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

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| **DISCIPLINARY COUNSEL,** | : | 08-1573 |
| RELATOR, | : | |
| **v.** | : | Case No. **UPL 06-06** |
| **BRUCE A. BROWN (aka B. ANDREW BROWN, aka AMIR JAMAL TAUWAB),** | : | **FINAL REPORT** |
| RESPONDENT. | : | |



## I. PROCEDURAL BACKGROUND

On June 12, 2006, the Relator, Disciplinary Counsel, filed a Complaint against Respondent Bruce A. Brown, aka B. Andrew Brown, aka Amir Jamal Tauwab, alleging six counts of unauthorized practice of law. The Respondent filed his Answer on June 26, 2006. The matter was assigned to a Panel consisting of James W. Lewis - Chair, James E. Young and Patricia A. Wise.

In response to a January 5, 2007 Notice for Deposition served by the Relator, the Respondent filed a Notice of Intent to Not Attend Deposition on January 12, 2007 and a Motion for Order of Protection on January 16, 2007. On January 19, 2007, the Panel overruled the motion and ordered the Respondent to make himself available for a deposition conducted by the Relator and to answer or respond to each question posed to him by the Relator.

The Respondent subsequently filed a Request for Declaratory Judgment on January 19, 2007, seeking a statement that his assertion of the Fifth Amendment privilege against self-incrimination during these proceedings could not result in a negative inference. The Panel

denied the request on January 31, 2007. The Respondent also filed a Motion to Terminate or Limit Examination on January 26, 2007, which was later denied by the Panel on February 23, 2007. In its February 23 Order the Panel renewed its direction to the Respondent to attend a deposition noticed by the Relator. Preceding its February 23, 2007 Order, the Panel had ordered the parties on February 2, 2007 to brief the applicability of the Fifth Amendment privilege to the Respondent's future testimony.

The Relator made additional attempts to notice the Respondent for a deposition. On February 26, 2007, the Relator filed a Notice for Deposition, an Amended Notice on March 9, 2007, and a Second Amended Notice on March 9, 2007. In the interim, the Respondent filed a new Request for Order of Protection on February 26, 2007 and an Amended Request for Order of Protection on February 27, 2008. On March 12, 2007, the Panel again ordered the Respondent to follow its January 19, 2007 order with regard to the taking of his deposition. The Respondent attended his deposition on March 19, 2007.

The Respondent subsequently filed a Motion for Leave and a Motion for Summary Judgment *Instanter* on March 12, 2007, which were denied as untimely.

On March 16, 2007, the Panel continued the original hearing date in the matter on the motion of the Relator due to the indictment of the Respondent in Cuyahoga County and a pending court date. The indictment included charges of False Representation as an Attorney pursuant to R.C. 4705.07(A). The Respondent entered into a plea agreement and the prosecutor dropped the R.C. 4705.07(A) charges as part of the agreement.

During the pendency of this case, the Respondent filed two actions in two different forums in an effort to suspend these proceedings. In the first action, the Respondent filed a Complaint in Prohibition against the Panel Chair and Board in the Supreme Court on February

23, 2007. The Panel Chair and Board filed a Motion to Dismiss on March 21, 2007, which was later granted by the Supreme Court on May 2, 2007. *State ex. rel. Bruce Andrew Brown v. James W. Lewis, et. al.*, Case No. 2007-0354

The Respondent also filed a Verified Complaint for a Preliminary Injunction and Motion for Temporary Restraining Order against the Panel Chair and the Board on February 27, 2007, in Federal District Court for the Northern District of Ohio. The Board and Panel Chair filed a Memorandum Contra to the Motion for Temporary Restraining Order on March 5, 2007 and the court denied the Respondent's requests on March 9, 2007. *Bruce Andrew Brown v. James W. Lewis, et. al.*, Case No. 1:07CV567, Judge Boyko.

Brown represented himself *pro se* throughout this action. He did not meaningfully participate in discovery. At a discovery deposition taken by Relator on January 22, 2007, and also at the hearing of this matter, Brown refused to answer Relator's questions under oath by invoking his constitutional privilege against self-incrimination. Brown asserted as grounds for his refusal to testify that he was under controlled release or probation for a conviction for committing the unauthorized practice of law and that proof of an additional act of unauthorized practice of law in the pending action (whether or not the alleged wrongful act occurred before or after his criminal conviction) would result in his incarceration. (Tr. 558-60)

The hearing in this matter was held on November 29-30, 2007 and March 13, 2008, in Cleveland. At the close of hearing the parties filed Proposed Findings of Fact and Conclusions of Law with the Panel on April 8, 2008.

## II. GENERAL FINDINGS OF FACT

At the hearing the Respondent testified that his legal name is Amir Jamal Tauwab and that "professionally" he "use(s)" the name Bruce Andrew Brown (Tr. 557), as well as Bruce Brown, Bruce A. Brown and B. Andrew Brown. (Tr. 557-58). The Respondent is not and has never been an attorney at law in the state of Ohio. (Exb. 1, Certificate of Attorney Services Division, Supreme Court of Ohio, Richard A. Dove, March 8, 2007)

The Respondent was admitted to the practice of law in the state of New York at the Second Judicial Department in 1985. By entry of the Supreme Court of New York, Appellate Division, First Department, dated July 30, 1992, the Respondent was disbarred from the practice of law in New York. *In the Matter of Bruce A. Brown* (1992), 586 N.Y.S.2d 607. (Tr. 9)

The Respondent has been convicted of multiple felony crimes in the state of Ohio. In 1991, the Respondent pled guilty in Cuyahoga County to the passing of two bad checks and one count of forging a power of attorney. In 1994, he was convicted in Cuyahoga County of 44 third degree felonies: 10 counts of grand theft; eight counts of forgery; eight counts of uttering; and, 18 counts of tampering with records. In or about January 2003, the Respondent pled guilty in Cuyahoga County to a 21-count indictment: theft (6 counts); false representation as an attorney (6 counts); passing bad checks (7 counts); forgery; and, uttering. In or about June 2003, the Respondent pled guilty to two counts of forgery in Portage County. (Admitted[1])

During the pendency of this action the Respondent also faced several unrelated charges including a charge of False Representation as an Attorney pursuant to R.C. 4705.07(A). On March 16, 2007, the Respondent entered into a plea agreement and the prosecutor dropped the R.C. 4705.07(A) charges as part of the agreement.

[1] "Admitted" references allegations that the Respondent admitted to in his Answer to Relator's Complaint.

The Respondent was previously involved in two other actions decided by the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio ("the Board"). In case number UPL 91-2, the Board found that he engaged in the unauthorized practice of law. See *Disciplinary Counsel v. Brown* (1992), 61 Ohio Misc.2d 792. In 2003, the Supreme Court of Ohio found that the Respondent had again engaged in, and was enjoined against committing, further acts of the unauthorized practice of law. *Disciplinary Counsel v. Brown,* 99 Ohio St.3d 114, 2003-Ohio-2568, where the Court, in a per curiam opinion concluded:

> Respondent is hereby enjoined from engaging in the unauthorized practice of law in the future. [1] All expenses and costs are taxed to respondent.
>
> FN 1 Concerned that respondent will return to the unauthorized practice of law, relator also seeks an order precluding respondent from using "J.D." or "Esq." in connection with his name and prohibiting respondent from working in any capacity in a law office or for a licensed attorney absent a license to practice law and registration in accordance with the Supreme Court Rules for the Government of the Bar. We decline to issue such an order but note that respondent risks contempt for continuing to engage in the unauthorized practice of law.

