

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

OHIO STATE BAR ASSOCIATION, :

07-1939

Relator,



CASE NO. UPL 06-01

v.

TERRY MARTIN, et al.,

FINAL REPORT

Respondents.

I. PROCEDURAL BACKGROUND

This matter was initiated on or about February 7, 2006 when Relator, Ohio State Bar Association, filed a Complaint with the Board on the Unauthorized Practice of Law alleging the unauthorized practice of law against Respondents Terry Martin and Eva Martin (both individually and as officers of their business, We The People of Cincinnati), and We The People of Cincinnati. The Complaint specified multiple instances of alleged unauthorized practice of law, and the rendering of legal services for fees, in connection with four matters that will be referred to as the Walters matter (Bankruptcy); Krull matter (Probate); Helton matter (Bankruptcy); and Bullock matter (Domestic Relations). The Complaint was assigned to a panel consisting of Kenneth A. Kraus, Chairman, Judge Carrie E. Glaeden, and James W. Lewis.

Essentially, the Complaint alleged various acts of the unauthorized practice of law, including but not limited to advising and counseling individuals with respect to the completion of forms for filing a personal bankruptcy [§8A(1)], and application for probate of an estate [§8B(1)]; advising individuals on how to complete the forms and what answers to put down [§8A(2)]; directing individuals to execute the documents and charging them for services [§8

A(4)]; instructing completion of forms in disregard of proper procedures and determination by the Bankruptcy Court that the filing was incomplete and/or inaccurate [¶8A(5)]; preparation of unnecessary and incorrect forms for administration of an estate [¶8B(2)]; preparing improperly completed forms for a bankruptcy [¶8C(1)]; issuing advertisements, and advertising the preparation of services for living trusts, wills, powers of attorney, etc., and "incorporations", "bankruptcy", "divorce"; and advertising prices and various legal services by website. Relator sought an order finding that Respondents have engaged in the unauthorized practice of law, and an order enjoining them from further engaging in the unauthorized practice of law and from damaging members of the public; and imposing a \$10,000.00 sanction per occurrence as civil penalties, as well as costs.

Pursuant to Motion, the Complaint was amended on April 26, 2006 in order for Relator to add TELLR Corporation as a "DBA" for We The People of Cincinnati and also to add We The People USA, Inc., ("WTPUSA") as franchisor of the Martins and TELLR Corporation. While the essential allegations of the Amended Complaint concerning the claimed UPL by the Martins and their business remained the same, there were additional allegations concerning the claimed participation of the new party defendant as franchisor in the context of processing and/or preparing forms, reviewing, modifying and correcting legal documents for filing with a court, and providing alleged legal services. Certain exhibits were attached to the Amended Complaint. The relief sought was identical to that in the Complaint.

Respondents Martin and TELLR, as well as WTPUSA each filed Answers to the Amended Complaint on July 5, 2006, admitting that forms were prepared, but essentially denying the material allegations of the Complaint concerning the claimed instances of UPL. Specifically, while Respondents admitted the existence of certain document preparation services,

they averred that such services are to individuals wishing to represent themselves, *pro se* in uncontested legal matters. Respondent WTPUSA raised other affirmative and legal defenses.

On October 13, 2006, a Second Amended Complaint was filed adding another Respondent, namely, IDLD, Inc. The latter, formerly known as We the People Forms and Service Centers USA, Inc., was the original franchisor of the forms business prior to March 7, 2005. IDLD, Inc. is in default¹ and has not responded to the Second Amended Complaint, even though service was perfected on this party through serving the California Secretary of State. However, Answers to the Second Amended Complaint were filed by the Martins and TELLR Corporation ("Cincinnati Respondents") on October 25, 2006, and by WTPUSA on October 27, 2006.

The Panel notes that at various times and based upon requests of the parties, the Case Scheduling Order of March 20, 2006 was amended to afford additional time for amending pleadings, answering pleadings, and/or for discovery or to modify the hearing date.

The Relator and Cincinnati Respondents filed comprehensive Agreed Stipulations and a Waiver of Hearing on November 21, 2006, most of which the Panel accepted by Order on December 8, 2006.² Agreed Stipulations of Relator and Respondent WTPUSA were filed on April 16, 2007, along with a Stipulated Waiver of Hearing. All parties thereafter filed Supplemental Stipulations concerning the Board's use of exhibits and trial depositions in reaching its decision. The Panel issued an Order on April 18, 2007 accepting the WTPUSA Stipulations and Waiver of Hearing, canceling the hearing as to all parties, and determining to enter a decision based upon the pleadings, Stipulations and other evidence admitted.

