IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex. rel. JONATHAN D. FREED 16993 Duncan Dr. Glouster, Ohio 45732, Relator, v. DISCIPLINARY COUNSEL SCOTT DREXEL (in his official capacity) 250 Civic Center Drive, Ste. 325 Columbus, Ohio 43215, Respondent.	: : : : : : : : : : : : : :	CASE NO. _____ ORIGINAL ACTION IN MANDAMUS (Mediation requested)

VERIFIED COMPLAINT FOR A WRIT OF MANDAMUS

Does it matter if Ohio's Disciplinary Counsel relied on an astounding misquotation when it refused to prosecute apparent unauthorized practice of law that delayed an unemployment insurance benefit for over two years?

1. Ohio's unemployment insurance protects workers who lose jobs through no fault of their own. Workers pay premiums through their labor that employers help convert into money and send to the state. In 1986, this Supreme Court of Ohio approved employers' use of non-attorney agents to respond to unemployment claims. This Court "*limited*" agents to logistics and assistance with "fact-finding". It did not permit them to interpret laws or make legal arguments. *Henize v. Giles*, 22 Ohio St. 3d 213 (1986) (*italic* emphasis in original).

2. Despite that, when Relator made a claim in 2015 for unemployment insurance benefits, his former employer's non-attorney agent wrongfully interpreted law both to the employer *in lengthy prose* and separately in her response to the state. The state refused to pay. Relator objected. The Fourth District decided the state denied him a fair hearing about the response. *Freed v. Unemp. Comp. Rev. Comm.*, 2017-Ohio-5731. The employer then retained an attorney who advised and assisted it in repudiating the non-attorney agent's wrongful response. Finally, over *two years* after that response, the state paid.
3. Interference like the non-attorney agent's may not be unusual, but few claimants persist as far as Relator has to correct a wrongful response. In a 2012 law journal article, Paul Caritj described the perverse incentive employers and such non-attorney agents have to protest claims. The issue of claimant fraud is well known. However, and due largely to claimants' very limited resources, very little is known about employer responses that preclude or delay payments far past the point in time they are needed most and that thus defeat the purpose of the unemployment insurance program. Paul Caritj, *Tortious Interference with the Expectancy of Entitlement Benefits*, 45 U. Mich. J. L. Reform 455 (2012), https://repository.law.umich.edu/mjlr/vol45/iss2/5
4. The state has yet to take any apparent action in relation to the non-attorney agent and her company. They do not appear to have been sanctioned or censured in any way in relation to the non-attorney agent's wrongful interpretation of law.

5. To help protect future claimants and recover from harms, Relator promptly complained in October 2017 about the time and money it took to correct the non-attorney agent's wrongful interpretation. Relator complained to the Respondent in the instant action, this Court's Disciplinary Counsel, to whom this Court directed such complaints in Rule VII of the Rules for the Government of the Bar. Relator based his allegation of damages in part on a Tenth District decision that his former employer's attorney brought to his attention. Relator alleged the following four counts of apparent unauthorized practice of law:

    Count 1: Corporate Cost Control, Inc. (the non-attorney agent's company) marketed "expertise" in "unemployment law".

    Count 2: The non-attorney agent jointly interpreted law, a Department of Job and Family Services provision, and a contract in relation to "remuneration".

    Count 3: The non-attorney agent interpreted a contract provision regarding confidentiality and purportedly applicable law.

    Count 4: The non-attorney agent attempted to negotiate legal claims and advise a person of their legal rights.

6. The non-attorney agent went far, *far* beyond a *Henize* conveyance of simple facts from the employer into the state's preprinted forms. *Twice*, she authored many advisory paragraphs of prose entirely outside of any form and sent them to the employer to use in its communication with Relator about his objections. She peppered her prose with citations of authorities and arguments about what should and should not happen. She blatantly, flatly, and *wrongly* argued in prose that

Relator should not have claimed unemployment benefits when he did. Ultimately, when Relator asked the employer prior to his appeals that it repudiate her response to the state, the employer was dissuaded from doing so by the company's self-purported “expertise” in “unemployment law”. In the employer’s refusal, it expressly stated that the company and the non-attorney agent are “experts in the field and work with ODJFS”, as if their status as so-called “third party administrators” made them some sort of authoritative extension of the ODJFS administrative agency.

7. On April 11, 2018, Respondent Disciplinary Counsel responded to Relator’s complaint. Counsel purported to quote *Henize*, supra, at 216-217, and baldly and generally asserted that the non-attorney agent's “actions appear to fall squarely within the parameters established by the Court under *Henize*.” Counsel “determined that further action will not be taken” and stated, “we are dismissing your grievance”. (Counsel’s letter is included at the end of this *Complaint* as “Exhibit 1”.)
8. Astoundingly, Disciplinary Counsel did not address in any way the first count that was solely about the company, Corporate Cost Control, Inc.
9. Astoundingly, Disciplinary Counsel omitted pertinent text from the middle of its purported quotation of *Henize* without using an editorial mark like an ellipsis. The omitted text included the pertinent words “fact-finding” that this Court has stated the *Henize* court was “careful” to use in indicating the limit of what non-attorney agents can do. *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506 (also known as “*CompManagement I*”), at ¶ 54.

10. Astoundingly, Disciplinary Counsel also omitted *every* part of the *Henize* text that this Court has itself quoted about how *Henize* does not permit non-attorneys to interpret law or render legal advice. *CompManagement I*, also at ¶ 54.
11. By rule, Counsel "shall investigate any [unauthorized practice of law] matter referred to it or that comes to its attention and may file a complaint pursuant to this rule. Gov.Bar. R. VII § 4(B).
12. Although Counsel has discretion in its decision to file or not file a complaint, Relator has the constitutional right "for an injury done him in his land, goods, person, or reputation" to a "remedy by due course of law". Ohio Constitution Article 1, § 16. Our Revised Code instructs that a person who is damaged by another's unauthorized practice of law may commence a civil action to recover actual damages, though it must begin with this Court's declaration that there has indeed been an unauthorized practice of law. (Such a declaration is not to rule on damages.) R.C. § 4705.07. While this Court may certainly refer matters to subordinates like Disciplinary Counsel, those subordinates' decisions must not constitute an unjust abuse of discretion or clearly disregard applicable law.
13. For those reasons *and others* that are described in the accompanying memorandum, Relator has the right to an investigation that concludes with a decision that is appropriately based in and complies with applicable law, is reasonable, is not arbitrary, and is not unconscionable.
14. Counsel denied Relator his right to such an investigation under color of state law in a violation of 42 U.S.C. § 1983.

15. Counsel's failure to address one of the four counts and Counsel's failure to address the other three individually was arbitrary and unreasonable.
16. Counsel's apparent reliance on a misrepresentation of *Henize* as well as Counsel's failure to address blatant interpretation of law that went far beyond conveyance of facts into preprinted forms was unreasonable.
17. Counsel's failure to appreciate how its unreasonable and arbitrary decision will likely embolden non-attorney agents to delay or preclude worthy claimants' payments is unconscionable. Many such claimants have children who may not eat while the non-attorney agents go home with a paycheck and can thus derive a perverse benefit from protested claims. Very few claimants have the time, money, and energy to appeal while in the midst of trying to get another job. They have very little incentive to continue an appeal after they get another job. Until now, not a single claimant since *Henize* in 1986 appears to have had the means to prosecute an underlying and root unauthorized practice of law that, in the instant matter, the attorneys and judges in the appeals utterly ignored despite Relator's protests.
18. Counsel conducted his investigation and issued his decision in purported compliance with Gov.Bar R. VII. There is no provision in Gov.Bar R. VII for an appeal of Counsel's decision or for requesting a review of Counsel's decision.
19. Relator faxed Counsel a general objection on April 14, 2018, a detailed objection on April 19, 2018, and emailed a follow-up inquiry on April 23, 2018, but he never received a response. Disciplinary Counsel has had a full opportunity to explain or at

least correct its bald misrepresentation of *Henize* that is violative of multiple parts of Prof.Cond.R. 8.4, but Counsel has not done either for Relator in any way.

