

# THE SUPREME COURT *of* OHIO

2018 UPL SEMINAR

Presented by  
The Board on the Unauthorized Practice of Law



**MAUREEN O'CONNOR**

CHIEF JUSTICE

**TERRENCE O'DONNELL**

**SHARON L. KENNEDY**

**JUDITH L. FRENCH**

**PATRICK R. FISCHER**

**R. PATRICK DEWINE**

**MARY DEGENARO**

JUSTICES

**MICHAEL L. BUENGER**

ADMINISTRATIVE

DIRECTOR

# OFFICE OF ATTORNEY SERVICES

**GINA WHITE PALMER, ESQ.**  
DIRECTOR OF ATTORNEY SERVICES

## BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

**MINERVA ELIZAGA, ESQ.**  
SECRETARY TO THE BOARD

**RENISA A. DORNER, ESQ., CHAIR**  
TOLEDO

**RICHARD L. CREIGHTON, ESQ.**  
CINCINNATI

**SCOTT E. ELISAR, ESQ.**  
COLUMBUS

**KENT C. KIFFNER, ESQ.**  
NEW ALBANY

**JAMAR T. KING, ESQ.**  
DAYTON

**PAUL T. KIRNER, ESQ.**  
NORTH ROYALTON

**EDWARD T. MOHLER, ESQ., VICE CHAIR**  
MAUMEE

**JAN A. SAURMAN, ESQ.**  
BAY VILLAGE

**JAMES SIMON, ESQ.**  
AKRON

**LEO M. SPELLACY JR., ESQ.**  
CLEVELAND

**DAVID TOM, PH.D.**  
COLUMBUS

**DAVID TSCHANTZ, ESQ.**  
WOOSTER

**ALFRED P. VARGAS, M.D.**  
SANDUSKY

## TABLE OF CONTENTS

<b>LETTER FROM THE CHAIR</b>	<b>i</b>
<b><u>AGENDA AND FACULTY</u></b>	<b><u>1</u></b>
<b>I. UPL RULE AND REGULATIONS</b>	<b>3</b>
○ UPL FLOWCHART (ADJUDICATED CASES)	5
○ UPL FLOWCHART (PROPOSED RESOLUTION)	6
○ GOV. BAR R. VII	7
○ UPL REGULATIONS	25
<b>II. UPL INTAKE PROCESS AND SAMPLE LETTERS</b>	<b>37</b>
○ OFFICE OF DISCIPLINARY COUNSEL COMPLAINT FORM	39
○ CMBA UPL COMMITTEE COMPLAINT FORM	45
○ OSBA UPL COMMITTEE COMPLAINT FORM	49
○ CMBA UPL COMMITTEE BYLAWS	51
○ SAMPLE UPL INVESTIGATION LETTERS	55
○ <i>ODC v. HERNANDEZ</i> (COMPLAINT AND MOTION FOR DEFAULT)	61
<b>III. TUOHY REGULATIONS</b>	<b>83</b>
<b>IV. RECENT TRENDS IN THE LAW</b>	<b>97</b>
○ POWERPOINT	99
○ OUTLINE	113
<b>V. USING THE CONSUMER SALES PRACTICES ACT TO COMBAT UPL</b>	<b>129</b>
○ AG'S CONSUMER COMPLAINT FORM	131
○ OUTLINE	135



# The Supreme Court of Ohio

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE  
MAUREEN O'CONNOR

SECRETARY  
MINERVA B. ELIZAGA, ESQ.

JUSTICES  
TERRENCE O'DONNELL  
SHARON L. KENNEDY  
JUDITH L. FRENCH  
PATRICK F. FISCHER  
R. PATRICK DEWINE  
MARY DEGENARO

TELEPHONE 614.387.9318  
FACSIMILE 614.387.9529  
[www.supremecourt.ohio.gov](http://www.supremecourt.ohio.gov)

September 11, 2018

Dear Colleagues:

Welcome to the 2018 Seminar on the Unauthorized Practice of Law. On behalf of the Board, I encourage you to engage in today's sessions, ask questions, and share the lessons learned in your work with regard to UPL investigations, resolutions, and prosecutions.

First and foremost, I would like to acknowledge the Secretary of the UPL Board, Minerva Elizaga, who organized this seminar. The Board is truly blessed with her hard work and leadership. The Board has sponsored quality programs in the past and this year is no exception. Plus, it is free.

A special thanks to our distinguished faculty who have volunteered their time to share their knowledge and experience in this very unique practice area. We are privileged to have Ms. Tracy Morrison Dickens from the Attorney General's office here to explain how the AG's office uses the Consumers Sales Practice Act to combat UPL.

It has been an honor serving as the Board's chair for the past year and as a commissioner for the past six years following my appointment by Justice Lanzinger. As my final term with the Board is coming to an end, I want to take this opportunity to thank members of the UPL committees throughout the state who are charged with the important work of conducting investigations of alleged UPL and then pursuing actions before the UPL Board. It is essential that the practice of law be conducted by only those individuals authorized by the Supreme Court of Ohio. We have all witnessed the disastrous results when an untrained individual attempts to practice law: a house can be lost in foreclosure, a person can refuse a plea deal resulting in a worse outcome, or an elderly person can have their assets improperly handled. I am grateful for those who volunteer their time and effort to protect the public. As we continue serving the people of Ohio, may our service always be an example of competence and diligence, as it is indeed an honor and privilege to serve on this Board.

Thank you for your attendance and please feel free to provide your feedback.

Warm regards,

Renisa A. Dorner, Esq.  
Chair



# THE SUPREME COURT *of* OHIO



## 2018 Unauthorized Practice of Law SEMINAR

**Friday, September 14, 2018**

**11:15 a.m. - 3:45 p.m.**

**Thomas J. Moyer Ohio Judicial Center  
65 South Front Street, Columbus**

- There is NO fee for the seminar, but registration is required.
- Seating is limited.
- Lunch will be provided.
- This activity has been approved by the Supreme Court of Ohio Commission on Continuing Legal Education for 3.50 total CLE hours instruction.

This seminar is designed primarily for attorneys who practice before the Board on the Unauthorized Practice of Law, UPL committee members, bar counsel, the Office of Disciplinary Counsel, Ohio Attorney General's Office, and defense counsel.

### AGENDA

10:45 a.m.	Registration
11:15 a.m.	Welcome
11:30 a.m. -12:45 p.m.	UPL 101 – Investigations, Complaints, & Discovery
12:45 p.m. – 1:30 p.m.	Break: Boxed lunch provided
1:30 p.m. – 2:45 p.m.	UPL Case Update
2:45 p.m. – 3:30 p.m.	Using the Consumer Sales Practices Act (CSPA) to Combat UPL
3:30 p.m.-p.m. - 3:45 p.m.	UPL Summary

### REGISTRATION

To register, complete the online registration form available at: [sc.ohio.gov/Boards/UPL/seminar](http://sc.ohio.gov/Boards/UPL/seminar) and submit it by September 7, 2018.

You will receive e-mail confirmation of registration approval.

**REGISTRATION DEADLINE: Friday, September 7, 2018**

### QUESTIONS?

Contact Minerva Elizaga, Secretary to the Board on the Unauthorized Practice of Law, at [Minerva.Elizaga@sc.ohio.gov](mailto:Minerva.Elizaga@sc.ohio.gov) or by calling 614.387.9318.

*This seminar is sponsored by the Supreme Court of Ohio Board on the Unauthorized Practice of Law.*

## 2018 UPL SEMINAR FACULTY

**RENISA A. DORNER (Board Chair)**, Attorney, Spengler Nathanson, P.L.L., Toledo.

**JOHN A. HALLBAUER**, Of Counsel, Buckley King, LPA, Cleveland.

**DAVID KUTIK**, Partner, Jones Day, Cleveland.

**TRACY MORRISON DICKENS**, Senior Assistant Attorney General, Consumer Protection Section, Office of Ohio Attorney General Mike DeWine, Columbus.

**KAREN OSMOND**, Assistant Disciplinary Counsel, Office of Disciplinary Counsel, Columbus.

**PAT SKILLITER**, Senior Attorney, MacMurray & Shuster, LLP, New Albany.

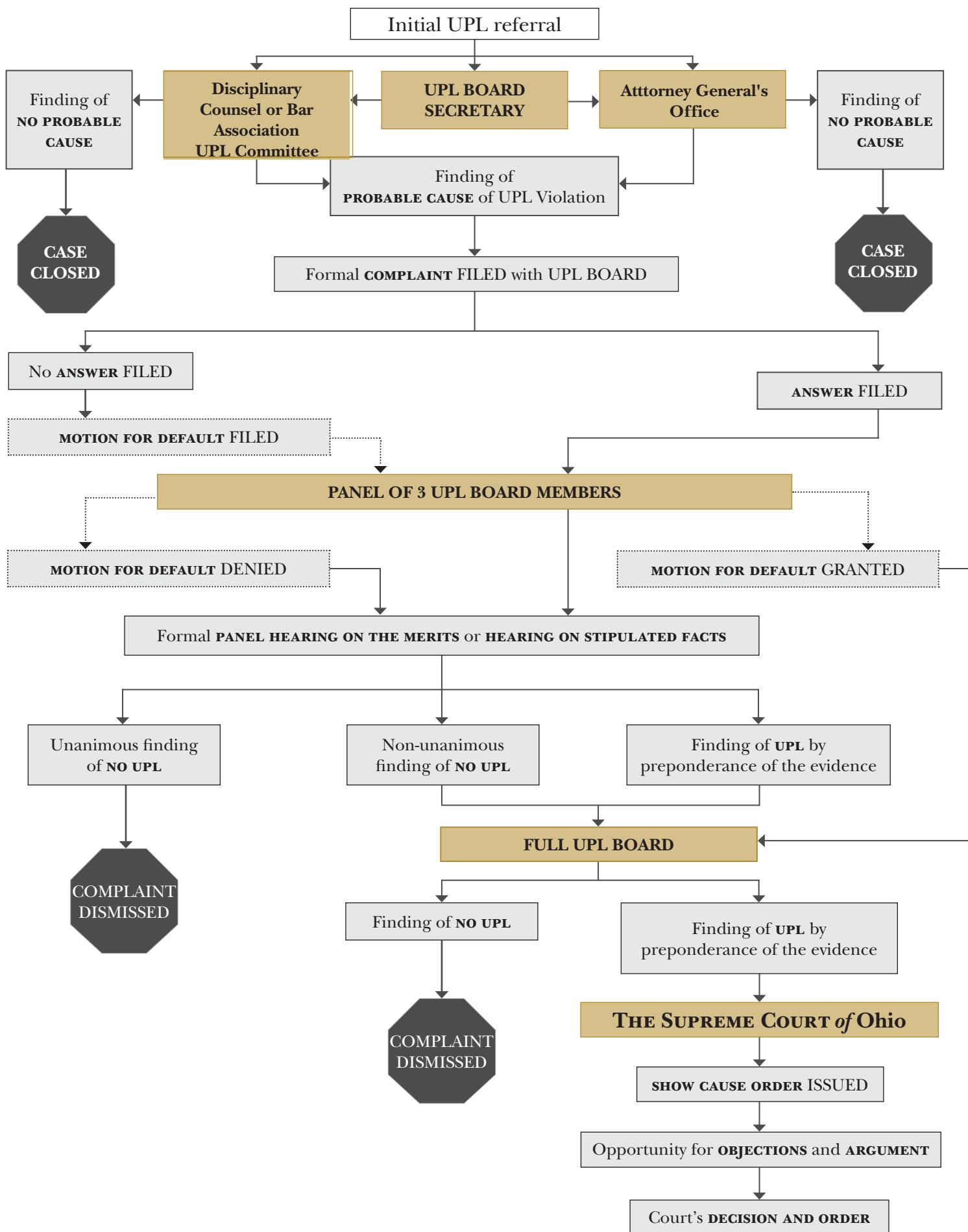
Registration Deadline: Friday, September 7, 2018



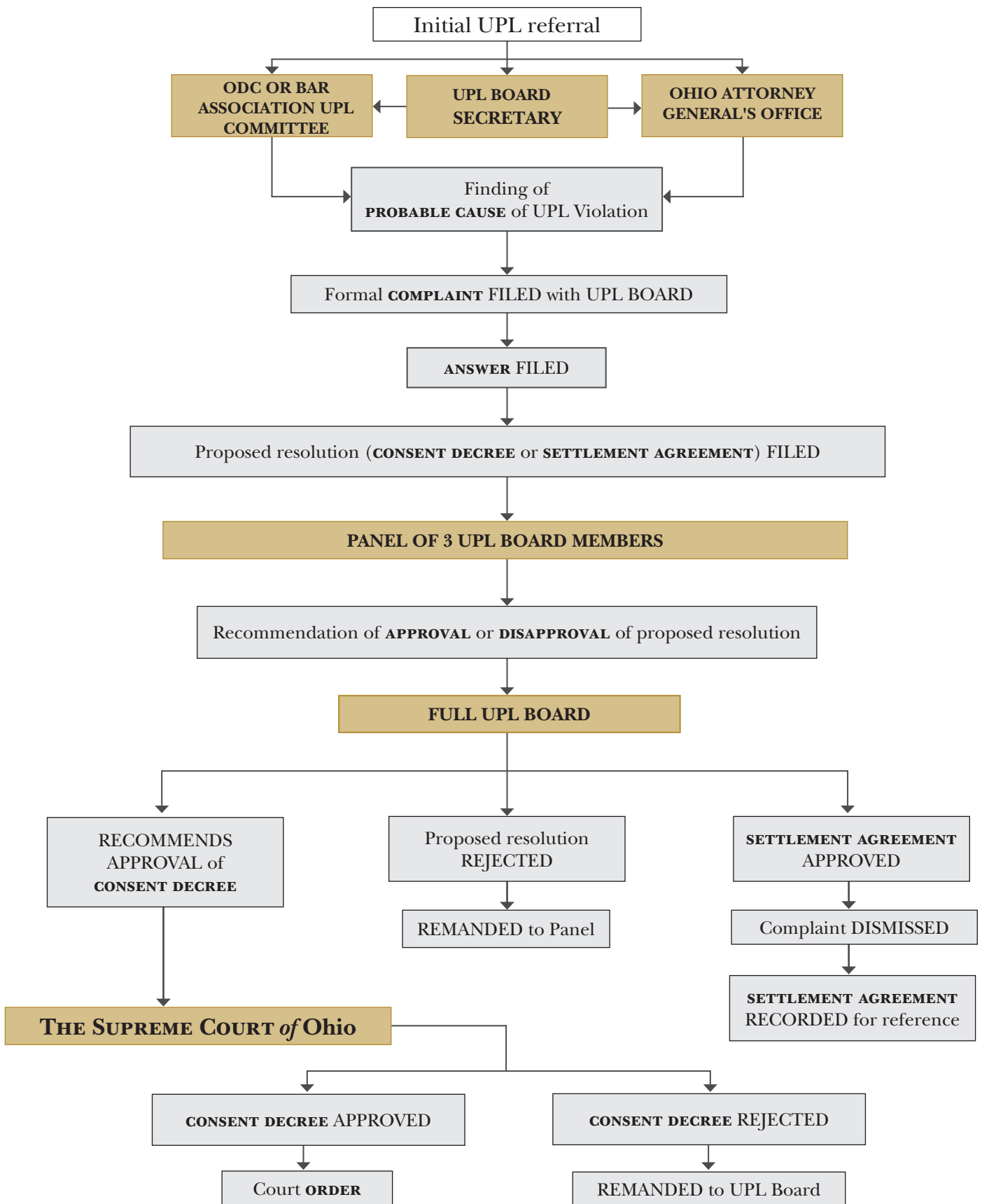
# UPL Rule & Regulations



# OHIO UPL CASE PROCESS — ADJUDICATED CASES



OHIO UPL CASE PROCESS — PROPOSED RESOLUTION CASES



## **RULE 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:

(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 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 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;
  - (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.

(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.

(D) *Referral by the Panel.* If the hearing panel is not unanimous in its finding that the evidence is insufficient to support a charge or count of unauthorized practice of law, the panel may refer its findings of fact and recommendations for dismissal to the Board for review and action by the full Board. The panel shall submit to the Board its findings of fact and recommendation of dismissal in the same manner as provided in this rule with respect to a finding of unauthorized practice of law pursuant to division (E) of this section.

(E) *Finding of Unauthorized Practice of Law; Duty of Hearing Panel.* If the hearing panel determines, by a preponderance of the evidence, that respondent has engaged in the unauthorized

practice of law, the hearing panel shall file its report of the proceedings, findings of facts and recommendations with the Secretary for review by the Board. The report shall include the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with the proceedings.

(F) *Review by Entire Board.* After review, the Board may refer the matter to the hearing panel for further hearing or proceed on the report of the prior proceedings before the hearing panel. After the final review, the Board may dismiss the complaint or find that the respondent has engaged in the unauthorized practice of law. If the complaint is dismissed, the dismissal shall be reported to the Secretary, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the hearing panel.

(G) *Finding of Unauthorized Practice of Law; Duty of Board.* If the Board determines, by a preponderance of the evidence, that the respondent has engaged in the unauthorized practice of law, the Board shall file the original and twelve copies of its final report with the Clerk of the Supreme Court, and serve a copy of the final report upon all parties and counsel of record, Disciplinary Counsel, the unauthorized practice of law committee of the Ohio State Bar Association, and the bar association of the county or counties from which the complaint emanated. The final report shall include the Board's findings, recommendations, a transcript of testimony, if any, an itemized statement of costs, recommendation for civil penalties, if any, and a certificate of service listing the names and addresses of all parties and counsel of record.

(H) *Hearing on Stipulated Facts.* A stipulation of facts and waiver of notice and hearing, mutually agreed and executed by relator and respondent, or counsel, may be filed with the Board prior to the date set for formal hearing. If a stipulation and waiver are filed, the parties are not required to appear before the hearing panel for a formal hearing, and the hearing panel shall render its decision based upon the pleadings, stipulation, and other evidence admitted.

The stipulation of facts must contain sufficient information to demonstrate the specific activities in which the respondent is alleged to have engaged and to enable the Board to determine whether respondent has engaged in the unauthorized practice of law.

The waiver of notice and hearing shall specifically state that the parties waive the right to notice of and appearance at the formal hearing before the hearing panel.

#### **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 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:

<b>Reimbursement for the months of:</b>	<b>Due by:</b>
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.

(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 8.

(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.

[Not analogous to former Rule VII, effective October 20, 1975; amended effective April 13, 1977; November 6, 1978; April 25, 1983; July 1, 1983; November 30, 1983; June 6, 1988; January 1, 1989; January 1, 1990; January 1, 1992; January 1, 1993; January 1, 1995; June 16, 2003; January 1, 2005; November 1, 2007; January 1, 2008; September 1, 2008; September 1, 2010; January 1, 2011; January 1, 2013.]

