

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

CINCINNATI BAR ASSOCIATION, :

Relator, :

v. :

DONALD L. BAILEY, :
d/b/a LICENSE RESQUE, :

Respondent. :

05-1930

Case No. UPL 03-13

FINAL REPORT FILED
OCT 14 2005
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

I. INTRODUCTION

This matter was heard on Thursday, June 9, 2005, Columbus, Ohio, at the Ohio Judicial Center before a Panel consisting of Commissioners James L. Ervin, Jr., Kenneth A. Kraus and Frank R. DeSantis, Chair of the Panel. Representing the Relator was Rosemary D. Welsh, Theresa L. Groh and Maria C. Palermo. Respondent Donald L. Bailey appeared *pro se*.

II. PROCEDURAL BACKGROUND

The Complaint in this matter was filed on December 11, 2003 and was served upon Respondent. The Complaint alleged that Donald L. Bailey, d/b/a License Resque, an individual not licensed to practice law was, among other things, advising clients and providing instruction on the preparation and filing of documents with the Bureau of Motor Vehicles. The Respondent filed an Answer on January 30, 2004, denying the allegations of the Complaint.

The filing of the Complaint followed an extended adversarial and contentious investigation which included, among other things, an action by the Respondent in Federal Court challenging the constitutionality of the investigation by the Relator and a separate UPL investigation by the Columbus Bar Association and the rules of the Supreme Court regarding the unauthorized practice of law; a contempt of court sanction by the Supreme Court levied against

Respondent for failure to comply with a subpoena; and a further Order by the Supreme Court that Respondent be incarcerated for ten days in the Franklin County Justice Center if he failed to comply with the Order and subpoena.

Following the filing of the Complaint and Answer, there ensued an extended and contentious period of discovery and motion practice. Another action was filed by Respondent in Federal Court, once again challenging the constitutionality of the process. The hearing on this matter was scheduled and continued several times culminating in the hearing on June 9, 2005.

At the hearing, the Panel received testimony from numerous witnesses in addition to the Respondent. The Panel heard testimony from Christopher McNeil, former lead attorney for the Bureau of Motor Vehicles section of the Ohio Attorney General's Office. Mr. McNeil was responsible for prosecuting cases on behalf of the Bureau of Motor Vehicles (sometimes hereinafter referred to as BMV). In part, his responsibility was to review administrative appeals filed with the Bureau of Motor Vehicles. Mr. McNeil testified that, in his opinion, the administrative proceedings before the Bureau of Motor Vehicles are of sufficient formality that the interests of the individual must be presented by an attorney.

Also, testifying at the hearing was J. Patrick Foley. Mr. Foley was Associate Legal Counsel of the Bureau of Motor Vehicles from 1991 to 2000. A great majority of his time dealt with driver's license suspensions, in particular, answering questions from the Bureau of Motor Vehicle employees concerning legal interpretation of the various provisions dealing with the suspension and reinstatement of a driver's license. Mr. Foley was also responsible for answering more complex questions from members of the public on those issues.

Timothy Fisher, the Assistant Chief of the Reinstatement Offices of the Bureau of Motor Vehicles, Annette Pinkerton, Chief of the Telecommunications Section of the Bureau of Motor

Vehicles and Julie Simpkins, a phone operator for the Bureau of Motor Vehicles, also testified at the hearing.

III. FINDINGS OF FACT

Respondent, Donald L. Bailey has operated a business called License Resque since 1989. This business assists clients in obtaining the reinstatement of their driver's license privileges through the Ohio Bureau of Motor Vehicles and in various courts. License Resque has assisted thousands of clients to obtain reinstatement of their licenses from its inception through the date of the hearing.

The Bureau of Motor Vehicles is an administrative agency governed by Sections 119.01 *et seq.* of the Ohio Revised Code. Among other things, the Bureau of Motor Vehicles has the ability to impose suspension of a person's driver's license, including a suspension without a prior hearing.

