### The Supreme Court of Ohio

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**Michael Buenger, Administrative Director**

**Senate Bill 120 Interested Party - written testimony**

**Senate Insurance Committee**

**Tuesday, October 3, 2017**

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Chairman Hottinger, Vice-Chair Hackett, Ranking Member Brown, and members of the committee:

I want to thank you for the opportunity to provide written testimony as an interested party on Senate Bill 120. My testimony reflects the opinion of the staff of the Supreme Court of Ohio and should not be interpreted as expressing the views of the Chief Justice or Justices of the Court as to the constitutionality of the bill. However, having reviewed Senate Bill 120, we believe that the current language, with respect to debt collection services, would likely intrude upon the Court’s exclusive authority to regulate the practice of law in Ohio and, by extension, its authority to prevent the unauthorized practice of law.

This bill involves authorizing nonattorneys to engage in certain debt collection activities. The activities authorized by the bill include such actions as . . . .

Article IV, Section 2(B)(1)(g) of the Ohio Constitution grants original jurisdiction to the Supreme Court of Ohio over all matters pertaining to the practice of law. On several occasions in the past, the Court has addressed the application of this constitutional provision in the context of debt collection activities. For example, in *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St. 3d 504, 2004-Ohio-5581, ¶15, the Court held that the unauthorized practice of law “includes representation by a nonattorney who advises, counsels, or negotiates on behalf of an individual or business in the attempt to resolve a collections claim between debtors and creditors.” And, in *Cincinnati Bar Assn. v. Jansen*, 138 Ohio St.3d 212, 2014-Ohio-512, ¶8, the Court reaffirmed this holding, finding that “the practice of law includes making representations to creditors on behalf of third parties, and advising persons of their rights, and the terms and conditions of settlement.”

We understand that the bill includes uncodified language declaring that nothing contained in the legislation shall be deemed to permit the unauthorized practice of law. While this language is certainly a welcomed clarification, it does not address the underlying concern. As noted, the Ohio Constitution gives to the Supreme Court exclusive authority to regulate the practice of law. A bill declaring that a particular practice would not constitute the practice of law does not make the practice so. In effect, this declaration in uncodified language can be read to produce only one of two possible outcomes: (1) it is, in fact, authorizing the practice of law by nonattorneys contrary to the exclusive constitutional authority of the Supreme Court; or (2) it is nullifying the very activities that it is authorizing. If the declaration is read to achieve the first outcome, then the uncodified language and the law itself are constitutionally suspect. If the declaration is read to achieve the second outcome, then any acts authorized by the law are nullified by the uncodified language since the Supreme Court has already determined that those activities by nonattorneys constitute the unauthorized practice of law.

We believe the Senate Bill 120 would authorize the practice of law by nonattorneys, declarations to the contrary notwithstanding. Thank you for the opportunity to testify as an interested party regarding Senate Bill 120.