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AUG 24 1987

CLERK, SUPREME COURT

By _____ Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, CASE NO. 63,298
62,831

Complainant,

vs.

MONROE W. TREIMAN,

Respondent.
_____/

RESPONDENT'S REPLY TO COMPLAINANT'S RESPONSE TO RESPONDENT'S RESPONSE TO REPORT OF REFEREE

Respondent, MONROE W. TREIMAN, in his own proper person, files this reply, and will show the Court:

I. Respondent had no access to transcripts during his reply. The transcripts were taken for, and under control of Complainant. Respondent made a trip to Tallahassee on July 31, 1987, and copied trial transcripts, then in possession of Complainant, and those depositions introduced in evidence and filed with the Supreme Court. This reply is to clear up the statements in Complainant's response by use of the transcript and depositions.

1. As to NAEGELI:

Complainant assumes that Respondent gave "legal advice" however the record bears out that Respondent worked directly under his attorney/employer, and did those things assigned to him by his attorney/employer. Ms. Naegeli failed to testify as to what precisely was the "legal advice" received. Testimony of Respondent very clearly refutes Ms. Naegeli's testimony. It was agreed before the Referee that Respondent never saw the check made out to Respondent by Naegeli. That check was sent tot he Law Office of Respondent's attorney/employer, and was negotiated into the official account of Respondent's attorney/employer by use of the rubber deposit stamp. The check does NOT bear the endorsement of Respondent.

The sworn testimony of witnesses Kristi Brayton, James E. Wade, III, Karen Beasley and Carolyn McCloud all cover the iron clad procedure of the handling of new clients, and show conclusively that Ms. Naegeli did have actual notice, in several ways, that Respondent was not an attorney. Further it is obvious that Ms. Naegeli did not

know of Respondent's attorney/employer's review of all documents, and instructions to Respondent to pursue certain actions in this matter, as making phone calls regarding the price negotiation of the lots.

2. As to ERHARD:

In this case Respondent acted as information taker. The fee quoted by Respondent was that Respondent's attorney/employer instructed him to quote. Respondent's attorney/employer regularly advertised the office fee schedule, and such information was available in the reception area.

Petitioner seeks to imply that because the Erhards testimony was to the effect they didn't remember signing the disclaimer, didn't remember seeing the desk sign and didn't remember the cards, that this proves Respondent was lying. To reach this conclusion one would have also to reach the conclusion that Respondent's witnesses, Kristi Brayton, James E. Wade, III, Karen Beasley and Carolyn McCloud were also lying. It is noted that Mr. Wade is now a practicing attorney. It is noted that this case proceeded through a wrongful death action in circuit court, and the final fee received by Respondent's attorney/employer was set by the circuit court judge.

3. As to CUTROLE:

This subject left certain information with the office of Respondent's attorney/employer with a request an analysis be made as to a possible lawsuit. This analysis was in fact made by Respondent's attorney/employer. Cutrole wanted a big lawsuit on a contingency basis, a request that was refused by Respondent's attorney/employer. Cutrole was billed $100.00 for work done, and has yet to pay this bill.

Petitioner makes much of the lack of the law office files in this and other cases. However, such files were available in the office of Respondent's attorney/employer at time these cases were filed. These files were personally received by Respondent, and Respondent's testimony was based on his own actual personal knowledge. However, in the passing of years, the law office moved several times, and eventually the old closed files were discarded by Respondent's attorney/employer. Respondent shows this is due to the failure of Petitioner to follow up on the case in a reasonable time, and the

files being missing following the passage of many years is Petitioner's fault, not Respondent's.

Again we have the sworn testimony of Kristi Brayton, James E. Wade, III, Karen Beasley, and Carolyn McCloud to back up the sworn testimony of Respondent. A fact conveniently overlooked by Petitioner.

4. As to BLEDSOE:

Testimony shows that Bledsoe called regarding a civil lawsuit. The information given was that contained in the suit and was available from the clerk of circuit court. Ms. Bledsoe did not testify as to any act or any statement that would have in any way constituted the practice of law. She did follow Respondent's suggestion and id retain her own attorney. It is clear that Respondent did not hold himself out as an attorney, and did not give legal advice.

5. As to MILLER:

The Millers came into the office of Respondent's attorney/employer to ask about legal representation. They were neighbors of a client who Respondent's attorney/employer did handle "subdividing" some land by use of deeds (not a "subdivision"). On finding out they would have to pay for drafting of deeds, they decided to do it themselves. They were never clients, and nothing proceeded past the inquiry stage. They were not clients, they did not pay a fee.

The so called "advice", was the statement that the law office of Respondent's attorney/employer, would for an appropriate fee prepare deeds. This is a fact that was publicly advertised.

The very thought that a law office would dispense "legal advice" to a non-client who was not willing to employ that office and pay a fee is ridiculous.