¹ Relator filed a Motion for Default on June 1, 2007, and pursuant to Order by the Panel, a Supplemental Motion for Default on June 15, 2007. Default was entered against Respondent IDLD, Inc. by Order of the Panel on July 24, 2007.

² The Panel did not adopt Agreed Stipulations Nos. 1, 22 and part of 23.

II. GENERAL FACTUAL CONTEXT

The various Stipulations filed by the parties in this matter have been comprehensive and detailed; although the Board notes at the outset that there arguably remain different points of view, if not some apparent discrepancies of fact between the two sets of Stipulations. Nonetheless, those factual matters relating to the specific instances of claimed unauthorized practice of law are best discussed within the context of analysis, evaluation and findings of fact relating to each of the specific instances for which facts have been presented to the Panel. However, some recitation of those factual stipulations which are undisputed and set the framework for framing the issues requiring decision by the Board is necessary and appropriate.

Respondents Terry and Eva Martin and their closely-held corporation, TELLR Corporation, are Ohio residents who hold a franchise with Respondent WTPUSA. They previously were a franchisee of IDLD, Inc. (We The People Forms and Service Center USA, Inc.).

WTPUSA is a company that franchises We The People stores throughout the United States. The stores sell and distribute books and information, such as legal forms and workbooks, on legal topics to customers through a processing center owned and operated by WTPUSA.

Historically, on March 7, 2005, WTPUSA, then a newly-formed and wholly-owned subsidiary of a public company, acquired by asset purchase substantially all of the assets of We The People Forms and Service Centers USA, Inc. One of the assets conveyed was the franchise agreement with the Cincinnati Respondents who admittedly are not licensed attorneys.

The Cincinnati Respondents had paid a substantial amount of money to acquire their franchise rights in Ohio. However, they allege that they were not properly trained and received less training than originally promised in order to prepare them to lawfully operate a We The

People forms and service center. They also claim to have received inadequate support from the franchisor.

The We The People business model offers the service, for a fee, of providing completed forms for use in basic, uncontested legal matters. Information provided by the customer is forwarded by the franchisee to a We The People processing center and incorporated into completed legal forms. The completed forms are given to the customer for the customer's further use. The franchisee collects a fee from the customer. The franchisor receives 25% of the franchisor recommended fee from the franchisee for its processing work. [*¶8 of Agreed Martin Stipulations*]

The We The People business model utilizes workbooks prepared by the franchisor for use by the customers of the franchisee. Workbooks are essentially questionnaires pertaining to specific legal problems such as Chapter 7 bankruptcy, divorce, dissolution, probate, etc. The customer is supposed to select the appropriate workbook for his/her particular problem or transaction. The customer is supposed to fill out the workbook which is then sent by the franchisee to the processing center for preparation of the forms. The forms are returned to the franchisee for delivery to the customer. [*¶9 of Agreed Martin Stipulations*]

For most matters, the workbooks must be Ohio specific. WTPUSA claims to rely on Ohio counsel for preparation of the various workbooks furnished to the Cincinnati Respondents. In fact, many of these workbooks were erroneous or inadequate in that they did not give complete or accurate direction to customers attempting to fill them out in accordance with limited, vague and ambiguous instructions. [*¶10 of Agreed Martin Stipulations*]

III. ISSUES PRESENTED

This Board is called upon to carefully consider the pleadings, Stipulations and exhibits (including depositions) in order to determine the following:

1. Whether the Cincinnati Respondents committed one or more acts of the unauthorized practice of law in the Walters, Krull, Bullock and Helton matters, and if so, the appropriate consequences and/or penalty, if any, to be imposed.

2. Whether WTPUSA committed one or more acts of the unauthorized practice of law in the Walters and Krull matters, and if so, the appropriate consequences and/or penalty, if any, to be imposed.

3. Whether, in addition, based upon a Motion for Default and Entry of Default, Respondent IDLD, Inc. has committed one or more acts of the unauthorized practice of law in the Helton and Bullock matters, and if so, the appropriate consequences and/or penalty, if any, to be imposed.

This Panel has agreed to the Waivers of Notice and Hearing, and has accepted both sets of Agreed Stipulations submitted by the various parties, along with the exhibits and depositions as its record in this matter. Based upon the foregoing, the Panel enters the following findings of fact, conclusions of law and recommendations.