Upon the suspension of a license, an administrative process ensues, which is intended to extend to the affected licensee the opportunity to cure any violations or to be heard on the validity of the suspension. There is an administrative hearing process with findings, conclusions and a recommendation as to the suspension, followed by a final order by the registrar of the Bureau of Motor Vehicles. This order can then be appealed to a Common Pleas Court and further, if applicable, to the Court of Appeals.

There are a number of legal concepts involved in a suspended licensee's determination as to whether to request an administrative hearing and also a number of legal issues involved in determining whether or not to include a summary of the facts of the case along with the request for administrative hearing. Further, while individuals can represent themselves at the administrative hearing, anyone appearing for a licensee must be an attorney licensed in Ohio.

The suspension and reinstatement of a driver's license can be a very complex process. There are approximately 45 to 50 types of suspensions. Sometimes several grounds for suspension occur as a result of one incident. The reinstatement process in those circumstances can be sophisticated and/or arcane.

Respondent claims that License Resque is a "courier" service that transmits documents to and from his "clients" to the Bureau of Motor Vehicles to expedite the reinstatement of their license. Respondent further claims he provides no information to his clients that would not otherwise be available to them from public sources.

The comprehensive record established by the Relator in this case belies both of Respondent's claims. The services provided by Respondent are comprehensive and substantive, and go far beyond a mere courier service. In Respondent's words, License Resque takes such actions as are necessary to secure the restoration of driving privileges.

Respondent, both personally and through others working for his business License Resque, provides advice to his clients on legal issues. Among other things, Respondent gives advice to clients as to the time limitations for filing requests for administrative hearings and time limitations and wording for filing an appeal in court. Respondent gives advice to clients as to the requirements for reinstatement; advice to clients as to the requirements for obtaining driving privileges; and advice to clients as to statements that should be given in court. Respondent offers interpretations to clients of the effect of an abeyance letter and gives advice to clients on what they should do if they have missed a court deadline.

Respondent personally and through others working for his business License Resque, prepares documents for, and on behalf of his clients, including requests for appeal, accident

reports, affidavits to submit to the Bureau of Motor Vehicles, and petitions to modify point suspension customized to the client to be submitted to a court.

Respondent personally and through others working for his business License Resque, communicates with attorneys for adverse parties and insurance companies and negotiates settlements involving automobile accidents on behalf of their client.

Respondent, personally and through others working for his business License Resque, communicates with the Bureau of Motor Vehicles on behalf of his clients. These contacts include personal contacts with individuals in positions of responsibility at the BMV to argue legal positions on behalf of his clients, and submission of letters to the BMV advocating positions for his clients.

Respondent, personally and through others working for his business License Resque, communicates with judges and court personnel on behalf of his clients and provides narratives to his clients to assist at court hearings.

While Relator provided evidence as to specific instances of all of these activities by Respondent on behalf of specific clients, Respondent repeatedly acknowledged that these instances were typical of services provided to Respondent's clients generally.

Respondent was previously investigated by the Columbus Bar Association for the unauthorized practice of law relating to his activities through the business of License Resque. As a result of that investigation, Respondent signed a consent decree under which he agreed to refrain from any act or practice which violates the Supreme Court Rules for the Government of the Bar of Ohio, specifically, the unauthorized practice of law. Respondent further agreed that should he violate in the future the Rules for the Government of the Bar relating to the unauthorized practice of law, the alleged violations raised by the Columbus Bar Association

could and would be used as evidence against him. Despite this consent decree, Respondent continued the same activities and conduct which took place prior to the Columbus Bar investigation.

IV. CONCLUSIONS OF LAW

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.

The unauthorized practice of law consists of rendering legal advice to another by any person not admitted to practice in Ohio. (Gov. Bar R. VII, §2(A)). The Supreme Court has consistently held that the practice of law is not limited to appearances in court, but also includes giving legal advice and counsel in the preparation of legal instruments by which legal rights are preserved. *Land Title Abstract & Trust Co. v. Dworkin* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650.

