

ORIGINAL

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

13-0072

LORAIN COUNTY BAR ASSOCIATION,

Relator,

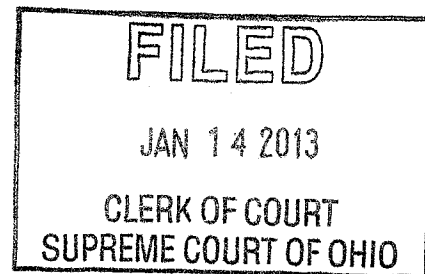
v.

KING AYETTEY ZUBAIDAH, individually,

and

STAND INC.

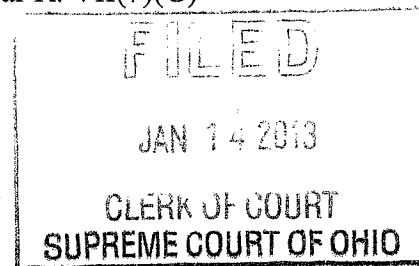
Respondents.



Case No. UPL 11-01

**FINAL REPORT**

Gov. Bar R. VII(7)(G)



**I. INTRODUCTION**

**A. Summary**

This matter was initiated before a panel of the Board on the Unauthorized Practice of Law ("Board") on a Complaint filed on March 25, 2011, by the Lorain County Bar Association ("LCBA"), alleging that respondents King Ayettey Zubaidah, formerly known as Gerald McGee, an individual, and a corporation he founded and controls known as STAND Inc. ("STAND"), all non-attorneys, are engaged in the unauthorized practice of law. Relator LCBA alleges Respondents have performed legal services for criminal defendants in Lorain County. The Complaint consists of four counts, each count describing Respondents' actions in a criminal case before the Lorain County Court of Common Pleas, and seeks civil penalties and injunctive relief against the Respondents. The Complaint describes how Respondents performed services including, but not limited

to, providing legal advice; submitting letters to judges requesting bond reductions on behalf of criminal defendants; and drafting letters to judges and attorneys in which Respondents purport to cite comparative cases, allege violations of the defendants' constitutional rights, and cite and apply outdated ethical considerations all allegedly within an advocacy context. It is noted that in each count, the criminal defendant was represented by legal counsel, as reflected in the certified court dockets provided by Relator.

Respondents were duly served with the Complaint in accordance with Gov. Bar R. VII, Sec. 6, and filed an Answer on June 16, 2011, contesting many of the substantive allegations of the Complaint. Thereafter, this matter was assigned to a Hearing Panel consisting of Commissioners Kenneth A. Kraus, Chair, Kevin L. Williams and Mark J. Huller.

A Joint Motion to Approve Consent Decree having been negotiated was filed by the parties on April 20, 2012; however, it was later discovered that Respondent Zubaidah wrote the words "under duress" after his signature on the pleading. Relator then filed a Motion to Withdraw Joint Motion to Approve Consent Decree and to Proceed with Hearing on May 1, 2012. The Motion being unopposed by Respondents, it was granted by the Panel.

A day-long hearing was thereafter held before the Panel on May 15, 2012<sup>1</sup>, at the Lorain County Courthouse, with both Relator and Respondent appearing and presenting testimony and evidence regarding the allegations of the Complaint.<sup>2</sup>

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<sup>1</sup> Mr. Kraus's term with the Board ended on December 31, 2011. According to Gov. Bar R. VII(1)(A), "A Commissioner whose term has expired and who has an uncompleted assignment as a commissioner shall continue to serve for the purpose of that assignment until the assignment is concluded before the Board,

**B. Interim Cease and Desist Order; Motion to Show Cause**

Pursuant to Gov. Bar R. VII, Sec. 5, Relator had also filed a Motion for Interim Cease and Desist Order with the Supreme Court on March 25, 2011. A copy of the Motion was served upon Respondents via process server, however, Respondents failed to file a response to the Motion. On April 29, 2011, the Supreme Court granted the Motion and ordered that Respondents immediately cease and desist from the unauthorized practice of law, pending final disposition of this matter. In accordance with Gov. Bar R. VII, Sec. 19, the clerk issued certified copies to Relator and Respondents.

Relator subsequently filed a Motion to Show Cause and Request for Sanctions on April 11, 2012 (Case No. 2011-0483). The Motion and supplementary materials alleged that Respondent Zubaidah had engaged in the unauthorized practice of law in violation of the cease and desist Order by giving legal advice to Kareem Tucker (“Tucker”) during his criminal trial. Specifically, Relator alleged that Tucker fired his attorney and rejected plea deals in a fashion similar to that of other cases in which Respondent Zubaidah has been alleged to be involved. After rejecting a three-year plea deal, Tucker went to trial where he presented unsound arguments allegedly similar to arguments that Zubaidah had used in other cases. Tucker was convicted and sentenced to 25 years in prison.