20. For these reasons and others, Relator argues in the accompanying memorandum that Counsel failed to respect and denied Relator's right to an investigation that concludes as described, and that Relator has no recourse but the instant action. Relator has no opportunity for an adequate remedy in the ordinary course of law.

21. In accordance with the facts, the argument in the memorandum, and the authorities cited therein, Relator respectfully asks this Court to issue a writ of mandamus ordering Respondent Disciplinary Counsel to:

    (1) Rescind its conclusions about Relator's complaint.

    (2) Rescind its misinterpretation of this Court's *Henize* decision.

    (3) Provide the identity of the source of the false *Henize* quotation to the Columbus Bar Association's Professional Ethics Committee for their consideration of whether there has been a violation of Prof.Cond.R. 8.4. (It is difficult to believe the source is within the office of Disciplinary Counsel, who just pressed strenuously for sanctions against an attorney for making misrepresentations in a matter even though no client was harmed. *Disciplinary Counsel v. Maciak*, Docket No. 2017-0492, Slip Opinion No. 2018-Ohio-544. It far easier to believe the source may be Corporate Cost Control's attorney, and that Disciplinary Counsel did not diligently review the false quotation due to a reason-based but ultimately unjustifiable bias against pro se parties. Such a bias is the plausible explanation for the

Unemployment Compensation Review Commission's and Hocking County Court of Common Pleas' failures that were unanimously overruled by the Fourth District.)

(4) Appropriately investigate each of the four counts.

(5) Facilitate any reasonable and timely request Relator may have for a subpoena to obtain testimony or other evidence pertinent to proof of his claims of unauthorized practice of law.

(6) Author a concluding decision that addresses each of the four counts individually.

(7) Separately submit within seven days of this Court's order an amendment to its Gov.Bar R. VII § 4(C) report for 2017 that contains the information the report does not currently contain but is required by Gov.Bar R. VII § 4(D): an expected date of disposition for Relator's complaint and a statement of reasons why the investigation has not been completed.

This *Complaint* is accompanied by and is being filed on this 2nd day of May, 2018, with a copy of the letter of April 11, 2018, *a Memorandum in Support of the Writ*, and a *Verification and Affidavit*.

Respectfully submitted,

/s "Jonathan D. Freed"

EXHIBIT #1,
FREED v. DISCIPLINARY COUNSEL
ORIGINAL ACTION IN MANDAMUS
SUPREME COURT OF OHIO

Disciplinary Counsel
THE SUPREME COURT OF OHIO

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April 11, 2018

PERSONAL AND CONFIDENTIAL

Mr. Jonathan D. Freed
16993 Duncan Drive
Glouster, Ohio 45732

Re: [redacted]/Corporate Cost Control, Inc.
Our File No. B7-1983U

Dear Mr. Freed:

After investigation and careful consideration of your grievance alleging that [redacted] and Corporate Cost Control, Inc., may have engaged in the unauthorized practice of law, we have determined that further action will not be taken. In order to pursue a matter beyond the investigative stage, we must find probable cause (defined as substantial, credible evidence) that an individual not licensed to practice law in the state of Ohio has engaged in the practice of law. After review of the materials submitted to our office, we do not believe that [redacted]'s actions taken in the course of her employment at Corporate Cost Control constituted the practice of law.

Corporate Cost Control, Inc., is an organization that provides its clients, such as [redacted] Inc., your former employer, with guidance and assistance relating to unemployment matters, the management and oversight of the phases of the unemployment claims process, and an analysis of ways the client can improve internal processes regarding unemployment claims. [redacted] is an account executive at Corporate Cost Control. Among her responsibilities as an account executive, [redacted] responds to client's inquiries relating to unemployment insurance services, acts as a liaison between the client and Corporate Cost Control team members to address the client's needs, explains the unemployment hearing process to the clients, and, when necessary, attends unemployment hearings on behalf of clients to assist the clients present their position and to ensure that the hearing officer has the necessary information and documentation to evaluate an unemployment claim.

As you noted in your grievance against [redacted], the Supreme Court of Ohio has previously considered whether activities similar to those performed by [redacted] on behalf of Corporate Cost Control constitute the unauthorized practice of law. See, *Henize v. Giles* (1986), 22 Ohio St.3d 213. In *Henize*, the Court determined that:

> Over the years, an increasing number of employers have utilized service companies to provide management support of various payroll, tax and employee benefit operations. Economy of scale

> and the technical expertise provided by such companies in the area of unemployment compensation have enabled employers, both large and small, to utilize the assistance of unemployment service specialists to manage their benefit programs. As an incidental portion of such service, agents are provided to attend board hearings as representatives of the employer. These agents are there to assure that the board has the appropriate personnel records, staff, and other documents present at the review. The role of such lay participants, as we perceive it, is not to render legal advice, nor to otherwise practice law by providing interpretations of board orders. Rather, the purpose of their participation is to facilitate the hearing process by serving as an adjunct to the claimant or employer in the sharing of their respective versions of the circumstances attendant to the claim.

Id. at 216-217. The Court made clear that non-lawyer representatives should continue to represent employers at unemployment hearings given the informal nature of the proceedings and that they are intended to serve as an "administrative information gathering tool" rather than an adverse adjudicative proceeding. [redacted]'s actions appear to fall squarely within the parameters established by the Court under *Henize*.

While we appreciate that you will likely disagree with our position that [redacted] and Corporate Cost Control did not engage in the unauthorized practice of law, we are dismissing your grievance at this time and closing our file.

Sincerely,

Stacy Solochek Beckman
Assistant Disciplinary Counsel

SSB/ck
cc: Jonathan E. Coughlan, Esq.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex. rel. JONATHAN D. FREED	:	CASE NO. _____
Relator,	:	
v.	:	
DISCIPLINARY COUNSEL SCOTT DREXEL (in his official capacity)	:	MEMORANDUM IN SUPPORT OF THE WRIT
Respondent.	:	

INTRODUCTION

1. This action pertains to Respondent Disciplinary Counsel's refusal on April 11, 2018, to pursue four counts of apparent unauthorized practice of law that delayed an unemployment insurance benefit payment for over two years. This action stems especially from Counsel's false quotation of one of this Court's decisions.
2. The instant action is of great public interest because such apparent unauthorized practice of law can, as evidenced by this case, lead to the delay of unemployment insurance benefit payments far past the point in time they are needed. Such delays defeat the purpose of unemployment insurance law. Such delays can have catastrophic effects on the employees and their dependents who may desperately need the benefits at the time of unemployment, not years afterwards. This matter sadly proves that this Court was too optimistic in parts of its decision in *Henize v. Giles*, 22 Ohio St. 3d 213 (1986).

3. Further, the instant action is worth this Court's careful consideration because the delay in benefits in this matter is likely to be repeated, but any underlying unauthorized practice of law is unlikely to come before this Court for review. That is because worthy unemployment insurance claimants have little time, money, or energy to protest the delay or denial of claims, let alone any unauthorized practice of law, particularly after they obtain new employment.
4. The instant action is also worth this Court's careful consideration because of Respondent Disciplinary Counsel's false quotation in his letter of April 11, 2018, and because of Counsel's apparent failure to respond to Relator's communications to Counsel about it. (If Relator is somehow mistaken about Counsel's false quotation despite Relator having read Counsel's letter again and again and again, then Relator's mistake is not for a lack of trying to clear up any such misunderstanding directly with Counsel.)
5. Counsel's false quotation does not appear to be a mere typographical error. It appears to be an astounding and blatant violation of Prof.Cond.R. 8.4 even if, as Relator suspects and sincerely hopes, the source of the misrepresentation lies outside of Disciplinary Counsel's office. For the sake of the public, Relator hopes that Counsel and Counsel's office is guilty of a lack of diligence rather than the far worse act of having authored the false quotation.

MEMORANDUM CONTEXT

6. There are no express instructions in this Court's rules about this *Memorandum* other than the S.Ct.Prac.R. 12.02 instruction that a complaint in an original action "may be

accompanied by a memorandum in support of the writ". Still, the rules imply that the complaint, affidavit, and memorandum should not contain a detailed review of all relevant evidence. That is because S.Ct.Prac.R. 12.06 indicates that the "Presentation of Evidence", if allowed, will come at a later time in the proceedings. If this *Memorandum* should actually contain more information about the evidence than it does and if the exhibits in this matter should be attached, then this Court should please clarify the memorandum's purpose within both its rules of practice and order that this *Memorandum* may be amended as appropriate.