**REGULATIONS GOVERNING PROCEDURE ON COMPLAINTS AND  
HEARINGS BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE  
OF LAW**

**UPL Reg. 100                      Title, Authority and Application**

(A)        These regulations shall be known as the Regulations Governing Procedure on Complaints and Hearings Before the Board on the Unauthorized Practice of Law and shall be cited as “UPL Reg. \_\_\_\_.”

(B)        The following regulations are adopted by the Board on the Unauthorized Practice of Law pursuant to Gov.Bar R. VII(16) of the Rules for the Government of the Bar of Ohio, with the prior approval of the Supreme Court of Ohio.

(C)        Pursuant to Gov.Bar R. VII(14), the Board applies the Ohio Rules of Civil Procedure and Rules of Evidence whenever practicable, unless a provision of Gov.Bar R. VII, these regulations, or Board procedure provide otherwise. Local rules of court are not applicable to matters before the Board.

**UPL Reg. 200                      Case Management; Practice and Procedure**

**201        Case Schedule**

(A)        After assignment of the Hearing Panel, the Secretary of the Board in consultation with the Panel Chair shall issue a case scheduling order to all parties or their counsel as set forth in this regulation. The case schedule shall be served upon the parties no more than seven days after the time to plead or otherwise defend the complaint has elapsed. The case schedule shall at a minimum establish deadlines for certain case events and may be adjusted by the Panel Chair or for good cause shown:

Assignment of Hearing Panel	0
Hearing Date	266 days after assignment
Initial Telephone Status Conference	30 days after assignment
Initial Disclosure of Witnesses	80 days after assignment, or upon request of either party
Discovery Cut-off	60 days before hearing
Pre-Hearing Statement/Briefs	40 days before hearing

(B) At the discretion of the Panel Chair, the following events may also be established:

- Dispositive Motion Deadline
- Motions on Preliminary or Procedural Issues Deadline
- Decisions on Motions
- Stipulations of Facts and/or Law
- Supplemental Disclosure of Witnesses
- Final Pre-Hearing Conference

(C) Any complaint filed by an Unauthorized Practice of Law Committee or the Disciplinary Counsel shall state whether the relator is aware that an underlying complainant or individual is seeking a private remedy pursuant to R.C. 4705.07. Upon receipt of the complaint, the Secretary shall designate the case accordingly and inform the Panel Chair, who will have the discretion to accelerate the case management schedule and hearing date.

## **202 Motions; Dispositive Motions**

(A) Upon the filing of a motion and unless ordered otherwise by the Panel Chair, any memorandum in opposition shall be filed within twenty-one days after the filing of the motion. The response shall be served upon the Secretary and all adverse parties or their counsel. Unless directed otherwise by the Panel Chair, any reply to the memorandum in opposition shall be filed within ten days of the filing of the memorandum in opposition. Three days shall be added to the prescribed time periods when the motion or responsive memoranda are served by mail.

(B) Any motion, including but not limited to a motion for summary judgment, a motion for judgment on the pleadings, and a motion to dismiss, that seeks to determine the merits of any claim or defense as to any or all parties shall be considered a dispositive motion. A voluntary dismissal under Civ.R. 41 is not a dispositive motion for purposes of this regulation. All dispositive motions shall be filed no later than the date specified in the case schedule. Pursuant to Civ.R. 56(A), leave is granted in all cases to file summary judgment motions between the time of service of the complaint and the dispositive motion date, unless the Panel Chair dictates otherwise by setting a different date. If a dispositive motion date was not established in the initial case schedule, leave of the Panel must be obtained pursuant to Civ.R. 56(A). Parties shall file their summary judgment motion at the earliest practical date during the pendency of the case.

(C) The Panel Chair may order the simultaneous filing of motions and memoranda in opposition without provision for reply.



## **203 Pre-hearing Procedure**

### **203.1 Pre-hearing Statements, Motions, and Briefs**

(A) In all cases pending hearing, all parties shall prepare and serve upon the Secretary, with a copy to all opposing counsel, a final pre-hearing statement forty days prior to the assigned hearing date. The final pre-hearing statement shall at a minimum contain:

- (1) A brief statement of the facts and identification of claims and defenses;
- (2) The factual and legal issues which the cause presents;
- (3) For relator, its position on whether the facts and circumstances of the case warrant imposition of a civil penalty and if the relator seeks the imposition of a civil penalty, the relator shall specify the amount of the civil penalty it is requesting and identify the unique facts and circumstances that it believes warrant imposition of the civil penalty requested; and,
- (4) For respondent, an indication of whether there is opposition to any request for imposition of a civil penalty and the existence of evidence in mitigation;
- (5) The estimated days required for hearing.

(B) Parties shall separately prepare and serve upon the Secretary, with a copy to all opposing counsel, forty days prior to the assigned hearing date:

- (1) Stipulations of fact or law, if any;
- (2) A listing of all witnesses with a brief summary of expected testimony; a copy of all available opinions of all persons who may be called as expert witnesses;
- (3) A listing of all exhibits expected to be offered into evidence, except exhibits to be used only for impeachment, illustration, or rebuttal.

(C) Forty days prior to the hearing date, all other motions (other than dispositive motions), pleadings, filings or hearing briefs intended to be offered at the hearing shall be served upon the Secretary and opposing parties. A response to any motion, brief or other filing shall be served according to UPL Reg. 202(A). The required pre-hearing statement may be included as part of any hearing brief.

(D) All documentary evidence to be offered at hearing shall be served upon the Secretary, adverse parties or their counsel at least thirty days before hearing pursuant to Gov.Bar R. VII(14).

(E) There is reserved to each party, upon application to the Panel and for good cause shown, the right at the hearing to:

- (1) offer additional exhibits, file additional pleadings;
- (2) supplement the list of witnesses to be called; and,
- (3) call such rebuttal witnesses as may be necessary, without prior notice to opposing parties.

#### **204 Certificate of Registration**

After filing a complaint alleging the unauthorized practice of law, relator shall produce a Certificate from the Supreme Court of Ohio, Office of Attorney Registration, indicating whether any responsive party to the complaint is not admitted to practice law in the State of Ohio, and serve a copy upon all respondents, counsel of record, and the Secretary of the Board, and the original shall be offered as an exhibit at hearing and filed with the Board by the relator at the conclusion of hearing.

#### **205 Final Pre-hearing Conferences**

(A) No later than sixty days before hearing, a party may file a request for a pre-hearing conference with the Panel. The request may be granted by the Panel Chair. The Panel Chair may also establish a pre-hearing conference date consistent with the initial case scheduling order. A pre-hearing conference with the parties shall at a minimum attempt to accomplish the following objectives:

- (1) Simplification of the issues;
- (2) Necessity of amendment to the pleadings;
- (3) Resolution of outstanding discovery issues;
- (4) Identification of anticipated witnesses;
- (5) The possibility of obtaining:
  - (i) stipulations of fact or law;
  - (ii) stipulations of the admissibility of exhibits;
- (6) Such other matters as may expedite the hearing;
- (7) Confirmation of the final hearing date and venue.

(B) At the discretion of the Panel Chair, a pre-hearing conference may be held by telephone, and may be continued from day to day. Counsel and parties should be prepared to discuss the matters contained in this regulation. At the conclusion of the pre-hearing conference, the Panel Chair may enter an order setting forth the action taken and the agreements reached, which order shall govern the subsequent course of proceedings.

**206 Electronic Filing (Reserved)**

**207 Continuances**

(A) The continuance of a hearing date is a matter within the discretion of the Panel for good cause shown. No party shall be granted a continuance of a hearing date without a written motion from the party or counsel stating the reason for the continuance. The motion shall be filed with the Secretary no later than ten days before the date set for hearing. If the motion is not granted by the Panel Chair, the cause shall proceed as originally scheduled.

(B) When a continuance is requested due to the unavailability of a witness at the time scheduled for hearing, the Panel may consider the feasibility of permitting testimony pursuant to Civ.R. 32.

**208 Subpoenas and Orders for Testimony**

(A) To compel the testimony of a witness at the hearing, requests for the issuance of subpoenas pursuant to Gov.Bar R. VII(12) shall be made in writing and filed with the Secretary no later than ten days before the date on which a complaint has been set for hearing.

(B) To compel the testimony of a witness whose testimony will be offered at the hearing via deposition pursuant to Civ.R. 32, requests for orders for testimony pursuant to Gov.Bar R.VII(13) or the issuance of subpoenas pursuant to Gov.Bar R. VII(12) shall be made in writing and filed with the Secretary no later than thirty days before the date on which a complaint has been set for hearing.

**209 Post-hearing Procedure of the Panel and Board**

(A) A Panel Report shall be submitted to the Secretary within sixty days of the filing of the transcript for consideration at the next regularly scheduled meeting of the Board. The Secretary, at the request of the Panel Chair, may extend the date for the filing of the Panel Report with the Board.

(B) The Final Report of the Board shall be filed with the Court by the Secretary no later than thirty days after the conclusion of the Board's review, approval and adoption of whole or part of the Panel's report. After consideration by the Board, the Chair may be granted the authority by the Board to prepare and file the Final Report.

(C) Failure by the Board to meet the time guidelines set forth in these regulations shall not be grounds for dismissal of the complaint.

**UPL Reg. 300                      Regulation for the Issuance of Advisory Opinions**

**300.1    Procedure for Issuance**

(A) Pursuant to Gov.Bar R. VII(2)(C) of the Supreme Court Rules for the Government of the Bar of Ohio, the Board on the Unauthorized Practice of Law may issue informal, non-binding Advisory Opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio regarding the unauthorized practice of law and issues implicated by R.C. 4705.01, 4705.07 and 4705.99. Requests for an Advisory Opinion may be submitted to the Board by Disciplinary Counsel or an Unauthorized Practice of Law Committee of a Local or State Bar Association.

(B) The Chair of the Board shall appoint three or more members of the Board to serve on an Advisory Opinion Subcommittee. The Advisory Opinion Subcommittee is a regular standing subcommittee of the Board. The subcommittee shall meet prior to each regularly scheduled Board meeting. The Chair will appoint one subcommittee member to serve as Chair of the Advisory Opinion Subcommittee. Each subcommittee member shall serve for a period of one year from the date of appointment and shall be eligible for re-appointment by the Chair.

(C) Requests for an Advisory Opinion shall be submitted in writing to the Secretary of the Board on the Unauthorized Practice of Law. The request for Advisory Opinion shall be in writing and state in detail to the extent practicable the operative facts upon which the request for Opinion is based, with information and detail sufficient to enable adequate consideration and determination of eligibility under these regulations. The request shall contain the name and address of the requester. A summary of the rules, opinions, statutes, case law and any other authority which the inquirer has already consulted concerning the questions raised should also be included in the request. A letter acknowledging the receipt of the request will be sent to the requester.

(D) The procedure for review of a request for Advisory Opinion shall be as follows:

(1) The Advisory Opinion Subcommittee shall review all requests for Advisory Opinion submitted by Disciplinary Counsel or an Unauthorized Practice of Law Committee of a Local or State Bar Association.

(2) The Advisory Opinion Subcommittee shall, within its discretion, accept or decline a request for an Advisory Opinion.

(3) In making such determination, the subcommittee shall be governed by Gov.Bar R. VII(2)(C) and respond only to prospective or hypothetical questions of public or great general interest regarding the application of Gov.Bar R. VII and the unauthorized practice of law. The subcommittee shall decline requests that concern a question that is pending before the Court, decided by the Court, or a question of interest only to the person initiating the request. If the subcommittee determines that adequate authority already exists to answer the inquiry posed, the requester will be advised of the applicable authority and no Opinion will be issued.

(4) If any member of the subcommittee requests the declination of the Advisory Opinion be considered by the full Board, such request will be presented to the full Board for consideration at the next business meeting. If the subcommittee unanimously declines a request for Advisory Opinion, such determination shall be final.

(E) The requester of an Advisory Opinion will be notified of the Board's determination to accept or decline a request.

(F) If a request for Advisory Opinion is accepted for consideration, the subcommittee will complete the process of researching, drafting and review as expeditiously as possible, preferably within two to six months after selection of the request. The subcommittee shall be empowered to request and accept the voluntary services of a person licensed to practice law in this state when the subcommittee deems it advisable to receive written or oral advice or assistance in research and analysis regarding the question presented by the requester.

(G) Conflict of Interest. Subcommittee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed Advisory Opinion or subcommittee recommendation or any other conflict of interest or an appearance of a conflict of interest that should prevent them from participating. However, no action of the subcommittee will be invalid where full disclosure has been made to the Chair of the Board and the Chair has not decided that the member's participation was improper.

(H) Each draft Opinion approved by majority vote of the subcommittee will be sent to the full Board on the Unauthorized Practice of Law for review approximately two weeks prior to the next Board meeting. Upon review, Board members may direct comments, suggestions, or objections to the Chair of the subcommittee.

(I) If objections are received, the draft Opinion will be placed on the agenda for discussion at the Board meeting. If no objections are received, the draft

Opinion will be adopted by a majority vote of the Board at the Board meeting. Minor or non-substantive changes are not considered as objections to a draft Opinion.

(J) A copy of the Adopted Advisory Opinion will be issued to the requester. Copies of the issued Opinions will be submitted for publication in the *ABA/BNA Lawyers Manual on Professional Conduct*, the *Ohio State Bar Association Report*, and other publications or electronic communications as the Board deems appropriate. Copies of issued Opinions will be forwarded to the Law Library of the Supreme Court of Ohio, County Law Libraries, Office of Disciplinary Counsel, Local and State Bar Associations with Unauthorized Practice of Law Committees.

(K) Issued Opinions shall not bear the name of the requester and shall not include the request letter. However, the requester's name and the request letter are not confidential and will be made available to the Bar, Judiciary, or the public upon request.

### **300.2 Procedure for Maintenance**

(A) A copy of each Advisory Opinion will be kept in the Board's offices.

(B) An Advisory Opinion that becomes withdrawn, modified, or not current will be marked with an appropriate designation to indicate the status of the opinion.

(C) The designation "Withdrawn" will be used when an Opinion has been withdrawn by the majority vote the Board. The designation indicates that an Opinion no longer represents the advice of the Board.

(D) The designation "Modified" will be used when an Opinion has been modified by a majority vote of the Board. The designation indicates that an Opinion has been modified by a subsequent Opinion.

(E) The designation "Not Current" will be used at the discretion of the Board to indicate that an Opinion is not current in its entirety. The designation that an Opinion is no longer current in its entirety may be used to indicate a variety of reasons such as subsequent amendments to rules or statutes, or developments in case law.

(F) Other designations, as needed, may be used by majority vote of the Board.

(G) The Advisory Opinion index will include a list identifying the Opinions as "Withdrawn," "Modified," or "Not Current," and other designations as decided by the Board.

**UPL Reg. 400**

**Guidelines for the Imposition of Civil Penalties**

(A) Each case of unauthorized practice of law involves unique facts and circumstances.

(B) At the hearing and at the end of its case-in-chief, relator shall set forth its position on the imposition of a civil penalty. Relator shall specify the amount of the civil penalty it is requesting and identify the factors, circumstances, and aggravating factors, if any, that warrant imposition of the requested civil penalty.

(C) At the hearing respondent shall contest any request for imposition of a civil penalty. Evidence that is offered by respondent in mitigation shall be introduced as part of the respondent's case-in-chief .

(D) In determining whether to recommend the imposition of a civil penalty, the Board shall consider all relevant facts and circumstances, as well as precedent established by the Supreme Court of Ohio and the Board.

(E) In each case where the Board finds by a preponderance of the evidence that respondent has engaged in the unauthorized practice of law, the Board shall discuss in its final report to the Supreme Court any of the factors set forth in Gov.Bar R. VII(8)(B):

"(B) Civil Penalties. The Board may recommend and the 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."

(F) As part of its analysis of "other relevant factors" pursuant to Gov.Bar R.VII(8)(B)(5), the Board may consider:

- (1) Whether relator has sought imposition of a civil penalty and, if so, the amount sought.
- (2) Whether the imposition of civil penalties would further the purposes of Gov.Bar R. VII.
- (3) Aggravation. The following factors may be considered in favor of recommending a more severe penalty:
  - (a) Whether respondent has previously engaged in the unauthorized practice of law;
  - (b) Whether respondent has previously been ordered to cease engaging in the unauthorized practice of law;
  - (c) Whether the respondent had been informed prior to engaging in the unauthorized practice of law that the conduct at issue may constitute an act of the unauthorized practice of law;
  - (d) Whether respondent has benefited from the unauthorized practice of law and, if so, the extent of any such benefit;
  - (e) Whether respondent's unauthorized practice of law included an appearance before a court or other tribunal;
  - (f) Whether respondent's unauthorized practice of law included the preparation of a legal instrument for filing with a court or other governmental entity; and
  - (g) Whether the respondent has held himself or herself out as being admitted to practice law in the State of Ohio, or whether respondent has allowed others to mistakenly believe that he or she was admitted to practice law in the State of Ohio.
- (4) Mitigation. The following factors may be considered in favor of recommending no penalty or a less severe penalty:
  - (a) Whether respondent has ceased engaging in the conduct under review;
  - (b) Whether respondent has admitted or stipulated to the conduct under review;
  - (c) Whether respondent has admitted or stipulated that the conduct under review constitutes the unauthorized practice of law;
  - (d) Whether respondent has agreed or stipulated to the imposition of an injunction against future unauthorized practice of law;
  - (e) Whether respondent's conduct resulted from a motive other than dishonesty or personal benefit;
  - (f) Whether respondent has engaged in a timely good faith effort to make restitution or to rectify the consequences of the unauthorized practice of law; and



(g) Whether respondent has had other penalties imposed for the conduct at issue.

**UPL Reg. 500-900 (Reserved)**

**UPL Reg. 1000 Effective Date**

(A) These regulations shall be effective June 1, 2006.



# **II. UPL INTAKE PROCESS AND SAMPLES**



**OFFICE OF DISCIPLINARY COUNSEL  
THE SUPREME COURT OF OHIO**

**Scott J. Drexel, Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
(614) 461-0256  
1-800-589-5256  
(614) 461-7205 FAX  
<https://www.supremecourt.ohio.gov/>**

\*\*\*\*\*

**INSTRUCTIONS**

The Office of Disciplinary Counsel investigates allegations of ethical misconduct against attorneys and judges. Disciplinary Counsel also investigates grievances regarding the unauthorized practice of law. Please understand that this office has no jurisdiction over and will not become involved in the legal merits of any case. The attorney disciplinary process will not affect or change court decisions made in your case. In addition, Disciplinary Counsel may not give you legal advice.