IV. FINDINGS OF FACT

A. CINCINNATI RESPONDENTS

1. The Cincinnati Respondents are not and have never been attorneys admitted to practice, granted active status or certified to practice law in the State of Ohio pursuant to Rules I, II, III, IV or V of the Ohio Supreme Court Rules for a Government of the Bar, nor are they

attorneys admitted to practice before any state in the United States of America. *[Agreed Martin Stipulations 13, 14]*

2. The Cincinnati Respondents admit, primarily through the Stipulations, that they undertook the following actions in connection with the "Walters Matter":

- (a) Respondent Terry Martin advised and counseled Ms. Walters as to which We The People workbook to complete for purposes of filing a personal bankruptcy in the United States Bankruptcy Court, Southern District of Ohio [June, 2005].
- (b) Respondent Terry Martin responded to questions of Ms. Walters and her husband regarding the disclosure of financial assets; he advised Ms. Walters that she did not need to list her husband's income on her bankruptcy filing, and she did not include such information.
- (c) The Martins asked Ms. Walters to execute the documents prepared by the WTPUSA processing center and charged her \$199.00 for said services, 25% of which was paid by the Cincinnati Respondents to WTPUSA.
- (d) Mr. Martin advised and counseled Ms. Walters and her husband concerning the completion of additional workbooks, so that certain revised bankruptcy schedules could be prepared in response to a request of the Bankruptcy Trustee. Mr. Martin then advised and counseled Ms. Walters that a listing of the spouse's income under these circumstances was not necessary.
- (e) Ms. Walters has been denied a refund for the costs and time she had incurred due to the errors and mistakes made in the filing.
- (f) In response to a complaint filed with the Better Business Bureau in Cincinnati, Mr. Martin conceded that they "made an error on Schedule C of this customer's Chapter 7 Petition." And only thereafter did they correct it at no cost.
- (g) After a series of e-mail messages to and from the Cincinnati Respondents on the one hand and the WTPUSA processing center on the other, regarding necessary amendment of the Bankruptcy Court documents, the Cincinnati Respondents received from WTPUSA various documents prepared by WTPUSA as to the required additional information necessary to prepare documents. The Cincinnati Respondents (claiming they relied on advice and counsel from WTPUSA), advised and counseled Ms. Walters to help her provide the information that she indicated had been requested by the Trustee.

3. The Cincinnati Respondents undertook the following actions in connection with the "Krull Matter":

- (a) In the summer of 2005, Ms. Barbara Krull and one of her daughters, Ms. Pamela Krull-Woods went to Respondent Terry Martin's We The People store in Cincinnati after her husband, George Albert Krull, died.
- (b) Respondent Terry Martin advised Mrs. Barbara Krull as to the Probate paperwork that needed to be filled out and filed with the Court. *[Barbara Krull Deposition at 7, 18]*
- (c) The Martins instructed Ms. Barbara Krull to follow the We The People workbook concerning the appropriate people to list as heirs on the forms and as to who was to receive notice of the filings. When Ms. Barbara Krull questioned putting certain names down, including her minor grandchildren, she was told by Mr. Martin that she had to do it, so they could not contest the will. *[Agreed Stipulations; Barbara Krull Deposition at 8, 9 and 13]*
- (d) Once completed by these customers with the assistance of Mr. Martin, the completed forms were then sent to the WTPUSA processing center which then provided completed forms for purposes of filing an application to probate the estate of George Albert Krull. The Martins reviewed, modified and corrected these documents for errors and omissions for filing with a court.
- (e) Because the workbook and other WTPUSA materials did not clearly communicate that estates below certain values are eligible for relief from administration, nor provide guidance on the valuation of joint property interests, the customers failed to understand that the correct workbook for them to request was for relief from administration, rather than to probate the estate. Erroneous filings made by the customer premised upon a workbook and forms resulted in additional costs and expenses to the customers. *[Agreed Stipulations; Barbara Krull Deposition pgs. 9, 11 and 12]*
- (f) The forms that Respondent Terry Martin selected for and sold to Mrs. Krull for \$399.00 were ineffective and unnecessary for her needs. *[Barbara Krull Deposition at 23 - 24]*

4. The Cincinnati Respondents undertook the following actions in connection with the "Bullock Matter":

- (a) The Martins were hired by Ms. Bullock to prepare domestic relations papers for her; and advised and counseled Ms. Bullock with respect to her options in connection with her desire to end her marriage [September, 2004].
- (b) Mrs. Bullock called Mr. Martin to seek his advice in completing the forms. [*Bullock Deposition at Page 10.*] In fact, the Martins or someone else pre-filled out portions of the forms.
- (c) She was charged and paid a fee of \$314.00 for the services; but was issued a partial refund of \$125.00 in accordance with action by the general counsel of We the People Form and Service Centers, Inc.

