or indirectly, through its employees or attorney employees. *Judd* at 88, 12 N.E.2d at 292.

5. The practice of law "includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured..." *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 28, 1 O.O. 313, 315, 193 N.E. 650, 652. It also includes "conducting cases in court, preparing and filing legal pleadings and other papers, appearing in court cases, and managing actions and proceedings on behalf of clients before judges, whether before courts or administrative agencies." *Cleveland Bar Assn. v. Coats*, 98 Ohio St.3d 413, 2003-Ohio-1496, 786 N.E.2d 449, ¶ 3, citing *Richland Cty. Bar Assn. v. Clapp* (1998), 84 Ohio St.3d 276, 278, 703 N.E.2d 771; *Cincinnati Bar Assn. v. Estep* (1995), 74 Ohio St.3d 172, 173, 657 N.E.2d 499.

6. The practice of law is not limited to the handling of cases in court. It also encompasses the preparation of pleadings and other papers in connection with legal matters and the management of such matters on behalf of others. *Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 2000-Ohio-288, 724 N.E.2d 402.

7. The selecting, drafting, and completing of legal documents which affect and determine legal rights by a layperson without the supervision of a licensed attorney constitute the unauthorized practice of law. *Ohio State Bar Assn. v. Cohen*, 107 Ohio St.3d 98, 2005-Ohio-5980, 836 N.E.2d 1219; *Coats* and *Clapp, supra.*

8. The Court has consistently held that "[t]he practice of law is not limited to appearances in court, but also includes giving legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are preserved." *Miami Cty. Bar Assn. v. Wyandt & Silvers, Inc.*, 107 Ohio St.3d 259, 2005-Ohio-6430, 838 N.E.2d 655, at ¶ 11, quoting *Cleveland Bar Assn. v. Misch* (1998), 82 Ohio St.3d 256, 259, 695 N.E.2d 244.

9. The involvement of an attorney in an unauthorized practice of law scheme does not insulate nonattorneys from unauthorized practice of law proceedings in Ohio. *Cleveland Bar Assn. v. Sharp Estate Serv., Inc.*, 107 Ohio St.3d 219, 2005-Ohio-6267, 837 N.E.2d 1183, ¶¶ 9-11; *Columbus Bar Assn. v American Family Prepaid Legal Corp.*, 123 Ohio St. 3d 353, 209-Ohio-5336, 916 N.E.2d 784, ¶¶ 67-76.

10. The American Bar Association ("ABA") defines "paralegal" or "legal assistant" as follows: "A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible." See http://apps.americanbar.org/legalservices/paralegals/def98.html. The majority of states have adopted similar definitions. See National Association of Legal Assistants, http://www.nala.org/terms.aspx.

11. "[A]lthough laypersons may assist lawyers in preparing legal papers to be filed in court and managing pending claims, those activities must be carefully supervised and approved by a

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licensed practitioner." *Columbus Bar Assn. v. Thomas*, 109 Ohio St.3d 89, 2006-Ohio-1930, 846 N.E.2d 31, ¶ 14. See, also, *Cleveland Bar Assn. v. Para-Legals*, 106 Ohio St.3d 455, 2005-Ohio-5519, 835 N.E.2d 1240; *Coats, supra; Columbus Bar Assn. v. Purnell*, 94 Ohio St.3d 126, 2002-Ohio-4211, 673 N.E.2d 1307; *Akron Bar Assn. v. Greene*, 77 Ohio St.3d 279, 1997-Ohio-298, 673 N.E.2d 1307.

12. Attorneys may "generally employ [legal] assistants in their practice. Such assistants, whether employees or independent contractors, act for the [attorney] in rendition of the [attorney's] professional services." Prof. Cond. Rule 5.3, Official Comment. However, the attorneys must give assistants "appropriate instruction and supervision" and are responsible for the assistants' work product. Id. "The measures employed in supervising [nonattorneys] should take account of the fact that they do not have legal training and are not subject to professional discipline." Id.

13. While attorneys may delegate legal work to paralegals and legal assistants, some tasks are not delegable. These tasks include establishing the attorney-client relationship, setting the appropriate fee, rendering a legal opinion, and taking a deposition. See ABA Model Guidelines for the Utilization of Paralegal Services, http://www.meetings.abanet.org/legalservices/paralegals/downloads/modelguidelines.pdf; Board of Commissioners on Grievances and Discipline, Advisory Opinion 2002-4.

14. Based upon Supreme Court case law, Prof. Cond. Rule 5.3 and its Official Comment, and nationally-recognized guidelines for the employment of paralegals, the Panel is of the opinion that paralegals and legal assistants are not independent practitioners and that the attorney-client relationship must be established prior to the work of a paralegal or legal assistant in a legal

matter. Accordingly, paralegals and legal assistants cannot solicit "clients" and then require or expect the client to find an attorney to supervise the paralegal or legal assistant.

15. Under R.C. 5149.101(B)(6), "[c]ounsel or some other person designated by the prisoner as a representative" may appear and give testimony or submit written statements during a full parole board hearing.

16. "The use of 'lawyer,' 'attorney at law,' 'counselor at law,' 'law,' 'law office,' or other equivalent 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 [as an attorney at law]." R.C. 4705.07(B)(1). (Emphasis added.)

Count One - Tiona Brown / DeCharles Stephens Matter

17. In the Brown / Stephens matter, the Panel finds that Respondents were not supervised by an attorney and that an attorney did not delegate the tasks performed by Respondents. The Panel further finds by a preponderance of the evidence that Respondents, working independently of an attorney, engaged in the following acts which constitute the unauthorized practice of law:

a. Entering into a contract with Tiona Brown to perform the following services for a fee: "Interviews, Legal Research & Preparation of Pretrial Motion to Suppress," on behalf of DeCharles Stephens;

b. Researching and preparing a motion to suppress in Stephens's felony criminal case;

c. Consulting with Stephens regarding the course of legal action to be taken in his criminal case and which plea he should enter.