In addition, in 2002, a lawyer was publicly reprimanded for aiding and abetting the Respondent in the unauthorized practice of law in *Disciplinary Counsel v. Willis*, 96 Ohio St.3d 142, 2002-Ohio-3614.

At the time of the filing of this action the Respondent maintained a place of business known as B. Andrew Brown & Associates, LLC, at The Brownhoist Building, located at 4403 St. Clair Avenue, NE, in Cleveland, Ohio 44103-1125. He holds himself out as "B. Andrew Brown, Esq." on the letterhead for "B. Andrew Brown & Associates."

## III. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. COUNT ONE

**FINDINGS OF FACT**

Ms. Georgia Hilliard died March 18, 2000. (Exb. 11, p. 51) A Power of Attorney dated July 12, 2005 purportedly appointed Respondent as attorney in fact for Ms. Hilliard relating to the sale of certain of her real property. (Tr. 215; Exb. 11, pp. 12-15, 34-37) Proceeds of $83,442.09 were received upon the sale of that property. *Id.* That amount was placed into a U.S. Bank IOLTA account designated as belonging to Respondent. *Id.* Respondent filed an action against U.S. Bank related to the proceeds from sale of the Hilliard property. *Id.*

Much of the testimony presented by Relator in support of its First Count against Respondent was based on U.S. Bank records. The sole witness presenting those records on behalf of U.S. Bank was Ms. Valerie Wright, who testified that part of her job responsibilities as a U.S. Bank District Operations Manager include authenticating documents created or maintained by U.S. Bank. (Tr. 265, 269) However, Ms. Wright expressly stated that she is "not records custodian" of U.S. Bank documents. (Tr. 286) Ms. Wright testified that documents responsive to a subpoena would be processed in Minnesota. (Tr. 271-72, 295)

Her further testimony demonstrated significant issues with the documents submitted. For example, Ms. Wright admitted that although Bank signature cards should not be signed if they are blank on one side, that did sometimes happen in her experience. (Tr. 300-01, 313). Ms. Wright stated that she was "confused" by some of the documents in the records she testified about, even though she sees those types of documents "quite often" in her job. (Tr. 317, 319)

At one point, Ms. Wright testified that she brought the "entire branch file." (Tr. 332) However, she then testified that certain documents "should" have been in the "branch file," but were not. (Tr. 332) Ms. Wright further testified that she previously provided documents to another individual related to the accounts at issue, and that those documents were no longer in her possession. (Tr. 327-28) She was then instructed by the Panel to make an additional search for all documents that may have been part of the file. (Tr. 334-35, 338-39)

After Ms. Wright returned with additional documents, she again admitted that certain documents were not included in the files that "should be" and that those should be "maintained in the normal course of business." (Tr. 448). She also admitted that based on the documents she did have, the procedures followed regarding the accounts at issue were "improper." (Tr. 450-451)

After much discussion about what had and had not been copied by the witness prior to her return, the witness enumerated many things that had not been copied (including a "little records folder," "some correspondence" and a fax transmittal). The witness was again directed to go back and make a complete copy of everything in the files. (Tr. 451-457)

Upon returning yet again the next day, Ms. Wright testified that she was "perplexed" and again "confused" at the contents of a new file she had provided because it had "some other things mixed in it." (Tr. 534)

On her fourth and final trip to the witness stand on the final day of testimony, Ms. Wright was once again forced to admit that a document (a copy of a check) that was responsive to the subpoena, and which should have been included in the documents she provided, was missing. (Tr. 660-61) Nor did she know why. (Tr. 661). The Panel finally ruled that the documents she had attempted to authenticate were inadmissible.

Respondent consistently maintained that the Bank's documents were "spurious," "false," and "fraud on the part of the bank." (Tr. 17, 104-05, 107, 111, 246, 285)

**CONCLUSIONS OF LAW**

On four separate trips to the witness stand, although Ms. Wright initially testified that the records presented were "complete," she was then forced to admit that some documents were missing, and that the records were confusing, perplexing, improper, and "mixed in." *Supra.*

Relator was never required to subpoena the complete file regarding Respondent's bank records, nor to present the complete file, either to Respondent or as evidence, as Relator's counsel noted several times. Relator argued that Relator should be permitted to offer as exhibits only what Relator's counsel determined to offer. While true, this misses the relevant points entirely. The determinative issue regarding this evidence, which Relator failed to understand, is that the witness was never able to properly authenticate the records. Based on Ms. Wright's testimony on each occasion, it does not appear that U.S. Bank complied with the subpoenas issued by Relator, but more importantly, Ms. Wright was not qualified to present the records as a "records custodian" or as a "qualified witness."

Relator had ample time between the first two days of hearings on November 29-30, 2007 and the final day on March 13, 2008 to obtain the appropriate records, and to provide a witness who could authenticate the records. But, on the final day, Ms. Wright appeared again, and was again forced to admit that a particular document which should have been included was missing, and that she did not know why. (Tr. 660-61)

The type of records presented in the course of Ms. Wright's testimony would ordinarily be admissible as evidence pursuant to the hearsay exception for records of regularly conducted

business activity. (Evid. R. 803(6)). To be admissible under this exception, however, the records must be reliable, "as shown by the testimony of the custodian or other qualified witness" and are admissible "unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." *Id.* Ms. Wright's testimony clearly demonstrated that she was not a qualified witness, and her own admissions regarding the records demonstrated a complete lack of trustworthiness in both the source of the information and the circumstances of preparation. Relator did not file a Motion for Reconsideration regarding the Panel's ruling excluding the Bank's records as evidence after the hearing.

Relator's difficulties regarding the U.S. Bank records aside, however, Count One still demonstrates an instance of the unauthorized practice of law by Respondent. In filing a lawsuit against the U.S. Bank as Georgia L. Hilliard's "Attorney in Fact," Respondent engaged in the unauthorized practice of law. R.C. 4705.01 provides:

> No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned . . . unless the person has been admitted to the bar by order to the supreme court in compliance with its prescribed and published rules.

Ohio law is clear that a party cannot use a power of attorney designation to circumvent this black letter law:

> The law recognizes that a person has the inherent right to proceed *pro se* in any court. But it also prohibits a person from representing another by commencing, conducting, or defending any action or proceeding in which the person is not a party. **When a person not admitted to the bar attempts to represent another in court on the basis of a power of attorney assigning pro se rights, he is in violation of [ R.C. 4705.01].**

*Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 2000-Ohio-288 (emphasis added). The Supreme Court affirmed this proposition:

> We reject Spurlock's argument that he was authorized to prepare a pleading on behalf of Degan because she gave him a power of attorney . . . **a power of attorney does not give a person the right to prepare and file pleadings in court for another.**

*Cuyahoga County Bar Association v. Spurlock*, 96 Ohio St.3d 18, 2002-Ohio-2580 (emphasis added).

Respondent engaged in the unauthorized practice of law by filing the action against U.S. Bank. No U.S. Bank records are needed to prove that fact.

