**IN THE STATE PERSONNEL BOARD OF REVIEW**
**COLUMBUS, OHIO**

David Douglas, et al.

*Appellant*

v.

City of Dover,

*Appellee*

Case Number: 2022-REM-01-0005
Case Number: 2022-WHB-01-0006
Case Number: 2022-REM-01-0007
Case Number: 2022-WHB-01-0008
Case Number: 2022-REM-01-0009
Case Number: 2022-WHB-01-0010

Motion to Strike Richard P. Homrighausen's, individually or as mayor, Motion to Intervene and to Stay Proceedings filed by Richard P. Homrighausen pro se or in his representative capacity as Mayor.

Motion to order Richard P. Homrighausen be ordered to identify all attorneys who participated in any manner with research, drafting, filing, advice, or any other indices of the practice of law.

Motion to order sanctions against Richard P. Homrighausen, individually and not as mayor of Dover, and the attorney that participated in the enabling and abetting of the unlawful practice of law and an order that both Richard P. Homrighausen and the attorney to pay all costs to defend these motions to both appellants and appellee, and all costs of the city of Dover (Dover) that will additionally incurred by the delay in the settlement of these cases after February 11, 2022 by the filing of these unlawful motions.

I.

Richard P. Homrighausen has filed three pleadings before two tribunals that constitute the unlawful practice of law. He has been enabled by an attorney to violate these provisions. This board, in addition to striking these pleadings filed herein, should also require the disclosure of the attorney that facilitated this action for appropriate sanctions and referral for sanctions as required by law.

The three motions are:

A motion to Intervene filed with the State Personnel Board of Review (SPBR) of February 11, 2022;
A motion to Stay Proceedings Pending Appointment of Counsel filed with the SPBR) on February 24, 2022;
A claimed Taxpayer Action for a Writ of Mandamus in the Tuscarawas County Court of Common Pleas filed February 25, 2022.

It is respectfully submitted that the SPBR has jurisdiction over the filings before this board or agency.

Appellee respectfully requests that the pleadings filed herein be struck from the record, that the attorney be identified, that sanctions be applied to Richard P. Homrighausen individually and not as mayor, and the attorney that helped prepare these filings be also sanctioned and ordered to pay costs and losses incurred by these parties including all attorneys' fees, all delay in reinstatement costs, and all other costs lawfully attributed to this misconduct.

II.

It is not the limited time between the filings that raises suspicion. Nor is it the lack of a required signature. These filings become suspicious when looked at as a whole. All of them arise out of the mayor's firing of city employees for cooperating with an investigation involving the mayor. All three employees complied with a lawful request testimony by providing their testimony in the form of an affidavit to the lawful authorities specifically listed in ORC 124.341.

The pretextual reason provided by the mayor for their discharge was 'lack of confidence'. We know this is pretextual due to the lack of any record of disciplinary action or misconduct by the fired employees. We also know that the mayor did not state any reasons when he fired the employees, nor at any time subsequent thereto. We also knew that these employees navigated the city through the pandemic while the mayor was simply missing in action. Combining the lack of a record demonstrating poor performance with the fact that the firings only took place after the mayor learned of the contents of the affidavits creates a reasonable inference that retaliation was the real motivation.

The discharged employees then initiated a whistleblower action against the city in order to be reinstated to their prior positions and for protection from further retaliation by the mayor. The Ohio State Personnel Board reviewed the facts of the case and agreed to approve of any reasonable settlement reached by the appellants [the discharged employees] and the city. The city agreed to reinstate the employees to their prior positions, without docking pay, and to pay them as if they were employed the entire time. It was also agreed that the employees would be protected from further disciplinary action by the mayor or anyone at his behest. This is includes preventing his ability to fire them again which is normally within his authority as mayor.

These matters were reviewed by the Administrative Law Judge (ALJ) and the ALJ awaits the filing of the settlement agreement by the parties after approval of the settlement by the terminated employees and the city of Dover, after council action to override the mayor's veto. This process allows the approved settlement agreement to be brought in front of city council, in the form of a resolution, for their review and approval. Council voted unanimously in favor of approving the terms of the agreement. The mayor vetoed the resolution on February 17, 2022. Council must wait a minimum of ten days after the veto to reconsider and override the veto. While the vote on the veto override is presently possibly considered for March 7, 2022, it may be delayed to a later date based upon additional contingencies that council and the city are considering, including the delay before the settlement is able to be approved by the SPBR board. As all of the above had transpired, the mayor filed the three motions and actions noted above.

III.
Civil Rule 11 Signature Requirement

Civ R 11 Signing of pleadings, motions, or other documents.

Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address, attorney registration number, telephone number, facsimile number, if any, and business e-mail address, if any, shall be stated.

A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address. A party who is not represented by an attorney may further state a facsimile number or e-mail address for service by electronic means under Civ.R. 5(B)(2)(f).

Except when otherwise specifically provided by these rules, pleadings, as defined by Civ.R. 7(A), need not be verified or accompanied by affidavit.

