

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

LORAIN COUNTY BAR ASS'N.,

RELATOR,

v.

ANTHONY KOCAK,

RESPONDENT.

08-2329

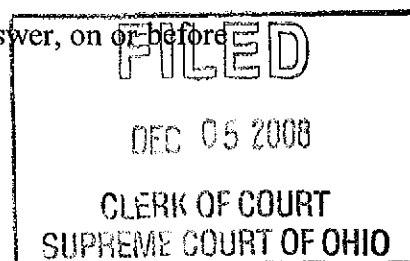
CASE NO. UPL 07-09

FINAL REPORT

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law ("Board") on Relator, Lorain County Bar Association's Complaint filed November 8, 2007. The Respondent, proceeding pro se, requested an extension of time to file an Answer. The Secretary of the Board granted the additional time on December 14, 2007. In lieu of an Answer, the Respondent filed a Notice of Criminal Activity & Demand for Proof of Jurisdiction on January 11, 2008. On January 30, 2008, the Panel ordered the Respondent to file an Answer in compliance with Gov. Bar R. VII, §6, and the Ohio Rules of Civil Procedure. Again, on February 20, 2008, the Respondent filed a Notice of Criminal Activity & Demand for Proof of Jurisdiction, but not an Answer.

On March 12, 2008, the Panel issued an Order construing the Respondent's February 20, 2008 filing as a motion to dismiss for lack of jurisdiction pursuant to Civ. R. 12(B)(1),(2), and ordered the Relator to file a reply to the motion. On March 24, 2008 the Relator filed a Brief in Opposition to Respondent's Motion to Dismiss. On May 5, 2008, the Panel denied the Respondent's Motion to Dismiss, and ordered the Respondent to file an Answer, on or before



May 15, 2008. The Respondent returned the Order to the Board on May 16, 2008 with the handwritten notations "VOID", and "Refused for FRAUD". The Respondent filed an additional document on May 16, 2008 titled "Refusal for Fraud, Declaration of Void Order & Notice of Criminal Fraud". On May 19, 2008, the Board *sua sponte* ordered that the Respondent's May 16, 2008 filing be stricken because it did not comply with the Panel's May 5, 2008 order. The Panel also ordered the Relator to file a Motion for Default as required by Gov. Bar R. VII, §7(B).

On July 3, 2008, the Relator filed its Motion for Default Judgment and a request for a recommendation for the imposition of civil penalties. The Panel granted the Motion in part, withholding its recommendation on civil penalties until a response from the Respondent could be filed. No response was filed by the Respondent by the deadline set forth in the Panel's order.

The matter was assigned to a Panel consisting of Commissioners James W. Lewis, Panel Chair, Curtis J. Sybert, and C. Lynne Day.

II. FINDINGS OF FACT

1. Relator is a Bar Association whose members include attorneys-at-law admitted to the practice of law in 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, Anthony Kocak, is an individual residing at 318 A. East River St., Elyria, OH 44035.

3. Respondent is not now, and never has been, an attorney admitted to the practice of law in the State of Ohio. (Certificate of Registration, The Supreme Court of Ohio, Office of Attorney Services, Susan B. Christoff, Director, October 16, 2008)(Relator's Motion for Default, July 3, 2008, Rel. Ex. A, hereinafter Rel. Ex. ____).

4. On May 1, 2006, Respondent prepared and filed various pleadings on behalf of his fiancé Jody M. Sanders in the matter of *Discover Bank v. Jody M. Sanders*, Lorain County Court of Common Pleas, Case No. 06 CV 145695. (Rel. Ex. 2).

5. On fifteen separate occasions after May 1, 2006, the Respondent prepared and filed pleadings on behalf of Jody M. Sanders in the same case in the Lorain County Court of Common Pleas. (Rel. Exs. 3-17). The Respondent never admitted or denied the allegations contained in the Relator's Complaint concerning these alleged acts.

6. The Lorain County case involved the collection of a debt against Jody M. Sanders. Respondent's various pleadings filed on the behalf of Sanders included *inter alia*, a Counterclaim against plaintiff Discover Bank for violation of the Fair Credit Reporting Act and Debt Collection Practice Act, responses to discovery, an Answer, two motions for reconsideration, and a response to the plaintiff's Motion for Summary Judgment. (Rel. Exs 3-17). The Respondent was not a real party in interest in the *Discover Bank* litigation.

7. The first responsive pleading filed in the *Discover Bank* matter was titled "Defendant, Jody M. Sanders, Motion to Dismiss, Motion for Default Judgment". (Rel. Ex. 4). The filing was signed by the Respondent as "Anthony C. Kocak, Defendant Pro Se".

8. A subsequent filing on June 14, 2006 in the *Discover Bank* matter stated that "Anthony C. Kocak acting as Jody M. Sanders [Agent], is acting in good faith as one not trained in the art of law, while always having presented himself to this court as a pro se litigant in Ms. Sanders shoes, to represent her lawful best interest in the above captioned matter, while lawfully possessing a General Power of Attorney Document." (Rel. Ex. 6).

