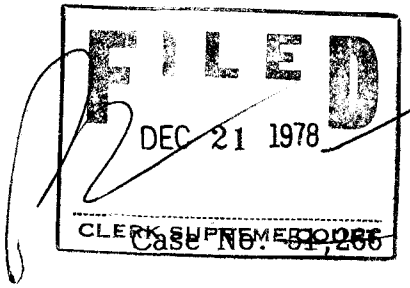
IN THE SUPREME COURT OF FLORIDA



THE FLORIDA BAR,

Petitioner,

v.

ROSEMARY FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE,

Respondent.

_____/

Case No. 51,256

BRIEF FOR PETITIONER, THE FLORIDA BAR AND OBJECTIONS TO REFEREE'S REPORT

Bernard H. Dempsey, Jr., Chairman
Standing Committee on Unauthorized
Practice of Law
610 Eola Office Center
605 East Robinson Street
Orlando, Florida 32801
(305)422-5166

Lacy Mahon, Jr.
Bar Counsel
350 E. Adams Street
Jacksonville, Florida 32202
(904)354-4300

H. Glenn Boggs
Assistant Staff Counsel - UPL
The Florida Bar
Tallahassee, Florida 32304
(904)222-5286

ATTORNEYS FOR PETITIONER

Table of Contents

Table of Citations

PRELIMINARY STATEMENT

For the convenience of the Court, and the parties, the petitioner will use the same terminology used by the respondent to refer to the record in this case. For purposes of clarification, that terminology is set forth as follows:

1. Transcript of the July 18, 1978, final hearing--"TR."

2. Evidentiary exhibits of the petitioner--"Pet. Ex."

3. Evidentiary exhibits of the respondent--"Res. Ex."

4. The pretrial stipulation introduced as Joint Exhibit 1-"PTS"

5. Report of the Referee dated August 17, 1978--"Report"

6. The respondent's brief--"Res. Br."

A number following any of the designated symbols cited above will refer to the page at which the citation may be found.

STATEMENT OF THE CASE AND FACTS

The respondent devoted nearly thirty pages of her brief to setting forth a statement of the case and facts. To comply with the applicable appellate rule and for the conservation of the Court's time, the petitioner will accept the statement of the case and facts of the respondent, except for those areas of disagreement which are set forth below.

Although it is probably only a typographical error, this Court issued its rule to show cause in this matter on March 14, 1977, instead of March 19, 1977, as suggested by the respondent. Subsequently, various pleadings were filed by the parties including a motion for appointment of referee filed by the petitioner on May 6, 1977, all of which culminated in this Court's Order appointing a Referee dated August 1, 1977.

In her brief (Res. Br. - 2), the respondent discusses the petitioner's allegations concerning her advertisements in the Jacksonville Journal. The petitioner would add that in her answer to the amended petition against unauthorized practice of law, the respondent admitted placing an advertisement in the Jacksonville Journal which advised the reader that the Northside Secretarial Service will "type all your papers and instruct you in procedure" (Emphasis added), but simultaneously denied that by this advertisement she rendered legal advice.

The respondent further contends (Res. Br. -2) that the petitioner failed to claim that any of the respondent's customers suffered harm as a result of her

services. However, the petitioner would draw the Court's attention to the respondent's footnote No. 3 (Res. Br. -3) wherein the respondent advises that, "The Bar, however, does claim generalized harm to the public." The respondent drew this conclusion from the Bar's answer to her interrogatories.

At Res. Br.-3, 4 and 5, the respondent sets forth certain admissions and denials and lists four defenses. These admissions, denials and defenses appear to be generally drawn from the respondent's answer to the amended petition against unauthorized practice of law. To the extent that they are drawn from her answer, the Bar replied to them in its reply to answer to amended petition against unauthorized practice of law dated December 2, 1977. Without engaging in argument in this portion of the brief, the petitioner again denies the respondent's defenses as set forth in her brief.

At Res. Br.-7, the respondent advises the Court that the referee repeatedly sustained evidentiary objections made by the petitioner during the final hearing regarding testimony deemed to be immaterial and irrelevant, although the referee did permit proffers by the respondent. However, now the respondent urges the Court to consider all the facts proffered at the final hearing and thus overrule the referee's decisions. Predictably, the petitioner disagrees and urges the Court to uphold the referee's evidentiary rulings, and continues its objections to the citations in the respondent's brief to proffers made at the final hearing.

