

ORIGINAL

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

**OHIO STATE BAR ASSOCIATION,** :

10-0151

Relator, :

Case No. UPL 09-04

v. :

**FINAL REPORT**

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

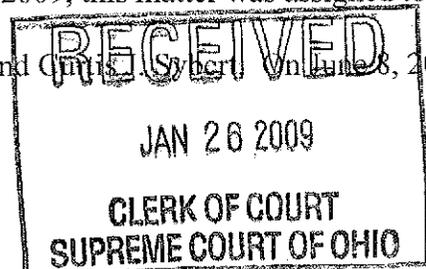
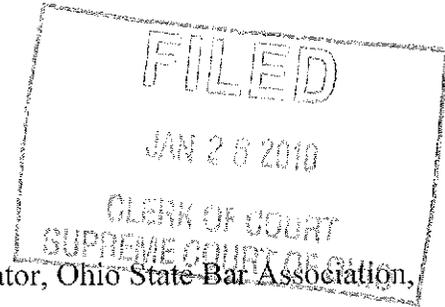
**APPRAISAL RESEARCH  
CORPORATION, ET AL.,** :

Respondents. :

**I. PROCEDURAL BACKGROUND**

This matter was initiated on May 8, 2009, when Relator, Ohio State Bar Association, filed a complaint alleging the unauthorized practice of law against Respondents, Appraisal Research Corporation ("ARC"), Sue Maag, and Richard H. Hoffman. Respondents conduct appraisals pursuant to contracts with Ohio counties. The Complaint states that Respondents engaged in the unauthorized practice of law at county board of revision hearings by conducting the hearing, examining witnesses, "defending" appraisals, administering oaths, and rendering advice concerning hearing procedure.

On June 4, 2009, Relator and Respondents jointly filed a Motion for Consent Decree, Stipulations, and Proposed Consent Order. Also on June 4, 2009, this matter was assigned to a panel consisting of James W. Lewis (Chair), John P. Sahl, and Curtis Sybert. On June 8, 2009, Relator filed a Recommendation Concerning Civil Penalty.



The Panel considered the parties' filings via teleconference on June 30, 2009, and found that the parties' proposed resolution was not "submitted in the form of a consent decree" as specified in Gov.Bar R. VII(5b)(C)(1). In a letter dated June 30, 2009, the Panel asked the parties to refile their proposed resolution in the proper form by August 3, 2009. On September 8, 2009, the parties filed a revised Proposed Consent Decree. Subsequently, the Panel reviewed the revised Proposed Consent Decree and agreed to recommend its acceptance to the Board.

At its meeting on November 20, 2009, the Board formally considered this matter. By a majority vote, the Board granted the parties' Motion for Consent Decree and recommended acceptance of the September 8, 2009, Proposed Consent Decree. However, the Board conditioned its recommendation of acceptance upon the parties making two revisions to the September 8, 2009, Proposed Consent Decree. By a letter dated November 24, 2009, the Board notified the parties of its decision and requested that a second revised consent decree be filed by December 18, 2009. On January 13, 2010, in response to the Board's letter, the parties filed a second revised Proposed Consent Decree. Upon receipt of the January 13, 2010, Proposed Consent Decree, the Board verified that the parties made the revisions requested in the Board's November 24, 2009, letter.

As required by Gov.Bar R. VII(5b)(D)(1), this Report sets forth the Board's reasons for recommending that the Court approve the January 13, 2010, Proposed Consent Decree.

## **II. FINDINGS OF FACT**

A. Relator is a bar association whose members include attorneys admitted to the practice of law in Ohio and who practice throughout Ohio. Through its Unauthorized Practice of

Law Committee, Relator is authorized by Gov.Bar R.VII to file a complaint with the Board.

Under this authority, Relator filed the Complaint in the present case.

B. Respondent ARC provides appraisal services throughout Ohio pursuant to contracts with county auditors. These appraisal services include the support of property values before county boards of revision. (Stipulations ¶¶ 2, 8, 9.)

C. Respondent Hoffman is an individual residing in Ohio. During the period relevant to the matter under review, Hoffman was both the owner and an employee of ARC. (Stip. ¶ 3.)

D. Respondent Maag is an individual residing in Ohio. During the period relevant to the matter under review, Maag was an employee of Respondent ARC. (Stip. ¶ 4.)