6. As to SASSER:

Testimony indicates Mr. Sasser had known for many years that Respondent was not an attorney, and that Respondent was an employee of a licensed attorney. The statement "retained us" is commonly used by any and all employees in law offices. Of all people, Mr. Sasser, with with his personal knowledge of the situation should not be offended by this, unless he was looking for a nit-picking way to hit Respondent.

It is very, very common practice for an attorney's employees to call other attorneys and relay information as instructed. At

absolutely NO time did Respondent ever, at any time, say that he represented any person as attorney.

Mr. Sasser testified he called to and talked with Respondent's attorney/employer about a case and the call back information, after the file was located, was from Respondent. It is quite obvious on whose instructions Respondent was acting.

7. As to AUVIL:

When an attorney is talking to another attorney's legal assistant, the statement as to "our clients" is obviously reference to clients of the other attorney, and that these "clients" are not being represented by the legal assistant.

Mr. Auvil knew for a number of years that Respondent was not an attorney, and Mr. Auvil knew Respondent was the employed legal assistant of a licensed, practicing attorney. To have to, over the years, begin each and every conversation with "Mr. Auvil, as you very well know, I am not a lawyer", would cause alot of laughter. Counsel for The Florida Bar freely admits that legal assistants routinely call other law offices and counsel, and do not use a "non-attorney" disclaimer, but the Bar only acts when it has complaints. Respondent has not seen any set of instructions for attorneys office personnel, though such seems to be sorely needed.

It was only on Respondent's trip to Tallahassee on July 31, 1987, that Respondent was advised that it was required that all non-attorneys, working for licensed attorneys, begin each and every conversation with all members of the public and other law offices and attorneys, by saying "I am not an attorney". If this indeed is the case, then why?, oh why?, in the name of common decency, simple justice, and in the spirit of making things work, could not have any member of the Bar or any of their employees, simply communicated this to Respondent, instead of spending great effort in secretly preparing a case against Respondent. OR in the alternative, since Respondent's attorney/employer was a member of the Bar, why could not the Bar have insisted that the attorney/employer make the changes or in the alternative discipline the attorney through the Bar's grievance procedure.

Bar counsel has alluded to certain correspondence, but refused to produce same in response to Respondent's request to produce,

which the Bar Counsel claims would show that Bar did in some way contact Respondent's attorney/employer. This correspondence was not copied to Respondent, and Respondent was not informed at any time, by anyone, in any way of what the Bar believes were acts of unauthorized practice.

The Bar's refusal to submit to discovery effectually foreclose Respondent's ability to find out the essentials of this case and thus they conducted a trial by ambush by refusal to discovery. This is not justice according to our scheme of things.

It should be pointed out that several persons testified that they thought that they received "legal advice" but the record is devoid of concrete examples of what the "legal advice" was.

We have here several disgrundled people, who after five or more years, say they think they got legal advice and very conveniently fail to remember any thing else.

The testimony of Mr. Wade, who is now a practicing attorney, was that he did the same things complained of against Respondent, but as a law student from an adjoining county he had no political enemies to complain of his acts. Wade further testified (Wade transcript page 33) that the office we worked in was like a legal clinic, and that he had done a research paper in law school on legal clinics.

Since Mr. Wade is now a practicing lawyer, in another county, and now has four years practice, his testimony is entitled to great weight and not to be ignored as Petitioner appears to desire (so it will go away).

II. Respondent was sent through the University of Florida College of Law by the State of Florida under a program supervised and administered by the Supreme Court of Florida, and his complete curriculum is contained in Southern Reporter, (Treiman v. State of Florida, 343 So. 2d 819). Respondent graduated third in his class, and in the course on professional responsibility Respondent ranked first in his class. Respondent at all times sought to follow the code of professional responsibility, and at no time did he deviate from what he perceived to be proper and correct procedure.

The Bar now advises that there were some areas in which there was correction needed, but the Bar apparently was too frightened to speak

with Respondent directly, wanting to file in Supreme Court to give Respondent his first contact with the Bar's apparatus.

A good example of the problems in this case is that Respondent found out, almost by accident, from Bar UPL Counsel on July 31, 1987, that simply not telling everyone a legal assistant talked with, that the speaker was not an attorney, was in and of itself the "unauthorized practice of law". If the Bar had not unlawfully and illegally evaded discovery procedure, Respondent would have found this out in time to cover this issue in trial testimony. This is a prime example of the willful damage done to Respondent by Petitioner.

Respondent served over 28 years as Judge of County Judge's Court, County Court, Juvenile Court, Small Claims Court and sometimes as Judge of Municipal Court. it was not uncommon in jurisdictions as probate, mental health and juvenile, to have lawyers employees call to the Judge and transmit information, ask questions, set hearings, etc., over these years, Respondent fielded many thousands of such calls. Of female employees Respondent can remember none saying they were not attorneys, and of male employees, it takes less than the fingers of one hand to count those who said they were not attorneys.

III. Petitioner apparently feels the entire legal system of Florida and the public is so badly threatened that there is a crying need of an injunction to protect them by having this Court issue an injunction.