At Res. Br.-9, the respondent cites several of the recommendations of the referee, including his finding regarding the potential for harm to the public from the activities of the respondent or persons similarly situated. The referee found that,

> This record demonstrates very clearly the extent of harm and damage that can be done by an unlicensed and non-regulated person attempting to perform legal services for a third party. Children and their rights are ignored, wives are not being properly provided for, wives and children are being deprived of home and shelter to which they are entitled until the youngest child reaches majority, the wife is being deprived of her property rights and a fair share of the accumulated estate, the right of visitation of either parent with the children is ignored. That if this type of proceeding is allowed to continue unbridled as it now appears to be developing throughout the state, a chaotic mess will be created to the detriment of society as a whole.

However, the respondent argues that the referee's view is void of support in the record. (Res. Br.-9). The petitioner takes issue with this view and submits that the referee's finding is adequately supported by approximately fifty pages of testimony which the referee reproduced for this Court between pages five and fifty-seven of his report.

At Res. Br.-11, the respondent refers to the individual cases in which the petitioner alleged unauthorized practice of law by the respondent and said that,

> ...they offer a representative sample of the kinds of clients she serves and the problems they encounter in obtaining domestic relations relief. The individual cases, taken together, also illuminate the extent and nature of the informational flow between client and secretarial service and additionally demonstrate the absence of any harm resulting from Respondent's activities.

The respondent does not list any citation to the record to support the foregoing conclusion. Accordingly, the petitioner disagrees that the individual cases alleged in the petition form any type of representative sample of the respondent's customers, or illustrates the type of information which passes between a client and a secretarial service. Finally, as found by the referee, these cases show the potential for public harm resulting from the respondent's activities rather than the absence of harm.

The petitioner would also draw the Court's attention to the respondent's assertion at Res. Br.-13 that the respondent began assisting her customers to obtain "...restraining orders, temporary support orders and dissolutions of marriage...Eventually, her services broadened to include domestic relations assistance to the general public...." The petitioner notes that the respondent admits the preparation of such documents.

The petitioner suggests that it is vitally important to the facts of this case for the Court to focus its attention on the respondent's construction of the facts found at Res. Br.-16, where the respondent states that,

> Essentially, Respondent translated her customers' factual information and desires for relief into legal terminology... on pleadings conforming to Rules of Civil Procedure,...and with local practices.

Although this characterization of the respondent's work product is found in that part of her brief labeled "Respondent's pre-Brumbaugh Practices," the petitioner submits that this characterization is equally applicable to the nature of the respondent's post-Brumbaugh practices. (See Res. Br.-25.)

At Res. Br.-17, the respondent states, "The evidence at the hearing clearly showed that Respondent had never acted for her customers in a representative capacity." Although the respondent next discusses the fact that she did not contact court personnel or make appearances on behalf of her customers and a citation is made to the record to substantiate that statement, the petitioner emphatically disagrees that the respondent never acted in a representative capacity. The respondent's own brief says she, "...translated her customers' factual information and desires for relief into legal terminology," and her testimony at the final hearing shows that she allowed her customers to rely on her by handing out different forms, depending on the circumstances. (Tr.-111, 112).

At Res. Br.-18, the respondent makes what the petitioner considers to be two contradictory assertions. There, the respondent states,

> Since Brumbaugh, Respondent has modified her practices insofar as she has altered her method of obtaining factual information from customers and has reduced all her instructions to writing. (Tr. at 78-86). The content of the information, however, has not changed, and she continues to orally communicate with clients as a means of supplementing or clarifying written materials. (Tr. at 85-86, 93.) (Emphasis added).

Petitioner submits that on the basis of the citations to the record provided by the respondent, a better characterization would be that she has reduced most of her instructions to writing. Also at Res. Br.-18, the respondent asserts that, "The discussion also demonstrates that no harm has resulted to anyone from Respondent's services..." Once again, the petitioner would dispute this claim by the respondent and point out that the respondent has not cited the record in this instance. Indeed a finding of the referee has been made, as heretofore shown, that the activities of the respondent and those similarly situated constitute a potential for harm to the public.

At Res. Br.-20, the petitioner would like to draw the Court's attention to the respondent's characterization of the work which she did for one of her customers. There, the respondent asserts that, "Mrs. Ammons, however, did not know how to express her desires in a judicially acceptable manner and accordingly relied upon Respondent to do so." A citation to the record follows thereafter and the petitioner agrees with this characterization by the respondent of her work product.

