

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

DISCIPLINARY COUNSEL,

Relator,

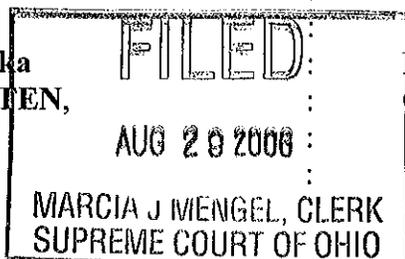
Sup. Ct. Case No. **04-1130**

v.

Case No. **UPL 03-07**

**CHARLES D. COTTON aka
PRINCE CHARLES COTTEN,**

Respondent.



**FINAL REPORT
ON REMAND**

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law ("Board") upon the complaint of Relator, Disciplinary Counsel, against Respondent, Charles D. Cotton *aka* Prince Charles Cotten, an inmate incarcerated by the State of Ohio.

On August 19, 2003, Relator filed a seven-count complaint alleging that Respondent was engaging in the unauthorized practice of law as a "jailhouse lawyer" for fellow inmates. Relator alleged that during the years 2001 and 2002, Respondent, while incarcerated at the London Ohio Correctional Institute ("LoCI"), prepared, drafted, and revised legal papers for other inmates and that those papers were eventually filed with the Clerk of the Supreme Court of Ohio.

A grievance was filed against Respondent by the Supreme Court of Ohio Office of the Clerk after the Clerk received a number of improper filings by Respondent. During the investigation, repeated requests were made to Respondent to cease this improper activity. Respondent replied that his conduct was not improper and declined to stop providing legal

representation to inmates. (Relator's Hearing Exbs. 2, 3 and 4).

Relator further alleged that two letters were sent to Respondent from the Office of Disciplinary Counsel requesting that Respondent cease and desist from the unauthorized practice of law, but Respondent refused to comply. Relator produced forty-two exhibits that were admitted into evidence by the Board.

Respondent, appearing *pro se*, filed a "response to formal complaint and or cross formal complaint" on September 25, 2003, claiming *inter alia* that he has a federal and state constitutional right to do so. On November 20, 2003, the Board issued an order *sua sponte* that "paragraphs number 1 through 4 of respondent's response be accepted as respondent's answer to the complaint and that the remainder of respondent's response be stricken."

Respondent did not appear in person but Relator took his deposition on December 8, 2003, and a transcript of the proceedings was filed with the Board. (Exb. 1). Respondent testified by deposition that he was not guilty of the unauthorized practice of law as he was merely providing assistance to illiterate inmates by typing, correcting errors, and referring them to court cases.

On January 21, 2004, this matter was heard by the Board and on July 13, 2004, the Board issued its final report. The report found that "respondent engaged in the unauthorized practice of law by preparing legal papers on behalf of other inmates" and recommended that an order be issued prohibiting him from engaging in this conduct in the future.

On July 19, 2004, the Supreme Court of Ohio issued a show cause order and on August 6, 2004, Respondent filed objections to the Board's report. The Court held an oral argument on January 19, 2005. On June 30, 2005, the Court remanded this matter to the Board "for further consideration, including findings on whether reasonable alternatives now exist in the Ohio prison system to assist inmates in the preparation of petitions for post-conviction relief as described in

Johnson v. Avery (1969), 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718."

A Panel consisting of Commissioners Judge Michael Corrigan, James W. Lewis, and Richard R. Hollington were assigned to hear the matter on remand.

On August 15, 2005, Ohio attorneys, Shawn J. Organ and Kerstin Sjoberg-Witt of the Jones Day law firm, entered their appearance as appointed counsel for Respondent and the Panel thereupon issued an order directing the parties to submit briefs in response to the Supreme Court's June 30, 2005 remand order. The parties conducted discovery, including sworn witness depositions.

On September 8, 2005, Relator filed a brief with supporting evidence. On November 7, 2005, Respondent filed a brief in opposition with supporting evidence. Respondent also filed a motion to strike the affidavit of Deb Timmerman-Cooper, submitted in support of Relator's brief. On November 17, 2005, Relator submitted a reply brief with supporting evidence and a response to the motion to strike the Timmerman-Cooper affidavit. On November 29, 2005, Respondent filed a reply to Relator's response.

On April 17, 2006, the Panel denied the motion to strike the affidavit because it contained a sufficient specific averment that the statement was made on the affiant's personal knowledge.

Respondent urges the Panel to dismiss Relator's complaint on two grounds. First, Respondent argues that Relator failed to establish that he engaged in the unauthorized practice of law. Second, even if Respondent's alleged conduct constituted the practice of law, Relator failed to demonstrate that reasonable alternatives exist in Ohio's prison system for illiterate or poorly educated inmates to prepare legal pleadings. In the absence of such reasonable alternatives, under *Johnson v. Avery*, Disciplinary Counsel may not prohibit Respondent's conduct.