This form must be completed, signed, and submitted to file a grievance. You may attach additional sheets of paper, if necessary, in order to complete the “Facts of the Grievance” portion of the form. If you wish to file a grievance against more than one attorney or judge, please use one form per attorney or judge. You may make additional copies of the form. You may enclose all forms in one envelope. Please complete the form in black ink only and do **not** use pencil, write in between the lines or in the margins of the form, affix post-it notes or stickers to the form or use staples. If you include documentation with your grievance, send copies only. **PLEASE DO NOT SEND ORIGINALS.** If additional pages are needed, please use only 8 ½ x 11” size paper. After you have legibly completed the form, please sign and date the form.

The Rules of the Supreme Court of Ohio require that investigations be confidential. You are requested to keep confidential the fact that you are filing this grievance. Only the attorney/judge against whom you are filing your grievance may waive confidentiality. In filing a grievance against your attorney, you are waiving your attorney-client privilege.

The attorney/judge against whom you are filing your grievance will receive notice of your grievance. Those individuals are also entitled to receive a copy of your grievance and may be asked to respond to your allegations. Your grievance may result in your attorney withdrawing from your case. Disciplinary Counsel cannot prevent an attorney from withdrawing from representation.

Once received, it may take up to ninety (90) days for us to review and respond to your grievance. However, you will be contacted by mail within that time period to advise you whether your grievance will be investigated or dismissed. You may or may not be contacted by mail or telephone to provide additional information. This office will respond to inquiries **only** from the person(s) who complete(s) the form (is/are named as Grievant(s) under the “Your Name” portion of the form).

**The Grievance Process**

A grievance sent to the Disciplinary Counsel of the Supreme Court of Ohio or to a local bar association’s certified grievance committee will be reviewed to determine whether the grievance alleges a violation of the Ohio Rules of Professional Conduct and/or Code of Judicial Conduct. If there is evidence that supports the allegation of a violation, the grievance will be investigated. Following the investigation, if substantial, credible evidence is found that a violation has occurred, a formal complaint may be filed with the Board of Professional Conduct of The Supreme Court of Ohio. A three-member panel of the Board will review the complaint and determine whether probable cause exists to certify it. If the complaint is certified by the Board, a hearing may be held before a different three-member panel of the Board. The panel considers the evidence and makes a recommendation to the full members of the Board. The full Board then makes a recommendation to the Supreme Court of Ohio. The Court has final say on whether to discipline an attorney or judge and what sanction should be administered. A

grievance is confidential until the Board certifies it as a formal complaint. A grievance or complaint can be dismissed at any point in the process. **Please keep this page for your records.**

**Grievance Form**

Ms. \_\_\_\_\_ Mrs. \_\_\_\_\_ Miss. \_\_\_\_\_ Mr. \_\_\_\_\_

YOUR NAME: \_\_\_\_\_  
Last First MI Phone No.

PERMANENT ADDRESS: \_\_\_\_\_

Street Email Address

City County State Zip Code

**ABOUT WHOM ARE YOU COMPLAINING ?**

(Please circle) ATTORNEY or JUDGE

NAME: \_\_\_\_\_  
Last First MI Phone No.

ADDRESS: \_\_\_\_\_  
Street

City County State Zip Code

Have you filed this grievance with any other agency or bar association? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, provide name of that agency and date of filing: \_\_\_\_\_ date: \_\_\_\_\_

Did you receive a response?: \_\_\_\_\_ Yes \_\_\_\_\_ No IF YES, PLEASE ATTACH A COPY

Did this attorney represent you? \_\_\_\_\_ Yes \_\_\_\_\_ No Type of case: \_\_\_\_\_

Date the attorney was hired: \_\_\_\_\_ Does s/he still represent you?: \_\_\_\_\_ Yes \_\_\_\_\_ No

Did you pay the attorney a fee/retainer? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, how much?: \_\_\_\_\_

Did you sign a written fee agreement/contract? \_\_\_\_\_ Yes \_\_\_\_\_ No IF YES, PLEASE ATTACH A COPY

Has the attorney sued you for fees? \_\_\_\_\_ Yes \_\_\_\_\_ No

Have you brought civil or criminal court action against this attorney or judge? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, provide name of court and case number \_\_\_\_\_

Result of court action: \_\_\_\_\_

Name and contact information for attorney currently representing you, if different than attorney about whom you are complaining:

Does this grievance involve a case that is still pending before a court? \_\_\_\_\_ Yes \_\_\_\_\_ No







---

---

---

---

**The Rules of the Supreme Court of Ohio require that investigations be confidential. Please keep confidential the fact that you are submitting this grievance. The party against whom you are filing your grievance will receive notice of your grievance and may receive a copy of your grievance and be asked to respond to your allegations.**

---

**Signature**

---

**Date**

**UNSIGNED COMPLAINTS WILL NOT BE PROCESSED.**





**The Cleveland Metropolitan Bar Association  
Unauthorized Practice of Law Committee  
1375 East Ninth Street, Floor 2  
Cleveland, Ohio 44114-1785**

**COMPLAINT FORM**

ABOUT YOU

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

PERSON AGAINST WHOM COMPLAINT IS FILED (PLEASE PROVIDE AS MUCH INFORMATION AS POSSIBLE)

Paralegal    Disbarred Lawyer    Out of State Lawyer    Other \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

County: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

COURT ACTION

If your complaint involves a legal proceeding please provide information concerning the case name, number, court name, and approximate date the case was filed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you are not a party to this case, what is your connection with it? Explain briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FACTS OF THE COMPLAINT

Did you employ the respondent for the purpose of providing legal services?

Yes:  No:  If yes, please describe in detail below.

Did you sign a contract for legal services?

Yes:  No:  If yes, please attach a copy if possible.

Was there a charge?

Yes:  No:  If yes, how much? \_\_\_\_\_

Did the respondent provide legal services (for example, appear in court, give legal advice, or prepare legal documents)?

Yes:  No:  If yes, please describe in detail below.

How did you become aware that this person was providing legal services? Explain briefly

---

---

---

What services did respondent provide? Check all that apply

- Gave legal advice;
- Selected, drafted, or completed legal forms, documents, or agreements;
- Appeared in court or in a formal administrative proceeding;
- Negotiated legal rights or responsibilities for another person;
- Offered to provide legal services
- Other \_\_\_\_\_

Did the respondent represent him or herself to be an attorney or otherwise hold him or herself out to be an attorney?

Yes:  No:  If yes, please describe in detail below.







OHIO STATE BAR ASSOCIATION  
Unauthorized Practice of Law Committee  
COMPLAINT FORM

YOUR NAME: \_\_\_\_\_  
Last First MI Phone No.

ADDRESS: \_\_\_\_\_  
Street  
\_\_\_\_\_  
City County State Zip Code

PERSON AGAINST WHOM COMPLAINT IS FILED:

NAME: \_\_\_\_\_  
Last First MI Phone No.

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
City County State Zip Code

COMPLAINT FILED WITH OTHER AGENCIES:

Have you filed a complaint with any other agency or bar association about this same matter?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, name of that agency: \_\_\_\_\_

Action taken by that agency: \_\_\_\_\_

Approximate date of action taken: \_\_\_\_\_

COURT ACTION:

Does this complaint involve a case that is currently pending? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, provide information concerning case name, number, and court in which pending.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESSES:

List below the name, address and daytime telephone number of persons who can support your complaint and who have information about the facts.

Name Address Phone No. (daytime)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





**CLEVELAND METROPOLITAN BAR ASSOCIATION  
BYLAWS FOR THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE**

**Article I.  
NAME AND MISSION**

- Section 1.** The name of this committee shall be the Unauthorized Practice of Law Committee (“Committee”).
- Section 2.** The mission of the Committee, in support of both the Cleveland Metropolitan Bar Association (“Association”) and the Supreme Court of Ohio (“Court”), is to preserve the integrity of the legal system. The Court has defined what constitutes the practice of law by caselaw and what constitutes the unauthorized practice of law (“UPL”). Through its clear policy, the Court has deemed UPL to be a danger to the public. To that end, the Committee will efficiently and effectively investigate complaints of UPL in Ohio, and where necessary, take corrective action including instituting formal proceedings with the Board on the Unauthorized Practice of Law (“Board”). The Committee exists to safeguard the public from unqualified and unscrupulous individuals and entities engaging in UPL. All activities will be conducted pursuant to all powers, privileges and immunities granted by Gov. Bar R. VII.

**Article II.  
MEMBERSHIP**

- Section 1.** The membership of the Committee shall be composed of attorneys who are members of the Association in good standing who have indicated an interest in serving on the Committee. All members shall be appointed by the President of the Association with approval from the Board of Trustees at the beginning of the fiscal year but new members may be appointed at anytime during the year. At the end of the fiscal year, membership on the Committee will automatically terminate, unless the member is reappointed for the following fiscal year. However, a Committee member who is not reappointed, but who remains an attorney at law in good standing and who is a member of a Trial Committee on a pending, open matter shall, with the member’s consent, remain on the Trial Committee and continue as an ex-officio member of the Committee until the conclusion of the matter.
- Section 2.** A Chair and Vice Chair shall be appointed by the President of the Association with approval from the Board of Trustees for each fiscal year. The Chair shall preside at Committee meetings and shall perform other acts or responsibilities as usually pertain to such office, or as directed by the Association. The Vice Chair shall assist the Chair with his or her duties and conduct the meetings in the absence of the Chair.

**Article III.  
MEETINGS, QUORUM AND ABSTENTIONS**

- Section 1.** The Committee meets monthly at a time and date fixed by the Committee, or by the Chair, as authorized by the membership. A meeting may be cancelled by the Chair if there is insufficient business to warrant a meeting. Notice of each meeting, or the cancellation thereof, shall be given to each member prior to such meeting.
- Section 2.** Special meetings may be called by the Chair or Vice Chair to deal with interim or emergency matters upon such notice as is practical to Committee members who regularly attend meetings. Interim meetings may be by teleconference.

- Section 3.** Five members of the Committee shall constitute a quorum for all regular and special meetings, and all matters decided by vote shall be decided by a majority of those present and voting.
- Section 4.** If a member decides to abstain from voting on a matter for any reason, the member shall not participate in discussion on the matter and the abstention shall be noted in the minutes.
- Section 5.** Association Staff (“Staff”) shall prepare meeting agendas in consultation with the Chair. The agenda shall include a listing of all pending matters and the member(s), if any, to whom the matters have been assigned for investigation or report or prosecution. Staff shall give notice to the Committee by email or other appropriate notification method of the time, place and purpose of meetings.
- Section 6.** Staff shall take minutes at meetings and distribute the minutes to the Committee before the next meeting.
- Section 7.** Bar Counsel or Assistant Bar Counsel shall attend Committee meetings whenever possible.

**Article IV.**  
**INVESTIGATIONS AND FORMAL COMPLAINTS**

- Section 1.** Upon the Committee’s receipt of information of actions which may constitute UPL, a preliminary determination shall be made at the next meeting as to whether or not the allegations on their face warrant further inquiry by the Committee. Written complaints that have been signed by a witness having knowledge of allegations of UPL are preferred but are not required for the Committee to investigate.
- Section 2.** The following are the procedures to be used for the handling of all complaints:
- A. The Committee shall determine at its next meeting whether or not the information submitted demonstrates on its face that the acts complained of do not constitute UPL. If the Committee determines that the acts do not constitute UPL, that determination shall be communicated in writing to the party or parties who referred the matter to the Committee.
  - B. If it is determined by the Committee that the acts appear to constitute UPL, based upon the applicable law, or if it is determined that further investigation is warranted, the Committee shall determine whether the matter is better suited for its own investigation or whether it is more appropriate to refer it to the UPL committee of another bar association or the Office of Disciplinary Counsel. If it is determined to be a matter for the Committee’s own investigation, it shall be assigned by the Chair to a member or members of the Committee for investigation.
  - C. An oral or written report of the investigation shall be made by the investigating member(s) to the Committee no later than 60 days after the date of assignment, unless additional time is needed. If it is then determined by the Committee that the acts complained of do not constitute UPL, such determination shall be communicated in writing to the party who originally referred the matter to the Committee, and to the person or entity investigated (if contact had been made by the Committee).
  - D. If further investigation is warranted before a determination pursuant to Paragraph C can be made, the investigation, which may include one or more

depositions, shall be conducted so that a report and recommendation to the Committee can be made within 120 days of the original assignment, unless additional time is needed.

- E. The written report of the Committee investigator(s) pursuant to paragraph C and D shall include:
  - (1) The nature of the complaint;
  - (2) The nature of the investigation;
  - (3) The conclusion of the investigator(s); and
  - (4) The recommendation of the investigator(s).
- F. If the Committee determines that reasonable cause exists to warrant a formal proceeding, then the Chair shall appoint a Trial Committee consisting of at least two members, one of whom shall be designated lead counsel, for preparing a formal complaint for filing with the Board after approval of the complaint by the Board of Trustees of the Association, and for prosecuting the matter to conclusion. This may include proceedings for an interim cease and desist order pursuant to Gov. Bar R. VII Section 5a if deemed appropriate by the Committee and the Trial Committee.
- G. The member investigating the complaint shall ordinarily be designated as lead counsel. If for any reason the lead counsel is unable to carry out these duties, then the Chair shall appoint another member to serve as lead counsel.
- H. All actions involving the particular matter shall be under the direction of lead counsel, who shall attempt to act with the consensus of the Trial Committee; provided, however that no settlement or agreed disposition shall be made unless first submitted to the Committee for approval at a regular meeting.
- I. From time-to-time as a matter proceeds, additional Trial Committee members may be appointed by the Chair, if requested by the Trial Committee, to fill any vacancy or provide additional staffing. An attorney in good standing and member of the Association associated with a member of a Trial Committee may assist the Trial Committee and shall be an ex-officio member of the Committee for such purpose.

#### **Article V.**

#### **ANNUAL REPORTS AND RECORD RETENTION**

- Section 1.** Staff shall be responsible for the submission of annual and/or interim reports to the Association and shall be responsible for reports to the Board and/or the Court.
- Section 2.** Staff shall maintain all records of the Committee and shall determine the appropriate length of time to retain Committee files if not otherwise specified herein.
- Section 3.** Staff shall maintain indefinitely a list of persons and entities investigated by the Committee along with brief summaries of the UPL allegations.
- Section 4.** All matters coming before the Committee shall be assigned a case number by Staff designating the day, month, and year the matter was opened for investigation.

**Article VI.**  
**EFFECTIVENESS AND AMENDMENTS TO BY-LAWS**

**Section 1.** These bylaws or any amendments hereto shall become effective upon approval by both: (1) a majority vote of the Committee members present at a meeting called for that purpose and (2) the Board of Trustees of the Association.

**Section 2.** Amendments to these bylaws may be considered at any meeting of the Committee, provided that such proposed amendments shall first be distributed to the members of the Committee prior to the meeting at which the amendments are to be considered.

Date approved: May 11, 2016  
(Committee)

Date approved: July 27, 2016  
(Board of Trustees of Cleveland Metropolitan Bar Association)

**[LAW FIRM LETTERHEAD]**

\_\_\_\_\_, 2018

Dan J. Jones  
Statutory Agent  
Legal Practice Service LLC  
100 State Road  
Cleveland, Ohio 44114

Re: Unauthorized Practice of Law Investigation

Dear Mr. Jones:

I am a member of the Cleveland Metropolitan Bar Association's Unauthorized Practice of Law Committee and, as such, I have been asked to initiate an investigation as to whether Legal Practice Service LLC and persons connected therewith are engaged in the unauthorized practice of law in Ohio, including the rendering of legal services for others in connection proceedings before Ohio courts.

In connection with my investigation, I would like to discuss the operation of Legal Practice Service LLC and any related companies or individuals with company representatives at a mutually convenient time.

Please call me, or have your counsel do so, within ten days from the date of this letter.

Very truly yours,

Sam Smith

SS/ask  
1662569\_1

[Date]

Ms. Jane Smith  
123 Main Street  
Cleveland, OH 44113

**Subject: Immigration Helper.com**

Dear Ms. Smith:

As we discussed during our August 8, xxxx telephone conversation and subsequently during the March 15, xxxx deposition (the “Deposition”), the Cleveland Metropolitan Bar Association's Unauthorized Practice of Law Committee (the “Committee”) has been investigating whether you, directly and/or through the above-named website, have been engaging in the unauthorized practice of law by preparing legal documents and/or providing legal advice to the public.

At the Deposition you stated that the purpose of your Immigration Helper.com business was to provide paralegal services to attorneys, rather than legal services to the general public. You indicated that you have not actually provided any such paralegal services to attorneys. You also indicated that you did not actively market the Immigration Helper.com website and have not provided such “legal services” as advertised on that website to any individual.

Finally, you represented that you have never otherwise provided any legal advice to, or filled out legal documents on behalf of, anyone, and do not intend to do so in the future. You indicated that you are aware of the prohibition against the unlicensed practice of law from the paralegal studies program in which you are enrolled.

Under Ohio law, the practice of law “embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions on proceedings on behalf of clients before judges in courts, and in addition ... the preparation of legal instruments of all kinds, and in general all advice to clients in all actions taken [for] them in matters connected with the law.” Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, syl ¶ 1.

In addition, “[p]ersons not licensed to practice law in Ohio are ... prohibited from

holding themselves out ‘in any manner as an attorney at law’ or from representing that they are authorized to practice law ‘orally or in writing, directly or indirectly.’” Disciplinary Counsel v. Pratt (2010) 127 Ohio St. 3d 293, 297.

The Committee is concerned about a number of representations you made on the Immigration Helper.com website, including “We provide the best legal assistance to our following valuable clients: [...] corporations [...] and individual,”<sup>1</sup> and “Our team of dedicated legal professionals is well-versed in many specialized areas.”<sup>2</sup> In the Committee’s opinion, such representations may indicate to a layperson that you are holding yourself out as an attorney at law. It is the Committee’s opinion that by holding yourself out as an attorney at law you engage in the unauthorized practice of law, even if you do not actually provide legal advice or services to anyone.

Based on the Committee's investigation, we have not found any evidence that you did actually provide any legal advice or legal services. We also note that the above-referenced website appears to have been shut down. We are therefore willing to resolve the matter without further investigation, provided you sign this letter agreement, and provided that the Committee does not receive allegations of additional violations of unauthorized practice of law in the future.

