

ORIGINAL

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

10-0794

CINCINNATI BAR ASSOCIATION,

Relator,

v.

TERRY SERSHION

and

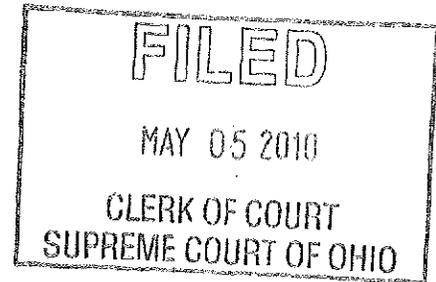
FIDUCIARY ONE, L.L.C.,

Respondents.

Case No. UPL 10-02

**FINAL REPORT**

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



**I. PROCEDURAL BACKGROUND**

This matter was initiated before the Board on the Unauthorized Practice of Law (“Board”) on or about February 2, 2010, when Relator, the Cincinnati Bar Association, filed a Complaint alleging the unauthorized practice of law against Respondents Terry Sershion and Fiduciary One, L.L.C. Respondent Sershion is a licensed public insurance adjuster authorized to negotiate real or personal property insurance claims pursuant to R.C. 3951.01. The Complaint states that Respondents engaged in the unauthorized practice of law by negotiating a “claim for bodily injury to a minor arising out of a motor vehicle accident,” which is outside the scope of R.C. 3951.01.

The Complaint was accompanied by Stipulated Findings of Fact and Conclusions of Law and a Proposed Consent Decree filed jointly by the parties on February 2, 2010. Also on February 2, 2010, Relator filed a Memorandum Regarding Waiver of Civil Penalty. On

February 24, 2010, Respondents filed an Answer admitting all of the allegations contained in the Complaint. On March 5, 2010, the Board Secretary assigned this matter to a hearing panel consisting of Commissioners James W. Lewis (Chair), Scott B. Potter, and Kevin L. Williams.

The Panel considered the parties' filings via teleconference on March 30, 2010. While the Panel was generally satisfied with the filings, it determined that the Proposed Consent Decree lacked a specific description of Respondents' prohibited conduct and failed to allocate costs and state whether a civil penalty would be imposed. In a letter dated April 5, 2010, the Panel therefore asked the parties to file a revised proposed consent decree that incorporates the parties' stipulations and addresses civil penalties and costs. On April 14, 2010, the parties filed an Amended Proposed Consent Decree.

At an April 21, 2010, meeting of the Board, the Panel presented its written report in this matter in accordance with Gov.Bar R. VII(5b)(D)(1). The Panel Report recommended acceptance of the Amended Proposed Consent Decree. After review of the Panel Report and deliberation, the Board voted to recommend that the Supreme Court of Ohio approve the April 14, 2010, Amended Proposed Consent Decree.

As required by Gov.Bar R. VII (5b)(D)(1), this Report will set forth the Board's reasons for recommending that the Court approve the parties' Amended Proposed Consent Decree.

## **II. FINDINGS OF FACT**

A. In their Answer filed on February 24, 2010, Respondents admit all of the allegations contained in the Complaint.

B. Relator is a bar association whose members include attorneys admitted to the practice of law in Ohio and who practice throughout Ohio. Relator is duly authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in

Ohio. (Stipulated Findings of Fact and Conclusions of Law, Amended Proposed Consent Decree [hereinafter “Stip.”], ¶ 1.)

C. Respondent Sershion is an individual and sole member of Respondent Fiduciary One, L.L.C., a limited liability company organized under the laws of Ohio. (Stip. ¶ 2.)

D. Respondent Sershion individually and as the sole member of Respondent Fiduciary One, L.L.C., held himself out as being able to negotiate and settle insurance claims including claims for bodily injury and extracontractual damages or “bad faith.” (Stip. ¶ 3.)