A key element of the practice of law is the tailoring of advice to the needs of a specific client. *Disciplinary Counsel v. Palmer*, 115 Ohio Misc. 2d 70, 74 (Ohio Board on the Unauthorized Practice of Law, December 31, 2001). The act of providing legal information in relation to the specific facts of a particular person's estate, for example, constitutes the practice of law. *Disciplinary Counsel v. Taylor*, 84 Ohio St.3d 390 (1999). This is true even where a non-lawyer marketing living trusts simply followed a "script" and completed a question and answer worksheet based on information from the client. *Akron Bar Association v. Miller*, 80 Ohio St.3d 6 (1997).

Issues involving the unauthorized practice of law with respect to the suspension and reinstatement of a driver's license have been addressed by the Supreme Court on two previous occasions. In *Columbus Bar Association v. Smith* (2002), 96 Ohio St.3d 156, much like in this case, non-attorney individuals doing business as License Recovery solicited customers from a list of individuals with suspended driver's licenses. The non-attorneys assisted these individuals in obtaining the reinstatement of their driver's privileges or appealing administrative suspensions. *Id.* at 157. Pursuant to a stipulated entry the non-attorneys agreed that preparing documents such as a petition to modify point suspensions and providing advice and instructions on how to file documents in Ohio courts amounted to the unauthorized practice of law. The Board recommended that the non-attorneys be enjoined from further activity constituting the unauthorized practice of law, and the Supreme Court adopted the findings, conclusions and recommendations of the Board. *Id.*

In *Disciplinary Counsel v. Dyllyn* (2002), 95 Ohio St. 139, the Supreme Court held that a non-attorney's actions to secure the reinstatement of suspended driving privileges constituted the unauthorized practice of law. In that case, the non-attorney did not perform any service, but signed a contract indicating what he would do in exchange for a fee to secure the reinstatement of driving privileges. The Supreme Court, adopting the findings and conclusions of the Board, deemed this contract a "legal services contract" and held that an individual not licensed to practice law who offers legal representation to others in return for a fee has engaged in the unauthorized practice of law. *Id.*

The Respondent Donald L. Bailey, personally and through his business License Resque, has engaged in the unauthorized practice of law by giving legal advice, preparing documents to be filed with the Bureau of Motor Vehicles and the courts, negotiating settlements with attorneys

for adverse parties and insurance companies, advocating on behalf of his clients to the Bureau of Motor Vehicles, and communicating with judges and other court personnel on behalf of his clients.

V. PANEL RECOMMENDATIONS

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

B. The Panel further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondent both personally and through his business License Resque, from engaging in the unauthorized practice of law in the future.

C. Effective June 16, 2003, Gov. Bar R. VII was amended at Section (19)(D)(1)(c) to permit the imposition of civil penalties against persons found to have engaged in the unauthorized practice of law. In addition, Rule VII, §17 specifically provides:

[t]his rule and regulations relating to investigations and proceedings involving complaints of unauthorized practice of law shall be liberally construed . . . 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.* [Emphasis added.]

Thus, the amended Rule on its face applies to any pending investigation or case, and any new complaint irrespective of when the alleged conduct occurred.

The Complaint in this matter was not filed until December 11, 2003, some six months after amendment of the Rule; and the hearing was not held until June 9, 2005. However, the acts complained of were of a continuing nature, with some occurring both before and after the Rule amendment.

Respondent has questioned the validity and/or constitutionality of application of this Rule in such a “retroactive” manner. But within the context of this proceeding, the civil penalty is a

civil remedy, rather than a criminal punishment, and not subject to the constitutional prohibition against *ex post facto* laws. In fact, Rule VII on its face is defined as a civil remedial rule, “[t]his rule . . . shall be liberally construed for the protection of the public, the courts, and the legal profession . . .”. Rule VII, §17. In two recent rulings, the Supreme Court has acted consistent with such propositions, determining to apply the Rule and impose civil penalties for conduct which occurred prior to the Rule amendment in June, 2003. See *Toledo Bar Assn. v. Chelsea Title Agency of Dayton, Inc.*, 100 Ohio St. 3d 356, 2003-Ohio-6453; *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St.3d 504, 2004-Ohio-5581. Accordingly, the Panel concludes there is no “retroactivity” bar to application of the amended Rule or imposition of civil penalties, assuming that the criteria for sanctions are met.