By signing this letter below, it is to be understood and agreed that:

1. You acknowledge that are not an attorney at law authorized to practice in Ohio or in any other jurisdiction.
2. You agree that you will not in the future hold yourself out to anyone as a lawyer, and will not give legal advice to anyone, whether for compensation or not. You will not attempt to represent anyone in connection with any civil or criminal proceedings, and you will not directly or indirectly represent any party on legal matters, provide any legal advice to any party, prepare any legal documents for any party, or file any documents with any court or agency on behalf of any party, unless and until you become licensed to practice law in the State of Ohio. You agree that you will not otherwise engage in the unauthorized practice of law.
3. You agree that you will not establish or publish any website or other electronic communications or advertise in any periodical publication or printed flyer or card to offer to perform paralegal services for anyone who is not a licensed Ohio attorney
4. If, in the future, should information be obtained that you have engaged in other conduct that appears to the Committee or other authorized investigating body to have involved the unauthorized practice of law, then this letter agreement will be evidence of notification and prior warning, and be used in the subsequent matter for any other appropriate reason.

Upon receipt of a signed copy of this letter indicating your agreement to these terms, the

- <sup>1</sup> Immigration Helper.com, “Staff” page, accessed and saved on August 8, 2012, attached hereto as Exhibit A.

- <sup>2</sup> Id., “Services” page, accessed and saved on August 8, 2012, attached hereto as Exhibit B.

Committee will close its file. If we receive allegations that you engaged in the unauthorized practice of law subsequent the date of this agreement, the Committee will re-open its investigation into the above-referenced matter.

Sincerely,

Joseph Volunteer  
Member,  
Unauthorized Practice of Law  
Committee of the Cleveland  
Metropolitan Bar Association

I hereby agree to the terms set forth in this document.

---

Ms. Jane Smith

---

Date



Mr. John Smith  
123 Main Street  
Cleveland, OH 44113

[Date]

**Subject: Unauthorized Practice of Law**

Dear Mr. Smith:

As we discussed during our March 5, xxxx telephone conversation, the Cleveland Metropolitan Bar Association's Committee on the Unauthorized Practice of Law (the "Committee") has been investigating whether you have been engaging in the unauthorized practice of law by appearing in court on behalf of another person after your disbarment.

During our conversation, you told me that you were doing a favor for a friend when you appeared in Cleveland Municipal Court on behalf of Jane Doe but that you no longer practice law and do not intend to do so in the future.

Under Ohio law, the practice of law "embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions on proceedings on behalf of clients before judges in courts, and in addition ... the preparation of legal instruments of all kinds, and in general all advice to clients in all actions taken [for] them in matters connected with the law." Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, syl ¶ 1.

In addition, "[p]ersons not licensed to practice law in Ohio are ... prohibited from holding themselves out 'in any manner as an attorney at law' or from representing that they are authorized to practice law 'orally or in writing, directly or indirectly.'" Disciplinary Counsel v. Pratt (2010) 127 Ohio St. 3d 293, 297.

Based on the Committee's investigation, we have found that you appeared in court on behalf of another and that you were not licensed to practice law in the State of Ohio at the time. However, you have stated that you do not intend to do so again in the future and no additional referrals to the Committee have been made to date.

We are therefore willing to resolve the matter without further investigation, provided you sign this letter agreement, and provided that the Committee does not receive allegations of additional violations of unauthorized practice of law in the future.

By signing this letter below, it is to be understood and agreed that:

1. You acknowledge that you are not an attorney at law authorized to practice in Ohio;
2. You agree that you will not in the future hold yourself out to anyone as a lawyer, and will not give legal advice to anyone, whether for compensation or not. You will not attempt to represent anyone in connection with any civil or criminal proceedings, and you will not directly or indirectly represent any party on legal matters, provide any legal advice to any party, prepare any legal documents for any party, or file any documents with any court or agency on behalf of any party, unless and until you become licensed to practice law in the State of Ohio. You agree that you will not otherwise engage in the unauthorized practice of law.
3. If, in the future, should information be obtained that you have engaged in other conduct that appears to the Committee or other authorized investigating body to have involved the unauthorized practice of law, then this letter agreement will be evidence of notification and prior warning, and be used in the subsequent matter for any other appropriate reason.

Upon receipt of a signed copy of this letter indicating your agreement to these terms, the Committee will close its file. If we receive allegations that you engaged in the unauthorized practice of law subsequent the date of this agreement, the Committee will re-open its investigation into the above-referenced matter.

Sincerely,

Katherine Volunteer  
Member,  
Unauthorized Practice of Law  
Committee of the Cleveland  
Metropolitan Bar Association

I hereby agree to the terms set forth in this document.

---

John Smith

---

Date



5. Respondent's business card indicated that she worked for "Hernandez Law," which purportedly focused on "criminal, family, juvenile, and immigration" law.
6. Galan-Rubio entered the United States illegally in or about 1999 and was facing possible deportation from the United States. Because he has a family and three young children who are U.S. citizens, Galan-Rubio contacted respondent for assistance with his immigration matters. At the time he contacted respondent, Galan-Rubio's next court date was scheduled for March 16, 2011 in the United States Immigration Court (Cleveland, Ohio), Case No. A088-922-285.
7. Sometime during late January 2011 or early February 2011, Galan-Rubio met with respondent about his immigration case. During this meeting, respondent reviewed Galan-Rubio's immigration documents and informed Galan-Rubio that it would be an "easy" case for her.
8. Respondent informed Galan-Rubio that she had a personal relationship with an individual named Yolanda Villalovos - a "high level" employee with the United States Citizenship and Immigration Service (USCIS) in California. She stated that Villalovos had assisted her with several other cases and would assist her with this case for a fee.
9. Respondent also told Galan-Rubio that she had a personal and direct contact with Immigration Judge Thomas Janas, the Governor of Ohio, and an Ohio Senator, and she implied that these individuals could assist her with Galan-Rubio's case.
10. Over the next few weeks, respondent and Galan-Rubio spoke regularly by phone. During these conversations, respondent advised Galan-Rubio that she had spoken to Judge Janas and Villalovos about Galan-Rubio's case and that everything was "fine."

She also advised him that he did not need to appear for his March 16, 2011 court date.

11. During these conversations, respondent also asked Galan-Rubio to pay certain fees, which she claimed she would forward to Judge Janas and Villalovos for their services. Galan-Rubio paid respondent the following amounts:

- a. \$500 on February 4, 2011 for "immigration paperwork;"
- b. \$500 on February 11, 2011 for "immigration paperwork;"
- c. \$550 on February 20, 2011 for "court cost (suspension deportation);" (sic) and
- d. \$500 on February 20, 2011 for "lawyer fee (immigration)."

12. During February 2011, respondent also met with Galan-Rubio several times. During these meetings, respondent presented Galan-Rubio with several documents that she *purportedly* prepared, filed, sent, or received on his behalf. These documents include, but are not limited to, the following:

- a. A letter, dated February 7, 2011, from respondent to Judge Thomas Janas (spelled Janise) asking that her "client," Galan-Rubio, not be removed from the United States;
- b. A letter, dated February 8, 2011, from respondent to Yolanda Villalovos, stating that she has a "client" that needs Villalovos help "in the worst way";
- c. A response, dated February 10, 2011, from Judge Janas (spelled Janise) to respondent, stating that he had received Galan-Rubio's papers and that he would be in contact with respondent as to whether Galan-Rubio needed to come to court or whether everything would be "dropped" against him;

- d. A letter, dated February 18, 2011, from respondent to Galan-Rubio containing a breakdown of fees owed in the case and stating that she was Galan-Rubio's "lawyer;"
- e. A letter, dated February 26, 2011, from respondent to Judge Janas (spelled Jansa) asking whether Galan-Rubio needed to appear in court on March 16, 2011 or whether "this problem" could be resolved out of court; and
- f. An I-485 form that respondent prepared on behalf of Galan-Rubio, which was ultimately rejected because it was not two-hole punched and did not contain a proof of service, cover page, or proposed order.

13. By late February 2011, Galan-Rubio had become suspicious of respondent. For example, Galan-Rubio had asked respondent for proof that he did not need to appear for his March 16, 2011 court date, but respondent stated that she would not have that information for a few more days. Galan-Rubio also asked respondent for proof that she was an attorney, but respondent stated that the information was not available because she had just moved.

14. On or about February 28, 2011, Galan-Rubio contacted the Immigration Court directly to determine the status of his March 16, 2011 court date. He was advised that the court date had not been canceled and that it was still scheduled for March 16, 2011.

15. On or about March 1, 2011 Galan-Rubio retained Marilyn Zayas-Davis, an attorney licensed to practice law in the state of Ohio, to represent him in his immigration matters. Zayas-Davis appeared in court with Galan-Rubio on March 16, 2011.

16. Zayas-Davis also notified numerous agencies including the Department of Homeland Security – Office of Inspector General (OIG) of respondent’s actions.
17. In or about March of 2011, the OIG initiated an investigation to determine whether any federal employees had committed misconduct.
18. On March 24, 2011, with Galan-Rubio’s consent, the OIG monitored a telephone call between Galan-Rubio and respondent. During this call, respondent stated she had completed all of the necessary paperwork and had spoken to Judge Janas several times regarding Galan-Rubio’s proceedings.
19. During the aforementioned call, respondent also requested another \$600 from Galan-Rubio which she stated was for Judge Janas to “finish up” the case.
20. On March 30, 2011, with Galan-Rubio’s consent, the OIG taped a meeting between Galan-Rubio and respondent. Galan-Rubio had been given \$600 in government funds which he provided to respondent during the meeting. Respondent reiterated that the money was for Judge Janas and gave Galan-Rubio a letter, dated February 21, 2011 and purportedly signed by Judge Janas, which indicated that he had received a total of \$1,550 from respondent.
21. On April 6, 2011, with Galan-Rubio’s consent, the OIG monitored a telephone call between Galan-Rubio and respondent. Respondent again stated she had spoken to Judge Janas and that Galan-Rubio did not have to attend any court proceedings. During this call, respondent told Galan-Rubio not to call the court directly because Judge Janas had already “taken care of everything.” Respondent requested more money from Galan-Rubio for her services as a lawyer.

22. The April 6, 2011 phone call was the last time that Galan-Rubio spoke to respondent; however, respondent continued to contact Galan-Rubio regarding “fees” that he owed.
23. On or about April 30, 2011, respondent sent a letter to Galan-Rubio stating that he needed to pay her \$2,500 or she would file “papers at the courthouse...for nonpayment.” The letter further stated that if she had to file “papers” against him, it would “look bad on you and can reverse and become a deportation (sic) charge again.”
24. On or about August 10, 2011, respondent wrote a second letter to Galan-Rubio stating that his “payment is overdue.” Respondent stated that if Galan Rubio does not pay her, she will have to contact “immigration and give them the right to take over your case and that leads to deportation (sic) and I can’t stop it this time around.”
25. On January 20, 2012, special agents from the OIG interviewed Judge Thomas Janas. During the interview, Judge Janas stated that he did not know respondent, that he had never received any money from her, and that he did not send any letters to her.
26. On January 24, 2012, special agents from the OIG interviewed Yolanda Villalovas. During the interview, Villalovas stated that she did not know respondent, Galan-Rubio, or Judge Janas. She further stated that she did not receive any money from respondent, nor does she recall receiving any letters from respondent. Villalovas stated that if a letter had been sent to her, it would have been most likely intercepted by the receptionist and forwarded to the correct department.
27. Based on relevant documents and the interviews with Judge Janas and Villalovas, the OIG declined to take further action in the matter.

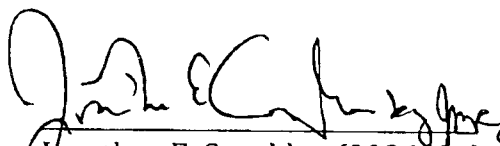


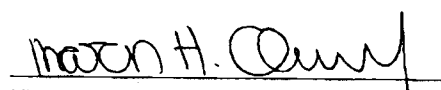
28. Respondent's actions as described above constitute the unauthorized practice of

law. Wherefore and based on the foregoing, relator asks:

- a. For a determination and declaration by the Board that respondent has engaged in conduct constituting the unauthorized practice of law in Ohio;
- b. For a recommendation by the Board to the Supreme Court of Ohio that the Court enter a permanent order enjoining respondent from engaging in the same or similar acts as described herein and from engaging in any other act in the state of Ohio constituting the practice of law unless and until (1) respondent secures from the Ohio Supreme Court, or from the highest court of some other state, territory or other jurisdictional entity of the United States, a license to practice law, and (2) she registers in accordance with the Rules for the Government of the Bar of Ohio;
- c. For a recommendation by the Board that civil penalties be imposed against respondent; and
- d. For any other relief the Board deems appropriate.

Respectfully submitted,

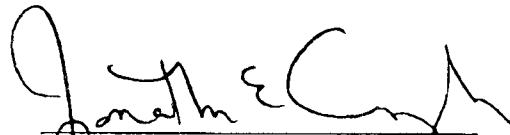
  
Jonathan E. Coughlan (0026424)  
Disciplinary Counsel

  
Karen H. Osmond  
Staff Attorney, Counsel for Relator  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
(614) 461-0256

**CERTIFICATE OF AUTHORITY**

Pursuant to Gov. Bar R. VII § 5, I, Jonathan E. Coughlan, Disciplinary Counsel, hereby certify that Karen H. Osmond, attorney at law (0082202), is: 1) authorized to represent Disciplinary Counsel in the foregoing unauthorized practice of law proceeding, and 2) has accepted the responsibility of prosecuting, to a conclusion, the foregoing Unauthorized Practice of Law Complaint.

I further certify that after investigation, Disciplinary Counsel, believes that probable cause exists to warrant a hearing on the foregoing complaint. Signed in Columbus, Ohio, on this 11<sup>th</sup> day of June 2013.

  
Jonathan E. Coughlan (0026424) *imv*  
Disciplinary Counsel *0014726*



On June 11, 2013, relator filed a formal complaint against respondent alleging that she had engaged in the unauthorized practice of law. (Ex. 3.) On June 12, 2013, the board sent respondent a copy of the complaint, via certified mail, along with notice that she had 20 days to file an answer to the formal complaint. (Ex. 4.) Respondent signed for the complaint on or about June 15, 2013; however, to date, she has not filed an answer to the complaint. (Ex. 5.) Accordingly, relator now moves for a default judgment.

#### *Efforts Made to Contact Respondent*

Relator's investigation began on or about September 29, 2011 when relator received a letter from Homeland Security Agent, John Tiano, regarding an investigation that the Office of Inspector General (OIG) was conducting. (Ex. 6.) The predicate of the OIG's investigation was respondent's "representation" of Miguel Galan-Rubio; however, the focus of the OIG's investigation was whether two federal employees, Yolanda Villalovas and Judge Thomas Janas, had accepted bribes from respondent in exchange for taking favorable actions in Galan-Rubio's case. (Ex. 7)

In or about January 2012, the OIG concluded their investigation with the finding that that the federal employees had not engaged in any misconduct. *Id.* Thereafter, the OIG provided relator with materials from their investigative file, including but not limited to documents obtained during the course of their investigation, video and audio recordings of meetings/phone calls with respondent, and notes pertaining to their investigation.

On November 28, 2012, relator sent respondent a Letter of Inquiry via certified mail. (Ex. 8.) Respondent personally signed for this letter on December 6, 2012. *Id.* On December 7, 2012, respondent called relator's office and left a voicemail message. (Ex. 9.) In her message, respondent stated that she had received relator's Letter of Inquiry, but that she was currently

experiencing several different health problems. *Id.* Respondent stated that she would have her daughter call back to discuss the matter further. *Id.* To date, relator has not received any phone calls from anyone claiming to be respondent's daughter, nor has relator received a response to the Letter of Inquiry. (Ex. 2; Ex. 9.)

Having received no further information from respondent, relator decided to file a formal complaint against respondent alleging that respondent had engaged in the unauthorized practice of law. On May 22, 2013, relator's investigator hand-delivered a draft copy of the complaint to respondent. (Ex. 10.) On that same day, respondent called relator's office and spoke to relator's counsel. (Ex. 2.) Respondent denied most of the allegations in the complaint and attempted to explain her conduct including, but not limited to, stating that her father had ordered business cards for her for when she finished law school. *Id.* Relator's counsel advised respondent that she would have a full opportunity to explain her conduct and/or defend herself; however, she had to follow the proper channels, i.e. providing a response to the draft complaint and filing an answer to the formal complaint if and when she was served with a formal complaint by the board. *Id.* Respondent then stated that she would be discussing the matter with her husband's immigration attorney because "he knew everything" that she did. *Id.* To date, relator has never been contacted by anyone claiming to be respondent's attorney, nor has relator received any type of written response to the allegations contained in the draft complaint. *Id.*

On August 2, 2013, an initial status call was held in this matter. (Ex. 11.) Prior to this call, the board had made attempts to notify respondent of the date and time of the call. *Id.* Despite the board's attempts, respondent did not participate in the call. *Id.*

On September 12, 2013, relator's counsel sent respondent a letter via regular and certified mail, which indicated that relator would be filing a Motion for Default Judgment on or before

September 30, 2013 and that if respondent wished to participate in the matter, she should contact the board immediately. (Ex. 12.) The certified copy of this letter was returned to relator; however, to the best of relator's knowledge, respondent received the regular mail copy of the letter. Nevertheless, on October 24, 2013, relator sent another letter to respondent advising respondent of relator's intent to file a Motion for Default Judgment.<sup>1</sup> (Ex. 13.) To date, relator has not been contacted by respondent, nor has relator been advised that respondent attempted to contact the board. (Ex. 2.)

#### *Evidence in Support of the Complaint*

In late January or early February 2011, Miguel Galan-Rubio picked up respondent's business card at Mi Tiera, a local Hispanic grocery store. (Ex. 14.) Respondent's business card indicated that she worked for "Hernandez Law," which purportedly focused on "criminal, family, juvenile, and immigration" law. (Ex. 14; Ex. 15.)

Galan-Rubio entered the United States illegally in or about 1999 and is facing possible deportation from the United States. (Ex. 14.) Because Galan-Rubio has a family and three young children who are U.S. citizens, Galan-Rubio contacted respondent for assistance with his immigration matters. *Id.* At the time he contacted respondent, Galan-Rubio's next court date was scheduled for March 16, 2011 in the United States Immigration Court (Cleveland, Ohio), Case No. A088-922-285. *Id.*

Sometime during late January 2011 or early February 2011, Galan-Rubio met with respondent about his immigration case. During this meeting, respondent reviewed Galan-Rubio's immigration documents and informed Galan-Rubio that it would be an "easy" case for

<sup>1</sup> By this time, relator had requested an extension of time until November 25, 2013 to file the Motion for Default Judgment.

her. *Id.* Respondent also informed Galan-Rubio that she had a personal relationship with an individual named Yolanda Villalovos – a “high level” employee with the United States Citizenship and Immigration Service (USCIS) in California. *Id.* She stated that Villalovos had assisted her with several cases and would assist her with this case for a fee. *Id.* Respondent also told Galan-Rubio that she had a personal and direct contact with Immigration Judge Thomas Janas, the Governor of Ohio, and an Ohio senator. *Id.* Respondent implied that these individuals could also assist her with Galan-Rubio’s case.