The Panel considered the evidence and arguments submitted by the parties, and for the reasons explained below finds no cause to hold a further evidentiary hearing or oral arguments to reach the conclusions set forth in this Final Report.

II. APPLICABLE LAW RELATING TO INMATE-RIGHT-OF-ACCESS TO THE COURTS

In *Johnson v. Avery* (1969), 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718, the United States Supreme Court reviewed the inadequacies of Tennessee's prison system in providing inmates with meaningful access to the courts. The court established certain basic constitutional guidelines regarding the extent to which inmates may provide assistance to each other in the preparation of post-conviction petitions. The court found that the only assistance Tennessee provided to inmates who wished to file post-conviction actions was the free notarization of petitions. *Id.* at 393 U.S. 488. Beyond that, the prison warden sometimes allowed inmates to use the telephone directory to locate an attorney listing and on a few occasions the warden placed a call to the public defender on behalf of an inmate. *Id.* at 490. On these facts, the court held that state prisons may not bar inmates from assisting each other in the preparation of post-conviction petitions unless the prison provides a reasonable alternative to this type of assistance. *Id.* The court emphasized the fundamental importance of the writ of habeas corpus and recognized that many inmates were illiterate and in need of assistance. *Id.* at 485. The court also held that a state may impose reasonable restrictions on this type of inmate activity. *Id.* at 490. The court noted with approval that other states provided public defenders or senior law students to consult with inmates and suggested this procedure as a possible alternative solution for a state seeking to prohibit mutual assistance among inmates. *Id.* at 489.

In *Bounds v. Smith* (1977), 430 U.S. 817, 97 S.Ct. 149, 52 L.Ed.2d 72, the Supreme Court reaffirmed inmates' fundamental constitutional right of access to the courts and recognized that providing adequate prison law libraries to assist them in preparing and filing meaningful legal papers is another constitutionally acceptable way for states to ensure inmates meaningful access to the courts. *Id.* at 828.

The U.S. Supreme Court reexamined and further narrowed the scope of an inmate's constitutional right of access to the courts in *Lewis v. Casey* (1996), 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606. Inmates brought a civil rights action alleging that Arizona prison officials had violated that right. The court held that a state need only provide "a reasonably adequate opportunity to file non-frivolous legal claims challenging their convictions or conditions of confinement." *Id.* at 356. The court noted that its prior decision in *Bounds*, requiring prisons to provide adequate law libraries, was a requirement with practical limits and held that prisons were required to provide only the library materials necessary for inmates to attack their sentences, directly or collaterally, and to challenge their conditions of confinement. *Id.* at 355. The court further held that a state is not required to enable prisoners to discover grievances or to litigate effectively once in court. *Id.* at 354.

The *Casey* court also held that for an inmate to advance a claim that the state failed to furnish adequate law libraries or adequate assistance from persons trained in the law, the inmate must demonstrate that he or she suffered actual injury. *Id.* at 351. An inmate can do this by demonstrating that an actionable claim was lost, rejected or prevented due to the prison's failure to provide the inmate with the capability to file the claim. *Id.* at 356. An inmate cannot bring a general challenge to the adequacy of the law library or legal assistance program provided by the state prison system. *Id.* at 351.

Together, *Johnson*, *Bounds* and *Casey* hold that meaningful access to the courts is provided when inmates have access to a prison library that contains legal materials needed to attack sentences and challenge confinement, and that the adequacy of such conditions may be challenged by the inmate only upon a showing of actual injury. Thus the right to meaningful access to the courts belongs to the aggrieved inmate, not to a “jailhouse lawyer” representing that inmate or otherwise advocating his or her cause.

Numerous court decisions have applied the holdings of these three U.S. Supreme Court decisions, including *Sizemore v. Lee*, 20 F. Supp. 2d 956 (W.D. Vir. 1998). Relator cites this case in support of the state’s claims against Respondent and the Panel finds it instructive. In *Sizemore*, a federal district court found that a direct order from prison officials requiring a Virginia inmate to cease writ-writing activities on behalf of other inmates was not unconstitutional. Sizemore admitted typing a habeas petition for another inmate. He claimed that the inmate he was helping, free of charge, and other inmates like him that he might have helped absent the order, had no other way to draft pleadings and they were indigent mental patients with no legal training. Sizemore asserted that he had paralegal training with ten years of experience in helping inmates prepare pleadings in civil and post-conviction litigation, that he had a four-year college degree and five years of on-the-job experience as a paralegal before incarceration. He admitted that the prison where he was incarcerated had a law library and inmate law clerks to aid other inmates in the library, but claimed that these inmates had no legal training and did not help other inmates prepare pleadings. He submitted affidavits from inmates whom he had helped or attempted to help in preparing legal pleadings. These inmates stated that without Sizemore's help, they could not have filed their claims, although they were not specific about the factors that would have prevented them from filing or the claims that they wished to bring.

