

THE SUPREME COURT OF OHIO

LORAIN COUNTY BAR ASSOC. )

CASE NO. 2013-0072

Relator, )

RELATOR'S ANSWER BRIEF  
TO RESPONDENT'S OBJECTION  
TO BOARD FINDINGS WITH  
MEMORANDUM IN SUPPORT

vs. )

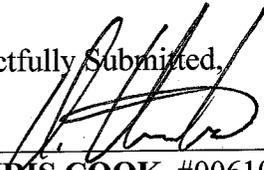
KING AYETTEY ZUBAIDAH, )  
fka GERALD McGEE, ET AL. )

Respondents. )

.....

Now comes Relator, Lorain County Bar Association, by and through the undersigned Bar Counsel, and respectfully submits its Answer Brief to Respondent's Objection to The Board's Findings with Memorandum in Support, attached and incorporated herein.

Respectfully Submitted,



D. CHRIS COOK, #0061073

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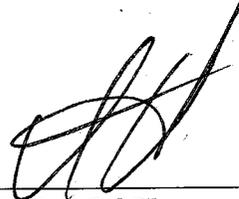
**PROOF OF SERVICE**

This is to certify that a copy of the foregoing Answer Brief to Respondent's  
Objection to Board Findings with Memorandum in Support was sent to the following by  
way of Regular U.S. Mail this 12<sup>th</sup> day of March, 2013:

King Ayettey Zubaidah  
1623 West 22<sup>nd</sup> Street  
Lorain, Ohio 44052  
Respondent

STAND, Inc.  
1623 West 22<sup>nd</sup> Street  
Lorain, Ohio 44052  
Respondent

Minerva Elizaga  
Board on Unauthorized Practice of Law  
The Supreme Court of Ohio  
65 S. Front Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215



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**D. CHRIS COOK**  
Bar Counsel - Attorney for Relator

THE SUPREME COURT OF OHIO

LORAIN COUNTY BAR ASSOC.

CASE NO. 2013-0072

Relator,

MEMORANDUM IN SUPPORT

vs.

KING AYETTEY ZUBAIDAH,  
fka GERALD McGEE, ET AL.

Respondents.

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**I. INTRODUCTION**

In the case at bar, The Board on the Unauthorized Practice of Law (“The Board”) concluded, based upon a preponderance of the evidence, that Respondents, King Ayettey Zubaidah and STAND Inc., engaged in the unauthorized practice of law. As a result, The Board recommended this that Court impose a civil penalty of \$20,000 both jointly and severally against Respondents, along with an Order prohibiting Respondents from engaging in the unauthorized practice of law in the future and for costs and expenses.

Respondents have timely filed Objections to The Board’s decision. Respondents challenge both the conclusion that they engaged in the unauthorized practice of law and the imposition of the civil penalties. In their Objections, Respondents argue that The Board’s decision was discriminatory and predicated on allegations rather than facts and evidence. Respondents further allege that The Board’s decision raises significant concerns as to King Zubaidah’s First Amendment Constitutional rights.

In turn, Relator submits that the facts and evidence support The Board’s decision as a matter of law. A review of the Respondents’ conduct, evidence adduced at The Panel hearing

(“The Panel”), and the findings of fact and conclusions of law all illustrate that the recommendations of The Panel and The Board’s adoption of same were proper.

Accordingly, Relator respectfully requests that this Court overrule Respondents’ Objections; accept the final report of The Board; issue an order finding that Respondents, King Ayetey Zubaidah, individually, and STAND, Inc., have engaged in the unauthorized practice of law; prohibit Respondents from engaging in the unauthorized practice of law in the future; impose the recommended civil penalty of \$20,000, jointly and severally, upon respondents; and order the reimbursement of costs and expenses incurred by The Board and Relator be paid by Respondents.

## **II. LAW & ARGUMENT**

### **A. Standard of Review**

This Court ordinarily accepts the conclusions of The Board and The Panel as to the propriety of an attorney’s conduct or appropriate sanction, and to that extent defers to their expertise. *Cleveland Metro Bar Assn v. Davie*, 133 Ohio St.3d 202 (2012).

Nevertheless, as it is the ultimate arbiter of misconduct and sanctions in disciplinary cases, this court is not bound by factual or legal conclusions drawn by either The Panel or The Board. *Id.*

These standards remain true in the context of cases involving the unauthorized practice of law. *Davie*, 133 Ohio St. 3d at 210.

