

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

ORIGINAL

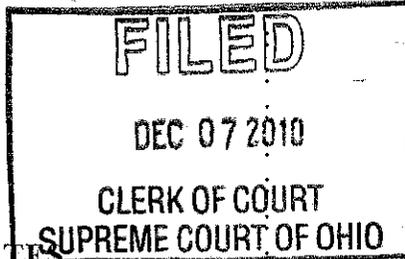
DISCIPLINARY COUNSEL,

Relator,

v.

JOSEPH-MARIO SPATES,

Respondent.



10-2121

Case No. UPL 10-04

FINAL REPORT

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

I. PROCEDURAL BACKGROUND

This matter was initiated on or about May 24, 2010, when Relator, Disciplinary Counsel, filed a Complaint alleging the unauthorized practice of law against Respondent, Joseph-Mario Spates. Respondent is employed as a bankruptcy petition preparer (BPP) pursuant to 11 U.S.C.S. § 110 and operates a business called "Bankruptcy for Less" in Youngstown, Ohio. The nine-count Complaint states that Respondent engaged in the unauthorized practice of law by giving legal advice, preparing court documents for debtors beyond the initial bankruptcy petition, and providing debtors with samples of court documents to be relied upon for drafting documents to be filed in bankruptcy court.

Respondent was served with the Complaint on June 24, 2010, and filed an Answer on July 14, 2010. In his Answer, Respondent admits all of the allegations in counts one through nine of the Complaint. On July 15, 2010, this matter was assigned to a panel consisting of N. Victor Goodman (Chair), C. Michael Walsh, and Brian L. Katz. On August 20, 2010, Relator

filed a Motion to Submit the Consent Decree of Relator and Respondent, which includes a proposed Consent Decree executed by the parties.

The Panel considered the Consent Decree during a teleconference on September 20, 2010, and agreed to recommend its acceptance to the Board. At its meeting on November 5, 2010, the Board formally considered this matter. By a majority vote, the Board granted the parties' Motion to Submit the Consent Decree and recommended acceptance of the Consent Decree. 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 August 20, 2010, Consent Decree.

II. FINDINGS OF FACT

The Consent Decree sets forth the following "Agreed Facts:"

A. Relator is duly authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in Ohio.

B. Respondent is a natural person whose address is 2733 Market Street, Youngstown, Ohio 44507. (Agreed Facts ["A.F."] ¶ 1.)

C. Respondent is not an attorney in the State of Ohio admitted pursuant to Gov.Bar R. I, registered pursuant to Gov.Bar R. VI, or certified pursuant to Gov.Bar R. II, Gov.Bar R. IX, or Gov. Bar R. XI. (A.F. ¶ 2.)

D. Since 1990, Respondent has been employed as a bankruptcy petition preparer (BPP), pursuant to 11 U.S.C.S. § 110. (A.F. ¶ 3.)

E. Respondent operates his BPP business under the business name "Bankruptcy for Less" at his office located at 6 West Federal Plaza, Youngstown, Ohio 44503. (A.F. ¶ 4.)

F. Respondent's business name may represent to the public that he can provide legal representation in bankruptcy cases for less than the usual cost. (A.F. ¶ 5.)

G. Respondent is the sole employee of “Bankruptcy for Less.” (A.F. ¶ 6.)

H. Respondent solicits clients through his website, newspaper ads, and referrals offering his services as an inexpensive alternative to the high cost of bankruptcy attorney fees. (A.F. ¶ 7.)

I. Pursuant to 11 U.S.C.S. § 110, respondent’s authorized activity as a BPP is limited to typing information provided by the debtor/petitioner onto a bankruptcy petition “form” created by the bankruptcy court that the debtor/petitioner may then file in the bankruptcy court pro se. (A.F. ¶ 8.)

J. Since October 31, 2005, the presumptive maximum allowable fee that a BPP may charge to prepare a bankruptcy petition in the United States Bankruptcy Court for the Northern District of Ohio has been \$125. U.S.Bankr.Ct.Rules N.D. Ohio, Order 05-3. (A.F. ¶ 9.)

