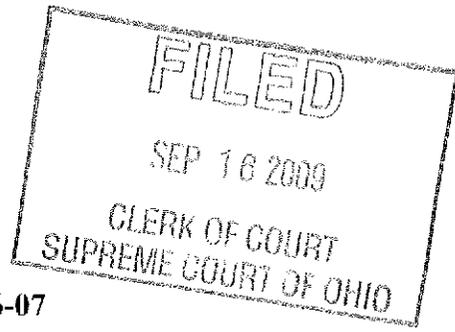


09-1663

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



CINCINNATI BAR ASSOCIATION, :
Relator, :
v. :
STUART JANSEN, ET AL. :
Respondents. :

Case No. UPL 06-07

FINAL REPORT

Proposed Resolution,
Gov.Bar R. VII(5b)

I. PROCEDURAL BACKGROUND

This matter was initiated on or about August 17, 2006, when Relator, the Cincinnati Bar Association, filed a Complaint alleging the unauthorized practice of law against Respondents, Stuart Jansen and American Mediation & Alternative Resolutions ("AMAR"). The Complaint alleges that Respondents engaged in the unauthorized practice of law by attempting to settle a debt on behalf of an Ohio resident who had signed a "Limited Power of Attorney." Respondents filed an Answer on October 6, 2006, which states that Relator and the Board previously sanctioned the procedures alleged in the Complaint.

On October 11, 2006, this matter was assigned to a panel consisting of Kevin L. Williams (Chair), Frank R. DeSantis, and Donald Hunt ("Original Panel"). The Board filed a Case Scheduling Order on November 1, 2006, and the Original Panel Chair conducted an initial telephone status conference on November 13, 2006. Also on November 13, 2006, due to a

conflict, James L. Ervin was appointed to replace Mr. DeSantis on the Original Panel. Relator and Respondents filed their Initial Disclosure of Witnesses on January 3, 2007, and January 5, 2007, respectively. The Board amended its original Case Scheduling Order on January 5, 2007, setting a hearing date of November 1, 2007.

On September 12, 2007, the parties filed a Stipulation and Agreed Order in an effort to settle this matter. Relator filed a Motion to Continue Hearing Date on October 19, 2007. The Motion states that the parties “have reached a full and final settlement of their dispute and are in the process of documenting that settlement in a manner consistent with newly adopted Rule VII(5b).” The Board granted the Motion on October 30, 2007, and cancelled the November 1, 2007, hearing. On February 28, 2008, the parties filed a Stipulation of Facts, Waiver of Notice and Hearing, Consent Decree and Judgment Entry. This filing is identical to the September 12, 2007, Stipulation except that it also contains a waiver of notice and hearing.

The Williams/Hunt/Ervin Panel considered the parties’ filings via teleconference in June 2008. Upon review of the filings, the Williams/Hunt/Ervin Panel determined that the proposed Consent Decree failed to convey an admission by Respondents that the alleged conduct constitutes the unauthorized practice of law. Consistent with this determination, in a letter dated June 13, 2008, the Williams/Hunt/Ervin Panel asked the parties to file a revised consent decree within 60 days.

By June 2009, the parties had yet to file the revised consent decree. Since the terms of Commissioners Hunt and Ervin had since expired, a new panel was appointed on June 2, 2009, consisting of Kevin L. Williams, Chair, Patricia A. Wise, and Kenneth A. Kraus (“New Panel”). On June 4, 2009, the parties filed a revised Stipulation of Facts, Waiver of Notice and Hearing,

Consent Decree and Judgment Entry. The New Panel considered this filing during a teleconference on June 29, 2009.

Upon review, the New Panel determined that the revised Consent Decree complied with the Williams/Hunt/Ervin Panel's request to include an admission that the alleged conduct constitutes the unauthorized practice of law. However, the New Panel had two issues with the revised Consent Decree and in a letter dated June 30, 2009, asked the parties to rectify these issues and file another consent decree by August 3, 2009. Specifically, the Panel objected to the lack of a discussion of the civil penalty factors of Gov.Bar R.VII(8) and the inclusion of language requiring the parties to "remediate [a] violation by agreement prior to seeking judicial intervention." The New Panel was concerned this "remediation" provision conflicted with Gov.Bar R. VII(5b)(E) and public policy.

On July 30, 2009, the Board granted a telephone request for an extension of time to file the revised consent decree. The Board set a new due date of August 17, 2009. On August 17, 2009, the parties filed a revised but marked-up Stipulation of Facts, Waiver of Notice and Hearing, Consent Decree and Judgment Entry. The parties filed a "clean," signed version on September 11, 2009.