5. Even though not addressed within the Stipulations, the Panel finds from the depositions, that the Cincinnati Respondents undertook the following actions in connection with the Helton matter:

- (a) Participated in the selection of forms for the Heltons.
- (b) Advised and counseled them and assisted with the preparation of their bankruptcy forms.³

6. The Cincinnati Respondents, allegedly following the franchisor's suggestions for advertising copy, have taken out advertisements in local newspapers suggesting "No Lawyers! Save Money" and advertising the preparation services for the following matters:

- (a) "Living Trusts \$399" – and purporting to list the benefits and advantages of such documents; and offering various forms of wills and powers of attorney.
- (b) "Divorce \$349; Bankruptcy \$199; Incorporation \$399."

7. The Cincinnati Respondents have in the past advertised various services and prices on their website at www.wtpcincinnati.com including Domestic Court Divorce \$349; Dissolution with children \$349; Dissolution without children \$249; QDRO with Joinder \$449;

³ The Panel has reviewed 11 USCS § 110 and concludes that the activities of the Cincinnati Respondents far exceeded the permissible activities in the statute for preparers of bankruptcy petitions. *Cleveland Bar Assn. v. Boyd*, 112 Ohio St.3d 331, 2006-Ohio-6590.

Stipulation and Order \$129; Motion to Modify \$129; Amendment \$349; Legal Separation \$349; Shared Parenting Plan \$249; Separation Agreement \$249; Bankruptcy Court: Chapter 7 Bankruptcy \$199; Bankruptcy Amendment \$99; Miscellaneous Living Trust \$399; Living Trust A/B/C \$599; and other various Wills, Deeds, Incorporation, LLC; Pre-nuptial Agreement, Step-parent Adoption \$249; Expungement \$599; and Guardianship (letter only) \$89.

8. Cincinnati Respondents have provided such services for a fee to various other individuals in Ohio in a similar manner, and have provided similar advice and counsel to individuals.

9. Cincinnati Respondents admit that they have engaged in providing advice and counsel regarding bankruptcy proceedings, probate proceedings, domestic relations matters, powers of attorney, real property matters, wills and estate planning matters, adoption, guardianships, expungement, and business formations on behalf of Ohio customers who have hired them, although they claim that in so doing they have relied upon WTPUSA's "inadequate and incomplete training, procedures, direction, advice and counsel . . ."

B. RESPONDENT WTPUSA

1. Paragraphs 8, 9 and 10 of the Agreed Martin Stipulations as referenced in this Panel Report at Pages 4-5 are incorporated herein by reference, since they reflect the general manner in which WTPUSA purported to do business and interact with its franchisees and their customers.

2. Neither the Martins nor the Cincinnati Respondents are employees of WTPUSA and have no business relationship with WTPUSA other than through their franchise agreement. There are no other We The People USA franchise or company-owned stores currently operating in Ohio.

3. WTPUSA undertook the following actions in connection with the "Walters Matter":

- (a) It considered a question raised by the Bankruptcy Trustee concerning one of Ms. Walters' responses on her bankruptcy filing, and specifically whether she needed to list her husband's income on her bankruptcy schedule.
- (b) The WTPUSA processing center, through its employee, corresponded with the Martin Respondents by e-mails concerning this question; and at one point the employee determined and advised: "There is no exemption amount for the house. One can only exempt equity, the liens are greater than the value. You have no equity to exempt."

4. Respondent WTPUSA undertook the following actions in connection with the "Krull Matter":

- (a) WTPUSA answered questions and provided advice and counsel to the Martins concerning the preparation and appropriateness of the probate forms for the Krulls, when in fact it was later determined that these forms were incorrect and unnecessary, in that the Krull Estate qualified for relief from administration. The Cincinnati Respondents were franchisees of WTPUSA at the time of these activities.

5. Between March, 2005 and October, 2005, Ira and Linda Distenfield, who were then the chief executives and fully authorized agents of WTPUSA, continued to interact with the Martins as ongoing franchisees.