K. Pursuant to 11 U.S.C.S. § 110, Respondent, as a BPP, is not authorized to give legal advice, prepare court documents for a debtor/petitioner beyond the initial petition, provide a debtor/petitioner with samples of court documents to be relied upon in drafting documents to be filed with the court, or direct the debtor/petitioner to such document samples. The performance of any of these activities by a BPP who is not licensed to practice law constitutes the unauthorized practice of law. (A.F. ¶ 10.)

L. Count 1 – Harris

1. By October 2005, Ruth Harris, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition. (A.F. ¶ 11.)

2. Harris paid Respondent at least \$175 for his services. (A.F. ¶ 12.)

3. During this time, Respondent gave Harris legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, which was filed on October 14, 2005, in the United

States Bankruptcy Court for the Northern District of Ohio under Case No. 05-48762. (A.F. ¶ 13.)

4. During the pendency of the bankruptcy case, Respondent prepared a “notice to amend” for Harris that she filed in her bankruptcy case. (A.F. ¶ 14.)¹

5. At all times relevant to the allegations contained in Count 1, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 15.)

M. Count 2 – Cooper

1. By October 2005, Tammie Cooper, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition. (A.F. ¶ 16.)

2. Cooper paid Respondent at least \$175 for his services. (A.F. ¶ 17.)

3. During this time, Respondent gave Cooper legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, which was filed on October 14, 2005, in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 05-48862. (A.F. ¶ 18.)

4. During the pendency of the bankruptcy case, Respondent prepared a “notice to amend” for Cooper that she filed in her bankruptcy case. (A.F. ¶ 19.)

5. At all times relevant to the allegations contained in Count 2, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 20.)

¹ The Agreed Facts state that Respondent prepared “notices to amend” for seven of the named clients. The Panel speculates these filings were notices to amend the bankruptcy petition, but the record fails to specify which documents the “notices to amend” were meant to address.

N. Count 3 – Richard

1. By January 2006, Eric and Essie Richard, Ohio residents, had hired Respondent to prepare their Chapter 7 bankruptcy petition. (A.F. ¶ 21.)

2. The Richards paid Respondent \$175 for his services. (A.F. ¶ 22.)

3. During this time, Respondent gave the Richards legal advice concerning the filing and litigation of their Chapter 7 bankruptcy case, which was filed on January 31, 2006, in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 06-40080. (A.F. ¶ 23.)

4. During the pendency of the bankruptcy case, Respondent prepared court documents for the Richards that they filed in their bankruptcy case. (A.F. ¶ 24.)

5. As a result of Respondent's UPL activity in the Richard case, on April 14, 2006, the Bankruptcy Court issued an Order enjoining Respondent from acting as a BPP for one year. (A.F. ¶ 25.)

6. At all times relevant to the allegations contained in Count 3, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 26.)

O. Count 4 – Tomlin

1. By September 2007, Dianna Tomlin, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition. (A.F. ¶ 27.)

2. Tomlin paid Respondent \$125 for his services. (A.F. ¶ 28.)

3. At this time, Respondent discussed with Tomlin the legal consequences of Chapter 7 and Chapter 11 bankruptcies and advised her to file a Chapter 7 bankruptcy. (A.F. ¶ 29.)

4. Tomlin accepted Respondent's legal advice. Respondent prepared her bankruptcy petition, and on September 10, 2007, Tomlin filed the Chapter 7 bankruptcy case in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 07-42229. (A.F. ¶ 30.)

5. During the pendency of the bankruptcy case, Respondent continued to give Tomlin legal advice and prepared for Tomlin the following documents that she filed in her bankruptcy case: a "notice to amend," a declaration of Tomlin's schedules, and a motion for extension of time. (A.F. ¶ 31.)

6. At all times relevant to the allegations contained in Count 4, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 32.)

P. Count 5 – Thomson

1. By September 2007, James and Iona Thomson, Ohio residents, had hired Respondent to prepare their Chapter 7 bankruptcy petition. (A.F. ¶ 33.)