9. The majority of the pleadings subsequently filed in the *Discover Bank* matter included a signature block with the signature of Jody M. Sanders *pro se*, but typically followed

by the notation “i.e. per Ms. Sanders’ Consent”, indicating that the pleadings were signed by the Respondent.

10. Throughout the Lorain County case Respondent repeatedly asserted his position that he was authorized to act on defendant Sander’s behalf. On May 1, 2006, the Respondent filed a Motion to Dismiss and a Motion for Default Judgment. The filing was signed by the Respondent and in pertinent part stated:

Defendant Jody M. Sanders has surrendered her legal rights to her fiancé Anthony C. Kocak . . . in order to represent her best interest in this captioned matter, between herself and said Discover Bank.

A general power of attorney naming Anthony C. Kocak as attorney for Jody M. Sanders was attached to the May 1, 2006 court filing. (Rel. Ex. 4)

11. On August 3, 2006, the Respondent filed a Motion for Judicial Determination. The Respondent specifically sought a judicial determination “as to whether [AGENT] Kocak can stand in Ms. Sanders (sic) shoes by appearing for her in this instant matter.” Respondent’s own account of his discussion with Judge Edward M. Zaleski’s staff attorney confirmed that Respondent could not appear for Ms. Sanders. An affidavit attached to Respondent’s Motion indicated that the Respondent “did appear as scheduled for Civil Pretrial before the Honorable Judge Edward M. Zaleski . . . on August 3, 2006.” (Rel. Ex. 10).

12. On August 7, 2008, Sanders filed a Motion (sic) The Court For Findings of Fact And Conclusions of Law “by and through her duly authorized [AGENT] Anthony C. Kocak Pro Se”, evidencing another attempt by the Respondent to represent Sanders. (Rel. Ex. 11). Additionally, Sanders filed a motion for Extension of Time, “by and through her duly authorized [AGENT] Anthony C. Kocak Pro se”. (Rel. Ex. 12).

13. On August 14, 2008, Sanders filed an Answer to the Plaintiff's Complaint. The Answer to the Complaint also specified that it was answered "by and through [the defendant's] duly authorized [AGENT] Anthony C. Kocak Pro se. . ." (Rel. Ex. 12).

14. On August 16, 2006, the Respondent filed a Motion for Reconsideration that asserted that the "Defendant, Jody Sanders as [Principal] has an absolute God Given Unalienable Right to Contract with Anthony Kocak to be her [AGENT] or "attorney in fact" [AIF]" (Rel. Ex. 14).

15. On September 1, 2006, the Respondent filed a document titled "Defendant Motion's Court to Take Judicial Notice of Her Agent's Appearance". Sanders moved the court to take judicial notice that "my lawfully authorized [AGENT] Anthony C. Kocak appeared in my shoes for this scheduled default hearing this first day of September 2006." (Rel. Ex. 8).

16. In October, 2006, the Respondent initiated an appeal to the Ninth District in the case styled *Discover Bank v. Jody M. Sanders*, Case No. 06 CA 0009028. In a Notice of Appearance dated October 4, 2006, the Respondent gave notice of his appearance as an agent of record for "Appellant Rev. Anthony C. Kocak, who is the [AGENT] in appearance for Defendant Jody M. Sanders in this appeal." (Rel. Ex. 20). In addition, in the Ninth District's required docketing statement, the Respondent was identified as a party and third party defendant. (Rel. Ex. 20).

17. On October 25, 2006, Magistrate C. Michael Walsh filed an entry indicating that the Respondent's filings in the court, including the Notice of Appeal, were to be stricken because he was not a licensed attorney. (Rel. Ex. 21). The entry also indicated that the Respondent was to file no further documents with the court and if appellant Sanders did not comply with the

order, the appeal would be dismissed. The appeal was eventually dismissed by the court on November 27, 2006.

18. Several of Respondent's filings with the Board during the pendency of this case contained veiled threats against the Panel and Board. Respondent's January 11, 2008 filing titled "Notice of Criminal Activity & Demand for Proof of Jurisdiction" stated that documents served on the Respondent by the Board constituted a fraudulent act and the use of sham legal process. The Respondent also requested that the Board supply him with proof of its jurisdiction in this matter. In addition, the filing advised the Panel Chair to consult with an attorney and that he had a right to remain silent.

19. On May 15, 2008, the Respondent filed a document with the Board titled "Refusal for Fraud, Declaration of Void Order & Notice of Criminal Fraud". Once again, the Respondent indicated to the Panel Chair that he had a right to remain silent, and advised him that he should consult an attorney. The Respondent also placed the Panel Chair on notice that "your actions may constitute a violation of your oath from the bar, ethical considerations and the disciplinary rules."

20. Relator recommends that a civil penalty of \$15,000 be imposed against the Respondent for the conduct that is subject to these proceedings. Specifically, the Relator recommends a \$10,000 penalty for Respondent's conduct before the Lorain County Court of Common Pleas and a \$5,000 penalty for Respondent's conduct before the 9th District Court of Appeals.