C. RESPONDENT IDLD, INC.

1. Respondent IDLD, Inc. undertook the following actions in connection with the "Helton Matter", [See generally *Depositions of Jeremy Helton and Rosemary Helton*]:

- (a) IDLD, Inc. set out a policy of having its franchisees (here the Martins) facilitate and assist the customers in their completion of various forms and materials.
- (b) The Heltons were assisted by the franchisees (Martins) in completing their bankruptcy forms

- (c) To the Heltons, there was no difference between We The People (Martins), and We The People or IDLD, Inc. as franchisee.
- (d) IDLD, Inc. encouraged its franchisees to attend court sessions to observe what the judges are doing in their courtrooms; to obtain "insider information" about what [customers are] to expect when they go to court with respect to bankruptcy proceedings; "[a]ttend the 341 meeting and observe; note how many people have attorneys and watch the role of the attorney at the hearing. Listen to the questions the trustee asks the debtors". [See *Pre-Opening Manual*, Relator's Exhibit 13.]
- (e) IDLD, Inc. helped to select forms, answer questions and train its franchisees.
- (f) The emphasis from IDLD, Inc. to its franchisee is to assist the customers and facilitate the process.

2. Respondent IDLD, Inc. undertook the same type of actions as set forth above in No. 1 in connection with the "Bullock Matter."

V. CONCLUSIONS OF LAW

A. GENERAL

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

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

3. The Supreme Court has consistently held that the practice of law includes not only the preparation of pleadings filed in the Courts of Ohio, but also the preparation of legal documents and instruments upon which legal rights are secured or advanced. *Land Title*

Abstract & Trust Co. v. Dworken, et al. (1934) 129 Ohio St. 23, 193 N.E. 650; *Akron Bar Association v. Greene*, 77 Ohio St.3d 279, 1997-Ohio-298.

4. The practice of law is not restricted to appearances in court; it also encompasses giving legal advice and counsel. *Cincinnati Bar Assn. v. Telford* (1999), 85 Ohio St.3d 111, 112, 707 N.E.2d 462, 463.

5. Selecting and completing legal forms for customers without attorney supervision is the unauthorized practice of law. *Cleveland Bar Assn. v. McKissic*, 106 Ohio St.3d 106, 2005-Ohio-3954.

6. A company employing non-lawyers to prepare legal documents or pleadings for customers constitutes the unauthorized practice of law. *Trumbull County Bar Ass'n v. Legal Aid State Services, Inc.*, 109 Ohio St.3d 93, 2006-Ohio-1931; *Cleveland Bar Assn. v. Para-Legals Inc.*, 106 Ohio St.3d 455, 2005-Ohio-5519.

7. Relator must prove by a preponderance of the evidence that Respondents engaged in the unauthorized practice of law. Gov. Bar R. VII, §7(E)

B. UNAUTHORIZED PRACTICE OF LAW BY CINCINNATI RESPONDENTS

The Panel finds that the Relator has established by a preponderance of the evidence that:

1. The Cincinnati Respondents engaged in the unauthorized practice of law in the Walters matter when they:
 - (a) Advised and counseled Ms. Walters concerning which workbook to complete for purposes of filing a personal bankruptcy.
 - (b) Responded to questions and gave advice about disclosure of financial assets, income and expenses in connection with a bankruptcy.
 - (c) Had her execute documents prepared by the WTP processing center and charged her a fee for services.

- (d) Advised and counseled her concerning filing of revised bankruptcy forms.
- (e) Advised and counseled Ms. Walters concerning information to provide the Bankruptcy Trustee.⁴

The advisory functions performed by the non-attorney Cincinnati Respondents in this matter are similar, if not identical, to those acts determined by the Supreme Court to constitute the unauthorized practice of law in *Cleveland Bar Assn. v. Sharp Estate Serv. Inc.*, 107 OhioSt.3d 219, 2005-Ohio-6267, namely telling customers that they needed a particular document (living trust or estate plan); recommending specific types of such documents (See also *Cleveland Bar Assn. v. McKissic*, *supra*); and advising customers of the legal consequences of their choices. *Sharp Estate*, *supra* at ¶6. See also *Disciplinary Counsel v. Palmer*, 115 Ohio Misc. 2d 70; 76 N.E.2d 717, 2001 Ohio Misc. LEXIS 37 (practice of law involves the tailoring of legal advice to individual needs.)

2. Based upon application of the same legal analysis, the Cincinnati Respondents engaged in the unauthorized practice of law in the Krull matter when they:

- (a) Selected and provided a WTP workbook for the customers to probate an estate, when in actuality a relief from administration was appropriate; and they charged for such services.
- (b) Instructed the customers on filling out the forms.
- (c) Reviewed, modified and corrected legal documents.

3. The Cincinnati Respondents engaged in the unauthorized practice of law in the Bullock matter when they:

Advised and counseled the customer for a fee with respect to her options in connection with terminating her marriage.