The court rejected Sizemore's habeas corpus claim and upheld the order to desist, without an evidentiary hearing, on several grounds. First, the court found "no merit to Sizemore's assertion that he had a constitutional right to engage in writ writing for other inmates. The right to access the courts is clearly personal to the inmate who is seeking to bring actionable claims before the court." *Id.* at 958. Second, the court held that the prison had satisfied the primary concerns of *Johnson v. Avery* by providing a law library and inmate legal assistants. Also, under *Casey*, "inmates may not bring a general challenge to the adequacy of the law library or legal assistance program provided by the state legal system." *Id.* Third, the court held that an individualized order to cease and desist writ writing was factually distinguishable from the statewide prison regulation struck down by *Johnson v. Avery*. *Id.* "From previous experience with Sizemore, the court takes judicial notice of the fact that, during a previous period of incarceration, Sizemore was investigated and disciplined for violating prison regulations against charging other inmates for his services as a jailhouse lawyer. Given this history and the fact that Sizemore has no constitutional right to prepare petitions for others, the court must defer to the apparent judgment of prison administrators that the security interests of the prison required a ban on Sizemore's writ writing activities." *Id.*

The court further found that Sizemore failed to demonstrate "any violation of the right of access to courts for the inmates whom he is not allowed to help. Even assuming that the inmates whom Sizemore would help are illiterate, unfamiliar with English, or too mentally incapacitated to write coherently, Sizemore has not demonstrated that they would not be allowed to seek writing help from other inmate writ writers, their prison counselors or family members. * * * Sizemore has failed to allege facts concerning any specific claim that these inmates wished to bring. To state a *prima facie* case of denial of the right of access, the plaintiff must demonstrate

that he had an actionable claim that he could not bring or that was rejected directly because of inadequate state assistance or state interference. *Casey*, 116 S. Ct. at 2182.” *Id.* at 958-959.

III. FINDINGS OF FACT

A. Unauthorized Practice of Law Activities

The Board previously found as fact (and concluded as a matter of law) that the alleged conduct of Respondent constituted the unauthorized practice of law.

Upon reviewing the Board’s earlier findings of fact (and conclusion of law) the Supreme Court of Ohio remanded this case to the Board “for further consideration, including findings on whether reasonable alternatives now exist in the Ohio prison system to assist inmates in the preparation of petitions for post-conviction relief as described in *Johnson v. Avery* (citation omitted).”

Upon remand the parties conducted additional discovery and Respondent briefed and submitted evidence on both the access-to-court and unauthorized practice of law issues.

The evidence includes the deposition testimony of LoCI Warden Deb Timmerman-Cooper, Librarian Gilbert Hurwood, Assistant Librarian Toni Duru, School Administrator Ernest Mack, and inmate legal clerks Jerome Barnett, Benjamin Price, Paul Jasper and Joe Deavors, and the Respondent himself. The record also contains substantial documentation.

The Panel considered both the earlier and additional evidence and arguments presented by the parties that are relevant to both the access-to-court and unauthorized practice of law issues, and finds as follows:

1. Relator, Disciplinary Counsel, is duly authorized to investigate activities that may constitute the unauthorized practice of law. Gov.Bar R. VII(5)(A).

2. Respondent, Charles D. Cotton *aka* Prince Charles Cotten was incarcerated at London Correctional Institute after his conviction in 1975 for aggravated murder. (Original Report of Board on the Unauthorized Practice of Law at 2) *See also, State v. Cotton* (1978), 56 Ohio St. 2d 8 and *Cotten v. Houck*, 12th Dist. No. CA2003-12-04, 2004 Ohio 5823.

3. Respondent was incarcerated at LoCI between November 1993 and August 2005. (Relator's Brief Exb. B).

4. Respondent is not an attorney licensed to practice law in Ohio pursuant to the Rules for the Government of the Bar. (Orig. Report at 2).

5. Respondent asserts, in his defense to the allegation of unauthorized practice of law, that his conduct did not constitute the practice of law, or alternatively, that he has a federal and state constitutional right to act as a "jailhouse lawyer" for fellow inmates. (Relator's Hearing Exb. 4).

