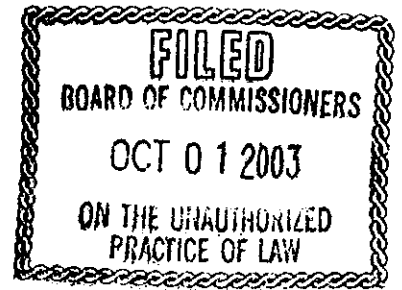


BEFORE THE BOARD OF COMMISSIONERS  
ON THE UNAUTHORIZED PRACTICE OF LAW  
OF THE SUPREME COURT OF OHIO



CINCINNATI BAR ASSOCIATION

Relator,

v.

ALLSTATE INSURANCE COMPANY

Respondent.

Case No.: UPL 02-02

FINAL REPORT

On February 25, 2002, Cincinnati Bar Association ("relator") filed with the Board of Commissioners on the Unauthorized Practice of Law ("Board") a complaint alleging that Allstate Insurance Company ("respondent" or "Allstate") had engaged in the unauthorized practice of law. In particular, relator claims that Allstate has committed the unauthorized practice of law by directing its attorney employees to form attorney-client relationships with, and generally represent the interests of, Allstate's insureds. On April 17, 2002, respondent filed an answer denying relator's claims. On February 13, 2003, the parties filed comprehensive factual stipulations with the Board waiving presentation of additional evidence and eliminating any need for an evidentiary hearing; the Board accepts those stipulations and incorporates certain ones into the findings of fact set forth below. At the parties' request, the Board granted oral argument which was conducted on March 19, 2003, with Chair Ralph E. Dill,

Commissioners Eric H. Kearney, Dennis Ryan Newman, Steven T. Nourse and Hon. John A. Polito participating. Commissioners James L. Ervin, Jr. and Gerald L. Draper recused themselves from this proceeding. The Board also granted *amicus curiae* status to several entities which were permitted to file briefs and participate in oral argument.

### FINDINGS OF FACT

1. Allstate's Ohio staff counsel employees include attorneys who are licensed to practice law in Ohio.
2. Allstate's staff counsel attorneys represent individuals insured by Allstate, its affiliated companies and Encompass Insurance.
3. When Allstate has a contractual obligation to defend an insured under the insured's policy of insurance sometimes it will have a staff counsel employee, who is licensed to practice law in the State of Ohio, represent the insured in litigation including, but not limited to, appearing in court and filing pleadings in court on behalf of the insured. Other times, Allstate will retain outside counsel, licensed to practice law in the State of Ohio, to represent the insured in litigation including, but not limited to, appearing in court and filing pleadings in court on behalf of the insured.
4. One or more of Allstate's shareholders is a non-lawyer.
5. One or more of Allstate's officers or directors is a non-lawyer. With regard to the hierarchy of authority, or "chain of command," existing between Allstate staff counsel and the highest executive levels at Allstate, one person within this hierarchy of authority is a non-lawyer and that person is the CEO.

6. At this time, for purposes of this proceeding, there is no evidence that staff counsel attorneys receive any specific case handling guidance, direction or advice from the CEO.

7. Within the past two years, one or more attorney-client relationships have been formed between one or more of Allstate's employees who are licensed to practice law in the State of Ohio, and one or more of Allstate's insureds who reside within the State of Ohio. Such attorney-client relationship came to exist pursuant to Allstate's assignment of the defense to staff counsel because of Allstate's contractual obligation to provide said defense according to the terms of the applicable insurance contract. In providing such defense, said staff counsel were acting in the scope of their employment with Allstate.

8. At this time, for purposes of this proceeding, there is no evidence that staff counsel employed by Allstate receive any specific case handling advice from non-attorneys employed by Allstate in the course of staff counsel representation of Allstate insureds.

9. Staff counsel, who are employees of Allstate, are subject to the same Code of Professional Responsibility as retained counsel who are in a principal/agent relationship with Allstate. At this time, for purposes of this proceeding, there is no evidence that staff counsel have failed to preserve client confidences and secrets, failed to exercise independent judgment, or failed to zealously represent insureds.

10. At this time, for purposes of this proceeding, there is no evidence that Allstate has exercised any direction, control or supervision of its staff counsel attorneys

that would impair any attorney's use of his or her independent judgment in representing the interests of Allstate's policyholders.

11. Relator has not received complaints by Allstate insureds relative to staff counsel employed by Allstate regarding the issues covered by the disciplinary rules.

12. Staff counsel employed by Allstate to represent Allstate insureds are protecting Allstate's direct and primary pecuniary interest in the outcome of litigation in which Allstate's insureds are involved.

### CONCLUSIONS OF LAW

1. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 617; *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 10 O.O. 95, 12 N.E.2d 288.

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

3. A corporation cannot lawfully engage in the practice of law, and it cannot do so indirectly through employment of qualified lawyers. *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 12 N.E. 2d 288; *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650. Both the *Judd* and *Dworken* opinion recognize, however, that corporate attorneys are permitted to work on matters where the corporation has a direct or primary interest. *Dworken*, 129 Ohio St. at 23, 193 N.E. at

651 (offering opinions and advice for the benefit of others, are acts falling within the practice of law, and may not be performed by corporations except wherein they have a direct or primary interest); *Judd*, 133 Ohio St. at 92-93, 12 N.E.2d at 293 (so long as the corporation's activities are confined to performing services beneficial to itself in the prosecution of their approved business, the necessarily appurtenant benefits of a legal complexion to other persons does not make such pursuit unlawful). As a related matter, both *Dworken* and *Judd* reviewed and upheld lower court injunctions that were limited to proscribing in house legal counsel activity where the corporation had no direct or primary interest in the legal dispute.

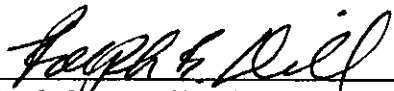
4. The Board finds that the situation presented in this record and based on the factual stipulations of the parties falls within the exception found in *Dworken* and *Judd* where the corporation has a direct interest in the outcome of litigation. Indeed, as noted above, the parties stipulated that "[s]taff counsel employed by Allstate to represent Allstate insureds are protecting Allstate's direct and primary pecuniary interest in the outcome of litigation in which Allstate's insureds are involved." February 13, 2003 Stipulation at ¶ 18. Based upon the stipulations and arguments of counsel, the Board concludes that relator has failed to establish that respondent has engaged in the unauthorized practice of law.

5. As is evident from the briefs as well as the discussion during oral argument, many of relator's arguments focus on potential ethical problems or potential conflicts of interests faced by staff counsel. If present in a particular case, such matters are of utmost importance and may present difficult and pressing issues in other cases

before other tribunals. But, as noted above, the parties herein stipulated at this time that, for purposes of this case, there is no evidence to support violations by respondent or its employees relative to particular ethical obligations. Moreover, this Board does not have jurisdiction to address attorney ethics or disciplinary matters and will not address those topics.

**ORDER**

The Board orders that this action be, and hereby is, dismissed.

  
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Ralph E. Dill, Chair  
Board of Commissioners on the  
Unauthorized Practice of Law