

BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO

12-1698

In re: :  
Complaint against : Case No. 11-077  
Donald Harris : Findings of Fact,  
Respondent : Conclusions of Law, and  
Disciplinary Counsel : Recommendation of the  
Relator : Board of Commissioners on  
: Grievances and Discipline of  
: the Supreme Court of Ohio  
:

FILED  
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OVERVIEW

{¶1} This case presents a matter of first impression related to the application of Prof. Cond. R. 8.5(a) to a lawyer not admitted in Ohio but providing legal services within the state. As set forth below, the panel finds that Respondent engaged in multiple violations of the Ohio Rules of Professional Conduct and recommends that Respondent be indefinitely suspended from the practice of law.

{¶2} This matter was heard on April 23, 2012 in Columbus, Ohio before a panel consisting of Keith Sommer, Martha Butler Clark and McKenzie Davis, chair. None of the panel members resides in the district from which the complaint originated, nor did any of the panel members serve on the probable cause panel that certified the complaint.

{¶3} Geoffrey Oglesby represented Respondent. Phillip King represented Relator.

{¶4} On August 15, 2011, a four-count complaint was filed against Respondent, Donald Harris, a lawyer admitted to the practice of law in the District of Columbia (March 2004)

and the Federal Bars of both the Northern (May 2004) and Southern (August 2007) Districts of Ohio. Respondent lives in Sandusky, Ohio and focused his practice in bankruptcy.

{¶5} On October 31, 2011, Respondent filed a pro se answer to Relator's complaint.

{¶6} On March 5, 2012, Geoffrey Oglesby filed a notice of appearance on behalf of Respondent.

{¶7} On April 16, 2012, Relator filed a witness list and an exhibit list. In addition, Relator filed a motion in limine regarding specific testimony of Relator's witness, Darlene Martincak. Respondent did not file a response to Relator's motion in limine until the date of the hearing. Arguments were heard on the motion at the April 23, 2012 hearing. Relator's motion was denied, but Respondent's examination of Ms. Martincak would be limited to what occurred during Respondent's representation of her. Respondent's objection to the ruling was duly noted.

#### **Discussion of Enforcement of a Lawyer Not Admitted to Practice Law in Ohio**

{¶8} This is a matter of first impression for the Board. It is the first attempt of Relator to utilize its authority under Prof. Cond. R. 8.5.

{¶9} The Supreme Court of Ohio adopted Prof. Cond. R. 8.5 in 2007, to ensure adequate protection of Ohio citizens who are offered and provided legal services in Ohio. More specifically, Prof. Cond. R. 8.5 authorized the Court to enforce the Ohio Rules of Professional Conduct against an attorney that does not have an Ohio license but represented Ohio citizens in a court that is geographically located in Ohio. See Prof. Cond. R. 8.5, Comment 1.

{¶10} Prior to the Court's adoption of Prof. Cond. R. 8.5 in 2007, Ohio citizens who wished to file a grievance against a lawyer not licensed in Ohio were required to do so within the federal system or in the foreign licensing jurisdiction. Such a mechanism was too cumbersome and often too expensive to be an option for Ohio citizens. To address this concern in a more

broad sense, the American Bar Association designed Model Rule 8.5 to assist states in closing this gap in coverage to citizens against a lawyer not licensed in the state the legal assistance was provided. Prof. Cond. R. 8.5 is virtually identical to the ABA Model Rule 8.5.

{¶11} In the present matter, Respondent is licensed in the District of Columbia, but holds a license in the Federal Bars of the Northern District of Ohio and the Southern District of Ohio, and the 6<sup>th</sup> Circuit Court of Appeals. Therefore, Respondent is able to practice law in the District of Columbia and any of the federal courts that are geographically located in Ohio. As such, Respondent, who resides in Sandusky, represents Ohio citizens in Ohio's federal courts, mainly the Northern District of Ohio – U.S. Bankruptcy Court.

{¶12} Respondent contends Prof. Cond. R. 8.5 is unconstitutional and the other options currently in place are adequate. Respondent Closing Argument Brief 2-7. Citing various provisions of the Ohio Constitution, Respondent states “[T]he Ohio Constitution does not give the Ohio Supreme Court authority over the United States District Court or the Sixth Circuit Court of Appeals.” Respondent Closing Argument Brief 3. Additionally, Respondent indicates “[T]he rule violates the commerce clause and full faith and credit because it restricts members of the federal bar, who are licensed by the United States District Courts from participating in a forum with an understanding of rules that do not apply to them.” Respondent Closing Argument Brief 9.