E. Respondent Sershion is an Ohio licensed public insurance adjuster. (Stip. ¶ 4, Complaint ¶ 4.)

F. Respondents have never been admitted to the practice of law in Ohio or any other state. (Stip. ¶ 5.)

G. In and after October 2007, Respondents attempted to negotiate the settlement of a claim for bodily injury to one Ohio resident, a minor, arising out of a motor vehicle accident. Respondents negotiated the claim on behalf of the minor and the minor’s parents. (Stip. ¶ 6, Comp. ¶ 9.)

H. Respondent Sershion published an advertisement on the internet in which he purports to have expertise in the resolution of claims for “bad faith.” (Stip. ¶ 7.)

I. Shortly after the commencement of formal discovery in this matter, Respondent Sershion agreed to cease and desist from activities constituting the unauthorized practice of law. (Stip. ¶ 8.)

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

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

D. The Supreme Court of Ohio has “repeatedly held that nonlawyers engage in the unauthorized practice of law by attempting to represent the legal interests of others and advise them of their legal rights during settlement negotiations.” *Cincinnati Bar Assn. v. Foreclosure Solutions, L.L.C.*, 123 Ohio St.3d 107, 2009-Ohio-4174, 913 N.E.2d 982, ¶ 25; citing *Disciplinary Counsel v. Brown*, 121 Ohio St.3d 423, 2009-Ohio-1152, 905 N.E.2d 163, ¶ 17; *Disciplinary Counsel v. Robson*, 116 Ohio St.3d 318, 2007-Ohio-6460, 878 N.E.2d 1042, ¶ 10; *Cleveland Bar Assn. v. Henley* (2002), 95 Ohio St.3d 91, 92, 766 N.E.2d 130; *Akron Bar Assn. v. Bojonell* (2000), 88 Ohio St.3d 154, 724 N.E.2d 401; *Cleveland Bar Assn. v. Moore* (2000), 87 Ohio St.3d 583, 722 N.E.2d 514.

E. The practice of law includes the negotiation and settlement of claims of bodily injury and the giving of legal advice. *Cincinnati Bar Assn. v. Fehler-Schultz* (1992), 64 Ohio

St.3d 452, 597 N.E.2d 79; *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E.2d 650; *Bar Assn. of Greater Cleveland v. Brunson* (1973), 37 Ohio Misc. 61, 304 N.E.2d 250.

F. Under R.C. 3951.01(B), public insurance adjusters may “[act] on behalf of or [aid] in any manner, an insurer or insured or another in negotiating for, or effecting the settlement of a claim or claims for loss or damage *under any policy of insurance covering real or personal property...*” (Emphasis added.)

G. Public insurance adjusters may not engage in activities outside the scope of R.C. 3951.01(B) which constitute the unauthorized practice of law. In addition to the general unauthorized practice of law prohibitions contained in Gov.Bar R. VII, R.C. 3951.08 provides that a public insurance adjuster shall not “make any misrepresentations of facts or advise any insured or insurer on any question of law or perform any service constituting the practice of law.” R.C. 3951.08 also prohibits public insurance adjusters from “advis[ing] any insured or insurer to refrain from retaining counsel to protect his or its interest.”

H. “Bad faith” in the context of insurance law is a claim involving an insured’s legal interests, as it is a tort action by which an insurer may be held “liable for its actions in administering or adjusting a claim.” 14 Russ & Segalla, *Couch on Insurance* (3 Ed.2005) § 204:3. Damages in a bad faith claim are “for sums of money other than amounts owed under the express terms of the [insurance] contract.” *Id.* at § 204:4. Accordingly, such damages are referred to as “extracontractual damages.” *Id.*

I. Respondents held themselves out as authorized to render legal services by indicating they were able to negotiate and settle insurance claims for bodily injury, bad faith, and extracontractual damages, and that they had expertise in the resolution of claims for bad faith.

Bodily injury, bad faith, and extracontractual damages claims impact upon the legal interests of insureds, and therefore constitute the unauthorized practice of law if pursued by nonattorneys on the insured's behalf. Such claims are also outside the scope of practice of public insurance adjusters set forth in R.C. 3951.01(B), which only permits the negotiation and settlement of claims arising under real or personal property insurance policies.