6. Respondent claims that the prisoners he assisted were illiterate, but there is no evidence in the record supporting this assertion except Respondent's own unsupported statements. In his deposition Respondent acknowledged that he did not know if at least one of the parties he assisted was illiterate. (Relator's Hearing Exb. 2 at 66:2) Moreover, this same inmate wrote seven letters in support of the inmate's various legal actions. (Relator's Hearing Exb. 15).

7. Respondent argues that his conduct is no different from that of LoCI's four inmate legal clerks and because they are not being accused of the unauthorized practice of law, neither should he.

8. The job description and authorized activities of the inmate legal clerks are clerical in nature such as showing inmates a self-help litigation manual, policies, administrative

regulations, a book of legal forms, etc. (Cotton Deposition Exb. J at 4).

9. On occasion the inmate legal clerks exceed these authorized activities and perform legal research and write pleadings for other inmates. (Barnett Deposition at 8, 14-15; Deavors Deposition at 23-24,61; Price Deposition at 27, 49).

10. It is within Relator's discretion to charge a particular individual and not another with an unauthorized practice of law violation. The decision not to charge, or to defer bringing a charge against one person and not another, does not provide a defense to the person charged.

11. Although Respondent's conduct appears to encompass certain activities in which the inmate legal assistants also engage (properly or otherwise), Respondent's conduct exceeds that level of participation and control.

12. Respondent regularly serves as an inmate advocate and in a letter to Disciplinary Counsel openly referred to himself as a "jailhouse lawyer." (Relator's Hearing Exb. 4).

13. While incarcerated, Respondent conducted legal research, provided legal advice and "drafted, revised and prepared" legal pleadings on behalf of numerous other inmates, including over 30 filings that are included in the record of this proceeding. (Orig. Report at 2, Relator's Hearing Exbs. 5-42).

14. Respondent also signed five of these legal pleadings as if he were acting as legal counsel for the inmate-defendant. (Relator's Hearing Exbs. 38-42).

15. Respondent acknowledged his authorship of and responsibility for creating these pleadings by typing the following statement on the bottom page of each pleading: "Drafted, revised and prepared by Prince Charles Cotten, Sr. #146 490, pro se assistance for the plaintiff as a state and federal constitutional right being filed before this most honorable court in this case in chief." .

16. Respondent's legal pleadings on behalf of other inmates have been filed with his own name on them in Common Pleas Court, the Court of Appeals, and the Supreme Court of Ohio. Respondent's pleadings on behalf of other inmates include: motions in criminal trial court proceedings; notices of appeal and briefs for criminal proceedings; petitions for procedendo; motions for reconsideration in the Court of Appeals and the Supreme Court of Ohio; various other special motions in the Court of Appeals; petitions for a writ of habeas corpus in the Court of Appeals; and writs of mandamus in the Supreme Court of Ohio. (Relator's Hearing Exbs. 5-42). In some instances Respondent completed legal work for inmates in proceedings in which the inmate had court appointed counsel. (Relator's Hearing Exbs. 19, 25, 26 and 27).

17. Robert Vaughn, Case Management Counsel with the Clerk's office of the Supreme Court of Ohio, testified and identified various exhibits that were representative of the legal papers in issue. (Original hearing transcript pp. 10-20).

18. There is no evidence in the record that any LoCI inmate's right of access to the courts was denied by unconstitutional conditions at LoCI in a specific case, which necessitated Respondent's legal assistance.

19. Respondent has an established reputation for knowing the law and for providing legal services to other inmates. (Deposition of Mack at 36:14; Deposition of Deavors at 26:17, 35:9; Deposition of Barnett at 18:18; Relator's Brief Exb. E).

20. Fellow inmates understood that Respondent placed his name on pleadings to show that he prepared them. (Deposition of Deavors at 46:21). Inmates and staff further understood that signing or placing your name on another inmate's court pleading is a violation of prison policy because by doing so it appears that one is holding himself out as an attorney. (Deposition of Deavors at 48:22, 49:16, 50:4; Deposition of Price 14:16, 51:12, 52:12; Deposition of Barnett

at 40:2; Deposition of Hurwood at 67:23; Deposition of Duru at 59:13).

21. Respondent was advised by at least one library law clerk that he should not sign or place his name on another inmate's pleadings. (Deposition of Deavors at 45:16, 47:2, 48:11, 48:22).