4. The Cincinnati Respondents, therefore, have engaged in the unauthorized practice of law by providing advice and counsel regarding various types of legal proceedings and legal

⁴ See footnote 3.

matters requiring legal pleadings and/or legal documents as specified above and also in the Helton matter, *Cincinnati Bar Assn. v. Telford*, *supra*; *Cleveland Bar Assn. v. McKissic*, *supra*.

C. UNAUTHORIZED PRACTICE OF LAW BY WTPUSA

The Panel further finds that Relator has established by a preponderance of the evidence that:

1. WTPUSA engaged in the unauthorized practice of law in the Walters matter when it advised and counseled the customer through the Cincinnati Respondents, their apparent agents, concerning exemptions on bankruptcy schedules/filings. This is certainly equivalent to the "preparation of legal documents" and "advising customers as to the legal effect of the documents that they had prepared" found by the Supreme Court in *Sharp Estate*, *supra* at ¶6, to constitute the unauthorized practice of law. Moreover, such a finding is further premised on the franchisor-franchisee relationship equivalent to the same type of "agency relationship" found by the Court in *Sharp Estate* in a somewhat different context, but where the Court concluded at ¶12 as follows:

Respondents TEP and Abts argue that Sharp and his associates were not their agents and that TEP had disclaimed any agency relationship in the contracts between TEP and Sharp. The record, however, reflects that Sharp was under contract with TEP, that TEP and Abts permitted the Sharp advisors to hold themselves out as agents of TEP, and that the Sharp advisors received extensive training from TEP on marketing and selling trust and estate plans to customers. We conclude that there was an agency relationship between TEP and Sharp. (*Sharp Estate* at ¶12)

The Panel similarly finds as a matter of law that there was an agency relationship here between WTPUSA and the Cincinnati Respondents, and that WTPUSA placed their franchisees in a position where they were, in effect, inviting UPL violations that were likely, if not certain, to occur based upon the manner in which their business was conducted. They cannot exculpate themselves from the consequences of such calculated behavior.

In any event it is clear that the Martins and Cincinnati Respondents, working together in a collaborative and intertwined manner with employees of WTPUSA who were acting within the scope of their employment for the benefit of WTPUSA, all violated the terms of their franchise agreement purporting to refer legal matters to the supervising attorney and to prohibit the unauthorized practice of law. At the very least, the UPL misconduct of the Martins was aided and abetted by employees of WTPUSA, who were acting within the scope of their employment for the benefit of both WTPUSA as franchisor and the Martins as franchisee. This is akin to employer liability under *respondent superior* for intentional behavior. See *Cooke v. Montgomery County*, 158 Ohio App.3d 139, 2004-Ohio-3780. Therefore, this Panel further finds as a matter of law that a UPL violation committed by an employee acting within the scope of employment for the benefit of an employer engaged in providing legal forms and clerical services to the general public, is imputable to the employer-business under the doctrine of *respondent superior*.

2. WTPUSA engaged in the unauthorized practice of law in the Krull matter when it provided advice and counsel to the customers through the Martins and answered questions concerning the preparation and appropriateness of probate forms – with the same legal effect as described above.

3. WTPUSA further engaged in the unauthorized practice of law in both matters when it participated in the selection of forms for customers. See *Cleveland Bar Assn. v. McKisic*, *supra*.

D. UNAUTHORIZED PRACTICE OF LAW OF RESPONDENT IDLD, INC.

The Panel further finds that Relator has established by a preponderance of the evidence that IDLD engaged in the unauthorized practice of law in the Helton matter and Bullock matter, for the same reasons set forth above in connection with the legal conclusions reached regarding

the identical type activities of WTPUSA as a subsequent franchisor of the business. This included participation in the selection of legal forms; direct and/or indirect assistance in preparation of forms; and providing legal advice and counsel through its franchisees as previously described.

E. SUMMARY OF FINDINGS OF UNAUTHORIZED PRACTICE OF LAW

1. Respondents Terry Martin, Eva Martin, TELLR Corporation and We The People USA, Inc. have admitted, and as reflected in the foregoing, the Panel so finds that they have engaged in the unauthorized practice of law in the State of Ohio.

2. The Relator and aforesaid Respondents have stipulated and agreed, and the Panel so finds, that the preponderance of the evidence establishes that the specified Respondents engaged in the unauthorized practice of law in the State of Ohio.

3. The Panel further finds that the preponderance of the evidence establishes that Respondent IDLD, Inc. has engaged in the unauthorized practice of law in the State of Ohio.

4. Each act found by the Panel to constitute the unauthorized practice of law is based upon a stipulation of facts and/or evidence 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. Compmangement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108 at ¶24-6.