{¶13} Respondent then suggests that Relator is selectively utilizing its perceived authority over only some lawyers not licensed in Ohio. Respondent Closing Argument Brief 4. Respondent contends Relator has an understanding to allow the U.S. Attorney General to handle some disciplinary matters of federal lawyers. Respondent believes this suggested type of selective enforcement is unconstitutional. *Id.*

{¶14} The panel is not persuaded by Respondent’s constitutional argument. Prof. Cond. R. 8.5 has been in place since 2007. In fact, the American Bar Association revised Model Rule 8.5 in 2002 to address this particular situation. Additionally, the District of Columbia adopted Prof. Cond. R. 8.5, which is substantially similar to the ABA Model Rule 8.5. Therefore, Respondent is aware of the potential to be subject to the rules of the state in which Respondent’s legal services are provided.

{¶15} Additionally, both federal district courts require attorneys to abide by the Ohio Rules of Professional Conduct. Ohio Northern District Local Rule 83.5(b); Ohio Southern District Local Rule IV.

{¶16} Prof. Cond. R. 8.5 specifically states, “a lawyer not admitted in Ohio is also subject to the disciplinary authority of Ohio if the lawyer provides or offers to provide any legal services in Ohio.” Relator has alleged that Respondent both provided and offered legal services in Ohio. Relator Closing Argument Brief 15-19. Whether Relator provided sufficient evidence that Respondent provided legal services in Ohio will be addressed later; but, Prof. Cond. R. 8.5(a) clearly provides Relator the opportunity to bring forth the allegations.

{¶17} Therefore, the panel finds Relator’s use of Prof. Cond. R. 8.5 in alleging violations against Respondent appropriate.

{¶18} Additionally, Prof. Cond. R. 8.5(a) specifically states, “a lawyer may be subject to the disciplinary authority of both Ohio and another jurisdiction for the same conduct.” Thus, a lawyer could be charged and required to defend oneself in two jurisdictions as a result of the same conduct. Furthermore, neither jurisdiction is bound by the ruling of the previous jurisdiction’s findings.

{¶19} Procedurally, it is also necessary to examine the choice of law requirements set forth in Prof. Cond. R. 8.5(b). Prof. Cond. R. 8.5(b)(1) requires the rules of the jurisdiction to be applied if the conduct involves a pending matter. Prof. Cond. R. 8.5(b)(2) requires for all other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred be applied, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction be applied. In the matter at hand, Respondent's representation of client's in the Northern District of Ohio U.S. Bankruptcy Court and counsel to other clients in Ohio, dictate that Ohio should be the controlling jurisdiction and consequently, Respondent is subject to the Ohio Rules of Professional Conduct.

#### **Misapplication of Prof. Cond. R. 5.5(a)**

{¶20} In Respondent's closing argument brief, Respondent asserts Relator charged Respondent with the wrong section of Prof. Cond. R. 5.5. Respondent is charged with a violation of Prof. Cond. R. 5.5(a), which Respondent contends, does not apply to him. Respondent believes Prof. Cond. R. 5.5(a) applies to attorneys licensed in Ohio who practice in another jurisdiction. On the other hand, Prof. Cond. R. 5.5(b) applies to situations like the matter at hand, where a lawyer not licensed in Ohio is supposedly practicing in Ohio. Respondent Closing Argument Brief 7-8. Therefore, the matter does not apply to Respondent's alleged misconduct.

{¶21} The panel also disagrees with Respondent's argument that Relator is charging the wrong section of Prof. Cond. R. 5.5. Prof. Cond. R. 5.5(a) states: "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." Relator is charging Respondent with practicing law in a jurisdiction

where he is not licensed to practice. The panel finds that is the intent of Prof. Cond. R. 5.5(a).  
Rule 5.5, Comment 1.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Count One—Skeel Matter**

{¶22} Respondent represented Aimee Skeel in two bankruptcies filed in the U.S. Bankruptcy Court for the Northern District of Ohio. The first was filed on February 17, 2009 (hereafter referred to as the 2009 bankruptcy). Relator Ex. 2. Among the items filed with the bankruptcy court was a “Disclosure of Compensation of Attorney for Debtor,” which certifies Respondent had received \$1,500 in fees from Skeel for the 2009 bankruptcy within a year of its filing. Relator Ex. 3. Skeel confirmed at the panel hearing that \$1,500 was the amount paid for the 2009 bankruptcy. Hearing Tr. 150. However, Skeel was not able to make payments according to the Chapter 13 plan and the 2009 bankruptcy was dismissed. Hearing Tr. 151.

{¶23} On May 10, 2010, Respondent filed the second bankruptcy on behalf of Skeel (hereafter referred to as the 2010 bankruptcy). Relator’s Ex. 5. However, Respondent did not file an “Official Form 1” document as required by the bankruptcy court in the initial filing. Relator’s Ex. 7. On May 11, 2010, the bankruptcy court issued a show cause order requesting why the matter should not be dismissed for failure to follow the procedural rules. Relator’s Ex. 7. Both the “Official Form 1” and the response to why the matter should not be dismissed for failure to follow the procedural rules were to be filed by May 14, 2010. Relator’s Ex. 7. Respondent filed the Official Form 1, but did not file the required response ordered by the bankruptcy court. Respondent’s answers to questioning on the required response were extremely evasive, never acknowledging the need for the additional document. Hearing Tr. 291-298.