## B. COUNT TWO

### FINDINGS OF FACT

Cindy Paoletta received a letter dated August 8, 2005 from B. Andrew Brown. The letter requested payment of an alleged debt by Ms. Paoletta to Raymond P. Buildt and enclosed an Affidavit For Mechanic's Lien by Mr. Buildt on property owned by Ms. Paoletta. The August 8, 2005 letter was written on stationery bearing the letterhead "B. Andrew Brown & Associates, L.L.C." and "B. Andrew Brown, Esq." (Exb. 16)

Ms. Paoletta retained Sergio DiGeronimo, Attorney at Law, to represent her in connection with the Buildt matter. (Tr. 121-122) Mr. DiGeronimo confirmed that Mr. Buildt's mechanic's lien had in fact been filed with the Cuyahoga County Recorder. Mr. DiGeronimo, whose practice includes real estate transactional work, also opined that in his experience the Recorder's Office requires that a mechanic's lien list the identity of the person who prepared the lien. (Tr. 121, 123-124) The mechanic's lien filed with the Cuyahoga County Recorder's Office contained the following legend:

"This document was prepared by:
B. A. Brown
4403 St. Clair Avenue
Cleveland, Ohio 44103
(216) 881-7103" (Exb. 59)

Based upon the letter from Respondent to Ms. Paoletta, Mr. DiGeronimo concluded that Respondent was an attorney. (Tr. 125) Mr. DiGeronimo wrote back to Respondent in a letter dated August 12, 2005 addressed to "B. Andrew Brown, Attorney at Law" (Exb. 17) The letter advised Respondent that Mr. DiGeronimo represented Ms. Paoletta and her husband and referred to Mr. Buildt as "your client." Mr. DiGeronimo then had conversations with Respondent. (Tr. 125) Respondent and Mr. DiGeronimo engaged in settlement negotiations. Respondent proposed the payment of money to Mr. Buildt to resolve the controversy. Mr. DiGeronimo then went to the property and looked at it. Respondent's proposal was not well received by Mr. DiGeronimo or his clients. (Tr. 129-130)

Mr. DiGeronimo received a letter dated September 16, 2005 enclosing a copy of a Satisfaction of Mechanic's Lien which had been filed for the Paoletta property. (Exb. 20; Tr. 131) The Satisfaction of Mechanic's Lien filed with the Cuyahoga County Recorder's Office bears the notation:

"Prepared by:
B. Andrew Brown & Assoc." (Exb. 60; Tr. 133-134)

Prior to receiving the Satisfaction of Mechanic's Lien, Mr. DiGeronimo learned from the Cuyahoga County Prosecutor's Office that Respondent was not admitted in Ohio. (Tr. 127-128, 132) Exhibit 18 is a letter dated August 15, 2005 from B. Andrew Brown to Mr. DiGeronimo. The letter provides in part: "Be advised that I am not an attorney, practicing law. I am a collection agent." Mr. DiGeronimo testified that he did not receive that letter in August 2005.

The first time he saw it was November 2007, approximately two weeks before the Board hearing. (Tr. 127) The Panel accepts the testimony of Mr. DiGeronimo.

**CONCLUSIONS OF LAW**

Respondent led Mr. DiGeronimo to believe that Respondent was an attorney. Mr. DiGeronimo's conclusion was based upon the August 8, 2005 letter from Respondent bearing the letterhead "B. Andrew Brown & Associates, L.L.C." and "B. Andrew Brown, Esq." (Exb. 16) By leading Mr. DiGeronimo to believe that he was in fact an attorney at law, Respondent committed the unauthorized practice of law. See *Disciplinary Counsel v. Robson*, 116 Ohio St.3d 318, 2007-Ohio-6460.

In *Geauga Cty. Bar Assn. v. Canfield*, a former lawyer prepared a contract for the sale of real property for others. Even though the former attorney copied the document from a form book and did not charge a fee, the Supreme Court ruled that the conduct constituted the unauthorized practice of law. 92 Ohio St.3d 15, 2001-Ohio-138. Here, Respondent prepared an Affidavit For Mechanic's Lien and Satisfaction of Mechanic's Lien on behalf of Mr. Buildt. Those documents were provided to Ms. Paoletta, Mr. DiGeronimo and filed with the Cuyahoga County Recorder. By doing so, Respondent committed the unauthorized practice of law.

The Supreme Court has recently considered on several occasions whether negotiation constitutes the unauthorized practice of law. In *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St.3d 504, 2004-Ohio-5581, the Court found the unauthorized practice of law where the respondent advised, counseled and represented various debtors, as well as negotiating the settlement of their claims and drafting settlement agreements. In *Cleveland Bar Assn. v. Henley*, 95 Ohio St.3d 91, 2002-Ohio-1628, the respondent was found to have engaged in the

unauthorized practice of law by, *inter alia,* attempting to negotiate the settlement of claims of alleged discrimination. In *Cleveland Bar Assn. v. CompManagement, Inc.,* 111 Ohio St.3d 444, 2006-Ohio-6108, the Court held that a third-party administrator could convey settlement offers from an employer when acting pursuant to an Industrial Commission Resolution. *Id.* at ¶¶ 50-62. In *Ohio State Bar Assn. v. Burdzinski, Brinkman, Czarzasty & Landwehr, Inc.*, 112 Ohio St.3d 107, 2006-Ohio-6511, the Court found that nonlawyers could participate in collective bargaining. The Court held:

> Respondents here are not negotiating the settlement of a legal dispute, nor are they negotiating a business or real-estate contract in which all elements of the contract are negotiable. Rather, there is a clearly defined scope of allowable subjects for negotiation. Because of the close federal regulation and the limited subjects for negotiation, we conclude that respondents' conducting of negotiations on behalf of their clients with employees or employees' representatives during collective bargaining is not the practice of the law. *Id.* at ¶ 20.

Here, Respondent engaged in negotiations attempting to settle a legal dispute in August 2005 involving his client and the client of an attorney-at-law, Sergio DiGeronimo. As such, Respondent committed the unauthorized practice of law.

## C. COUNT THREE

### FINDINGS OF FACT

Rosa Primous, a school teacher, applied for a home equity loan at Key Bank on Kinsman Road in Cleveland. (Tr. 344) At the time of her application, Rex Erusiafe was the bank's branch manager. (Tr. 345-46; see also Relator's Exb. 31) During the application process and after reviewing her credit report, Erusiafe told Primous that another person was using her social

security number. (Tr. 346) Primous and Erusiafe discussed the problem and she asked him if he knew "a lawyer who could handle that, because I didn't have a lawyer."(Tr. 346) In response to her request for a referral to a lawyer, Erusiafe recommended that she hire the Respondent and gave her one of the Respondent's business cards. (Tr. 346, 356-57) The Respondent's business card identifies him as "B. Andrew Brown, Esq." and his business as "B. Andrew Brown & Associates LLC." (Exb. 62) Erusiafe told her the Respondent had previously done some work for him and recommended him "as a lawyer." (Tr. 356, 369) At this point "[i[t "was clear" to Primous that the Respondent "was a lawyer." (Tr. 347)

As a result of Erusiafe's referral to the Respondent, Primous phoned for an appointment with him at his St. Clair Avenue office (asking for "a lawyer who was recommended by a friend to help me in this case", mentioning the Respondent by name) and when she arrived for her appointment there, accompanied by a friend, they were ushered into a conference room where the Respondent met with them. (Admitted; Tr. 347-48) Primous told the Respondent, "I needed a lawyer and Rex recommended you." (Tr. 357) She also handed or showed the Respondent the business card that Erusiafe had given to her. (Tr. 356-57) Before hiring the Respondent, Primous wanted to know more about him and he discussed his background. (Tr. 357) At no time did the Respondent inform Primous that he was not a lawyer. (Admitted; Tr. 354) Believing the Respondent to be a lawyer, Primous provided him with some information about herself and the person Erusiafe said was using her social security number. (Tr. 352-53) Primous considered the information personal or confidential. (Tr. 354-55) She did not believe she was hiring a consumer credit organization to assist her. (Tr. 357, 376) Primous paid the Respondent a $250 "retainer fee" believing he was an attorney. (Tr. 350)

On July 14, 2005, the Respondent wrote a letter on Primous' behalf to Robert J. Jatleff of

Winthrop, Washington, on stationery bearing the letterhead "B. Andrew Brown & Associates, LLC" and "B. Andrew Brown, Esq." (Admitted; Exb. 21, 88, Exb. B; Tr. 350) The letter stated, in part, "Please be advised that this office has been retained to investigate and resolve the matter of your use of a social security number belonging to another individual. Towards that end, be further advised that I will contact the three major credit reporting agencies to ascertain the extent of your improper use of my client's social security number. Subsequent thereto, we will determine whether or not to involve the criminal justice authorities." "Ms. Rosa Primous" was an indicated recipient of the letter. (Exb. 21, Exb. B) By writing letters setting forth Primous' legal position with regard to the allegedly fraudulent use of her social security number, and by threatening legal action on her behalf, the Respondent engaged in the unauthorized practice of law.