On April 20, 2012, Relator filed a Motion to Stay Show Cause Motion and Request for Sanctions when it appeared that the pending case might be resolved through a

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and the successor commissioner shall take no part in the proceedings of the Board concerning the assignment.”

<sup>2</sup> On May 14, 2012, Relator filed, and later argued at the hearing, a Motion for Civil Rule 37(D) sanctions against Respondent for failing to appear at an agreed deposition of Respondent. Respondent, through counsel, failed to appear, he stated, due to his intent to assert his Fifth Amendment rights against self-incrimination, which he later initially asserted at the hearing. While technically there was a sanctionable failure to attend, given the assertion of his Fifth Amendment rights, it is unlikely that any deposition would have taken place in any event. For this reason, and considering the circumstances, the Board finds a technical violation, but chooses not to impose any sanctions against Respondent.

Consent Decree. The Supreme Court granted the Motion to Stay on April 30, 2012. However, once the Consent Decree was withdrawn and the case proceeded to hearing, Relator filed a Motion to Lift Stay and Revive Show Cause Motion on June 8, 2012, and subsequently, on July 19, 2012, filed a Revised Motion to Show Cause and Request for Sanctions. Respondent was ordered to appear in person before the Court on September 12, 2012. As a result, based upon a September 18, 2012 Order, the Motion to Show Cause was denied, but the Cease and Desist Order remains in effect.

At the October 26, 2012 meeting of the Board, the panel presented its written report in this matter in accordance with Gov. Bar R. VII(7)(E). In its report, the panel indicated that it found, by a preponderance of the evidence, that Respondents had engaged in the unauthorized practice of law in all four counts of the Complaint. The panel recommended a civil penalty of \$5,000 for each count for a total of \$20,000 against Respondents, jointly and severally. After review of the panel report and deliberation, the Board voted to adopt the panel report in its entirety, including the findings of facts, conclusions of law, and recommendations.

As required by Gov. Bar R VII (7)(G), this report includes the Board's findings, recommendations, a transcript of testimony (Exhibit A), recommendation for civil penalties, and an itemized statement of costs (Exhibit B).

## **II. FINDINGS OF FACT**

### **A. Background**

1. Relator is a bar association where members include attorneys admitted to the practice of law in Ohio and who practice law throughout Ohio. Relator is duly

authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in Ohio. [Gov. Bar R. VII(4) and (5).]

2. Respondent King Ayettey Zubaidah, fka (or aka) Gerald McGee is the president, CEO and only employee of respondent STAND Inc. (an acronym for Striving Toward A New Day). [Compl. at ¶ 12.] STAND is a for-profit corporation registered with the Ohio Secretary of State, established by Mr. Zubaidah, and that he describes as “a new grass roots organization assembled to help level the playing field in the educational, employment, & judicial system towards citizens of America.” [Compl. at Ex. 5 and 8.] For purposes of this discussion the organization and the individual respondent are one and the same; and therefore Mr. Zubaidah and STAND Inc. will be referred to collectively as “Zubaidah,” except where expressly distinguished as appropriate.

3. Respondents King Ayettey Zubaidah fka Gerald McGee, an individual, and STAND Inc. (“STAND”) are not admitted to the practice of law in Ohio under Gov.Bar R. I, nor registered under Gov.Bar R. VI, or certified under Gov.Bar R. II, Gov.Bar R. IX, or Gov.Bar R. XI. [Relator’s Ex. Packet 7.]

4. Either in his individual capacity, and/or acting on behalf of STAND Inc., Zubaidah is alleged in the Complaint to have engaged in the unauthorized practice of law with respect to four different criminal defendants. In each case, he interceded on behalf of the defendant and his family either with the Court, defense counsel, or both.

5. With respect to the Calhoun, White, and Harris criminal cases, Zubaidah and STAND entered into a sort of engagement contract with a family member of the accused. [Relator’s Ex. Packet 8; 14; and 20.] The document is an identical form in each case bearing the STAND logo and the heading General Letter of Introduction. *Id.*

The letter states that STAND will be assisting the criminal defendant as a STAND Inc. member. *Id.* In the blank for member signature is the signature of a family member, but not of the defendant. Below that is a second blank for the signature of a STAND representative and the blank is filled with Mr. Zubaidah's signature. Mr. Zubaidah testified that he required each family member to sign the document as a STAND member, but did not charge them a fee for the membership or for the assistance. [Tr. of Proceedings at 450-51.]

6. Mr. Zubaidah testified that he informed each of the members that he was not an attorney and could not practice law. [Tr. of Proceedings at 378.] Each of the family members who appeared at the hearing confirmed that testimony, and stated that they knew Zubaidah was not an attorney and did not believe he was practicing law. [Tr. of Proceedings at 312; 337; 357; and 365.] None of the criminal defendants at issue in this case testified at the hearing.