Upon review of the August 17, 2009, revised Consent Decree, the New Panel determined that it rectifies the concerns delineated in the New Panel's June 30, 2009, letter. The New Panel also agreed to recommend acceptance of the Consent Decree to the Board. As required by Gov.Bar R. VII (5b)(D)(1), this Report sets forth the New Panel's reasons for recommending acceptance of the Consent Decree.

II. FINDINGS OF FACT

A. Relator is a bar association whose members include attorneys practicing law in Hamilton County, Ohio. Relator, through its Unauthorized Practice of Law Committee, is authorized to pursue this action against Respondents under Gov.Bar R. VII.

B. Respondent Jansen is a resident of Hamilton County, Ohio, and is the Managing Director of the Cincinnati, Ohio, office of AMAR, an unincorporated association doing business in Hamilton County. (Stipulation ¶ C).

C. AMAR and its local representatives, including Jansen, offer to the general public to use, as a neutral party, both mediation and nonbinding arbitration to resolve disputes between adverse parties. (Stipulation ¶ D).

D. In late 2004 or early 2005, Ronald J. Solomon, D.D.S., Inc. ("Solomon") retained the services of Karen Comisar Prescott ("Prescott"), an Ohio Attorney located in Hamilton County, to assist him in the collection of a delinquent account in the principal amount of \$2,411,82 owed by one of Solomon's patients, Gina Baer ("Baer"). (Stipulation ¶ E).

E. After Prescott contacted Baer in an attempt to collect the debt, Baer engaged the services of Respondents and asked them to respond to Prescott's communication. (Stipulation ¶ F).

F. On January 31, 2005, at Jansen's request, Baer executed a "Limited Power of Attorney" pursuant to which Baer appointed AMAR as her attorney-in-fact to "mediate creditors' claim(s) and to effect a reasonable settlement with... Ronald J. Solomon, D.d.s., Inc. (sic)." Jansen also executed the Limited Power of Attorney on behalf of AMAR. (Stipulation ¶ G; Complaint, Exhibit A).

G. On February 1, 2005, Jansen sent a letter to Prescott in which he offered on behalf of Baer to settle Solomon's \$2,411.82 claim for a lump sum payment, in cash, of \$1,300 based on: (1) Baer's apparent dissatisfaction with the professional services rendered by Solomon; (2) allegedly false statements made by Solomon's office personnel concerning the availability to Baer of insurance coverage for the services rendered; and (3) Baer's distressed financial condition. (Stipulation ¶ H; Complaint, Exhibit B).

H. Since February 1, 2005, Jansen, on behalf of other clients of the Respondents, has sent to other creditors or their representatives at least seven similar letters in which Jansen raised possible defenses or mitigation to the validity of the amount, or both, of the creditor's claim and, on that basis, has offered on behalf of the Respondents' client to settle the claim for less than the full amount. (Stipulation ¶ I).

I. Respondents are not attorneys admitted to practice, granted active status, or certified to practice law in Ohio pursuant to Gov.Bar R. I, II, VI, IX, or XI.

J. Relator contends, and Respondents agree, that the letters and related communications described above constitute the unauthorized practice of law by Respondents under Gov.Bar R. VII. (Stipulation ¶ J).

III. CONCLUSIONS OF LAW

A. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 617; *Judd v. City Trust & Sav. Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288. Accordingly, the Court has exclusive jurisdiction over the regulation of

the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, Slip Opinion No. 2009-Ohio-3508, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

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

C. “The practice of law includes ‘making representations to creditors on behalf of third parties, and advising persons of their rights, and the terms and conditions of settlement.’” *Cincinnati Bar Assn. v. Telford* (1999), 85 Ohio St.3d 111, 113, 707 N.E.2d 462, 464, quoting *Cincinnati Bar Assn. v. Cromwell* (1998), 82 Ohio st.3d 255, 256, 695 N.E.2d 243, 244. It follows that the unauthorized practice of law occurs when a nonattorney negotiates collection claims with creditors on behalf of debtors. *Cincinnati Bar Assn. v. Foreclosure Solutions, L.L.C.*, Slip Opinion No. 2009-Ohio-4174; citing *Ohio State Bar Assn. v. Kolodner et al.*, 103 Ohio St.3d 504, 2004-Ohio-5581, 817 N.E.2d 25; *In re Ferguson* (Bankr.N.D. Ohio 2005), 326 B.R. 419. Negotiating the interests of others in settlement negotiations is also the unauthorized practice of law. *Disciplinary Counsel v. Robson*, 116 Ohio St.3d 318, 2007-Ohio-6460.