7. Relator has attempted to keep his *Complaint* in the instant action short, and he has structured this *Memorandum* to expound upon the *Complaint*'s information and arguments. This *Memorandum* contains the following sections: **Parties**, **Jurisdiction and Law**, **Background Context**, and **Argument** (with objections and assignments of error).
8. Relator is mindful that there is a fine line between (a) providing enough background context about his October 2017 complaint to Respondent Disciplinary Counsel so that this Court can understand why Counsel's April 11, 2018, response is unacceptable and (b) reciting that October 2017 complaint verbatim. Relator is hopeful that he has achieved an appropriate balance and prays that this Court feels he has, or that this Court will order this *Memorandum* amended accordingly or other such remediation as may be appropriate.

PARTIES

9. Relator is a lifelong resident of Ohio whose labor paid the premiums for the unemployment insurance claim that underlies this matter. He ultimately received his benefits after two years of appeals.

10. Relator represents no one but himself in this action. Still, this Court would be mistaken to not view him as symbolically representative of worthy claimants who, in their hours of need, may see their benefits denied or delayed in relation to the perverse incentive that employers and their "third party administrators" have to protest claims. Paul Caritj described such perversity in *Tortious Interference with the Expectancy of Entitlement Benefits*, 45 U. Mich. J. L. Reform 455 (2012), https://repository.law.umich.edu/mjlr/vol45/iss2/5

11. Respondent Disciplinary Counsel Scott Drexel ("Counsel") is named in his official capacity as the state's Disciplinary Counsel. Most of Disciplinary Counsel's responsibilities are defined within Gov.Bar R. V. However, Counsel has a parallel and independent set of responsibilities in relation to unauthorized practice of law under Gov.Bar R. VII. Counsel is named within the context of his Gov.Bar R. VII responsibilities.

12. Respondent Disciplinary Counsel is also named as being responsible for his assistants. Gov.Bar R. VII references Disciplinary Counsel, not his office that is comprised of assistants and others whose actions relevant to this matter are correctly attributed in this action to Respondent Disciplinary Counsel.

JURISDICTION AND LAW

13. This Court and Respondent Disciplinary Counsel derive their authority and affirmative duties in this matter from:

    a. The reserved powers referenced in our U.S. Constitution's Amendment X.

    b. Our Ohio Constitution's Article IV, particularly:

        i. Section 2(B)(1):

            > The Supreme Court shall have original jurisdiction in the following: … (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

        ii. Section 5(B):

            > The Supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right.

    c. The Court's Rules for the Government of the Bar of Ohio, Rule VII about unauthorized practice of law.

14. This Court has directed that complaints about a non-attorney's unauthorized practice of law shall go through a bar association, Disciplinary Counsel, or the Attorney General. See Gov.Bar R. VII § 4 and § 5(A). Section 4(A) instructs that "[a]ll proceedings arising out of complaints of the unauthorized practice of law shall be brought, conducted, and disposed of in accordance with the provisions of this rule". Section 4(B) instructs that "Disciplinary Counsel shall investigate any matter referred to it or that comes to its attention and may file a complaint pursuant to this rule." Section 5(A) mandates that:

    > "A complaint shall not be accepted for filing unless it is signed by one or more attorneys admitted to the practice of law in Ohio who shall be counsel for the relator. The complaint shall be accompanied by a certificate in writing signed by

the president, secretary or chair of the unauthorized practice of law committee of any regularly organized bar association, Disciplinary Counsel, or the Attorney General, who shall be the relator".

15. However, the Court's constitutional authority to prescribe such a restriction must be harmonized with constitutional provisions of equal or higher authority.

16. Relator derives his authority to bring this action and his right to a just decision from authorities that include the following:

    a. Our U.S. Constitution's Amendments I, X, and XIV.

    b. Our Ohio Constitution's Article I, Sections 1, 20, and especially 16, "Redress in courts":

        All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

    c. Our Ohio Constitution's Article IV, particularly:

        i. Section 2(B)(1)(g): "(B)(1) The Supreme Court shall have original jurisdiction in the following: …(g) (f) In any cause on review as may be necessary to its complete determination".

        ii. Section 2(B)(3): "No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court."

    d. Ohio's Revised Code, Section 4705.07:

        (A) No person who is not licensed to practice law in this state shall do any of the following: … (3) Commit any act that is prohibited by the supreme court as being the unauthorized practice of law.
        ...
        (C) … (2) Any person who is damaged by another person who commits a violation of division (A)(3) of this section may commence a civil action to recover actual damages from the person who commits the violation, upon a finding by the supreme court that the other person has committed an act that is prohibited by the supreme court as being the unauthorized practice of law in violation of that division.

17. Clearly, this Court's power derived from its Constitution Article IV Section 2(B) "original jurisdiction in … all other matters relating to the practice of law", including the unauthorized practice of law, does not extend so far as to completely prevent Relator or any other person from accessing this Court in relation to a complaint about unauthorized practice of law.
18. Relator stipulates that this Court clearly has the power to direct that complaints regarding an unauthorized practice of law be reviewed first by a magistrate, a special master, the Board on the Unauthorized Practice of Law, a bar association, Disciplinary Counsel, or some similar body or person.
19. However, this Court may not delegate its decision-making power and power of review entirely, as such a delegation would render this Court unconstitutionally closed to Relator. Every person whose matter is referred to such a body or person must be provided with the opportunity to review the findings of any such body or person, object to them, and then have this Court itself review the findings and objections before they may be rendered final.
20. It may be reasonable to initially construe the aforementioned Gov.Bar R. VII Sections 4 and 5(A) to instruct that a decision of Disciplinary Counsel to not proceed with a complaint is final, unreviewable, and unappealable because:
    a. Disciplinary Counsel "*may* file a complaint pursuant to this rule" (*italic* emphasis added);
    b. "A complaint shall not be filed [presumably with the Board on the Unauthorized Practice of Law] unless it is signed by one or more attorneys

admitted to the practice of law in Ohio" who represent Disciplinary Counsel, a bar association, or the Attorney General; and

c. There is no provision within the rule for requesting a review of any decision by Disciplinary Counsel to not proceed with filing a complaint.

21. However, such a construction would be unconstitutional to the extent that it would deny redress in this Court, which is the only Court with jurisdiction over complaints of unauthorized practice of law like that in this matter.

22. Such a construction would also and separately be unconstitutional to the extent that it would prevent a person from invoking the original jurisdiction of this Court, and this Court is, again, the only court with original jurisdiction in matters of unauthorized practice of law.

23. Such a construction would also be unconstitutional to the extent that such a reading of the rule would abridge and modify substantive rights, including but not limited to the right to pursue a remedy by due course of law in the appropriate court.

24. Such a construction would also be unconstitutional (a) in relation to the U.S. Constitution Amendment I right to petition for a redress of grievances (as incorporated through the U.S. Constitution Amendment XIV), (b) in relation to the U.S. Constitution Amendment X rights reserved to the people, and (c) in relation to Amendment XIV clauses regarding privileges and immunities, due process, and -- pursuant to a rational basis review -- equal protection. In Ohio, non-attorneys are permitted to prosecute a civil complaint of legal malpractice, and there is no reason to treat a civil complaint of unauthorized legal practice any differently.

25. In accordance with those reasons and authorities, this Court has jurisdiction in the instant matter and a duty to not abuse its discretion, and Relator has the authority and right to demand decisions by both Respondent Disciplinary Counsel and this Court that are appropriately based in and comply with applicable law, are reasonable, are not arbitrary, and are not unconscionable.

