

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

TOLEDO BAR ASSOCIATION,

Relator,

v.

RICK B. VANLANDINGHAM III, COURT:

Respondent.

FILED
AUG 27 2014
SUPREME COURT OF OHIO

14-1497

UPL 13-06

FINAL REPORT

The Toledo Bar Association (“Relator”) filed a Complaint alleging Respondent Rick B. VanLandingham III engaged in one count of the unauthorized practice of law by filing a motion on behalf of his girlfriend in a case before the Toledo Municipal Court.

Relator filed a Motion for Summary Judgment, and Respondent did not file a response to the motion. Upon consideration, the panel granted Relator’s Motion for Summary Judgment, finding that Respondent engaged in the unauthorized practice of law; however, no civil penalty is recommended. At the Board’s regular meeting on July 30, 2014, the panel presented its report and recommendation, which the Board unanimously approved.

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law on Relator’s Complaint filed on July 29, 2013. Respondent was served with the Complaint by certified mail. Thereafter, the matter was assigned to Renisa A. Dorner, Chair, Julie

P. Hubler, and Robert V. Morris II, panel members. On August 28, 2013, Mr. VanLandingham requested an extension of 30 days or until September 30, 2013, to file an answer, which request was granted. The entry granting Respondent's request to file an Answer by September 30, 2013, was sent to all parties by certified mail, in accordance with Gov. Bar R. VII, Sec. 10. The record indicates that the certified mail to Respondent was returned to the Board on October 10, 2013, as "unclaimed," with a notation that notices were left at Respondent's address on three separate occasions. In accordance with Gov. Bar R. VII, Sec. 10, the entry was then sent to Respondent by regular mail and evidenced by a certificate of mailing. Respondent filed an Answer on December 11, 2013. It was noted that the the Answer did not bear a certificate of service.

A Case Scheduling Order was issued on January 16, 2014. A copy of the Case Scheduling Order and a copy of the Notice regarding the initial, telephone status conference were sent to the parties by certified mail and e-mail with delivery confirmation. Mr. VanLandingham acknowledged receipt of the email by sending a reply message. On February 4, 2014, the initial status conference was held by telephone. Counsel for relator attended, but neither respondent nor counsel for respondent phoned in. The certified mailing containing the Case Scheduling Order and the Notice of the initial status conference in this matter was unclaimed by Respondent, but was not returned to the Board until February 18, 2014, after the initial status conference. Again, the mailing was sent by regular mail with a certificate of mailing.

On January 21, 2014, Relator filed a Motion for Default. At the initial status conference, Relator notified the panel that it had received a copy of Respondent's Answer

after filing its Motion for Default. Relator moved to withdraw its Motion for Default during the initial status conference, which motion was granted.

On February 25, 2014, Relator filed a Motion for Summary Judgment, which included a certificate of service indicating that Respondent was served by regular mail. Respondent did not file a response or any objections to the motion. Upon consideration, the panel granted Relator's motion on June 2, 2014.

Respondent sent an email to the panel, which was received on June 3, 2014, requesting that the complaint be dismissed or that a hearing be "re-set and re-held with ACTUAL notice provided to all parties." It is noted that the final hearing in the matter was not scheduled until June 23, 2014. There was no indication that email was also sent to Relator. The panel issued an Entry on June 11, 2014, dismissing Respondent's request and vacating all remaining deadlines in the Case Scheduling Order in this matter.

II. FINDINGS OF FACT

1. Relator, Toledo Bar Association, is duly authorized to investigate and prosecute activities which may constitute the practice of law within the State of Ohio. Gov. Bar R. VII, Sec. 4.
2. Respondent has never been admitted to the practice of law in Ohio and is not otherwise authorized to practice law in this state. Mot. Summ. J. Ex. A. Respondent admits that he is not authorized to practice law in Ohio. Resp't Answer ¶ 2.
3. Respondent presented to the Toledo Municipal Clerk of Court a Motion to Set Aside Plea Agreement and Vacate Guilty Plea, *Sua Sponte* on behalf of Meghan E. Link

in the Toledo Municipal Court in the case known as *City of Toledo v. Meghan E. Link*, Case No. CRB-12-04429, which was filed March 19, 2013. Mot. Summ. J. Ex. H. Respondent admits to preparing the motion, however he states he was filing it on his own behalf as he was a named co-defendant in the case. Resp't Answer ¶¶ 3-4. The motion drafted by Respondent refers to Ms. Link rather than Respondent's status in the case. Mot. Summ. J. Ex. G. Respondent further states that since he apparently forgot to sign the motion, he denies filing the motion, and "thus merely attempted to file said motion." Resp't Answer ¶ 4. The certified journal report of the case indicates an entry on March 19, 2013, that the motion was not signed and should not have been docketed. Mot. Summ. J. Ex. H.

4. According to the docket, at the time Respondent submitted the motion to the clerk's office, Ms. Link was represented by attorney Stephen Long. Mot. Summ. Ex. C.

