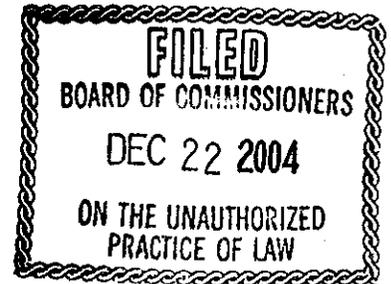


BOARD OF COMMISSIONERS ON THE
UNAUTHORIZED PRACTICE OF LAW
OF THE SUPREME COURT OF OHIO



CUYAHOGA COUNTY BAR ASSOCIATION, :
Relator, :

v. :

ANDREW MARGLES :

and :

AMERICAN MEDIATION & :
ALTERNATIVE RESOLUTIONS, :
Respondents. :

CASE NO. UPL 03-08

ORDER

On October 3, 2003, the Cuyahoga County Bar Association, Relator, filed a Complaint with the Board of Commissioners on the Unauthorized Practice of Law ("Board") against Respondents, Andrew Margles and American Mediation & Alternative Resolutions ("American Mediation"), pursuant to Gov. Bar R. VII. The Complaint alleges that Mr. Margles and American Mediation were engaged in the unauthorized practice of law by representing Joan Y. Alan in a debtor/creditor dispute. Respondents deny that they were engaged in the unauthorized practice of law.

STATEMENT OF FACTS

This matter was presented to the Board on stipulated facts.

Andrew J. Margles was admitted to practice law in Ohio in 1976. After surgery and illness, Mr. Margles registered as an inactive attorney pursuant to the Supreme Court Rules for the Government of the Bar of Ohio. At all times relevant to this matter, Mr. Margles was registered as inactive.

Mr. Margles is sole proprietor of Respondent, American Mediation, an unincorporated business in Cleveland, Ohio.

Respondents offer mediation services on behalf of debtors who are the subject of a creditor collection proceeding. Respondents access public records to compile a pool of potential clients for their services. The potential clients are defendants in collection proceedings. Once a debtor/client agrees to use Respondents' services, Mr. Margles interviews the debtor/client, "and determines what an acceptable resolution may be." Stipulated Facts, Paragraph 8 (hereinafter Stip. Facts ¶ __). The debtor/client then signs a "Limited Power of Attorney Appointment" form. The "Power of Attorney Appointment" form provides, "It is understood that no legal advice or opinions are being provided."

The debtor/client often pays an up-front fee, which is refundable if an acceptable resolution is not reached. No payments are made by the creditor to Respondents.

After the debtor/client signs the Power of Attorney, Mr. Margles contacts the collection attorney's firm. Mr. Margles provides a copy of the Power of Attorney Appointment form and "offers an initial starting point for consideration between the parties." Stip. Facts. ¶ 10.

If the debtor/client wishes to assert a defense or asks questions regarding the statute of limitations or other legal issues, Mr. Margles advises the individual to contact an attorney. Stip. Facts ¶ 12.

CONCLUSIONS OF LAW

Relator must prove by a preponderance of evidence that Respondents engaged in the unauthorized practice of law, Gov.Bar R. VII § 8(A). The unauthorized practice of law has been defined for Ohio as "the rendering of legal services for another person by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VII . . ."

Gov.Bar R. VII § 2(A). The Ohio Supreme Court has noted that in practicing law, a licensed attorney generally engages in three principal types of professional activity:

"These types are legal advice and instructions to clients to inform them of their rights and obligations; preparation for clients of documents and papers requiring knowledge of legal principles which is not possessed by an ordinary laymen; and appearance for clients before public tribunals . . ."

Sharon Village Ltd. v. Licking County Bd. of Revision, et al. (1997), 78 Ohio St.3d 479, 481, 678 N.E.2d 932.

While Mr. Margles was admitted to practice law in Ohio in 1976, he did not have active status at the time of the events under review.

The issue here is not whether Respondents provide true mediation services¹ but whether they are engaged in the unauthorized practice of law. Even if the activities of Respondents constituted negotiation on behalf of their clients instead of mediation, that fact alone would not give rise to the unauthorized practice of law. See *West Coast Industrial Relations Association, Inc. v. Superior Beverage Group* (1998), 127 Ohio App.3d 233, 240-41, 712 N.E.2d 770. In every case in which the Ohio Supreme Court has found the unauthorized practice of law in connection with a negotiation by a nonactive attorney, there has always been some improper act beyond mere negotiation.

In *Cincinnati Bar Association v. Cromwell* (1998), 82 Ohio St.3d 255, 695 N.E.2d 243, the Supreme Court adopted the findings and conclusions of the Board and issued an injunction. The Court found that a non-lawyer who contacted insurance companies to negotiate settlements, and who in the process drafted a proposed settlement agreement, was engaged in the unauthorized practice of law.

¹Typically, a person providing mediation services is a neutral in the matter subject to mediation. The American Bar Association Uniform Mediation Act, does not preclude someone with a relationship with a party from serving as a mediator if there is a full disclosure. See Uniform Mediation Act § 9(a)(2)(g) (2002).

In *Akron Bar Association v. Bojonel* (2000), 88 Ohio St.3d 154, 724 N.E.2d 401, the Court found the unauthorized practice of law and issued an injunction. There, a non-lawyer contacted adverse parties on behalf of clients attempting to negotiate a settlement. In the process, the respondent discussed legal theories and litigation procedures with counsel for the opposing parties.

In *Cleveland Bar Association v. Henley* (2002), 95 Ohio St.3d 91, 766 N.E.2d 130, the Court again found the unauthorized practice of law and issued an injunction. The Court held that when a non-lawyer negotiates on behalf of someone else and purports to advise his client on the client's legal rights, the non-lawyer has engaged in the unauthorized practice of law.

Here the stipulated facts fail to demonstrate that Respondents provided any legal advice nor did they create any documents on behalf of their clients for use in connection with the alleged debt at issue. Accordingly, there is not sufficient evidence to find the unauthorized practice of law.

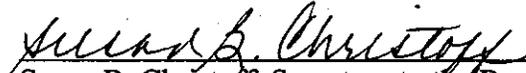
This matter is therefore dismissed.



RALPH E. DILL, CHAIR
Board of Commissioners on the
Unauthorized Practice of the Law

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Report was served by certified mail upon the following this 22nd day of November, 2004: Cuyahoga County Bar Association, 1240 Leader Building, 526 Superior Avenue, Cleveland, OH 44114; Harry J. Jacob, III, Esq., Cuyahoga County Bar Association, 1240 Leader Building, 526 Superior Avenue, Cleveland, OH 44114; Andrew Margles, 27600 Chagrin Blvd., Ste. 460, Cleveland, OH 44122; American Mediation and Alternative Resolutions, 27600 Chagrin Blvd., Ste. 460, Cleveland, OH 44122; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Ohio State Bar Association, Unauthorized Practice of Law Committee, 1700 Lake Shore Drive, Columbus, OH 43204.


Susan B. Christoff, Secretary to the Board