The signature of an attorney or *pro se* party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or *pro se* party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted."

Ohio Civ. R. 11

The Ohio Civil Rules and Statutes proscribe an individual, other than a licensed attorney, from representing another, in a legal capacity. This does not preclude someone from representing themselves. Instead, the desire is to regulate the practice of law to protect the public. As the Ohio Supreme Court explains "[t]he purpose . . .is to "protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation." *Cleveland Metro. Bar Ass'n v. Hennessey*, 2021-Ohio-667, 164 Ohio St. 3d 437, 439, 173 N.E.3d 465, 467. Two of the main mechanisms used to provide this protection include Ohio's Civil Rule 11 and Ohio Revised Code §2323.51.[1]

To the degree that the mayor claims that he is filing as a mayor, he is filing in a representative capacity and is therefore in violation of Civil Rule 11.

## IV.
## Conduct Constituting Bad Faith Under Rule 11.

Rule 11 seems relatively straightforward, but its application, especially with facts like the ones before us, is not. In order for sanctions for filing frivolous documents the court must find that the filing party acted with "bad faith." Ohio's Supreme Court in *State ex rel Bardwell v. Cuyahoga Cty. Bd of Commrs*., explained "Civ. R. 11 employs a subjective bad-faith standard to

[1] "Definitions; award of attorney's fees as sanction for frivolous conduct" Ohio Rev. Code Ann. § 2323.51 (West)

invoke sanctions by requiring that any violation must be willful." *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 2010-Ohio-5073, ¶ 8, 127 Ohio St. 3d 202, 203, 937 N.E.2d 1274, 1276. "This court has described bad faith as "'a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity." *Id*. "It means a breach of a known duty through some motive of interest or ill will." *Id*.

## V.
## Duty of Candor.

The Duty of Candor applies to all conduct by an attorney that may affect the judiciary. It is arguably the most important duty because it is the foundation underlying the public's confidence in the legal system. The Duty of Candor is found and defined under Rule 3.3 of the Ethics Rules.

> Rule 3.3 (a) states, a "lawyer shall not *knowingly* do any of the following" . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . ." *Id.*
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> Rule 3.3 (b) forbids "a lawyer who represents a client in an adjudicative proceeding and who knows that a person, including the client, intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take all reasonable measures to remedy the situation, including, if necessary disclosure to the tribunal." *Id*, at (b).
>
> Rule 3.3 (d) In an *ex parte* proceeding, a lawyer shall inform the *tribunal* of all material facts *known* to the lawyer that will enable the *tribunal* to make an informed decision, whether or not the facts are adverse. *Id*, at (d).

Since all of the filed documents relate to actions currently in front of a tribunal the information contained within must provide all knowns facts that will enable the tribunal to make an informed decision. Rule 3.3(d), *supra*. In other words, any omissions of material fact are a violation of the duty of candor and could result in sanctions against an attorney. Again, all three documents were signed solely by the Richard P. Homrighausen, either as an individual or as mayor, even though they were prepared by an unspecified attorney. *See generally*, Mayor's Writ, Motion to Intervene, and Motion to Stay.

It is clear that an attorney researched, prepared, and wrote the documents despite the lack of a signature. It is reasonable to infer this since all of the legal documents are formatted correctly and follow the unique writing and citation style only taught in law schools. The mayor, before his time in office, was an undertaker. He owned and operated a funeral home. It is patently clear the mayor does not have the requisite skills or knowledge to create anything near a coherent legal argument as those contained in the documents he filed.

Why would an attorney invest the time and energy in preparing the documents and not sign them as required by Rule 11 and Ohio's Professional Code of Conduct? The only logical reason that comes to mind is that the attorney knew the filings were meritless and in order to comply with the Rules of Professional Conduct the attorney agreed to draft the documents but not to file nor sign them. This not only served to protect the drafting attorney from possible sanctions, it also allowed them to comply with the wishes of his client. Unfortunately for the mayor, the fact that the attorney prepared the documents but refused to represent him and refused to sign the filings is circumstantial evidence that the claims lack merit.

The mayor is clearly attempting to proceed in a personal representative capacity while benefitting from the skills and expertise of traditional legal counsel. This is not permitted by the courts. " A litigant has the right to represent himself or to be represented by counsel; but not the right to both" *Wood v. Eubanks*, 459 F. Supp. 3d 965, 979 (S.D. Ohio 2020), *rev'd and remanded,* 25 F.4th 414 (6th Cir. 2022). "[C]ourts in the routinely strike or refuse to consider *pro se* pleadings filed by represented parties. *Chasteen v. Jackson*, No. 1:09-cv-413, 2012 WL 1564493, at *3 (S.D. Ohio May 3, 2012) (citing *United States v. Flowers*, 428 Fed. App'x 526, 530 (6th Cir. 2011)); see also *United States v. Degroat*, No. 97-cr-20004-DT-1, 2009 WL 891699, at *1 (E.D. Mich. Mar. 31, 2009) ("The court will strike the *pro se* motion because, now that Defendant is represented by counsel, all filings must be made by the attorney of record.").*Wood v. Eubanks*, 459 F. Supp. 3d 965, 979 (S.D. Ohio 2020), *rev'd and remanded,* 25 F.4th 414 (6th Cir. 2022).