{¶24} After the initial Chapter 13 filing, Respondent was to file the following six documents within 14 days: (1) schedule and a summary of schedule; (2) a statement of financial affairs; (3) a Chapter 13 plan; (4) an attorney fee disclosure statement; (5) copies of all payment advices or other evidence of payment received by debtor from any employer; and (6) a statement of current income and calculation of commitment period and disposable income. U.S. Bankruptcy Rules 1007 and 3015. Respondent did not file any of these documents within the 14-day time period. Relator's Ex. 8. On May 26, 2010, the bankruptcy court issued a show cause order why the 2010 bankruptcy should not be dismissed for again failing to follow the procedural rules. *Id.* The court ordered Respondent to file the six documents by June 9, 2010 and set a hearing for July 6, 2010 to determine whether the 2010 bankruptcy should be dismissed and whether appropriate sanction and/or disgorgement of attorney fees should not be imposed by the court. Relator's Ex. 9. On June 15, 2010, six days after the court requested the documents, Respondent filed five of the six documents (copies of all payment advices or other evidence of payment received by debtor from any employer were not filed). Hearing Tr. 301-302. Included in the documents that were filed was the "Disclosure of Compensation of Attorney for Debtor," wherein Respondent certifies he had received \$1,500 for the bankruptcy filing. Relator's Ex. 6.

{¶25} The bankruptcy court also requires petitioners to upload the information of the creditors listed on the Matrix filed with the original petition into the court's electronic case filing (ECF) system. Respondent did not upload the required information. On June 18, 2010, the bankruptcy court issued an order requesting Respondent upload the required information on the Matrix by June 21, 2010. Relator's Ex. 10. The bankruptcy court's order also stated it would dismiss the 2010 bankruptcy without a hearing if Respondent did not upload the required information by June 21, 2010. Relator's Ex. 10. Respondent did not upload the required

information set forth in the court's order and Skeel's 2010 bankruptcy was dismissed on June 23, 2010. Relator's Ex. 11. Skeel testified that she attempted to contact Respondent numerous times during the failures to file and upload the required and requested information, but Respondent did not call or text message her back. Hearing Tr. 155-156. Respondent, on the other hand, claims that Skeel never provided him with the necessary information to file the required documentation.

{¶26} On June 25, 2010, Skeel filed a grievance with Relator against Respondent. Relator's Ex. 13. In response to letters of inquiry by Relator, Respondent acknowledged Skeel's 2010 bankruptcy did not get completed. Relator's Ex. 15. Additionally, Respondent stated he received \$800 for attorney fees for the 2009 bankruptcy, seemingly contrary to the 2009 disclosure of compensation of attorney for debtor filed February 17, 2009. Relator's Ex. 15. Respondent also indicated he did not receive attorney fees from Skeel for the 2010 bankruptcy, seemingly contrary to the 2010 disclosure of compensation of attorney for debtor filed June 15, 2010. Relator's Ex. 15. In a follow-up letter, Respondent explained the 2010 disclosure of compensation of attorney for debtor represented the \$1,500 previously paid in 2009, also contrary to the earlier letter sent to Relator. Relator's Ex. 16. Skeel testified that she paid \$1,500 twice to Respondent. Hearing Tr. 150-152. Respondent claims to have been paid \$1,500 once. Respondent eludes to the fact that an employee took the second \$1,500 and did not give it to him. Hearing Tr. 304-305.

{¶27} On June 18, 2010, Skeel sent a letter to the bankruptcy court judge complaining about Respondent's representation in this matter. Relator's Ex. 12. In the letter, Skeel outlined how Respondent had failed to keep her updated on the case and that she had provided him with all the necessary information. *Id.* Skeel indicated that she would not be able to attend the July 6,

2010 hearing on whether appropriate sanction and/or disgorgement of attorney fees should not be imposed by the court and to allow this letter to serve as her testimony. *Id.*

{¶28} The July 6, 2010, hearing on sanction and disgorgement was heard without Skeel. The bankruptcy judge declined to order sanction or disgorge any attorney fees. Respondent's Ex. 1; Document 27.

{¶29} Respondent is charged with the following rule violations in connection with the conduct set forth in Count One: Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.4(a)(4) [failure to comply as soon as practicable with reasonable requests for information from the client]; Prof. Cond. R. 1.16(e) [failure to promptly refund any unearned attorney's fee upon termination of representation]; Prof. Cond. R. 8.1(a) [a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law].