7. Virtually all of the witnesses, including Mr. Zubaidah, testified that Mr. Zubaidah has shown an intense interest in the court system in Lorain County for some years. [Tr. of Proceedings at 27; 287; 288; 382; 413.] He is well known in the community for that interest [*Id.* at 136 and 381.], and is frequently present at the courthouse and in courtrooms both for proceedings related to the cases at issue before the Board and in other cases. [*Id.* at 384.] He is a vocal public critic of the local judicial system [*Id.* at 381-382.]; and is recognized by the local press and familiar to the Judges and other courthouse personnel. Mr. Zubaidah testified that he and members of the community whom he purports to serve consider him a watchdog of the judicial system who advocates on behalf of the powerless and disadvantaged against a system that he

believes is unfair. [*Id.* at 135.] He further testified that he believes his conduct and his participation in the judicial system on behalf of others is an exercise of his right to free speech. [Tr. of Proceedings at 378 and 409.]

**B. Calhoun Case.**

8. With respect to the *Calhoun* case, the Board finds that Zubaidah entered into a STAND membership contract with Terri Blackburn, mother of Dennis Calhoun. [Tr. of Proceedings at 54; Relator's Ex. Packet 8.] Mr. Calhoun had been accused of rape and gross sexual imposition, was ultimately convicted, and sentenced to life in prison. [Relator's Ex. Packet 7.]

9. Mr. Calhoun was represented by Attorney David Nehr. [*Id.*] Mr. Nehr believed that Mr. Zubaidah's participation in the case had a negative impact. [Tr. of Proceedings, at 66.] Attorney Nehr testified that his client and Ms. Blackburn were more willing to listen to the advice of Mr. Zubaidah than to him. [*Id.*]

10. During the course of the representation, Zubaidah sent two letters to Attorney Nehr challenging his legal advice, disputing his legal strategy, and accusing him of unethical conduct. [Relator's Ex. Packet 9 and 11.] Zubaidah confused citations to both the Disciplinary Rules no longer in effect at the time, and to the Rules of Professional Conduct in attempting to interpret Ohio disciplinary law and in describing what he believed were ethical violations by Attorney Nehr. [Tr. of Proceedings, at 56; 58-59.] Zubaidah also challenged Nehr's legal advice regarding a proposed plea agreement that Nehr had recommended. Nehr concluded that Zubaidah had told the client not to accept the plea. [Tr. of Proceedings, at 90.]

11. Attorney Nehr further testified that he observed Mr. Zubaidah enter the holding cell at the Lorain County Courthouse, a place not normally open to access by other than attorneys, law enforcement personnel, probation officers and court personnel, and talk to two other inmates about their cases. [Tr. of Proceedings at 62; Relator's Ex. Packet 11.] Nehr testified that Ms. Blackburn told him she was being represented by Mr. Zubaidah. [Relator's Ex. Packet 11.] Finally, he stated that the actions of Mr. Zubaidah made it clear he intended to practice law with respect to Mr. Calhoun and others. [*Id.*]

12. The Board finds the testimony of Attorney Nehr to be credible.

C. White Case.

13. With respect to the *White* case, the Board finds that Zubaidah entered into a STAND contract with Gail White, mother of Eric White. [Relator's Ex. Packet 14.] Mr. White had been accused of felonious assault and was represented by Attorney J. Anthony Rich. [Relator's Ex. Packet 13.]

14. Attorney Rich withdrew from representation of his client because of interference in the attorney/client relationship by Mr. Zubaidah. [Tr. of Proceedings at 99 and 104.] Mr. Rich had represented other clients who were also "clients" of Mr. Zubaidah. In the *White* case, as in the others, Zubaidah presented Attorney Rich with a copy of the signed representation agreement. [*Id.* at 100.] In this case, unlike the others at issue, Ms. White was accompanied by Zubaidah to a meeting with Attorney Rich where she suggested strategies to Rich that included introducing false documents and bribing witnesses. [Relator's Ex. Packet 15.] In Mr. Rich's letter to the bar committee investigator, he states that after this meeting, it was clear to him that his client was being



counseled by Zubaidah, and that his relationship with his client was strained because of his negative response to White and Zubaidah at their meeting. [*Id.*]

15. Mr. Zubaidah also sent a characteristic letter to Attorney Rich in connection with the White case. [Relator's Ex. Packet 16.] The letter interprets constitutional due process guarantees, cites defunct ethics law, analyzes two comparative cases regarding bond, and seeks to direct Rich's conduct in representing his client. Rich pointed out that the citations, comparisons, and analysis demonstrated significant ignorance of the relevant issues in the case. [*Id.*]