Over the next few weeks, respondent and Galan-Rubio spoke regularly by phone. During these conversations, respondent advised Galan-Rubio that she had spoken to Judge Janas and Villalovos about Galan-Rubio’s case and that everything was “fine.” *Id.* She also advised him that he did not need to appear for his March 16, 2011 court date. *Id.* During these conversations, respondent asked Galan-Rubio to pay certain fees, which she claimed would be forwarded to Judge Janas and Villalovos for their services. *Id.* Galan-Rubio paid respondent the following amounts:

- a. \$500 on February 4, 2011 for “immigration paperwork;”
- b. \$500 on February 11, 2011 for “immigration paperwork;”
- c. \$550 on February 20, 2011 for “court cost suspension deportation;” (sic) and
- d. \$500 on February 20, 2011 for “lawyer fee immigration.” (Ex. 16; Ex. 17.)

During February 2011, respondent also met with Galan-Rubio several times. During these meetings, respondent presented Galan-Rubio with several documents that she *purportedly* prepared, filed, sent, or received on his behalf. These documents included, but were not limited to, the following:

- a. A letter, dated February 7, 2011, to Judge Thomas Janas (spelled Janise) asking that her “client,” Galan-Rubio, not be removed from the United States;
- b. A letter, dated February 8, 2011, to Yolanda Villalovos, stating that respondent has a “client” that needs Villalovos’ help “in the worst way;”
- c. A letter, dated February 10, 2011, from Judge Janas (spelled Janise), stating that he had received Galan-Rubio’s papers and that he would be in contact with respondent regarding Galan-Rubio’s case;
- d. A letter, dated February 18, 2011, from respondent to Galan-Rubio containing a breakdown of respondent’s fees and stating that she was Galan-Rubio’s lawyer;”
- e. A letter, dated February 26, 2011, to Judge Janas (spelled Jansa) asking whether Galan-Rubio needed to appear in court on March 16, 2011 or whether “this problem” could be resolved out of court; and
- f. An I-485 form (Application to Register Permanent Residence of Adjust Status) that respondent prepared on behalf of Galan-Rubio.<sup>2</sup> (Exs. 18-23.)

By late February 2011, Galan-Rubio had become suspicious of respondent. For example, Galan-Rubio had asked respondent for proof that he did not need to appear for his March 16, 2011 court date, but respondent stated she would not have that information for a few more days. (Ex. 14.) Galan-Rubio also asked respondent for proof that she was an attorney, but respondent stated that she did not have that information available because she had recently moved. *Id.*

On or about February 28, 2011, Galan-Rubio contacted the immigration court directly to determine the status of his March 16, 2011 court date. *Id.* He was advised that the court date

<sup>2</sup> This form was rejected by the U.S. Department of Justice, Executive Office for Immigration Review because it was not two-hole punched and did not contain a proof of service, cover page, or proposed order. (Ex. 24.)



had not been canceled and that it was still scheduled for March 16, 2011. *Id.* On or about March 1, 2011, Galan-Rubio retained Attorney Marilyn Zayas-Davis to represent him in his immigration matters. *Id.* Thereafter, Attorney Zayas-Davis made arrangements for an attorney, Jennifer Payton, to appear at immigration court on behalf of Galan-Rubio on March 16, 2011. (Ex. 25.)

Attorney Zayas-Davis also notified numerous agencies, including the Department of Homeland Security – Office of Inspector General (OIG), of respondent’s actions. *Id.* As noted above, the OIG initiated an investigation in or about March 2011 to determine whether any federal employees had engaged in misconduct. (Ex. 7.)

On March 24, 2011 and with Galan-Rubio’s consent, the OIG monitored a telephone call between Galan-Rubio and respondent. (Ex. 7; Ex. 26.) During this call, respondent stated she had completed all of the necessary paperwork for Galan-Rubio and had spoken to Judge Janas several times about Galan-Rubio’s proceedings. *Id.* During the aforementioned call, respondent also requested another \$600 from Galan-Rubio, which she stated was for Judge Janas to “finish up” the case. *Id.*

On March 30, 2011 and with Galan-Rubio’s consent, the OIG taped a meeting between Galan-Rubio and respondent. (Ex. 7; Ex. 27.) The OIG had provided Galan-Rubio with \$600 in government funds which he gave to respondent during the meeting. (Ex. 28.) Respondent reiterated that the money was for Judge Janas, and she gave Galan-Rubio a letter, dated February 21, 2011, purportedly signed by Judge Janas, which indicated that Judge Janas had received a total of \$1,550 from respondent. (Ex. 29.)

On April 6, 2011 and with Galan-Rubio’s consent, the OIG monitored a telephone call between Galan-Rubio and respondent. (Ex. 7; Ex. 30.) Respondent again stated she had spoken

to Judge Janas and that Galan-Rubio did not have to attend any court proceedings. *Id.* During this call, respondent told Galan-Rubio not to call the court directly because Judge Janas had already “taken care of everything.” *Id.* Respondent then requested more money from Galan-Rubio for her services as his “lawyer.” *Id.*

The April 6, 2011 phone call was the last time that Galan-Rubio spoke to or met with respondent; however, respondent continued to contact Galan-Rubio regarding “fees” that he owed. (Ex. 14.) On or about April 30, 2011, respondent sent Galan-Rubio a letter stating that he needed to pay her \$2,500 or she would file “papers at the courthouse...for nonpayment.” (Ex. 31.) The letter further stated that if she had to file “papers” against him, it would “look bad” and may initiate deportation proceedings again. *Id.* On or about August 10, 2011, respondent wrote a second letter to Galan-Rubio stating that his “payment is overdue.” (Ex. 32.) Respondent stated that if Galan-Rubio did not pay her, she would have to contact immigration officials, which would lead to him being deported. *Id.* Respondent further stated that she could not “stop it this time around.” *Id.*

On January 20, 2012, Cassandra Koshorek and David Malloy, special agents from the OIG, interviewed Judge Thomas Janas. (Ex. 33.) During this interview, Judge Janas indicated that he did not know respondent, that he had never received any money from her, and that he did not send any letters to her. *Id.* On January 24, 2012, Koshorek interviewed Yolanda Villalovas. (Ex. 34.) During the interview, Villalovas stated that she did not know respondent, Galan-Rubio, or Judge Janas. *Id.* She further stated that she did not receive any money from respondent, nor did she recall receiving any letters from respondent. *Id.* Villalovas stated that if a letter had been sent to her, it would have most likely been intercepted by the receptionist and forwarded to the correct department. *Id.* Based on the interviews with Judge Janas and Villalovas, the OIG

declined to take further action in the matter. (Ex. 7.) The OIG did, however, speak to federal and local prosecutors about the possibility of prosecuting respondent for her actions; however, both entities declined to prosecute respondent for various reasons. *Id.*

## CASE LAW

Many cases decided by the Supreme Court of Ohio support relator's allegations that respondent engaged in the unauthorized practice of law. Respondent not only held herself out as an attorney, she also filed immigration paperwork on behalf of Galan-Rubio. In addition, respondent engaged in deceitful and dishonest actions, which would have resulted in irreparable harm to Galan-Rubio. In fact, if Galan-Rubio had not acted on his suspicions regarding respondent, the immigration court would have ordered him to be removed in absentia without any further opportunity for hearing or due process. (Ex. 25.)

This Supreme Court of Ohio has consistently held that the “the unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the Supreme Court Rules for the Government of the Bar of Ohio.” *Ohio State Bar Assn. v. Heath*, 123 Ohio St.3d 483, 2009-Ohio-5958, 918 N.E.2d 145 (citing *Akron Bar Assn. v. Greene*, 77 Ohio St.3d 279, 280 (1997) and *Land Title Abstract & Trust Co., v. Dworken*, 129 Ohio St.3d 23, 1 O.O. 313, 193 N.E. 650 (1934)). The Court has further held that “Advising others of their legal rights and responsibilities is the practice of law, as is the preparation of legal pleadings and other legal papers without the supervision of an attorney licensed in Ohio.” *Disciplinary Counsel v. Brown*, 121 Ohio St.3d 423, 2009-Ohio-1152, 905 N.E.2d 163 (citing *Cleveland Bar Assn. v. McKissic*, 106 Ohio St. 3d 106, 2005-Ohio-3954, 832 N.E.2d 49).

“Because respondent did not possess the qualifications necessary to practice law in this state and

yet attempted to provide legal representation in court for another person, a preponderance of the evidence establishes that [she] engaged in the unauthorized practice of law.” *Heath*, 123 Ohio St.3d 483, 2009-Ohio-5958, 918 N.E.2d 145, ¶23.

### **MITIGATING FACTORS**

Relator is not aware of any mitigating factors or exculpatory evidence in this matter.

### **EXHIBITS**

1. Certificate from the Supreme Court of Ohio
2. Affidavit from Karen H. Osmond
3. Formal Complaint, June 11, 2013
4. Notice to respondent of filing of complaint, June 11, 2013
5. Email and attachment from Minerva Elizaga, September 12, 2013  
Printout from USPS Website, November 4, 2013
6. Letter from John Tiano to relator, September 28, 2011
7. Affidavit and attachments from Cassandra Koshorek
8. Letter of Inquiry, November 28, 2012
9. Affidavit from Shannon Scheid
10. Affidavit from Donald Holtz
11. Entry, August 5, 2013
12. Letter to respondent, September 12, 2013
13. Letter to respondent, October 24, 2013
14. Affidavit and attachments from Miguel Galan-Rubio
15. Respondent’s business card
16. Receipts provided to Galan-Rubio by respondent, February 4 and 11, 2011

17. Receipts provided to Galan-Rubio by respondent, February 20, 2011
18. Letter from respondent to Judge Janas, February 7, 2011
19. Letter from respondent to Yolanda Villalovas, February 8, 2011
20. Letter allegedly from Judge Janas, February 10, 2011
21. Letter from respondent to Galan-Rubio, February 18, 2011
22. Letter from respondent to Judge Janas, February 26, 2011
23. Galan-Rubio's EOIR Records
24. Rejected Filing Notice, February 17, 2011
25. Affidavit and attachments from Marilyn Zayas-Davis
26. Memorandum of Activity, March 24, 2011
27. Memorandum of Activity, March 30, 2011
28. Payment Receipt, March 30, 2011
29. Letter allegedly from Judge Janas, February 21, 2011
30. Memorandum of Activity, April 6, 2011
31. Letter from respondent to Galan-Rubio, April 30, 2011
32. Letter from respondent to Galan-Rubio, August 10, 2011
33. Memorandum of Activity, January 20, 2012
34. Memorandum of Activity, January 24, 2012

#### **STATEMENT OF RELIEF SOUGHT BY RELATOR**

Relator requests that the board make a specific finding that respondent engaged in the unauthorized practice of law. Relator further requests that the board recommend that the Supreme Court of Ohio permanently enjoin respondent from engaging in the same or similar acts

to those described in this motion. Finally, relator requests that that the board impose a \$10,000 civil penalty upon respondent – the maximum penalty permitted under Gov. Bar R. VII (8)(B) – due to the deceitful and potentially harmful conduct that respondent engaged in.

### **CONCLUSION**

Respondent has engaged in conduct constituting the unauthorized practice of law in the State of Ohio. Despite having been given adequate opportunity to do so, respondent has failed to participate or otherwise defend her actions in this matter. Accordingly, relator respectfully requests that the board grant this Motion for Default Judgment.

Respectfully submitted,

Office of Disciplinary Counsel  
Scott J. Drexel  
Disciplinary Counsel Designate\*

---

Karen H. Osmond (0082202)  
Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
(614) 461-0256  
(614) 461-7205 (Facsimile)  
Karen.Osmond@sc.ohio.gov  
Counsel for Relator

\*Admitted in California, application for admission pending in Ohio

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing “Relator’s Motion for Default Judgment” was served upon Mary E. Hernandez, at 7501 School Road, Lot 63, Cincinnati, OH 45249, via U.S. Mail, postage prepaid, on this 6<sup>th</sup> day of November 2013.

---

Karen H. Osmond  
Counsel for Relator





# **III. Tuohy Regulations**



Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.21

## 28 CFR 16.21 - Purpose and scope.

### § 16.21 Purpose and scope.

(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:

(1) In all federal and state proceedings in which the United States is a party; and

(2) In all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a "demand") of a court or other authority is issued for such material or information.

(b) For purposes of this subpart, the term ***employee of the Department*** includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. Attorneys, U.S. Marshals, U.S. Trustees and members of the staffs of those officials.

(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prosecutive, or regulatory agencies.

(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

**1 Download PDF**To View PDF, Download Here [free.quickpdfmerger.com](https://free.quickpdfmerger.com)**2 Google Chrome**Chrome Safe Browsing will protect you from malicious sites.  
[google.com](https://google.com)[About LII](#)[Contact us](#)[Advertise here](#)

Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.22

## 28 CFR 16.22 - General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

### **§ 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.**

(a) In any federal or state case or matter in which the United States is not a party, no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official in accordance with §§ 16.24 and 16.25 of this part.

(b) Whenever a demand is made upon an employee or former employee as described in paragraph (a) of this section, the employee shall immediately notify the U.S. Attorney for the district where the issuing authority is located. The responsible United States Attorney shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the responsible U.S. Attorney. Any authorization for testimony by a present or former employee of the Department shall be limited to the scope of the demand as summarized in such statement.

(d) When information other than oral testimony is sought by a demand, the responsible U.S. Attorney shall request a summary of the information sought and its relevance to the proceeding.

**Download PDF**

To View PDF, Download Here

OPEN

[About LII](#)[Contact us](#)

Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.23

## 28 CFR 16.23 - General disclosure authority in Federal and State proceedings in which the United States is a party.

### **§ 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.**

(a) Every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the “originating component” as defined in § 16.24(a) of this part, to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by any attorney, or investigator of the Department of Justice, as such attorney shall deem necessary or desirable to the discharge of the attorney's official duties: *Provided*, Such an attorney shall consider, with respect to any disclosure, the factors set forth in § 16.26(a) of this part: *And further provided*, An attorney shall not reveal or furnish any material, documents, testimony or information when, in the attorney's judgment, any of the factors specified in § 16.26(b) exists, without the express prior approval by the Assistant Attorney General in charge of the division responsible for the case or proceeding, the Director of the Executive Office for United States Trustees (hereinafter referred to as “the EOUST”), or such persons' designees.

(b) An attorney may seek higher level review at any stage of a proceeding, including prior to the issuance of a court order, when the attorney determines that a factor specified in § 16.26 (b) exists or foresees that higher level approval will be required before disclosure of the information or testimony in question. Upon referral of a matter under this subsection, the responsible Assistant Attorney General, the Director of EOUST, or their designees shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

1 [www.warnermendenhall.com](http://www.warnermendenhall.com) - [www.warnermendenhall.com](http://www.warnermendenhall.com)

Whistleblower Lawyer - Medicare & Medicaid fraud - False Claims - Health Fraud [warnermendenhall.com](http://warnermendenhall.com)

2 **Download Form (Free)** To View Form, Download Now [free.searchformsonline.com](http://free.searchformsonline.com)

3 **Download PDF** To View PDF, Download Here [free.quickpdfmerger.com](http://free.quickpdfmerger.com)

About LII

## 28 CFR 16.24 - Procedure in the event of a demand where disclosure is not otherwise authorized.

### § 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

(a) Whenever a matter is referred under § 16.22 of this part to a U.S. Attorney or, under § 16.23 of this part, to an Assistant Attorney General, the Director of the EOUST, or their designees (hereinafter collectively referred to as the “responsible official”), the responsible official shall immediately advise the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person (hereinafter collectively referred to as the “originating component”), or that official's designee. In any instance in which the responsible official is also the official in charge of the originating component, the responsible official may perform all functions and make all determinations that this regulation vests in the originating component.

(b) The responsible official, subject to the terms of paragraph (c) of this section, may authorize the appearance and testimony of a present or former Department employee, or the production of material from Department files if:

- (1) There is no objection after inquiry of the originating component;
- (2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in § 16.26(a) of this part; and
- (3) None of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure.

(c) It is Department policy that the responsible official shall, following any necessary consultation with the originating component, authorize testimony by a present or former employee of the Department or the production of material from Department files without further authorization from Department officials whenever possible: *Provided*, That, when information is collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of the Department or by the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require that the originating component obtain the division's or the EOUST's approval before authorizing a responsible official to disclose such information. Prior to authorizing such testimony or

production, however, the responsible official shall, through negotiation and, if necessary, appropriate motions, seek to limit the demand to information, the disclosure of which would not be inconsistent with the considerations specified in § 16.26 of this part.

**(d)**

**(1)** In a case in which the United States is not a party, if the responsible U.S. attorney and the originating component disagree with respect to the appropriateness of demanded testimony or of a particular disclosure, or if they agree that such testimony or such a disclosure should not be made, they shall determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney shall notify the Director of the EOUST or the Assistant Attorney General in charge of the division responsible for such litigation or investigation, who may:

**(i)** Authorize personally or through a Deputy Assistant Attorney General, the demanded testimony or other disclosure of the information if such testimony or other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment or in the judgment of the Director of the EOUST, is consistent with the factors specified in § 16.26(a) of this part, and none of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure;

**(ii)** Authorize, personally or by a designee, the responsible official, through negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which, through testimony or documents, considerations specified in § 16.26 of this part, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

**(iii)** If, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Director of the EOUST or the Assistant or Deputy Assistant Attorney General does not authorize the demanded testimony or other disclosure, refer the matter, personally or through a Deputy Assistant Attorney General, for final resolution to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

**(2)** If the demand for testimony or other disclosure in such a case does not involve information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component shall decide whether disclosure is appropriate, except that, when especially significant issues are raised, the responsible official may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part. If the originating component determines that disclosure would not be appropriate and the responsible official does not refer the matter for higher level review, the responsible official shall take all appropriate steps to limit the scope or obtain the withdrawal of a demand.