E. 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. (Stip. ¶ 6.)

F. During the relevant periods of the matter under review, Respondents were not employees of any auditor of any county in Ohio. (Stip. ¶ 7.)

G. In addition to performing appraisal duties required under their contracts with county auditors, Respondents presided over board of revision hearings (notwithstanding the presence of board of revision members), “defended” their appraisals, examined witnesses, administered oaths, and rendered advice concerning hearing procedure. (Stip. ¶ 10, Stip. Exh. A.)

H. Respondents acted with a good faith belief that their conduct was permitted under Ohio Adm. Code 5703-25-08. (Stip. ¶ 11.)

I. Respondents state that they did not receive any direct benefit from the conduct under review. Respondents may have received an indirect benefit through better customer relations. (Stip. ¶¶ 15, 16.)

### 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.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

B. The unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice, granted active status, or certified to practice law in Ohio pursuant to Gov.Bar R. I, II, VI, IX, or XI.

C. “[T]he practice of law includes conducting cases in court, preparing and filing legal pleadings and other papers, appearing in court cases, and managing actions and proceedings on behalf of clients before judges, whether before courts or administrative agencies.” *Cleveland Bar Assn. v. Coats*, 98 Ohio St.3d 413, 2003-Ohio-1496, 786 N.E.2d 449, ¶ 3; citing *Richland Cty. Bar Assn. v. Clapp* (1998), 84 Ohio St.3d 276, 278, 703 N.E.2d 771; *Cincinnati Bar Assn. v. Estep* (1995), 74 Ohio St.3d 172, 173, 657 N.E.2d 499.

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

E. With limited exception, a corporation may not give legal advice to another, directly or indirectly, through its employees or attorney employees. *Judd* at 88, 12 N.E.2d at 291-2.

F. R.C. 5715.02 creates county boards of revision to hear property valuation complaints. A board of revision is comprised of the county treasurer, county auditor, and the president of the county commissioners. *Id.* These officials may appoint one qualified employee to serve on separate hearing boards that also hear property valuation complaints. *Id.* R.C. 5715.02, however, does not authorize boards of revision to appoint individual hearing examiners. As part of their property valuation duties, members of county boards of revision and appointed hearing boards may administer oaths. *Id.*

G. Under Ohio Adm.Code 5703-25-08(E), a county auditor may employ professional appraisal firms. If a county employs a professional appraisal firm, the firm must provide a “responsible and competent employee” to provide a support of property values before the board of revision. Ohio Adm.Code 5703-25-08(F)(4). For purposes of reappraisals, employees of the appraisal firm are appointed deputies of the county auditor and also act as agents of the firm. Ohio Adm.Code 5703-25-08(F)(8).

H. Pursuant to R.C. 5715.19, a corporate officer may present the value of property before a board of revision on behalf of the corporation “as long as the officer does not make legal

arguments, examine witnesses, or undertake any other tasks that can be performed only by an attorney.” *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. Of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852, 856 N.E.2d 926, at ¶ 32.

I. In the context of administrative proceedings before the Bureau of Workers’ Compensation and the Industrial Commission, the Supreme Court of Ohio has ruled that nonattorneys may offer general assistance to parties as long as the activities “do not require the specialized training and skill of an attorney” and are permitted by established agency procedure. *Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, at paragraph two of the syllabus.

J. In the case at hand, Respondents were not presenting the value of property as a corporate officer or providing general assistance in compliance with established administrative procedure. Instead, Respondents exceeded their authority as appraisers to support property value determinations and became advocates for the county. Respondents’ advocacy included defending their appraisals, examining witnesses, and rendering advice concerning the applicable hearing procedure. These activities go beyond the general assistance permitted at times in the administrative setting and require specialized legal training and skill. Respondents’ representation of multiple interests in board of revision hearings is also troublesome. Respondents acted as witnesses for the support of property values in county board of revision hearings while simultaneously serving as advocates and de facto hearing examiners for the counties. These actions demonstrate the “divided loyalties” the Supreme Court seeks to address in its regulation of the unauthorized practice of law.

K. Respondents engaged in the unauthorized practice of law at county board of revision hearings by defending their appraisals, examining witnesses, and rendering legal advice concerning hearing procedure.

**IV. PRINCIPAL TERMS OF REVISED CONSENT DECREE**

A. Respondents are permanently enjoined from defending their appraisals at board of revision hearings, examining witnesses at such hearings, rendering legal advice, and otherwise engaging in the unauthorized practice of law.