On July 14, 2005, using his "B. Andrew Brown & Associates, LLC/B. Andrew Brown, Esq." stationery, the Respondent wrote letters to the three major credit reporting services on Primous' behalf. (Tr. 351-352; Exb. 21, Exbs. C, D and E) At all times Primous believed the Respondent was a lawyer performing legal services on her behalf. (Tr. 354-55, 358, 368-69, 371) By doing so, the Respondent engaged in the unauthorized practice of law.

At the hearing the Respondent cross-examined Primous at length using certain documents, over Relator's objection, which he had not previously disclosed on discovery. Among those were three letters that he claimed he authored and mailed to Primous: a July 25, 2005 letter referencing an enclosed a copy of her Equifax Consumer Credit Report stating that only her name appeared thereon (Exb. Q); a July 26, 2005 letter with an enclosed credit report from TransUnion, which did not contain Jatleff's name (Exb. P); and a July 28, 2005 letter referencing an enclosed a credit report from Experian stating that additional documentation was needed.

(Exb. O) Primous did not recall receiving these letters from the Respondent (Tr. 351-53, 358-63), but taken together they indicate that at least two of the credit reports did not contain the name Robert J. Jatleff, the person who was supposedly using Primous' social security number. The Respondent intimated during his cross-examination (Tr. 364) that his efforts were the reason the man's name was not on her credit reports; however, no independent evidence established that the man's name ever did actually appear on any of Primous' credit reports. The Respondent stated in his July 26, 2005 letter to her (Exb. P) that the information received from TransUnion "combined with that we recently received from Equifax causes me to believe that a mistake occurred when you were advised that Mr. Jateff was using your Social Security Number." Thus it may be that Jatleff's name never did appear on any of Primous' credit reports and that no one named Jatleff was using her social security number, as Erusiafe had led her to believe.

During the Respondent's cross-examination of Primous, he attempted to elicit from her additional information about what Erusaife had told her about the legal work he (the Respondent) had previously performed. Primous did not recall any specific details but the Respondent persisted with his cross-examination and at one point asked her, "Did he discuss that I had done a bankruptcy for his wife?" (Tr. 369) The question itself raises concerns about the existence of the Respondent's prior relationship with Erusiafe and suggests another potential UPL violation on the Respondent's part, if in fact he "had done a bankruptcy" for Erusiafe's wife.

When Primous later returned to the bank to complete her transaction she learned that Erusaife was no longer employed there. (Tr. 366) Primous later tried to contact the Respondent but he did not return her calls or return any portion of her $250 retainer fee. (Tr. 353-55)

In summary, the Panel finds that (1) Erusaife told Primous that she needed the services of a lawyer; (2) at that time Erusaife believed, or at least told Primous he believed, that the

Respondent was a lawyer who had done previous legal work for him; (3) Erusaife gave her one of the Respondent's "Esq." business cards, which further led her to believe the Respondent was a lawyer; (4) Primous later telephoned the Respondent's office for an appointment, saying that the Respondent had been recommended to her as being a good lawyer; (5) when she met in person with the Respondent she told him she had been referred to him by Erusaife as a "good lawyer" and asked the Respondent to discuss his background with her but he said nothing to correct her understanding that he was a lawyer; (6) the Respondent then obtained from Primous personal and confidential information, which she provided on the belief he was a lawyer; (7) Respondent advised Primous that he would proceed to address her problem in two stages, first by contacting the man who was supposedly using her social security number and then by contacting credit agencies on her behalf; (8) using his "B. Andrew Brown & Associates, LLC/B. Andrew Brown, Esq." stationery, he wrote a letter on her behalf to a Mr. Jateff stating that he had been "retained to investigate and resolve the matter of your use of a social security number belonging to another individual" and threatening possible legal action against him; (9) he charged Primous a $250 "retainer fee" for these services and (10) at all times Primous believed the Respondent was an attorney, that the services he recommended to her were being performed by an attorney, and that she had paid an attorney to perform them.

**CONCLUSIONS OF LAW**

The Panel concludes that Respondent's misrepresentation and failure to correct Primous' misconception constitutes the unauthorized practice of law. Respondent's failure to correct Primous' understanding of his status as an attorney led Primous to believe that she was paying an attorney to provide her with legal services. Primous' intention and desire to hire an attorney to

resolve her situation was evident from her initial meeting with Respondent. Respondent's collection of a retainer fee reinforced the idea that an attorney-client relationship had been established. The misrepresentation that continued as a result of Respondent's actions constitutes the unauthorized practice of law.

D. **COUNT FOUR**

**FINDINGS OF FACT**

Mohammad Joseph and his cousin, Mahoud Khalil, attempted to start a business known as King Drive Through, LLC. (Tr. 21-23, 62) Prior to meeting Respondent, Mr. Joseph had been charged in Lakewood, Ohio with carrying a concealed weapon ("CCW"). (Tr. 29) During the course of forming the business and believing that Respondent could provide legal services to him, Mr. Joseph discussed his CCW charge with Respondent. (Tr. 29-34) Respondent told Mr. Joseph that he would represent Mr. Joseph on the CCW charge in court. (Tr. 31)

The Respondent analyzed the CCW charge and advised Mr. Joseph that the charge should be dismissed.

> Q And what did Mr. Brown say to you when you told him that you had been charged with CCW?
>
> A He told me it's most likely as a discrimination. You had your license on you, you had your gun. My gun was not loaded, so by the law it shouldn't be in the holster or cannot be in the holster. He told me it shouldn't be a problem, he'll dismiss out the first day.
>
> (Tr. 30-31)

The Respondent did not appear for Mr. Joseph's scheduled court hearing. Rather, he told Mr. Joseph that he had been in an accident on the way to court. The case was continued. (Tr.

31-34) The next day Respondent advised Mr. Joseph that Respondent would file a motion to dismiss. Later Respondent told Mr. Joseph that the motion to dismiss had been filed and that Mr. Joseph would not have to go to court.

> Q And on the next date, the other date that they gave you, did you talk to Mr. Brown and what did he tell you?
>
> A Yes, actually by the next day I talked to Mr. Brown, he told me it wouldn't be a problem. "I'm going to have to do something else." He said he's going to do like a motion to dismiss or something. This way I didn't even have to go to court. So he told me he's going to go file a motion to dismiss.
>
> I talked to him. He told me he already filed. He said, "Don't even worry about it. You're not going to have to go to court." He said they'll call him back or something or other, tell him the answer. Either I still have to go to court or the motion to dismiss was accepted.