16. Respondent Zubaidah further sent a letter to Judge Miraldi, the presiding judge in the Eric White case. [Relator's Ex. Packet 17.] The letter seeks to influence the ruling by the Court on the issue of bond. In doing so, Zubaidah cites case law and seeks to argue both on the basis of comparative cases, and on facts surrounding White's arrest and his personal background that the Court's ruling should be changed. Judge Miraldi testified both that he considered the communication to be the practice of law, and that he responded by writing to White's counsel to instruct that if he was asking for a modification of bond, then a hearing would be set. [Tr. of Proceedings at 171.] Judge Miraldi stated this appeared to be the unauthorized practice law. [*Id.* at 172.]

17. The Board finds the testimony of Attorney Rich and Judge Miraldi to be credible.

**D. Harris Case.**

18. With respect to the *Harris* case, the Board finds that Zubaidah entered into a STAND contract with Isaiah Harris Sr., father of Isaiah Harris. [Relator's Ex. Packet

20.] Mr. Harris had been accused of felonious assault, rape, aggravated burglary, and domestic violence and was represented by Attorney J. Anthony Rich. [*Id.* at 19(A)-(C).]

19. Rich learned there was a letter, shared with him by Judge Rothgery, that had been written by Respondent Zubaidah to the Judge regarding Mr. Harris. [Tr. of Proceedings at 120.] The letter showed a disregard for the undisputed facts of the case. [Relator's Ex. Packet 21.] Mr. Harris had admitted many of the charged crimes, but was nonetheless being encouraged by Mr. Zubaidah to deny responsibility for the offenses and go to trial against the advice of Attorney Rich. [*Id.* at 15.] Rich vigorously recommended to his client that he accept a plea bargain of a 3-year concurrent prison term. [*Id.*] Mr. Harris rejected the advice. [*Id.*] On the day of trial the offer was up to 4 years, and Zubaidah continued to encourage Harris to fight the charges directly against the advice of his attorney, Rich. Following trial, Mr. Harris was convicted and sentenced to 23.5 years in prison. [Relator's Ex. Packet 19(C); Tr. of Proceedings at 128.]

20. Although the letter written by Zubaidah to Judge Rothgery contains a significant amount of character information, it also seeks to argue the facts of the case to the Court; and urges an interpretation of the facts that are unmistakably an attempt to mitigate the impact of the facts in the mind of the judge. Attorney Rich pointed out that the letter was written prior to trial, not after trial as normal character letters would be. [Tr. of Proceedings at 120.] He believed it was damaging to his client because it essentially admitted the alleged facts to the Court, while at the same time Zubaidah was encouraging Mr. Harris to go to trial to fight the charges. [*Id.*]

21. Judge Rothgery stated that the letter he received from Zubaidah constituted advocacy, and that the STAND letter of introduction making a formal

statement that STAND will be assisting the defendant with his legal matters contributes to the impression that Zubaidah is seeking to advocate on behalf of a client as an attorney would, rather than as a concerned friend or family member might do. [Tr. of Proceedings at 257.] Judge Rothgery described the letter written by Zubaidah as “speaking more to a legal issue than a character issue.” [*Id.* at 247.]

22. The Board finds the testimony of Judge Rothgery and Attorney Rich to be credible.

E. **Bason Case.**

23. With respect to the *Bason* case, the Board finds that Respondent Zubaidah sought to intervene in the criminal prosecution of Corey A. Bason for rape and gross sexual imposition by writing a letter to Judge Miraldi accusing the Judge of “discriminatory actions against him for the setting of his bond so high.” [Relator’s Ex. Packet 22.]

24. Mr. Zubaidah expressed a clear intention to influence the legal rights and responsibilities of Mr. Bason in a pending prosecution by starkly announcing in the opening of the letter, “I am petitioning the court on behalf of Corey A. Bason . . .” [*Id.*] Respondent proceeded to compare the case and the bond set by the Court with the facts and bond of what he believed was a legally comparable case. [*Id.*] Zubaidah then argued to the Judge that the bond he set constituted a violation of due process rights under the Constitution. Finally, Respondent cited Canon 2 of the Code of Judicial Conduct in urging the Court to adopt Respondent’s view of the appropriate bond in the case, and closed the letter with a specific request to change the bond. [*Id.*]

25. Judge Miraldi testified that he understood the letter to indicate that Respondent was representing or attempting to represent Mr. Bason, and attempting to influence the Court to change its ruling. [*Id.* at 229.] Judge Miraldi understood the word “petition” to be used in the legal sense of the word in the letter. [*Id.* at 188-189; Relator’s Ex. Packet 22.] He stated that Respondent makes statements of facts and draws conclusions about legal issues, and thereby offers legal opinions. [Tr. of Proceedings at 209.] When offering such opinions, he does not necessarily have all the facts or an understanding of the law. [*Id.* at 212.] The character and type of letters Judge Miraldi received from Mr. Zubaidah are different from any letters that he has ever received from other non-lawyers. [*Id.* at 211.]