{¶30} Respondent suggests the entire count should be dismissed simply because the bankruptcy court held in the show cause hearing that Respondent should not be sanctioned or required to disgorge the attorney fees. Respondent Closing Argument Brief 13-20.

{¶31} The panel is not persuaded that the bankruptcy court's decision not to sanction Respondent nor disgorge fees should have any bearing on our conclusion.

{¶32} First, the panel believes Prof. Cond. R. 8.5(a) should be interpreted to mean that (1) a lawyer may be required to defend oneself in two jurisdictions as a result of the same conduct, and (2) neither jurisdiction is bound by the ruling of the previous jurisdiction's findings.

{¶33} Secondly, and more fundamentally, the show cause hearing referenced by Respondent bears little similarity to the disciplinary matter brought before the Board. Thus, to analogize them and suggest the matter has been fully examined is not appropriate.

{¶34} The panel finds clear and convincing evidence that Respondent violated all of the rules alleged by Relator.

{¶35} Respondent violated Prof. Cond. R. 1.3, by continuously failing to file the appropriated document required by the bankruptcy court and allowing the matter to be dismissed.

{¶36} Respondent violated Prof. Cond. R. 1.4(a)(4), by not adequately communicating with Skeel and if necessary obtaining the appropriate information to file the bankruptcy.

{¶37} Respondent violated Prof. Cond. R. 1.16(e), by not refunding any unearned fee Respondent and his office received from Skeel. Irrespective of whether Skeel gave the money to Respondent or his office, Respondent is responsible for the actions of his office. Such failure to take ownership of this issue constitutes a violation of Prof. Cond. R. 1.16(e).

{¶38} Respondent violated Prof. Cond. R. 8.1(a), by filing inaccurate materials with the bankruptcy court and with Relator. Respondent's failure to clear up the disputed amounts of legal fees paid to Respondent with the bankruptcy court, his client and Relator constitute a violation.

{¶39} Respondent violated Prof. Cond. R. 8.4(c), by failing to refund fees for work that was not completed.

{¶40} Respondent violated Prof. Cond. R. 8.4(d), by failing to complete the bankruptcy on behalf of Skeel and neglecting her inquiries.

{¶41} Respondent violated Prof. Cond. R. 8.4(h), by the totality of the circumstances.

## Count Two—Sharp Matter

{¶42} Ronald Sharp contacted Respondent in August 2009, requesting his assistance in modifying a mortgage. Relator's Ex. 18. Respondent had represented Sharp in a Chapter 7 and a Chapter 13 bankruptcy. Hearing Tr. 191. On August 17, 2009, Sharp entered into an agreement with Respondent to modify or renegotiate the mortgage Sharp held on his current residence. Relator's Ex. 18. Sharp had been represented by Loretta Riddle, who shares office space with Respondent, in a domestic matter. Riddle had not completed the domestic matter for Sharp and owed him \$500. Riddle met with Respondent and decided to provide Sharp a credit for the representation in the loan modification. Hearing Tr. 200-204. Respondent did not inform Sharp that he was not licensed to practice law in Ohio. Hearing Tr. 204-205.

{¶43} It is unclear precisely what Respondent did on behalf of Sharp to modify the mortgage. Respondent claims to have contacted HSBC on behalf of Sharp numerous times. Respondent Closing Argument Brief 23. In fact, Respondent claims to have modified Sharp's mortgage with HSBC. Respondent suggests that the Sharp family was not satisfied with the new terms and turned down the modification he was able to obtain on their behalf. Respondent Closing Argument Brief 27. Sharp claims that he later learned HSBC does not do loan modifications, thus Respondent could not have modified the mortgage on his behalf. Hearing Tr. 219. Furthermore, Sharp claims that Respondent or representatives from his office created a fictitious individual for whom he was supposedly working with on the loan. The person Respondent told Sharp he was working for never actually existed at HSBC upon investigation by Sharp. Hearing Tr. 196. However, all parties agree that they spoke with Scott Ciupak, legal counsel for HSBC, on a conference call about renegotiating the mortgage. Hearing Tr. 196-198.

{¶44} There was much discussion about the difference between a loan modification, rate modification, loan renegotiation, and reaffirmation agreement. However, the panel does not believe they are relevant to the issue at hand. The panel was able to decipher a couple of key issues from the complicated and conflicting testimony of both Sharp family members and Respondent. Respondent entered into a separate agreement with Sharp, outside of the two bankruptcy matters, to assist him in a separate legal matter. Respondent did attempt to change the terms of Sharp's mortgage. Sharp was not able to pay whatever amount Respondent was able to negotiate for the mortgage with HSBC. Hearing Tr. 230-233. No documents were presented, by either party, demonstrating the amount Respondent was able to negotiate.