B. Respondents are ordered to notify in writing the auditor of each of the Ohio counties that employed one or more of Respondents to provide services to the county's board of revision that, by engaging in the conduct at issue, Respondents engaged in the unauthorized practice of law. Respondents are also required to deliver to Relator's counsel a copy of each such notice.

C. Respondents shall be assessed any and all 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 September 8, 2009, 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)(C). The Panel reviewed the parties' September 8, 2009, Proposed Consent Decree using the factors stated in Section 5b(C) and made the following determinations:

1. The parties' 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 have agreed to cease the conduct described in the Complaint, and to notify each county auditor for which Respondents provided services that Respondents engaged in the unauthorized practice of law;
4. Respondents have agreed to be permanently enjoined from engaging in all activities that constitute the unauthorized practice of law;
5. The Proposed Consent Decree resolves material allegations of the unauthorized practice of law as it contains specific admissions by Respondents;
6. Because Gov.Bar R. VII(5b)(H) requires that all consent decrees approved by the Court be recorded for reference, the Proposed Consent Decree furthers public policy and the purposes of Gov.Bar R. VII by putting the public on notice of the appropriate role of an appraiser for the county in a property valuation hearing;
7. The parties' collaborative efforts to resolve this matter resulted in a cessation of Respondents' unauthorized practice of law and allowed Relator to conserve prosecutorial resources without jeopardizing public protection. This collaboration furthers the purposes of Gov.Bar. R. VII, prevents protracted litigation, and is consistent with the Supreme Court's approach to case resolution set forth in S.Ct.Prac.R. XIV(6).

Based upon the foregoing analysis, the Panel found that the September 8, 2009, Proposed Consent Decree satisfies the requirements of Gov.Bar R. VII(5b)(C) and recommended that the Proposed Consent Decree be considered by the Board.

Due to inaccurate statements concerning the unauthorized practice of law in the Proposed Consent Decree and a typographical error, the Panel also recommended that the parties make two revisions to the Proposed Consent Decree. Under R.C. 5715.02, nonattorney board of revision and appointed hearing board members may preside over hearings and administer oaths. Despite this provision, the September 8, 2009, Proposed Consent Decree states that presiding over board of revision hearings and administering oaths constitute the unauthorized practice of law. Because Respondents were not members of county boards of revision or related hearing boards, they were not statutorily-authorized to preside over property valuation hearings or administer oaths in such hearings. Presiding over property valuation hearings and administering oaths, however, do not fall within the definition of the unauthorized practice of law in Gov.Bar R. VII(2)(A), which is the “rendering of legal services for another.” Accordingly, the Panel recommended that the Board ask the parties to remove the statements in the Proposed Consent Decree that presiding over hearings and administering oaths constitute the unauthorized practice of law. The Panel also suggested that the Board ask the parties to correct a typographical error identified in paragraph six of the Proposed Consent Decree. The Panel further recommended that the Board accept the Proposed Consent Decree conditioned upon the parties’ compliance with these requests for revision.

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

When determining whether to recommend the imposition of civil penalties in an unauthorized practice of law case, the Board is required to base its recommendation on the general factors set forth in Gov.Bar R. VII(8)(B) and UPL Reg. 400(F)(1) and (2). Additionally, UPL Reg. 400(F)(3) lists the aggravating factors the Board may consider in recommending a more severe penalty, and UPL Reg. 400(F)(4) specifies mitigating factors the Board may use to justify a recommendation of no civil penalty or a less severe penalty. The Panel's analysis of the general, aggravating, and mitigating civil penalty factors is set forth below.

1. General Civil Penalty Factors

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

- a. Respondents cooperated with the investigation and resolution of these proceedings;
- b. Although only one specific occasion of the unauthorized practice of law was referred to Relator for investigation, multiple instances occurred over a period of time;
- c. The record fails to contain any evidence of flagrancy or an ongoing pattern of conduct with specific intent to avoid the regulation of the practice of law;
- d. The record fails to contain any evidence of harm to third parties.