26. The Board finds the testimony of Judge Miraldi with respect to the Corey Bason case to be credible.

### **III. CONCLUSIONS OF LAW**

A. 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.*, 27 Ohio St. 3d 31, 501 N.E.2d 617 (1986); *Judd v. City Trust & Sav. Bank*, 133 Ohio St. 81, 12 N.E.2d 288 (1937). Accordingly, the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

B. The Supreme Court of Ohio regulates the unauthorized practice of law in order to “protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

C. The unauthorized practice of law is the rendering of legal services for another by any person not admitted or otherwise certified to practice law in Ohio. Gov. Bar R. VII(2)(A).

D. 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 v. Dworken*, 129 Ohio St. 23, 28, 194 N.E. 650, 652 (1934).

E. An individual not licensed to practice law in Ohio who purports to negotiate legal claims on behalf of others, and advises persons of their legal rights, and the terms and conditions of settlement is engaged in the unauthorized practice of law. *Cleveland Bar Assn. v. Henley*, 95 Ohio St.3d 91 (2002); *Cincinnati Bar Assn. v. Cromwell*, 82 Ohio St.3d 259, 695 N.E.2d 243 (1998); *Cleveland Bar Assn. v. Moore*, 87 Ohio St.3d 583, 722 N.E.2d 514 (2000). Moreover, the fact that the non-attorney received no remuneration for his actions is irrelevant to the determination of whether he engaged in the unauthorized practice of law. *Henley* at 92; *Geauga Cty. Bar Assn. v. Canfield*, 92 Ohio St.3d 15, 16, 748 N.E.2d 23 (2001).

F. It is well-settled that representing to the public that one is not a licensed attorney and is not providing legal advice, will not insulate a non-attorney from the

unauthorized practice of law if he is in substance giving legal advice and counsel. *Cincinnati Bar Assn. v. Telford*, 85 Ohio St.3d 111 (1999).

G. The writing and issuance of letters by non-attorneys which purport to affect the legal rights or duties of others such as third-party litigants, constitutes legal advice and advocacy falling squarely within the unauthorized practice of law. *Henley, supra*; *People v. Shell*, 148 P3d. 162, 171 (2006) (Letters written by a non-attorney to an attorney directing the lawyer to specific legal actions present only an incidental effect on the exercise of free speech); *In the Disciplinary Matter Involving Burrell*, 882 P.2d 1257 (Alaska 1994) (The Court held that the circumstances of the writing of letters demonstrates that the non-attorney was providing advice or preparing documents for another which affect legal rights or duties.)

H. While it appears no Ohio case has fully explored the interplay between an individual's constitutional right to free speech and the constraints of regulation of the practice of law and actual related conduct, the Ohio Supreme Court has, in fact, briefly commented on the lack of First Amendment implications in UPL cases. In *Cincinnati Bar Ass'n. v. Bailey*, 110 Ohio St.3d 223 (2006) at 227, the Court stated: "As to the First Amendment, the restrictions on respondent's conduct by prohibiting practicing law without a license do not implicate his right to free speech." Moreover, there can be no doubt that neither the First nor Sixth Amendments to the U.S. Constitution guarantee laymen the right to practice law on behalf of others, any more than a defendant in a criminal proceeding has a right to be represented by unlicensed counsel during legal proceedings. See: *People v. Shell*; *Turner v. American Bar Assn.*, 407 F. Supp. 451, (N.D. Texas 1975); *City of Cleveland v. Cohen*, 1987 Ohio App. Lexis 8352; *State v.*

*Peterson*, 266 N.W.2d 103 (S.D. 1978). Any notion to the contrary would belie the Ohio Constitution's absolute grant and delegation of exclusive, original jurisdiction to the Supreme Court over the regulation of conduct involving the practice of law. *Ohio Constitution Article IV*, Section 2(B)(1)(g).

I. A character reference letter provides a "description of one's disposition as it relates to a general trait such as honesty, temperance, or peacefulness as opposed to mere evidence of habit." *State v. Reed*, 110 Ohio App.3d 749, 753, 675 N.E.2d (4<sup>th</sup> Dist. 1996). At various points in the within hearing, Respondent's defense characterized his actions as nothing more than a friend providing a character reference to a court, either at the time of sentencing or at a bail hearing for a criminal defendant. There were further characterizations of the Respondent as being a non-lawyer who was merely acting as a "courthouse watchdog" or "community activist." When considering the totality of all the circumstances, the Board concludes that the activities of the Respondent cannot be simply characterized as providing character references for friends, or conduct that is to be expected from a courthouse watchdog. (See: *People v. Shell* at 167, where ". . . her advocacy previously has led her to cross the line between permissible activism and the unauthorized practice of law.") The Respondent was attempting to represent and advocate for the interests of third-party litigants, clients in the judicial system, as his written agreement with most of the clients states. Consequently, the letters written by Respondent Zubaidah in this case were not mere character reference letters, nor otherwise excepted from the parameters of the unauthorized practice of law.

