

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

DISCIPLINARY COUNSEL,
Relator,

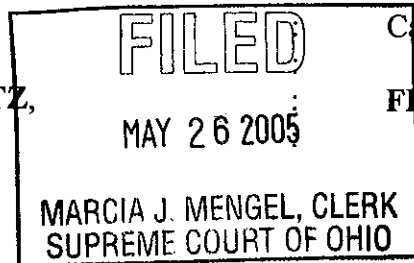
Sup. Ct. Case No. 04-2107

vs.

Case No. UPL 04-03

WILLIAM G. GOETZ,
Respondent.

FINAL REPORT ON REMAND



This matter was presented to the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio ("Board") on a Motion for Default. On February 12, 2004 Relator, the Ohio Disciplinary Counsel, filed a Complaint with the Board against William G. Goetz of Cincinnati, Ohio. The Complaint alleges that Mr. Goetz engaged in the unauthorized practice of law by preparing contractual and estate planning documents for Richard and Olajeanne Faulkner. On March 3, 2004 a Notice was sent to Respondent enclosing a copy of the Complaint and advising him that he had the right to file an answer with the Board within 20 days. No answer was ever filed with the Board on behalf of Mr. Goetz.

On October 4, 2004 the Disciplinary Counsel moved for a default order pursuant to Gov. Bar R. VII(7)(B). The Motion was supported by affidavits and other documentary evidence.

The Board's findings of fact, conclusions of law, and recommendation were filed with the Supreme Court on December 22, 2004. In Case No. 04-2107, on February 25, 2005, the Supreme Court remanded the cause to the Board.

FINDINGS OF FACT

1. Respondent William G. Goetz has not been admitted to the practice of law in the State of Ohio. (Affidavit of Richard A. Dove, Director, Attorney Services Division of the Supreme Court of Ohio [hereinafter "Aff. of _____]).

2. On or about February of 1995 Richard and Olajeane K. Faulkner contacted Mr. Goetz regarding several estate planning issues. The Faulkners owned several farms in Champaign County, Ohio. They were interested in minimizing estate taxes and avoiding probate. The Faulkners' insurance agent referred them to Respondent. (Aff. of Olajeane K. Faulkner).

3. Mr. Goetz represented himself as an attorney experienced in the areas of wills and estate planning. Mr. Goetz provided a business card to the Faulkners identifying himself as "William G. Goetz, JD." Mr. Goetz explained that the letters "JD" meant "Juris Doctorate" and it was just another way of saying he was an attorney. (Aff. of Olajeane K. Faulkner).

4. Mr. Goetz prepared trusts, wills and a contractual agreement on behalf of the Faulkners, as well as a number of other estate planning documents. The Faulkners' current attorney has found the trust and will documents to be faulty. (Aff. of Olajeane K. Faulkner).

5. The Faulkners paid Mr. Goetz \$23,000 for his services.

6. Eventually the Faulkners terminated Mr. Goetz' services. When they did so, Mr. Goetz refused to return the documents to them until the Faulkners threatened to initiate a lawsuit against him. (Aff. of Olajeane K. Faulkner).

7. On December 5, 2002 Olajeane K. Faulkner filed a grievance with the Ohio Disciplinary Counsel. On December 30, 2002 Mr. Goetz responded to the grievance with a letter which provided in its entirety: "I herein deny the allegation filed in the above matter. I

specifically deny that I engaged in the unauthorized practice of law." There is no evidence in the record of any further communications by Mr. Goetz regarding this matter.

8. Prior to filing the Motion for Default, Stacy Solochek Beckman, Assistant Disciplinary Counsel, sent a letter dated September 21, 2004 by Certified and Regular U.S. Mail to William G. Goetz. The letter enclosed a copy of the complaint filed with the Board on February 12, 2004. The letter advised Mr. Goetz that if he wished to file an answer to the complaint, he must do so before September 29, 2004 or else a Motion for Default would be filed. No such answer was filed with the Board. (Aff. of Stacy Solochek Beckman. *See also* September 21, 2004 letter from Stacy Solochek Beckman, Assistant Disciplinary Counsel, to William G. Goetz).

9. Relator requests that the Board make a recommendation to the Supreme Court of Ohio that the Court enter a permanent order enjoining Respondent from engaging in the State of Ohio in the same or similar acts to those described above and from engaging in any other act in the State of Ohio constituting the practice of law unless and until (a) Respondent secures from the Court, or from the highest court of some state, territory or other jurisdictional entity of the United States, a license to practice law and (b) Respondent registers in accordance with the Rules for the Government of the Bar of Ohio.

CONCLUSIONS OF LAW

10. As required by Gov. Bar R. VII(7)(B), Relator has made reasonable efforts to contact Respondent regarding the Motion for Default.

11. Relator must prove by a preponderance of the evidence that Respondent 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 by any person not admitted to practice in Ohio . . ." 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.

12. The Board has found that the preparation of a will or trust by a nonlawyer constitutes the unauthorized practice of law. See *Ohio State Bar Ass'n., et al. v. Martin* (1994), 66 Ohio Misc.2d 15, 642 N.E.2d 75 and *Cleveland Bar Ass'n. v. Scali* (1991), 62 Ohio Misc.2d 562, 608 N.E.2d 865.