(Tr. 32-33; See also Tr. 35)

The hearing was in fact rescheduled. Respondent was supposed to appear with Mr. Joseph. Approximately a half hour before the hearing, Respondent called Mr. Joseph to tell him that he needed $500 "because he found out that his [law] license was expired and he needed $500 to renew his license." (Tr. 33-34) Mr. Joseph went to court alone that day and the hearing was again rescheduled. (Tr. 33-34) Respondent told Mr. Joseph that he would appear for the third rescheduled hearing. He however did not appear and Mr. Joseph obtained an attorney to represent him. (Tr. 34-35)

Respondent prepared and filed the necessary documents for the establishment of the business to be known as King Drive Through, LLC. Although Mr. Joseph concedes that he does not know who actually filled out the form for the Organization/Registration of Limited Liability Company (Tr. 64-65), the undisputed testimony is that Respondent agreed to prepare and file the necessary documentation for the incorporation of King Drive Through, LLC, as well as "do" the

liquor license and lottery applications. (Tr. 24-27) Mr. Joseph and Respondent sat together and jointly filled out the application to sell lottery tickets, which was then typed up by Respondent's secretary. (Tr. 24-25) Moreover, Respondent signed the Organization/Registration of Limited Liability Company form for King Drive Through, LLC accepting his appointment as agent and "B. Andrew Brown & Associates" is listed as the person to whom requests for copies of company documents should be addressed. (Exb. 24, pp. 10-12) In addition, Exhibit 24, p. 8 is a copy of the letter from Respondent to the Ohio Secretary of State enclosing the Organization/Registration of Limited Liability Company for King Drive Through, LLC. Exhibit 24, p. 9 is a letter dated September 23, 2005 from Respondent to Mr. Joseph enclosing the "Certificate of Registration" for King Drive Through, LLC received from the Ohio Secretary of State.

Mr. Joseph paid Respondent $1,800 for representation in connection with the CCW case and for services in connection with the startup of King Drive Through, LLC. (Tr. 31) Respondent told Mr. Joseph that he would repay the $1,800 to Mr. Joseph's bank account. A check was drawn on an account registered to "The Bruce Andrew Brown Group, Ltd." in the amount of $1,800 payable to Mohammad Joseph. That check was deposited to Mr. Joseph's account pursuant to an endorsement on the back of the check containing Mr. Joseph's name. Mr. Joseph, however, testified that he did not sign the check. Respondent's account however had been closed and the check was not honored. A second check for $1,850 was written on the same account and also bore the endorsement of Mr. Joseph on the back. Mr. Joseph testified that he did not sign that check either. That check was also not honored. (Tr. 44-48) See Exb. 24, pp. 14 and 15.

Mr. Joseph filed a claim with the Supreme Court's Client's Security Fund seeking a return of money given to Respondent. See. Exb. 24, pp. 1 and 2. That claim was denied on the grounds that Respondent was not an attorney admitted to practice in Ohio. (Tr. 38-39, 48) Mr. Joseph did not learn that Respondent was not an attorney until he was notified by the Supreme Court Client Security Fund. (Tr. 48)

**CONCLUSIONS OF LAW**

In general, the practice of law includes rendering of legal advice. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 193 N.E. 650, at paragraph one of the syllabus. Respondent engaged in the unauthorized practice of law by giving Mr. Joseph legal advice about his criminal case.

The drafting of documents by a layperson on another's behalf and which create a business entity is the unauthorized practice of law. *Columbus Bar Assn. v. Verne*, 99 Ohio St.3d 50, 2003-Ohio-2463. Respondent contracted with Mohammad Joseph to provide legal services in connection with a criminal charge pending against Mr. Joseph and in connection with Mr. Joseph's efforts to start a business known as King Drive Through, LLC and accepted compensation for such services. Respondent engaged in the unauthorized practice of law by preparing and filing the necessary documents for the establishment of King Drive Through, LLC. These documents included the Organization/Registration of Limited Liability Company as well as the documentation necessary to obtain a liquor license and to apply for the right to sell lottery tickets.

## E. COUNT FIVE

**FINDINGS OF FACT**

On October 12, 2005, the Respondent filed a Chapter 7 bankruptcy petition for Reginald V. Pierce and designated himself as a Bankruptcy Petition Preparer. (Exb. 32, p.2) Pierce was referred to Respondent after asking a local attorney for a recommendation for an attorney to assist him in filing a bankruptcy petition. (Tr. 163-65) Upon first meeting Pierce, the Respondent told him that he needed a "lawyer" to complete his bankruptcy forms and that Respondent would "take care of everything" relative to the bankruptcy. (Tr. 165, 173, 184-85, 192, 200-1) Pierce believed that the Respondent was an attorney. (Tr. 165) The Respondent never informed Pierce that he was not an attorney. (Tr. 166) Simultaneously with the filing of the bankruptcy petition, the Respondent also filed a "General Power of Attorney", appointing himself as Pierce's "attorney in fact". (Exb. 32, p. 5) Pierce denied that he executed a power of attorney as filed by the Respondent. (Tr. 173). Pierce paid Respondent $200 to complete and file the bankruptcy in addition to $209 for filing fees. (Tr. 167) The Respondent converted $109 of the filing fee for his own use. (Exb. 40, Tr. 408-09) A bankruptcy petition preparer cannot collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition. 11 U.S.C. §110(g)

The case was assigned to Judge Morgenstern-Clarren who immediately issued a show cause order requiring the Respondent and Mr. Pierce to appear and explain why the petition was filed by a third party and whether any compensation was paid to Respondent for preparing and filing the bankruptcy case. Judge Morgestern-Clarren testified that she typically issues a show cause order in any case filed with a general power of attorney to verify the relationship. (Tr.

394) Judge Morgenstern-Clarren testified that she initially believed the Respondent was an attorney. (Tr. 403)

The Respondent appeared before Judge Morgenstern-Clarren on November 17, 2005 without Pierce and falsely claimed that he had not been paid by him for his services. (Tr. 299, Exb. 57) The Respondent never informed Pierce of the judge's order to appear. (Tr. 174)

Mr. Pierce's case was eventually dismissed by Judge Morgenstern-Clarren because he failed to appear in response to the court's order to show cause. Mr. Pierce was unaware of the dismissal, and consulted the Respondent when his wages began to be garnished by his employer. (Tr. 179) Respondent in turn gave Pierce advice regarding the status of the bankruptcy case and made several calls to temporarily stop the garnishment. (Tr. 180-81) Pierce ultimately sought the services of a licensed attorney to file a new bankruptcy petition. (Tr. 202)

**CONCLUSIONS OF LAW**

Section 110, Title 11 of the US Bankruptcy Code permits non-attorneys to prepare ordinary petitions for bankruptcy on behalf of others pursuant to specific guidelines. See *Cleveland Bar Ass'n v. Boyd*, 112 Ohio St.3d 331, 2006-Ohio-6590.

Here, the Respondent exceeded the statutory guidelines for bankruptcy petition preparers because he began to act in the capacity as a legal representative. In addition, the Respondent, while not disclosing to Pierce he was not licensed to practice law, filed a general power of attorney without proper authorization, all in an attempt to represent Pierce as his legal representative in the proceedings.

The Respondent eventually failed in his effort to represent Pierce before the bankruptcy court, and in failing to restrict his activities to those permitted by Section 110, eventually caused

Pierce's case to be dismissed.

Section 2(B)(1)(g), Article IV of the Ohio Constitution confers on the Supreme Court original jurisdiction over all matters related to the practice of law, including allegations of laypersons practicing law without a license. "[E]xcept to the limited extent necessary for the accomplishment of the federal objectives," the Supreme Court is also authorized to enjoin the unauthorized practice of law before federal courts in this state. *Sperry v. Florida ex rel. Florida Bar* (1963), 373 U.S. 379, 402, 83 S.Ct. 1322.