The current, applicable version of Gov. Bar R. VII (effective January 1, 2005) provides in Section 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.

The record developed in this case is both comprehensive and substantial, and reflects the Respondent’s egregious, continuing pattern of conduct and acts of unauthorized practice of law as measured by the above factors. It is, therefore, difficult to imagine a more appropriate case for imposition of a severe civil penalty.

1. Respondent's Lack of Cooperation in the Investigation.

The procedural history of the within investigation reveals not only Respondent's total disregard for authority and complete failure to cooperate, but a pervasive and persistent affirmative effort on his part to delay, obfuscate, and obstruct these proceedings over a long period of time. Respondent's actions included such things as excessive requests for extensions of time and continuous filing of numerous motions; efforts to obstruct discovery, including production of documents, depositions and responses to subpoenas; and filing frivolous related lawsuits in an attempt to interfere with enforcement efforts against him. The Respondent has been totally uncooperative in responding to a number of investigations and/or complaints of UPL. Moreover, in this regard, the Supreme Court had no choice at one point but to issue an Order holding Respondent in contempt for failure to respond to a lawful subpoena for documents. And ultimately, he was in jeopardy to be incarcerated for failure to comply with the Court's directive. In 1996, the Respondent had signed a Consent Order agreeing to cease and desist from any further acts of UPL, which he has totally disregarded.

In summary, there is not one scintilla of evidence indicating that at any time Respondent was ever cooperative in connection with the investigation or processing of this Complaint.

2. Numerous Occasions that Unauthorized Practice of Law Were Committed.

At the hearing, through testimony and exhibits, Relator documented some seventeen (17) instances of Respondent's engaging in the unauthorized practice of law. However, by Respondent's own admission in sworn testimony, he has assisted approximately 3000 clients or customers during the past nine (9) years (anywhere from 10 to 50 per month).

3. The Flagrancy of the Violations.

This Panel cannot conceive of more flagrant violations than the ones addressed in the record. Respondent openly advertised his business and through executed purported “powers of attorney” he openly represented thousands of individuals who paid him substantial fees in connection with serious driver’s license suspensions and related issues. He had no fear or shame in openly advising customers, assisting them in filing Petitions, pursuing and advocating their individual interests with the Ohio Bureau of Motor Vehicles, clerks of courts or even judges.

4. Excessive Harm to Third Parties Arising from the Offenses.

The record is replete with evidence of harm to numerous “clients” who were misled into believing that License Resque would or could properly pursue their interests and protect their legal rights and positions concerning driver’s license suspensions. They each were misled into remitting hundreds of dollars in fees to Respondent to perform services for which he was not properly licensed, and for which he had no specialized knowledge or training. Numerous of these representations by Respondent resulted in consumer complaints to the Ohio Attorney General’s office. All of these matters involved potentially serious consequences to the customers, such as loss of driving privileges, large reinstatement fees, and related issues with their insurance companies. The actual harm to third parties obviously was immense.

5. Other Relevant and Aggravating Factors.

In reviewing the record and evaluating this matter against the above criteria, and considering Relator’s request for a substantial and severe penalty, this Panel also finds the following aggravating factors to be persuasive:

- (i) Respondent’s previous acts in the unauthorized practice of law.
- (ii) Respondent’s flagrant violation of his 1996 Consent Decree, wherein he had agreed to cease engaging in the unauthorized practice of law.

- (iii) His knowledge of the nature of his acts.
- (iv) Respondent's substantial financial benefit exceeding many thousands of dollars per year in gross business revenue.
- (v) Respondent's admitted interaction with numerous clerks of courts, judges, and the Ohio Bureau of Motor Vehicles on behalf of his clients.
- (vi) Respondent's assistance in preparing legal forms – Petitions for Reinstatement – for many customers.

At the same time, this Panel finds a glaring absence of any meaningful mitigating factors.