Count Two - Katina Singleton / Anthony Singleton Matter

18. In the Singleton matter, the Panel also finds that Respondents were not supervised by an attorney and that an attorney did not delegate the tasks performed by Respondents. The Panel further finds by a preponderance of the evidence that Respondents, working independently of an attorney, engaged in the following acts which constitute the unauthorized practice of law:

a. Entering into a contract with Katina Singleton to perform legal services for a fee in a custody matter, including an "Answer to Motion for Full Custody" and "Motion for Continuance;"

b. Preparing a memorandum entitled "Defendant's Answer and Motion For MCR 2.116(C)(8) Dismissal of Plaintiff's Motion for Full Legal and Physical Custody," which was signed by Katina Singleton and filed in a Michigan court by Respondent Davie;

c. Preparing a "Motion for Continuance" for Katina Singleton's signature in the Singleton custody matter.

Count Three - Cleophus Jones / Parole Hearing

19. In the Cleophus Jones parole matter, the Panel finds that Respondent Davie was authorized to appear at Jones's parole board hearing as a person designated by Jones to appear as his representative pursuant to R.C. 5149.101(B)(6). While Respondents' memorandum to the parole board caused some participants to mistakenly assume that Respondent Davie was an attorney, the record indicates that his nonattorney status came to light early in the hearing and that Davie was known to the hearing officer as a former inmate. The record simply fails to indicate that Davie attempted to portray himself as an attorney at the hearing.

Regarding the memorandum Respondent Davie submitted to the parole board, it was certainly misleading, and Davie admitted as much during his testimony. Because the

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memorandum included the terms "legal service" and "professional legal consulting," a "bar number" and a picture of the scales of justice, one could have easily assumed that an attorney authored the memorandum. The terminology Davie chose for the memorandum's letterhead and signature line likely caused some confusion with the parole board concerning Davie's credentials. Although Davie engaged in careless drafting, the record fails to indicate that his purpose was to portray himself as an attorney to the parole board. The "bar number" was the actual paralegal membership number assigned to Davie by the Ohio State Bar Association. The "bar number" consisted of six digits without zeroes rather than the seven digits preceded by two zeroes comprising the registration numbers of Ohio attorneys. In addition, Davie does not refer to himself as an attorney in the memorandum or use designations such as "Esq.," "Atty.," or "J.D."

As for the substance of the memorandum, Respondent Davie presents reasons for Jones's release, including Jones's employable skills, remorsefulness, and involvement with a community re-entry support organization. The Panel noted that under R.C. 5149.101(B)(6), a nonattorney inmate representative may communicate with the parole board both orally and in writing. In addition, Ohio Department of Rehabilitation and Correction policy 105-PBD-06 on full board hearings permits an inmate representative to provide both written and oral communication to the parole board. In fact, the current version of policy 105-PBD-06 actually requires inmate representatives, prosecutors, and victim advocates to supply the parole board with a "written summary of the arguments presented at the hearing for or against release." See http://www.drc.state.oh.us/web/drc_policies/drc_policies.htm. The Panel concluded that Respondent Davie's memorandum is a written statement of an inmate representative as

authorized by R.C. 5149.101(B)(6) that does not constitute the rendering of legal services for another under Gov. Bar R. VII(2)(A).

The panel found that Respondents' use of Respondent Davie's Ohio State Bar Association paralegal number, ALS's letterhead with the scales of justice, and the use of the terms "legal service" and "professional legal consulting" may be misleading to a reasonable person. However, for all of the reasons set forth in Conclusion of Law 19, the Panel also hereby found that Relator failed to establish by a preponderance of the evidence that Respondents engaged in the unauthorized practice of law in the Cleophus Jones parole hearing matter. See Gov. Bar R. VII(7)(E). Accordingly, the Panel concluded that the third count of the Complaint should be dismissed.

IV. PANEL'S CIVIL PENALTY ANALYSIS

Relator recommends that the maximum penalty of $10,000 per UPL violation should be considered by the Panel and that such a penalty would be entirely justified based on many aggravating factors. Gov. Bar. R. VII(8)(B) provides that a civil penalty may be imposed for up to $10,000 for each offense, and, as set forth in UPL Reg. 400(E), provides a number of factors to consider: (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; and (5) Any other relevant factors. UPL Reg. 400(F) also details additional considerations, many of which were recently reviewed by the Ohio Supreme Court in *Ohio State Bar Assn. v. Lienguard,* 126 Ohio State St.3d 400, 2010-Ohio-3827.

The Panel found that Respondents committed the unauthorized practice of law in the two matters involving Tiona Brown and Katina Singleton. Respondent Davie, acting by and through Respondent ALS, prepared a written contract for both Brown and Singleton to execute prior to

the start of any work by ALS. Each document totals three pages of single spaced verbiage wherein Respondents state that they will conduct legal research and *consulting* and also that it was the client's responsibility to obtain legal counsel of their choice. One statement in Respondents' contract reads: "You understand that (with the exception of a case evaluation service) it is your responsibility to provide legal counsel to ALS who will represent you." Such statements directly conflict with Respondent Davie's deposition and hearing testimony to the effect that all of his work in the Brown and Singleton matters was supervised by the late Attorney Haygood.

The contracts go on to describe the type of work to be performed by ALS. In the Brown matter, ALS was to perform "Interviews, legal research [and] preparation of a Pretrial Motion To Suppress" for a total fee of $1,500. Pursuant to the Singleton contract, ALS was to prepare an "Answer to Motion for Full Custody" and a "Motion for Continuance" for a fee of $3,500. These tasks constitute the practice of law and Respondent Davie sued his "clients" for performing them even though Davie was not working under the supervision of an attorney retained by Brown or Singleton.

