

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

07 - 1481

DAYTON BAR ASSOCIATION, :
 :
 Relator, :
 :
 v. :
 :
 RICKY L. STEWART, et al., :
 :
 Respondents. :

CASE NO. UPL 06-04

FINAL REPORT

I. PROCEDURAL BACKGROUND

On May 12, 2006 Relator Dayton Bar Association filed its Complaint against Respondents Ricky L. Stewart, a Certified Public Accountant, and Ricky L. Stewart, C.P.A., Inc. The Complaint alleged that Mr. Stewart individually and through Ricky L. Stewart, C.P.A., Inc., provided legal advice and prepared legal documents for third parties for the formation of business entities in the State of Ohio. On May 31, 2006 Respondents filed their Answer, and on June 15, 2006 their Amended Answer. The answers generally deny Relator's allegations.

On April 25, 2007 Relator and Respondents filed a Stipulation, Exhibit List, with exhibits, and Joint Waiver of Hearing pursuant to Gov. Bar R. VII(7)(H).

FILED
AUG 10 2007
CLERK OF COURT
SUPREME COURT OF OHIO

II. FINDINGS OF FACT

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

1. Relator is a bar association whose members include attorneys-at-law practicing primarily in Montgomery County, Ohio, as well as the surrounding counties. Relator is authorized to pursue this action against Respondents under Rule VII of the Supreme Court of Ohio Rules for the Government of the Bar.

2. Respondent Ricky L. Stewart is a Certified Public Accountant who resides and works in the State of Ohio.

3. Respondent Ricky L. Stewart, C.P.A., Inc. is an organization that was formerly recognized as a corporation under Ohio law. In 2002, the incorporation of Respondent Ricky L. Stewart, C.P.A., Inc. was canceled by the Ohio Secretary of State.

4. Respondent Ricky L. Stewart continues to operate an accounting business as an individual and through Respondent Ricky L. Stewart, C.P.A., Inc.

5. Respondent Ricky L. Stewart is not and never has been an attorney admitted to practice, granted active status or certified to practice law in the State of Ohio pursuant to the Supreme Court of Ohio Rules for the Government of the Bar.

6. Respondent Ricky L. Stewart is not and has never been an attorney admitted to practice law in any state in the United States of America.

7. During the years 1994 through the date of the Complaint, Respondent Ricky L. Stewart, individually and through Respondent Ricky L. Stewart, C.P.A., Inc., rendered legal services on at least 82 occasions in the State of Ohio for a fee.

8. In addition to their stipulations, the parties submitted an Exhibit List and 82 exhibits. The exhibits include Articles of Incorporation, Articles of Organization and/or Certificates of Dissolution for 80 business entities. Each of the exhibits contains the name of Respondents' client and is dated. The parties have stipulated that the exhibits are a sample of documents pertaining to clients represented by Respondents in the State of Ohio from 1994 to the present for which Respondents have provided legal advice regarding the formation or dissolution of a business. The parties have also agreed that all such exhibits are admissible for purposes of any and all matters regarding this case.

9. The facts regarding the legal services provided by Respondent Ricky L. Stewart, individually and through Respondent Ricky L. Stewart, C.P.A., Inc., to the businesses identified in the exhibits are as follows:

- a. Respondent Ricky L. Stewart researched legal issues relating to the requirements to incorporate a business under Ohio law in preparation for providing legal advice and drafting the necessary legal documents to incorporate businesses for the clients identified in the exhibits;
- b. Respondent Ricky L. Stewart provided legal advice to the clients identified in the exhibits about the requirements to form and dissolve a corporate entity under Ohio law;
- c. Respondent Ricky L. Stewart prepared and filed legal documents with the Ohio Secretary of State necessary to incorporate, organize and dissolve the businesses identified in the exhibits, including Articles of Incorporation, Articles of Organization and Certificates of Dissolution* ; and
- d. Respondents received a fee for the legal services provided to the clients identified in the exhibits, ranging from \$250.00 to \$650.00, said fees also included any and all accounting information and filings with the requisite tax entities, both local and federal.

10. Respondent Ricky L. Stewart admits that, while acting individually and through Respondent Ricky L. Stewart, C.P.A., Inc., he provided legal advice, and prepared and filed various legal documents for the formation and dissolution of corporate entities for clients that hired him, though he was unaware of the fact that this was unlawful.