2. The Thomsons paid Respondent \$125 for his services. (A.F. ¶ 34.)

3. During this time, Respondent gave the Thomsons legal advice concerning the filing and litigation of their Chapter 7 bankruptcy case, which was filed on September 27, 2007, in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 07-42422. (A.F. ¶ 35.)

4. During the pendency of the bankruptcy case, Respondent prepared for the Thomsons two "notices to amend" and two motions for extension of time that the Thomsons filed in their bankruptcy case. (A.F. ¶ 36.)

5. At all times relevant to the allegations contained in Count 5, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 37.)

Q. Count 6 – Davis

1. By December 2007, Marguerite Davis, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition. (A.F. ¶ 38.)

2. Davis paid Respondent \$125 for his services. (A.F. ¶ 39.)

3. During this time, Respondent gave Davis legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, which was filed on December 19, 2007, in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 07-19578. (A.F. ¶ 40.)

4. During the pendency of the bankruptcy case, Respondent prepared for Davis the following documents that she filed in her bankruptcy case: a motion to withdraw petition, an amended motion to withdraw petition, and a “notice to amend.” (A.F. ¶ 41.)

5. At all times relevant to the allegations contained in Count 6, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 42.)

R. Count 7 – Johnson

1. By January 2008, Harold Johnson, an Ohio resident, had hired Respondent to prepare his Chapter 7 bankruptcy petition. (A.F. ¶ 43.)

2. Johnson paid Respondent \$125 for his services. (A.F. ¶ 44.)

3. During this time, Respondent gave Johnson legal advice concerning the filing and litigation of his Chapter 7 bankruptcy case, which was filed on January 9, 2008, in the United

States Bankruptcy Court for the Northern District of Ohio under Case No. 08-40050. (A.F. ¶ 45.)

4. During the pendency of the bankruptcy case, Respondent prepared for Johnson a response to a show cause order and two “notices to amend” that Johnson filed in his bankruptcy case. (A.F. ¶ 46.)

5. At all times relevant to the allegations contained in Count 7, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 47.)

S. Count 8 – Shuster

1. On September 8, 2005, Mary Jo Shuster filed a Chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 05-45399. The Bankruptcy Court entered an Order on December 7, 2005, which discharges some of Shuster’s debts. (A.F. ¶ 48.)

2. Two years later, JP Morgan Chase Bank sought to foreclose on Shuster’s home, and she contacted Respondent for assistance. (A.F. ¶ 49.)

3. After Shuster explained her situation to Respondent, he advised Shuster to reopen her bankruptcy case and then initiate adversary proceedings to have the JP Morgan Chase Bank debt discharged. (A.F. ¶ 50.)

4. To assist Shuster, Respondent provided her with samples of a motion to reopen and a complaint for adversary proceedings. Shuster relied upon these samples to prepare a motion and complaint, which she filed with the Bankruptcy Court under Case Nos. 05-45399 and 08-04014. (A.F. ¶ 51.)

5. Shuster did not pay Respondent for his services. (A.F. ¶ 52.)

6. At all times relevant to the allegations contained in Count 8, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 53.)

7. As a result of Respondent's UPL activity in Shuster's cases, the Bankruptcy Court issued an Order on May 13, 2008, enjoining Respondent from acting as a BPP for one year. (A.F. ¶ 54.)

T. Count 9 – Shavers

1. By August 2009, Cheryl Shavers, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition. (A.F. ¶ 55.)

2. Respondent charged Shavers \$125 for his services, but she has only paid \$50. (A.F. ¶ 56.)

3. Respondent gave Shavers legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, which was filed on August 12, 2009, in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 09-43053. (A.F. ¶ 57.)

4. During the pendency of the bankruptcy case, Respondent prepared a "notice to amend" for Shavers that she filed in her bankruptcy case. (A.F. ¶ 58.)

5. At all times relevant to the allegations contained in Count 9, Respondent was not an attorney licensed to practice law in the State of Ohio or before the Bankruptcy Court and was not qualified to provide legal representation on any matter. (A.F. ¶ 59.)

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, at ¶ 40.

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

D. The practice of law “includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured...” *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 28, 1 O.O. 313, 193 N.E. 650. It also 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, at ¶ 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.