The Panel further found that Respondents on numerous occasions failed or refused to cooperate in the Relator's investigation and litigation of these matters. In addition to the documents prepared and filed on behalf of Brown and Singleton, Respondents deny that either has received proper service of process in this UPL case. Further, Respondents are responsible for filing unfounded and frivolous pleadings. For example, in an effort to delay the hearing in this UPL case, without giving Relator or the Panel prior notice, Respondents filed, pro se, in the U.S. District Court a "Motion to Dismiss, Right to Jury Trial and a Declaratory Judgment" action against the Supreme Court of Ohio, Board on The Unauthorized Practice of Law, Panel Chair

Curtis J. Sybert, Relator, Relator's counsel and many other individuals with specific knowledge of this case. U.S. District Court Judge Polster in his December 3, 2010, decision dismissed the action and stated in his order that an appeal from that decision could not be taken in good faith. Respondents nevertheless appealed the decision with complete disregard of Judge Polster's order, all with a mind toward delaying this proceeding and challenging the Court's authority to regulate the unauthorized practice of law in Ohio.

Throughout the discovery phase of this matter and up to and including the December 15, 2010, hearing, Relator made several attempts to secure additional documentation and testimony from Respondents and witnesses favorable to them. Despite subpoenas being issued and properly served, Respondent's wife Erica Davie and his father-in-law Bishop David Owens failed to appear for their depositions. Erica Davie also failed to appear for the hearing itself. Respondent Davie twice failed to appear for his deposition even after it was specifically agreed to and noticed by counsel. Because Respondents basically refused to cooperate in the discovery phase of Relator's investigation, it is not known how many other UPL violations they might have committed.

The Panel found that a further aggravating factor was that Respondents collected a partial fee for each case in which the Panel found the unauthorized practice of law. Furthermore, Respondents then sued and successfully obtained judgments against both Brown and Singleton as a result of their nonpayment of the fees Respondents charged for their legal research, document-drafting and consulting services. Respondents attempted to collect the Singleton judgment despite this pending UPL case by garnishing Singleton's accounts. It is not known for certain whether Respondent Davie continues to attempt to collect the judgments against Brown and Singleton, although at present he certainly could execute on these judgments if he so

chooses. In any event, Respondents' judgments taken for alleged fees owed against Brown and Singleton have most likely affected their credit ratings, causing additional and ongoing harm to these individuals.

The Panel found that Respondent Davie took advantage of the untimely death of Attorney Sebraien M. Haygood and fabricated testimony in an attempt to establish that Mr. Haygood was supervising him in the Brown and Singleton matters. The Panel was presented with no credible evidence that Attorney Haygood supervised Davie in either of those matters. Indeed, Respondents failed to produce a single document with Attorney Haygood's name on it or any documentation which might suggest that Attorney Haygood even had knowledge of the Brown or Singleton matters before his death.

The Panel found that Respondent Davie never admitted that the activities and services he provided in the Brown and Singleton matters constituted the unauthorized practice of law and continues to challenge the Court's authority to regulate his conduct absent the enactment of specific statutory legislation. Respondents have not agreed to be enjoined from further unauthorized practice of law and before the hearing of this matter refused to discuss any agreed resolution or stipulations.

The Panel noted that Respondent Davie testified that he has attempted to find employment as a paralegal under a lawyer's supervision, but due to his felony conviction record he has been unable to do so, and as a result is nearly indigent. In further consideration of the appropriate sanction in this case, the Panel further noted that Davie does not have regular employment, lives with family members, and has at least two children to support.

V. PANEL RECOMMENDATION

1. The Panel recommended that the Supreme Court of Ohio issue an order finding that Respondents engaged in the unauthorized practice of law in the Brown and Singleton matters.

2. The Panel recommended that the Court impose a civil penalty against Respondents in the amount of $2,000 for each of the two violations, for a total penalty of $4,000.

3. The Panel further recommended that the Court issue an order:

   a. Enjoining Respondents from engaging in any future unauthorized practice of law;

   b. Requiring Respondents to notify the Cleveland Municipal Court in writing within thirty days and in appropriate legal form that the judgments obtained in the Brown and Singleton matters have been satisfied, and fining Respondents $100.00 per day for their failure to indicate satisfaction of these judgments within thirty days;

   c. Requiring Respondents to repay Brown and Singleton all sums obtained in connection with these matters and to provide to Relator written proof of payment (based upon Respondents' invoices contained in Relator's Exhibit G, Tiona Brown paid Respondents $100 and Katina or Anthony Singleton paid $500); and

   d. Requiring Respondents to work as a paralegal or legal assistant only under the direction and supervision of an attorney authorized to practice law in the appropriate jurisdiction and properly identify himself as a paralegal or legal assistant in communications and correspondence.

4. The Panel unanimously agreed to dismiss the third count of the Complaint pursuant to Gov. Bar R. VII(7)(C).

5. The Panel recommended that the Court issue an order requiring Respondents to pay the costs and expenses incurred by the Board and Relator in this matter.

VI. BOARD RECOMMENDATION

The Board formally considered this matter on June 27, 2011, and adopted the Panel's findings of fact and conclusions of law. However, the Board determined that because the identified aggravating factors substantially outweighed any mitigating factors, imposition of the maximum civil penalty of $10,000 per offense was justified. Accordingly, the Board recommends the Court issue an order:

1. a. Finding that Respondents engaged in the unauthorized practice of law in the Brown and Singleton matters;

   b. Enjoining Respondents from engaging in any future unauthorized practice of law;

   c. Requiring Respondents to notify the Cleveland Municipal Court in writing within thirty days and in appropriate legal form that the judgments obtained in the Brown and Singleton matters have been satisfied, and fining Respondents $100.00 per day for their failure to indicate satisfaction of these judgments within thirty days;

   d. Requiring Respondents to repay Brown and Singleton all sums obtained in connection with these matters and to provide to Relator written proof of payment (based upon Respondents' invoices contained in Relator's Exhibit G, Tiona Brown paid Respondents $100 and Katina or Anthony Singleton paid $500);

   e. Requiring Respondents to work as a paralegal or legal assistant only under the direction and supervision of an attorney authorized to practice law in the appropriate jurisdiction and properly identify himself as a paralegal or legal assistant in communications and correspondence;

f. Imposing a civil penalty against Respondents, jointly and severally, in the amount of $10,000 for each of the two violations of unauthorized practice of law for a total of $20,000; and

g. Requiring Respondents to pay the costs and expenses incurred by the Board and Relator in this matter.