BACKGROUND CONTEXT

26. As Relator conveyed in the instant action's *Complaint*, items 1 - 2:

    1. Ohio's unemployment insurance protects workers who lose jobs through no fault of their own. Workers pay premiums through their labor that employers help convert into money and send to the state. In 1986, this Supreme Court of Ohio approved employers' use of non-attorney agents to respond to unemployment claims. This Court "limited" agents to logistics and assistance with "fact-finding". It did not permit them to interpret laws or make legal arguments. Henize v. Giles, 22 Ohio St. 3d 213 (1986) (italic emphasis in original).
    2. Despite that, when Relator made a claim in 2015 for unemployment insurance benefits, his former employer's non-attorney agent wrongfully interpreted law both to the employer in lengthy prose and separately in her response to the state.

27. Relator's former employer contracted with a "third party administrator" company, Corporate Cost Control, Inc., for the non-attorney agent's services. The non-attorney agent is referred to herein as Ms. Doe.

28. Neither Corporate Cost Control, Inc., nor Ms. Doe were admitted to the practice of law in Ohio at any time relevant to this matter.

29. In response to Relator's claim for unemployment insurance benefits, the non-attorney lay representative Ms. Doe asserted to both Ohio's Department of Job and Family Services and Relator's former employer that Relator had received "remuneration". Ms. Doe *twice* authored many paragraphs of prose regarding the remuneration and other matters of law and sent it to Relator's former employer for use in communications between the employer and Relator.

30. In *Henize v. Giles*, 22 Ohio St. 3d 213 (1986), at 220, this Court asserted the following about Barbara Henize's similar unemployment insurance claim situation:

> We believe Ohio's trial courts, within their scope of statutory review, can adequately safeguard the parties' respective interests if lay representation is allowed at the board hearing level. In the unlikely event that the record is a sham, the proceedings are overly tainted, the result unfair, or the decision is not supported by the evidence, the reviewing court will remedy the error by finding the decision to be unreasonable, against the manifest weight of the evidence, or unlawful. R.C. 4141.28(0).
>
> Lastly, we can not perceive how this particular claimant's right to a fair hearing has been denied simply because her employer chose not to retain legal counsel. To the contrary, the record demonstrates the claimant was afforded adequate due process safeguards and was not prejudiced. She exercised her right to be represented by legal counsel and was able to fully present her evidence and testimony.

31. In contrast, the Fourth District Court of Appeals found the following in 2017:

    a. Relator had been denied his "right to a fair hearing" before the Unemployment Compensation Review Commission,

    b. the Hocking County Court of Common Pleas did not "remedy the error",

c. Relator had not been “afforded adequate due process safeguards”,

d. Relator had been “prejudiced”, and

e. Relator was denied his right “to fully present [his] evidence and testimony.”

32. Those findings may be seen in the Fourth District Court of Appeals unanimous decision *Freed v. Unemp. Comp. Rev. Comm.*, 2017-Ohio-5731 (all ellipses and bracketed text added):

> {¶3} … [Relator’s former employer] terminated Appellant’s [Relator's] employment on April 28, 2015, due to lack of work [and they entered into a] “Severance Agreement and Release” ...
> {¶4} Appellant [Relator] filed an application for determination of [unemployment insurance] benefit rights, which was allowed, … but ... because severance pay he received had equaled or exceeded his weekly benefit amount, he was not entitled to benefits per R.C. 4141.31 ...
> {¶5} … On July 17, 2015, ODJFS [Ohio Department of Job and Family Services] transferred jurisdiction to the Unemployment Compensation Review Commission. ...
> {¶8} A decision was issued by the Unemployment Compensation Review Commission on August 31, 2015. Ultimately, the Commission ... affirmed the [ODJFS] Director's redetermination with respect to its finding that Appellant [Relator] received deductible remuneration in the form of separation pay …
> {¶9} Appellant [Relator] again appealed the decision, this time to the Hocking County Court of Common Pleas. The trial court, however, issued a general affirmance of the decision of the Unemployment Compensation Review Commission …
> …
> {¶26} Here, the issues presently on appeal involve the nature of the agreement signed by the parties, as well as the nature of the payments received by Appellant [Relator] and whether they do, in fact, constitute separation pay and thus, deductible remuneration. It appears that the requested documents and witnesses may have been relevant to that determination. In light of the foregoing, we conclude that the Commission’s refusal to issue subpoenas for witnesses and documents, despite Appellant’s [Relator's] proper and timely request to do so, without affording Appellant [Relator] an opportunity to demonstrate the necessity therefore, constituted an abuse of discretion that resulted in a denial of due process to Appellant [Relator]. As such, Appellant’s [Relator's] third assignment of error has merit and is therefore sustained. Accordingly, the judgment of the trial court affirming the Review Commission’s determination is reversed, and this matter is remanded for further proceedings

consistent with this opinion.

33. Upon remand, the Unemployment Compensation Review Commission issued the subpoenas Relator had requested *two years* prior.

34. Relator and an attorney for Relator's former employer communicated about affidavits that two employees would submit in lieu of subpoenaed testimony. The attorney advised and assisted the employer in submitting those affidavits that repudiated the non-attorney agent's wrongful response.

35. The Review Commission held a new hearing and then communicated the following in its decision, Docket No: C-2015010780 (all square-bracketed text added; page numbers are prefixed with asterisks):

> [*4] … On August 4, 2017, a hearing was held in Columbus, Ohio … At the conclusion of the testimony and evidence, claimant [Relator] requested that the hearing being continued in order to re-subpoena [Jane Doe], who though subpoenaed at two different addresses provided by the claimant neither appeared for the hearing nor contacted the Review Commission to state that she could not attend. Ms. [Doe] is (or at least was) an employee of Corporate Cost Control, a third-party representative used by [Relator's former employer]. Ms. [Doe] apparently filled out some of the early paperwork submitted on behalf of [Relator's former employer]. Given her absence despite being subpoenaed, and the more important fact that her second-hand knowledge has been supplanted in this matter by the affidavits submitted by [Relator's former employer]'s President and Human Resources Manager, the Hearing Officer denied and the Commission again denies claimant's [Relator's] request to continue this matter any further.
> ...
> [*5] … After terminating the claimant [Relator] on April 28, 2015, [Relator's former employer] offered him three months pay … but only in exchange for "releasing any and all claims against [Relator's former employer]." Finally, in her affidavit, [the employer's Human Resources Manager] admitted that the payment "was not based on services performed by" claimant [Relator], as one would expect for remuneration received by the claimant in the form of separation pay.
> … [Relator's former employer] may have consistently labeled the payment in this matter as "severance pay," but the Review Commission finds that the payment was fact a true settlement payment.

> Based upon the evidence in this matter, the Review Commission finds that the $[...] payment by [Relator's former employer] was a legal settlement, and was not remuneration in the form of separation pay. Accordingly, the payment is not deductible from claimant's [Relator's] unemployment compensation benefits. Under these circumstances, the Review Commission finds that claimant [Relator] is not ineligible for benefits …

36. Then, over *two years* after the non-attorney agent wrongful response, the state paid Relator his benefits.

37. As the Review Commission noted, the non-attorney agent Ms. Doe did not appear. Still, undisputed evidence from both the employer and Relator in the ODJFS Director's file and the Review Commission's exhibits indicated that the source of the wrongful assertion that Relator had received "remuneration" was Ms. Doe.

38. That file and those exhibits also contain copies of the correspondence between Relator, the employer, and Ms. Doe that occurred just after Relator's claim for benefits in 2015. That correspondence is a core focus of Relator's complaint to Respondent Disciplinary Counsel about apparent unauthorized practice of law.

39. In September 2017, Relator communicated with his former employer's attorney about damages stemming from Ms. Doe's wrongful interpretations of law. They communicated about whether they would jointly submit a complaint of unauthorized practice of law against Ms. Doe. Ultimately, the employer decided against joining Relator and incurring the related expenses of litigation. Still, the attorney referred Relator to *Caddell v. Bureau of Workers' Compensation*, No. 92-AP-1466, 1993 Ohio App. LEXIS 2949 (10th Dist. Franklin June 8, 1993).

40. In *Caddell*, the Tenth District opined that if a claimant of state insurance program benefits is initially and wrongfully denied but ultimately receives those benefits, the

claimant could still complain of conversion and claim “loss of use of the converted property during the period of conversion … [specifically] the equivalent of interest upon the amount wrongfully withheld during the period of time it was wrongfully withheld.” (The court treated such a claim for interest as hypothetical, as Caddell “did not bring such a claim for relief”. Relator is waiting for the resolution of this unauthorized practice of law matter before making any final decision about bringing such a claim.)