E. The practice of law, however, is not limited to the handling of cases in court. It also encompasses the preparation of pleadings and other papers in connection with legal matters

and the management of such matters on behalf of others. *Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 2000-Ohio-288.

F. The selecting, drafting, and completing of legal documents which affect and determine legal rights by a layperson without the supervision of a licensed attorney constitutes the unauthorized practice of law. *Ohio State Bar Assn. v. Cohen*, 107 Ohio St.3d 98, 2005-Ohio-5980, 836 N.E.2d 1219; *Cleveland Bar Assn. v. Coats*, 98 Ohio St.3d 413, 2003-Ohio-1496, 786 N.E.2d 449; *Richland Cty. Bar Assn. v. Clapp* (1998), 84 Ohio St.3d 276, 703 N.E.2d 771.

G. “Counseling debtors in financial crisis as to their best course of legal action requires the attention of a qualified attorney.” *Cincinnati Bar Assn. v. Foreclosure Solutions, L.L.C.*, 123 Ohio St.3d 107, 2009-Ohio-4174, at ¶ 24, citing *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541, 894 N.E.2d 1210, at ¶ 24; *Columbus Bar Assn. v. Flanagan* (1997), 77 Ohio St.3d 381, 383, 674 N.E.2d 681.

H. Under 11 U.S.C.S. § 110, a bankruptcy petition preparer (BPP) may not execute any document on behalf of a debtor, offer the debtor legal advice, including advice concerning bankruptcy procedures and rights, or use the word “legal” or similar terms in advertising. BPPs must provide debtors with written notice that BPPs are not attorneys and may not practice law or give legal advice. Additionally, “nothing in [11 U.S.C.S. § 110] shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.” 11 U.S.C.S. § 110(b), (e), (f), (k).

I. While working as a BPP, Respondent engaged in the unauthorized practice of law through the acts described in Counts 1-9 in the Complaint and as recited in Agreed Facts 1-59 of the Consent Decree. These acts included giving legal advice, preparing legal documents, and providing pleading and document samples for pro se filing.

J. Respondent's 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)(H). See *CompManagement* at ¶¶ 24-26.

IV. PRINCIPAL TERMS OF CONSENT DECREE – “AGREED RESOLUTION”

A. Respondent admits that he was engaged in the unauthorized practice of law as set forth in the Agreed Facts section of the Consent Decree.

B. Respondent agrees to cease and desist from engaging in the unauthorized practice of law.

C. Respondent agrees to cease and desist using the business name “Bankruptcy for Less” or any similar name in connection with his bankruptcy petition preparer business.

D. Respondent agrees to the imposition of civil penalties in the amount of \$250 for each of the nine counts stated in the Complaint, resulting in a total civil penalty of \$2,250.

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 Panel reviewed the parties' proposed resolution using the factors stated in Section 5b and found:

1. The proposed resolution is submitted in the form of a consent decree;
2. Respondent admits all of the material allegations of the unauthorized practice of law as stated in the Complaint;

3. The public is sufficiently protected from future harm as Respondent has agreed to cease and desist from the conduct described in the Complaint, cease and desist using the business name “Bankruptcy for Less,” and modify his website;

4. The Consent Decree resolves material allegations of the unauthorized practice of law as it contains comprehensive, specific admissions by Respondent;

5. Because 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 placing the public on notice of the appropriate role of a bankruptcy petition preparer;

6. The parties’ collaborative efforts to resolve this matter caused Respondent to alter the language he uses to advertise his services 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 Consent Decree complies with Gov.Bar R. VII(5b) and recommended that it be considered 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. Relying upon the statements made

in Relator's Motion to Submit the Consent Decree, the Panel's analysis of the applicable 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)(1)-(5) and UPL Reg. 400(F)(1) and (2), the Panel found:

- a. Respondent cooperated with the investigation and resolution of these proceedings;
- b. Respondent did not commit a single unauthorized practice of law violation; rather, his conduct involved nine clients over a period of four years;
- c. The four-year time period during which Respondent's conduct occurred, the number of clients, and the admonishments from the United States Bankruptcy Court, Northern District of Ohio, demonstrate both flagrancy and an ongoing pattern of conduct with specific intent to avoid the regulation of the practice of law;
- d. Respondent profited from his conduct as he collected fees from eight of the nine clients named in the Complaint and Agreed Facts.

