

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

OHIO STATE BAR ASSOCIATION, :

Relator, :

v. :

09-0966

Case No. UPL 07-10

GARY ALLAN HEATH, :

Respondent. :

FINAL REPORT

FILED
MAY 28 2009
CLERK OF COURT
SUPREME COURT OF OHIO

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law on the Relator, Ohio State Bar Association's Complaint filed on November 16, 2007 and Amended Complaint on December 2, 2008. The Respondent, Gary Allan Heath was served with a copy of the Complaint and Notice and subsequently filed an Answer on December 11, 2007. An Amended Complaint was filed by the Realtor on December 2, 2008 and served on the Respondent on December 11, 2008. No Answer to the Amended Complaint was filed by the Respondent. The Amended Complaint in this matter alleged, *inter alia*, the Respondent prepared and signed numerous legal documents on behalf of another including pleadings for filing in a court of law. The matter was assigned to a panel consisting of Kevin L. Williams, Panel Chair, Judge Carrie E. Glaeden and Don Hunt.

On August 1, 2008, Relator filed a Motion for Summary Judgment. After reviewing the Motion, the Panel permitted the Relator to supplement or amend the Motion for Summary Judgment

with additional evidence, stipulations or affidavits per Civ. R. 56(E). The Relator filed its Second Motion for Summary Judgment on January 2, 2009. A timely response was not filed by the Respondent. The Panel unanimously sustained Relator's Second Motion for Summary Judgment and cancelled the hearing in this matter.

II. FINDINGS OF FACT

1. Realtor, Ohio State Bar Association, is duly authorized to investigate and prosecute activities which may constitute the practice of law within the State of Ohio.

2. Respondent Gary Allan Heath, is not and has never been an attorney admitted to practice as an in the State of Ohio. (Certificate of Attorney Services Division, Supreme Court of Ohio, Susan B. Christoff, February 29, 2008).

3. On November 16, 2006, the Relator, received two documents from Attorney Josiah L. Mason which were prepared and signed by Respondent. Amended Complaint Exs. A,B.

4. Attorney Mason represented Florence Burson in a dispute over rights to a gas well located on property owned by Daniel Miller. Burson died on April 1, 2007 at the age of 86. Deposition Mason, pg. 6, 7.

5. Respondent represented Daniel Miller in the gas well matter following an adjudication in Burson's favor concerning rights to the gas well. Respondent, on behalf of Miller, demanded money, threatened legal sanctions and further legal action against Burson.

6. Respondent prepared a document on behalf Miller titled "Private International

Administrative Notice:” and further titled “Notice of Tort Violations, Bad Faith, Harassment, Disturbing the Peace, Misapplication of Statutes, Bias, Prejudice, Trespass, Intimidation, Duress, Malice, Trespass Vi Et Armi, Conspiracy, Severe Mental Anguish, Infliction of Emotion Distress Notice to Cease and Desist-Demand to Be Left Alone” that served as a general complaint for damages allegedly resulting from Burson’s legal use of the gas well situated on Miller’s property. The Respondent signed the document in two places as “attorney-in-fact”. Amended Complaint Exhibit “A”.

7. Burson, upon receipt of the “Private International Administrative Notice”, sought legal assistance from attorney Mason based on the allegations and demands set forth in the document. Mason Deposition, p 8.

8. The “Private International Administrative Notice” included the notation that the Respondent was the “attorney-in-fact” for Miller.

9. Respondent prepared and signed as a “secured party” a document titled “Notice of Your Options to Settle and Close This Matter”. The document was sent to Burson and articulated legal claims, cited legal authorities and demanded payment from Burson in an effort to allow Miller to use the gas well he was court ordered to cease using. While not filed in a court of law, the document contained a certificate of service and was distributed to various governmental authorities in an attempt to intimidate Burson. Amended Comp. Ex. B. Mason Deposition, p. 9.