**B. This Court Should Accept the Conclusions of The Panel and The Board Wherein they Determined that Respondents Engaged in the Unauthorized Practice of Law**

**1. Respondents Engaged in the Unauthorized Practice of Law**

Both The Panel and The Board had ample evidence before it to conclude that Respondents engaged in the unauthorized practice of law. The Panel heard testimony that King Zubaidah entered into STAND membership contracts with family members of Calhoun, White, and Harris; provided legal advice; submitted letters to judges requesting bond reductions on behalf of criminal defendants; drafted letters to judges and attorneys in which he purported to cite comparative cases; alleged violations of the defendants' constitutional rights; and cited outdated ethical considerations.

Of significant importance to The Panel and The Board were the representation agreements entered into between Respondents and the criminal defendants (or their families.)/These representation agreements *alone* support the conclusion that Respondents were engaged in a pattern of unauthorized practice of law. The agreements in essence state that Respondents would "assist" the defendants in their dealings with the criminal justice system, much like an attorney or advocate.

In their Objections, Respondents do not dispute entering into these representation agreements nor did they deny it at the hearing. Likewise, Respondents do not dispute submitting letters to judges and attorneys in which citations to caselaw and legal analysis were made in an effort to influence the outcome of a particular defendant's case. Rather,

Respondents submit that none of this activity amounts to legal advice so as to constitute the practice of law.

In support of their argument, Respondents rely heavily on the fact that none of the four criminal defendants have ever stated that Zubaidah acted as their lawyer or gave them legal advice.<sup>1</sup> In addition, Respondents claim that Zubaidah never “held himself out as being a lawyer.” Respondents base this assertion on the testimony of Attorney Nehr who stated that he never heard Zubaidah call himself a “lawyer.” (Transcript of Proceedings, Page 87, lines 4-13.)

Gov. Bar R. VII(2)(A)(4) defines the unauthorized practice of law as including “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.” The rule defines “holding out” as including conduct prohibited by R.C. 4705.07.

Pursuant to R.C. 4705.07(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, or; (2) *Represent that person orally or in writing, directly or indirectly, as being authorized to practice law.*” (Emphasis added.)

As indicated by The Board “It is well-settled that representing to the public that one is not a licensed attorney and is not providing legal advice, will not insulate a non-attorney from unauthorized practice of law if he is in substance giving legal advice and counsel.” *Cincinnati Bar Assn. v. Telford*, 85 Ohio St.3d 111 (1999).

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<sup>1</sup> None of the four criminal defendants testified at the hearing held before The Panel on May 15, 2012.

Zubaidah engaged in the unauthorized practice of law by not only holding himself out as an attorney through the representation agreements he entered into - which indicated that he would *assist* in his “clients” defense - but also in the substance of the legal advice and counsel he provided.

King Zubaidah sent letters to both attorneys and judges interpreting constitutional issues, ethics law, and comparative caselaw while seeking to influence the ultimate outcome of the individual defendant’s case. Examples of Zubaidah’s conduct are best illustrated by Judge Miraldi’s testimony.

Judge Miraldi testified that, in spite of his statement that he was not practicing law, Zubaidah’s use of comparative caselaw to make a legal argument was an attempt to persuade him. (Transcript of Hearing, Page 174, Lines 5-16.) Judge Miraldi further testified that King Zubaidah made legal arguments and advocated on behalf of Corey Bason. (*Id.* Page 179, Lines 11-22, Page 180, Lines 6-16.) Further, Judge Miraldi testified that a lay person such as King Zubaidah referencing the Code of Judicial Conduct demonstrated the practice of law by one who is not authorized to do so. (*Id.* Page 180, Line 25, Page 181, Line 1-14.)

It is in these actions involving legal citation, analysis, argument, and interpretation that Zubaidah crossed the line and ventured into the unauthorized practice of law. *Ohio State Bar Assn. v. Chiofalo*, 112 Ohio St 3d 113 (2006) (a nonlawyer engages in the unauthorized practice of law by arguing statutory provisions and caselaw, construing a legal text to advance the case, and interpreting the weight, significance, and credibility of evidence presented).