At the bottom of page six (6) of the mayor's motion to intervene is located that following language; "the Mayor seeks leave to intervene in this action to protect the interests of the Appellee for which he serves as the appointing authority." *Homrighausen Motion to Intervene*, at 6. Appellee is the City of Dover and is already represented by counsel in the action the mayor is seeking to intervene. Despite this the mayor trying to act in a representative capacity for the City and to do so in a legal proceeding. This is an unlawful practice of law.

## VI.
## The Unlawful Practice of law.

The unauthorized practice of law "is the rendering of legal services for another by any person not admitted to practice in Ohio," Gov. Bar R. VII(2)(A)(1). . . ." *Disciplinary Couns. v. Spicer*, 2020-Ohio-3020, 160 Ohio St. 3d 466, 468, 158 N.E.3d 589, 591–92. "We have consistently maintained that the rendering of legal services includes "'the preparation of legal instruments and contracts by which legal rights are preserved.'" *Ohio State Bar Assn. v. Miller*, 138 Ohio St.3d 203, 2014-Ohio-515, 5 N.E.3d 619, ¶ 14, quoting *Ohio State Bar Assn. v. Allen*, 107 Ohio St.3d 180, 2005-Ohio-6185, 837 N.E.2d 762, ¶ 7. And the drafting of a contract or other legal instrument on behalf of another constitutes the practice of law "even if the contract is copied from a form book or a contract previously prepared by a lawyer." *Ohio State Bar Assn. v. Burdzinski, Brinkman, Czarzasty & Landwehr, Inc.*, 112 Ohio St.3d 107, 2006-Ohio-6511, 858 N.E.2d 372, ¶ 23." *Disciplinary Couns. v. Spicer*, 2020-Ohio-3020, 160 Ohio St. 3d 466, 468, 158 N.E.3d 589, 591–92.

Assuming arguendo that the mayor is honestly seeking to protect the interest of the City of Dover by participating in the negotiations, the court cannot grant him this request. If granted the court would be assisting the mayor in engaging in the unlawful practice of law. *See*, *Cleveland Metro. Bar Ass'n v. Hennessey*, *(*Anyone negotiating legal claims and terms and conditions of settlement engages in the practice of law.) *Cleveland Metro. Bar Ass'n v. Hennessey, 2021-Ohio-667, 164 Ohio St. 3d 437, 439, 173 N.E.3d 465, 467*; *see also, Fravel v. Stark Cty. Bd. of Revision* (2000), 88 Ohio St.3d 574, 728 N.E.2d 393, 2000-Ohio-430 (R.C. 4705.01 prohibits a non-attorney from representing another in any action or proceeding in which the person is not a party). Thus, the court may not and will not grant the mayor's request because doing so will assist him in unlawful conduct.

## VII.
## The Lawyer who Helped prepare these pleadings Violated Civil Rule 11 and Ethics Rule 3.

Appellee restates the provisions stated above. The ALJ and the Board should require the disclosure of the Attorney with all contact information. The Attorney, along with Richard P. Homrighausen, in his individual capacity, should be required to show cause why sanctions should not be awarded in favor of both Dover and the Appellants.

The sanctions should include attorneys' fees, costs of delay, additional front pay costs of the city, and such other additional sanctions as appropriate under the circumstances. As Richard P. Homrighausen is asserting only pretextual basis, and after the fact basis, for the firing of these three employees, the sanctions should included all costs associated with this action, including all attorneys' fees related to the discharge.

Awarding all costs against the mayor personally is the only effective way to preclude this type of behavior and to make this appellants and appellee whole. The order should be specific to Richard P. Homrighausen individually. It is respectfully submitted that due to the unlawful malice and purposeful misconduct, not only in the firing, but in the pretextual conduct behavior and unlawful motions, this is the method that should be followed.

The award should be against the mayor individually and his yet undisclosed counsel, as that is the way to punish this misconduct and stop this behavior in the future.

Respectfully submitted,
**DOUGLAS J. O'MEARA**
Douglas J. O'Meara (0015068)
Dover Ohio Law Director
339 Oxford Street
Dover, Ohio 44622
Doug.omeara@doverohio.com
3304324006

Service

A copy of this memorandum was served on David Dingwell at ddingwell@lawlion.com, Richard P. Homrighausen at Richard.homrighausen@doverohio.com, and the Administrative Law Judge Raymond Geis at Raymond.geis@serb.ohio.gov, and spbr@spbr.ohio.gov on the 2nd day of March, 2022.

Douglas J. O'Meara
Dover Ohio Law Director