J. Entering into an agreement or contract with a litigant does not grant authority to a non-attorney to be an "attorney in fact" or to otherwise lawfully represent

the interests of the litigant; nor does merely being a part of an organization seeking to protect the interests of one of its members confer the ability or authority to engage in the practice of law. *Akron Bar Assn. v. Frank*, 88 Ohio St.3d 152 (2000); *Lorain Cty. Bar Assn. v. Kocak*. The representation agreements between Respondents and criminal defendants, or their families, support the conclusion that Respondents were engaged in a regular pattern of unauthorized practice of law. See: *Office of Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155 (2000) (A private contract, such as a power of attorney, cannot be used to circumvent a statutory prohibition based on public policy.) Non-attorneys are not permitted to represent others in legal proceedings, nor are they permitted to serve as “co-counsel” with an attorney in a legal matter. *State v. Martin*, 103 Ohio St.3d 385 (2004).

K. Due to the nature of the facts presented at the hearing and the defenses that were raised by the Respondents, it is important to note certain similar activities that are customary, generally appropriate, and in the view of this Board do not necessarily constitute, in and of themselves, the unauthorized practice of law. For example, we see nothing inappropriate with a friend of a criminal defendant sending a true character reference letter to a court in advance of a bond hearing or sentencing. Neither are we summarily declaring that a courthouse watchdog or community activist who challenges the judicial system in a general way is necessarily engaging in the unauthorized practice of law. It is further important to point out that a trusted advisor, friend or relative of a criminal defendant should be free to provide personal, non-legal advice to a defendant on matters such as whether he or she believes it is wise to accept a plea offer being



recommended by the defendant's attorney or, whether he believes the defendant is receiving adequate legal representation.

A fact of primary significance marking the difference between all of the above referenced activities and those in which the Respondent engaged, is that the Respondent consistently and repeatedly required the criminal defendant or his family member to sign the STAND, Inc. "General Letter of Introduction," which was in essence an agreement stating that the Respondent would be "assisting" the defendant in, among other things, his dealings with the judicial system. As stated by witness, J. Anthony Rich, who had been the criminal defense attorney for Eric White, the Respondent would always make sure that the attorney had a copy of the Agreement if the Respondent was going to be advocating for that attorney's client. Referring to this STAND, Inc. Agreement, Rich testified:

This is the document, I believe, Mr. Zubaidah has his – what he refers to as his client sign. And he – if he is involved in a case and I was handling it, he would always make sure I had a copy of this. (Tr. of Proceedings, at 101.)

Regarding the same STAND, Inc. Agreement, David Nehr, Criminal Defense Attorney for Dennis Calhoun testified that the Agreement was also provided to him by the Respondent and he described its meaning as follows:

Actually, I kind of concluded that he [the Respondent] was helping represent Mr. Calhoun. It struck me as what I would call a letter of engagement that I would send to an insurance company or the state of Ohio upon myself being retained as a lawyer. (Tr. of Proceedings, at 55.)

In discussing the STAND, Inc. Agreement he received that accompanied a letter from the Respondent and that was written on behalf of criminal Defendant, Isaiah Harris, Lorain County Court of Common Pleas Judge Christopher R. Rothgery testified:

When you get this STAND, Inc. General Letter of Introduction that says that STAND will be assisting and the representative will be King Zubaidah, that, in my mind, is more than just a letter. Then it starts to look like advocacy. (Tr. of Proceedings, at 257.)

In summary, the Board agrees with witnesses Rich, Nehr and Rothgery. The Respondent was generally using a written agreement to engage clients for the purpose of providing assistance to these clients and/or a family member in their dealings with the criminal justice system. And there was undoubtedly an implication in the nature of such agreement and in the Respondent's actions, implying that he possessed special knowledge and skills to explain and deal with that system. The implication is akin to holding oneself out as an expert, and as a person worthy of trust on matters of the law and of trial strategy. This misrepresentation to the public carries a real danger of inducing reliance on unauthorized and unqualified legal advice by Lorain County criminal defendants to their grave detriment – as apparently occurred in this case. Thus, the totality of Respondent's advocacy under all of these circumstances on behalf of these individual litigants pursuant to a written agreement crossed the threshold of the unauthorized practice of law.