D. Respondents engaged in the unauthorized practice of law by negotiating with creditors on behalf of debtors in an attempt to settle delinquent claims.

IV. PRINCIPAL TERMS OF CONSENT DECREE

A. Respondents shall cease and desist from sending on behalf of any client of Respondents located in the state of Ohio any correspondence, email message, memorandum, or any other written or oral communication to any creditor of such client which communication disputes or otherwise calls into question the validity or amount of the creditor’s claim against

such client (except only to the extent any such creditor has or may have incorrectly computed the amount of its claim then due).

B. Respondents shall not otherwise represent debtors in Ohio by advising, counseling, or negotiating resolution of their debts with creditors or creditors' counsel and shall not otherwise engage in the unauthorized practice of law.

C. Respondents shall not be assessed the costs of this matter pursuant to Gov.Bar R. VII (8)(A).

D. Respondents shall not be subject to the civil penalties authorized by Gov.Bar R. VII (8)(B).

V. PANEL ANALYSIS

A. Review of Proposed Consent Decree Using Factors in Gov.Bar R. VII (5b)(C)

When evaluating a proposed resolution, in this case a consent decree, the Board is required to consider the factors set forth in Gov.Bar R. VII(5b). The New Panel reviewed the parties' proposed resolution using the factors stated in Section 5b and made the following determinations:

1. The proposed resolution is submitted in the form of a consent decree;
2. Respondents admit the material allegations of the unauthorized practice of law as stated in the Complaint;
3. The public is sufficiently protected from future harm as Respondents agree not to represent, advise, or counsel debtors. Respondents also agree not to negotiate on behalf of debtors or send communications that dispute or otherwise question the validity of a creditor's claim.

4. Respondents agree to cease and desist all activities that constitute the unauthorized practice of law;

5. The Consent Decree resolves material allegations of the unauthorized practice of law as it contains admissions by Respondents and Respondents acknowledge that the conduct in question constitutes the unauthorized practice of law;

6. Since Gov.Bar R. VII(5b)(H) requires that all consent decrees approved by the Court be recorded for reference, the Consent Decree furthers public policy and the purposes of Gov.Bar R. VII by putting the public on notice that attorneys must negotiate settlements on behalf of debtors, not nonattorney mediators.

Based upon these findings, the New Panel recommended that the Proposed Consent Decree be considered and approved by the Board.

B. Applicability of Civil Penalties Based on Factors in Gov.Bar R. VII (8)(B) and UPL Reg. 400

When determining whether to recommend that the Supreme Court impose civil penalties in an unauthorized practice of law case, the Board is required to base its recommendation on the factors set forth in Gov.Bar R. VII (8)(B) and UPL Reg. 400(F). Additionally, UPL 400(F)(4) specifies mitigating factors the Board may use to justify a recommendation of no civil penalty or a less severe penalty. Because Relator does not recommend a civil penalty in this case, the New Panel considered both the general civil penalty factors and the mitigating factors and its analysis is described below.

1. General Civil Penalty Factors

In regard to the general civil penalty factors listed in Gov.Bar R. VII (8)(B)(1)-(5) and UPL Reg. 400(F)(1) and (2), the Panel made the following determinations:

- a. Respondents cooperated fully with Relator's investigation in this matter;
- b. Although Respondents admit eight occurrences of the unauthorized practice of law, the record does not contain any evidence of flagrancy or specific harm to third parties;
- c. Relator has not sought the imposition of a civil penalty;
- d. While Respondents' business activities at the time of the Complaint included activities that constitute the unauthorized practice of law, there is no evidence that Respondents have continued these activities. Therefore, pecuniary punishment contrary to Relator's recommendation is not appropriate and would not further the purposes of Gov.Bar R. VII.

2. Mitigating Civil Penalty Factors

Applying the mitigating factors of UPL Reg. 400(F)(4)(a)-(g), which are the basis for a recommendation of no civil penalty or a less severe penalty, the New Panel made the following determinations:

- a. The record fails to indicate that the conduct at issue has continued;
- b. Respondents admit all of the allegations stated in the Complaint and further admit to an additional seven occurrences of negotiating with creditors on behalf of debtors in an attempt to settle delinquent claims;
- c. Respondents admit their conduct constitutes the unauthorized practice of law;
- d. Respondents agree to the imposition of an injunction against future unauthorized practice of law;

e. The record fails to contain any evidence of a dishonest motive by Respondents;

f. Respondents have not had other penalties imposed for the conduct at issue.