* Although the Certificates of Dissolution appear to utilize a form provided by the Ohio Secretary of State, the parties have stipulated that Respondents provided legal advice regarding the dissolutions.

11. Respondent Ricky L. Stewart, admits that, while acting individually and through Respondent Ricky L. Stewart, C.P.A., Inc., he engaged in the unauthorized practice of law in the State of Ohio.

12. Relator seeks, and Respondents do not oppose, an Order consistent with these stipulated facts as follows:

- A. Respondents have engaged in the unauthorized practice of law in the State of Ohio.
- B. Unless Respondent Ricky L. Stewart becomes an attorney licensed to practice law in Ohio, he will not provide legal advice or counseling to any person or business, will not prepare any legal documents for the incorporation, organization or dissolution of a business in Ohio, and will not otherwise engage in the practice of law.
- C. Respondent Ricky L. Stewart agrees that he and his company, Respondent Ricky L. Stewart, C.P.A., Inc., have ceased and will not re-engage in the conduct referenced in the Stipulation and the Complaint as follows:
 - i. Respondents will not in any way prepare or file any legal documents relating to the formation or dissolution of a business under Ohio law, including, but not limited to, Articles of Incorporation, Articles of Organization, Bylaws, Shareholder Agreements, and Certificates of Dissolution.
 - ii. Respondents will not provide legal advice to clients in any way relating to the formation or dissolution of a business.

- iii. In the event that any client of Respondents requests services from Respondents as identified in Paragraphs i. and ii. above, Respondent Ricky L. Stewart will advise the client that he is not licensed to practice law in Ohio and cannot provide legal advice to the client. Respondent Ricky L. Stewart will direct the client to seek the advice of an attorney.
- iv. Respondents will notify in writing, at Respondents' expense, all entities that have been represented by Respondents in Ohio, as identified in the exhibits regarding Respondents' conduct that constituted the unauthorized practice of law. The notification shall include copies of the findings of the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio ("Board"), as well as the final determination rendered by the Supreme Court of Ohio with regard to this case. A copy of such notices shall be forwarded to Relator's counsel.
- v. Respondents are further ordered to pay the costs and expenses of this proceeding.

13. Relator and Respondents agree that the facts contained in their Stipulation are relevant to and dispositive of this matter, and, that by separate pleading, each has waived a hearing in this matter and desires that the matter be submitted to the Board by way of stipulations, exhibits, and pleadings.

14. For purposes of this Stipulation, Relator agreed not to seek civil penalties against Respondents.

III. CONCLUSIONS OF LAW

1. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 617.

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

3. The practice of law is not limited to the conduct of cases in court. It includes the preparation of legal instruments of all kinds and legal advice. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650; See, *Cleveland Bar Assn. v. Misch* (1998), 82 Ohio St.3d 256, 695 N.E.2d 244.

4. A corporation cannot lawfully engage in the practice of the law through an officer who is not a licensed attorney. *Cincinnati Bar Assn. v. Clapp & Affiliates Financial Services, Inc.*, 94 Ohio St.3d 509, 2002-Ohio-1485; *Disciplinary Counsel v. Lawlor*, 92 Ohio St.3d 406, 2001-Ohio-195; *Union Savings Assn. v. Home Owners Aid, Inc.* (1970), 23 Ohio St.2d 60, 52 O.O.2d 329, 262 N.E.2d 558.

5. The Ohio Supreme Court recently considered two cases in which non-lawyer accountants drafted documents establishing business entities for customers. In both cases, the Court found the unauthorized practice of law. See, *Miami Cty. Bar Assn. v. Wyandt & Silvers, Inc.*, 107 Ohio St.3d 259, 2005-Ohio-6430; *Columbus Bar Assn. v. Verne*, 99 Ohio St.3d 50, 2003-Ohio-2463. In *Verne*, the Court noted “[f]or a layperson to draft documents creating a business entity on another’s behalf is unquestionably the unauthorized practice of law.” 2003-Ohio-2463 at ¶ 4.

6. The Panel finds that Respondents Ricky L. Stewart and Ricky L. Stewart, C.P.A., Inc. have engaged in the unauthorized practice of law by researching legal issues, rendering legal advice and by preparing and filing legal documents for others.