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). Only a licensed attorney may provide legal advice, file pleadings and other legal papers in court, and manage court actions on another's behalf. *Cleveland Bar Ass'n v. Baron*, 106 Ohio St.3d 259, 2005-Ohio-4790; *Akron Bar Ass'n v. Greene*, 77 Ohio St.3d 279, 1997-Ohio-298. The Respondent engaged in the unauthorized practice of law by acting beyond the permissible scope of a bankruptcy petitioner, including filing a forged general power of attorney in an attempt to elevate his level of representation, acting on Pierce's behalf to temporarily stop a garnishment, and advising Pierce, incorrectly, of the status of the bankruptcy after the case had been dismissed and Pierce's wages were garnished.

## F. COUNT SIX

### FINDINGS OF FACT

On October 12, 2005, the Respondent filed a Chapter 7 bankruptcy petition for Theresa Delaney, designating himself as a bankruptcy petition preparer on Delaney's bankruptcy petition.

(Admitted; Exb. 41, p. 2) The petition requested that Delaney be allowed to pay the required bankruptcy fee in installments. The Respondent also filed a "General Power of Attorney" with the bankruptcy court appointing himself, "B. Andrew Brown, Esq. of Cleveland, Ohio," as Delaney's "attorney in fact." Delaney's bankruptcy case was assigned to Hon. Arthur I. Harris. (Admitted; Exb. 41, Tr. 478) Linda M. Battisti, an attorney employed by the United States Trustee's Office Justice, also was assigned to the case. (Tr. 458-59) Battisti testified that the proper role of a bankruptcy petition preparer is purely clerical, basically that of a typist. (Tr. 463-64) The petition preparer must file and sign a disclosure statement that contains the preparer's social security number and the amount of the fee being charged to the petitioner. (Tr. 464) The preparer's fee cannot be paid until the bankruptcy filing fee is paid in full. (Tr. 465-66) The Respondent did not file a disclosure of Bankruptcy Petition Preparer fees in Delaney's bankruptcy case. (Exb.41; Tr. 476) However, it was alleged that Delaney paid the Respondent a $200 preparer's fee. (Tr. 476-77)

The fact the petition requested that the filing fee be paid in installments caused Battisti to be concerned that a preparer's fee had been, or might be, paid contrary to law. (Tr. 473-75)

The General Power of Attorney also raised concerns with Battisti. (Tr. 467) Delaney appeared on December 8, 2005 for her 341 creditors' meeting, but because she did not bring photo identification with her, the meeting was continued to December 13, 2005. (Exb.41, p. 25; Tr. 467-68) Delaney failed to appear for the December 13, 2005 creditors' meeting. (Exb.41 p. 26; Tr. 468-69) As a consequence, on or about January 4, 2006, the United States Trustee filed an amended notice of motion to dismiss Delaney's bankruptcy petition. (Exb.41, p. 28; Tr. 469) On January 11, 2006, Delaney filed an unsigned document in the United States Bankruptcy Court indicating that she had received legal advice from the Respondent regarding her appearance for

her creditors' meeting. (Exb.41, p. 33; Tr. 470) On January 13, 2006, Delaney filed a second document in the United States Bankruptcy Court indicating that she had received legal advice from the Respondent regarding her appearance for the creditors' meeting. (Exb. 41, p. 34; Tr. 470) The documents filed by Delaney on January 11 and January 13, 2006 caused Battisti to begin an investigation of the Respondent. (Tr. 470) Ultimately, Battisti filed an adversary action against him, seeking the imposition of fines and the disgorgement of the preparer's fees that he allegedly had been paid by Delaney. On February 24, 2004, the United States Bankruptcy Trustee, Saul Eisen, filed a motion for an oral examination (deposition) of Delaney pursuant to Bankruptcy Rule 2004. (Exb. 41, p. 39; Tr. 472-73) On March 7, 2006, Eisen filed a complaint for injunctive relief, turnover of fees and imposition of fines against the Respondent. (Exb. 41, p. 45; Exb. 76; Tr. 473) The allegations of the unauthorized practice of law against the Respondent in the three-count complaint were based upon communications between the Department of Justice and Delaney. (Tr. 473-74)

Based upon the filing of the adversary proceeding against the Respondent, Relator contends that the Department of Justice had concluded that the Respondent had engaged in the unauthorized practice of law by providing legal advice to Delaney. (Exb. 41, p. 45; Exb. 76)

Delaney was noticed to appear for an oral examination, which Battisti described as a "deposition" taken in bankruptcy proceedings (Tr. 472) The main purpose of the deposition was to determine whether the Respondent had been paid a $200 preparer's fee and not disclosed it in conjunction with the filing of the petition. (Tr. 473)

The Respondent advised Battisti that he could not appear for Delaney's first scheduled deposition due to medical problems his mother was experiencing, and the deposition was rescheduled. (Tr. 491)

Delaney later appeared and gave sworn testimony at a deposition held in the bankruptcy case on September 18, 2006. (Exb. 42; Tr. 479-80.) The Respondent did not attend this deposition and the reason why he did not became an issue in the pending unauthorized practice of law action.

The Relator served Delaney with a subpoena to attend and testify at the pending unauthorized practice hearing but she failed or refused to appear, or to contact the Relator. (Tr. 86-89)

Inasmuch as Delaney did not appear for and was unavailable as a witness the hearing in this UPL action (Tr. 484-85), the admissibility of Delaney's deposition testimony therefore became essential to proof of the Relator's sixth alleged count. The Respondent objected to the introduction of Delaney's deposition testimony under Evid. R. 804(B)(1) on grounds that he did not receive notice of the deposition and therefore was not present and unable to cross-examine her. (Tr. 480-481)

Evid. R. 804(B)(1) reads:

"(B) Hearsay exceptions.

> The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
>
> (1) Former testimony.
>
> Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. Testimony given at a preliminary hearing must satisfy the right to confrontation and exhibit indicia of reliability." (Emphasis added)

The testimony adduced from Battisti and Brown during an extensive voir dire examination of both witnesses revealed that Battisti had not issued a written notice of deposition to Brown for

the second Delaney deposition. Battisti testified that she "would have" given Brown oral notice by telephone, as she said was her customary practice, but she could not specifically recall doing so in this case. (Tr. 493-494, 497) She testified that she thought it unusual that Brown was not in attendance at the deposition, based on his past appearances in the case, including his attendance at his own deposition, but she proceeded to conduct the Delaney deposition in his absence. (Tr. 495) Some time after the Delaney deposition was taken, Battisti telephoned the Respondent to settle the adversary action in exchange for his approval and signature on a consent decree in which he agreed not to commit future unauthorized practice of law violations while not admitting any past violations, and the Respondent eventually agreed to this proposed resolution. (Exb. 43, 68). However, at no time during these settlement discussions was the Delaney deposition mentioned. (Tr. 506, 507, 511-512, 515, 520). Although the Respondent admitted that he knew Battisti intended to depose Delaney, he testified that he did not learn that the deposition actually had been conducted until the deposition transcript was provided to him by the Relator on discovery in this action. (Tr. 500, 503, 507)

The Respondent also argues that he did appear for his own deposition during the bankruptcy case, although he refused to testify on Fifth Amendment grounds. (Tr. 478) His appearance for deposition was offered as circumstantial proof that he appeared in the bankruptcy case whenever he was noticed to appear. (Tr. 500)

In testifying against the admission of the Delaney deposition transcript into evidence, the Respondent argued (Tr. 501) that Federal Rule of Civil Procedure 30 (depositions by oral examination) requires that written notice of the deposition be given to the other parties in the action. Section (b)(1) of that Rule reads:

> "(b) Notice of the Deposition; Other Formal Requirements.
> (1) *Notice in General.* A party who wants to depose a person by oral questions must give

reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs." (Emphasis added.)