III. CONCLUSIONS OF LAW

A. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 501 N.E.2d 617 (1986); *Judd v. City Trust & Sav. Bank*, 133 Ohio St. 81, 12 N.E.2d 288 (1937). Accordingly, the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, at ¶ 16;

Lorain Cty. Bar Assn. v. Kocak, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

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

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

D. The practice of law includes the “preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts.” *Land Title Abstract v. Dworken*, 129 Ohio St. 23, 28, 194 N.E. 650, 652 (1934).

E. An individual not licensed to practice law in Ohio who purports to negotiate legal claims on behalf of others, and advises persons of their legal rights, and the terms and conditions of settlement is engaged in the unauthorized practice of law. *Cleveland Bar Assn. v. Henley*, 95 Ohio St.3d 91 (2002); *Cincinnati Bar Assn. v. Cromwell*, 82 Ohio St.3d 259, 695 N.E.2d 243 (1998); *Cleveland Bar Assn. v. Moore*, 87 Ohio St.3d 583, 722 N.E.2d 514 (2000).

F. It is well-settled that representing to the public that one is not a licensed attorney and is not providing legal advice, will not insulate a non-attorney from the

unauthorized practice of law if he is in substance giving legal advice and counsel.

Cincinnati Bar Assn. v. Telford, 85 Ohio St.3d 111 (1999).

G. Non-attorneys are not permitted to represent others in legal proceedings, nor are they permitted to serve as “co-counsel” with an attorney in a legal matter. *State v. Martin*, 103 Ohio St.3d 385 (2004).

H. By drafting and filing, or attempting a file, a Motion to Set Aside Plea Agreement and Vacate Guilty Plea, *Sua Sponte* on behalf of Meghan Link in the Toledo Municipal Court, in Case No. CRB-12-04420, Respondent engaged in the unauthorized practice of law, which the conclusion is drawn in compliance with Gov. Bar R. VII(7)(H) and *Cleve. Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶ 24-26.

IV. CIVIL PENALTY ANALYSIS

General Civil Penalty Factors

In regard to the general civil penalty factors listed in Gov.Bar R. VII (8)(B)(1)-(5) and UPL Reg. 400(F)(1) and (2), the Board finds:

- a. Respondent did not cooperate with the investigation and resolution of these proceedings;
- b. Respondent committed a single unauthorized practice of law violation
- c. The record does not indicate that Respondent received any compensation or benefit from his unauthorized practice of law.
- d. Relator has not sought the imposition of a civil penalty .

2. Mitigating Civil Penalty Factors

Applying the mitigating factors of UPL Reg. 400(F)(4)(a)-(g), which the Court may use to support a recommendation of no civil penalty or a less severe penalty, the Board finds:

- a. Respondent has ceased engaging in the conduct under review;
- b. Respondent has admitted the conduct under review but has denied that the conduct constitutes the unauthorized practice of law;
- c. Respondent did not benefit from the unauthorized practice of law.
- d. Respondent has not had other penalties imposed for the conduct at issue.

Aggravating Civil Penalty Factors

The aggravating factors listed in UPL Reg. 400(F)(3) can justify the recommendation of a more severe civil penalty. Applying the aggravating factors of UPL Reg. 400(F)(3)(a)-(g), the Board made the following determinations:

- A. Although Respondent did not make appearances before any tribunals, he prepared and filed legal documents in court on behalf of another.

4. Conclusion Regarding Civil Penalties

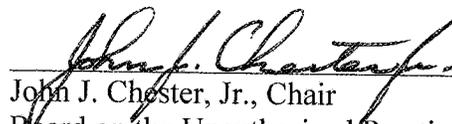
Relying on the above analysis, the Board finds that a civil penalty is not warranted in this case. Respondent's conduct involved one instance of unauthorized practice. He did not benefit by his unauthorized practice of law. There is no evidence of harm to a third party. The Board concludes that there should be no imposition of a civil penalty.

V. CONCLUSION/RECOMMENDATIONS

1. The Board recommends that the Supreme Court of Ohio issue an order finding that Respondent engaged in the unauthorized practice of law.
2. The Board recommends that the Court not impose a civil penalty against Respondent.
3. The Board recommends that the Court issue a further Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.
4. The Board recommends that the Court issue an order requiring Respondent to pay the costs and expenses incurred by the Board and Relator in this matter.

VI. STATEMENT OF COSTS

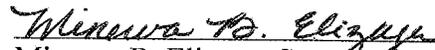
Relator indicated it incurred no costs in this matter.



John J. Chester, Jr., Chair
Board on the Unauthorized Practice of Law

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 21st day of August 2014: Gregory Denny, 405 Madison Ave., Suite 1300, Toledo, Ohio 43604; Michael Bonfiglio, 311 North Superior St., Toledo, Ohio 43604; Rick B. VanLandingham III, 318 Buckeye St., Toledo, Ohio 43611; Eugene Whetzel, Ohio State Bar Association UPL Committee, PO Box 16562, Columbus, Ohio 43216; Amy Stone, Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215.


Minerva B. Elizaga, Secretary