2. Aggravating Civil Penalty Factors

The aggravating factors listed in UPL Reg. 400(F)(3)(a)-(g) may cause the Board to recommend a more severe civil penalty than proposed by Relator. The Panel identified

two aggravating factors in this case. First, Respondents potentially benefited from their unauthorized practice of law by receiving compensation for their appraisal services and an “indirect benefit through better customer relations.” (Stip. ¶¶ 15, 16); see UPL Reg. 400(F)(3)(d). It is possible that Respondents offered to conduct board of revision hearings when negotiating their county contracts and received additional compensation for this service. However, Respondents have only stipulated to receiving “no direct personal benefit” and an “indirect benefit through better customer relations.” (Stip. ¶¶ 15, 16). Without further stipulations or other evidence in the record concerning the terms of Respondents’ county contracts or the specific number of hearings Respondents conducted, the Panel was unable to determine the amount of direct financial benefit Respondents received, if any, from their conduct.

Second, Respondents' conduct occurred before boards of revision, which are administrative tribunals. See UPL Reg. 400(F)(3)(e). It appears, however, that Respondents were authorized to appear at county board of revision hearings and provide support of property values for the county auditor. Ohio Adm.Code 5703-25-08(F)(4). While Respondents impermissibly expanded their role as witness to that of advocate, Respondents had a good faith belief that their conduct was permitted by contract and Ohio Adm.Code 5703-25-08. Additionally, Respondents ceased the conduct once Relator notified them of its investigation, and the conduct had not been questioned beforehand.

3. Mitigating Civil Penalty Factors

Applying the mitigating factors of UPL Reg. 400(F)(4)(a)-(g), which the Board may use to support a recommendation of no civil penalty or a less severe penalty, the Panel made the following findings:

- a. Respondents have ceased engaging in the conduct under review;
- b. Respondents have admitted the conduct under review and that the conduct constitutes the unauthorized practice of law;
- c. Respondents have agreed to the imposition of an injunction against future unauthorized practice of law;
- d. Respondents' conduct resulted from a motive other than dishonesty and Respondents acted with a good faith belief that the conduct under review was permitted under their county contracts and Ohio Adm. Code 5703-25-08;
- e. Respondents have agreed to rectify the consequences of their unauthorized practice of law by providing written notification to the counties to which they provided services;
- f. Respondents have not had other penalties imposed for the conduct under review.

4. Conclusion Regarding Civil Penalties

Relying on the above analysis, the Panel found that the favorable general civil penalty factors and the multiple mitigating factors applicable in this case, especially Respondents' cooperation and good faith belief that their conduct was permitted by

contract and Ohio Adm.Code 5703-25-08, outweigh the presence of multiple occurrences, speculative financial benefit, and appearances before administrative tribunals. Accordingly, the Panel agreed with Relator that civil penalties are not warranted in this case. Consistent with the Proposed Consent Decree, the Panel recommended that all direct costs of this matter be charged to Respondents.

**VI. PANEL RECOMMENDATION**

The Panel recommended that the Board ask the parties to remove the references to “presiding over hearings” and “administering oaths” in the Proposed Consent Decree and correct the typographical error identified in paragraph six. Conditioned upon the execution of these revisions, the Panel further recommended that the Board accept the Proposed Consent Decree and file it with the Supreme Court pursuant to Rule VII(5b)(E).

**VII. BOARD RECOMMENDATION**

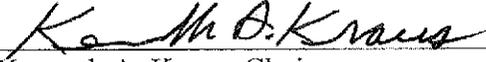
As indicated previously, the Board formally considered this matter on November 20, 2009. By majority vote, the Board adopted the findings of fact and conclusions of law of the Panel. Also by majority vote, the Board adopted all of the recommendations of the Panel, including conditional approval of the September 8, 2009, Proposed Consent Decree.

On January 13, 2010, the parties filed a revised Proposed Consent Decree that complies with the Board’s requests for revision. Accordingly, the Board hereby recommends that the Court approve the January 13, 2010, revised Proposed Consent Decree in the form submitted by the parties (Exhibit “A”) and issue the appropriate order as specified in Gov.Bar R. VII(5b)(E)(2).