{¶45} Count Two charges Respondent with the following rule violations in connection with his representation of Sharp: Prof. Cond. R. 5.5(a) [a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction]; Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

{¶46} The panel does not find sufficient evidence that Respondent violated Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(h). Although the testimony was confusing and often conflicting, the evidence is not clear enough to conclude Respondent acted with dishonesty, fraud, deceit, or misrepresentation. Nor is the evidence clear enough to conclude that Respondent engaged in conduct adversely reflecting on his fitness to practice law.

{¶47} Additionally, the panel does not find sufficient evidence that Respondent violated Prof. Cond. R. 5.5(a). Prof. Cond. R. 5.5(a) states: "a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another is doing so." Respondent is not licensed to practice law in the state of Ohio. To violate the rule, Respondent must have "practiced law." Respondent never disputed that he practiced

law, and the panel concludes Respondent did practice by entering into an agreement with Sharp and attempting to modify the mortgage with HSBC.

{¶48} Respondent argues there is no violation of Prof. Cond. R. 5.5 because he met the criteria set forth in Prof. Cond. R. 5.5(c) and (d). Specifically, Prof. Cond. R. 5.5(c)(4) permits “a lawyer who is admitted in another United States jurisdiction to provide legal services on a temporary basis in this jurisdiction if the lawyer engages in negotiations, investigations, or other nonlitigation activities that arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.”

{¶49} Although there was a separate agreement put in place with Sharp for the loan modification, the panel believes such a legal act is reasonably related to the bankruptcy, which he is authorized to complete through his federal bar admission. The panel acknowledges the potential creation of a slippery slope as to what can be considered reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice. However, we were hard pressed to find a nonlitigation activity that is more closely related to bankruptcy than the potential of the modification of the individual’s home mortgage. Therefore, we conclude insufficient evidence exists to find Respondent violated the alleged rule violations set forth in Count Two and dismiss the entire count.

### **Count Three—Martincak/Roussos Matter**

{¶50} In late 2006, Darlene Martincak verbally entered into an agreement to transfer five properties owned under her company, Mr. Max Properties, to Alexander Roussos. Hearing Tr. 87. Prior to the agreement, Martincak’s brother, who did much of the maintenance on the properties, had a brain aneurysm and would not be able to continue the maintenance. Hearing Tr. 87. The properties became overwhelming and Martincak wanted to sell the properties. *Id.*

{¶51} In 2010, Martincak engaged Respondent to file her bankruptcy. Prior to the filing of the bankruptcy, Respondent met with Martincak and Roussos to discuss the completion of the property transfers. Hearing Tr. 348. Respondent agreed to assist in the transfers. Respondent would create an LLC on behalf of Roussos and handle all of the document transfers from Mr. Max to the newly created LLC. Roussos paid \$1,500 and Martincak paid \$250 for the LLC formation and property transfers. Respondent did not inform Martincak or Roussos that he was not licensed to practice law in Ohio. Hearing Tr. 355-357.

{¶52} Respondent hired Marian Mills, an independent contractor with the National Association of Bankruptcy Petition Preparers to assist in the representation of both Roussos and Martincak. Hearing Tr. 347. Mills is not an attorney, but the membership director for the association. On September 17, 2010, Mills prepared the documentation for the property transfers from Mr. Max to Roussos Contracting, LLC, which had yet to be created, on behalf of Respondent. Hearing Tr. 349. Respondent reviewed the documentation. Respondent had Loretta Riddle, an Ohio licensed attorney with whom he shares office space, briefly review the documentation. Hearing Tr. 351-352. Shortly thereafter, both Martincak and Roussos signed the contracts.

{¶53} On October 5, 2010, Respondent met with Martincak to discuss the formation of the LLC for Roussos. Hearing Tr. 348-349. Respondent drafted the appropriate documentation for an LLC formation. Again, Respondent had attorney Riddle briefly review the LLC documentation. Hearing Tr. 351-352. Respondent gave the documentation to Martincak to obtain the necessary signatures from Roussos. Martincak met with Roussos and obtained the necessary signatures. Martincak returned the LLC formation documentation to Respondent. Respondent again had attorney Riddle briefly review in order to finalize the LLC documentation.

Attorney Riddle received a small amount of compensation, but did not actively participate, nor share any responsibility in the representation of Martincak or Roussos. Hearing Tr. 352-355; 379-380.

{¶54} Respondent contends the formation of the LLC for Roussos was on behalf of Martincak and the property transfers were part of the bankruptcy. Respondent Closing Argument Brief 28. Therefore, according to Respondent, the exceptions set forth in Prof. Cond. R. 5.5(c) and (d) allow Respondent's conduct relating to the formation of the LLC and property transfers. Respondent Closing Argument Brief 28. The panel was not persuaded by Respondent's argument in this count.