VII. STATEMENT OF COSTS

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

FOR THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

Kenneth A. Kraus

Kenneth A. Kraus, Chair

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

Exhibit A

STATEMENT OF COSTS

Cleveland Metropolitan Bar Association v. Davie and Alpha Legal Services

Case No. UPL 09-07

Reporting and Transcript Services	1156.00
Deposition Costs	1410.88
Document Services	372.81
Subpoena Services	289.50
Panel Travel Expenses	332.01
TOTAL	**$ 3,561.20**

Note: In accordance with Gov.Bar R. VII(19)(F), there will also be publication costs incurred once the Supreme Court enters its order in this case.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail this **4th** day of October 2011 upon the following: Michael D. Davie, 11811 Shaker Blvd., Suite 314, Cleveland, Ohio 44120; Alpha Legal Services, Inc., c/o Michael D. Davie, 11811 Shaker Blvd., Suite 314, Cleveland, Ohio 44120; Donald R. Murphy, 12800 Shaker Blvd., Suite 208, Cleveland, Ohio 44120; Heather M. Zirke, Cleveland Metropolitan Bar Association, 1301 E. Ninth St., Second Level, Cleveland, Ohio 44114; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio 43204; Cleveland Metropolitan Bar Association, 1301 E. Ninth St., Second Level, Cleveland, Ohio 44114.

Minerva B. Elizaga

Minerva B. Elizaga, Secretary
Board on the Unauthorized Practice of Law

Ohio Constitution

Article IV. Judicial

Current through 2010

§ 2. Organization and jurisdiction of Supreme Court

(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.

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Ohio Statutes

Title 47. OCCUPATIONS - PROFESSIONS

Chapter 4705. ATTORNEYS

Includes legislation filed in the Secretary of State's office through 9/26/2011, with the exception of HB 218 and HB 224

§ 4705.01. Practice of law - prohibited acts

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.

History. Effective Date: 09-30-1997; 08-17-2006

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Ohio Statutes

Title 47. OCCUPATIONS - PROFESSIONS

Chapter 4705. ATTORNEYS

Includes legislation filed in the Secretary of State's office through 9/26/2011, with the exception of HB 218 and HB 224

§ 4705.07. Unauthorized practice

(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.

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(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.

History. Effective Date: 09-30-1997; 09-15-2004

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Ohio Statutes

Title 51. PUBLIC WELFARE

Chapter 5149. ADULT PAROLE AUTHORITY

Includes legislation filed in the Secretary of State's office through 9/26/2011, with the exception of HB 218 and HB 224

§ 5149.101. Full board hearings

(A)(1) A board hearing officer, a board member, or the office of victims' services may petition the board for a full board hearing that relates to the proposed parole or re-parole of a prisoner. At a meeting of the board at which a majority of board members are present, the majority of those present shall determine whether a full board hearing shall be held.

(2) A victim of a violation of section **2903.01** or **2903.02** of the Revised Code, the victim's representative, or any person described in division (B)(5) of this section may request the board hold a full board hearing that relates to the proposed parole or re-parole of the person that committed the violation. If a victim, victim's representative, or other person requests a full board hearing pursuant to this division, the board shall hold a full board hearing.

(B) At a full board hearing that relates to the proposed parole or re-parole of a prisoner and that has been petitioned for or requested in accordance with division (A) of this section, the parole board shall permit the following persons to appear and to give testimony or to submit written statements:

(1) The prosecuting attorney of the county in which the original indictment against the prisoner was found and members of any law enforcement agency that assisted in the prosecution of the original offense;

(2) The judge of the court of common pleas who imposed the original sentence of incarceration upon the prisoner, or the judge's successor;

(3) The victim of the original offense for which the prisoner is serving the sentence or the victim's representative designated pursuant to section **2930.02** of the Revised Code:

(4) The victim of any behavior that resulted in parole being revoked;

(5) With respect to a full board hearing held pursuant to division (A)(2) of this section, all of the following:

(a) The spouse of the victim of the original offense;

(b) The parent or parents of the victim of the original offense;

(c) The sibling of the victim of the original offense;

(d) The child or children of the victim of the original offense.

(6) Counsel or some other person designated by the prisoner as a representative, as described in division (C) of this section.

(C) Except as otherwise provided in this division, a full board hearing of the parole board is not subject to section **121.22** of the Revised Code. The persons who may attend a full board hearing are the persons described in divisions (B)(1) to (6) of this section, and representatives of the press, radio and television stations, and broadcasting networks who are members of a generally recognized professional media organization.

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At the request of a person described in division (B)(3) of this section, representatives of the news media described in this division shall be excluded from the hearing while that person is giving testimony at the hearing. The prisoner being considered for parole has no right to be present at the hearing, but may be represented by counsel or some other person designated by the prisoner.

If there is an objection at a full board hearing to a recommendation for the parole of a prisoner, the board may approve or disapprove the recommendation or defer its decision until a subsequent full board hearing. The board may permit interested persons other than those listed in this division and division (B) of this section to attend full board hearings pursuant to rules adopted by the adult parole authority.

(D) The adult parole authority shall adopt rules for the implementation of this section. The rules shall specify reasonable restrictions on the number of media representatives that may attend a hearing, based on considerations of space, and other procedures designed to accomplish an effective, orderly process for full board hearings.

History. Effective Date: 07-01-1996; 04-29-2005

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STATE OF OHIO

DEPARTMENT OF REHABILITATION AND CORRECTION

SUBJECT: **Full Board Hearing**	PAGE 1 OF 7
	Number: 105-PBD-06
RULE/CODE REFERENCE: ORC 5149.10, 101; ORC 2967.02, 03, 04, 12	SUPERSEDES: 105-PBD-06 dated 07/17/10
RELATED ACA STANDARDS: 2-1092-1; 2-1093; 2-1094	EFFECTIVE DATE: July 8, 2011
	APPROVED:

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code §5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to standardize a procedure for conducting Full Board Hearings that provides for participation by other segments of the criminal justice system and the public and to promote a better understanding of the hearing process.