J. Respondents engaged in the unauthorized practice of law in violation of Gov.Bar R. VII by presenting and negotiating a bodily injury claim on behalf of a minor and the minor's parents in and after October 2007. Respondents' conduct is also outside the statutory scope of practice of public insurance adjusters set forth in R.C. 3951.01(B) and strictly prohibited by R.C. 3951.08.

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

**IV. PRINCIPAL TERMS OF CONSENT DECREE**

A. Respondents and their successors and assigns, officers, members, agents, representatives, and employees are permanently enjoined from advertising, soliciting, or marketing advice regarding claims for personal injury.

B. Respondents and their successors and assigns, officers, members, agents, representatives, and employees are permanently enjoined from providing legal services or legal advice to Ohio residents or otherwise engaging in the unauthorized practice of law in Ohio.

C. Respondents shall be assessed 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. ANALYSIS

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

Pursuant to Gov.Bar R. VII(5b)(D), both the hearing panel and the Board are required to evaluate the consent decree using the factors set forth in Gov.Bar R. VII(5b)(C). In this instance, the Panel made the following findings:

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 have agreed to cease the conduct described in the Complaint and modify their website;
4. Respondents have agreed to be permanently enjoined from engaging in all activities that constitute the unauthorized practice of law;
5. The Amended 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 Amended Proposed Consent Decree furthers public policy and the purposes of Gov.Bar R. VII by placing consumers on notice that the scope of practice of public insurance adjusters is limited by unauthorized practice of law and statutory prohibitions;

7. The parties' collaborative efforts to resolve this matter resulted in Respondents' agreement to cease the 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 discussion, the Panel found that the Amended Proposed Consent Decree complies with Gov.Bar R. VII(5b) and recommended that it be accepted 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 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). Additionally, UPL Reg. 400(F)(3) lists the aggravating factors the Board may consider in recommending a more severe penalty, and UPL 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 conducted the initial analysis of the civil penalty factors as set forth below.

1. General Civil Penalty Factors

With 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 found:

- a. Respondents cooperated with the investigation and resolution of these proceedings;

b. Respondents committed a single unauthorized practice of law violation;

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;

e. Relator states that Respondents did not experience a discernable financial gain as a result of the conduct under review.

2. 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 found:

a. Respondents have agreed to cease 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 any future unauthorized practice of law;

d. By agreeing to modify their website to explicitly state that Respondents are not lawyers and do not offer legal advice, Respondents are making a good faith effort to address any potential misrepresentations caused by the statements made on their website;

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

3. Aggravating Civil Penalty Factors

The aggravating factors listed in UPL Reg. 400(F)(3) can justify the recommendation of a more severe civil penalty. Upon review of the parties' filings and the record in this case, the Panel was unable to identify the presence of any aggravating factors.

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 in the investigation and settlement, agreement to be enjoined from any future unauthorized practice of law, and agreement to modify their website support Relator's waiver of a civil penalty recommendation. The Panel agreed with Relator that civil penalties are not warranted in this case and that all direct costs of this matter be charged to Respondents.

**VI. PANEL RECOMMENDATION**

As stated in the "Analysis" section of this Final Report, the Panel recommended that the Board accept the parties' April 14, 2010, Amended Proposed Consent Decree.

**VII. BOARD RECOMMENDATION**

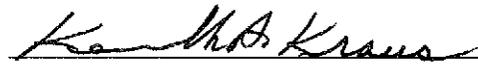
The Board formally considered this matter on April 21, 2010. By majority vote, the Board adopted the Panel's findings of fact and conclusions of law, consent decree and civil penalty analysis, and recommendation that the Amended Proposed Consent Decree be accepted and submitted to the Supreme Court for approval. Accordingly, the Board hereby recommends

that the Court approve the April 14, 2010, Amended 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**