L. Therefore, in view of the record and considering the totality of circumstances, the Board concludes based upon a preponderance of the evidence [Gov. Bar R. VII(7)(E)], that Respondents engaged in the unauthorized practice of law in violation of Gov. Bar R. VII with regard to each of the four Counts of the Complaint by engaging in the following conduct: contracting with litigants and/or their families to represent them in the criminal justice system; providing legal advice to litigants concerning, among other things, their legal rights; implying their special knowledge, information and/or skills in interpreting the law, developing legal strategies, and in

navigating the County criminal justice system on behalf of others; submitting letters to Common Pleas Judges concerning pending cases and requesting bond reductions on behalf of criminal defendants; and by drafting letters to Judges and various counsel of record in which Respondents purport to cite and compare cases, allege violations of criminal defendants' constitutional rights, and cite and apply outdated ethical guidelines all within an advocacy context – even though the party litigants were already represented by licensed counsel.

M. Respondents' acts found to constitute the unauthorized practice of law are based upon specific evidence and admissions that contain sufficient information to demonstrate the specific activities upon which the conclusions are drawn in compliance with Gov. Bar R. VII(7)(H) and *Cleve. Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶ 24-26.

#### **IV. CIVIL PENALTY ANALYSIS**

The Board hereby adopts the civil penalty recommendation of the panel. The panel carefully 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 \$5,000 on each count of the Complaint is warranted in this case. The reasons are set forth below.

The factors to consider when recommending a civil penalty include the following:

(1) The degree of cooperation provided by the respondents in the investigation; (2) The number of occasions that unauthorized practice of law was committed; (3) The flagrancy of the violation; (4) harm to third parties arising from the offense; and (5) any other relevant factors. UPL Reg. 400(F) also details additional considerations, many of which were

recently reviewed by the Ohio Supreme Court in *Ohio State Bar Assn. v. Lienguard*, 126 Ohio State St.3d 400, 2010-Ohio-3827.

1. The degree of cooperation provided by the respondent in the investigation.

While the Board recognizes that Respondents ultimately participated in the proceeding by providing testimony, it is noted that Respondent Zubaidah showed a lack of cooperation throughout the investigation process. This pattern of lack of cooperation is apparent by, for example, his failure to appear at a deposition wherein Relator had provided proper notice. Secondly, after efforts to negotiate a consent decree had been undertaken, Respondent signed the consent decree with the words “under duress”. As a result, the consent decree was subsequently withdrawn.

Zubaidah has never admitted that the services he provided constituted the unauthorized practice of law and continues to defiantly challenge the Court’s authority to regulate his conduct. Respondent has not agreed to be enjoined from the unauthorized practice of law.

2. The number of occasions that unauthorized practice of law was committed.

The Board found that Zubaidah committed UPL in each of the four counts presented by Relator. However, there was substantial evidence presented that Respondent also held himself out to others as one who has a special knowledge of the criminal justice system of Lorain County. With that façade, he induced others to join his society known as STAND Inc. and sign a membership agreement for services which included, for example, drafting letters to attorneys on behalf of third parties, and drafting bond reduction letters to judges on behalf of criminal defendants. The record further

reflects that Respondent spends a considerable amount of his time monitoring -and interfering- with legal proceedings in the courthouse.

3. Flagrancy and harm to third parties

Many of Respondents' actions served to undermine public confidence in the judicial system. The harm caused by Zubaidah's involvement is irreparable in nature and apparent with each criminal defendant presented. Zubaidah offered legal advice in connection with each count yet refused to acknowledge it is, in fact, legal advice. The STAND members and criminal defendants relied on such advice to their detriment and rejected advice from their own licensed counsel. In the White case, Zubaidah's interference resulted in Attorney Rich withdrawing as counsel because the attorney client relationship had been irreparably harmed by Zubaidah. [*Id.* at 105.] Although Zubaidah claims he was trying to "[c]reate a harmonious relationship between the client and lawyer" [*Id.* at 393.], his services clearly had the opposite effect. In the Calhoun case, the panel heard testimony from Attorney Nehr regarding Zubaidah's negative impact on the attorney client relationship, with Zubaidah advising Nehr's client not to accept a plea. The client was ultimately sentenced to life in prison. [*Id.* at 91.]

The letters written by Zubaidah not only constitute the unauthorized practice of law, they openly suggest that the lawyers to whom they are written are incompetent. For example, in a letter to Attorney Nehr, Zubaidah cites Disciplinary Rules with the intent of letting "him know that he was in violation of his working agreement." [Tr. of Proceedings at 390.]