{¶55} Count Three charges with respondent with the following rule violations: Prof. Cond. R. 1.6(a) [revealing information relating to the representation of a client, unless the client gives informed consent]; Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

{¶56} First, the panel finds clear and convincing evidence Respondent violated Prof. Cond. R. 1.6(a) by permitting Attorney Loretta Riddle to review the materials at different intervals in the representation. Neither Martincak nor Roussos gave consent to Respondent to allow her to review the materials. Hearing Tr. 355. Attorney Riddle is not a member of Respondent's firm, nor was she compensated for her services; therefore, she does not meet the authorized disclosure provision of Prof. Cond. R. 1.6(a), Comment [5]. The fact that Marian Mills participated in the representation of Martinack and Roussos does not absolve Respondent of his duty to protect client confidences. Respondent hired Mills to assist him in the representation. Both Martincak and Roussos gave their implied consent by meeting with her and openly discussing the matter with her. Such discussion and or consent was not offered or given by Martincak and Rousos as it relates to Riddle's involvement.

{¶57} Second, the panel finds clear and convincing evidence Respondent violated Prof. Cond. R. 5.5(a) by practicing law in Ohio without a license.

{¶58} In order to find a violation of Prof. Cond. R. 5.5(a), the panel must conclude Respondent “practiced law.” Again, while Respondent does not dispute he practiced law, the panel concluded that Respondent’s entering into a contract with Roussos and Martincak for a total \$1,750 to form an LLC and transfer the properties into the newly formed LLC constitutes the practice of law.

{¶59} Respondent claims the situation in this count is the same as in the previous count. Respondent again suggests his conduct is protected by the exceptions in Prof. Cond. R. 5.5(c) and (d). The panel disagrees.

{¶60} In this count, Respondent formed the LLC on behalf of Roussos, not Martincak. Although Martincak stood to benefit from the formation of the LLC, the legal work was completed for Roussos. Roussos would be the real party in interest in the malpractice claim, not Martincak.

{¶61} Furthermore, the oral agreement for the transfers of property occurred three years prior to Martincak’s bankruptcy. Hearing Tr. 87. Martincak indicated she wanted to get rid of the property because her brother would not be available to assist her in the maintenance. Therefore, it would be impossible for the property transfers to be reasonably related the bankruptcy.

{¶62} The representation of one client cannot be reasonably related to the representation of another client and meet the spirit of the exceptions in Prof. Cond. R. 5.5(c) and (d). The panel cannot find the conduct meets any of the exceptions set forth in Prof. Cond. R. 5.5(c) or (d).

Therefore, the panel finds sufficient evidence for a violation of Prof. Cond. R. 5.5(a) by practicing law in Ohio without an Ohio law license.

{¶63} The panel also finds Respondent violated both Prof. Cond. R. 8.4(c) and (h) by representing both the transferor and transferee in the real estate transaction between Martincak and Roussos and intentionally attempting to practice law in Ohio without an Ohio license.

#### **Count Four—Information about Legal Services Violations**

{¶64} Count 4 charges Respondent with the following rule violations: Prof. Cond. R. 7.1(a) [making or using a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services; Prof. Cond. R. 7.5(a) [using letterhead that is misleading as to the identity of the lawyers practicing under the firm name]; Prof. Cond. R. 7.5(d) [implying that a lawyer practices with other lawyers in a firm when this is false]; Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

{¶65} Respondent formed the Donald Harris Law Firm, Attorneys at Law in 2004. Hearing Tr. 263. He has employed a number of different individuals at different times since 2004. Hearing Tr. 403-405. This count deals with the relationship between Respondent and Loretta Riddle. It has been suggested that law firms in small towns benefit from the appearance that they are larger than they actually are. Before the panel can determine whether rule violations occurred, we must first determine whether a law firm existed between Respondent and Riddle.

{¶66} Respondent also maintained a website from 2004 to the date of the hearing. Hearing Tr. 405. A print-out of the website on July 19, 2011 stated "Members of the Ohio Bar, Michigan Bar, Tennessee Bar, American Bar Association, Northern District of Ohio Federal Bar, American Trial Lawyers Association, National Association of Consumer Bankruptcy Attorneys,

and The Washington D.C. Bar.” Relator’s Ex. 36. Another portion of the same website page stated, “The lawyers in the Donald Harris Law Firm are licensed in Ohio, Michigan, Tennessee and the District of Columbia.” *Id.* The website page does not list the other lawyers in the firm. *Id.* A print-out of the website on April 5, 2012, indicated that the first quote listed above was changed to read, “Lawyers in the firm are members of the Ohio Bar, Michigan Bar, Tennessee Bar, American Bar Association, Northern District of Ohio Federal Bar, American Trial Lawyers Association, National Association of Consumer Bankruptcy Attorneys and The Washington DC Bar.” *Id.*

{¶67} Since 2009, Respondent has listed Riddle on his letterhead and considered her the other lawyer in the law firm and therefore able to utilize the terms “Attorneys at Law” in the name of his firm. Hearing Tr. 385. However, Respondent testified that, for tax purposes, he lists himself as a sole practitioner. Hearing Tr. 264. Respondent also testified that he and Riddle do not have a written agreement confirming their business relationship. Hearing Tr. 282.