41. Relator and the attorney also communicated about the case that originated in what is now Relator’s Fourth District: *Fulks v. Fulks*, 95 Ohio App. 515 (1953). In that case, Maggie Fulks was held to be liable for both (a) the conversion of property and (b) time and money spent to recover the property, even though she did not assert ownership of the converted property but merely assisted in its conversion, and regardless of whether she had any intent or purpose to do a wrong, as that is not a necessary element of conversion.

42. And in *Henize*, of course, this Court contemplated the harm that could have resulted to an unemployment insurance claimant when an “employer chose not to retain legal counsel.” Id., at 220.

43. During Relator's communications with the employer's attorney, Relator estimated the time and money he had spent in pursuit of his unemployment insurance benefits for which his labor had paid the premiums. Within those communications, Relator concluded there was good reason to believe he had suffered damages that far

exceeded a nominal amount. His time and labor included preparing for and appearing, via filings when not in person:

a. Before the Department of Job & Family Services' Director for the redetermination 228248433-2 of June 25, 2015;
b. Before the Unemployment Compensation Review Commission for an initial hearing on August 24, 2015;
c. Before the UCRC for the review of September 21, 2015;
d. Before the Hocking County Court of Common Pleas for its judgment of January 19, 2016;
e. Before the Fourth District Court of Appeals for its decision of June 29, 2017;
f. Before the Court of Common Pleas again for a judgment on July 20, 2017; and
g. Before the UCRC for a second hearing on August 8, 2017.

44. With that context, and with citations to *Henize*, *Caddell*, *Fulks*, and other appropriate authorities, Relator submitted a complaint in October 2017 to Respondent Disciplinary Counsel about apparent unauthorized practice of law. As was conveyed in the instant action's *Complaint*, ¶ 5, Relator alleged the following four counts (instances) of apparent unauthorized practice of law:

Count 1: Corporate Cost Control, Inc. (the non-attorney agent's company) marketed "expertise" in "unemployment law".

Count 2: The non-attorney agent jointly interpreted law, a Department of Job and Family Services provision, and a contract in relation to "remuneration".

Count 3: The non-attorney agent interpreted a contract provision regarding confidentiality and purportedly applicable law.

Count 4: The non-attorney agent attempted to negotiate legal claims and advise a person of their legal rights.

45. Relator's complaint to Counsel included a very thorough review of relevant case law and about 27 exhibits of evidence in support of the complaint, including the aforementioned 2015 correspondence between Relator, the employer, and the non-attorney agent that was part of the record before the Unemployment Compensation Review Commission.

46. This Court's Rules for the Government of the Bar do not prescribe any particular form or channel for a person to use for a complaint about an apparent unauthorized practice of law. Gov.Bar R. VII § 5(A) merely starts with the instruction that "[a] complaint shall be a formal written complaint alleging the unauthorized practice of law by one who shall be designated as the respondent". Also, Gov.Bar R. VII § 4(B) instructs that Respondent Disciplinary Counsel "shall investigate" such a complaint that has been submitted to it.

47. As Relator conveyed in the instant action's *Complaint*, item 8:

On April 11, 2018, Respondent Disciplinary Counsel responded to Relator's complaint. Counsel purported to quote *Henize*, supra, at 216-217, and baldly and generally asserted that the non-attorney agent's "actions appear to fall squarely within the parameters established by the Court under Henize." Counsel

"determined that further action will not be taken" and stated, "we are dismissing your grievance".

(The letter is included at the end of the *Complaint* as "Exhibit 1" in the instant action.)

ARGUMENT; OBJECTIONS AND ASSIGNMENTS OF ERROR

48. As is stated in Ohio's Revised Code, 2731.01:

> Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

49. As this Court just recently stated in *State ex rel. Cowan v. Gallagher*, 2018 Ohio 1463 (2018):

> {¶ 10} To be entitled to a writ of mandamus, a party must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide the requested relief, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6, 13.

50. Those three factors have been addressed in the instant action's *Complaint* and the "Jurisdiction" section above. Although Respondent Disciplinary Counsel has discretion by rule to end its investigation of apparent unauthorized practice of law with a decision to not proceed with a complaint, Relator has multiple constitutional rights to an investigation that concludes with a decision that is based in and complies with applicable law, is reasonable, is not arbitrary, and is not unconscionable. By rule, Disciplinary Counsel has the duty to provide such an investigation.

51. Relator would not have a "clear legal right to the requested relief", and Respondent Disciplinary Counsel would not have a "clear legal duty … to provide the requested

relief" if Respondent Disciplinary Counsel had already and sufficiently complied with the mandate in Gov.Bar R. VII § 4(B) that it do an investigation. However, Disciplinary Counsel did not do so, and Disciplinary Counsel did not provide evidence of having done so. Instead, Counsel's letter of April 11, 2018, is clear evidence of Counsel having committed multiple errors that, both severally and jointly, clearly demonstrate that Counsel did not complete an investigation as required because it disregarded applicable law in its decision to not proceed with a complaint and the decision was unreasonable, arbitrary, and unconscionable.

52. Relator's *Complaint* in the instant matter contains a summary of Relator's objections to Respondent Disciplinary Counsel's April 11, 2018, decision. The following paragraphs expound upon Relator's objections and assignments of error.

53. **Error #1: In Respondent Disciplinary Counsel's letter of April 11, 2018, Counsel erred by not even acknowledging the existence of four counts and by not addressing each count individually.**

54. Respondent Disciplinary Counsel made a bare reference to "your [Relator's] grievance" in Counsel's April 11th letter. Counsel made the bare statement and baldly and generally asserted that "[the agent]'s actions appear to fall squarely within the parameters established by the Court under *Henize*" (*Henize v. Giles*, 22 Ohio St. 3d 213 (1986)). That bare reference and bald and general assertion are utterly insufficient as evidence that Counsel heard and considered the four separate counts that Relator has a right to have investigated. Counsel hardly acknowledged any

specific part of the complaint's text whatsoever except Relator's reference therein to *Henize*.

55. As parents, teachers and others are well aware, if an adult wants to verify that a child has understood a request, the adult may ask the child to repeat or at least accurately paraphrase the request. Respondent Disciplinary Counsel need not have done any more than that to verify that it heard and understood the counts Relator has a right to have investigated. However, Counsel did not even do that.

56. Accordingly, Respondent Disciplinary Counsel cannot reasonably be said to have investigated Relator's complaint, and Counsel denied Relator's right to such an investigation. Counsel's deficient investigation and decision was unreasonable. Relator objects to Counsel's errors and unreasonable decision.

57. **Error #2: Respondent Disciplinary Counsel erred by failing to address one of the four counts. Counsel erred by only addressing one of the two parties that Relator alleged to have engaged in the unauthorized practice of the law.**

58. In his letter of April 11, 2018, Respondent Disciplinary Counsel referenced the aforementioned non-attorney agent Ms. Doe but did not at all address the first of the four counts that was only about the agent's company, Corporate Cost Control, Inc. There is no evidence that Counsel had any reason for its slanted and deficient focus. Counsel's failure to address that first count was arbitrary.

59. Accordingly, Respondent Disciplinary Counsel cannot reasonably be said to have investigated Relator's complaint, particularly count one of the complaint, and

Counsel has denied Relator's right to such an investigation. Relator objects to Counsel's error and arbitrary decision.