**(e)** In a case in which the United States is a party, the Assistant General or the Director of the EOUST responsible for the case or matter, or such persons' designees, are authorized, after consultation with the originating component, to exercise the authorities specified in paragraph (d)(1) (i) through (iii) of this section: *Provided*, That if a demand involves information that was collected, assembled, or prepared originally in connection with litigation or an investigation

supervised by another unit of the Department, the responsible official shall notify the other division or the EOUST concerning the demand and the anticipated response. If two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement, or the Director of the EOUST and the appropriate Assistant Attorney General, may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25(b) of this part.

**(f)** In any case or matter in which the responsible official and the originating component agree that it would not be appropriate to authorize testimony or otherwise to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. After taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand, the responsible official shall refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

**(g)** In any case or matter in which the Attorney General is personally involved in the claim of privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

**1 Download PDF** To View PDF, Download Here [free.quickpdfmerger.com](http://free.quickpdfmerger.com)



**2 Download Form (Free)** To View Form, Download Now [free.searchformsonline.com](http://free.searchformsonline.com)



**3 Divorce Advice Workshops - Resources to Help You Navigate**

Legal, Financial & Wellness Professionals Facilitate: Call & Reserve A Seat Now! [clientcentricfinancialadvisors.com](http://clientcentricfinancialadvisors.com)



About LII

Contact us

Advertise here

Help

Terms of use

Privacy

[LII]



Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.25

## 28 CFR 16.25 - Final action by the Deputy or Associate Attorney General.

### § 16.25 Final action by the Deputy or Associate Attorney General.

(a) Unless otherwise indicated, all matters to be referred under § 16.24 by an Assistant Attorney General, the Director of the EOUST, or such person's designees to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the matter is referred personally by or through the designee of an Assistant Attorney General who is within the general supervision of the Deputy Attorney General, or (2) to the Associate Attorney General, in all other cases.

(b) All other matters to be referred under § 16.24 to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the originating component is within the supervision of the Deputy Attorney General or is an independent agency that, for administrative purposes, is within the Department of Justice, or (2) to the Associate Attorney General, if the originating component is within the supervision of the Associate Attorney General.

(c) Upon referral, the Deputy or Associate Attorney General shall make the final decision and give notice thereof to the responsible official and such other persons as circumstances may warrant.

**Ask a Lawyer Online Now - Lawyers Answer in Minutes**

Questions Answered Every 9 Seconds. Get Legal Answers Online & Save Time!  
[justanswer.com/Law/Online-Lawyers](https://justanswer.com/Law/Online-Lawyers)



[About LII](#)

[Contact us](#)

[Advertise here](#)

[Help](#)

[Terms of use](#)

[Privacy](#)

Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.26

## 28 CFR 16.26 - Considerations in determining whether production or disclosure should be made pursuant to a demand.

### **§ 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.**

**(a)** In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:

- (1)** Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and
- (2)** Whether disclosure is appropriate under the relevant substantive law concerning privilege.

**(b)** Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:

- (1)** Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e),
- (2)** Disclosure would violate a specific regulation;
- (3)** Disclosure would reveal classified information, unless appropriately declassified by the originating agency,
- (4)** Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection,
- (5)** Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired,
- (6)** Disclosure would improperly reveal trade secrets without the owner's consent.

**(c)** In all cases not involving considerations specified in paragraphs (b)(1) through (b)(6) of this section, the Deputy or Associate Attorney General will authorize disclosure unless, in that person's judgment, after considering paragraph (a) of this section, disclosure is unwarranted. The Deputy or Associate Attorney General will not approve disclosure if the circumstances specified in paragraphs (b)(1) through (b)(3) of this section exist. The Deputy or Associate Attorney General will not approve disclosure if any of the conditions in paragraphs (b)(4) through (b)(6) of this section exist, unless the Deputy or Associate Attorney General

determines that the administration of justice requires disclosure. In this regard, if disclosure is necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, consideration shall be given to:

- (1) The seriousness of the violation or crime involved,
- (2) The past history or criminal record of the violator or accused,
- (3) The importance of the relief sought,
- (4) The importance of the legal issues presented,
- (5) Other matters brought to the attention of the Deputy or Associate Attorney General.

(d) Assistant Attorneys General, U.S. Attorneys, the Director of the EOUST, U.S. Trustees, and their designees, are authorized to issue instructions to attorneys and to adopt supervisory practices, consistent with this subpart, in order to help foster consistent application of the foregoing standards and the requirements of this subpart.

- |  |   |       |
|--|---|-------|
| <b>1 Chapter 13 Bankruptcy</b>   | Columbus Attorney Scott R Needleman Meet with me, not a paralegal thecolumbusbankruptcylawyer.com           | > ▶ × |
| <b>2 Basics of Laserfiche</b>  | Enjoy a free webinar of the Basic Functions of Laserfiche! pages.mccinnovations.com                         | > ×   |
| <b>3 30-Hour Auditing Certification - Good Clinical Practice Audit</b> | This program is geared toward individuals transitioning into GCP auditing barnettinternational.com/Auditing | > ×   |

About LII

Contact us

Advertise here

Help

Terms of use

Privacy

[LII]

Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.27

## 28 CFR 16.27 - Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.

### **§ 16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.**

If response to a demand is required before the instructions from the appropriate Department official are received, the responsible official or other Department attorney designated for the purpose shall appear and furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.



### Temple Law School Japan

Take int'l law classes, gain internship experience, and discover Japan's unique culture.

OPEN



[About LII](#)

[Contact us](#)

[Advertise here](#)

[Help](#)

[Terms of use](#)

[Privacy](#)

[LII]

Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.28

## 28 CFR 16.28 - Procedure in the event of an adverse ruling.

### § 16.28 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.27 of this chapter pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 16.24 and 16.25 of this part not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall, if so directed by the responsible Department official, respectfully decline to comply with the demand. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

### Military Defense Lawyer - BCMR Experts

Top Military Defense. Representing Service Members in Courts-Martial, PEB & More [militarydefense.com](http://militarydefense.com)



OPEN

[About LII](#)

[Contact us](#)

[Advertise here](#)

[Help](#)

[Terms of use](#)

[Privacy](#)

[LII]

Cornell Law School

CFR › Title 28 › Chapter I › Part 16 › Subpart B › Section 16.29

## 28 CFR 16.29 - Delegation by Assistant Attorneys General.

### § 16.29 Delegation by Assistant Attorneys General.

With respect to any function that this subpart permits the designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate their authority, in any case or matter or any category of cases or matters, to subordinate division officials or U.S. attorneys, as appropriate.

#### 1 Temple Law School Japan

JD SPRING SEMESTER ABROAD in TOKYO expands your legal education. Apply for Spring 2019. [tuj.ac.jp](http://tuj.ac.jp)



#### 2 Download PDF

To View PDF, Download Here [free.quickpdfmerger.com](http://free.quickpdfmerger.com)



[About LII](#)

[Contact us](#)

[Advertise here](#)

[Help](#)

[Terms of use](#)

[Privacy](#)

[LII]

# **IV. Recent Trends in the Law**

**IV.**

Recent Trends







**Recent Trends in the Law  
Regarding the  
Unauthorized Practice of Law**

David A. Kutik  
Of Counsel, Jones Day

---

---

---

---

---

---

---

---

**CHALLENGES TO A STATE'S ABILITY TO REGULATE THE  
PRACTICE OF LAW**

<p>Multijurisdictional practice</p>	<p>On-line legal service providers</p>	<p>Risk of retaliatory filing of actions by UPL respondents against UPL prosecutors</p>
-------------------------------------	--	---

---

---

---

---

---

---

---

---



**MULTIJURISDICTIONAL  
PRACTICE**

**OHIO**  
*welcomes You*

0

---

---

---

---

---

---

---

---

THE OVERRIDING  
POLICY SUPPORTING  
A STATE'S ABILITY TO  
REGULATE THE  
PRACTICE OF LAW



Consumer Protection

---

---

---

---

---

---

---

---

DO CLIENT  
MATTERS STOP  
AT A STATE'S  
BORDERS?



---

---

---

---

---

---

---

---



Principles & Values | Experience & Practices | People | Offices | News & Knowledge | Careers | Languages

# one firm worldwide

Why This Matters...

- news [The Best Lawyers in America® 2019 recognizes 275 Jones Day lawyers](#) August 2018
- news [Jones Day adds two new partners in London to firm's Banking, Finance & Securities Practice](#) August 2018
- news [Jones Day welcomes Laura S. Pruitt to Financial Institutions Litigation & Regulation Practice in Washington](#) August 2018
- news [Jones Day names Tony Dias Partner-in-Charge of Miami Office](#) August 2018
- news [Jones Day lawyers author Blockchain for Business Lawyers book published by ABA Section of Science & Technology Law](#) September 2018
- news [Jones Day welcomes partner Richard Kramer to Tokyo Office](#) August 2018

Contact Us | Attorney Advertising | Disclaimers | Privacy | Copyright | Subscribe | Videos | Site Map |

Amsterdam | Atlanta | Beijing | Berlin | Brisbane | Brussels | Chicago | Cleveland | Columbus | Dallas | Detroit | Dubai | Düsseldorf | Frankfurt | Hong Kong | Houston | Irvine | London | Los Angeles | Madrid | Melbourne | Mexico City | Miami | Milan | Minneapolis | Montreal | New York | Paris | Perth | Pittsburgh | San Diego | San Francisco | São Paulo | Seoul | Sydney | Shanghai | Silicon Valley | Singapore | Sydney | Taipei | Tokyo | Washington

---

---

---

---

---

---

---

---

**RULE 5.5 SEEKS  
TO BALANCE  
THESE  
COMPETING  
POLICIES**



---

---

---

---

---

---

---

---

**RULE 5.5's "SIMPLE" RULES**

- Don't practice law in Ohio if you're not licensed to do so.
- Don't establish an office in Ohio if you're not licensed in Ohio.
- Don't help others do that.
- Don't hold yourself out as an Ohio lawyer.
- Don't appear in Ohio courts without first being admitted pro hac vice.

---

---

---

---

---

---

---

---

**RULE 5.5's "NOT SO SIMPLE" RULES**

If not licensed in Ohio, don't establish a "systematic and continuous presence" in Ohio.	If not licensed in Ohio and practicing for a corporate employer in Ohio, register for corporate-counsel status.  • Also can provide pro bono service	If not licensed in Ohio, ok to provide service as authorized by federal or Ohio law.
--	--	--

---

---

---

---

---

---

---

---



ON-LINE  
LEGAL  
SERVICES  
AND  
INFORMATION



---

---

---

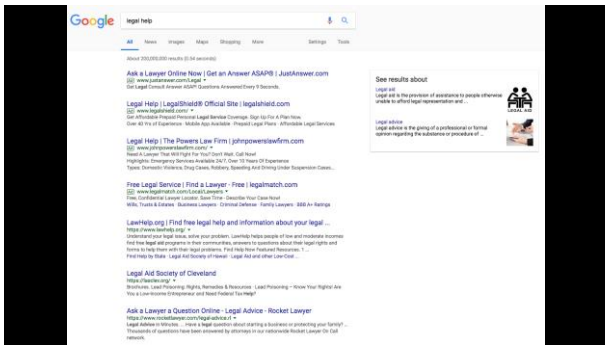
---

---

---

---

---



---

---

---

---

---

---

---

---

LAW ONLINE



- Blogs
- Lawyer/Law Firm Websites
- Ask a Lawyer
- Find a Lawyer
- Document Preparation

---

---

---

---

---

---

---

---





**LF** Trademarkia **V.**

*legalzoom*

**Trademarks411**  
Search. File. Protect.

**TTC BUSINESS SOLUTIONS**

**trademark engine**

**TradeMark Express**  
EXPERT LEGAL RESEARCH

---

---

---

---

---

---

---

**SIMILAR PROCESS AT ISSUE**



---

---

---

---

---

---

---



---

---

---

---

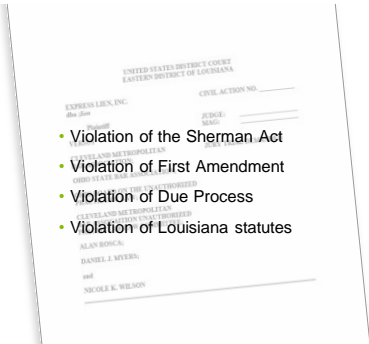
---

---

---







- Violation of the Sherman Act
- Violation of First Amendment
- Violation of Due Process
- Violation of Louisiana statutes

---

---

---

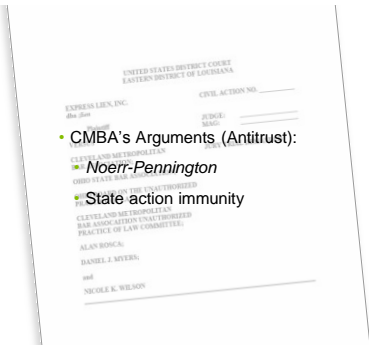
---

---

---

---

---



- CMBA's Arguments, (Antitrust):
  - *Noerr-Pennington*
  - State action immunity

---

---

---

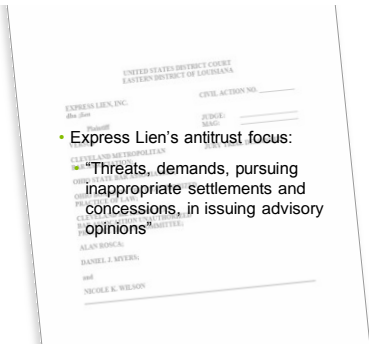
---

---

---

---

---



- Express Lien's antitrust focus:
  - Threats, demands, pursuing inappropriate settlements and concessions, in issuing advisory opinions

---

---

---

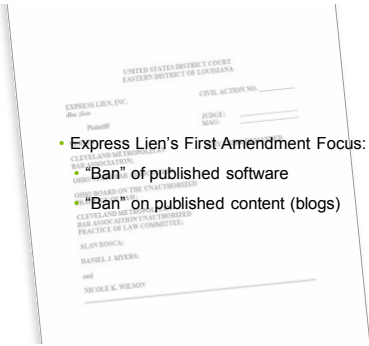
---

---

---

---

---



- Express Lien's First Amendment Focus:
  - "Ban" of published software
  - "Ban" on published content (blogs)

---

---

---

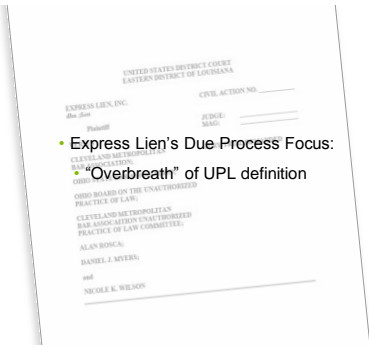
---

---

---

---

---



- Express Lien's Due Process Focus:
  - "Overbreath" of UPL definition

---

---

---

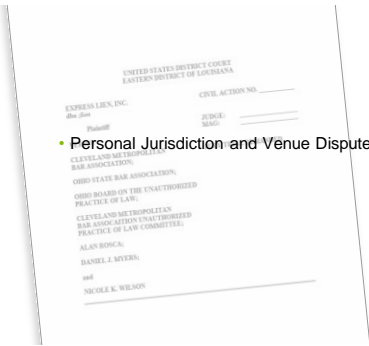
---

---

---

---

---



- Personal Jurisdiction and Venue Disputed

---

---

---

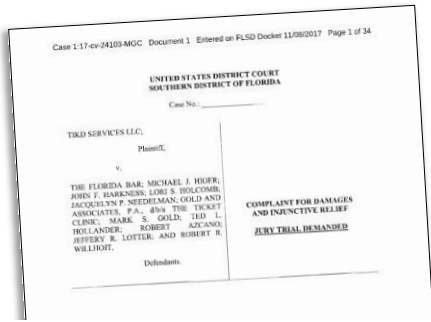
---

---

---

---

---



---

---

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

---

---

WE KNOW GETTING A TRAFFIC TICKET HURTS. HERE'S HOW TIKD CAN MAKE IT A LITTLE BETTER.

**1.5**

TIKD Points Protection. No points on your license or your money back.

**US\$10**

Avoid late fees and pay your fine.

**\$**

Pay less than your fine amount on select tickets.

**10**

All from your phone in two minutes or less.

---

---

---

---

---

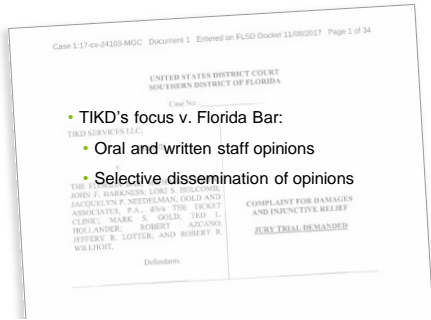
---

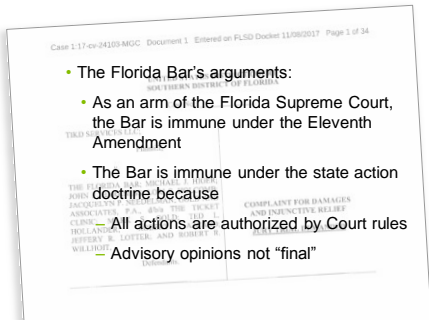
---

---

---

---






---

---

---

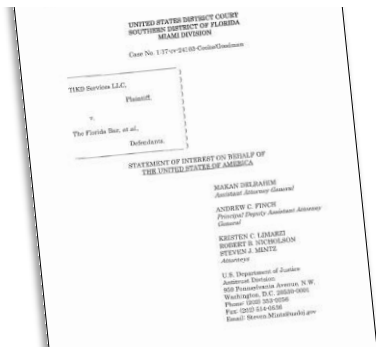
---

---

---

---

---




---

---

---

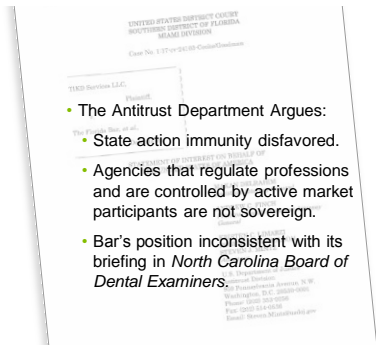
---

---

---

---

---




---

---

---

---

---

---

---

---

**LESSONS  
LEARNED?**



---

---

---

---

---

---

---

---

## RECENT TRENDS IN THE LAW REGARDING THE UNAUTHORIZED PRACTICE OF LAW

David A. Kutik  
Of Counsel, Jones Day

- I. COMMON THEME: A STATE’S ABILITY TO REGULATE THE PRACTICE OF LAW FACES RIGOROUS CHALLENGES
  - A. As multi-state law firms and business dealings become commonplace, do the rules relating to the multi-jurisdictional practice still make sense?
  - B. As we become more reliant on on-line information, apps and e-communications, is state by state regulation effective?
  - C. As on-line providers of legal services have more financial resources, are there risks associated with prosecuting such firms for UPL?
- II. MULTI-JURISDICTIONAL PRACTICE
  - A. A Conflict of Policies
    - 1. State regulation of the practice of law is necessary to control lawyers and discipline lawyers effectively.
    - 2. But client matters don’t stop at state borders.
      - a. My law firm’s motto: “One Firm Worldwide.”
      - b. Clients should have the freedom to pick their lawyers.
  - B. Rule 5.5 of the Ohio Rules of Professional Conduct<sup>1</sup> Seeks to Balance Competing Policies
    - 1. Rule 5.5 sets up some “simple” rules.
      - a. Don’t practice law in Ohio if you’re not licensed to do so. (Rule 5.5(a))
      - b. Don’t help others do that. (*Id.*)
      - c. Don’t establish an office in Ohio if you’re not licensed in Ohio. (Rule 5.5(b)(1))

<sup>1</sup> Based on the Model Rules of Professional Conduct.