At Res. Br.-24, the respondent advises that,"...she has litigated the case as though the Bar had in fact charged her with activities arising after Brumbaugh, and she has fully disclosed her current practices." In footnote 12 inserted at the conclusion of the foregoing sentence, the respondent advised that,

> One week after Brumbaugh was decided, Respondent filed an Offer of Judgment consenting to the entry of an injunction limiting her business in accordance with the opinion. The Bar declined to accept the Offer.

The certificate of service on the Offer of Judgment filed by the respondent is dated January 18, 1978. The record discloses that the parties jointly filed a joint motion for stay of proceedings and for suspension of discovery and final hearing dated January 23, 1978, which was within the 10 days required by Fla. R. Civ. P. 1.442 for an adverse party to accept an offer of judgment. In the joint motion, the parties stated in paragraph 2, "The Florida Bar is petitioning for a rehearing in the Brumbaugh case," and in paragraph 3 that, "The final outcome of the Brumbaugh case will materially affect these proceedings." Subsequently, this Court denied the Bar's petition for rehearing in the Brumbaugh case. However, by that time, the ten days within which the petitioner was required to accept the offer of judgment had expired, and according to Fla. R. Civ. P. 1.442, it is deemed to be withdrawn.

Of course, at a time subsequent to the rejection of the Bar's petition for rehearing in Brumbaugh, the respondent had evidently changed her position and was no longer willing to be bound by an injunction along the terms of this Court's decision in Brumbaugh. Support for this proposition is found at Tr.-17 where respondent's counsel states, "It is in that spirit that we will be presenting evidence to the Court to show why the Brumbaugh decision does not go far enough in providing meaningful access to information to citizens in order to effectuate their rights to self-representation." (Also see Tr. - 22.) Indeed, the respondent has admitted violating the Brumbaugh order (Tr. - 129) and consequently, the petitioner asserts that the offer of judgment no longer has any efficacy.

Next, the petitioner would invite the Court's attention to respondent's characterization of her services since Brumbaugh, found at Res. Br. - 25, where she states,

> Since Brumbaugh, Respondent has tried to comply with it to the maximum extent possible. (Tr. at 78-83). She has increased the utilization of forms and now asks the individual to fill in the blanks themselves, from which she types the required pleadings. (Tr. at 84; Res. Ex. 12. . .) (emphasis added).

The petitioner agrees with this analysis of respondent's services.

Finally, the petitioner disagrees with the last three sentences preceding paragraph four at Res. Br. - 27. There, the respondent has drawn certain conclusions about the effect of written instructions, but does not cite the record to support these conclusions.

RESPONSE TO RESPONDENT'S ARGUMENT I

The respondent asserts in her Argument I that, "This Court should rule that respondent's activities in assisting self-filers in obtaining domestic relations relief does not constitute the unauthorized practice of law." In support of that proposition the respondent discusses this Court's decision in The Florida Bar v. Brumbaugh, 355 So. 2d 1186 (1978). Simply stated, the respondent completely misunderstands the Brumbaugh holding. At Res. Br.-31 the respondent sets forth in capsule form her understanding of the Brumbaugh decision. There the respondent states that,

> . . . this Court relaxed its prior ban on activities of laypersons to permit the selling of divorce kits, with instructions and forms, and to permit individuals who are not members of the Bar to prepare papers so long as they do it without any oral communications regarding the substance of those papers and so long as errors and omissions are not corrected. ...It is these limitations on oral communications and correction of errors that Respondent asks this Court to remove.

On the contrary, this Court did not rule that laymen can prepare papers provided that they simply do so without oral communications and refrain from correcting errors or omissions on such papers. To quote from this Court at page 1193 of the Brumbaugh decision, the Court stated that,

> Although Marilyn Brumbaugh never held herself out as an attorney, it is clear that her clients placed some reliance upon her to properly prepare the necessary legal forms for their dissolution proceedings. To this extent we believe that Ms. Brumbaugh overstepped proper bounds and engaged in the unauthorized practice of law.

The gravamen of the holding was that the clients "placed some reliance" on the layman to prepare the required legal forms. Reliance by a customer is the critical element to be examined in this case. The record is replete with examples of a client who came to the respondent and told the respondent what relief he or she

hoped to obtain and counted on the respondent to prepare the necessary documents. A review of the transcript cited by the referee in his report should leave any reader convinced that such is the case.