Although the Relator established that Delaney was unavailable as a witness at the hearing of this unauthorized practice of law action, and that the factual and legal issues addressed in the deposition were essentially the same as those being litigated in the pending unauthorized practice of law action before the Board, the Panel concluded that the evidence was insufficient to establish that the Respondent received notice of the Delaney deposition in compliance with Fed. R. Civ. P. 30 (b)(1). Accordingly, the Panel ruled the Delaney deposition testimony inadmissible. (Tr. 521) Proof of the substance of the unauthorized practice of law violations alleged against the Respondent in Count Six required Delaney's testimony. In absence of that testimony, Count Six could not be proved and is hereby dismissed.

## IV. RESPONDENT'S CONTINUED COURSE OF CONDUCT IN HOLDING HIMSELF OUT AS AN ATTORNEY, OR ONE QUALIFIED TO PRACTICE LAW, TO THE PUBLIC CONSTITUTES THE UNAUTHORIZED PRACTICE OF LAW

In this action, the Respondent argued that the use of "Esq." by a nonlawyer does not violate Ohio common or statutory law and he cited as authority, in part, the Supreme Court's ruling against him in *Disciplinary Counsel v. Brown,* 99 Ohio St.3d 114, 2003-Ohio-2568, where the Court, in a *per curiam* opinion, concluded:

> Respondent is hereby enjoined from engaging in the unauthorized practice of law in the future. [1] All expenses and costs are taxed to respondent.
>
> FN 1 Concerned that respondent will return to the unauthorized practice of law, relator also seeks an order precluding respondent from using "J.D." or "Esq." in connection with his name and prohibiting respondent from

working in any capacity in a law office or for a licensed attorney absent a license to practice law and registration in accordance with the Supreme Court Rules for the Government of the Bar. We decline to issue such an order but note that respondent risks contempt for continuing to engage in the unauthorized practice of law.

The Respondent contends that even after considering all of his prior disciplinary actions and other violations of law, including his repeated acts of unauthorized practice of law, the Supreme Court declined to prohibit even his use of the term "Esq." The Respondent's proven conduct in this action places his interpretation of the *Brown* decision squarely to the test, as demonstrated by his own cross-examination of Federal Bankruptcy Court Judge Morgenstem-Clarren (Tr. 412-13):

Q Does Footnote 1 state that the Supreme Court declined to prohibit Bruce Brown from using esquire with his name?

A It says what it says. It says that the Relator asked the Court to preclude you from using JD or e-s-q in connection with your name and to prohibit you from working in any capacity in a law office or for a licensed attorney without a license to practice law and registration.

The Court goes on to say that they declined to issue that order, but noted that you risk contempt for continuing to engage in the unauthorized practice of law.

Q Correct. So there is nothing in this case as you see it prohibiting me from using e-s-q with my name?

MS. BROWN: Objection. The document speaks for itself. We're not going to ask a Federal Bankruptcy Judge to interpret the order of the Ohio Supreme Court.

THE CHAIRPERSON: Could you repeat the question, please?

(Question read.)

THE CHAIRPERSON: I believe it's a fair question.

A I don't read this as prohibiting you from using the word esq. so long as you do not engage in the unauthorized practice of law.

Q Did I engage in the unauthorized practice of law?

MS. BROWN: Objection.

THE CHAIRPERSON: That's asking for a conclusion and I'll sustain your objection.

The Respondent further advanced his interpretation of the use of "Esq." during the Reginald Pierce bankruptcy matter, the deputy clerk for the court issued an "order on debtor(s) to appear and show cause" On November 15, 2005, the Respondent sent a letter to the Deputy Clerk in response on stationary bearing the letterhead "B. Andrew Brown & Associates, LLC", and "B. Andrew Brown, Esq.". (Tr. 404; Exb. 36, p.3)

In response to the November 15th letter, Mara Doganiero, law clerk to Judge Morgenstern-Clarren wrote a letter to the Respondent on November 28, 2005 on behalf of the judge asking for clarification of his admission status to the Northern District Court, a prerequisite to appearing in Bankruptcy Court, since his letter to the deputy clerk indicated that he was an attorney and the Clerk's office had no record of his admission to the bar.

The Respondent responded to the clerk's letter on November 30th and specifically indicated that the Supreme Court had ruled in *Disciplinary Counsel v. Brown* (2003), that it was not improper for him to use the suffixes J.D., or Esq. after his name.

The record in this case, and in the earlier *Brown* cases, 99 Ohio St.3d 114 and 61 Ohio Misc.2d 792, establishes the existence of a widespread belief among members of the lay public, as well as the bench and the bar in Ohio, that the term "Esq." and its equivalents indicate lawyer. In this case, by using the term "Esq." on his office stationery and business cards, the Respondent induced a federal judge, a practicing lawyer, a school teacher and a city prosecutor into believing that he was a lawyer. The Respondent committed these acts after being expressly admonished by the Supreme Court that his future use of "Esq." placed him at risk of being in contempt of the injunction issued against him in *Disciplinary Counsel v. Brown* (2003). The record in this case produced substantial credible evidence of the Respondent's repeated and purposeful misuse of

"Esq." for the purpose of inducing people into believing he was a lawyer and into engaging him to perform services for a fee.

The Respondent further argues that R.C. 4705.07 does not prohibit his use of the term "Esq." and that because he is not being prosecuted for violating that statute, the Board cannot find him liable for committing the unauthorized practice of law. The determination of an entity other than this Board not to prosecute the Respondent for a violation of R.C. 4705.07 is irrelevant to this proceeding and does not determine whether the Respondent engaged in the unauthorized practice of law. *Respondent's Answer,* p. 7.

When a nonlawyer holds himself or herself out as a lawyer by the use of "Esq." for the purpose of inducing others into performing services for a fee, that person commits the unauthorized practice of law. *Disciplinary Counsel v. Brown* (2003), *supra.*

The Supreme Court of Ohio recently held that a law school graduate engaged in the unauthorized practice of law by posing as a licensed lawyer. *Disciplinary Counsel v. Robson,* 116 Ohio St. 3d 318, 2007-Ohio-6460. When a person induces others into believing he or she is a licensed lawyer, for the purpose of performing a service for them, the holding out constitutes the unauthorized practice of law.

In this case, some of the services the Respondent performed, or agreed to perform, after holding himself out as a lawyer were services that a nonlawyer might lawfully perform in absence of fraudulent inducement. Such conduct may nevertheless constitute the unauthorized practice of law.

In many circumstances activities permissibly performed by laypersons can constitute the practice of law when performed by a lawyer when acting as a lawyer, or by a purported lawyer. Ohio and other jurisdictions have recognized this theory in a variety of contexts, most often

involving suspended lawyers, lawyers pursuing business activities with nonlawyers, or malpractice.

For example, a lawyer who prepared an income tax filing and simultaneously advised a client as to her rights to a refund was found to be acting professionally as a lawyer. *In re Carr's Estate* (1952), 371 Pa. 520, 92 A.2d 213. In a similar case, a court considered that assistance in filling out income tax returns was generally not the practice of law, but when performed by a lawyer, the lawyer is professionally bound to address legal problems presented by the completion of simple paperwork. *State v. Willenson*, 20 Wis. 2d 519, 522-23 (Wis. 1963).