{¶68} Riddle testified that she stopped receiving a wage from the Donald Harris Law Firm in mid-2008. Hearing Tr. 372. Riddle testified that she has not received a W-2 from Harris since 2007. Hearing Tr. 378. Riddle testified that she does not share her legal fees with the Donald Harris Law Firm. Hearing Tr. 373. Riddle testified that she maintains her own fee agreements. Hearing Tr. 388. Riddle testified that she uses her own letterhead, Loretta Riddle, Attorney at Law, for her cases. Hearing Tr. 393. Riddle testified that she maintains her own professional liability insurance. Hearing Tr. 388. Riddle testified that she has her own books for gross receipts and payments of bills and expenses and her own business account for deposits and expenses. Hearing Tr. 394. Riddle testified that she shares office space and split some office

expenses. Hearing Tr. 389. Finally, Riddle testified that she considers herself a member of the Donald Harris Law Firm. Hearing Tr. 385.

{¶69} The definition of a law firm in Prof. Cond. R. 1.0(c) reads:

“Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a private or public legal aid or public defender organization, a legal services organization, or legal department of a corporation or other organization.

{¶70} The rule was designed to prevent conflicts of interest and protect the public from firms representing both sides.

{¶71} Respondent suggests the inclusions of the terms “or other organization” in Prof. Cond. R. 1.0 allows for the creation of a firm, if, in the minds of those that want the firm, believe there is a firm. Additionally, Respondent points to the Indiana Supreme Court’s ruling in *In the Matter of James R. Recker*, (2009) 902 N.E.2d 225, for further justification. In *Recker*, the Indiana Supreme Court looked to the comment section of the Indiana Rules of Professional Conduct Rule 1.0. Specifically, the Court states that:

Whether two or more lawyers constitute a firm\* \* \* can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the rule.

{¶72} Respondent contends a law firm existed based on two factors: (1) the belief by both Respondent and Riddle a law firm existed; and (2) that Respondent and Riddle somehow represented themselves to the Sandusky community that they are part of a law firm.

{¶73} The ABA Model Rules of Professional Conduct Rule 1.0 comment section contains the provision cited by Respondent. It is likely to assume that Indiana adopted Rule 1.0 directly from the ABA Model Rule.

{¶74} The Ohio version of Prof. Cond. R. 1.0 comment section does not include the reference from the Indiana rule cited by Respondent. The comments to the Ohio rule provide no statement that would allow for courts to consider two practitioners that present themselves as a law firm to the public, to be considered a law firm for the purposes of the Rules of Professional Conduct. Therefore, it must be concluded that the Supreme Court of Ohio evaluated the particular provision in the ABA comment section and made a policy decision to not include the statement because the Court did not want to provide for such circumstances.

{¶75} The panel is not convinced a law firm organization existed between Respondent and Loretta Riddle based on the testimony of Loretta Riddle. The panel cannot conclude the inclusion of the terms “or other organizations” in Prof. Cond. R. 1.0 should be construed to permit what amounts to an office-sharing arrangement be considered a law firm.

{¶76} The panel is not bound by the ABA Model Rules or the Indiana Court’s decision because of the Supreme Court of Ohio’s intentional exclusion of the “holding themselves to the public” language. However, if the Ohio court were willing to extend this additional protection, the panel would still not be persuaded by Respondent’s reliance on the Indiana Court’s decision. Although both Donald Harris and Loretta Riddle testified they are a law firm by “presenting themselves to the public,” other facts suggest that is not the case. The mere fact that Riddle maintains her own letterhead implies they do not “present themselves to the public” as a law firm. Additionally, Riddle is not listed on The Donald Harris Law Firm website. Finally, Respondent cannot be a sole practitioner, for tax purposes, but be a law firm in other circumstances when it would be advantageous. These facts together, strongly suggest that Respondent and Riddle do not meet that criteria and are not part of the same law firm.

{¶77} Based on the testimony from Loretta Riddle and websites created by Respondent, the panel finds no law firm organization existed and there is clear and convincing evidence to conclude Respondent violated all of the alleged rule violations.

{¶78} Specifically, the panel finds Respondent violated Prof. Cond. R. 7.1 by falsely including Riddle's name on his letterhead, while she maintained her own letterhead for all the cases she handled. Additionally, Respondent violated Prof. Cond. R. 7.1 by falsely claiming the licensure of numerous bar memberships to his law firm, when he was the only member of the law firm and did not hold those licenses.

{¶79} The panel finds clear and convincing evidence to conclude Respondent violated Prof. Cond. R. 7.5(a) by including Riddle's name in his letterhead when she was not a member of the Donald Harris Law Firm.