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. Respondent has agreed to cease and desist from engaging in the conduct under review;

b. Respondent has admitted the conduct under review and that the conduct constitutes the unauthorized practice of law;

c. Respondent has engaged in a good faith effort to rectify the potential misrepresentation caused by his business name by changing it from “Bankruptcy for Less” to “Spates Bankruptcy Petition Preparer Services” (<http://jspates.com>);

d. Although the United States Bankruptcy Court, Northern District of Ohio, twice enjoined Respondent from working as a BPP, he has 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. Applying the aggravating factors of UPL Reg. 400(F)(3)(a)-(g), the Panel made the following determinations:

a. Because the United States Bankruptcy Court, Northern District of Ohio, enjoined Respondent from acting as a BPP for one year in both 2006 and 2008 for the conduct described in the Agreed Facts, Respondent had been informed that his conduct constituted the unauthorized practice of law and was previously ordered to cease engaging in such conduct;

b. Respondent benefited from the unauthorized practice of law as he collected fees from eight of the nine clients named in the Agreed Facts;

c. Although Respondent did not make appearances before the United States Bankruptcy Court, Northern District of Ohio, he prepared legal documents for filing in that Court;

d. By operating a business entitled “Bankruptcy for Less” and using this name on a website, Respondent allowed others to believe that he offered legal services.

4. Conclusion Regarding Civil Penalties

Relying on the above analysis, the Panel found that a civil penalty is warranted in this case. Respondent’s conduct involved nine clients over four years, and he collected fees for his services, prepared legal documents for filing in the United States Bankruptcy Court for the Northern District of Ohio, and was admonished twice by that Court for his conduct. However, because Respondent cooperated fully in Relator’s investigation, admitted the conduct alleged in the Complaint and that the conduct constitutes the unauthorized practice of law, agreed to cease and desist from similar future conduct, and agreed to modify his business name and website, the Panel agreed that the maximum civil penalty should not apply. The Panel concluded that the civil penalty of \$250 for each of the nine agreed offenses, for a total of \$2,250, reflects an appropriate balancing of the aggravating and mitigating factors.

VI. PANEL RECOMMENDATION

The Panel recommended that the Board approve the Consent Decree, attached as Exhibit A, and file it with the Supreme Court of Ohio pursuant to Rule VII (5b)(E).

VII. BOARD RECOMMENDATION

As indicated previously, the Board formally considered this matter on November 5, 2010. 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 acceptance of the August 20, 2010, Consent Decree. Accordingly, 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(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 this 7th day of December 2010 upon the following: Joseph-Mario Spates, 6 West Federal Plaza # 701, Youngstown, Ohio 44503; Philip A. King, Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio 43204; Richard Machuga, Mahoning County Bar Association, 114 East Front Street, Suite 100, Youngstown, Ohio 44503; Don Hinkson, Deputy Clerk-in-Charge, United States Bankruptcy Court, Northern District of Ohio, Nathaniel R. Jones Federal Building and United States Courthouse, 10 East Commerce Street, Youngstown, Ohio 44503-1621.


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

3. Since 1990, Respondent has been employed a bankruptcy petition preparer (BPP), pursuant to 11 USCS § 110.

4. Respondent operates his BPP business under the business name "Bankruptcy For Less" at his office located at 6 West Federal Plaza, Youngstown, Ohio 44503.

5. Respondent's business name may represent to the public that he can provide legal representation in bankruptcy cases for less than the usual cost.

6. Respondent is the sole employee of "Bankruptcy For Less."

7. Respondent solicits clients through his website, newspaper ads, and referrals offering his services as an inexpensive alternative to the high cost of bankruptcy attorney fees.

8. Pursuant to 11 USCS § 110, respondent's authorized activity as a BPP is limited to typing information provided by the debtor/petitioner onto a bankruptcy-petition "form" created by the bankruptcy court that the debtor/petitioner may then file in the bankruptcy court pro se.