3. Conclusion Regarding Civil Penalties

Based upon these findings, and absent any aggravating factors, the New Panel agreed with Relator that civil penalties are not warranted in this case.

VI. BOARD RECOMMENDATION

As indicated previously, the Board formally considered this matter on August 27, 2009. By majority vote, the Board adopted the findings of fact and conclusions of law of the Panel. Also by majority vote, the Board adopted all of the recommendations of the Panel. Due to the conflict referenced earlier in this Report, Chair Frank R. DeSantis recused himself and did not participate in the Board's deliberations or vote.

The Board hereby recommends that the Court approve the Consent Decree in the form submitted by the parties (Exhibit "A") and issue the appropriate order as specified in Gov. Bar R. VII(E)(2).

VII. STATEMENT OF COSTS

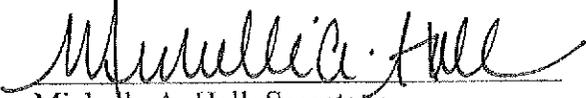
Attached as Exhibit "B" is a statement of costs and expenses incurred to date by the Board and Relator in this matter.

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

 *Vice-Chair*
Kenneth A. Kraus, Vice-Chair
(Acting due to the recusal of the Chair)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 10th day of September 2009: American Mediation & Alternative Resolutions, 9475 Kenwood Road, Suite 9, Cincinnati, Ohio 45242; Stuart Jansen, 9475 Kenwood Road, Suite 9, Cincinnati, Ohio 45242; Geoffrey Stern, Kegler, Brown, Hill & Ritter, Suite 1800, 65 E. State Street, Columbus, Ohio 43215-4294; Louis F. Solimine, Suite 1400, 312 Walnut Street, Cincinnati, Ohio 45202, Maria Palermo, Cincinnati Bar Association, The Cincinnati Bar Center, 225 East Sixth Street, Cincinnati, Ohio 45202; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215.


Michelle A. Hall, Secretary
Board on the Unauthorized Practice of Law

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

CINCINNATI BAR ASSOCIATION :

Relator, :

-vs- :

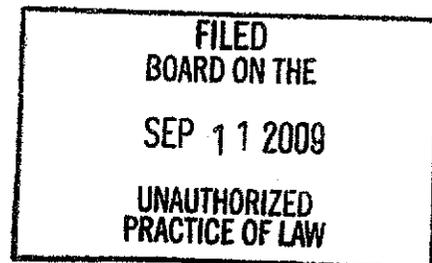
STUART JANSEN :

CASE NO. UPL 06-07

and :

**AMERICAN MEDIATION & ALTERNATIVE
RESOLUTIONS** :

Respondents. :



**STIPULATION OF FACTS, WAIVER OF NOTICE AND
HEARING, CONSENT DECREE AND JUDGMENT ENTRY**

THIS STIPULATION OF FACTS, WAIVER OF NOTICE AND HEARING,
CONSENT DECREE AND JUDGMENT ENTRY concerning the Cincinnati Bar Association
(the "Relator"), and Stuart Jansen ("Jansen") and American Mediation & Alternative Resolutions
("AMAR" and, together with Jansen, the "Respondents") is as follows:

A. WHEREAS, the Relator is a bar association whose members include attorneys practicing law in Hamilton County, Ohio; and

B. WHEREAS, the Relator, through its Unauthorized Practice of Law Committee, is authorized, pursuant to Gov. Bar R. VII, to investigate and file complaints with the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio regarding claims of the unauthorized practice of law; and

C. WHEREAS, Jansen is a resident of Hamilton County, Ohio and is the Managing Director of the Cincinnati, Ohio office of AMAR, an unincorporated association doing business in Hamilton County, Ohio; and

D. WHEREAS, AMAR and its local representatives, including Jansen, offer to the general public to use, as a neutral party, both mediation and nonbinding arbitration to resolve disputes between adverse parties; and

E. WHEREAS, in late 2004 or early 2005 Ronald J. Solomon, D.D.S., Inc. ("Solomon") retained the services of Karen Comisar Prescott ("Prescott"), an Ohio attorney located in Hamilton County, to assist him in the collection of a delinquent account in the principal amount of \$2,411.82 owed by one of Solomon's patients, Gina Baer ("Baer"); and