- d. Don't hold yourself out as an Ohio lawyer. (Rule 5.5(b)(2))
  - e. Don't appear in Ohio courts if not licensed in Ohio without first being admitted pro hac vice.
2. But there are also some "not so simple" rules
- a. If licensed elsewhere, don't establish a "systematic and continuous presence" in Ohio. (Rule 5.5(b)(1))
    - "Presence may be systematic and continuous even if a lawyer is not physically present here." (Rule 5.5, Comment 4)
    - *E.g.*: advertising in Ohio, website available to Ohio clients
  - b. If a lawyer licensed elsewhere, the lawyer can practice in Ohio if:
    - (1) the lawyer is registered for corporate counsel status with the Office of Attorney Services and is providing legal services to the lawyer's employer or its organizational affiliates for which the permission of a tribunal to appear pro hac vice is not required;
    - (2) the lawyer is registered for corporate-counsel status with the Office of Attorney Services and is providing authorized pro bono services;
    - (3) the lawyer is providing services that the lawyer is authorized to provide by federal or Ohio law. (Rule 5.5(d)(1)-(3))
  - c. If a lawyer is licensed elsewhere, a lawyer may practice in Ohio on a temporary basis if there is a reasonable relationship between the lawyer and the client or the lawyer and the matter in the jurisdiction in which the lawyer is licensed, or if the Ohio matter is reasonably related to the lawyer's practice in another jurisdiction.(Rule 5.5(c)(2)-(4))
3. It has been generally thought that a lawyer who is continuously in Ohio could practice law if restricted to appropriate federal matters or to matters in the state of the lawyer's licensure.
4. But maybe not.
5. *In re Application of Egan*, 151 Ohio St. 3d 525, 2017-Ohio-8651.



- a. A 1998 law school graduate, Egan was admitted to the Kentucky bar in 1998.
- b. In 2002, she practiced in the Cincinnati office of her firm.
  - The firm's letterhead noted she was "admitted in Kentucky." (Note that the letterhead did not say "only admitted in Kentucky." Others on letterhead designated as "also admitted in Kentucky.")
- c. While working in the Cincinnati office of her firm, she did not hold herself out as an Ohio lawyer and she did not work on any Ohio matters.
- d. In 2008, she applied for admission to the Ohio bar without examination.
  - (1) She was advised by the Supreme Court's bar admissions counsel that her time practicing in Ohio would not count for her admission without examination – credit only for practice "performed in a jurisdiction in which the applicant was admitted..." Gov. Bar. R. I (9)(B)(2).
  - (2) She did not pursue Ohio admission further at that time.
- e. Egan joined another firm in 2013 and began working in that firm's Cincinnati office.
  - (1) Egan's application for admission without examination was again denied (for the same reason for which her application had been previously denied).
  - (2) She then moved to work in the firm's Kentucky office, although she continued to work in Cincinnati 40% of the time.
  - (3) The Board of Commissioners on Character and Fitness found Egan had engaged in UPL. The Board recommended that her application be denied, but that she be allowed to take the bar exam at a later date.
- f. Supreme Court affirmed Board's finding and recommendation. The Court observed:
  - (1) Egan's practice was not temporary.

- (2) None of the exceptions allowing non-Ohio lawyers with a systematic and continuous presence to practice in Ohio apply. [See Rule 5.5(d)(1)-(3)]

6. *In re Application of Jones*, Case No. 2018-0496 (Oh. S. Ct.)

- a. Jones graduated from law school and was admitted to the Kentucky bar in 2009.
- b. In 2014, she took a position with a Louisville law firm that subsequently merged with an Ohio law firm.
- c. In October 2015, she applied for admission to the Ohio bar without examination and moved to her firm's Cincinnati office.
- d. During her time in Cincinnati, she worked exclusively on Kentucky matters.
- e. The Board on Character and Fitness denied her application, reasoning:
  - (1) Rule 5.5 does not authorize an attorney licensed elsewhere to practice in Ohio pending admission.
    - (a) Gov Bar R. I (9)(4) prohibits non-Ohio attorneys from engaging in the practice of law prior to the attorney's application to the Court. [See also Gov Bar I (6)(A)(2).]
    - (b) ABA's proposed model rule regarding practice pending admission would not have been necessary if Rule 5.5 otherwise allowed such practice.
    - (c) Chief Justice Moyer's order allowing non-Ohio lawyers to practice non-Ohio law in Ohio after Hurricane Katrina would not have been necessary if non-Ohio practice was allowed.
  - (2) Jones' practice in Ohio was not temporary.
  - (3) None of the safe harbors in Rule 5.5 applied to Jones.
  - (4) Rule 5.5 does not allow a non-Ohio attorney to practice in Ohio even if the attorney is not practicing Ohio law.
- f. This case is pending before the Supreme Court on Jones' objection to the Board's report. Jones has argued:

- (1) Jones' practice of Kentucky law in Ohio was allowed under Rule 5.5(1)(2). That rule states, in part:
  - A lawyer who is admitted in another United States jurisdiction, is in good standing in the jurisdiction in which the lawyer is admitted, and regularly practices law may provide legal services on a temporary basis in this jurisdiction if . . . the services are reasonably related to a pending or potential proceeding before a tribunal in . . . another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law . . . to appear in such proceeding . . .
- (2) Jones' practice was temporary, relying on Comment 6 to Rule 5.5.
  - "There is no single test to determine whether a lawyer's services are provided on a 'temporary basis' in this jurisdiction, and may therefore be permissible under Division (c). Services may be 'temporary' even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation."
- (3) Jones' Kentucky practice has harmed no one in Ohio.
- (4) Unlike the applicant in *Egan*, Jones immediately applied for admission.
- (5) To deny Jones' application would violate the Fourteenth Amendment's Privileges and Immunities Clause. Under that clause, the government cannot:
  - (a) discriminate in the application process on the basis of residency.
  - (b) infringe on an individual's right to travel.
- (6) To deny Jones' application would violate the Due Process Clause.
  - The denial of the application here amounts to an unreasonable regulation and denial of applicant's livelihood.

### III. ON-LINE LEGAL SERVICES PROVIDERS AND UPL

#### A. The Ubiquity of the Internet Has Given Rise to An Active On-Line Legal Service Industry.

1. A Google search for “legal help” yields over 200 million results.
2. Per the ABA *Report on the Future of Legal Services in America*, on-line service industry value will be nearly \$6 billion within the next year.
3. There are different types of on-line legal services or information
  - a. Blogs and lawyer/law firm websites
  - b. “Find a lawyer” sites
  - c. Providing legal forms

#### B. Blogs and Lawyer/Law Firm Websites May Raise UPL Issues.

1. Providing Advice Could Raise UPL Issues.
  - a. Placing an online intake form and responding to questions for a fee may be proper. Opinion 1999-9 (Dec. 2, 1999), Board of Commissioners on Grievances and Discipline<sup>2</sup>
  - b. But a lawyer may engage in UPL providing advice through a website if the lawyer is not licensed in Ohio and the client is in Ohio. Opinion 2011-2 (Oct. 7, 2011), Supreme Court of Ohio, Board of Commissioners on Grievances & Discipline
    - (1) “[T]hrough internet advertising, the lawyers may have ‘[held] out to the public or otherwise represent[ed] that [they are] admitted to practice law’ in Ohio.” Op., p. 8.
    - (2) A lawyer not admitted in Ohio may not establish a “systematic and continuous presence for the practice of law” in Ohio. Ohio R. Prof. Cond. 5.5(b)(1), Comment [4]. “‘Systematic and continuous presence’ includes both physical and virtual presence in Ohio.” Op., p. 8.
    - (3) “Safe harbors” of Rule 5.5(c) likely do not apply.

#### C. UPL Issues Regarding “Find A Lawyer” Sites Have Been Addressed In Ohio.

<sup>2</sup> Note that this Opinion provides advice under the Ohio Code of Professional Responsibility which has been superseded by the Ohio Rules of Professional Conduct, effective 2/1/2007.

1. Online Referral Services Have Been Addressed In Ohio.
  - a. Opinion 2001-2 (Apr. 6, 2001), Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline<sup>3</sup>
    - (1) “When an attorney is contacted by a law-related commercial website company that offers to make available, in some manner, the attorney’s name, address, phone number, area of practice, or other information to potential clients in exchange for the attorney providing compensation to the company, the attorney must be extremely cautious.” (*Id.*, syllabus.)
    - (2) “An attorney is not permitted to aid in the unauthorized practice of law and therefore must exercise professional judgment to determine whether the entity is engaged in the unauthorized practice of law. Whenever a law-related website is offering services that go beyond merely a ministerial function of providing a legal form to users, the attorney should be on alert that the company may be engaged in the unauthorized practice of law.” (*Id.*)
    - (3) “Before participating with any law-related website, an attorney must familiarize himself or herself with the content of the website and the services being offered to Users.... [T]he Board suggests that if a website is offering services that go beyond merely providing a legal form to Users, an attorney should be on the alert that the company be engaged in the unauthorized practice of law.” (*Id.*, p. 5-6.)
    - (4) Cites prior opinion, Opinion 92-15 in which the Board deemed it improper for a law firm to assist a business corporation from marketing legal forms which included providing advice and instructions on filling out the documents. Attorneys were asked to provide advice for corporation’s customers. (*Id.*, p. 6.)

D. Providing Forms Or Documents May Be UPL.

1. Merely providing forms, even for a fee, is not UPL. *See Green v. Huntington National Bank*, (1965) 4 Ohio St. 2d 78, 81.

<sup>3</sup> Note that this Opinion provides advice under the Ohio Code of Professional Responsibility which has been superseded by the Ohio Rules of Professional Conduct, effective 2/1/2007.

2. Having Nonlawyers Prepare Documents, Modify Documents Or Provide Advice Regarding Documents Constitutes UPL.
  - a. The lawsuits filed by Raj Abhyanker provide insights on online UPL in the area of trademarks.
    - (1) Abhyanker was named a "Legal Rebel" by the ABA. He is the founder of LegalForce RAPC, "a patent and trademark law firm," and Trademarkia, a trademark search engine.
    - (2) He filed a series of lawsuits in the U.S. District Court for the Northern District of California.
      - (a) The defendants, in separate lawsuits, include:
        - i) LegalZoom.com
        - ii) Trademarks 411
        - iii) TTC Business Solutions (aka the Trademark Company)
        - iv) Trademark Engine
        - v) Trademark Express
    - (3) According to Abhyanker, each of these companies provided similar services through similar processes, *i.e.*:
      - (a) Providing a questionnaire to get information for a trademark application;
      - (b) Providing advice regarding the classifications of goods and services to be used for the application;
      - (c) Modifying the description of the goods and services used in the application to fit the application more clearly within the classification(s) chosen;
      - (d) Performing a trademark search;
      - (e) Providing advice regarding potentially conflicting existing trademarks; and,
      - (f) Filing completed trademark application with the U.S. Patent and Trademark office.
    - (4) Steps (b), (c), (d) and (e) likely constitute UPL.

b. Note, however, there are numerous websites that merely do searches. (In fact, Abhyanker owns one).

(1) These are likely not UPL.

3. Current status of Abhyanker's cases

a. LegalZoom successfully moved for arbitration per the terms of service on the website.

b. Trademarks 411 successfully moved to dismiss; the court held:

Statement that TM411 "does not practice law" is not misleading because TM411's activities as a correspondent for a trademark application does not constitute a representation that the correspondent is (or must be) an attorney. State law claims based on alleged UPL dismissed when Court declined to involve supplemental jurisdiction.

c. Sharp Filings successfully moved to dismiss federal Lanham Act claims. State law claims based on alleged UPL dismissed when court declined to invoke supplemental jurisdiction.

#### IV. THE GROWING THREAT TO UPL PROSECUTION

A. Well-funded UPL Respondents Are Bringing Suits Alleging, Among Other Things, Violation Of Antitrust Laws.

1. Claims to be brought claim that seeking to bar UPL is a restraint of trade in violation of the Sherman Act, 15 U.S.C. §1.

a. Theory of claim relies on *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015).

- A state agency that is controlled by market participants and not actively supervised by a politically accountable state official and not in pursuit of a clearly articulated state policy is not immune from antitrust liability.

B. Ohio's Relatively Recent Experience – *Express Lien, Inc. dba zlien v. Cleveland Metropolitan Bar Association, et al.*, Case No. 2:15-cv-02519 (U.S.D. Ct. E.D. La.)

1. In *Ohio State Bar Association v. Lienguard, Inc.*, 126 Ohio St. 3d 400, 2010-Ohio-2827, the preparation of mechanic's liens by nonlawyers was held to be UPL (albeit via a case presented on a consent decree).

2. In May 2015, CMBA filed a UPL complaint against Express Lien and certain individuals (including two Louisiana attorneys) who owned or worked for that company.

The CMBA alleged:

- According to its website, zlien “is a complete turn-key service” that “takes care of everything to get your company’s mechanics lien filed. Once you fill out our online questionnaire, you’re completely done.” (See <http://www.zlien.com/mechanics-lien/how-does-zlien-work/>. . .) zlien researches the legal property description and property owner, prepares the mechanics lien, signs the mechanics lien using a power of attorney, delivers and files the lien with the County Recorder, serves the filed lien on the property owner and required parties, and monitors lien deadlines and expirations. (See *id.* and the video at <http://zlien.com/mechanics-lien/how-does-zlien-work/>.)
3. Two months later, Express Lien filed a complaint in federal court in the Eastern District of Louisiana against the CMBA, the OSBA, the Board on the Unauthorized Practice of Law, the CMBA’s UPL Committee and three members of that committee.
    - a. Seeking to take advantage of *NC State Board of Dental Examiners*, Express Lien brought the following claims:
      - (1) Violation of the Sherman Act, 15 U.S.C. §§1 and 2
      - (2) Infringement of plaintiffs’ First Amendment Rights (via 42 U.S.C. §1983)
      - (3) Violation of Plaintiffs’ Due Process Rights
      - (4) Violation of Louisiana statutes
  4. Plaintiffs’ antitrust claims evolved.
    - a. CMBA filed a motion to dismiss. Addressing antitrust claims, CMBA argued:
      - (1) The claims were barred under the *Noerr-Pennington* doctrine: antitrust laws do not apply to “conduct (including litigation) aimed at influencing decision making by the government.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, S. Ct. 1749, 1757 (2014).



- (2) The CMBA is immune from liability under the state-action doctrine. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).
    - (3) CMBA acting as agents of the state.
      - (a) All consent decrees must be approved by the Ohio Supreme Court.
      - (b) All adjudications made by the Ohio Supreme Court.
    - (4) CMBA is acting under clearly articulated state policy.
      - Rules for the Government of the Bar expressly provide for CMBA's conduct.
  - b. Plaintiffs alleged that the conduct at issue was neither in furtherance of a clearly articulated state policy or actively supervised by the Court.
    - Plaintiffs' Second Amended Complaint described the conduct at issue as "unsigned and unsupervised anticompetitive conduct by CMBA defendants in making threats, demands, pursuing inappropriate settlements and concessions, making unguided and unauthorized legal interpretations, and for the UPL Board for issuing anti-competitive advisory opinions prior to the filing of the UPL Complaint."
5. First Amendment claims
- a. Focused on:
    - (1) Actions to "ban" Plaintiffs' published software.
    - (2) Actions to "ban" Plaintiffs' published content (*i.e.*, a blog).
  - b. CMBA's defenses similar to antitrust claims: state action immunity.
6. Due Process claim targeted "facial overbreadth" of the definition of UPL.
- CMBA's defense the same as other claims
7. CMBA also sought dismissal based on the lack of personal jurisdiction and venue.
- a. Plaintiffs sought to take advantage of the venue provisions in the Clayton Act (which also apply to the Sherman Act):

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

- b. Emphasizing the last (*i.e.*, beginning with “all process”) phrase, Plaintiffs contended that this allowed nationwide service.
- c. CMBA replied that the phrase “such cases” limited the application of the last phrase, and thus required such to be filed only where the CMBA was “an inhabitant,” where it “may be found” or where it “transacts business.” See *KM Enterprises, Inc. v. Global Traffic Techs, Inc.*, 725 F.3d 718, 724 (7<sup>th</sup> Cir. 2013); *Daniel v. American Board of Emergency Medicine*, 428 F.3d 408, 424 (2d, Cir. 2005); *GTE New Media Services, Inc. v. Bell South Corp.*, 199 F.3d 1343, 135 (D.C. Cir. 2000). But see *In re Auto Refinishing Paint Antitrust Litig.*, 358 3d 288, 296-297 (3d Cir. 2004); *Go-Video, Inc. v. Akai Electric Co.*, 885 F.2d 1406, 1413 (9<sup>th</sup> Cir. 1989).

8. The case was settled before the Court could rule on the dismissal motions.

C. Another Cautionary Tale: *TIKD Services, LLC v. The Florida Bar, et al.*, Case No. 1:17-cv-24103-MGC (U.S.D. Ct. S.D. Fla.)

1. The facts:

- a. TIKD is an online platform (including an app) which offers, for a flat fee, to retain an attorney and pay fines, if any, for individuals who receive certain kinds of traffic tickets. TIKD will also refund all monies if the customer receives any points on the customer’s driver’s license as a result of the representation obtained by TIKD.
- b. TIKD’s allegations focus on the actions of attorneys that own or work for The Ticket Clinic, a law firm, that represented individuals seeking to defend against traffic tickets. Specifically, TIKD alleged that the owner of or attorneys from The Ticket Clinic:
  - (1) Filed a bare bones UPL complaint against TIKD with the Florida Bar, *i.e.*, “TIKD.com seems to be a service that provides legal help, but its operated by non-lawyers. It seems to violate UPL rules.”
  - (2) Threatened to report attorneys taking cases from TIKD for ethics violations.

