



February 4, 2020

MEMORANDUM

Re: Ohio State Bar Association v. Watkins Global Network, L.L.C., et al

From: Betty D. Montgomery, Attorney at Law

ISSUE PRESENTED: What activities constitute the unauthorized practice of law in Ohio?

FACTS OF THE CASE:

The facts in this case, albeit scanty, are undisputed. Mario Watkins did engage, by his own admission, in negotiating debt reductions with creditors on behalf of his clients. As a result of a complaint by the Ohio State Bar Association ("Bar") which was filed with the Board on the Unauthorized Practice of Law ("Board"), the Board determined that Watkins had engaged in the unauthorized practice of law on 31 occasions.

In a 4-2 decision, the Ohio Supreme Court overruled the Panel and determined that Watkins had engaged in the unauthorized practice of law on only one occasion, stating that there was insufficient evidence presented by the Bar to support the Panel's decision on the other 30 counts. Two justices concurred in part and dissented in part. While agreeing with the majority opinion that the Bar had failed in meeting its burden to prove an unauthorized practice of law in 30 of the cases charged, the two justices expressed concerns regarding the majority's approach in defining unauthorized practice—seeing it as defining this issue with too broad a brush. Referencing *North Carolina State Bd. of Dental Examiners v. Fed. Trade Comm.*, U.S. ___, 135 S. Ct. 1101, 1112, 191 L. Ed. 2d 35 (2015), these justices expressed concern regarding the noncompetitive activities (in a regulatory sense) by lawyers. Thus, because of the failure by the Bar to meet its burden in 30 cases, combined with an expressed concern as to the broadness of the definition of unauthorized practice of law as applied by the majority, these justices dissented from the majority decision that Watkins had illegally practiced law without a license in one of the 31 cases charged. In their partial concurrence/dissent they felt that the Bar had failed in its burden in all 31 cases.

DISCUSSION OF THE CASE:

This case finally puts to rest the reflexive application of the *Kolodner* case to the activities of nonlawyers engaged in negotiating debts. Several times in the opinion the Court stresses (if not admonishes) that *Kolodner* "**does not amount to a per se rule that any person who negotiates a settlement of a debt on behalf of another but who does not have a license to practice law in the state of Ohio engages in the unauthorized practice of law**". (Emphasis added)

Instead, relying on *Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St. 3d 444, 2006-Ohio-6108, 857 N.E. 2d 95, and other related cases which were factually distinguishable from *Kolodner*, the Court insists that such unauthorized practice of law cases must require an examination of specific acts of the person charged: Did the charged individual give legal advice, draft legal documents, assert legal defenses, use legal devices or tactics in assisting his client? The Court strongly disavowed the wooden application of *Kolodner* that has been applied by the Bar and the Panel in the many cases we have seen. The Court reiterates its *CompManagement* position that "**an allegation that an individual or entity has engaged in the unauthorized practice of law must be supported by either an admission or by other evidence of the specific act or acts upon which the allegation is based**".

CONCLUSION:

It appears that, based on the decision in this case, the industry can be engaged in debt settlement in Ohio. It can do so if debt negotiators act functionally as messengers—presenting offers, relaying counter offers, and requiring clients to draw their own conclusions. A close reading of the *CompManagement* case, which is cited in this *Watkins* decision, gives guidance as to the Court's thinking about generally held knowledge and experience which can be applied when representing clients in negotiations. (See my earlier memo on this.) Although the industry cannot be engaged in making legal determinations, using legal tactics, drafting legal documents, etc., a review of the *CompManagement* case lets us understand the Court's thinking. Where activities are based on experience and common sense that do not require specific knowledge, education and skill, debt negotiations/settlements by non-lawyers appear to be sanctioned by the Court. When, however, negotiations involve drafting legal documents, giving legal advice, using legal tactics, and asserting legal defenses, it would appear from this case, as well as its precedents, that the Court will find that such activities have crept into the legal practice realm where both the Bar and the Courts will discipline and shut down such activities.