VI. PANEL RECOMMENDATIONS

A. CINCINNATI RESPONDENTS

1. The Panel recommends that the Supreme Court of Ohio issue an Order finding that Respondents Terry Martin, Eva Martin, and TELLR Corporation have engaged in the unauthorized practice of law.

2. The Panel further recommends that the Supreme Court of Ohio issue an Order prohibiting said Cincinnati Respondents from engaging in the unauthorized practice of law in the future; and that the Court issue additional Orders reflecting certain of those matters agreed to by the Cincinnati Respondents and Relators in their Agreed Stipulations regarding notices and refunds to customers as follows:⁵

The Cincinnati Respondents shall send notice as set forth below, in writing, at Respondent's expense, to all parties that have been represented by the Cincinnati Respondents in Ohio since the Cincinnati Respondents began doing business. Such notification shall include a copy of the findings of the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio as well as the final determination rendered by the Supreme Court of Ohio with regards to this case. Said notice shall also include a reply form and envelope which shall be approved by Relator and addressed to Relator directly, which shall permit any party to report to Relator if they believe they have been provided with advice, counsel or legal representation by a Cincinnati Respondent and whether or not said party believes they have been harmed by said advice, counsel and/or legal representation. A copy of all such notices shall be forwarded to Relator's counsel within 60 days of mailing.

The Cincinnati Respondents shall promptly refund any and all fees collected from Ms. Walters, the Kralls (including any charges to the Estate of Mr. Krull), and Ms. Bullock. In addition, upon receipt of a reply form by Relator as set forth * * * above which describes conduct of the Respondent in sufficient detail reasonably to permit a conclusion that such conduct constitutes advice, counsel or legal representation by a Cincinnati Respondent and which further explains with specificity the nature and value of any harm resulting therefrom, the Cincinnati Respondents shall promptly refund any and all fees collected from the author of such reply form within thirty days of presentation of said form to the Cincinnati Respondents. The Cincinnati Respondents may rely on the advice of counsel in determining whether a refund is required in a particular instance. *[Agreed Martin Stipulations 22c (iv) (v)]*

⁵ Although Relator and Cincinnati Respondents have entered into additional comprehensive Stipulations regarding these Respondents' further conduct in business, the Panel declines to approve or disapprove them, nor to adopt a rule dictating such specifics, leaving it to the parties to undertake their business activities without committing UPL.

3. The Panel also has considered the appropriateness of the imposition of civil penalties pursuant to Gov. Bar R. VII, §8(B) and UPL Reg. 400(F)(3)(c)²,(d),(f). While Respondent WTPUSA belatedly signed Agreed Stipulations and participated in some modicum of cooperation, it fundamentally participated in various acts of the unauthorized practice of law and at the very least its actions misled its franchisees and ultimately placed them and their customers in jeopardy to WTPUSA's financial benefit. For this, it should pay substantial penalties, and as reflected in its Stipulation for payment of penalties in the Walters and Krull matters in which it participated, at the maximum level of \$10,000.00 each.

4. Therefore, the Panel recommends imposition of a civil penalty of \$10,000.00 against WTPUSA in each of the Walters and Krull matters for a total of \$20,000.00.

C. IDLD, INC.

1. The Panel recommends that the Supreme Court of Ohio issue an Order finding that Respondent IDLD, Inc. has engaged in the unauthorized practice of law.

2. The Panel further recommends that the Supreme Court of Ohio issue an Order prohibiting said Respondent from engaging in the unauthorized practice of law in the future.

3. The Panel also has considered the appropriateness of the imposition of civil penalties pursuant to Gov. Bar R. VII, §8(B) and UPL Reg. 400(F)(3)(d),(f). Respondent IDLD, Inc. has attempted to evade the Relator and this judicial process and has exhibited a total lack of cooperation. Absent any mitigating factors provided under the Rules, this Respondent should pay the maximum penalties for each infraction of the unauthorized practice of law.

² For the sole purpose of recommending a civil penalty, the Panel takes notice of two unauthorized practice cases filed against WTPUSA and its predecessors in other jurisdictions and included as part of WTPUSA's filed hearing exhibits: Florida, Supreme Court Case No. SC-05-2322, and Illinois, Cook County Chancery Court Case No. 2007-CH-12923. The Florida case had been resolved by a Stipulation for Permanent Injunction and the Illinois case by a Consent Decree and Final Judgment, the underlying actions of which were both filed well prior to the date of filing of the Complaint in the instant action. Consequently, the Panel concludes WTPUSA had reasonable notice that some of its business practices may also constitute unauthorized practice in other jurisdictions prior to the filing of the present case.

counsel and/or legal representation. A copy of all such notices shall be forwarded to Relator's counsel within 60 days of mailing.