The respondent has submitted her current intake form, Res. Ex. 12, (see App. 2) into evidence, and it inescapably stands for the proposition that her customers provide her with certain biographical information, financial needs, and the relief desired. From the respondent's own testimony, (Tr.-84-90) she then shoulders the burden of translating this raw data into the appropriate legal instruments. This is a flagrant violation of the Brumbaugh order and one which the respondent seems to either totally ignore or to be unaware of. The Brumbaugh decision at page 1194 provides that, "...we hold that it is not improper for Marilyn Brumbaugh to engage in a secretarial service, typing such forms for her clients, provided that she only copy the information given to her in writing by her clients."

The Court held additionally, that, "...Marilyn Brumbaugh must not, in conjunction with her business, engage in advising clients as to the various remedies available to them, or otherwise assist them in preparing those forms necessary for a dissolution proceeding." The respondent in this case does not ask the Court to lift its ban on oral communication and its ban on correcting errors and omissions as applied to the pleadings, but rather as applied to the respondent's intake form. The respondent blatantly transfers information obtained on the intake form to the legal documents. If such an operation does not place any client in reliance on the respondent, one wonders what would.

Before going further, petitioner would invite the Court to focus close attention on Res. Ex. 12 (see App. 2) which has been referred to by the respondent as her intake form. A careful examination of this form shows that it elicits certain biographical data from the customer and allows the customer to inform the respondent as to the nature of the relief sought. The customer can check various amounts on the form for child support, and for alimony. There is a block which asks the customer if she wants protection from her husband and if she wants an injunction against him. Respondent then takes the information provided and prepares the pleadings she considers necessary to accomplish the desires of the client. Petitioner is hard pressed to explain how this service differs from the service provided by a true fiduciary who owes a duty of absolute loyalty to his client, who has been tested for competency under the supervision of this Court, and who is subject to discipline of this Court for violations of his duty to his clients.

It is interesting to compare the language of the Brumbaugh decision to the acts of respondent detailed above. Petitioner is at a loss to explain how the respondent can "copy the information given to her in writing by her customers," if the customers do not give her written pleadings at all? This Court went on to say in the Brumbaugh decision that, "...Marilyn Brumbaugh may not make inquiries nor answer questions from her clients as to the particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at court hearings." Actually, from the testimony and the evidence admitted in this case, it appears that the respondent is not simply helping her customers to fill out the pleadings necessary in a dissolution proceeding, she is filling them out on her own, without input from the customer, except for the necessary biographical information and the relief requested by the customer on the intake form.

The petitioner submits that what the Court sought to do in the Brumbaugh decision was to ensure that citizens of this State have the opportunity to truly represent themselves. Self-filers, under Brumbaugh, have the right to buy legal forms and to use their own judgment in applying the general information they obtain in filling out those forms. The service provided by the respondent is far from that contemplated by the Court in Brumbaugh. The respondent has tailored her service to address the individual needs of each customer, and has placed herself in a position so that the customer relies upon her as an essential link in effectuating the customer's desires into legal documents acceptable to the courts.

It is also instructive to review Res. Ex. 17, (see App. 3) which is the respondent's intake sheet for adoption. Such a review will show that it serves the same purpose as respondent's intake form for dissolutions. The adoption intake form simply seeks to obtain biographical data and an indication of the relief sought by the customer which is then transferred onto the legal documents by the respondent. The same arguments which have been made by the petitioner regarding the dissolutions are applicable to respondent's adoption procedure.

At Res. Br.--32, the respondent complains that the main problem about requiring communication between her and her customers to be in writing is that it, "...creates a significant risk that Respondent may not accurately translate the wishes of the self-filer onto paper." This statement again shows the complete misapprehension by the respondent of the Brumbaugh decision. It is completely outside the latitude permitted to the respondent under Brumbaugh to, "accurately translate the wishes of the self-filer onto paper." The respondent argues that this Court's requirement for written communication between the respondent and her customers becomes a greater problem when the customers have no facility in

English, either due to functional illiteracy or due to the fact that English is not their native language. Petitioner submits that in such cases it is even more important that the respondent not render individual assistance and that the respondent not allow such persons to rely on her since she has not been certified as competent by this State and is not regulated by this Court.

In complaining about the prohibition against respondent correcting errors and omissions made by her customers, the respondent argues that, "The ban serves no discernible purpose," and that, "...Respondent may have the duty to correct errors both to accurately convey their wishes and to satisfy the requirements of Florida law." (Res. Br.-33). It is not the respondent's job to "accurately convey their wishes and to satisfy the requirements of Florida law." Her job as a secretary is simply to reproduce exactly whatever the customer seeks to file in the Court. If the respondent is allowed to depart from this, and if her customers are permitted to rely on her, then the whole machinery provided by this Court to certify the competency of attorneys and to discipline them after their admission would be circumvented.