King Zubaidah cannot simply shield himself from sanctions for the unauthorized practice of law by proclaiming that he is not a lawyer and then in substance, practice law without a license. On one hand, King Zubaidah claims he is not a lawyer and is not offering legal advice. On the other hand, King Zubaidah (and STAND, Inc.) enter into representation agreements to *assist* defendants in criminal cases and then interjected themselves into the criminal judicial system by advocating on behalf of the defendants they “represented.”

**2. Respondents’ Right to Free Speech is not Implicated by Prohibiting the Unauthorized Practice of Law**

The Supreme Court of Ohio 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).

King Zubaidah asserts in his Objections that this case raises substantial concerns over his First Amendment rights under the Constitution. Zubaidah claims that his actions in drafting character letters and petitioning the courts were permissible exercises of his First Amendment rights to freedom of speech and freedom to petition the government.

As The Board indicated in its decision, Ohio has not fully explored the balance to be struck between an individual’s rights to free speech and the regulation of harm associated with the unauthorized practice of law. This court has at least implied, however, that the scale tips in favor of protecting the public from the unauthorized practice of law. *Cincinnati Bar Assn. v. Bailey*, 110 Ohio St.3d 223 (2006) (“As to the

First Amendment, the restrictions on respondent's conduct by prohibiting practicing law without a license do not implicate his right to free speech.")

In general, the ban on the unauthorized practice of law does not implicate the First Amendment because it is directed at conduct, not speech. See *Ohralik v. Ohio State Bar Assn*, 436 U.S. 447, 456 (1978), suggesting that the government's regulation of the practice of law is a regulation of conduct, not speech.

The fact that the ban on the conduct touches on the legal content of the advice offered by a non-attorney is of no constitutional significance since "it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *People v. Shell*, 148 P.3d 162 (Colo. 2006), citing *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949).

As in the case at bar, the United States Supreme Court has rejected an interpretation of speech without limitations and has held that, in certain instances, public interests override freedom of speech. For example, where the act of speech poses a threat of clear and present danger or is being uttered to incite violence, these "fighting words" are not protected free speech. Equally, obscenity and libelous or slanderous statements are not protected by the First Amendment.

Moreover, this court should be wary of the King's attempt to characterize his speech as mere social commentary. Respondents would have the court view King Zubaidah as a mere "courthouse watchdog" or "community activist" who at times simply wrote "character" references for long time friends in the community.

At The Board hearing and at the oral argument before this Court in the *Tucker* matter,<sup>2</sup> Respondents have tried to portray the King as a local “Al Sharpton” or “Jesse Jackson” to justify the King’s conduct. Such parallels are inapposite.

Al Sharpton and Reverend Jackson are known for making pointed, often candid observations about the criminal justice system in America, particularly as it impacts African Americans. While their observations and comments are often directed to a specific case (Trayvon Martin -in Florida- for example), they never actually advocate or “represent” the individuals they speak about.

On the contrary, King Zubaidah enters into contracts with folks, advocates on his “clients” behalves, petitions judges and attorneys about *specific* matters, and threatens disciplinary action when his objectives are not met.

In each of the four counts of the Relator’s Complaint, Respondents intervened into a specific criminal case and crossed the line between permissible social activism and the unauthorized practice of law. (See, *People v. Shell, supra* at 167, where “. . . her advocacy previously has led her to cross the line between permissible activism and the unauthorized practice of law.”)

King Zubaidah, rather than speaking for the general interests of the community or making broad observations about the criminal justice system, entered into representation agreements for criminal defendants to “assist” in their defenses and directly advocates on their behalf to the judges and attorneys handling the respective cases.

As such, in considering the totality of circumstances, The Board’s decision that

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<sup>2</sup> At the show-cause hearing before this Court on September 12, 2012 Respondents argued that King Zubaidah did nothing different than Al Sharpton or Reverend Jackson.

Respondents engaged in the unauthorized practice of law was based upon a preponderance of overwhelming evidence and supported under current law despite and notwithstanding Zubaidah's first amendment rights.

**C. This Court Should Accept The Board's Imposition of the Civil Penalty**

In adopting the civil penalty recommendation of The Panel, The Board determined that a civil penalty of \$5,000 on each count of the Complaint was warranted in this case. Respondents have objected to the imposition of this penalty.

Relator submits that The Board properly applied the factors to be considered when recommending a civil penalty.

**1. The Degree of Cooperation Provided by the Respondent in the Investigation**

As indicated by The Board, King Zubaidah engaged in a pattern whereby he failed to fully cooperate in the investigation process. First, King Zubaidah failed to appear at a properly noticed deposition. Second, after negotiations had been undertaken to obtain a consent decree, he signed the consent decree with the words "under duress." As a result, the consent decree was withdrawn.