IV. RECOMMENDATIONS

1. The Panel recommends that the Supreme Court of Ohio issue an order finding that Respondents Ricky L. Stewart and Ricky L. Stewart, C.P.A., Inc., have engaged in the unauthorized practice of law.

2. The Panel further recommends that the Supreme Court of Ohio issue a further order enjoining Respondent Ricky L. Stewart from engaging in the State of Ohio in the same or similar acts to those described above and from engaging in any other act in the State of Ohio constituting the unauthorized practice of law unless and until (a) Respondent Ricky L. Stewart secures from the Court, or from the highest court of some state, territory or other jurisdictional entity of the United States, a license to practice law and (b) Respondent Ricky L. Stewart registers in accordance with the Rules for the Government of the Bar of Ohio.

3. The Panel further recommends that the Supreme Court of Ohio issue a further order enjoining Respondent Ricky L. Stewart, C.P.A., Inc. from engaging in the State of Ohio in the same or similar acts to those described above and from engaging in any other act in the State of Ohio constituting the unauthorized practice of law.

4. The Panel further recommends that the Supreme Court of Ohio issue a further order enjoining Respondents from in any way preparing or filing any legal documents relating to the formation or dissolution of a business under Ohio law including, but not limited to, Articles

of Incorporation, Articles of Organization, Bylaws, Shareholder Agreements and Certificates of Dissolution.

5. The Panel further recommends that the Supreme Court of Ohio issue a further order enjoining Respondents from providing legal advice to clients in any way relating to the formation or dissolution of a business.

6. The Panel further recommends that the Supreme Court of Ohio issue a further order providing that in the event any client of Respondents requests services from Respondents as identified in paragraphs 4 and 5 above, then Respondent Ricky L. Stewart shall advise the client that he is not licensed to practice law in Ohio and cannot provide legal advice to the client. Respondent Ricky L. Stewart shall direct the client to seek the advice of an attorney.

7. The Panel further recommends that the Supreme Court of Ohio issue a further order directing Respondents to notify in writing, at Respondents' expense, all entities that have been represented by Respondents in Ohio, as identified in the exhibits, regarding Respondents' conduct that constituted the unauthorized practice of law. The notification shall include copies of the findings of the Board, as well as the final determination rendered by the Supreme Court of Ohio regarding this matter. A copy of such notices shall be forwarded to Relator's counsel.

8. The standard for the imposition of civil penalties is set forth in Gov. Bar R. VII(8)(B) which provides:

(B) *Civil Penalties.* The Board may recommend and the Court may impose civil penalties in an amount up to ten thousand dollars per offense. Any penalty shall be based on the following factors:

- (1) The degree of cooperation provided by the respondent 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;

(5) Any other relevant factors.

9. In addition, the Board has promulgated guidelines for the imposition of civil penalties. See UPL Regulation 400. These guidelines require the Board to discuss in its final report to the Supreme Court any of the factors enumerated in Gov.Bar R. VII(8)(B). In its analysis of “other relevant factors,” the Board may consider whether the Relator has sought the imposition of a civil penalty and, if so, the amount sought. UPL Reg. 400(F). In addition, UPL Reg. 400(F) sets forth a series of aggravation and mitigation factors to consider in determining whether, and to what extent, a civil penalty should be imposed.

(3) Aggravation. The following factors may be considered in favor of recommending a more severe penalty:

(a) Whether respondent has previously engaged in the unauthorized practice of law;

(b) Whether respondent has previously been ordered to cease engaging in the unauthorized practice of law;

(c) Whether the respondent had been informed prior to engaging in the unauthorized practice of law that the conduct at issue may constitute an act of the unauthorized practice of law;

(d) Whether respondent has benefited from the unauthorized practice of law and, if so, the extent of any such benefit;

(e) Whether respondent’s unauthorized practice of law included an appearance before a court or other tribunal;

(f) Whether respondent’s unauthorized practice of law included the preparation of a legal instrument for filing with a court or other governmental entity; and

(g) Whether the respondent has held himself or herself out as being admitted to practice law in the State of Ohio, or whether respondent has allowed others to mistakenly believe that he or she was admitted to practice law in the State of Ohio.