Next, at Res. Br.-34, the respondent highlights one of the difficulties faced by the petitioner in enforcing the law as defined by Brumbaugh. There the respondent states that, "...even with written communications, the problem of policing is so great that the Bar cannot meaningfully undertake to determine whether the instructions in some way constitute improper legal advice." Of course, the petitioner disputes this claim, and submits that when written communications are tailored to be applicable to an individual case, then the written communications violate the Brumbaugh decision. However, the respondent has raised a creditable point in that the Bar, under Brumbaugh, does face a difficult job of policing the activities of the respondent and those similarly situated.

It appears that a large part of the respondent's argument is grounded in the fact that she charges $50 for her services and that she has testified that attorneys in the Jacksonville area generally charge $200 for an uncontested dissolution. The respondent would have the Court believe that there exists a large class of individuals in the community who can afford to pay $50 for her services but who absolutely, under no circumstances, can possibly afford to pay $200 to an attorney. Obviously, what is at issue is a difference of $150. In many cases, it would take the wisdom of Solomon to determine whether an individual "could afford" to pay an additional $150 for a given service or not. But, even assuming that there are some people who, under any conceivable stretch of the imagination, could not afford the extra $150, one is still left with the question of whether the difference in price between the respondent and an attorney will always be constant. Does the respondent ever plan to raise her fees? Alternatively, perhaps attorney's fees for handling uncontested dissolutions will decline? Attorney advertising is almost certain to have an increased impact in this area. Even if respondent's argument that there exists a class of persons that can afford her prices, but cannot afford an attorney's services, were true today, one has no assurance that it will be true tomorrow.

Finally, to end its reply to respondent's Argument I, the petitioner would draw the Court's attention to the question of public harm. It is clear that the referee concluded on the basis of the evidence before him that the possibility of harm to the public exists in this case. His findings on that point have already been reproduced for the benefit of the Court in the respondent's brief and in this brief at page 4. The petitioner submits that this Court should not reverse the findings of the referee unless they are clearly erroneous or wholly lacking in evidentiary support. See The Florida Bar v. Wagner, 212 So.2d 770 (Fla. 1968);

The Florida Bar, 323 So.2d 257, 259 n. 9 (Fla. 1975); State ex. rel The Florida Bar v. Bennett, 246 So.2d 107 (Fla. 1971). In this case, the referee's findings are abundantly supported by the record; indeed, the referee reproduced some fifty pages of the transcript in his report to buttress his findings.

In any event, petitioner suggests that it is not legally necessary to show harm or the potential for harm to prove that the respondent is engaged in unauthorized practice of law because her conduct, on its face, violates the Brumbaugh injunction. Petitioner is, of course, aware that the reason for prohibiting the unauthorized practice of law is to protect the public from the risk of harm at the hands of unauthorized practitioners. Yet, when a showing can be made that a certain individual has engaged in conduct which has been prohibited by this Court, as unauthorized practice of law, then the element of harm is not an essential element of the prima facie case necessary to show unauthorized practice of law. In the instant case, however, one need not reach that question since it has been found by the referee that the respondent's activities contain the potential for harm to the public.

RESPONSE TO RESPONDENT'S ARGUMENT II

The respondent contends in her Argument II that, "The failure to permit respondent to assist others in obtaining domestic relations relief would violate the constitutional rights of those unable to afford the assistance of an attorney."

The respondent spends nearly fourteen pages of her brief in support of this argument; however, the gist of it is contained in the very first sentence of the argument. There, the respondent advises that, "This case involves a logical extension of Boddie v. Connecticut, 401 U.S. 371 (1971)," where, as the respondent went on to relate, the U. S. Supreme Court held that it was unconstitutional for a State to require an indigent to pay certain filing fees and costs in dissolution cases. The respondent then endeavors, by citing various cases which deal with either criminal law, filing fees (or similar costs), or court appointed counsel to persuade this Court that the Boddie doctrine should be expanded.

The respondent argues that the roadblock barring the way to access to Florida courts is not a filing fee or statutory requirement as was at issue in Boddie but rather the legal fees which a client faces when seeking to employ an attorney to represent him or her. The obvious rebuttal to that argument is that if an attorney's fee is an impediment to the right of a citizen to access to the courts, then the respondent's own fee is equally an impediment. The respondent does not argue that she should provide her services at no charge, or that the state should pay her to provide her services. She simply argues that she charges an amount less than that charged by attorneys for similar services, and that the state should allow its citizens to take advantage of her lower rates. As petitioner

has already asserted, the fact that her rate may be lower today, does not mean that it will be lower tomorrow, or that some attorney may not move to Jacksonville next week, who agrees to handle dissolutions at a rate of $25 per case.