Finally, and perhaps most importantly, King Zubaidah has never been willing to admit or acknowledge that the services he provides constitute the unauthorized practice of law and caused substantial harm to his "clients."

**2. The Number of Occasions that the Unauthorized Practice of Law was Committed**

Relator included four counts of unauthorized practice of law in its complaint

against Respondents. In three of those specific cases, King Zubaidah entered into representation agreements to “assist” in the defense of the criminal defendants.

Within the context of these cases, King Zubaidah provided legal advice; submitted letters to judges requesting bond reductions on behalf of the criminal defendants; drafted letters to judges and attorneys in which he purported to cite comparative cases; alleged violations of the defendants’ constitutional rights; and cited outdated ethical considerations.

The record further reflects that King Zubaidah was well known within the Lorain County courthouse and considered a “watchdog” of the criminal justice system, though it is obvious that he went well beyond the role of “watchdog” and entered the realm of advocate.

### **3. Flagrancy and Harm to Third Parties**

As indicated by The Board, King Zubaidah offered legal advice in connection with each count, causing irreparable harm to each defendant, yet has refused to acknowledge that it was, in fact, legal advice. As illustrated by his Objections, King Zubaidah continues to deny that he provided legal advice to any of the defendants in this case and instead, attempts to hide behind the protections of the First Amendment.

As evidenced by the testimony adduced before The Panel, the STAND members and criminal defendants rejected advice from their own licensed attorneys in favor of the advice of King Zubaidah. To cite an example, in the White case, Attorney Rich ultimately withdrew as counsel due to King Zubaidah’s interference in his attorney-client

relationship. (Transcript of Hearing at 105.) King Zubaidah also negatively impacted attorney-client relationship in the Calhoun case when he advised Attorney Nehr's client not to accept a plea. The client was ultimately sentenced to life in prison where Attorney Nehr had negotiated a favorable plea deal of four years. (*Id.* at 91.)

Pursuant to UPL Reg. 400, The Board may also consider "other relevant factors" in the recommendation of civil penalties, including the following:

**4. Respondents have previously been ordered to cease engaging in the unauthorized practice of law**

Respondents have been ordered by the Ohio Supreme Court to cease and desist from any activity which constitutes the unauthorized practice of law and in fact remain under a Cease and Desist Order issued by the Supreme Court of Ohio issued on April 29, 2011, in Case NO. 2011-0483.

**5. Respondents have been informed that the conduct at issue may constitute an act of unauthorized practice of law**

Respondents have long been given an opportunity to cease engaging in the unauthorized practice of law. Relator contacted Respondents as early as December 31, 2009 and informed them that their conduct may constitute an act of unauthorized practice of law. Thereafter, Relator and Respondents met at Relator's office to discuss Respondents' conduct and were offered a cease and desist consent agreement which was flatly rejected.

Respondents denied and continue to deny that any of their conduct constitutes the unauthorized practice of law.

**6. Respondents' conduct does not appear to be motivated by dishonesty or personal benefit**

The Board notes and Relator will concede as a mitigating factor that Respondents' conduct does not appear to be motivated by dishonesty or personal benefit. Relator submits, however, that the evidence and applicable law support the conclusion that Respondents' conduct cannot be characterized as mere social activism but has crossed over the line into the area of unauthorized practice of law.

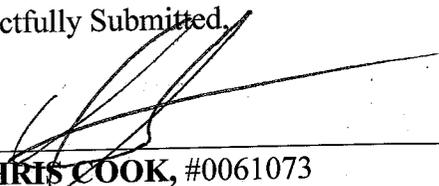
Moreover, Respondent's "clients" suffered tremendous harm by virtue of their long prison sentences when they rejected the advice of their "real" attorneys and instead, took the advice of King Zubaidah.

As such, Relator submits that The Board properly balanced the factors in considering the appropriate civil penalty and that this Court should accept the recommended civil penalty of \$5,000 for each count for a total of \$20,000 against Respondents, jointly and severally.

**III. CONCLUSION**

Based on the foregoing arguments and applicable law, Relator respectfully requests that the Supreme Court of Ohio accept The Board's recommendation *in toto* and issue an Order accordingly.

Respectfully Submitted,



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