F. WHEREAS, after Prescott contacted Baer in an attempt to collect the debt, Baer engaged the services of the Respondents and asked them to respond to Prescott's communication; and

G. WHEREAS, on January 31, 2005, at Jansen's request, Baer executed a Limited Power of Attorney, a copy of which is attached to the Complaint which the Relator filed in this proceeding on August 17, 2006 (the "Complaint") as Exhibit A, pursuant to which Baer appointed AMAR as her attorney-in-fact to "mediate creditors' claim(s) and to effect a reasonable settlement with . . . Ronald J. Solomon, D.d.s., Inc." (sic); Jansen also executed the Limited Power of Attorney on behalf of AMAR; and

H. WHEREAS, on February 1, 2005 Jansen sent a letter to Prescott, a copy of which is attached to the Complaint as Exhibit B, in which he offered on behalf of Baer to settle Solomon's \$2,411.82 claim for a lump sum payment, in cash, of \$1,300 based on: (1) Baer's apparent dissatisfaction with the professional services rendered by Solomon; (2) allegedly false

statements made by Solomon's office personnel concerning the availability to Baer of insurance coverage for the services rendered; and (3) Baer's distressed financial condition; and

I. WHEREAS, since February 1, 2005 Jansen, on behalf of other clients of the Respondents, also has sent to other creditors or their representatives at least seven similar letters in which Jansen raised possible defenses or mitigation to the validity or the amount, or both, of the creditor's claim and, on that basis, has offered on behalf of the Respondents' client to settle the claim for less than the full amount; and

J. WHEREAS, the Relator contends, and the Respondents agree, that the letters and related communications described above constitute the unauthorized practice of law by the Respondents under Gov. Bar. R. VII; and

K. WHEREAS, in order to eliminate the need for contentious, costly and time-consuming litigation of their dispute, the outcome of which is uncertain, and to amicably settle their disagreements and differences, the Relator and the Respondents have agreed to enter into this Stipulation and Agreed Order; and

L. WHEREAS, Relator and Respondents hereby waive notice of and a hearing before the Board of Commissioners.

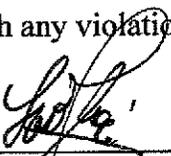
NOW, THEREFORE, it hereby is agreed, decreed and ordered that:

1. The Respondents permanently shall cease and desist from sending on behalf of any of client of the Respondents located in the State of Ohio any correspondence, email message, memorandum or any other written or oral communication to any creditor of such client which communication disputes or otherwise calls into question the validity or amount of the creditor's claim against such client (except only to the extent any such creditor has or may have incorrectly computed the amount of its claim then due).

2. The Respondents shall not otherwise "represent debtors in Ohio by advising, counseling or negotiating resolution of their debts with creditors or creditors' counsel" (per *Ohio State Bar Assn. v. Kolodner* (2004), 103 Ohio St. 504, 2004-Ohio-5581) and shall not otherwise engage in the unauthorized practice of law.

3. The Relator hereby withdraws its demand for civil penalties against the Respondents for the reasons that: the Respondents have fully cooperated with the Relator with respect to its investigation; the number of occasions on which the Relator claims the Respondents engaged in the unauthorized practice of law is small (eight); the violations were not flagrant; and it does not appear that any third parties suffered significant harm as the result of the Respondents' activities. The Relator also shall not seek reimbursement from the Respondents for the Relator's legal fees or expenses incurred in connection with this proceeding, provided the Respondents comply and remain in compliance with the terms hereof.

4. The Relator expressly reserves all of its rights and remedies in connection with any violation hereof by the Respondents.

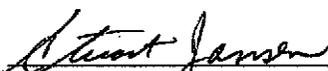


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(513) 352-6700
Counsel for Relator

SO ORDERED:

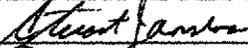
BOARD OF COMMISSIONERS OF THE
UNAUTHORIZED PRACTICE OF LAW OF
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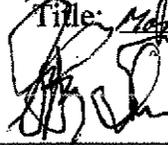
By: _____
596295.8



Stuart Jansen

AMERICAN MEDIATION &
ALTERNATIVE RESOLUTION

By: 

Title: Managing Director - Cincinnati


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

Exhibit "B"

STATEMENT OF COSTS

Cincinnati Bar Assn. v. Stuart Jansen, et al.

Case No. UPL 06-07

To date, no expenses have been incurred.