This Court has already addressed this question in any event. In the Brumbaugh case, this Court held at page 1192 that,

> Although it is not necessary for us to provide affirmative assistance in order to ensure meaningful access to the courts to our citizens, as it is necessary for us to do for those incarcerated in our state prison system, Bounds v. Smith, . . . we should not place any unnecessary restrictions upon that right.

The touchstone of the Court's thinking on this point appears to be that it is not necessary for the State to provide affirmative assistance to its citizens to obtain meaningful access to the courts in civil cases. To do so would, in effect, create a whole new bureaucracy of civil "public defenders" and "public advocates." For this Court to undertake a decision of that magnitude would, it is submitted, require an extensive study, much public input and careful debate before reaching such a conclusion.

To support Argument II, respondent seeks to rely on Johnson v. Avery, 393 U.S. 483 (1969) and Faretta v. California, 422 U.S. 806 (1975). However, both of these cases were in the criminal area. In Johnson, the United States Supreme Court ruled on the question of whether inmates may be prevented from assisting fellow inmates in legal matters. The Johnson holding was significantly different from the question here at issue because it dealt with criminal matters and the State's duty to those it incarcerates. As far as Faretta goes, the Supreme Court held that the State could not require a defendant to have a lawyer, and ruled that the defendant could represent himself. The petitioner has no quarrel with that concept and does not challenge the longstanding rule in Florida which

allows any citizen to represent himself. This concept is codified in Section 454.18 Florida Statutes (1977), and the petitioner is not attempting to tamper with it. Nevertheless, the respondent attempts to construe the Faretta decision to stand for the following proposition: "... when the choice is between no attorney and no divorce on the one hand, and a divorce with the personalized assistance of a person familiar with the practices who discloses fully that he or she is not an attorney and will charge a fee that the individual seeking a divorce can afford on the other, Faretta strongly suggests that in this area of fundamental rights the state cannot impose a high-priced attorney when a low-priced secretary will do." (Res. Br.-43). This is simply a misconstruction of Faretta. The choice in Faretta was not between an attorney and a laymen to represent the defendent. The choice was between an attorney and the defendent representing himself.

The remaining cases cited by the respondent in support of Argument II can be dismissed as being in the areas of criminal justice, state requirements such as costs or filing fees, or of court appointed counsel to represent indigents. These cases simply do not stand for the proposition that the state owes its citizens a duty to provide legal assistance in civil matters.

THIS COURT SHOULD ADOPT ALL OF THE REFEREE'S REPORT INCLUDING HIS FINDINGS EXCEPT THOSE FINDINGS OBJECTED TO BY THE PETITIONER HEREINAFTER.

The petitioner agrees with and endorses the report of the referee including the findings made by the referee except for those portions objected to which are identified under the petitioner's objections to the referee's report hereinafter.

Although the referee's report is not so labled, the petitioner suggests that the first five pages of his report including all of paragraph one are set forth in the nature of a statement of the case and the facts. Beginning with paragraph two of his report, the referee has set forth what he viewed as the pertinent aspects of the record. Petitioner suggests that those portions of the record form the basis upon which the referee reached his findings of fact. The petitioner specifically notes that in paragraph two of his Findings, the referee found,

> That the Opinion in Florida Bar vs. Brumbaugh is being interpreted by many as a license to individuals, who are trained and experienced in secretarial work, to practice law. This creates a grave danger to the citizens of Florida.

The petitioner endorses that finding of the referee and would add that while the instant case deals primarily with dissolution of marriages and adoptions, the Brumbaugh holding is applicable to other areas of legal work such as wills or real estate transactions. While dissolution documents prepared by self-filers (with assistance which may or may not violate Brumbaugh) are normally subject to judicial scrutiny shortly after their preparation, documents prepared in other areas under the Brumbaugh rule may go unscrutinized for months or years before being reviewed by a judge or by any person skilled in the law. The Court may wish to deal with this problem in reaching its decision in the instant case.

The petitioner also suggests that the Brumbaugh holding needs clarification, and that this Court should explain to the lay public and lawyers alike in clear and unequivocable terms that a layman may not provide individual assistance to a self-filer. The case now before the Court is a classic example of how a layman has misconstrued the Court's holding in Brumbaugh so that she is providing individual assistance to her customers even though most of her procedures have been reduced to writing. (TR.-111, 112.) The petitioner urges this Court to make it absolutely clear that only those who have proven their competency in the law by an examination and who submit to regulation of their conduct by this Court shall be allowed to serve as fiduciaries and render legal service in this state.