{¶80} The panel finds clear and convincing evidence to conclude Respondent violated Prof. Cond. R. 7.5(d) by implying to the public he practices with Riddle in a firm when a law firm does not exist.

{¶81} Finally, the panel finds clear and convincing evidence to conclude Respondent violated Prof. Cond. R. 8.4(c) and (h) by his intentional efforts to misuse and confuse the public about his relationship with Riddle for his potential future economic benefit.

#### **AGGRAVATION, MITIGATION, AND SANCTION**

{¶82} Respondent did not provide the panel any specific mitigating factors that should be considered in recommending a less severe sanction. However, the panel finds that Respondent has no prior disciplinary record.

{¶83} The panel, based on Relator's submission, finds the following factors in recommending a more severe sanction:

- *A pattern of misconduct* – The record is clear that Respondent pushed the limits of his licensure to practice in other jurisdictions in numerous situations;
- *Selfish or dishonest motives* – Respondent pushed the limits of his licensure for his own pecuniary gain;
- *Lack of remorse* – Respondent’s conduct during the hearing clearly indicated he does not believe he did anything wrong;
- *Failure to acknowledge the wrongfulness of his actions* – As stated above, Respondent does not believe he did anything wrong;
- *Harm to clients* – There was harm to Skeel, and possibly others relating to the information for legal services violation; and
- *Failure to cooperate with disciplinary proceeding* – Respondent was needlessly difficult during the discovery stage of the proceeding as well as at the hearing.

{¶84} Relator recommends an indefinite suspension with the condition of restitution of \$750 to Aimee Skeel, \$500 to Ronald Sharp, and \$1,500 to Alexander Roussos. Respondent recommends a dismissal of all counts.

{¶85} The presumptive sanction for an attorney engaging in the unauthorized practice of law is disbarment. *Disciplinary Counsel v. Koury*, 77 Ohio St.3d 433, 1997-Ohio-91. The Court has, however, imposed indefinite suspension in a number of other unauthorized practice of law matters.

{¶86} The facts in the matter at hand are much different from the case law regarding unauthorized practice of law. Here, as earlier discussed, is a matter of first impression for the Board. Therefore, previous case law will not provide the panel with much guidance.

{¶87} In the previous cases, the Court’s rulings dealt with attorneys licensed in Ohio, but practicing law while under suspension or on inactive status in Ohio. Here, the panel is faced with an attorney, licensed in the District of Columbia and licensed in the Federal Districts of Ohio, but practicing in Ohio because of his federal bar privileges.

{¶88} The Supreme Court of Iowa was faced with a similar dilemma when addressing misconduct by an out-of-state lawyer who violated the Iowa Rules of Professional Conduct while practicing federal immigration law in Iowa. *Iowa Supreme Court Attorney Disciplinary Bd. v. Carpenter*, 781 N.W.2d 263 (2010). That court fashioned a sanction using its injunctive and equitable powers, finding that such a sanction was necessary for the protection of Iowa citizens, and referenced cases from other states in which a similar result was reached. *Id.* at 269-270.

{¶89} The panel concluded that Respondent knew or should have known his conduct was inappropriate in Counts One and Three. Respondent believed either he could get away with it or make the case, it was close enough to what his federal bar licensure would allow him to do. Count Four, on the other hand, is a clear attempt to manipulate the local community to believe that his firm was much larger than it actually was. The panel found Respondent's and Loretta Riddle's testimony relating to the existence of a law firm not credible.

{¶90} Each individual act of misconduct does not amount to what the panel would conclude as warranting significant time away from the practice of law. However, all the acts together, combined with Respondent's cavalier attitude towards the proceedings and clear attempt to broaden his potential client base by deceptive advertising practice necessitate a different conclusion.

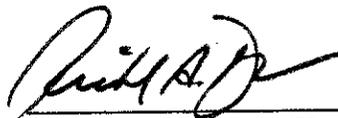
{¶91} Finally, the panel is concerned, given Respondent's belief that the Board and the Court have no authority over his practice, whether the ultimate sanction will impact the manner in which he represents citizens of the state of Ohio, presumably in federal bankruptcy court. Therefore, the panel must conclude the only appropriate sanction would be to indefinitely suspend Respondent from the practice of law. This sanction will, therefore, require Respondent to request reinstatement and demonstrate his awareness of the Court's authority over his ability

to represent citizens of Ohio in the state of Ohio. Respondent's reinstatement should further be conditioned on payment of restitution of \$750 to Aimee Skeel and \$1,500 to Alexander Roussos.

### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 5, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Donald Harris, be indefinitely suspended from the practice of law with reinstatement subject to the conditions set forth in ¶91 of this report. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**



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**RICHARD A. DOVE, Secretary**