

63 298

THE FLORIDA BAR,

Petitioner,

v.

MONROE W. TREIMAN,

Respondent.

CASE NO. 63,298

**FILED**

MAR 24 1983

SID J. WHITE  
CLERK SUPREME COURT

Chief Deputy Clerk

PETITIONER'S RESPONSE TO RESPONDENT'S ANSWER

COMES NOW Petitioner, The Florida Bar, by and through the undersigned counsel, and pursuant to this Court's order of February 20, 1983, makes this response to Respondent's answer to the petition against unauthorized practice of law.

I

In response, Petitioner would show that:

1. Respondent counseled Lewis E. Lee regarding preparation of Mr. Lee's will, advised Mr. Lee regarding Florida law on wills, and set the attorney's fees for Linda Treiman, attorney, representing Lewis E. Lee in a criminal case. Lewis E. Lee was not aware that Respondent was not an attorney.

2. Respondent has stated that the will prepared for Ruth Mary Hope was reviewed by Linda Treiman, attorney, and that Respondent performed only those duties assigned him as a salaried legal assistant. In response, Petitioner would show that Respondent held himself out to Ms. Hope as qualified to prepare a will, that Respondent failed to inform Ms. Hope that he was not an attorney, and that Respondent "made notes during (the) conversation and then he left the room and returned with a typed will." Further, Ms. Hope took the will back to Respondent for a correction, "and he said the reason he had prepared the will in that manner was

that it was the way most wealthy people in the Springhill vicinity wanted their wills prepared. Monroe Treiman made a correction on the scene." Petitioner's exhibit A, affidavit of Ruth Mary Hope.

3. Respondent has denied that he engaged in the unauthorized practice of law with regard to the purchase of a mobile home and lot by Marilyn Naegeli, specifically stating that "the office" of Linda Treiman, attorney, issued title insurance and conducted the closing, and that all attorney's fees were paid directly to Linda Treiman, attorney. Petitioner would show that Respondent himself gave Ms. Naegeli an opinion as to the sufficiency of a contract to purchase the mobile home, that respondent identified himself to Ms. Naegeli as "Judge Treiman" and did not disclaim being an attorney, that Respondent advised Ms. Naegeli what his fee would be in representing her interests in purchasing a lot, and that Respondent directly received a check in the amount of \$150.00 as the attorney's fee in the Naegeli transaction. Petitioner's exhibit B, affidavit of Marilyn Naegeli; Petitioner's exhibit C, copy of cancelled check made payable to Monroe Treiman, Esquire.

4. Petitioner would show that Respondent rendered legal advice to John and Julie Erhard regarding the probate of an estate and did receive \$200.00 in cash as partial payment of an attorney's fee; and further, that the activities engaged in by Respondent occurred in an initial conference with the Erhards and said activities were not supervised or directed by an attorney.

## II

Respondent has alleged in his defense that he has only performed such legal assistant duties as authorized by the Code of Professional Responsibility and assigned by his employing attorney. Petitioner submits that Respondent's perception of his duties as a "salaried legal assistant" are

outside the parameters of activities which an attorney may allow nonlawyer personnel to perform. Nonlawyer personnel employed by an attorney are not permitted to:

- (i) counsel clients about legal matters,
- (ii) appear in court or in proceedings which are a part of the judicial process, or
- (iii) otherwise engage in the unauthorized practice of law.

FLA. Bar Code Prof. Resp., DR 3-104(A).

Neither is a legal assistant permitted "any representation that such nonlawyer is a member of The Florida Bar." Emphasis supplied. DR 3-104(B), supra. Respondent's use of the term "judge", following a lengthy tenure as county judge, was misleading to clients who were referred to him upon their consulting the office of Linda Treiman, attorney. Furthermore, neither Ms. Hope nor Ms. Naegeli, mentioned in I above, had contact with a licensed attorney in the office shared by Respondent.

The affidavits attached hereto clearly show that Respondent failed to inform clients of his nonlawyer status, contrary to the requirement of DR 3-104(E), supra.

Petitioner submits that at the outset of the circuit UPL committee investigation of allegations that Respondent was engaging in the unauthorized practice of law, Respondent and Linda Treiman were contacted in an early attempt to resolve the matter. Respondent and his employing attorney, Linda Treiman, rejected the proffered resolution prior to the institution of this litigation. Petitioner's composite exhibit D.

Petitioner does not deny that the use of "legal assistants" by an attorney or law firm is provided for by the Code of Professional Responsibility. Petitioner has shown, however, in this proceeding that Respondent has continuously performed duties of an attorney and not those of a legal assistant.

Respondent has attempted to evade the unauthorized practice of law implication in the Naegeli transaction (I above) by showing that the office of Linda Treiman, attorney, issued title insurance in the purchase of the real property. This Court's decision in The Florida Bar v. McPhee, 195 So.2d 552 (Fla. 1967), specifically stated that title insurance companies are prohibited from "making any charge other than regular title insurance premiums for preparing documents or conducting closings." 195 So.2d 554. The attorneys fee of \$150.00 paid by Ms. Naegeli to Respondent therefore is not permissible in a title insurance transaction under McPhee, supra.

Respondent has further attempted to dismiss his prior conduct as moot based on the fact that Linda Treiman has relocated her law office and that Respondent is no longer employed by her. This action was not brought against Linda Treiman, but against Respondent himself. The fact that Respondent is no longer employed by a certain attorney does not render this proceeding moot, as averred by Respondent.

Respondent, whether known or unknown to his previous employer, Linda Treiman, has violated this Court's decisions rendered in The Florida Bar v. Walzak, 380 So.2d 428 (Fla. 1980); The Florida Bar v. Larkin, 298 So.2d 371 (Fla. 1974); The Florida Bar v. Town, 174 So.2d 395 (Fla. 1965); and The Florida Bar v. Thomson, 310 So.2d 300 (Fla. 1975).

Notwithstanding the above, Petitioner, in an effort to resolve this litigation, continues to be amenable to a stipulated injunction against Respondent's further engaging in the unauthorized practice of law.

WHEREFORE, Petitioner respectfully requests that this Court grant the relief requested in the petition against unauthorized practice of law filed in this proceeding.

Respectfully submitted,

THE FLORIDA BAR

James C. Rinaman, Jr., President  
The Florida Bar  
Post Office Box 447  
Jacksonville, FL 32201  
(904) 355-6681

William O. E. Henry  
President-elect  
The Florida Bar  
Post Office Drawer BW  
Lakeland, FL 33802  
(813) 682-1161

John F. Harkness, Jr.  
Executive Director  
The Florida Bar  
Tallahassee, FL 32301  
(904) 222-5286

James P. Hahn, Chairman  
Standing Committee on UPL  
Post Office Box 38  
Lakeland, FL 33802  
(813) 688-7747

Catherine L. Dickson  
UPL Counsel  
The Florida Bar  
Tallahassee, FL 32301  
(904) 222-5286

BY: Catherine L. Dickson  
Catherine L. Dickson  
UPL Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished by mail to Monroe W. Treiman, Respondent, Post Office Box 308, 133 South Brooksville Avenue, Brooksville, FL 33512, this 24<sup>th</sup> day of March, 1983.

Catherine L. Dickson  
Catherine L. Dickson