III. APPLICABILITY

This policy applies to all participants and attendants of Full Board Hearings and to the inmates under Department of Rehabilitation and Correction supervision who are incarcerated serving indefinite sentences for offenses committed before July 1, 1996 or to those inmates receiving life sentences with the possibility of parole for offenses committed on or after July 1, 1996.

IV. DEFINITIONS

News Media - Any agency that gathers and reports for a general circulation newspaper, news magazine, national or international news service, or radio or television news program holding a Federal Communications Commission License.

Statement - Written, video, audio, or verbal information provided to the Parole Board at a Full Board Hearing.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to fulfill its duties relating to Full Board Hearings in a manner that is expeditious and fair to all parties involved and in a manner that conforms to the requirements of Ohio Revised Code §5149.10 and §5149.101.

VI. PROCEDURE

A. Mandatory Full Board Hearings

1. The Parole Board shall hold a Full Board Hearing regarding the proposed parole or re-parole of any inmate serving a sentence for a violation of section 2903.01 or 2903.02 of the Ohio Revised Code (aggravated murder and murder) when it receives a written petition requesting a Full Board Hearing from any of the following parties related to the offense:

   a. The victim's representative;
   b. The spouse of the victim;
   c. The parent or parents of the victim;
   d. The sibling of the victim;
   e. The child or children of the victim.

B. Petition Process

1. Whenever parole or re-parole is proposed for an inmate serving a sentence imposed for an offense other than 2903.01 and 2903.02, any Parole Board member, any hearing officer, or the Office of Victim Services (OVS), may petition the Parole Board for a Full Board Hearing. The petition process shall also be utilized when a request for a Full Board Hearing is made regarding the proposed parole or re-parole of any inmate serving a sentence for a violation of section 2903.01 and 2903.02 by a party other than those indicated in section VI. A.1.

2. Petitions shall be submitted to the Parole Board Chair or his/her designee as soon as possible after OVS has received a written request from the victim or other interested party, but in all cases, before the inmate has been released. OVS should not make any preliminary determination regarding the merit of a petition. The determination whether a petition has merit will be the sole responsibility of the Parole Board members.

3. Petitions must be submitted on the form entitled Ohio Parole Board Petition for Full Board Hearing (DRC3233).

4. If multiple petitions for a Full Board Hearing are received for a particular case, then the Parole Board Chair or his/her designee shall incorporate them into one hearing petition.

5. The petition shall be submitted and considered by the Parole Board members. The petition may be submitted through electronic means or in person by a representative of OVS when a majority of the Board members are present. The petition will be decided by majority vote.

6. In considering a petition for a Full Board Hearing, the Parole Board may vote to either grant the petition or deny the petition. Generally, the Parole Board will grant a petition if the information presented is relevant to the issue of whether the inmate is fit to be at liberty without being a threat to society, and whether paroling the inmate would further the interests of justice and be consistent with the welfare and security of society.

7. The decision of the Board to grant or deny a Full Board Hearing petition is final and not subject to appeal and will be provided to the petitioner in writing.

8. If the Parole Board decision is to grant a Full Board Hearing, then a final decision regarding the proposed parole will not be made until the Full Board Hearing is conducted.

9. If the Parole Board decision is to deny a Full Board Hearing, then a parole on or after date will be issued.

10. If a petition is received after a parole on or after date has been issued, a stop letter shall be sent to the record office of the institution where the inmate is incarcerated to stop the inmate's release so that the petition can be heard by the Parole Board.

C. Hearing Notification

1. Whenever a Full Board Hearing is to be held, the hearing shall be scheduled by the Parole Board and notice shall be provided in compliance with and to those parties designated in Ohio Revised Code sections 2930.16, 2967.12 and 5149.101.

2. The notification shall include the date, time, and place of the Full Board Hearing. The notification shall also indicate that the proposed action to be considered at the Full Board Hearing is a release.

3. Included in the notice to any potential attendees at the hearing will be information regarding timeframes for submitting documents, the dress code, and age restrictions.

4. Notification shall also be provided to the Office of Victim Services, the Office of Communications, and the inmate and the inmate's representative. The inmate shall be notified by a Parole Board staff member or by designated institutional staff in person and in writing.

D. Pre-Hearing Preparation

1. All relevant information including, but not limited to, information described in Administrative Rule 5120:1-1-07, Procedures for Release on Parole and Shock Parole; Factors that Shall be Considered in a Release Hearing, shall be reviewed by the Parole Board members prior to the hearing. Any attendant who wishes to submit documents for the Parole Board to consider shall submit the documents at least one week prior to the scheduled hearing. Any documents submitted less than one week prior to the hearing, including documents submitted at the hearing, may not be considered by the Parole Board unless the party submitting the documents outside of the timeframe can show good cause to the Parole Board Chair for the late submission. Any documents submitted will be provided to the opposing party, unless it is a confidential statement as indicated in Section E (3).

2. The names of all attendees for both the inmate and the victim shall be submitted to the Parole Board Chair or his/her designee no later than five (5) business days prior to the

scheduled hearing date. The Office of Victim Services shall be responsible for submitting the names of the attendees appearing on behalf of the victim. This submission shall also include the designation of which attendees will be presenting at the hearing. Thereafter, changes to attendees and those presenting will only be permitted for very extenuating circumstances and only by approval of the Parole Board Chair.

E. Attendance

1. The following persons shall be permitted to appear at a Full Board Hearing and give oral and/or written statements:

   a. The prosecuting attorney of the county of indictment;
   b. Any law enforcement agency(s) that assisted in the prosecution of the original offense;
   c. The sentencing judge or the judge's successor;
   d. The victim of the original offense for which the inmate is serving the sentence or the victim's representative designated pursuant to ORC section 2930.02;
   e. The victim of any behavior that resulted in parole being revoked; and
   f. With respect to a Full Board Hearing held pursuant to section VI.A.1, the spouse, parent or parents, sibling, child or children of the victim of the original offense.
   g. An inmate representative (family member, personal friend, employer, clergy, or attorney).