The Cincinnati Respondents shall promptly refund any and all fees collected from Ms. Walters, the Krulls (including any charges to the Estate of Mr. Krull), and Ms. Bullock. In addition, upon receipt of a reply form by Relator as set forth * * * above which describes conduct of the Respondent in sufficient detail reasonably to permit a conclusion that such conduct constitutes advice, counsel or legal representation by a Cincinnati Respondent and which further explains with specificity the nature and value of any harm resulting therefrom, the Cincinnati Respondents shall promptly refund any and all fees collected from the author of such reply form within thirty days of presentation of said form to the Cincinnati Respondents. The Cincinnati Respondents may rely on the advice of counsel in determining whether a refund is required in a particular instance. *[Agreed Martin Stipulations 22(c)(iv)-(v)]*

The Board further recommends that the Court in its Order impose an additional requirement to Agreed Martin Stipulations 22(c)(iv)-(v), that if an aggrieved party reasonably believes Cincinnati's counsel has not acted in good faith in determining if a refund is warranted, the party may seek a review of the matter by Relator's counsel, whose decision shall be final.

The Board also reviewed certain stipulations of the various parties specifically not adopted by the Panel. The Board concurs with the Panel in its conclusions not to adopt such stipulations as part of the formal recommendations to the Court through this Final Report, namely: Agreed Stipulations No. 22(c)(i)-(iii) between the Relator and Respondents Terry Martin, Eva Martin, and TELLR Corp.; and Stipulations Nos. 17 and 19 between the Relator and Respondent WTPUSA, Inc. The aforementioned stipulations outline possible future specific conduct of the parties, and the Board declines to adopt such stipulations since they do not address conduct presently or properly before it, and would require the issuance of several advisory opinions within the context of this matter.

The Board further recommends that the Supreme Court of Ohio impose total civil penalties of \$2000 against Terry Martin, Eva Martin, and TELLR corporation jointly and

severally; \$20,000 against WTPUSA; \$20,000 against IDLD, Inc., and that any costs of these proceedings be taxed to the Respondents jointly and severally in any Order entered, so that execution may issue.

VIII. STATEMENT OF COSTS

Attached as Exhibit "A" is a statement of costs and expenses incurred to date by the Panel and Relator in this matter for which payment by Respondents on a joint and several basis is recommended.

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


James L. Ervin, Chair of the Board

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

Exhibit "A"

STATEMENT OF COSTS

Ohio State Bar Association v. Terry Martin, et. al.,

Case No. UPL 06-01

California Secretary of State, Service of Amended Complaint	\$50.00
Legalese Attorney Service, Inc., Service of Amended Complaint	\$34.00
Reimbursement to the Ohio State Bar Association	\$10,285.75
TOTAL	\$10,369.75

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 October, 2007: Terry Martin, 794 Main Street, Milford, OH 45150-1763; Eva Martin, 794 Main Street, Milford, OH 45150-1763; TELLR Corporation, 794 Main Street, Milford, OH 45150-1763; We the People USA, Inc., 1436 Lancaster Avenue, Suite 300, Berwyn, PA 19312; Ira Distenfield, IDLD, Inc., 4312 Marina Drive, Santa Barbara, CA 93110; Ira Distenfield, IDLD, Inc., 1435 Estrella Drive, Santa Barbara, CA 93110; Eugene P. Whetzel, Esq., Ohio State Bar Association, P O Box 16562, Columbus, OH 43216-6562; Jeffrey J. Fanger, Esq., Fanger Law Office LLC, 600 Superior Ave., E, Suite 1400, Cleveland, OH 44114; David S. Mann, Esq., Michael T. Mann, Esq., Mann & Mann, LLC, 1014 Vine St., Suite 1900, Cincinnati, OH 45220; Christopher J. Weber, Esq., Geoffrey Stern, Esq., Kegler, Brown, Hill & Ritter, LPA, 65 East State Street, Suite 1800, Columbus, OH 43215; Joanne P. Underhill, Esq., Underhill & Underhill, PC, 5340 S. Quebec St., Suite 306 North, Greenwood Village, CO 80111-1906; Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215-7411; Clermont County Bar Association, c/o Law Library, 270 E. Main Street, Batavia, Ohio 45103; Cincinnati Bar Association, The Cincinnati Bar Center, 225 East Sixth Street, Second Floor, Cincinnati, Ohio 45202-3209 Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204.



D. Allan Asbury, Secretary of the Board