(4) Mitigation. The following factors may be considered in favor of recommending no penalty or a less severe penalty:

(a) Whether respondent has ceased engaging in the conduct under review;

- (b) Whether respondent has admitted or stipulated to the conduct under review;
- (c) Whether respondent has admitted or stipulated that the conduct under review constitutes the unauthorized practice of law;
- (d) Whether respondent has agreed or stipulated to the imposition of an injunction against future unauthorized practice of law;
- (e) Whether respondent's conduct resulted from a motive other than dishonesty or personal benefit;
- (f) Whether respondent has engaged in a timely good faith effort to make restitution or to rectify the consequences of the unauthorized practice of law; and
- (g) Whether respondent has had other penalties imposed for the conduct at issue.

Id.

10. Here Respondents have committed the unauthorized practice of law within the State of Ohio on at least 82 occasions between 1994 and the present. Those activities have included the preparation of legal instruments for filing with the Ohio Secretary of State. Respondents' fees ranged from \$250.00 to \$650.00, which included compensation for Respondents' unauthorized practice of law as well as its proper activities.

11. On the other hand, there has been no evidence presented that anyone has suffered harm as a result of Respondents' conduct, and Respondents were unaware that their conduct was improper. Respondents have fully cooperated in Relator's investigation. Respondents have stipulated to the conduct under review and that such conduct constitutes the unauthorized practice of law. They have stipulated to the imposition of an injunction against future unauthorized practice of law. Respondents have ceased engaging in the conduct under review and have agreed not to engage in such conduct in the future. Respondents have agreed to notify each of the clients identified in the exhibits that their conduct was wrongful and to include copies of the determinations of the Board and the Supreme Court of Ohio.

12. There is no question of the seriousness of Respondents' conduct. If not for Respondents' cooperation and Relator's decision not to seek a civil penalty, the Panel would normally recommend the imposition of a substantial penalty. The Panel has, however, determined that some civil penalty is required. The Panel therefore recommends the imposition of a civil penalty of \$8,200.00, which is equal to \$100.00 for each of the 82 stipulated instances of the unauthorized practice of law.

13. The Panel further recommends that the Supreme Court of Ohio require the Respondents Ricky L. Stewart and Ricky L. Stewart, C.P.A., Inc. to reimburse the costs and expenses incurred by the Board and Relator in this matter.

V. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered this matter on July 20, 2007. The Board adopted the findings of fact, and conclusions of law of the Panel. The Board further adopted the recommendations of the Panel, including the recommendation for a civil penalty for the conduct.

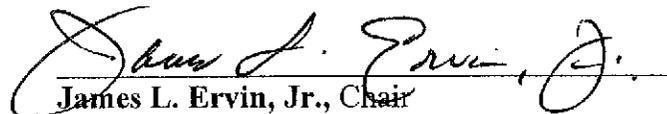
The Board recommends that the Supreme Court of Ohio issue an Order finding that the Respondents have engaged in the unauthorized practice of law.

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

The Board further recommends that the Supreme Court of Ohio impose a total civil penalty of \$8,200.00 against the Respondents and that any costs of these proceedings be taxed to the Respondents in any Order entered, so that execution may issue.

VI. STATEMENT OF COSTS

Attached as Exhibit A is a Statement of Costs and Expenses incurred to date by the Board and Relator in this matter.


James L. Ervin, Jr., Chair
Board on the Unauthorized Practice of Law

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

Exhibit "A"

STATEMENT OF COSTS

Dayton Bar Association v. Ricky L. Stewart, et. al.

Case No. UPL 06-04

Reimbursement to the Dayton Bar Association	\$270.00
TOTAL	\$270.00

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 10th day of August, 2007: Chad E. Burton, Esq., Thompson Hine, LLP, 2000 Courthouse Plaza N.E., P.O. Box 8801, Dayton, OH 45401-8801; William G. Knapp, III, Esq., 800 East Franklin Street, Centerville, OH 45459; Ricky L. Stewart, 4134 Linden Avenue, Dayton, Ohio 45432; Ricky L. Stewart, CPA, Inc., 4134 Linden Avenue, Dayton, OH 45432; Dayton Bar Association, 600 Performance Place, 109 N. Main Street, Dayton, Ohio 45402-1129; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204.


D. Allan Asbury, Secretary of the Board