2. Other interested persons may attend and present oral and/or written statements, or observe, if space is available and if permitted by the Parole Board Chair/designee. However, unless the attendee is the victim of an offense for which the inmate is serving a sentence or the victim of any behavior that resulted in parole revocation, no person shall be permitted to attend or observe the hearing who is less than 16 years of age.

3. If any of the above persons choose not to attend, a written statement in lieu of an appearance will be accepted by the Parole Board. The person can designate that the statement will be read during the hearing or can request that the statement remain confidential and considered by the Parole Board in executive session.

4. The inmate's representative and the prosecuting attorney and/or victim advocate appearing for or with the victim shall provide the Parole Board with a written summary of the arguments presented at the hearing for or against release.

5. All efforts will be made to schedule Full Board Hearings on days when all Parole Board members can be in attendance. If not otherwise off work on a day designated for Full Board Hearings, all Parole Board members shall be assigned to participate in Full Board Hearings and shall not be designated any other assignment during scheduled Full Board Hearing days.

F. Media

Members of the news media who are an accredited media organization may attend a Full Board Hearing. All media organizations must notify the Office of Communications a minimum of two

business days prior to the hearing. News media attendees will be required to comply with Department Policy 01-COM-09, Media Policy. The media must be escorted at all times by a designated staff person. Live broadcasts of the hearing by television, radio, or other telecommunication technology are prohibited. Recordings of the proceedings are allowed. Interviews of the victims, victim survivors, law enforcement, attorneys, or inmate family members are permitted after the hearing is adjourned.

G. Inmate Attendance and Representation

1. The inmate being considered for parole has no right to be present at the hearing but may be represented by counsel or some other person designated by the inmate. Any additional supporters or speakers on behalf of the inmate may be approved at the discretion of the Parole Board Chair/designee.

2. Inmate representatives must not be under the jurisdiction of the Department of Rehabilitation and Correction or any other State, Federal or County jurisdiction for having committed a felony. Inmate representatives, for the purpose of attending Full Board Hearings, shall be limited to family members, personal friends as designated on the institution mail and visiting list, employers, clergy, or attorneys. Special interest groups, reform groups or other interested persons will not be permitted to serve as an inmate representative.

H Hearing Decorum

All participants and observers must be seated in the hearing room prior to the beginning of the hearing. Persons arriving after the hearing has begun may be excluded from the hearing. Any person whose behavior or decorum causes any disruption in the hearing will be asked to leave the hearing room.

I. Statements

1. The order in which statements are presented shall be determined by the Parole Board Chair or his/her designee, but most generally will be in the following order:

   a. The inmate representative(s);
   b. Law enforcement;
   c. The prosecutor of the county of indictment;
   d. The sentencing judge or the judge's successor;
   e. The victim of an offense for which the inmate is serving a sentence, or the victim's representative; and/or the victim or victim's representative of any behavior that resulted in parole being revoked;
   f. With respect to a Full Board Hearing held pursuant to section V1.A.1, the spouse, parent or parents, sibling, child or children of the victim of the original offense;
   g. Any other person as deemed appropriate and relevant by the Parole Board Chair/designee

2. All statements shall be given from the designated table or podium and shall be limited to a reasonable length of time as determined by the Parole Board Chair/designee. A

statement in the form of video, audio, or in written form presented at the time of the hearing may be excluded if it duplicates live testimony or is irrelevant.

J. Confidentiality

ORC §5149.101 provides that the victim or victim's representatives may request that news media be excluded while the victim or the victim's representative is giving testimony at the hearing. Such a request may be made in advance of the hearing. If the victim has not made a request in advance, the Office of Victim Services will ask the victim prior to the hearing if the news media should be excluded. If so excluded, following the victim's testimony, the media representatives will be re-admitted to the hearing room.

K. Vote

After hearing all of the statements of those present at the hearing, the Parole Board shall move into executive session for purposes of deliberation. By a majority vote, the Board shall take one of the following actions:

1. Issue a parole or delayed parole on or after date; or
2. Establish the next date for release consideration; or
3. Defer its decision to a subsequent Full Board Hearing. In the case of a tie vote, the Chief of the Adult Parole Authority/designee will cast the deciding vote.

L. Notification of the Decision

1. Prior to the announcement of the decision, designated Parole Board staff shall notify correctional institution staff who shall inform the inmate of the decision of the Full Board.

2. The decision of the Full Board and rationale will be announced at the conclusion of the executive session or, at the discretion of the Parole Board Chair or his/her designee, the decision and rationale may be announced at a subsequent meeting of the Full Board.

M. Hearing Digest

Full Board Hearings will not be transcribed. However, in order to document the information presented at the Full Board Hearing, the Parole Board shall produce and retain a written digest of the hearing which will summarize the information provided by each participant and will include the decision and rationale of the Parole Board. The digest shall be provided to participants and the inmate upon request. However, any oral statement of a victim or victim's representative shall be redacted prior to release of the digest. The digest shall be sent to the Bureau of Records Management to be scanned to the file. The digest shall, at a minimum, record:

1. The name of each witness;
2. Whether the witness appears as a proponent or an opponent of release;
3. The nature of the witness's testimony;
4. A description of each item of demonstrative evidence produced including, but not limited to, photos, video recordings, audio recordings and the like; and

5. A description of each written submission concerning the proposed release.

The digest shall be signed by the person who prepared it and by a member of the Parole Board.

Related Department Forms:

Ohio Parole Board Petition for Full Board Hearing DRC3233

Fund in the state treasury shall be credited to that fund.

(C) On or before the first day of November each year, the Administrative Director of the Supreme Court shall prepare and publish a report on the activity of the Attorney Services Fund.