10. Both Burson and her attorney initially believed that Respondent was an attorney. Mason Deposition, p. 13.

11. On January 5, 2007, Respondent prepared, filed or caused to be filed a “Notice of

Bond” in Ashland County Municipal Court Case No. 06-CRB-01478, *State v. Daniel Miller*, signed by the Respondent as “attorney-in-fact”, and for the purpose of dismissing criminal charges against Miller. Accompanying the Notice was a prepared draft order for the court. Amended Comp. Ex. C.

12. The “Notice of Bond” indicated the Respondent was acting as the authorized representative of Miller.

13. On January 5, 2007, Respondent prepared, filed, or caused to be filed, a Motion to Dismiss in the Ashland County Municipal Court Case No. 06-CRB-01478, *State v. Daniel Miller*. The motion contained legal argument and the application of facts to law. Attached to the Motion was a prepared draft order for the court. Amended Comp. Ex.D.

14. On January 5, 2007, Respondent prepared, filed, or caused to be filed, a “Surety Bond” and “Administrative Notice” in Ashland County Municipal Court Case No. 06-CRB-01478, *State v. Daniel Miller*. The Surety Bond and Administrative Notice was signed by the Respondent as “attorney-in-fact” on behalf of Mr. Miller. Amended Comp. Ex. E.

15. On January 5, 2007, Respondent prepared, filed, or caused to be filed on behalf of Miller, an “Affidavit of Specific Negative Averment” in Ashland County Municipal Court Case No. 06-CRB-01478, *State v. Daniel Miller*. The document denied the existence of the United States of America and the State of Ohio as governmental entities and the authority of any court over Miller. Amended Comp. Ex. F.

16. On January 5, 2007, Respondent prepared, filed or caused to be filed on behalf of Miller, an “Affidavit of Denial of Corporate Existence, and Verified Facts for the Record” in the Municipal Court of Ashland County. The pleading was signed by the Respondent as “attorney-in-

fact”. Amended Comp. Ex.G.

17. On January 5, 2007, Respondent prepared, filed, or caused to be filed on behalf of Miller, a “Verified Notice and Demand for an Extension of Time” in the Municipal Court of Ashland County. The Respondent signed the document as “attorney-in-fact”. Amended Comp. Ex.H.

18. On January 5, 2007, Respondent prepared, filed, or caused to be filed on behalf of Miller, a “Notice to Recuse, With Affidavit of Bias and Prejudice/Notice of Objection to this Court’s Jurisdiction” in the Municipal Court of Ashland County. The document alleges misconduct by public officials, presents legal arguments relating to evidence, and demands the removal of the magistrate. The document was signed by the Respondent as “attorney-in-fact”. Amended Comp. Ex. I.

19. At all times relevant to these proceedings, Respondent has challenged the jurisdiction of the Board on the Unauthorized Practice of Law and the Supreme Court of Ohio.

20. The Respondent does not recognize the Supreme Court’s jurisdiction over the practice of law by declaring in his response to the Complaint “[t] is no such thing as a license to practice law” and that “[t]he practice of Law is AN OCCUPATION OF COMMON RIGHT(sic capitalization)!”.

III. 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 to 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, 501 N.E.2d 617; *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288.

2. The Supreme Court’s jurisdiction extends to regulating the unauthorized practice of law, to protect the public from persons “who have not been qualified to practice law and who are not amenable to the general discipline of the court.” *Union Sav. Assn. v. Home Owners Aid, Inc.* (1970), 23 Ohio St.2d 60, 64, 52 O.O.2d 329, 262 N.E.2d 558.

3. The unauthorized practice of law consists of rendering legal services for another by any person not admitted to practice law in the State of Ohio (Gov. Bar R. VII, §2(A)).

4. The practice of law is not limited to the handling of cases in court, but 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; *Land Title Abstract & Trust Co. v. Dworkin* (1934), 129 Ohio St. 23, 193 N.E. 650.

5. The unauthorized practice of law occurs when a layperson renders legal services for another, including the management of actions and proceedings on behalf of clients before courts of law. *Richland Cty Bar Ass’n v. Clapp* (1988), 84 Ohio St.3d 276, 278.