22. Throughout Respondent's deposition testimony he minimized the nature and extent of his involvement in the cases in which he participated, describing what he does as being basically clerical in nature, and the same as what LoCI's four inmate legal assistants are authorized to do. Respondent testified in deposition how he envisioned his role as beyond that of a person merely assisting other inmates, as follows:

- "I'm giving guys the right information" (Relator's Hearing Exb. 2 at 26:5).
- "I told him [Killings] what the courts have said and this is what you need" (Relator's Hearing Exb. 2 at 34:8).
- "I recopied it from the book and from the pages and put it together" (Relator's Hearing Exb. 2 at 38:13).
- "I put my name on this showing that I did help this guy" (Relator's Hearing Exb. 2 at Tr. 52:7).
- "[O]bviously I'm doing something right" (Relator's Hearing Exb. 2 at 52:11).

23. In his testimony, Respondent's descriptions of the work he performed establish that his actions encompassed more than typing and making spelling corrections. Respondent met with inmates whom he claims were illiterate, read and reviewed legal books, located legal precedent and forms, advised on litigation strategy, and prepared pleadings by copying information from various legal texts. (Relator's Hearing Exb. 2 at 25:9, 26:4, 26:24, 27:5, 27:9, 27:12, 27:16, 28:22, 29:6, 30:6, 31:10, 31:19, 33:22, 34:8, 38:13, 42:3, 42:16, 52:14).

24. Respondent testified that he provides these legal services "for the experience" and takes credit when his efforts are successful. (Relator's Hearing Exb. 2 at 103:5, 52:8).

25. Respondent has a reputation for flouting the rules, filing grievances and lawsuits, and clashing with the prison administration. (Deposition of Hurwood at 60:22, 63:6, 64:9,

64:21; Deposition of Mack at 36:19; Deposition of Deavors at 35:21, 44:20, 62:12; Deposition of Barnett at 35:14).

26. A grievance was filed against Respondent by the Supreme Court of Ohio Office of the Clerk after the Clerk received a number of improper filings by Respondent. During the investigation, repeated requests were made to Respondent to cease this improper activity. Respondent replied that his conduct was not improper and declined to stop providing legal representation to inmates. (Relator's Hearing Exbs. 2, 3 and 4).

27. Respondent's credibility was placed in issue. Among the assertions he made under oath was that he graduated from law school *magna cum laude*, but claimed to be unable to remember the name or location of the law school. (Relator's Hearing Exb. 2 at 14-15).

28. Respondent also testified that as of December 2003, he was no longer assisting inmates with legal problems, but the record shows that Respondent continued to assist multiple inmates as recently as 2005 (Relator's Hearing Exb. 2 at 103:10; Deposition of Benjamin Price at 53:23).

29. Respondent's alleged activities, if committed by a non-inmate or non-incarcerated person, would constitute the unauthorized practice of law.

30. Respondent's activities, as proven by Relator and shown in the record, constitute the unauthorized practice of law.

B. Inmate's Right of Access to Ohio Courts

31. Respondent presented evidence and arguments that the LoCI law library and four inmate legal clerks assigned to it cannot or do not provide adequate assistance to the 2000 inmates of the facility.

32. Respondent's criticisms of the LoCI law library and participation of the four inmate legal clerks identify several actual or arguable shortcomings in the system. However valid those criticisms may be, they do not establish proof that any specific LoCI inmate was denied his constitutional right of access to the courts in a specific case.

33. Not all LoCI inmates are in need of access to the courts at the same time and there is no evidence in the record that any specific inmate's right of access to the courts was denied by unconstitutional conditions at LoCI, or any other Ohio prison facility, in a specific case, or in any case that allegedly necessitated Respondent's legal assistance as opposed to other alternatives.

34. Relator presented substantial evidence of the services provided to illiterate inmates and the access to the courts provided to all inmates at LoCI. This evidence included written regulations and the deposition testimony of Warden Deb Timmerman-Cooper, Librarian Gilbert Hurwood, Assistant Librarian Toni Duru, School Administrator Ernest Mack and inmate law clerks Jerome Barnett, Benjamin Price, Paul Jasper and Joe Deavors.

35. Relator's evidence demonstrates that the Ohio Department of Rehabilitation has implemented a comprehensive system to ensure that inmates are provided adequate access to the courts and that system, though sometimes slow and understaffed and open to other criticisms, is available to inmates at LoCI.

36. To ensure that all inmates have meaningful access to the courts, Ohio has adopted standards in the Ohio Administrative Code and the Ohio Department of Rehabilitation and Correction has adopted an internal policy. These actions have made various forms of assistance available to inmates.

37. Ohio Administrative Code Section 5120-9-20, entitled "Visits by attorneys and inmate access to legal services" outlines the procedures employed in Ohio to ensure that inmates

will have meaningful access to the courts. The Code specifies that "it is the policy of the department of rehabilitation and correction to permit inmates reasonable access to legal materials and a reasonable opportunity to prepare legal documents." Ohio Adm. Code 5120-9-20(B)(1).