The petitioner also recommends that the Court may wish to invite the circuit judges of Florida to comment, in an amicus curiae brief, on their experiences in dealing with self-filers under the Brumbaugh rule at the trial level. In petitioner's view, a substantial impact of the Brumbaugh decision has been felt by the trial judges due to an increase in such cases. This increase has likely placed more burdens on the trial judge's time and requires that they devote attention to ensuring that the self-represented person is protected, without prejudicing the rights of opposing parties. This can place the trial judge in the difficult position of acting in several capacities in order to protect the rights of all parties to the action while at the same time remaining alert to detect unauthorized practice of law by laymen who may be assisting the self-filer.

OBJECTIONS TO THE REFEREE' REPORT

The petitioner objects to portions of the referee's findings found in paragraphs eight and nine as follows: (1) In paragraph eight, the referee found that,

> The Florida Bar should become conscious of the fact that much of the work that the legal profession and the courts are being called upon to perform in this age is social, as well as legal. It should take note of this immediately and make provisions so the legal aid service in every county will be capable and adequate to provide competent representation to those who are not able to pay.

and, (2) In paragraph nine,

> The only way to protect the public from the hazards of unauthorized practice of law is for The Florida Bar to provide legal service to everyone who is in need.

The petitioner's objection to this finding of the referee is based on the same cases upon which the petitioner relies to advocate that this Court uphold the referee's finding with regard to the question of public harm. Those cases, cited at pages 14-15 of this brief hold, in part, that the referee's findings should not be disturbed unless they are wholly without support in the record. The petitioner submits that a finding that The Florida Bar should be the instrument which provides legal service to all those in "need" in this state is without support in the record.

Traditionally, this Court has placed the burden of making legal services available to those in need on individual attorneys. Canon 2 of the Code of Professional Responsibility states, "A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty To Make Legal Counsel Available." The ethical considerations found in the Code under Canon 2 further explain what is meant by the Court in its injunction to attorneys to make legal services available to the public. Perhaps

EC 2-25 most thoroughly explains this Courts traditional view of this problem as follows:

> Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

CONCLUSION

The petitioner urges: (1) That this Court adopt all of the referee's report except that part objected to herein by the petitioner, (2) That this Court find that the respondent, Rosemary Furman, has engaged in the unauthorized practice of law when measured by this Court's decision in The Florida Bar v. Brumbaugh, (3) That the respondent, Rosemary Furman, be enjoined by this Court from allowing the public to rely on her in any way for legal services or legal advice and from rendering, either orally or in writing, legal services or legal advice tailored to the circumstances of any individual, and (4) That the costs of this proceeding be assessed against the respondent.

Respectfully submitted,

BERNARD H. DEMPSEY, JR., Chairman
Standing Committee on Unauthorized
Practice of Law
610 Eola Office Center
605 East Robinson Street
Orlando, Florida 32801

LACY MAHON, JR.
Bar Counsel
350 East Adams Street
Jacksonville, Florida 32202

By: H. Glenn Boggs
H. GLENN BOGGS
Assistant Staff Counsel-UPL
The Florida Bar
Tallahassee, Florida 32304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Albert J. Hadeed, Southern Legal Counsel, Inc., Suite A, 115 N. E. 7th Avenue, Gainesville, Florida 32601 and to Alan B. Morrison, Harvard Law School, FOB 210, Cambridge, Massachusetts 02138; attorneys for respondent by U.S. Mail this 21st day of December, 1978.

/s/ H. Glenn Boggs

H. Glenn Boggs

Appendix

INFORMATION FOR DIVORCE PAPERS -- Please fill out as completely as you can.

(Only one of you need to appear in Court) You & spouse must show different addresses

1. PERSON GOING TO COURT - NAME _____

ADDRESS _____ ZIP _____ HOME PHONE _____

EMPLOYMENT PHONE _____ LIVED IN FLORIDA HOW LONG? _____

2. SPOUSE'S NAME _____ HOME PHONE _____

ADDRESS _____ Zip _____ EMP. PHONE _____

3. Underline which of the following is your situation:

a) Both will sign papers. b) Papers to be served on spouse. c) Don't know where spouse is

4. DATE OF MARRIAGE: Month _____, Day _____, Year _____

PLACE OF MARRIAGE: City _____, County _____, State _____

DATE you stopped living together as husband and wife: _____

FILL OUT ONLY if you have children by this marriage. ☐ FA

5. LIST ALL CHILDREN under 18 years born to you & your spouse (or adopted by you):

NAME (first & middle)	DATE OF BIRTH	ANY ADULT CHILDREN?
_____	_____	Yes____ No____
_____	_____	
_____	_____	
_____	_____	

List with whom (both parents, mother, etc.) the child/children have lived during the past 5 years, and in what city and state.