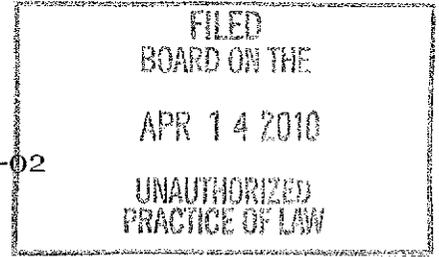
  
\_\_\_\_\_  
Kenneth A. Kraus, Chair

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 5<sup>th</sup> day of May 2010: George D. Jonson, Montgomery, Rennie & Jonson, 36 E. Seventh St., Suite 2100, Cincinnati, Ohio 45202; Terry Serhion, 9641 Kelly Dr., Loveland, Ohio 45140; Fiduciary One, L.L.C., 9641 Kelly Dr., Loveland, Ohio 45140; Albert T. Brown, Jr., 1014 Vine St., Suite 2350, Cincinnati, Ohio 45202-1156; Maria C. Palermo, Cincinnati Bar Association, 225 E. Sixth St., 2<sup>nd</sup> Fl., Cincinnati, Ohio 45202; 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.

  
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 : Case No. UPL 10-02  
Relator :  
vs. :  
TERRY A. SERSHION : **AMENDED PROPOSED**  
FIDUCIARY ONE, LLC : **CONSENT DECREE**  
Respondents :  
:

Pursuant to Rule VII, Section 5b, Supreme Court Rules for Government of the Bar of Ohio, Relator, Cincinnati Bar Association, and Respondent, Terry A. Sershion, Fiduciary One, LLC, request that the following Consent Decree be approved by this Board and the Supreme Court of Ohio:

**Stipulated Findings of Fact and Conclusions of Law:**

Relator and Respondent respectfully stipulate to the following findings of fact and conclusions of law:

1. Relator, Cincinnati Bar Association, is duly authorized to investigate and prosecute activities which may constitute the unauthorized practice law in the State of Ohio.
2. Respondent, Terry A. Sershion, is an individual and sole member of Fiduciary One, LLC, a Limited Liability Company organized under the laws of Ohio.
3. Respondent Sershion individually and as the sole member of Fiduciary One, LLC held himself out as being able to negotiate and settle insurance claims for including claims for bodily injury and extra-contractual damages or "bad faith".

4. Respondent Sershion is an Ohio licensed public insurance adjuster.
5. Respondent Sershion has never been admitted to the practice of law in Ohio or any other state.
6. These proceedings identified one Ohio resident for whom respondent attempted to negotiate the settlement of a claim for bodily injury. In that matter Respondent Sershion engaged in the negotiation of a claim for bodily injury to a minor arising out of a motor vehicle accident.
7. Sershion published an advertisement on the internet claiming to have expertise in the resolution of claims for “bad faith”.
8. Shortly after the commencement of formal discovery in the within matter, Respondent Sershion agreed to cease and desist from activities constituting the unauthorized practice of law.
9. 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, 27 OBR 447, 501 N.E.2d 617.
10. 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).
11. The practice of law includes the negotiation and settlement of claims of bodily injury, *Cincinnati Bar Ass’n v. Fehler-Schultz* (1992), 64 Ohio St.3d 452, 597 N.E.2d 79, and the giving of legal advice. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650.

12. Ohio's licensed public insurance adjuster statute, R.C. 3951.01 et seq., only permits public adjusters to represent clients in claims for loss or damage under a policy of insurance covering real or personal property.

13. Respondent's presentation of claims of bodily injury under liability policies is the unauthorized practice of law. The assertion of claims for extra-contractual damages under other policies of insurance would also be the unauthorized practice of law.

14. Respondent Sershion's presentation of a claim on behalf of the minor Maria Ventre and her parents in and after October 2007 constituted the unauthorized practice of law.

15. Each of the above acts is found to constitute the unauthorized practice of law and is based upon specific evidence or an admission that contains sufficient information to demonstrate the specific activities upon which the conclusions are drawn in compliance with Gov.Bar R. VII(7)(H); and *Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, at ¶24-26.