38. Inmate access rights are detailed in the various sections of the Code. Section (B)(2) states that all inmates shall have access to utilize the legal materials in the library either through visiting the library or having materials brought to them. Section (B)(4) allows inmates to purchase law books and Section (B)(5) states that inmates may "assist each other in the preparation of legal documents."

39. Section (B)(6) allows inmates reasonable access to typewriters or the assistance of an inmate clerk to complete necessary typing. Section (B)(7) allows inmates the ability to contact and communicate confidentially with legal counsel. Section (B)(8) states each prison shall make a legal kit available for sale to inmates.

40. Pursuant to statutory authority in the Ohio Revised Code, the Department of Rehabilitation and Correction adopted Policy 59-LEG-01 to govern inmate access to the courts. (Relator's Brief Exb. A).

41. Section V of Policy 59-LEG-01 states, "Inmates shall have access to courts so that they may challenge their convictions, sentences, or the conditions of their confinement. Pursuing such legal matters shall not subject the inmate to reprisals or punishment of any sort."

42. Inmate access rights are explained in detail in the various sections of this policy. Policy 59-LEG-01(VI)(F)(1) permits inmates "to assist one another in the preparation and filing of legal documents or other legal matters." This assistance is subject to several restrictions and limitations including a prohibition against an inmate acting as a paralegal or attorney at law. Policy 59-LEG-01 (VI)(F)(4).

43. Policy 59-LEG-01 requires that each institution maintain a law library with law clerks and prison staff to assist inmates in pursuing legal issues related to conviction and confinement. This library is required to provide inmates with the most recent editions of a lengthy list of legal volumes pertinent to inmate legal actions. Policy 59-LEG-01 (VI)(A)(1). The list of the legal volumes required to be available to inmates is extensive. Policy 59-LEG-01 further requires that each law library be open at reasonable hours and allows each library to employ inmate clerks to assist inmates. Policy 59-LEG-01 (VI)(A) and (B).

44. Policy 59-LEG-01 outlines the process for providing assistance to inmates who are illiterate or who have physical or mental impairments which prevent them from reading or writing. An illiterate inmate may request assistance in reading or writing initial pleadings.

45. Policy 59-LEG-01 (VI)(C)(1). This assistance is provided by a staff member or inmate clerk. Policy 59-LEG-01 requires that illiterate inmates be instructed both orally and in writing on the availability of these services. Policy 59-LEG-01 (VI)(C)(3). Policy 59-LEG-01 further requires that the assistance of a translator also be made available to inmates.

46. Policy 59-LEG-01 also details the services provided to indigent inmates. Indigent inmates are entitled to a free legal kit. The required contents of this kit include envelopes, a pen, paper and a writing tablet. Policy 59-LEG-01 further states that indigent inmates are entitled to free first class mail to courts of law.

47. Additionally, while criminal defendants do not have a state or federal constitutional right to appointed counsel for preparing and filing petitions for post conviction relief, if a court determines that a hearing on the merits is required, the Ohio Public Defender must provide legal counsel if the Public Defender determines that the matter has "arguable merit." *State v. Crowder* (1991), 60 Ohio St.3d 151.

48. Policy 59-LEG-01 Section VI(F)(2)(a) limits the manner in which inmates may assist each other and states that inmates do not have the right to receive assistance from or provide assistance to a specific inmate.

49. LoCI maintains a law library with the materials required by Policy 59-LEG-01. The LoCI library contains an estimated 3,341 legal books and eight typewriters available for inmates use. (Relator's Brief Exb. B and C).

50. The LoCI library is open seven days a week for six hours each day. (Relator's Brief Exb. B).

51. Library operations are supervised by several LoCI staff members, including two librarians, one correction officer and/or education staff member. (Relator's Brief Exb. B).

52. The LoCI library also has four inmate clerks who are supervised by the LoCI library staff members. (Relator's Brief Exbs. B and D).

53. The inmate clerks "may be employed in the law library to assist inmates in the use of the legal materials, to maintain the library collections, for typing and other clerical duties." 59-LEG-01 (VI)(B)(1).

54. These staff members and inmate clerks are available to assist inmates with questions. (Relator's Brief Exb. B).

55. Library staff and the inmate law clerks regularly assist inmates. (Deposition of Deavors at 21:16; Deposition of Price at 20:8, 27:14, 38:24; Deposition of Duru at 21:4).

56. The number of inmates visiting the library per day ranges from 30 to 70. (Deposition of Jasper at 29:20; Deposition of Price at 31:7; Deposition of Barnett at 44:18; Deposition of Hurwood at 75:21; Deposition of Duru at 61:22).