While perhaps not expressly holding himself out as an attorney by name, the Respondent continues to openly imply to others that he can perform these services in a legal capacity. He obstinately persists in refusing to acknowledge the illegitimacy of his conduct; continues to aggressively resist efforts by lawful authority concerning his behavior, and flagrantly engages in a pervasive pattern of acts of the unauthorized practice of law, without any apparent remorse. Even though Respondent purports to feel sorry for the circumstances of his customers, his motive and objective was, and is, clearly and solely for his personal benefit. Respondent has made no effort to remedy his prior acts or substantial harm caused to others.

Under these circumstances, the imposition of rather harsh and severe civil penalties is most certainly warranted, recognizing that the ultimate decision concerning an appropriate penalty rests solely with the Supreme Court. Gov. Bar R. VII , §19(D)(1)(c). Only a penalty of great magnitude would serve to further the purpose of Rule VII, hopefully deter the Respondent in the future, and deter other potential similar violators.

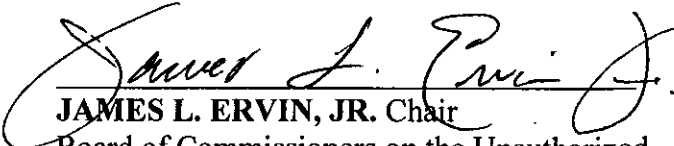
Accordingly, this Panel recommends a civil penalty should be assessed against Respondent Bailey in the maximum amount of \$10,000.00 for each of the seventeen (17) specific acts and offenses of the unauthorized practice of law established in the record, for a total of \$170,000.00. *See Toledo Bar Assn. v. Chelsea Title Agency of Dayton, Inc., supra.*

VI. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII, §7(F) the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered this matter on September 28, 2005. The Board adopted the findings, conclusions of law, and recommendations of the Panel. Specifically, and as provided herein, the Board adopts the Panel's recommendation that the Court issue an Order that the Respondent has engaged in the unauthorized practice of law; that the Court issue an Order enjoining the Respondent, personally and through his business License Resque, from engaging in the unauthorized practice of law; and that the Court levy a civil penalty of \$170,000 (One Hundred Seventy Thousand Dollars and 00/100) against the Respondent. The Board further recommends that the costs of these proceedings incurred by the Board and the Relator be taxed to the Respondent in any Order entered, so that execution may issue.

VII. 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 of Commissioners on the Unauthorized
Practice of the Law

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

Exhibit "A"

STATEMENT OF COSTS

Cincinnati Bar Association v. Donald L. Bailey d/b/a License Resque,
Case No. UPL 03-13

Fraley Cooper & Associates, 6/9/05 Hearing and Transcript	\$1,264.10
Frank R. DeSantis, Commissioner Expenses -6/9/05 Hearing	130.02
Kenneth A. Kraus, Commissioner Expenses -6/9/05 Hearing	132.45
Reimbursement to the Cincinnati Bar Association	2648.96
Subpoenas, June 9, 2005 Hearing – Franklin County Sheriff	
Annette Pinkerton	11.50
Julia Doe	11.50
Tim Fisher	11.50
Sam Shamansky	8.10
 TOTAL	 \$4,218.13

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 14th day of OCTOBER, 2005; Cincinnati Bar Association, The Cincinnati Bar Center, 225 E. Sixth Street, 2nd Floor, Cincinnati, OH 45202; Rosemary D. Welsh, Esq., Atrium Two, 221 East Fourth Street #2000, Cincinnati, OH 45202; Maria C. Palermo, Esq., Cincinnati Bar Association, The Cincinnati Bar Center, 225 E. Sixth Street, 2nd Floor, Cincinnati, OH 45202; Theresa L. Groh, Esq., Murdock, Goldenberg, Schneider & Groh, 35 E. 7th Street, Suite 600, Cincinnati, OH 45202; Donald L. Bailey, d/b/a, License Resque, P.O. Box 32484, 4345 Donlyn Ct., Bldg. C., Columbus, OH 43232; 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.


D. Allan Asbury, Secretary of the Board