Zubaidah's impact in the Harris case is also noteworthy. As pointed out by Attorney Rich, Zubaidah sent a letter to Judge Miraldi while the Harris case was still

pending. While Attorney Rich and the client were entering a plea of not guilty, Zubaidah was sending a letter confessing on behalf of the client. [*Id.* at 120.] Due to Zubaidah's interference, the client rejected his attorney's advice, which included accepting a four-year plea deal. The client, against his attorney's advice, proceeded to trial, and was sentenced to 23.5 years in prison. [*Id.* at 128.] Attorney Rich testified that Zubaidah directly contradicted Rich's legal advice, and encouraged Harris to contest every fact in the case, despite Harris having confessed to many of the crimes already. Zubaidah testified that he thought the letter to Judge Miraldi "would soften the blow for Isaiah." [*Id.* at 416.] Zubaidah testified that he sees nothing inappropriate with the letters he has written requesting the bonds to be lowered in the White and Bason cases. [*Id.* at 440.]

UPL Reg. 400, lists "other relevant factors" the Board may consider in the recommendation of civil penalties, which include the following:

4. Respondent has previously been ordered to cease engaging in the unauthorized practice of law.

Respondents are still under a Cease and Desist Order issued by the Supreme Court of Ohio on April 29, 2011, in Case No. 2011-0483.

5. Respondent had been informed that the conduct at issue may constitute an act of unauthorized practice of law.

Respondents were contacted by Relator as early as December 31, 2009, to cease engaging in the unauthorized practice of law. [Complaint at Ex. 24.] Respondents denied the allegations and continued to engage in the conduct at issue. [Complaint at Ex. 25.]

The Board notes the following mitigating factor:

6. Respondents' conduct appears to have resulted from motives other than dishonesty or personal benefit.

Zubaidah indicated that he established STAND to “help in leveling the playing field in the educational, employment, & judicial system towards citizens of America.” [Id.] It was noted that each witness who testified on behalf of Respondents indicated Zubaidah is a family friend of many years who offered support. One witness characterized Zubaidah’s participation as a familiar face in the courtroom for her son to see during his trial. [Tr. at 311.] Zubaidah does not appear to collect any fees from his STAND memberships, nor does he charge for the services he provides. Mr. Zubaidah seems to genuinely believe that his society can help show young people how to do the right thing. [Tr. at 381.] Moreover, he passionately expresses his Constitutional right to exercise free speech with regard to judicial proceedings. However, as seen from the evidence and applicable law, his conduct has crossed the threshold into the unauthorized practice of law.

After balancing all of these factors, and affording some deference to the fact that Respondent is retired, the Board recommends a civil penalty of \$5,000 for each count for a total of \$20,000 against Respondents, jointly and severally.

## **V. CONCLUSION/RECOMMENDATIONS**

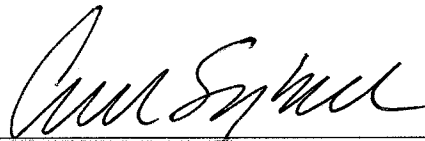
1. The Board recommends that the Supreme Court of Ohio issue an order finding that Respondents engaged in the unauthorized practice of law.

2. The Board recommends that the Court impose a civil penalty against Respondents in the amount of \$5,000 for each of the four counts, for a total penalty of \$20,000 both jointly and severally against the Respondents.
3. The Board recommends that the Court issue a further Order prohibiting Respondents from engaging in the unauthorized practice of law in the future.
4. The Board recommends that the Court issue an order requiring Respondents to pay the costs and expenses incurred by the Board and Relator in this matter.

**VIII. STATEMENT OF COSTS**

Attached as Exhibit B is a statement of costs and expenses incurred to date by the Board and Relator in this matter.

**FOR THE BOARD ON THE  
UNAUTHORIZED PRACTICE OF  
LAW**



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Curtis J. Sybert, Chair



**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 14<sup>th</sup> day of January, 2013: D. Chris Cook, Esq., Giardini, Cook, & Nicol, LLC, 520 Broadway, Third Floor, Lorain, OH 44052; Michael Duff, Esq., 715 Broadway, Lorain, OH 44052-1740; King Ayettey Zubaidah, 1623 West 22<sup>nd</sup> St., Lorain, OH 44052; STAND Inc., c/o King Ayettey Zubaidah, 1623 West 22<sup>nd</sup> St., Lorain, OH 44052; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411; Eugene Whetzel, Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio 43216; John Pincura, Lorain County UPL Committee, 627 West Broad St., Elyria, OH 44035.

*Minerva B. Elizaga*

Minerva B. Elizaga, Secretary

Board on the Unauthorized Practice of Law

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

Exhibit "B"

**STATEMENT OF COSTS**

*Lorain Cty. Bar Assn. v. Zubaidah, et al.*  
Case No. UPL 11-01

Reporting and Transcript Services – Keller Reporting Services Ltd.	1,684.00
<b>TOTAL</b>	<b>\$1,684.00</b>