57. Every inmate may request assistance from library staff and inmate law clerks and no inmate who seeks assistance from the library is denied services. (Deposition of Deavors at 54:3; Deposition of Jasper at 29:15; Deposition of Price 12:2, 28:21, 56:6; Deposition of Barnett at 23:22; Deposition of Hurwood at 75:17; Deposition of Duru at 61:3; Deposition of Timmerman-Cooper 69:12).

58. All four inmate clerks at LoCI have advanced education and training and have earned a college degree, a paralegal certificate and/or have earned substantial credit hours in pursuit of a college degree. (Deposition of Deavors 13:9, 15:24; Deposition of Jaspers at 6:12, 7:23; Deposition of Price at 6:23, 8:20; Deposition of Barnett at 6:4).

59. All four inmate clerks are available to provide inmate assistance every hour the library is open. (Deposition of Deavors at 55:3; Deposition of Jasper at 11:14; Deposition of Price at 30:2, 30:13, 37:2 Deposition of Barnett at 43:20).

60. A Spanish and a Chinese interpreter are also available to assist inmates in the library. (Deposition of Hurwood at 51:6).

61. In addition to staff assistance, the library has an estimated 36 sample pleadings that inmates can use to challenge their conviction or the conditions of their confinement. (Deposition of Deavors at 25:2, 39:6, 51:1; Deposition of Hurwood at 68:8).

62. These fill-in-the-blank forms include a motion for transcripts, a delayed notice of appeal, a post-conviction petition requesting a hearing, a petition to vacate sentence, an affidavit of indigency, a motion for withdrawal of guilty plea, a motion for new trial, a motion to vacate payment of fines and costs, a habeas corpus petition, a 42 U.S.C. 1983 complaint, a motion for appointment of counsel, a motion for judicial release, and a motion for jail time credit. (Relator's Brief Exb. G).

63. Respondent claims that 90 or 95 percent of LoCI's inmates are illiterate, have legal issues and that their needs are unmet by an understaffed library. This claim is contradicted by the LoCI school administrator, who testified that the number of illiterate inmates is 60 or 70 percent, while others estimate the total between 20 and 40 percent. (Deposition of Mack at 31:5; Deposition of Price at 18:11; Deposition of Barnett at 20:24).

64. In order to ensure that illiterate inmates are identified and provided educational services, every inmate undergoes an educational assessment prior to assignment to a prison. (Deposition of Mack at 10:2).

65. After inmates are placed at a prison, all inmates are informed verbally and in writing of the literacy programming and law library services during inmate orientation. (Deposition of Mack at 24:21; Deposition of Hurwood at 35:13, 72:11; Deposition of Duru at 49:18; Deposition of Timmerman-Cooper at 26:12; Relator's Brief Exb. F).

66. Later, inmates can obtain literacy services or assistance with legal issues by making a request to the school administrator, a case manager, a unit manager, other prison employees, a teacher, a guard or other personnel. (Deposition of Mack 14:14, 15:11; Deposition of Hurwood at 37:23; Deposition of Timmerman-Cooper at 31:19).

67. To address specific inmate educational deficiencies, special services are provided to illiterate inmates including a school, a literacy dormitory and a special education teacher. (Deposition of Mack at 10:2, 35:1).

68. Illiterate inmates are required to attend mandatory schooling and a special education teacher is also available to provide additional services. (Deposition of Mack at 26:7, 29:16).

69. A special intensive literacy dormitory with tutors and assistance available around the clock is operated for inmates with a third grade education level and below. (Deposition of Mack 10:23, 35:1, 35:19, 35:23).

70. The LoCI library is subjected to an annual compliance audit and passed the most recent June 2005 audit. (Deposition of Hurwood at 70:6).

71. Credible testimony in the record provides evidence that the foregoing prison policies and programs have been implemented and are working at LoCI. (Deposition of Mack at 38:1; Deposition of Duru at 58:1).

72. Reasonable alternatives exist in the Ohio prison system and at LoCI to assist inmates in the preparation of petitions for post-conviction relief, and to have access to the courts, as mandated by *Johnson v. Avery* and later U.S. Supreme Court decisions.

73. Policy 59-LEG-01(VI)(F)(4) prohibits an inmate from acting as a paralegal or attorney at law. Primary responsibility for enforcing this policy rests with the Ohio Department of Rehabilitation and Correction. Acts constituting the unauthorized practice of law committed by inmates within the confines of the state's prison system can and should be regulated there. Alleged acts of unauthorized practice of law by inmates of Ohio's prison system should, in the first instance, be reported to the appropriate prison authorities for investigation and enforcement. See *Lewis v. Casey* and *Sizemore v. Lee, supra*.