(Adopted eff. 7-1-83; amended eff. 5-13-85, 7-1-86, 1-1-89, 7-1-91, 9-1-91, 1-1-92, 7-1-92, 7-1-93, 1-1-95, 7-1-95, 11-1-95, 7-1-97, 7-1-99, 11-28-00, 6-1-02, 8-19-02, 11-1-02, 7-1-03, 7-1-05, 9-1-05; 7-1-07; 9-1-07; 1-1-08; 5-1-09; 9-1-10)

Gov Bar R 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 thirteen commissioners appointed by the Court. Eleven commissioners shall be attorneys admitted to the practice of law in Ohio and two commissioners shall be persons 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) The Board shall each year elect an attorney commissioner as chair and vice-chair. A commissioner may be reelected as chair, but shall not serve as chair for more than two consecutive one-year terms. A commissioner may be reelected as vice-chair, but shall not serve as vice-chair for more than two consecutive one-year terms. The Administrative Director or his or her designee shall serve as the Secretary of the Board. The chair, vice-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 or vice-chair.

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

(E) For the initial appointment beginning January 1, 2011, one nonattorney shall be appointed for a term ending December 31, 2013. A commissioner appointed pursuant to this division shall be eligible for reappointment to one three-year term.

Section 2. Jurisdiction of Board

(A) The unauthorized practice of law is:

(1) The rendering of legal services for another by any person not admitted to practice in Ohio under Rule I of the Supreme Court Rules for the Government of the Bar unless the person is:

(a) Certified as a legal intern under Gov. Bar R. II and rendering legal services in compliance with that rule;

(b) Granted corporate status under Gov. Bar R. VI and rendering legal services in compliance with that rule;

(c) Certified to temporarily practice law in legal services, public defender, and law school programs under Gov. Bar R. IX and rendering legal services in compliance with that rule;

(d) Registered as a foreign legal consultant under Gov. Bar R. XI and rendering legal services in compliance with that rule;

(e) Granted permission to appear pro hac vice by a tribunal in a proceeding in accordance with Gov. Bar R. XII and rendering legal services in that proceeding;

(f) Rendering legal services in accordance with Rule 5.5 of the Ohio Rules of Professional Conduct (titled "Unauthorized practice of law; multijurisdictional practice of law").

(2) The rendering of legal services for another by any person:

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(a) Disbarred from the practice of law in Ohio under Gov. Bar R. V;

(b) Designated as resigned or resigned with disciplinary action pending under former Gov. Bar R. V (prior to September 1, 2007);

(c) Designated as retired or resigned with disciplinary action pending under Gov. Bar R. VI.

(3) The rendering of legal services for another by any person admitted to the practice of law in Ohio under Gov. Bar R. I while the person is:

(a) Suspended from the practice of law under Gov. Bar R. V;

(b) Registered as an inactive attorney under Gov. Bar R. VI;

(c) Summarily suspended from the practice of law under Gov. Bar R. VI for failure to register;

(d) Suspended from the practice of law under Gov. Bar R. X for failure to satisfy continuing legal education requirements;

(e) Registered as retired under former Gov. Bar R. VI (prior to September 1, 2007).

(4) Holding out to the public or otherwise representing oneself as authorized to practice law in Ohio by a person not authorized to practice law by the Supreme Court Rules for the Government of the Bar or Prof. Cond. R. 5.5.

For purposes of this section, "holding out" includes conduct prohibited by divisions (A)(1) and (2) and (B)(1) of section 4705.07 of the Revised Code.

(B) The Board shall receive evidence, preserve the record, make findings, and submit recommendations concerning complaints of unauthorized practice of law except for complaints against persons listed in division (A)(3) of this section, which shall be filed in accordance with the disciplinary procedure set forth in Gov. Bar R. V.

(C) The Board may issue informal, nonbinding advisory opinions to any regularly organized bar association in this state, Disciplinary Counsel, or the Attorney General in response to prospective or hypothetical questions of public or great general interest regarding the application of this rule 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 with information and details sufficient to enable adequate consideration and determination of eligibility under this rule.

The Secretary shall acknowledge the receipt of each request for an advisory opinion and forward copies of each request to the Board. 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, Disciplinary Counsel, or the Attorney General may direct a written inquiry regarding a procedural question to the Board chair or vice-chair. The inquiry shall be sent to the Secretary. The chair or vice-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, Disciplinary Counsel, or the Attorney General 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 except for complaints against persons listed in Section 2(A)(3) of this rule, which shall be filed in accordance with the disciplinary procedure set forth in Gov. Bar R. V. 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, Disciplinary Counsel, and the Attorney General may share information with each other regarding investigations and prosecutions. This information 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, Disciplinary Counsel, and the Attorney General.

(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 Attorney General may also file a complaint pursuant to this rule. The Board, Disciplinary Counsel, the president, secretary, or chair of the unauthorized practice of law committee of a bar association, and the Attorney General 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

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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, Disciplinary Counsel, and the Attorney General 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 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, Disciplinary Counsel, or the Attorney General, 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 with all the privileges and immunities of an officer of the Court. The Attorney General may serve as co-relator with any regularly organized bar association or Disciplinary Counsel.

(B) Upon the filing of a complaint with the Secretary, 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, Disciplinary Counsel, the unauthorized practice of law committee of any regularly organized bar association, or the Attorney General, 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.

(b) Simultaneously file a motion with the Supreme Court and the Board 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. If a memorandum in opposition to the motion is not filed, the stay of proceedings before the Supreme Court shall be automatically lifted and the Court shall rule on the motion pursuant to division (C) of this section.

(B) Upon the filing of a memorandum opposing the motion for an interim cease and desist order, the Board chair 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

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commissioner's report, the stay of Supreme Court proceedings shall be automatically lifted.

(C) Upon consideration of the commissioner's report required by division (B) of this section, 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 posing a substantial threat of serious harm to the public, 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 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 the Supreme 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 Supreme Court. The consent decree is the final judgment of the Supreme 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) The proposed resolution of a complaint filed pursuant to Section 5 of this rule, prior to adjudication by the Board, shall not be permitted without the prior review of the Board, the Supreme Court, or both. Parties contemplating the proposed resolution of a complaint shall file a motion to approve settlement agreement or motion to approve consent decree, whichever is applicable, with the Secretary. The motion shall be accompanied by:

(1) A proposed settlement agreement or a proposed consent decree that is signed by the respondent, respondent's counsel, if the respondent is represented by counsel, and the relator and contains a stipulation of facts and waiver of notice and hearing as stated in Section 7(H) of this rule;

(2) A memorandum in support of the proposed resolution that demonstrates the resolution complies with the factors set forth in division (C) of this section and makes a recommendation concerning civil penalties based upon the factors set forth in Section 8(B) of this rule and Regulation 400(F) of the Regulations Governing Procedure on Complaints and Hearings Before the Board on the Unauthorized Practice of Law;

(3) An itemized statement of the relator's costs or a statement that no costs have been incurred.