9. Since October 31, 2005, the presumptive maximum allowable fee that a BPP may charge to prepare a bankruptcy petition, as set forth in General Order 05-3, is \$125.

10. Pursuant to 11 USCS § 110, respondent, as a BPP, is not authorized to (1) give legal advice, (2) prepare court documents for a debtor/petitioner beyond the initial petition, or (3) provide a debtor/petitioner with or direct him to samples of court documents to be relied upon in drafting documents to be filed with the court. The performance of any of these activities by a BPP, not licensed to practice law, constitutes the unauthorized practice of law (UPL).

COUNT 1 – HARRIS

11. By October 2005, Ruth Harris, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition.

12. Harris paid Respondent at least \$175 for his services.

13. During this time, Respondent gave Harris legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, filed in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 05-48762 on October 14, 2005.

14. During the pendency of the bankruptcy case, Respondent prepared a notice to amend for Harris that she filed in her bankruptcy case.

15. At all times relevant to the allegations contained in Count 1, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

COUNT 2 – COOPER

16. By October 2005, Tammie Cooper, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition.

17. Cooper paid Respondent at least \$175 for his services.

18. During this time, Respondent gave Cooper legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, filed in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 05-48862 on October 14, 2005.

19. During the pendency of the bankruptcy case, Respondent prepared a notice to amend for Cooper that she filed in her bankruptcy case.

20. At all times relevant to the allegations contained in Count 2, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

COUNT 3 – RICHARD

21. By January 2006, Eric and Essie Richard, Ohio residents, had hired Respondent to prepare their Chapter 7 bankruptcy petition.
22. The Richards paid Respondent \$175 for his services.
23. During this time, Respondent gave the Richards legal advice concerning the filing and litigation of their Chapter 7 bankruptcy case, filed in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 06-40080 on January 31, 2006.
24. During the pendency of the bankruptcy case, Respondent prepared court documents for the Richards that they filed in their bankruptcy case.
25. As a result of Respondent's UPL activity in the Richard case, on April 14, 2006, the bankruptcy court issued an order enjoining Respondent from acting as a BPP for one year.
26. At all times relevant to the allegations contained in Count 3, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

COUNT 4 – TOMLIN

27. By September 2007, Dianna Tomlin, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition.
28. Tomlin paid Respondent \$125 for his services.
29. At this time, Respondent discussed the legal consequences of Chapter 7 and Chapter 11 bankruptcies with Tomlin and advised her to file a Chapter 7 bankruptcy.
30. Tomlin accepted Respondent's legal advice, Respondent prepared her bankruptcy petition, and Tomlin filed the Chapter 7 bankruptcy case in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 07-42229 on September 10, 2007.

31. During the pendency of the bankruptcy case, Respondent continued to give Tomlin legal advice and prepared for Tomlin the following documents that she filed in her bankruptcy case: a notice to amend, a declaration of Tomlin's schedules, and a motion for extension of time.

32. At all times relevant to the allegations contained in Count 4, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

COUNT 5 – THOMSON

33. By September 2007, James and Iona Thomson, Ohio residents, had hired Respondent to prepare their Chapter 7 bankruptcy petition.

34. The Thomsons paid Respondent \$125 for his services.

35. During this time, Respondent gave the Thomsons legal advice concerning the filing and litigation of their Chapter 7 bankruptcy case, filed in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 07-42422 on September 27, 2007.

36. During the pendency of the bankruptcy case, Respondent prepared two notices to amend and two motions for extension of time for the Thomsons that they filed in their bankruptcy case.

37. At all times relevant to the allegations contained in Count 5, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

COUNT 6 – DAVIS

38. By December 2007, Marguerite Davis, an Ohio resident, had hired Respondent to prepare her Chapter 7 bankruptcy petition.

39. Davis paid Respondent \$125 for his services.

40. During this time, Respondent gave the Davis legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, filed in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 07-19578 on December 19, 2007.

41. During the pendency of the bankruptcy case, Respondent prepared for Davis the following documents that she filed in her bankruptcy case: a motion to withdraw petition, an amended motion to withdraw petition, and a notice to amend.