6. An attorney-in-fact is not permitted to prepare and pursue legal filings and proceedings on behalf of another. *Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 2000- Ohio-288; *Ohio State Bar Ass’n v. Jackim*, 121 Ohio St.3d 33, 2009-Ohio-309.

7. The Panel finds by a preponderance of the evidence presented that Respondent engaged in the unauthorized practice of law when he prepared, signed and filed various legal

pleadings in the Ashland Municipal Court in a criminal case against Daniel Miller.

8. The Panel additionally finds by a preponderance of the evidence presented that Respondent engaged in the unauthorized practice of law by sending demand letters or notices on behalf of another that threatened legal action against Burson and various governmental officials in order to reverse the result of a legal judgment rendered against Miller. Ex. A,B.

9. Each act found by the Panel to constitute the unauthorized practice of law is based upon evidence that contains sufficient information to demonstrate the specific activities upon which the conclusions are drawn in compliance with Gov. Bar R. VII, §(7)(H); and *Cleveland Bar Assn. v. Compmanagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108 at ¶24-6.

IV. PANEL RECOMMENDATIONS

1. The Panel recommends that the Supreme Court of Ohio issue an Order finding that the Respondent has engaged in the unauthorized practice of law.

2. The Panel further recommends that the Supreme Court of Ohio issue an Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.

3. The Panel has also considered the appropriateness of the imposition of civil penalties pursuant to Gov. Bar R. VII, §(8)(B) and UPL Reg. 400. The Panel has determined that civil penalties are appropriate in this case based on the following factors:

a). The Respondent repeatedly engaged in acts of representation that sought to intimidate adverse parties or delay the judicial process. Gov. Bar R. VII, §8(B)(2),(5).

b). The Respondent prepared legal instruments for another for filing in a court of law in flagrant and obvious disregard of the rules governing the practice of law. Gov. Bar R. VII, §8(B)(3), UPL Reg. 400(F)(3)(f).

c). The Respondents' actions required the prevailing party in a civil case to secure the services of legal counsel to defend herself from the accusations and legal threats the Respondent made on behalf of another. Gov. Bar R. VII, §(8)(B)(4).

d). The Respondent repeatedly challenged the jurisdiction of the Board and the Court in pleadings filed in this matter and did not fully cooperate in these proceedings. Gov. Bar R. VII, §(8)(B)(5).

Relator seeks the imposition of \$9,000.00 civil penalty. The Respondent did not reply to the Panel's order permitting a response to the Relator's request. Upon review of the factors outlined, the Panel recommends a civil penalty, in an amount that exceeds the recommendation of the Relator, of \$15,000 against the Respondent.

V. **BOARD RECOMMENDATIONS**

Pursuant to Gov. Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered this matter on May 6, 2009. The Board adopted the findings of fact and conclusions of law of the Panel, including the recommendation of a civil penalty of \$15,000 against the Respondent.

The Board recommends that the Supreme Court of Ohio issue an Order finding that the

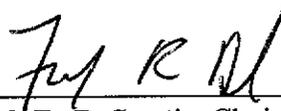
Respondent has engaged in the unauthorized practice of law.

The Board further recommends that the Supreme Court issue a further Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.

The Board further recommends that the Supreme Court of Ohio impose a total civil penalty of \$15,000; and that any costs of these proceedings be taxed to the Respondent in any Order entered, so that execution may issue.

VI. 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.



Frank R. DeSantis, Chair
Board on the Unauthorized Practice of Law

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

Exhibit "A"

STATEMENT OF COSTS

Ohio State Bar Association v. Gary Allan Heath

Case No. UPL 07-10

Reimbursement to Ohio State Bar Association	245.80
Total:	\$245.80

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served certified mail upon the following this 28th day of May, 2009. Tricia L. Sprankle, Esq., Kohler & Smith, Co., LPA, 7650 Rivers Edge Drive, Suite 101, Columbus OH 43235; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, P O Box 16562; Columbus, OH 43216-6562; Gary Allan Heath, 6478 Winchester Blvd., #389, Canal Winchester, OH 43110; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215; Ohio State Bar Association, P O Box 16562, Columbus, OH 43216-6562.


D. Allan Asbury, Secretary of the Board