IV. CONCLUSIONS OF LAW

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. Pennev Co.* (1986)

27 Ohio St. 3d 31, 501 N.E. 2d 617; *Judd v. City Trust & Savings Bank* (1937) 133 Ohio St. 81, 10 O. O. 95, 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 in Ohio. Gov.Bar R. VII 2(A).

3. The practice of law includes conduct of cases in court, preparation of legal pleadings and other papers and the management of actions and proceedings on behalf of clients before judges and courts. *Columbus Bar Assn. v. Thomas* (2006), 109 Ohio St. 3d 89, 2006-Ohio-1930; *Richland County Bar Association v. Clapp* (1998), 84 Ohio St. 3d 276, 703 N.E. 2d 771; *Akron Bar Association v. Greene* (1997), 77 Ohio St. 3d 279, 673 N.E. 2d 1307; *Cincinnati Bar Association v. Estep* (1995), 74 Ohio St. 3d 172; *Land Title Abstract and Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O. O. 313, 193 N.E. 650.

4. Respondent regularly drafted, revised, and prepared various legal papers for the benefit of other inmates. (Exhibits 6-42).

5. Respondent engaged in the unauthorized practice of law by preparing legal papers on behalf of other inmates as referred to in Exhibits 3-42.

6. Inmates at LoCI have sufficient capability to pursue actionable, civil rights or post-conviction claims through the combination of legal assistance and access to legal materials and/or a law library provided by the state of Ohio.

V. PANEL RECOMMENDATION

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

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

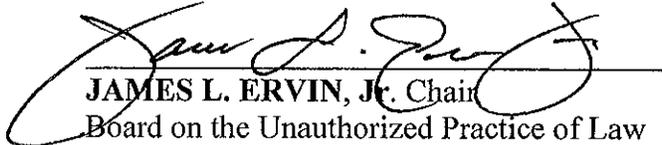
3. The Panel does not recommend the imposition of civil penalties pursuant to Gov.Bar R. VII(8)(B) in this matter. The nature of the current proceedings is to review the narrow issue presented by the Court in its June 30, 2005 Order. Moreover, the Board did not recommend the imposition of civil penalties in its original Final Report, and this Panel declines to do so now.

V. BOARD RECOMMENDATION

Pursuant to Gov.Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered this matter on August 22, 2006¹. The Board adopted the findings, conclusions of law, and recommendations of the Panel. Specifically, and as provided herein, the Board adopts the Panel's recommendation that the Court issue an order finding that Respondent has engaged in the unauthorized practice of law; that the Court issue an Order enjoining the Respondent from engaging in the unauthorized practice of law in the future. The Board does not recommend the imposition of civil penalties for the same reasons set forth in the Panel's report. The Board further recommends that any costs of these proceedings incurred by the Board and the Relator be taxed to the Respondent in any Order entered, so that execution may issue.

VI. STATEMENT OF COSTS

Attached as Exhibit A is a statement of costs incurred by Relator and the Board to date.


JAMES L. ERVIN, JR. Chair
Board on the Unauthorized Practice of Law

¹ Commissioners James E. Young and Kevin L. Williams self recused and did not participate.

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

Exhibit "A"

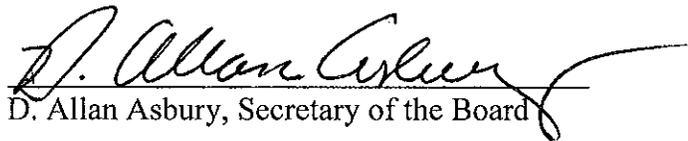
STATEMENT OF COSTS

Disciplinary Counsel v. Charles D. Cotton, aka Prince Charles Cotton
Case No. UPL 03-07, Sup. Ct. Case No. 04-1130

To date, no additional expenses have been incurred since the Order of Remand dated June 30,
2005.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 29th day of August, 2006: Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Jonathan E. Coughlan, Esq., Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215-7411, Robert R. Berger, Esq., Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215-7411; Charles D. Cotton, Inmate No. 146-490, London Correctional Institute, P O Box 69, London, OH 43140; Shawn J. Organ, Jones Day, P.O. Box 165017, Columbus, OH 43216-5017; Kerstin Sjoberg-Witt, Jones Day, P.O. Box 165017, Columbus, OH 43216-5017; Ohio State Bar Association, Unauthorized Practice of Law Committee, 1700 Lake Shore Drive, Columbus, OH 43204.


D. Allan Asbury, Secretary of the Board