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 Supreme Court based on the following factors:

(1) The extent the proposed resolution:

(a) Protects the public from future harm and remedies any substantial injury;

(b) Resolves material allegations of the unauthorized practice of law;

(c) Contains an admission by the respondent to material allegations of the unauthorized practice of law as stated in the complaint and a statement that the admitted conduct constitutes the unauthorized practice of law;

(d) Involves public policy issues or encroaches upon the jurisdiction of the Supreme Court to regulate the practice of law;

(e) Contains an agreement by the respondent to cease and desist the alleged activities;

(f) Furthers the stated purposes of this rule;

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(g) Designates whether civil penalties are to be imposed in accordance with Section 8 of this rule;

(h) Assigns the party responsible for costs, if any.

(2) The extent the motion to approve settlement agreement or consent decree and any accompanying documents comply with the requirements of division (B) of this section;

(3) 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 or vice-chair dismissing the complaint. Upon a majority vote to accept a consent decree, the Board shall prepare and file a final report with the Supreme 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 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 Supreme 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 both the Supreme 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 this rule if a proposed resolution is rejected by either the Board or the Supreme 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 Supreme 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 Supreme Court shall be recorded for reference by the Board, bar association unauthorized practice of law committees, and Disciplinary Counsel.

(I) This section shall not apply to the resolution of matters considered by an unauthorized practice of law committee, Disciplinary Counsel, or the Attorney General before a complaint is filed pursuant to Section 5 of this rule.

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

The Secretary 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.

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. At least two members of the hearing panel shall be attorney commissioners. The Secretary shall designate one of the commissioners chair of the panel, except that a nonattorney 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.

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(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 Services 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 Board chair or vice-chair 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, 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.

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 Supreme 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 and the Attorney General 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 or Attorney General 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. 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 this rule. The Board, by regulation, shall establish criteria for determining

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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 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 lawsuit 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(3)(D).

(C) *Quarterly Reimbursement of Certain Indirect Expenses.* In addition to applying annually for reimbursement pursuant to division (B) of this section, a bar association may apply quarterly to the Board for reimbursement of the expenses set forth in divisions (B)(1) and (2) of this section that were necessarily and reasonably incurred during the preceding calendar quarter. Quarterly reimbursement shall be submitted in accordance with the following schedule:

Reimbursement for the months of:	Due by:
January, February, and March	May 1
April, May, and June	August 1
July, August, and September	November 1
October, November, and December	February 1 (with annual reimbursement request)

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 divisions (B)(1) and (2) of this section.

(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 Disciplinary Counsel, the unauthorized practice of law committee of any regularly organized bar association, respondent, relator, or the Attorney General, the Secretary, the Board chair or vice-chair, and the hearing panel chair 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, the Attorney General, a Board hearing panel, or the Board. All subpoenas shall be issued in the name and under the seal of the Supreme Court and shall be signed by the Secretary, the Board chair or vice-chair, or the hearing panel chair and served as provided by the Rules of Civil Procedure. Fees and costs of all subpoenas shall be provided from the Attorney Services 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 or to 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 Board chair or vice-chair, and the hearing panel chair 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 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 the Supreme 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 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.

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(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 Supreme 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 Services 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.

(Adopted eff. 7-1-83; 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, 11-1-07, 1-1-08, 9-1-08, 9-1-10, 1-1-11)

~~**Gov Bar R VIII Clients' security fund**~~

~~**Section 1. Establishment of fund**~~

~~(A) There shall be a Clients' Security Fund of Ohio~~ consisting of amounts transferred to the fund pursuant to this rule and any other funds received in pursuance of the fund's objectives. The purpose of the fund is to aid in ameliorating the losses caused to clients and others by defalcating members of the bar acting as attorney or fiduciary, and this rule shall be liberally construed to effectuate that purpose. No claimant or other person shall have any legal interest in the fund or right to receive any portion of the fund, except for discretionary disbursements directed by the Board of Commissioners of the Clients' Security Fund of Ohio, all payments from the fund being a matter of grace and not right.

(B) The Supreme Court shall provide appropriate and necessary funding for the support of the Clients' Security Fund from the Attorney Registration Fund. The Clerk of the Supreme Court of Ohio shall transfer funds to the Clients' Security Fund at the direction of the Court.

Section 2. Board of Commissioners of the Clients' Security Fund of Ohio; administrator; chair

(A) Creation; members There is hereby created a Board of Commissioners of the Clients' Security Fund of Ohio consisting of seven members appointed by the Supreme Court, at least one of whom shall be a person not admitted to the practice of law in Ohio or any other state. The Court shall designate one member as chair and one member as vice-chair, who shall hold such office for the length of their term. All terms shall be for a period of three years commencing on the first day of January. No member shall serve more than two consecutive three-year terms. The Board shall have its principal office in Columbus.

(B) Administrator There shall be an Administrator of the Board of Commissioners of the Clients' Security Fund. The Court shall appoint and fix the salary of the Administrator. If the Administrator is an attorney admitted to practice in Ohio, he or she shall not engage in the private practice of law while serving in that capacity. The Administrator shall be the secretary to the Board. The Administrator shall appoint, with the approval of the Court, staff as required to satisfactorily perform the duties imposed by this rule. The Court shall fix the compensation of personnel employed by the Administrator.

(C) Powers of the board The Board shall do all of the following:

(1) Investigate applications by claimants for disbursement from the fund;

(2) Conduct hearings relative to claims;

(3) Authorize and establish the amount of disbursements from the fund in accordance with this rule;

(4) Adopt rules of procedure and prescribe forms not inconsistent with this rule.

~~*(D) Powers of the chair*~~

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