

SUPREME COURT OF OHIO

Columbus Bar Ass'n v. Verne, 99 Ohio St. 3d 50, 2003-Ohio-2463

788 N.E.2d 1064 (Ohio 2003) · Decided May 16, 2003

SUMMARY

The Ohio Supreme Court held that a certified public accountant engaged in the unauthorized practice of law by advising clients on the selection of a business structure and preparing documents to establish a limited liability company. The court enjoined the respondent from preparing legal documents constituting the unauthorized practice of law and taxed costs and expenses to him.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; Cook, J.
JURISDICTION	Ohio
DECIDED	May 16, 2003
DISPOSITION	other
PROCEDURAL POSTURE	The Columbus Bar Association filed a formal complaint alleging that respondent engaged in the unauthorized practice of law by preparing LLC formation documents and advising clients about business structure. The Board of Commissioners on the Unauthorized Practice of Law found the allegations established and recommended an injunction and reimbursement of costs and expenses.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	Columbus Bar Association v. Leonard P. Verne Jr.

TOPICS

limited liability companies

corporate law

remedies

PRACTICE AREAS

unauthorized practice of law

limited liability companies

corporate law

legal ethics and professional responsibility

QUESTIONS PRESENTED

1. Whether a nonlawyer certified public accountant engages in the unauthorized practice of law by preparing documents to create an LLC for others.
2. Whether advising clients about which business structure to select constitutes the unauthorized practice of law rather than permissible clerical or accounting assistance.

HOLDINGS

1. A layperson who drafts documents creating a business entity for another person engages in the unauthorized practice of law.
2. A certified public accountant engages in the unauthorized practice of law when he advises clients about which business structure to choose because that advice requires substantial legal judgment in addition to tax and accounting considerations.

KEY QUOTATIONS

“For a layperson to draft documents creating a business entity on another’s behalf is unquestionably the unauthorized practice of law.” (¶ 4)

“To the contrary, respondent’s advice to his clients about which business structure they should choose is just what Gustafson determined to be the unlicensed practice of law.” (¶ 5)

FACTUAL BACKGROUND

Leonard P. Verne, a certified public accountant who had never been admitted to practice law, helped two individuals structure a power-washing business as a limited liability company and drafted articles of organization using state forms. After the business partners later disagreed, an attorney reviewing the LLC documents discovered that no operating agreement had been executed and learned that Verne had assisted with the formation. Verne also advised the clients about which business structure to choose, including considerations beyond tax consequences.

PROCEDURAL HISTORY

After discovering that respondent, a certified public accountant who was not licensed to practice law, had prepared articles of organization for an LLC and advised clients about structuring their business, an attorney filed a grievance with the Columbus Bar Association. The Association filed a formal complaint on March 27, 2002. The Board of Commissioners on the Unauthorized Practice of Law recommended an injunction and costs, which the Supreme Court of Ohio adopted.

DISPOSITION

other

CASES CITED

- Cincinnati Bar Assn. v. Davis, 62 Ohio Misc. 2d 64, 590 N.E.2d 916 (1992)
- Florida Bar v. Mills, 398 So. 2d 1368 (Fla. 1981)

- Knight v. Day, 343 Ark. 402, 36 S.W.3d 300 (2001)
- Gustafson v. V.C. Taylor & Sons, Inc., 138 Ohio St. 392, 20 O.O. 484, 35 N.E.2d 435 (1941)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} Respondent, Leonard P. Verne Jr., is a certified public accountant (“CPA”). In 1997, two men who were operating a power-washing company discussed with respondent how best to structure their business.

Although respondent has never been admitted to the practice of law in Ohio or any other jurisdiction, he drafted articles of organization, using forms available from the Secretary of State’s office as a baseline, to establish the business as a limited liability company (“LLC”). {¶ 2} In early 2000 after the partners had a falling out, one of them consulted an attorney who was also a CPA about how to structure the company’s future business transactions.

The attorney reviewed the documents of organization that respondent had prepared and filed. He discovered that no operating agreement had been executed between the two partners, an omission that commentators caution against. Henning & McQuown, Ohio Limited Liability Company: Forms and Practice Manual (December 2001), Section 3.5 (written operating agreements “minimize disputes, prevent fraud, protect the legitimate expectations of the members, and avoid or minimize problems with disregard of the entity for liability purposes”). {¶ 3} The attorney asked his client who had assisted in forming the LLC, and the client directed him to respondent.

When the attorney realized that respondent was not licensed to practice law, he filed a grievance with relator, the Columbus Bar Association. On March 27, 2002, relator issued a formal complaint charging respondent with having engaged in the unauthorized practice of law and seeking to enjoin this conduct.

The Board of Commissioners on the Unauthorized Practice of Law heard the cause, found the facts as stated, and recommended that we issue the injunction together with an order for reimbursement of costs and expenses. {¶ 4} We adopt the board’s findings and recommendation.

For a layperson to draft documents creating a business entity on another’s behalf is unquestionably the unauthorized practice of law. Cincinnati Bar Assn. v. Davis (1992), 62 Ohio Misc.2d 64, 590 N.E.2d 916. Accord Florida Bar v. Mills (Fla.1981), 398 So.2d 1368; and Knight v. Day (2001), 343 Ark. 402, 36 S.W.3d 300. And although respondent argues that as a CPA he is also capable of competently advising clients in the creation of these documents, his argument actually makes relator’s case against him.

D. Allan Asbury, Bruce Campbell, Bar Counsel, and Jill M. Snitcher McQuain, Assistant Bar Counsel. Alan L. Bolen, for respondent. Blaugrund, Herbert & Martin, Steven A. Martin and Teri

G. Rasmussen, for amicus curiae Ohio Society of Certified Public Accountants. Eugene P. Whetzel, for amicus curiae Ohio State Bar Association. {¶ 5} While we recognize that certified public accountants perform a valuable function in advising on financial matters in the formation of a company, such as how best to structure a business entity for tax benefits, there are still many remaining issues that require legal analysis in choosing a business structure.

This case highlights the dangers when those lines are blurred. In this case, respondent helped his clients choose a business structure, a decision that ordinarily requires a significant amount of legal judgment in addition to tax and other accounting considerations. Clients need to know the legal differences between and formalities of available structures and then be advised according to their best interests, taking into account personal and practical concerns, not just tax consequences.

Where there is more than one principal involved in the venture, the existing and potential conflicts also must be assessed. This undertaking is hardly the clerical service that respondent insists he performed and that is permissible under *Gustafson v. V.C. Taylor & Sons, Inc.* (1941), 138 Ohio St. 392, 20 O.O. 484, 35 N.E.2d 435.

To the contrary, respondent's advice to his clients about which business structure they should choose is just what Gustafson determined to be the unlicensed practice of law. *Id.* at 397, 20 O.O. 484, 35 N.E.2d 435. {¶ 6} Accordingly, we adopt the findings, conclusion, and recommendation of the board. Respondent is hereby enjoined from preparing legal documents that constitute the unauthorized practice of law.

Costs and expenses are taxed to respondent. Judgment accordingly. Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur. Cook, J., concurs in judgment.