In California, a suspended lawyer continued to engage in work as a real estate broker and prepared deeds, mortgages and releases for his clients. The court held that the activities were the practice of law, regardless whether the same work could permissibly be performed by one not admitted to the bar. *Crawford v. State Bar of California*, 54 Cal. 2d 659 (Cal. 1960).

The Supreme Court of Ohio has addressed this issue in the context of a disciplinary case involving a lawyer who shared referrals and fees with a lay industrial commission practitioner. The lawyer respondent argued that since laypersons were permitted to practice before the commission, a lawyer representing the same client could share fees with the lay practitioner. The court disagreed and stated that "[t]here are many areas in which personal services do not constitute the practice of law when done by a layman but which are the practice of law when performed by an attorney, e.g., work in the fields of income tax and trademarks." *Columbus Bar Association v. Agee* (1964), 175 Ohio St. 443, 446. *Accord Gmerek v. State Ethics Commission*, 751 A.2d 1241 (Pa. 2000) (citing *Agee*, lawyers performing legislative lobbying work through their law firms may be regulated as practicing law); *Comm. v. Mahoney*, 402 N.W.2d 434 (Iowa, 1997) (tax preparation and labor negotiation is not necessarily the practice of law, but when

performed by a licensed lawyer constitutes the practice of law.); and *State v. Butterfield*, 172 Neb. 645, 111 N.W.2d 543 (1961) (activities including the selecting and filling out forms and preparing tax returns constitute the practice of law when performed by a suspended or disbarred lawyers, even though laymen may perform such activities without engaging in the unauthorized practice of law).

Modern recognition of this concept is also identified in multi-jurisdictional practice considerations. In the Ohio Rules of Professional Conduct, Rule 5.5(c)(4), a lawyer may engage in negotiations, investigation, or other non-litigation activities that arise out of the lawyer's practice in a jurisdiction in which he/she is licensed. Comment 13 to the rule characterizes the legal services under this rule as "both legal services and services that nonlawyers perform but that are considered the practice of law when performed by lawyers." (Emphasis added).

In summary, it is the Panel's finding and conclusion that a nonlawyer who holds himself or herself out as a lawyer, by use of the terms "Esq.", "Esquire", "J.D." or otherwise, for the purpose of inducing another to pay for the performance of a service, engages in the unauthorized practice law in Ohio.

## V. PANEL RECOMMENDATIONS

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

The Panel further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.

The Panel further recommends that the Supreme Court of Ohio issue a further Order

prohibiting Respondent from using the terms "Esq.," "Esquire", "J.D." or otherwise on stationery, business cards and other documents and literature in conjunction with his name or business name.

The Panel 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.

The Panel recommends the imposition of a civil penalty of $10,000 on Counts 1, 2, 3, 4, and 5 of the Complaint, for a total penalty of $50,000.

The Panel has considered the relevant, aggravating and mitigating factors for the imposition of civil penalties in this case pursuant to Gov. Bar R. VII(8)(B) and UPL Reg. 400 and is of the opinion a civil penalty of $50,000 is warranted in this case.

The Respondent, while ultimately participating in the hearing of this matter, initially demonstrated an unwillingness to recognize the Board's and Court's jurisdiction. The two legal challenges filed in both state and Federal court to the proceedings generally questioned the jurisdiction and authority of these bodies and caused significant delay in these proceedings. Gov. Bar R. VII, §(8)(B)(5).

The Respondent's conduct in this case also demonstrated a degree of flagrancy not presented before to this Board. Despite being before this Board on three separate occasions since 1992 based on very similar allegations, he has continued to engage in a pattern of deception and chicanery in a deliberate and unlawful attempt to engage in the practice of law. Gov. Bar. R. VII, §8(B)(3).

The Respondent has previously engaged in and been ordered by the Supreme Court to cease engaging in the practice of law. UPL Reg. 400(F)(3)(a)-(b). The Respondent, probably better than most Respondents, has a unique understanding as a former attorney as to what

constitutes the practice of law.

His conduct in the instant case resulted in harm to numerous individuals who believed he was an attorney-at-law, relied upon him for assistance, and then faced detrimental outcomes to their legal needs because of the unqualified and incompetent assistance, if any, that he provided. Gov. Bar. R. VII, §8(B)(2),(4). In each instance the Respondent benefited financially from the services he performed. UPL Reg. 400(F)(3)(d).

Lastly, the Respondent has engaged in this case in a pattern of conduct that has "allowed others to mistakenly believe that he . . . was admitted to practice law in the State of Ohio." UPL Reg. 400(F)(3)(g). This conduct permitted the Respondent to lure persons that would not have sought his services if they fully understood that he was not an attorney-at-law. Respondent's failure to affirmatively state this fact in each instance was deceptive.

The Panel further finds that the Respondent's proven actions under Counts 1, 2, 3, 4, and 5 of Relator's Complaint constitute violations of the Supreme Court of Ohio's injunction in *Disciplinary Counsel v. Brown* (2003), *supra.* It is the Panel's further recommendation that, in addition to imposing the other sanctions proposed in this opinion, the Supreme Court order the Respondent to show cause why he should not be held in contempt of the injunction issued against him in *Disciplinary Counsel v. Brown* (2003), *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 formally considered this mater on June 30, 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 regarding the imposition of a civil

penalty.

The Board recommends that the Supreme Court of Ohio issue an Order finding that the Respondent engaged in the unauthorized practice of law on Counts 1, 2, 3, 4 and 5 of the Relator's Complaint.

The Board further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.

The Board further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondent from using the terms "Esq.," "Esquire", "J.D." or otherwise on stationery, business cards and other documents and literature in conjunction with his name or business name.

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.

The Board recommends the imposition of a civil penalty of $10,000 on Counts 1, 2, 3, 4, and 5 of the Complaint, for a total penalty of $50,000.

The Board further recommends that in addition to imposing the other sanctions proposed herein, the Supreme Court order the Respondent to show cause why he should not be held in contempt of the injunction issued against him in *Disciplinary Counsel v. Brown* (2003), *supra*.

## VII. STATEMENT OF COSTS

Attached as Exhibit A is a statement of costs and expenses incurred to day 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**

*Disciplinary Counsel v. Bruce A. Brown*

Case No. UPL 06-06

| | |
|---|---|
| Reporting and Transcript Services – Fincun & Mancini | 3775.00 |
| Commissioner reimbursements | |
| James W. Lewis | 279.51 |
| Patricia A. Wise | 478.74 |
| James E. Young | 8.00 |
| **TOTAL** | **$4541.25** |

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 6th day of August, 2008: Jonathan E. Coughlan, Esq., Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Lori J. Brown, Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Bruce A. Brown, The Brownhoist Building, 4403 S. Clair Avenue, Cleveland, OH 44103; 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; The Cleveland Metropolitan Bar Association, 1301 East Ninth St., 2nd. Level, Cleveland, OH 44114-1253.

D. Allan Asbury, Secretary of the Board

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 11th day of August, 2008: Jonathan E. Coughlan, Esq., Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Dr., Suite 325, Columbus, OH 43215; Lori J. Brown, Esq.., First Assistant Disciplinary Counsel, Office of Disciplinary Counsel, 250 Civic Center Dr., Suite 325, Columbus, OH 43215;; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215; Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204; The Cleveland Metropolitan Bar Association, 1301 E. Ninth St., 2nd Level, Cleveland, OH 44114-1253

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