60. **Error #3: Respondent Disciplinary Counsel erred when it based its refusal to proceed any further on counts two, three, and four entirely on a misunderstanding and cherry-picked misrepresentation of this Court's decision in *Henize*, where Counsel even omitted text from the middle of a sentence without any editorial mark like an ellipsis.**

61. The following indented text is a copy of Respondent Disciplinary Counsel's purported quotation of *Henize* and Counsel's surrounding words from Counsel's letter of April 11, 2018. Relator has added **bold** emphasis to the sentence that Counsel purports to exist as-is in *Henize*. Counsel omitted *Henize* text from that sentence without any editorial mark like an ellipsis. Counsel stated:

> As you noted in your grievance against Ms. [Doe], the Supreme Court of Ohio has previously considered whether activities similar to those performed by Ms. [Doe] on behalf of Corporate Cost Control constitute the unauthorized practice of law. See, *Henize v. Giles* (1986) 22 Ohio St.3d 213. In *Henize*, the Court determined that:
>
> > Over the years, an increasing number of employers have utilized service companies to provide management support of various payroll, tax and employee benefit operations. Economy of scale and the technical expertise provided by such companies in the area of unemployment compensation have enabled employers, both large and small, to utilize the assistance of unemployment service specialists to manage their benefit programs. As an incidental portion of such service, agents are provided to attend board hearings as representatives of the employer. **These agents are there to assure that the board has the appropriate personnel records, staff, and other documents present at the review.** The role of such lay participants, as we perceive it, is not to render legal advice, nor to otherwise practice law by providing interpretations of board orders. Rather, the purpose of their participation is to facilitate the hearing process by service as an adjunct to the claimant or employer in the sharing of their respective versions of the circumstances attendant to the claim.

> Id. at 216-217. The Court made clear that non-lawyer representatives should continue to represent employers at unemployment hearings given the informal nature of the proceedings and that they are intended to serve as an "administrative information gathering tool" rather than an adverse adjudicative proceeding. Ms. [Doe]'s actions appear to fall squarely within the parameters established by the Court under *Henize*.

62. The indisputable fact that Respondent Disciplinary Counsel misrepresented and misunderstands *Henize* is obvious when Counsel's purported quotation is compared to this Court's own interpretation and correct quotation of *Henize* in the subsequent and controlling decision in *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 179, 2004-Ohio-6506 (¶ 54), 818 N.E.2d 1181 (also known as "*CompManagement I*"; **bold** emphasis added, including to the pertinent phrase the Office omitted):

> {¶ 54} Nevertheless, lay representatives were not given carte blanche in *Henize* to appear and practice before the unemployment compensation agencies. Accordingly, the court in *Henize* was **careful** to point out: "Our decision today does not reach nor permit the rendering of legal advice regarding unemployment compensation laws or board orders. Rather, our **narrow** holding **merely permits** lay representation of parties to assist in the preparation and presentation of their cause in order to facilitate the hearing process." *Id*., 22 Ohio St.3d at 219, 22 OBR 364, 490 N.E.2d 585. **Specifically**, the court permitted agents of actuarial firms to attend board hearings as employer representatives in order "to assure that the board has the appropriate personnel records, staff, and other documents present at the **hearing and to assist in the fact-finding process during the referee's claim** review." *Id*. at 217, 22 OBR 364, 490 N.E.2d 585.

63. Counsel's astounding misrepresentation of *Henize* omitted the *Henize* court's "careful", "narrow", and "specific[]" emphasis on "merely permit[ting]" "assist[ance]" in "fact-finding".

64. Counsel astoundingly and utterly omitted the *Henize* text that the *CompManagement I* court emphasized that "the court in *Henize* was careful to point out": that *Heinze* "does not reach nor permit rendering of legal advice regarding unemployment compensation laws".

65. Respondent Disciplinary Counsel's decision to not proceed against Ms. Doe is clearly based on Counsel's understanding of *Henize*. Counsel indicated that basis through its sentence that "Ms. [Doe]'s actions appear to fall squarely within the parameters established by the Court under Henize." However, Counsel's understanding is demonstrably lacking the clear and emphatic instruction that *Henize* "does not reach nor permit the rendering of legal advice regarding unemployment compensation laws". Id.

66. Respondent Disciplinary Counsel cannot reasonably be said to have investigated a purported unauthorized practice of law when Counsel has provided a clear demonstration that its understanding of unauthorized practice of law is lacking and wrong. However, that is exactly what Counsel did.

67. Respondent Disciplinary Counsel's demonstrated its misunderstanding of *Henize* despite Relator's very thorough analysis of decisions like *Henize* and *CompManagement I* in Relator's October 2017 complaint.

68. Relator's second, third, and fourth counts in his complaint were regarding Ms. Doe. Respondent Disciplinary Counsel's decision to not proceed with a complaint against Ms. Doe is clearly a decision to not proceed with Relator's counts two, three, and four. Counsel's decision was clearly based on a misunderstanding of applicable law.

Accordingly, Counsel cannot reasonably be said to have investigated Relator's complaint, particularly counts two, three, and four of the complaint, and Counsel has denied Relator's right to such an investigation. Relator objects to Counsel's errors and unreasonable decision.

69. **Error #4: Respondent Disciplinary Counsel erred by making a decision to not proceed with any of the four counts that is unreasonable in light of applicable law and the available evidence.**

70. In his letter, Respondent Disciplinary Counsel stated:

> In order to pursue a matter beyond the investigative stage, we must find probable cause (defined as substantial, credible evidence) that an individual not licensed to practice law in the state of Ohio has engaged in the practice of law. After review of the materials submitted to our office, we do not believe that Ms. [Doe]'s actions taken in the course of her employment with Corporate Cost Control constituted the practice of law.

71. Respondent Disciplinary Counsel is incorrect that it must find probable cause regarding "an individual". A company or corporation may also be found to have engaged in the unauthorized practice of law. See *Ohio State Bar Assn. v. Home Advocate Trustees, L.L.C.*, 152 Ohio St.3d 60, 2017-Ohio-9108, *Columbus Bar Assn. v. Am. Family Prepaid Legal Corp.*, 123 Ohio St.3d 353, 2009-Ohio-5336, and *Ohio State Bar Assn. v. Pinnacle Title Corp.*, 122 Ohio St.3d 592, 2009-Ohio-4206. Disciplinary Counsel's apparent ignorance of this may explain why it did not address nor proceed with Relator's count one that regarded the Corporate Cost Control company alone. In any case, and ultimately, the fact that Disciplinary Counsel's reasoning excluded companies is evidence that Counsel's decision was unacceptably unreasonable.

72. As was conveyed in relation to Error #3, everything about Respondent Disciplinary Counsel's letter indicates that Counsel was weighing the substance of the evidence within the context of a misunderstanding about applicable law. Because Counsel was using an incorrect standard while gauging and weighing the substance of the evidence, Counsel's decision was, at its root, unreasonable.

73. Further, it would be preposterous to think that *Henize* alone is the extent of applicable case law. In Relator's four count complaint, he undertook an extensive analysis of about 50 cases including and since *Henize*. Relator did that in order to both understand what constitutes unauthorized practice of law and share that knowledge with readers.

74. Although Counsel's decision only cites *Henize*, *Henize* is not the controlling case for count one that regards marketing that constitutes the unauthorized practice of law. Instead, the controlling cases are those like *Cleveland Metro. Bar Assn. v. McGinnis*, 137 Ohio St.3d 166, 2013-Ohio-4581 (use of the word "law", etc.), *Toledo Bar Assn. v. Abreu*, 147 Ohio St.3d 35, 2016-Ohio-2972 (advice or strategy for appropriate way to work within confines of a government program to achieve results), and *Disciplinary Counsel v. Catalfina*, 150 Ohio St.3d 98, 2016-Ohio-5126 (strategic silence about not being an attorney or lawyer admitted to the practice of law).

75. Although Counsel's decision only cites *Henize*, *Henize* is not the only controlling case for count two that regards interpretation of law and a contract regarding "remuneration". Instead, controlling and more recent cases also include *Cleveland Metro. Bar Assn. v. Davie*, 133 Ohio St.3d 202, 2012-Ohio-4328, and *Cleveland Bar*

Assn. v. CompManagement, Inc., 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95 ("CompManagement II") (assistance may not involve legal analysis, skill, citation, or interpretation).

76. Although Counsel's decision only cites *Henize*, *Henize* is not the only controlling case for count three that regards interpretation of law and a contract provision regarding confidentiality. Instead, controlling and more recent cases also include *Davie*, supra.