### **Waiver of Civil Penalty**

For the following reasons, Relator recommends that civil penalties not be issued in this case:

1. Relator's investigating counsel reports to the Board that he received an initial inquiry from counsel to an insurance company regarding Respondent's involvement as the presenter of a claim for injury to a minor arising out of a motor vehicle accident. Relator's Investigative counsel sought further information from the

individuals upon whose behalf Respondent was allegedly functioning. Repeated contacts to these persons produced no response and no cooperation.

2. Relator's investigating counsel also presented inquiry to the Ohio Department of Insurance under whose authority Respondent exercised the privileges of a licensed Ohio Insurance Public Adjustor. The organization conducted its own confidential investigation and did not find any issues regarding Respondent's conduct. The Department of Insurance did not sanction or penalize Respondent.

3. Counsel reviewed references to other matters described on Respondent's web site and found that Respondent's claims of expertise had been applied to matters in which he was involved as a party or where he was functioning in a non-litigation capacity, asserting claims arising under first party policies of insurance on property. These activities are within the scope of his authority as a licensed Ohio Public Insurance Adjustor.

4. Upon commencement of formal Discovery in the instant case, Respondent contacted counsel for Relator and timely responded to documentary discovery requests. Respondent promptly retained counsel who has confirmed that only one instance of representation of bodily injury claim has arguably occurred and that Respondent will cease and desist all other activities constituting the Unauthorized Practice of Law.

5. Respondent has also agreed to modify his company web site so that it explicitly states that he is not a lawyer and does not offer legal advice.

6. In view of Respondent's cooperative attitude, the lack of any discernible financial gain, and the absence of cooperation by the involved "client," Relator does not recommend the imposition of a Civil Penalty.

**Consent Decree**

Based on the foregoing, the following decree is proposed:

1. By negotiating claims for bodily injury and soliciting employment in the negotiation of claims for extra contractual damages in Ohio, Terry Sershion and his alter ego, Fiduciary One LLC, engaged in the unauthorized practice of law.
2. Terry Sershion and Fiduciary One LLC, its successors and assigns, officers, members, agents, representatives, and employees are permanently enjoined from advertising, soliciting, or marketing advice regarding claims for personal injury.
3. Terry Sershion and Fiduciary One LLC, its successors and assigns, officers, members, agents, representatives, and employees are permanently enjoined from providing legal services or legal advice to Ohio residents or otherwise engaging in the unauthorized practice of law in the State of Ohio.
4. A civil penalty will not be imposed in this matter. Respondent to bear all costs.

**Relator, Cincinnati Bar Association:**

BY: Brian N. Stretcher  
Brian N. Stretcher  
Chairman, Unauthorized Practice  
Of Law Committee

AND: Albert T. Brown, Jr.  
Albert T. Brown, Jr. (0015355)  
1014 Vine Street, Suite 2350  
Cincinnati, Ohio 45202-1156  
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Facsimile: 513-621-2823  
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**Respondent Terry A. Sershion  
Fiduciary One, LLC:**

BY:   
Terry A. Sershion, Member

AND:   
George D. Jonson, Esq.  
MONTGOMERY, RENNIE & JONSON  
*Counsel for Respondent Terry A.  
Sershion, Fiduciary One, LLC*  
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**BOARD ON THE UNAUTHORIZED PRACTICE OF LAW  
OF  
THE SUPREME COURT OF OHIO**

**STATEMENT OF COSTS**

*Cincinnati Bar Association v. Terry Serhion and Fiduciary One, L.L.C.*

Case No. UPL 10-02

Reimbursement to the Cincinnati Bar Association

Warren County Sheriff's Office Invoice # 22207	36.42
<u>Warren County Sheriff's Office Invoice # 22272</u>	<u>18.42</u>
<b>Total:</b>	<b>\$54.84</b>

In accordance with Gov.Bar R. VII(19)(F), there will also be publication costs incurred once the Supreme Court enters its order in this case.