Lived with: _____ from _____ to _____ in _____

Lived with: _____ from _____ to _____ in _____

Lived with: _____ from _____ to _____ in _____

Lived with: _____ from _____ to _____ in _____

Who will have CUSTODY? WIFE _____ HUSBAND _____

Do you wish for the parent without custody to visit at any reasonable times and places after reasonable notice to parent with custody? YES _____ NO _____

OTHER visiting arrangements? (if any) _____

CHILD SUPPORT $_____ per child per Week _____ or per month _____

Paid through DOMESTIC RELATIONS DEPOSITORY____ Directly to Wife____ Other _____

Who shall carry medical, hospital and/or dental insurance on your child? _____

Who shall be responsible for medical expenses not covered by insurance? _____

6. ALIMONY (if any) $_____ per week____ or month____, until DATE _____

7. Do you and your spouse have any of the following in both of your names (in joint ownership)?

House____ Car____ Furniture____ Debts____ Other _____

If yes, explain how you want to divide or settle those items checked: _____

_____

8. Does wife want a former name: _____ If yes, what name? _____

9. Do you need protection from your husband (has he beaten or abused you or is he threatening to harm you now?)_____ Do you want an injunction against him? _____

COURT FEES:	$32.00 (All Divorces) (Filing Fee)	Service of Summons: $12.00 (Refuses to Sign) Add'l	Publication: $38.50 (Address Unknown) Add'l

SECRETARIAL FEE: $50.00 (All Divorces) Other Documents $_____

PAID: _____

ACKNOWLEDGMENT

No one at Northside Secretarial Service has represented herself to be an Attorney, and I have neither sought nor received legal advice. It is my intention to represent myself in Court and I have paid my fee for secretarial services ONLY.

Date _____ Signed _____

INFORMATION FOR ADOPTION PAPERS -- Please fill out as completely as you can.

1. PETITIONER (Stepparent who wishes to adopt)

-NAME_____ Race_____

-BIRTHDATE_____ Age_____

Birthplace: City_____ County_____ State_____

-ADDRESS_____ (Zip)_____ Phone_____

Type Dwelling: House_____ Apartment_____ Mobile Home_____ No. of Bedrooms_____

Do you OWN your home?_____ Are you RENTING your home?_____

-EMPLOYED BY_____ Salary $_____

Employer's Address_____ Zip_____ Phone_____

Your Occupation_____

-IF MARRIED BEFORE, give: Date of Divorce_____ and

Place: City_____ County_____ State_____

-MARRIAGE TO CHILD'S NATURAL PARENT: Date_____ and

Place: City_____ County_____ State_____

2. NATURAL PARENTS (Mother use maiden name):

-PARENT WITH CUSTODY_____ Race_____

-PARENT GIVING UP CHILD_____ Race_____

Address_____ Zip_____

-DIVORCE INFORMATION: Case no._____ Date Final_____

Place: CITY_____ County_____ State_____

3. CHILD(REN) TO BE ADOPTED: Birthplace Birthdate

_____ _____ _____

_____ _____ _____

_____ _____ _____

4. OTHER CHILDREN IN THE HOUSEHOLD:

_____ Birthdate_____

_____ Birthdate_____

_____ Birthdate_____

5. DID YOU BRING: BIRTH CERTIFICATE(S)?_____ MARRIAGE CERTIFICATE?_____

6. OTHER INFORMATION:_____

_____

COURT FEES:	$29 Filing Fee	$12 to Serve Papers	$38.60 Publication	$5 Amended Birth Certificate (DVS)

SECRETARIAL FEE: $50.00

PAID:_____

Filed in Evidence
as
~~Petitioner's~~ RESPONDENT'S
Exhibit 7 Date 5-5-79
Case [illegible]

ACKNOWLEDGMENT

No one at Northside Secretarial Service has represented herself to be an Attorney, and I have neither sought nor received legal advice. It is my intention to represent myself in Court and I have paid my fee for secretarial services ONLY.

Date_____ Signed_____