77. *Henize* is not the only controlling case for count four that regards negotiating legal claims and advising a person of their legal rights. Instead, controlling and more recent cases also include *Cleveland Metro. Bar Assn. v. Hill*, 141 Ohio St.3d 166, 2014-Ohio-5239 (attempting to negotiate settlement of legal claims on behalf of others constitutes unauthorized practice of law), and *Disciplinary Counsel v. Brown*, 121 Ohio St.3d 423, 2009-Ohio-1152 (advising others of their legal rights and responsibilities is the practice of law).

78. Further, and despite Counsel's implication to the contrary, it simply defies all credibility that Relator's 27 exhibits of evidence did not provide substantial, credible evidence of unauthorized practice of law. Much of the evidence was part of and undisputed in the proceedings before ODJFS, the Unemployment Compensation Review Commission, the Hocking County Court of Common Pleas, and the Fourth District Court of Appeals.

79. It is certainly not this Court's role to weigh all of that evidence on a granular level. However, this Court may confidently see and declare that Relator provided Counsel

with a plethora of credible and undisputed instances of Corporate Cost Control's own words and Ms. Doe's own words, and that Counsel should review them again in the context of an appropriate understanding of applicable law.

80. In relation to count one regarding marketing that constitutes the unauthorized practice of law, Relator provided Respondent Disciplinary Counsel with copies of the following verifiable and undisputed assertions that Corporate Cost Control, Inc., made *in writing*. Relator also explained about how these assertions led his former employer to (a) describe the non-attorney agent Ms. Doe and Corporate Cost Control as "experts in the field" and (b) refuse to repudiate the agent's interpretation of law until after the court of appeals decision and the employer retained an actual attorney. (The following exhibit letters refer to exhibits attached to the October 2017 complaint Relator sent to Counsel.)

> From Exhibit R: "Though the states mentioned above are just examples of the nuances and variances to the state laws ... Always check your state laws, or with your Corporate Cost Control Account Executive if you have questions about what may make a claimant eligible or ineligible for benefits."
>
> From Exhibit T: "Over these 50+ years we have pioneered many of the industry's greatest innovations and have been focused on expertise in unemployment law."
>
> From Exhibit U: "There are many aspects of CCC's capabilities that go beyond expertise in unemployment law and can provide value even to the most knowledgeable in-house program."
>
> From Exhibit Y: "In the final take away, the state laws vary widely and its best to contact your CCC team for expert advice with your scenarios to be successful."

81. Corporate Cost Control did not limit itself to expressions about how the company is an expert and timely *Henize* conveyer of mere factual information from an employer

into a state's preprinted forms. The Exhibit Y written "final take away" is the company's assertion about its expertise about unemployment law. It is the company's assertion about expertise in the interpretation of and application of widely varying state laws to specific employers' "scenarios". Further, the company's marketing does not disclaim that it and its agents are not attorneys. The company has remained strategically silent on the fact that it and its agents are not admitted to the practice of law.

82. Respondent Disciplinary Counsel cited no more than *Henize* in Counsel's decision. However, and as Relator conveyed in his complaint, there are multiple decisions that are relevant to the question of whether marketing constitutes the unauthorized practice of law. Ultimately, it is unreasonable for Counsel to have decided that the marketed messages did not constitute substantial, credible evidence when Relator's former employer was clearly swayed by them and, as a result, refused to repudiate the non-attorney agent's interpretation of law that delayed Relator's benefit payment for over two years.

83. There is clearly substantial, credible evidence of the Corporate Cost Control having engaged in marketing that constitutes unauthorized and harmful practice of law *in writing*.

84. Counts two, three, and four are about how the company's agent (2) erroneously interpreted law, a Job and Family Services provision, and a contract in relation to "remuneration" and (3) a client's promise of confidentiality, and (4) authored a brief

for her client -- Relator's former employer -- in an attempt to negotiate legal claims and provide advice about legal rights.

85. Despite the implication to the contrary in Counsel's April 11, 2018, decision, none of these three counts are about or can be reduced to mere *Heinze*-compliant transfers of simple facts from an employer to the state's pre-printed forms. Relator's corresponding exhibits contain evidence of the non-attorney agent making the statements listed below *in writing*. The listed statements clearly swayed Relator's former employer enough to describe the agent and her company as "experts in the field" and to refuse to repudiate the agent's interpretation of law for over *two years* until the employer retained an actual attorney.

86. The following quotations from Relator's October 2017 complaint's Exhibit B came "verbatim" from the agent, according to an unsolicited assertion of the same by Relator's former employer in Exhibit D. Exhibit G was the agent's written prose that is accurately described as a "legal brief". Each of the following quotations are followed by an assertion about the quotation. (**Bold** emphasis added.)

From Exhibit B:

a. "you **should** not be disallowed benefits".

   This is clearly advice regarding and based on an interpretation of unemployment law.

b. "based on separation you **should** receive a determination allowing benefits".

   This is also clearly advice regarding and based on an interpretation of unemployment law.

c. “Based on severance payments -- you **should** receive a ruling disqualifying due to separation pay for the weeks the severance payments are allocated to. [...] To have prevented disqualification due to severance payments, you **should** have waited until after severance was completely paid out and received”.

   This is also clearly advice regarding and based on an interpretation of unemployment law. Also, the agent’s “you should have waited” advice was utterly **wrong**. The Unemployment Compensation Review Commission ultimately determined that the so-called “severance payments” were not deductible remuneration but were instead, per the contract, for a valuable release of claims. However, that determination did not happen until *after* an extensive appeals process that was necessitated *by the agent’s erroneous submission to the state*. The above erroneous advice preceded the employer’s refusal to repudiate the erroneous submission prior to any appeals. The erroneous advice was harmful to the employer, to Relator, and to Ohio’s taxpayers. They paid for the time and expenses of state attorneys, judges, and support staff through the appeals process that, again, ultimately determined that the non-attorney agent’s interpretation and advice was and always had been **wrong**.

From Exhibit G:

d. “What was the federal mandate? The Trade Adjustment Assistance Extension Act of 2011 (PL 112-40), Section 252 required that all state unemployment agencies pass legislation [… et cetera]”.

   This is unquestionably an interpretation of unemployment law, regardless of its veracity.

e. “Supplying this information [to the state] is **not** in violation of Section 2. (b) [of the contract between claimant and employer], as neither [employer] nor [company] are opposing his application”.

   This is unquestionably an interpretation of contract language, which is unquestionably a matter of law, not fact.

f. “As a result of our response above this **would** not disqualify him from benefits under 4141.29(D)(2)(a) relating to an individual who quits a job without just

cause. While he may feel this particular portion of the [revised] **code** [of Ohio] fits the parameter for a mutual discharge to be considered a quit, **it does not**. There are two immediate questions that have to be answered first for this to be considered a voluntary quit and this portion of **code** to be considered. [...] Since the answers to these questions are both No, this is considered a DISCHARGE."

This is unquestionably an interpretation of unemployment law, regardless of its veracity.

g. "When a case is determined to be a discharge, the employer has the **burden of proof** to establish that his discharge was for just cause. [...] However, since he was DISCHARGED, the State of Ohio **has to determine** if one of the following occured."

This is unquestionably an interpretation of unemployment law or past department decisions, or both, and regardless of its veracity.

h. "Our response to the State of Ohio would not **disqualify** him from benefits either, as we are not providing any information or proof that his DISCHARGE was for just cause, as **would** be required for a disqualification."

This is unquestionably an interpretation of unemployment law or past department decisions, or both, and regardless of its veracity.

i. "Mr. Freed as the claimant is **required** to report all weekly income, including payments other than wages. In certain cases, the entire amount may be deducted from his benefits. Types of income that may be deductible include: [...] Per his Severance agreement: 2.(a) Three months' of employee's regular base salary as severance pay (less applicable tax and withholding, and paid in accordance with the normal payroll practices) [...] our records indicate that the Severance Pay **would** be enough of a reduction to **disqualify** him for said weeks the Severance Pay is allocated to."