- (3) Filed ethics complaints against lawyers taking cases from TIKD.
      - (4) Filed a lawsuit against TIKD alleging that TIKD was “improperly and allegedly competing” by engaging in UPL.
    - c. TIKD has defended the UPL and fee splitting claims arguing:
      - (1) TIKD provided no legal advice to customers.
      - (2) It retained lawyers on behalf of TIKD customers. Each lawyer and client would enter into their separate agreement.
      - (3) TIKD paid lawyers a flat fee for cases taken for TIKD customers.
      - (4) TIKD capped its customer’s liability.
      - (5) TIKD’s arrangement with its customers to the arrangement between a liability insurer and its insureds.
2. TIKD alleges that the Florida Bar acted improperly by:
  - a. Providing a written staff opinion that a program similar to TIKD’s “raises ethical concerns regarding fee splitting with nonlawyer solicitation, indirect attorney client relationships, the unlicensed practice of law and financial assistance for clients.”
  - b. The Bar did not publish this opinion. Nor did it send a copy of the opinion to TIKD. Yet, the Ticket Clinic’s lawyers obtained a copy. Ticket Clinic’s lawyers then spread word of this “opinion.” The Ticket Clinic’s lawyers used the “opinion” to get lawyers taking cases for TIKD to stop working with TIKD.
  - c. The Bar refused TIKD’s request to confirm publicly that it had not reached any conclusions on the ethics/UPL complaints against TIKD.
  - d. The Bar also refused TIKD’s request to appear before the Bar’s UPL Committee.
  - e. The Bar knew about The Ticket Clinic’s conduct vis-a-vis TIKD and refused to do anything to stop it.
3. TIKD filed a motion for a preliminary injunction. The Bar filed a motion for summary judgment.
  - a. TIKD’s argument:

- Actions undertaken by the Bar (specifically, oral and written advisory opinions) not actively supervised by the Florida Supreme Court. Thus, the Bar is not immune from antitrust liability.
- b. The Bar’s arguments:
- (1) As an arm of the Florida Supreme Court, the Bar is immune under the Eleventh Amendment to the U.S. Constitution.
  - (2) For the same reason, the Bar enjoys state action immunity.
    - (a) Cites *Ramos v. Tomasino*, Case No. 16-cv-80681, 2016 WL 8678546 (S.D. Fla., Aug. 25, 2016), *aff’d in part, remanded on other grounds*, Case No. 16-15890, 2017 WL 2889472 (11<sup>th</sup> Cir. July 7, 2017) (dismissing antitrust action against Florida Bar unsuccessful bar applicant).
    - (b) All actions undertaken by Bar were authorized by Florida Supreme Court rules.
    - (c) Any alleged unsupervised acts were not “final agency action.”
- c. TIKD’s responses:
- (1) The Bar’s actions have been contrary to Florida Supreme Court rules, *e.g.*: no rules govern advisory opinions re UPL; rules prohibit advisory opinions while active investigation is ongoing.
  - (2) Non-binding opinions are, by definition, unsupervised actions.
  - (3) *Ramos* involved alleged unlawful destruction of documents, not anticompetitive conduct. Thus, *Ramos* is distinguishable.
4. The Antitrust Division of the U.S. Justice Department filed a “Statement of Interest,” supporting TIKD. The Antitrust Division argues:
- a. The state action doctrine is disfavored.
  - b. State agencies that regulate professions and are controlled by active market participants are treated as non-sovereigns for purposes of the state action doctrine.

- Cites *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975) (the fact that a state bar may be a state agency for some purposes does not create a shield that allows it to foster anticompetitive practices)
- The Bar's amicus position in *NC Board of Dental Examiners* is inconsistent with its position here that the Bar need not satisfy requirements for state immunity.
- *Ramos* is distinguishable because the plaintiff there challenged a rule promulgated by the Florida Supreme Court.

D. Lessons Learned?



# **V. Using the CSPA to Combat UPL**







# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Consumer Protection  
Office 800-282-0515  
Fax 866-268-2279

30 E. Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215  
www.OhioAttorneyGeneral.gov

## Consumer Complaint Form

<b>Office Use Only:</b> Complaint #: _____
---

The Ohio Attorney General's Consumer Protection Section provides a complaint resolution process to resolve disputes between consumers and businesses. If you have a complaint regarding a consumer transaction (a purchase or advertisement of a product or service used for the home or personal use), you may file a complaint with our office.

### You May File a Complaint One of Three Ways:

<b>By mail:</b> Complete this form in dark ink and mail to:  <b>Consumer Protection Section</b> <b>30 E. Broad St., 14th floor</b> <b>Columbus, OH 43215-3400</b>	<b>By phone:</b> Call <b>800-282-0515</b>  Our help center associates will assist you in filing your complaint.	<b>Online:</b> Visit <b>www.OhioAttorneyGeneral.gov</b>  On our Web site, you can file a complaint, sign up for our e-newsletter and learn about your consumer rights.
--	--	---

### Pre-Complaint Questions:

- Have you contacted the company about your complaint? Yes \_\_\_ No \_\_\_
- Have you hired an attorney to represent you in this matter? Yes \_\_\_ No \_\_\_  
 If yes, provide: Attorney's name: \_\_\_\_\_ Attorney's phone number: (\_\_\_\_) \_\_\_\_\_
- Are you involved in a lawsuit regarding this issue? Yes \_\_\_ No \_\_\_
- Have you contacted any other agencies regarding this issue? Yes \_\_\_ No \_\_\_  
 If yes, please list the agencies: \_\_\_\_\_

**PLEASE NOTE: Any information you submit with your complaint is considered public and may be released as part of a public records request. Remove Social Security numbers, credit card numbers, debit card numbers and other bank account numbers from any documents you submit with your complaint.**

### Information about You (the Consumer):

First name: \_\_\_\_\_ MI: \_\_\_\_\_ Last name: \_\_\_\_\_ Suffix: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_ Country: \_\_\_\_\_

Daytime phone: (\_\_\_\_) \_\_\_\_\_ Alternate phone: (\_\_\_\_) \_\_\_\_\_

E-mail address: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

### Subject of the Complaint (Business Information):

Name of business you're complaining about: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_ Country: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Toll-free: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

E-mail address: \_\_\_\_\_ Web address: \_\_\_\_\_

Name of business owner/salesperson: \_\_\_\_\_

## About the Transaction:

Product/service involved: \_\_\_\_\_

Date of purchase: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ (mm/dd/yyyy)

Did you sign a contract? Yes \_\_\_\_ No \_\_\_\_

Are you making payments? Yes \_\_\_\_ No \_\_\_\_

Total cost of product/service: \$ \_\_\_\_\_

Method of payment: \_\_\_\_\_

Amount paid so far: \$ \_\_\_\_\_ Disputed amount: \$ \_\_\_\_\_

Is the product/service under warranty? Yes \_\_\_\_ No \_\_\_\_

If yes, warranty company name: \_\_\_\_\_

How did the first contact with the company occur?

E-mail

Mail

Fax

Radio

Home visit

Store visit

Infomercial

Telephone call

Internet auction

Television

Internet banner/Web site

Word of mouth

Magazine/Newspaper

Other: \_\_\_\_\_

Describe the transaction and your complaint: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Briefly describe what you would consider a reasonable resolution to your complaint: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Motor Vehicle Complaints *ONLY*:

**Complete this section *only* if your complaint regards a motor vehicle:**

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase / Lease (*circle one*)

Vehicle Identification Number (VIN—***not your license plate number***): \_\_\_\_\_

Year of vehicle: \_\_\_\_\_ New / Used (*circle one*) Under warranty / "AS IS" (*circle one*)

Mileage at purchase or lease: \_\_\_\_\_ Current mileage: \_\_\_\_\_

## Acknowledgment of Terms and Conditions:

By checking this box I acknowledge that the information given above is true to the best of my knowledge and belief. I understand that any information I submit to the Ohio Attorney General's Office is considered public information and may be released in a public records request. I understand a copy of this form and all documents relating to my complaint will be forwarded to the company that is the subject of my complaint. I understand that the Ohio Attorney General cannot serve as my private attorney.

Date submitted: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ (mm/dd/yyyy)



## Consumer Complaint Form, Part 2

**Office Use Only:**  
Complaint #:

When you file a consumer complaint with the Ohio Attorney General's Office, you also must submit copies of documents related to your complaint, such as contracts and receipts. Submitting these documents helps ensure that you will get the best possible results from our complaint resolution process. Failure to provide required documentation may prevent or delay our ability to help you.

**Please send this form and copies of any documents related to your complaint to the Attorney General's Office:**  
Consumer Protection Section, 30 E. Broad St., 14th floor, Columbus, OH 43215-3400  
**DO NOT SEND ORIGINALS.** Any documents sent to our office will be scanned electronically and then destroyed.

**PLEASE NOTE:** Any information you submit with your complaint is considered public and may be released as part of a public records request. Remove Social Security numbers, credit card numbers, debit card numbers and other bank account numbers from any documents you submit with your complaint.

### Documents to Submit with Your Complaint:

Check below to indicate which documents/items you are submitting with your complaint (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> Contract / Purchase Agreement | <input type="checkbox"/> HUD 1 Settlement Statement ( <i>Residential Mortgage Transactions Only</i> )      |
| <input type="checkbox"/> Warranty / Service Agreement  | <input type="checkbox"/> Debt Collection Account Number* ( <i>Debt Collection Complaints Only</i> ): _____ |
| <input type="checkbox"/> Invoice / Billing Statement   | <input type="checkbox"/> Other: _____  |
| <input type="checkbox"/> Payment Record / Receipt      |  |
| <input type="checkbox"/> Advertisement                 |  |
| <input type="checkbox"/> Estimate / Proposal           |  |
| <input type="checkbox"/> Loan Application              |  |

\*DO NOT SUBMIT YOUR BANK ACCOUNT NUMBER OR SOCIAL SECURITY NUMBER.

### Additional Information about You:

To help our office better serve Ohio consumers, please check any/all categories that apply to you (optional):

- Active service member or immediate family of active service member
- Disaster victim
- Non-English speaking
- Person with disability
- Over the age of 65
- Veteran



# Using the Consumer Sales Practices Act (CSPA) To Combat UPL

2018 Unauthorized Practice of Law Seminar  
The Supreme Court of Ohio  
September 14, 2018

Tracy Morrison Dickens  
Senior Assistant Attorney General  
Office of Ohio Attorney General Mike DeWine

*This presentation is intended for educational purposes only. The Ohio Attorney General's Office may not provide legal advice to individual consumers or businesses. For legal advice, please consult an attorney. All views expressed in this presentation are not necessarily those of the Ohio Attorney General.*

I. **Consumer Sales Practices Act, R.C. 1345.01, et seq.**- Prohibits Unfair, Deceptive, and Unconscionable Acts and Practices associated with consumer transactions

A. Definitions—R.C. 1345.01

1. “consumer transaction” - R.C. 1345.01(A)→ “*a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are **primarily personal, family, or household, or solicitation to supply any of these things.***”
2. “supplier” - R.C. 1345.01(C)→ “*someone engaged in the business of soliciting consumer transactions*”

B. R.C. 1345.02 - Prohibits ***Unfair or Deceptive*** acts and practices

1. R.C. 1345.02(A)—general prohibition
2. R.C. 1345.02(B) List of acts that are considered deceptive to represent to consumers
  - a. That a good or service is of a particular standard if it is not
  - b. That a supplier has a sponsorship, approval, or affiliation that it does not have
3. Pursuant to the AG’s consumer protection rulemaking authority, in Ohio Admin. Code 109-4-3, specific acts that have been declared violations of R.C. 1345.02
  - a. Failure to Deliver Rule (OAC 109:4-3-09)

- b. “Use of the Word Free” Rule (OAC 109:4-3-04)
- c. Exclusions and Limitations in Advertising Rule (OAC 109:4-3-02)

C. R.C. 1345.03—Prohibits *Unconscionable* Acts or Practices

- 1. gives a list of factors to consider when deciding if an act is unconscionable.
  - a. Example: Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction
- 2. Must prove that the supplier committed the acts *knowingly*
- 3. R.C. 1345.031—Prohibits unconscionable acts and practices that are committed in connections with the origination of a mortgage\_(Enacted in 2006 during the foreclosure crisis)

D. R.C. 1345.06—Gives the AG authority to investigate cases where there is a “reasonable cause to believe” a violation of the CSPA has occurred

- 1. Pre-suit subpoena power
  - a. Subpoena duces tecum
  - b. Investigatory depositions
- 2. The names of companies the AG is investigating are confidential (R.C. 1345.05(A)(7))

E. R.C. 1345.07—Gives the AG power to bring enforcement actions and lists remedies available

- 1. Standard for bringing an action
  - a. AG has reasonable cause to believe a supplier has engaged or is engaging in an act or practice that violates the CSPA  
and
  - b. the action would be in the public interest
- 2. The AG can bring an action under the CSPA even if no known victims (AGO brings its action as a result of complaints *or “by the attorney general’s own inquiries”*)
  - i. Ex: Deceptive ad with no one known to have relied on it yet
- 3. Remedies
  - a. Permanent Injunction
  - b. Declaratory Judgment
  - c. Consumer Damages –R.C. 1345.07(B)

- d. Civil Penalties assessed by the Court –R.C. 1345.07(D)
  - i. Amount: Up to \$25,000 per violation
  - ii. When – Two categories of acts are eligible for the assessment of civil penalties
    - i. Specific acts that have been determined to be violations of R.C. 1345.02 by Ohio Courts and where those court decisions have been made available for public inspection in the Public Inspection File:  
<https://opif.ohioattorneygeneral.gov/>
    - ii. Specific acts that have already been declared by OAC rule to be unfair, deceptive, or unconscionable

F. Exempt Transactions -- R.C. 1345.01(A)

- 1. Attorneys
- 2. Physicians
- 3. Financial institutions
- 4. Sale of Insurance
- 5. Dealers in intangibles
- 6. \*NOTE: pure real estate transactions are also exempt, via case law

G. Private Right of Action – R.C. 1345.09

**II. Attorney General’s Consumer Protection Section**

A. Overview

- 1. Complaints—resolve using IDR process
- 2. Monitor trends
- 3. Investigate potential violations
- 4. Referral to attorneys (AAGs) for possible enforcement actions
- 5. Consumer Education Unit
- 6. Economic Crimes Unit
- 7. Identity Theft Unit

B. Consumer Complaints

- 1. Receive around 25,000 per year
- 2. Most common categories
  - a. Debt Collection
  - b. Unwanted telephone calls

- c. Motor Vehicles
  - d. Home Improvement
  - e. Shopping
  - f. Identity Theft
3. Help us determine which suppliers to investigate
  4. How to file
    - a. Mail
    - b. Online:
      - i. [www.ohioprotects.org](http://www.ohioprotects.org)
      - ii. <https://www.ohioattorneygeneral.gov/About-AG/File-a-Complaint>
    - c. Phone: 1-800-282-0515 (Attorney General’s Help Center)
  5. Are public records and can be requested in detail
  6. Can search by name of business
    - a. <https://www.ohioattorneygeneral.gov/Individuals-and-Families/Consumers/Search-Consumer-Complaints>

#### C. 2017 Enforcement Snapshot

1. 42 Lawsuits
2. 49 judgments and out of court assurances

#### D. Scams

1. If true scam and money is stolen, contact local law enforcement (the AG does not have original criminal jurisdiction)
2. Still encouraged to also file consumer complaints with AG because we monitor trends

### III. Foreclosure Rescue Scams / “*Loan Modification Companies*”

#### A. History

1. Arose at the same time as foreclosure crisis targeting borrowers facing foreclosure
2. First wave
  - a. True scams—promised to stop foreclosure, took money, and did nothing
  - b. Some took money and, with the help of an attorney who the consumer never had contact with, filed a limited answer and then cut off future communications

#### B. What we’re seeing now: Loan Modification Companies



1. Market themselves as “experts” in speaking with servicers and tell consumers they “know who to speak to (many former mortgage brokers)
2. Deceptive use of government affiliation, including referring to the ability to get a consumer “Special bailout funds”
3. Large up-front fees
4. Promises of help that are too good to true
5. Instruct consumers not to do things that would make sense to do, such as calling their lender, calling their attorney, or going to court
6. Many out-of-state companies (with local “reps” for credibility)
7. HUD-certified housing counselors can provide services to distressed homeowners for free

#### C. Attorney General Enforcement: Case examples

1. *State v. Mario W. Watkins and Global Services of Ohio, etc.*,
  - a. 2008 Lawsuit-- Franklin County Court of Common Pleas
  - b. Case No.: 08CVH11 16464
  - c. Marketed himself as a “foreclosure consultant”
2. *State v. Legal Aid Services, Inc. and Floyd Belsito*
  - a. 2015 Lawsuit – Delaware County Court of Common Pleas
  - b. Case No.: 15-CVH—11—0772
3. *State v. Mehdi Moarefian, dba Green Tree Financial Group et al.*
  - a. 2015 Lawsuit – Cuyahoga County Court of Common Pleas
  - b. Case Number CV 15 849655
  - c. \*\*Defendants also pleaded guilty to Federal criminal charges: <https://www.justice.gov/usao-ct/pr/ringleader-mortgage-loan-modification-scheme-pleads-guilty>
4. *State v. Michael Rabel and Michael Rabel & Associates LLC*
  - a. 2016 Lawsuit – Franklin County Court of Common Pleas
  - b. Case Number 16CV003046

#### D. FTC Rule: **Mortgage Assistance Relief Services—16 C.F.R. Part 322**

1. Took full effect January 31, 2011
2. Applies to companies that claim that they will, for a fee, negotiate with a consumer’s lender to obtain a variety of types of relief.
3. Includes an Advance fee ban and requires specific disclosures
4. Required to make certain disclosures
5. Attorneys exempt *if they are engaged in the practice of law* and meet other requirements

**IV. Other Attorney General CSPA Lawsuits and Investigations that have included possible UPL**

A. Lawsuits

1. *State v. Nelson Gamble & Associates et al.* (Debt Settlement Company)
  - a. 2012 Lawsuit – Franklin County Court of Common Pleas
  - b. Case Number 12CV003049
2. *State v. Andrea West and Estate Planning Paralegal Services*
  - a. 2010 Lawsuit – Franklin County Court of Common Pleas
  - b. Case Number 10CVH08 12416
3. *State v. Disability Ohio Assistance LLC and Kelly S. McElravey*
  - a. 2017 Lawsuit – Franklin County Court of Common Pleas
  - b. Case Number 27CV008059

B. Investigation: A non-attorney who was working as a “bankruptcy preparer” in S.D. Ohio