

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

08-0257

OHIO STATE BAR ASSOCIATION, :

RELATOR, :

v. :

JESSE V. NEWBURN, :

RESPONDENT. :

CASE NO. UPL 07-03

FINAL REPORT

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law ("Board") on Relator, Ohio State Bar Association's Complaint filed June 11, 2007. On August 17, 2007, Respondent filed an Answer admitting all of the allegations of Relator's Complaint, and alleging that he had consulted with legal counsel and now fully understands the consequences of the conduct described in the Complaint and fully intends to comply with the law in the future.

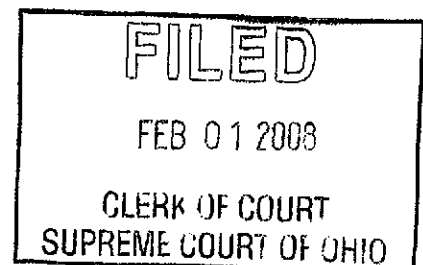
Also, on August 17, 2007, Relator and Respondent filed Stipulations with exhibits and a Joint Waiver of Hearing pursuant to Gov. Bar R. VII(7)(H).

The matter was assigned to a Panel consisting of Commissioners Frank R. DeSantis, Panel Chair, Don Hunt, and James W. Lewis.

II. FINDINGS OF FACT

Pursuant to the stipulated facts and exhibits, the Panel finds the following facts:

1. Relator is a Bar Association whose members include attorneys-at-law admitted to the practice of law in Ohio and who practice throughout the state of Ohio. Relator is authorized



to pursue this action against Respondent under Rule VII of the Supreme Court of Ohio Rules for the Government of the Bar.

2. Respondent, Jesse V. Newburn, is an individual residing at 3815 Boy Scout Road, Dover, Ohio 44622. Respondent is, and was at all times, relevant to this matter, registered as a professional surveyor with the Ohio Engineers and Surveyor's Board under Chapter 4733 of the Ohio Revised Code.

3. Respondent is not now, and never has been, an attorney admitted to the practice of law in the State of Ohio.

4. In October of 2006, Respondent prepared a document titled "Easement," purportedly to convey an easement from the "Heirs of the Estate of Sarah J. Robson to Gerald Lee Warner."

5. In October of 2006, Respondent also prepared a document titled "Easement," purportedly to convey an easement from "Gerald Lee Warner to the Estate and Heirs of Sarah J. Robson."

6. Upon receipt of the Complaint filed by Relator with respect to his conduct in preparing these easements, Respondent consulted with an attorney authorized to practice law in the State of Ohio. Respondent admits that in preparing the easements previously described, his actions constituted the practice of law in the State of Ohio and that in undertaking such actions he engaged in the unauthorized practice of law in the State of Ohio.

7. Relator seeks, and Respondent agrees to an Order by the Supreme Court of Ohio enjoining Respondent from the unauthorized practice of law in the future.

8. Relator and Respondent agree that the facts contained in their Stipulations are relevant to and dispositive of this matter, and, that by separate pleading each has waived a

hearing in this matter and desires that the matter be submitted to the Board by way of Stipulations, exhibits and pleadings.

9. By way of Stipulation, Relator recommends that no civil penalty be imposed against Respondent for the conduct that is subject to these proceedings.

10. In furtherance of that recommendation, Relator filed on August 28, 2007, a Recommendation Concerning Civil Penalty, wherein Relator identified factors supporting its recommendation that no civil penalty be imposed against Respondent in this case. The factors cited by Relator include:

(a) Respondent cooperated with the investigation and resolution of these proceedings;

(b) The only occasion of the unauthorized practice of law was referred to Relator;

(c) The violation was not flagrant, and only occurred as an incident to Respondent's occupation as a registered, professional surveyor, and not as a result of an ongoing pattern of conduct to avoid the regulation of the practice of law; and

(d) There is no substantial harm to third parties arising from the offense.

11. Pursuant to UPL Reg. 400(F)(3), Relator considered the following aggravating factors:

Respondent received incidental benefit to the extent of compensation received for his services as a professional surveyor and Respondent's conduct included preparation of a legal instrument for the conveyance of a property interest from one private party to another that would be recorded with the County Recorder.

12. Pursuant to UPL Reg. 400(F)(4), Relator considered the following mitigating factors:

Respondent has ceased engaging in the conduct under review; Respondent has admitted to the conduct under review; Respondent has admitted that the conduct under review constitutes the unauthorized practice of law; Respondent has stipulated to the imposition of an injunction against future unauthorized practice of law; and Respondent's conduct resulted from other than dishonesty.