42. At all times relevant to the allegations contained in Count 6, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

COUNT 7 – JOHNSON

43. By January 2008, Harold Johnson, an Ohio resident, had hired Respondent to prepare his Chapter 7 bankruptcy petition.

44. Johnson paid Respondent \$125 for his services.

45. During this time, Respondent gave Johnson legal advice concerning the filing and litigation of his Chapter 7 bankruptcy case, filed in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 08-40050 on January 9, 2008.

46. During the pendency of the bankruptcy case, Respondent prepared a response to a show cause order and two notices to amend for Johnson that he filed in his bankruptcy case.

47. At all times relevant to the allegations contained in Count 7, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

COUNT 8 – SHUSTER

48. On September 8, 2005, Mary Jo Shuster filed a Chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 05-45399 that resulted in the discharge of various debts by an order issued on December 7, 2005.

49. Two years later, JP Morgan Chase Bank sought to foreclose on Shuster's home and she contacted Respondent for assistance.

50. After Shuster explained her situation to Respondent, he advised Shuster to reopen her bankruptcy case and then initiate adversary proceedings to have the JP Morgan Chase Bank debt discharged.

51. To assist Shuster, Respondent provided her with samples of a motion to reopen and a complaint for adversary proceedings that Shuster relied upon to prepare her motion and complaint that she filed with the bankruptcy court under Case Nos. 05-45399 and 08-04014.

52. Shuster did not pay Respondent anything for his services.

53. At all times relevant to the allegations contained in Count 8, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

54. As a result of Respondent's UPL activity in Shuster's cases, on May 13, 2008, the bankruptcy court issued an order enjoining Respondent from acting as a BPP for one year.

COUNT 9 – SHAVERS

55. By August 2009, Cheryl Shavers, an Ohio resident, had hired Respondent to prepare his Chapter 7 bankruptcy petition.

56. Respondent charged Shavers \$125 for his services but she has only paid \$50.

57. During this time, Respondent gave Shavers legal advice concerning the filing and litigation of her Chapter 7 bankruptcy case, filed in the United States Bankruptcy Court for the Northern District of Ohio under Case No. 09-43053 on August 12, 2009.

58. During the pendency of the bankruptcy case, Respondent prepared a notice to amend for Shavers that she filed in her bankruptcy case.

59. At all times relevant to the allegations contained in Count 9, Respondent was not an attorney licensed to practice law in the State of Ohio or before the federal bankruptcy court and was not qualified to provide legal representation on any matter.

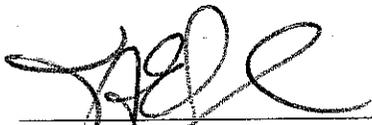
II. AGREED RESOLUTION

As set forth in Gov. Bar R. VII § 5b(C):

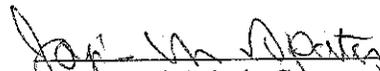
- Respondent admits that he was engaged in the unauthorized practice of law as set forth in the “Agreed Facts” section of this consent decree, and thereby, admits the material allegations of the unauthorized practice of law as set forth in relator’s Formal Complaint;
- The public is protected from future harm and any substantial injury is remedied by this consent decree;
- Respondent agrees to cease and desist from engaging in the unauthorized practice of law;
- Respondent agrees to cease and desist using the business name “Bankruptcy For Less” or any similar name in connection with his bankruptcy-petitioner-preparer business.

- Respondent agrees to the imposition of civil penalties in the amount of \$250 for each of the nine counts describing his unauthorized practice of law resulting in a total civil penalty of \$2,250;
- This consent decree resolves the material allegations of the unauthorized practice of law; and
- This consent decree does not involve any public policy issues or encroach upon the jurisdiction of the Supreme Court to regulate the practice of law.

Respectfully submitted,



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Relator



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

STATEMENT OF COSTS

Disciplinary Counsel v. Spates

Case No. UPL 10-04

To date, no expenses have been incurred. In accordance with Gov.Bar R. VII(19)(F), there will be publication costs incurred once the Supreme Court enters its order in this case.

EXHIBIT B