**VIII. STATEMENT OF COSTS**

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

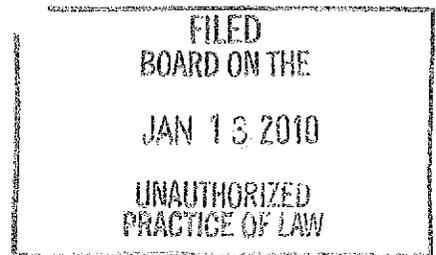
**FOR THE BOARD ON THE UNAUTHORIZED  
PRACTICE OF LAW**

  
\_\_\_\_\_  
Kenneth A. Kraus, 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 20th day of January 2010: Ralph D. Russo, 101 West Sandusky Street, Findlay, Ohio 45840; Appraisal Research Corp., 101 East Sandusky Street, Findlay, Ohio 45849; Richard H. Hoffman, 101 East Sandusky Street, Findlay, Ohio 45849; Sue Maag, 101 East Sandusky Street, Findlay, Ohio 45849; John N. MacKay, Shumaker, Loop & Kendrick LLP, North Courthouse Square, 1000 Jackson, Toledo, Ohio 43604-5573; Eugene Whetzel, Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio 43216; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Findlay-Hancock County Bar Association, 220 West Hardin Street, Findlay, Ohio 45840.

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



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

In the matter of:

Ohio State Bar Association

Case No. UPL 09-04

Relator,

v.

**PROPOSED CONSENT DECREE**

Appraisal Research Corporation, et al.,

Respondents.

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By and through their respective counsel, Relator and Respondents hereby request the approval by the Board of Commissioners on the Unauthorized Practice of Law and the Supreme Court of Ohio of the following proposed consent.

1. Respondent, ARC provides appraisal services to counties throughout Ohio, specifically to County auditors.
2. In addition to duties described in ¶1, Respondents ARC, Hoffman, and Maag assumed, with the consent of the Boards of Revision, duties to “defend” ARC’s appraisals at hearings of Boards of Revision, to examine witnesses at such hearings, and to render advice concerning the conduct of such hearings.
3. Respondents admit the conduct described in ¶2, and that the conduct described in ¶2 constitutes the unauthorized practice of law. Respondents state that they acted with a good faith belief that this conduct was proper pursuant to the provisions of OAC § 5703-25-08, *supra*.
4. Respondents have ceased the conduct described in ¶2, have agreed not to engage in such conduct in the future, and have consented to the imposition of an injunction against future unauthorized practice of law.
5. Relator’s position is that no penalty be imposed, and the Board so recommends.

6. Respondents, and their respective successors and assigns, agents, members, officers, representatives and employees are permanently enjoined from defending their appraisals at hearings, examining witnesses at such hearings, rendering legal advice, and otherwise engaging in the unauthorized practice of law.

7. Respondents are ordered to notify in writing the auditor of each of the counties in Ohio that employed one or more of Respondents to provide services to its Board of Revision that, by engaging in the prohibited conduct, Respondents engaged in the unauthorized practice of law and to deliver to Relator's counsel a copy of each such notice.

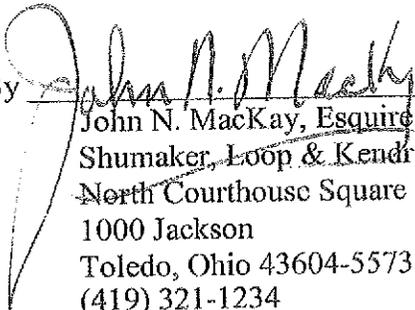
8. Respondents are hereby ordered to reimburse the Board and Relator their costs and expenses in this matter.

9. Respondents are hereby ordered to pay costs.

10. No civil penalty is imposed.

Approved and Respectfully Submitted,

On Behalf Of Relator,  
The Ohio State Bar Association

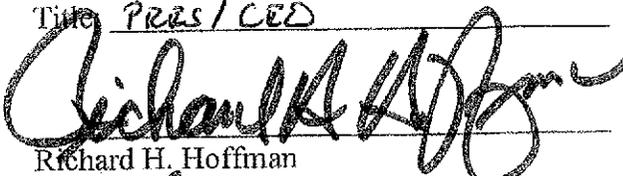
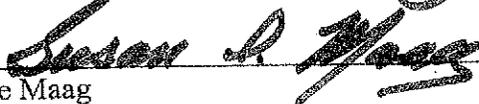
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Counsel for Appraisal Research Corporation, Richard H. Hoffman, and Sue Maag

Appraisal Research Corporation  
By:   
Name: RICHARD H. HOFFMAN  
Title: PRES / CEO  
  
Richard H. Hoffman  
  
Sue Maag

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

**STATEMENT OF COSTS**

*Ohio State Bar Association v. Appraisal Research Corporation, et al.*

Case No. UPL 09-04

To date, no expenses have been incurred.