21. In furtherance of its recommendation, Relator identified those factors supporting its recommendation that a civil penalty be imposed against Respondent in this case. The relevant factors cited by Relator include:

(a) Respondent failed to cooperate in the investigation in this matter. He did not directly respond to the allegations contained in the Relator's Complaint, and filed frivolous pleadings replete with accusations, threats and other incoherent exhortations;

(b) The Relator engaged in twenty separate examples of unauthorized practice in the Lorain County Court of Common Pleas, and the Ninth District Court of Appeals.

(c) The violations were flagrant, in that the Respondent continued his conduct after being warned by both courts, and the Lorain County Bar Association Unauthorized Practice Committee that his conduct was improper.

(d) Harm resulted in both cases because Sanders received no value for the representation provided by the Respondent since his efforts only served to annoy, harass, and inconvenience the courts.

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 includes the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 193 N.E. 650; *Richland Cty. Bar Ass'n v. Clapp*, (1998), 84 Ohio St.3d

276, 703 N.E.2d 771. The unauthorized practice of law also occurs when a layperson prepares legal pleadings and other papers for filing in court on another's behalf without the supervision of a licensed attorney. *Cleveland Bar Ass'n v. Boyd*, 112, Ohio St.3d 331, 2006-Ohio-6590.

4. The Supreme Court has repeatedly held that a general power of attorney does not give a person the right to prepare and file pleadings in court for another. *Disciplinary Counsel v. Coleman* (2000), 88 Ohio St.3d 155, 724 N.E.2d 402; *Richland Cty. Bar Ass'n v. Clapp*, (1998), 84 Ohio St.3d 276, 703 N.E.2d 771.

5. The Panel finds that Relator's Motion for Default contains sufficient and certified documentary prima facie evidence in support of the allegations in its Complaint. Gov Bar R. VII, §7(B).

6. The Panel finds that Respondent, Anthony Kocak, engaged in the unauthorized practice of law by preparing and filing legal pleadings in a court of law on behalf of another and managing the actions and proceedings on behalf of another before a court of law. Respondent's repeated written assertions to the two courts in this matter that he was a pro se litigant in Sander's case with Discover Bank, or that he stood in "her shoes", or that Sanders surrendered her legal rights to him to pursue her defense, amounted to unfounded attempts to validate his illegal representation of Sanders.

7. The Panel finds that a general power of attorney did not give the Respondent the right to prepare and file pleadings in court for Sanders or manage the actions and proceedings on her behalf before courts of law.

IV. PANEL RECOMMENDATIONS

1. The Panel recommends that the Supreme Court of Ohio issue an Order finding that Respondent Anthony Kocak 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 Anthony Kocak 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.

3. 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. In consideration of a civil penalty, the Panel reviewed the recommendation of the Relator. The Respondent did not respond to an opportunity from the Panel to challenge the Relator's recommendation. The Panel unanimously recommends the imposition of a civil penalty in the amount of \$20,000, representing a penalty for acts before the Lorain County trial court in the amount of \$10,000, and before the Ninth District Court of Appeals in the amount of \$10,000. The Panel has determined that the imposition of civil penalties is appropriate in this case for the following reasons:

(a) Respondent did not cooperate with the investigation of this matter and sought to challenge the jurisdiction of the Panel and the Board with various notices of criminal conduct and warnings to the Panel. The Respondent never responded to the allegations in the Relator's Complaint despite several opportunities provided by the Panel. (Rule VII, §(8)(B)(1));

(b) Respondent blatantly engaged in over twenty instances of the unauthorized practice of law in the preparation and filing of pleadings in court on behalf of another. (Gov. Bar R. VII, §8(B)(2));

(c) Harm to another directly resulted from Respondent's preparation of pleadings that were ineffective and inadequate in the trial court, and that an appeal of the trial court's adverse decision was dismissed for failure to perfect the appeal. (Rule VII, §8(B)(4)), (UPL Reg. 400 (F)(3)(f));

(d) Respondent was warned by both courts and the local bar association unauthorized practice of law committee that his conduct was improper and constituted the unauthorized practice of law. The Ninth District specifically ordered the Respondent to not file additional documents in the court. (UPL Reg. 400 (F)(3)(c));

(e) Respondent made appearances on behalf of another in Lorain County Common Pleas Court and the Ninth District Court of Appeals (UPL Reg. 400 (F)(3)(e)).

The panel found no mitigating factors that would support a lesser civil penalty.

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 November 20, 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 to impose a civil penalty.

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


The Board further recommends that the Supreme Court of Ohio issue a further Order enjoining Respondent Anthony Kocak 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.

The Board further recommends that the Supreme Court of Ohio impose a civil penalty of \$20,000 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

Lorain County Bar Ass'n v. Anthony Kocak,

Case No. UPL 07-09

To date, no expenses have been incurred.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served certified mail upon the following this 5th day of December, 2008. D. Chris Cook, Esq., 520 Broadway, 2nd Fl., Lorain OH 44052; Anthony Kocak, 318 A E. River St., Elyria, OH 44035-5229; Lorain County Bar Association, 205 Robinson Building, Elyria, OH 44035; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215; Ohio State Bar Association, P O Box 16562, Columbus, OH 43216-6562.



D. Allan Asbury, Secretary of the Board