This is unquestionably an interpretation of both unemployment law and the contract. Also, the interpretation was **wrong**. The state determined that the so-called severance pay was not deductible remuneration, again, after a lengthy set of expensive appeals and the employer's retainer of an actual (and expensive PorterWright) attorney.

j. “As for Fagetelli v. Ohio Bur. Of Emp. Serv., 146 Ohio App. 3d275 -- This case is referencing WARN Act payments as a result of an employer failing to provide the required 60 days notice of a plant closure and/or mass layoff. This **has no relation** to his case or separation from [employer].”

   This is unquestionably an interpretation of both a court decision and unemployment law, regardless of its veracity.

k. “Based on his separation with [employer], he **should** be found eligible for benefits”

   This is unquestionably an interpretation of unemployment law, regardless of its veracity.

87. Although reasonable minds can disagree on the exact boundaries of unauthorized practice of law, Respondent Disciplinary Counsel’s bald assertion that the preceding marketing messages, interpretations, and advice *all* “appear to fall squarely within the parameters established by the Court under *Henize*” is preposterously unreasonable, particularly when some of the interpretations were proven wrong. Corporate Cost Control, Inc., and the non-attorney agent Ms. Day indisputably went far beyond marketing their *Henize* competence at conveying facts from employers into the state’s preprinted forms. Their actions indisputably went far beyond such *Henize* conveyance. Accordingly, Counsel cannot reasonably be said to have concluded an investigation of Relator's complaint with a reasonable decision based in applicable law. Counsel has denied Relator’s right to such an investigation. Relator objects to Counsel’s errors and unreasonable decision.

88. **Error #5: Respondent Disciplinary Counsel’s erred by making a decision to not proceed with any of the four counts that was unconscionable.**

89. As Relator conveyed in the instant matter's Complaint, item 17:

> Counsel's failure to appreciate how its unreasonable and arbitrary decision will likely embolden non-attorney agents to delay or preclude worthy claimants' payments is unconscionable. Many such claimants have children who may not eat while the non-attorney agents go home with a paycheck and can thus derive a perverse benefit from protested claims. Very few claimants have the time, money, and energy to appeal while in the midst of trying to get another job. They have very little incentive to continue an appeal after they get another job. Until now, not a single claimant since Henize in 1986 appears to have had the means to prosecute an underlying and root unauthorized practice of law that, in the instant matter, the attorneys and judges in the appeals utterly ignored despite Relator's protests.

90. By making an unconscionable decision, Counsel denied Relator's right to an investigation that ends in a decision that is not unconscionable. Relator objects to Counsel's error and unconscionable decision.

CONCLUSION

91. Clearly, Respondent Disciplinary Counsel's April 11, 2018, decision regarding Relator's October 2017 complaint leaves much to be desired. It also denies Relator his right to an investigation of his complaint that concludes with a decision that is appropriately based in applicable law, is reasonable, is not arbitrary, and is not unconscionable. Counsel's decision fails on all counts. This Court should and must issue a writ that orders Counsel to comply with applicable law.

92. Further, and to preserve the public's respect and trust, this Court should, as Relator asks, order Disciplinary Counsel to identify the source of its false *Henize* quotation to the Columbus Bar Association's Professional Ethics Committee or some similar group. Frankly, something stinks about Counsel's April 11, 2018, decision. Did Counsel even read Relator's complaint, or did Counsel just skim it and wait for Corporate Cost Control's response? Is Counsel's "decision" actually just text copied from Corporate Cost Control's attorney?

93. Counsel's apparent failure to respond to Relator's faxes and follow-ups on April 14, April 19, and April 23, 2018, indicates that Disciplinary Counsel and his office should not be trusted to fully investigate the violations of the Rules of Professional Conduct that surround Counsel's letter of April 11, 2018. Relator has already filed a grievance and a copy of the letter with the Columbus committee. However, attorneys around the state are understandably timid about questioning Disciplinary Counsel and his office. An order that Counsel must identify the source of its false *Henize* quotation will surely go a long ways to preserving the integrity of the profession.

94. When this Court considers the propriety of such an order, this Court need consider little more than Disciplinary Counsel's very recent words in a case where this Court acknowledged that the complained-of attorney's misrepresentation caused no harm to any clients. See the decision and Counsel's brief in *Disciplinary Counsel v. Maciak*, Docket No. 2017-0492, Slip Opinion No. 2018-Ohio-544. In that brief, Counsel conveyed a "purported utter lack of diligence" and argued that "[t]he court

should infer Maciak's willful violation of Prof.Cond.R. 8.4(c)" regarding misrepresentation", and that "to do otherwise would ... diminish the integrity of our profession."

95. What about Counsel's misrepresentation in a matter where a worthy claimant was harmed and what Counsel's refusal to act implies to non-attorney agents? Who will care, please, about worthy claimants who pay premiums with their labor and who do not have money and years of time to appeal wrongful interpretations?

96. I have no attorney, understandably, because attorney representation was and is prohibitively expensive in matters such as this, and attorneys are loath to provide the type of limited counsel that this Court's rules permit. I have a family who deserves my time and attention, and now, roughly three years after my claim, I am exhausted. True, I have prosecuted this matter in selfish pursuit of compensation for damages, but it is a mistake to think my alleged damages are all that is at stake in this matter. It will be shameful if this Court cannot see how this present matter is a counterpoint to this Court's optimistic view in *Henize*. An employer placed its faith in a non-attorney agent and company that "work with ODJFS", the non-attorney agent's wrongful interpretation of law led to a denial of due process, and the reviewing trial court failed to remedy that denial. What is going to prevent that from happening again and again and again to worthy claimants? Certainly mere *Henize* optimism will not.

Respectfully submitted,

/s "Jonathan D. Freed"

VERIFICATION AND AFFIDAVIT

STATE OF OHIO)
FRANKLIN COUNTY)

I, Jonathan D. Freed, having been duly cautioned and sworn, do hereby depose, state, and aver that (**1**) I am the relator in this action; that (**2**) I have read all of (**a**) my *VERIFIED COMPLAINT FOR A WRIT OF MANDAMUS* also filed this day, (**b**) the Exhibit #1 (attached to the complaint), which is a true copy of the letter, dated April 11, 2018, I received from the Office of Disciplinary Counsel (except that the actual name of a Ms. "Jane Doe" has been blanked out), (**c**) my *MEMORANDUM IN SUPPORT OF THE WRIT,* (**d**) and the full text of all of the decisions and other texts referenced within the complaint and memorandum; that (**3**) I have truly and faithfully represented all of the referenced texts to the best of my ability; that (**4**) all of my statements, averments, declarations, and representations of fact in the complaint, the memorandum, and the October 2017 complaint I submitted to Disciplinary Counsel are true to the best of my knowledge and belief and supported by sufficient and credible evidence consisting of others' writing and not just, for example, self-serving averments; that (**5**) I understand that attributing an apparent violation of Rule of Professional Conduct 8.4 to Disciplinary Counsel is a very serious matter; that (**6**) frankly, I am scared of the power that Disciplinary Counsel wields that is, generally speaking, based in well-deserved respect; that (**7**) I am utterly astounded and perplexed by the pertinent misrepresentation in Disciplinary Counsel's letter; and that (**8**) I have never made a complaint like this before and would certainly not be doing so now if I had not received a unanimous decision from an initially very skeptical Fourth District panel in the separate action that preceded and underlies the instant action, as well as spoken on-the-record compliments regarding my reasoning in matters unrelated to this one from officials in public settings such as Ohio Casino Control Commission Chairwoman Betty D. Montgomery and Justice Judith L. French, who was then a judge with the Tenth District Court of Appeals. I beg that this Court, which is probably even more skeptical than were the members of that Fourth District panel, gives the instant action due consideration and, to the extent that Disciplinary Counsel may be considered a sort of "judicial officer" of this Court, that this Court keeps the last sentence of Gov.Bar R. IV Section 2 in mind, which regards a "serious complaint of a judicial officer" and is this: "These charges should be encouraged and the person making them should be protected." Please provide such protection.

Further Affiant sayeth naught.

Jonathan D. Freed, 16993 Duncan Dr, Glouster, Ohio, 45732

Sworn to and subscribed in my presence this 2nd day of May, 2018:

Notary Public

TAMANNA CHOWDHURY - NOTARY PUBLIC
COMM EXP JUL 8, 2019
STATE OF OHIO