To understand the situation, let us review the facts as set forth in the sworn testimony.

Respondent did not maintain a law office.

Respondent did not advertise as attorney.

Respondent did not hold himself out to be an attorney.

Respondent did not have business cards identifying him as an attorney.

Respondent did not receive any attorney fees whatsoever.

Respondent was not referred to as an attorney in the attorney's office in which he was employed.

Respondent did not sign any pleadings as attorney.

Respondent did not appear in Court as an attorney.

Respondent did have business cards identifying him as a legal assistant.

Respondent did have a large sign on his desk identifying him as legal assistant.

Respondent was identified as a legal assistant on all of the information sheets filled out and signed by every client.

Respondent was identified as a legal assistant in the agreement to represent signed by clients.

Respondent worked strictly under orders and control of a licensed attorney, who had full power to fire him, and over whom The Florida Bar had control by virtue of its disciplinary procedure.

Respondent's only compensation was a weekly paycheck which was less than others working the same law office.

Against this - the Petitioner presented witnesses who conveniently cannot remember the various disclaimers, signs and cards, but claimed they had some assumed presumption that Respondent must be an attorney.

Petitioner elicited testimony from clients that they thought they received "legal advice" from Respondent, but conveniently could not remember what this advice was, and had no knowledge that information transmitted was on instructions of Respondent's employer/attorney.

Petitioner did elicit testimony that Respondent did not begin each and every conversation by saying "I am not an attorney".

The testimony is uncontradicted that Respondent, after being served with this action, voluntarily quit his employment as a legal assistant, and in the ensuing years has not worked in the field of law.

Later discovered information shows clearly that in routine cases, The Florida Bar counsel with those suspected of unlawful practice, and gives them an opportunity to appear before the Bar Circuit UPL Committee. In this case, this was NOT done, thus depriving Respondent of due process, and violating the rule of fundamental fairness.

There is not one sintela of evidence to indicate the need for an injunction, the reading of the legal definitions on the purpose of an injunction clearly indicates injunctive relief is not indicated in this case.

Therefore Respondent prays this Honorable Court to deny the request of Petitioner for an injunction.

This court has, in fact, amended it's rules to presently allow non-attorneys to fill out forms and do much other work for clients as an outside commercial service, not in an attorney's office. Petitionersomehow feels it is not relevant to what is done by an attorney'semployee, a position that is highly inconsistent.

IV. It is crystal clear why the Petitioner wants to limit this court in what it decides. It desires to cover up the Florida Bar's ineptitude and bungling in this case. It wants to sweep under the rug the real issue. That is can an employee of a licensed attorney follow the specific orders of the employer? If then the Bar decides the bounds of unauthorized practice are overstepped, must the Bar require the attorney/employer to make corrections or discipline the attorney. Or if the Bar does not have sufficient influence over the attorney, must the Bar then go to the employee with warnings and/or admonitions before proceeding further, and then afford the employee with a hearing before the circuit UPL Committee before going to the Supreme Court, admitting total failure, and asking the Supreme Court to do the Bar's routine work?

If this case is upheld, the Supreme Court will approve the Bar's total lack of due process or fundamental fairness, and that a vendetta of few old political enemies will have succeeded.

Petitioner feels that Respondent must ask this court for an advisory opinion before Respondent could carry out duties assigned him by his licensed attorney/employer, and that this court should not set policy as to UPL cases.

If a formal request for an advisory opinion is needed, then Respondent formally requests that this honorable court broaden this case to include an advisory opinion to clarify what the lowly employee of a licensed attorney/employer may properly do, and when the Bar must at least give the employer some contact, counseling, or warning prior to filing a case in Supreme Court. The Bar is in a curious situation, persecuting its members employees for doing what its member/licensed attorney has instructed that employee to do. To the general lay public, such position is wholly inconsistent, and is a admission by the Bar that it is unable to control or supervise its membership.

V. CONCLUSION

The sworn testimony, when including former associate employees of the law office concerned, which includes one person who now has become an attorney, is such that the Petitioner's case is not proven, and should fail on the clear weight of the evidence.

There is no reason or logic whatsoever as to the need for an injunction.

The misconduct of The Florida Bar in willfully denying discovery should require a setting aside of the trial and the giving of the Respondent the same time as Petitioner to pursue discovery, and by sanctions the Petitioner required to pay all costs.

The newly discovered evidence of the Petitioner's clear violation of Petitioner's own rules and practice in handling UPL cases is so persuasive that the Petitioner should be required to restart the entire procedure and begin with counseling, admonition, and warning and then proceed only on failure of these procedures.

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(904) 796-2638

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 1987, copies of the foregoing were placed in U.S. Mail to LORI S. LEIFER HOLCOMB, UPL Counsel, The Florida Bar, Tallahassee, FL 32301; and to L. E. TAYLOR, Bar Counsel, P.O. Box 208, Leesburg, FL 32749-0208.

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