III. 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.

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

3. The practice of law is not limited to the conduct of cases in court. It includes the preparation of legal instruments of all kinds and legal advice. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313; *See Cleveland Bar Assn. v. Misch* (1998), 82 Ohio St.3d 256, 695 N.E.2d 244.

4. The Panel finds that Respondent, Jesse V. Newburn, engaged in the unauthorized practice of law by preparing legal documents, to wit: easements, conveying the interest of property from one private party to another.

IV. PANEL RECOMMENDATIONS

1. The Panel recommends that the Supreme Court of Ohio issue an Order finding that Respondent Jesse V. Newburn has engaged in the authorized practice of law.

2. The Panel further recommends that the Supreme Court of Ohio issue a further Order enjoining Respondent Jesse V. Newburn 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 unauthorized practice of law unless and until (a) Respondent Jesse V. Newburn secures from the Court, or from the highest court of the state, territory or other jurisdiction entity of the United States, a license to practice law and, (b) Respondent Jesse V. Newburn registers in accordance with the Rules for the Government of the Bar of Ohio.

3. The Panel further recommends that the Supreme Court issue a further Order directing Respondent to notify in writing, at Respondent's expense, the individuals for whom he prepared the easements as identified in the exhibits attached to the Stipulations of the parties regarding Respondent's conduct that constituted the unauthorized practice of law. The notification shall include copies of the findings of the Board, as well as final determination rendered by the Supreme Court of Ohio regarding this matter. A copy of such notices shall be forwarded to Relator's counsel.

4. The Panel has considered the appropriateness of the imposition of civil penalties pursuant to Gov. Bar R. VII(8)(B) and the Guidelines for the Imposition of Civil Penalties, UPL Reg. 400. The Panel has determined that the imposition of civil penalties is not appropriate in this case for the following reasons:

(a) Respondent cooperated with the investigation and resolution of this matter (Rule VII, §(8)(B)(1));

(b) Respondent engaged in only one circumstance of the unauthorized practice of law in the preparation of the two easements that were the subject of this investigation (Rule VII, §(8)(B)(2));

(c) Respondent has admitted to the unauthorized practice of law (UPL Reg. 400 (F)(4)(c));

(d) Respondent has ceased engaging in the conduct giving rise to this complaint (UPL Reg. 400 (F)(4)(a));

(e) Respondent has stipulated to the imposition of an injunction against future unauthorized practice of law (UPL Reg. 400 (F)(4)(d)); and

(f) There was no substantial harm to third parties arising from the offense (Rule VII, §8(B)(4)).

V. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio formally considered this matter on January 17, 2008. The Board adopted the findings of fact, and conclusions of law of the Panel. The Board further adopted all of the recommendations of the Panel including its recommendation not to impose a civil penalty.

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

The Board further recommends that the Supreme Court of Ohio issue a further Order enjoining Respondent Jesse V. Newburn 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 unauthorized practice of law unless and until (a) Respondent Jesse V. Newburn secures from the Court, or from the highest court of the state, territory or other jurisdiction entity

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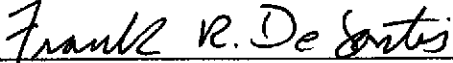
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The Board further recommends that the Supreme Court of Ohio not impose a civil penalty against the Respondent in this matter.

The Board further recommends that any costs of these proceedings be taxed to the Respondent in any Order entered, so that execution may issue.

VI. 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.



Frank R. DeSantis, Chair
Board on the Unauthorized Practice of Law

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

Exhibit "A"

STATEMENT OF COSTS

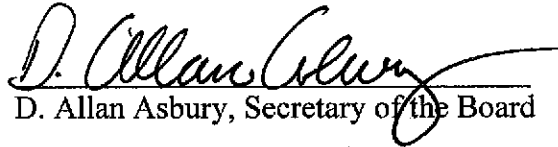
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To date, no expenses have been incurred.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 1st day of February, 2008: Jesse V. Newburn, 3815 Boy Scout Road, Dover, OH 44622; E.K. Wright, Esq., P O Box 711, 134 Fourth Street, N.W., New Philadelphia, Ohio 44663-1934; John N. MacKay, Esq., Shumaker, Loop & Kendrick, LLP, 100 Jackson, Toledo, OH 43604-5573; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, P O Box 16562, Columbus, OH 43216-6562; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204.


D. Allan Asbury, Secretary of the Board