13. In *Land Title Abstract & Trust Co. v. Dworken, et al.* (1934), 129 Ohio St. 23, 28, 193 N.E. 650, the Ohio Supreme Court noted that the practice of law includes "the preparation of legal instruments and contracts by which legal rights are secured . . ." In *Green v. Huntington Nat'l. Bank* (1965), 4 Ohio St.2d 78, 79, 212 N.E.2d 585, the Court found that when a bank or trust company "provides specific legal information in relation to the specific facts of a particular person's estate," the bank is engaging in the practice of law. In *Trumbull County Bar Ass'n. v. Hanna, et al.* (1997), 80 Ohio St.3d 58, 60, 684 N.E.2d 329, the Court held that a non-attorney financial planner engaged in the unauthorized practice of law when he marketed living trusts to his clients. In *Cincinnati Bar Ass'n. v. Kathman* (2001), 92 Ohio St.3d 92, 96, 748 N.E.2d 1091, the Court held, *inter alia*, that an attorney violated Disciplinary Rule 3-101(A) by assisting a non-attorney marketing and selling living trusts.

14. Here the evidence of record indicates that Respondent prepared trusts, wills and a contractual agreement on behalf of the Faulkners, as well as a number of other estate planning

documents. Since Mr. Goetz was not licensed to practice law in the State of Ohio at the time he prepared such documents, he has engaged in the unauthorized practice of law.

15. The Motion for Default is granted.

16. Having granted the Motion for Default, the Board must proceed to Section 8 of the Rules for the Government of the Bar to determine the appropriate sanction to be recommended to the Court. Gov. Bar R. VII(7)(B). Section 8 provides, *inter alia*, that the Board shall submit its final report to the Ohio Supreme Court. Among other things the final report shall include the Board's findings and recommendations, including any recommendations for civil penalties. Gov. Bar R. VII(8)(B).

17. In this case Relator has not asked the Board to recommend civil penalties. Whether the Board does or does not recommend civil penalties, the final decision on whether civil penalties will be imposed rests with the Ohio Supreme Court. Gov. Bar R. VII(19)(D)(1)(c). The Court has discretion to impose civil penalties for the unauthorized practice of law regardless of whether the Board has recommended the imposition of such a penalty. *See Toledo Bar v. Chelsea Title* (2003), 100 Ohio St. 3d 356, 800 N.E.2d 29.

18. The standard for the imposition of civil penalties is set forth in Gov. Bar R. VII(8)(D), which provides as follows:

(D) "The Board may recommend and the Court may impose civil penalties in an amount up to ten thousand dollars per offense. Any such penalty shall be based on the following factors:

- (1) the degree of cooperation, in the investigation, provided by the respondent;
- (2) the number of occasions that unauthorized practice of law was committed;
- (3) the flagrancy of the violation;
- (4) damages to third parties arising from the offense;

(5) any other relevant factors."

19. The degree of cooperation by the Respondent has been minimal. Mr. Goetz' only communication to Relator with respect to this matter has been a two sentence letter responding to the grievance filed against him by Mrs. Faulkner. Respondent did not file a response to the complaint or even enter an appearance in this proceeding.

20. Mr. Goetz engaged in the unauthorized practice of law on a number of occasions in his relationship with the Faulkners. Respondent prepared trusts, wills and a contractual agreement on behalf of the Faulkners, as well as a number of other estate planning documents.

21. Respondent's violation has been flagrant. Mr. Goetz falsely represented himself as an attorney at law. He prepared estate planning documents on behalf of the Faulkners which the Faulkners current attorney has declared to be faulty. Mr. Goetz charged the Faulkners a substantial fee for his activities. Mr. Goetz refused to return documents to the Faulkners until a lawsuit was threatened.

22. The Faulkners have paid \$23,000 to Mr. Goetz for his services.

23. No other relevant evidence has been presented, and specifically no mitigating evidence has been presented on behalf of Mr. Goetz.

24. A civil penalty should be assessed against Mr. Goetz of \$10,000 for the trusts, \$10,000 for the wills and \$10,000 for the contractual agreement.

RECOMMENDATIONS

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

26. The Board further recommends that the Supreme Court of Ohio issue a further order enjoining Respondent from engaging in the State of Ohio in the same or similar acts to those described above and from engaging in any other act in the State of Ohio constituting the

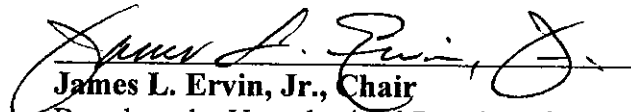
practice of law unless and until (a) Respondent secures from the Court, or from the highest court of some state, territory or other jurisdictional entity of the United States, a license to practice law and (b) Respondent registers in accordance with the Rules for the Government of the Bar of Ohio.

27. The Board further recommends that the Supreme Court of Ohio impose a civil penalty against William Goetz in the amount of \$30,000.

28. The Board further recommends that the Supreme Court of Ohio require the Respondent to reimburse the costs and expenses incurred by the Board and Relator in this matter.

STATEMENT OF COSTS

Attached as Exhibit A is a statement of costs and expenses incurred to date by the Board and Relator in this matter.


James L. Ervin, Jr., Chair
Board on the Unauthorized Practice of Law

**BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
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Exhibit "A"

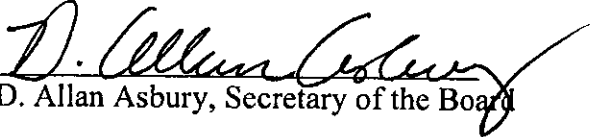
STATEMENT OF COSTS

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To date, no expenses have been incurred.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 26th day of MAY, 2005: Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Jonathan E. Coughlan, Esq. Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Stacy Solocheck Beckman, Esq., Assistant Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; William G. Goetz, 431 Ohio Pike, Suite 105N, Cincinnati, Ohio, 45255; Ohio State Bar Association, Unauthorized Practice of Law Committee, 1700 Lake Shore Drive, Columbus, OH 43204; Cincinnati Bar Association, Cincinnati Bar Center, 225 East Sixth Street, 2nd Floor, Cincinnati, Ohio 45202.


D. Allan Asbury, Secretary of the Board