63298

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 63,298,
62,831

v.

MONROE W. TREIMAN,

Respondent.

RESPONSE TO RESPONDENT'S RESPONSE TO
REPORT OF REFEREE

Petitioner, The Florida Bar, hereby responds to Respondent's Response to Report of Referee as follows:

I. Referee's Findings of Facts

Respondent's response to the referee's report centers around the findings of fact made by the referee after a full evidentiary hearing on the merits. It is fundamental that the referee's findings of fact may not be overturned unless they are clearly erroneous or totally lacking in evidentiary support. The Florida Bar v. Furman, 451 So.2d 812 (Fla. 1984); The Florida Bar v. Wagner, 212 So.2d 770 (Fla. 1968). In the case before this court, the referee's findings are supported by the evidence whereas the Respondent's objections are not.

1. The referee's findings of fact as to Ms. Naegeli contained in paragraph IIA3 are supported by Ms. Naegeli's testimony at the final hearing.

Ms. Naegeli testified that when she told the receptionist at Respondent's office that she wanted a real estate transaction handled, the receptionist introduced her to Respondent. (TR39-41) She further testified that Respondent was introduced as Judge Treiman and she assumed he was an attorney. (TR40) After the initial introduction, Ms. Naegeli discussed the real estate transaction with Respondent. (TR41-43) She asked him legal questions to which Respondent responded by giving legal advice. (TR44) At the conclusion of the transactions, Ms. Naegeli wrote a check payable to Monroe Treiman for costs and fees. (TR50) At no time was Ms. Naegeli told that the Respondent was not an attorney. (TR52-53)

On the other hand, Respondent's factual assertions contained in his objections are not supported by the evidence. Ms. Naegeli could not recall filling out an information sheet, being given a card, or seeing a sign on Respondent's desk. (TR55-56) The remaining assertions are based on Respondent's testimony rather than that of the witness. (TR56-58)

2. The referee's findings of fact as to Mr. and Mrs. Erhard found in paragraph IIA4 are supported by their testimony at the final hearing.[1]

Mrs. Julie Erhard testified that she spoke to Respondent regarding the drafting of her father-in-law's will. (DTR6-7) She later went to Respondent concerning the probate of her mother's estate. (DTR10-11) Respondent quoted her a fee of $250 to $400 and also gave her advice and information concerning the advertisement requirement of probate. (DTR11-13) Respondent never informed

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1 Mr. and Mrs. Erhard's testimony was submitted by way of deposition, therefore, all cites to the record will be to their deposition and cited DTR.

Mrs. Erhard that he was not an attorney nor does he recall seeing any signs or disclaimers. (DTR12-13) As Mrs. Erhard knew that Respondent had once served as a judge, she believed that he was a licensed attorney. (DTR11)

Mr. John Erhard testified that he knew Respondent was a judge, and therefore, thought that he was an attorney. (DTR5) He was never told that he was not an attorney nor does he recall seeing any disclaimers as to Respondent's status. (DTR7-9)

On the other hand, Respondent's factual assertions are not supported by the evidence. Mrs. Erhard testified that she does not recall seeing Respondent's business card, desk sign, or information form. (DTR11-13) Mr. Erhard does not recall seeing the disclaimers. (DTR8-9) Whether the fee quoted was from a schedule or the notice to creditors was common knowledge are irrelevant.

3. The referee's finding of fact as to Marlene Cutrole contained in paragraph IIB2 are supported by Ms. Cutrole's testimony at the final hearing.

Ms. Cutrole testified that she made an appointment with the law office of Respondent's attorney-employer to discuss an article written about her son. (TR130-131) After arriving at the office, she was introduced to Respondent. (TR133) She told Respondent her story and asked if he could do something for her. (TR134) Respondent told her that he would make some calls and get back to her. (Id) She also received legal advice from Respondent. (TR135) At all times, Ms. Cutrole understood that she was speaking to an attorney. (TR134-136)

Ms. Cutrole testified that after the first visit, she received some phone calls from the Respondent. (TR136-137) The

Respondent informed Ms. Cutrole that there was not anything he could do about her problem. (TR137) At no time was Ms. Cutrole told that Respondent consulted with an attorney or was passing on information of an attorney. (TR135, 138)

On the other hand, Respondent's assertions of fact contained in his objections have no evidentiary support. Ms. Cutrole testified that she did not fill out an information sheet, she was not given a business card, and she did not see a sign on Respondent's desk. (TR145-146) Moreover, Ms. Cutrole was never told all information was being cleared with the attorney. (TR149) The fact that payment was not made is irrelevant.

4. The referee's findings of fact as to Carol Bledsoe contained in paragraph IIB3 are supported by Ms. Beldsoe's testimony at the final hearing.

Ms. Bledsoe testified that after being served with a complaint in a civil suit she contacted the offices where Respondent was employed as the office represented the plaintiff. Upon calling the office, she was connected with the Respondent. (TR152-153) Respondent explained the suit to her and gave what she felt were legal opinions. (TR153, 155) Ms. Bledsoe knew that Respondent was a judge at one time and believed that he was an attorney. (TR154) He never told her that he was not an attorney and his advice gave her no reason to believe that he was not an attorney. (TR156-157)

On the other hand, Respondent's factual assertions are not supported by the record. Ms. Bledsoe testified that she was never told that Respondent discussed her case with his attorney-employer. (TR156)

5. The referee's findings as to Marice Miller contained in paragraph IIB4 are supported by Ms. Miller's testimony at the final hearing.

Ms. Miller testified that she went to Respondent's office to seek advice on how to split a piece of property. (TR171-172) Respondent proceeded to give Ms. Miller advice on how to split the property. (TR173-174) Respondent never stated that he was discussing the matter with an attorney. (TR174-175)

On the other hand, there is no testimony to support the Respondent's factual assertions made in his objections.

6. The referee's findings as to David Sasser contained in paragraph IIB5 are supported by Mr. Sasser's testimony at the final hearing.

Mr. Sasser, a licensed attorney, testified that Respondent called him to discuss the possible settlement of one of his pending cases. (TR73-74) During the conversation, the Respondent indicated that he had discussed the case with the defendants as if they were his clients. (TR75-76) He also advised Mr. Sasser that the defendants "have retained us to represent them." (TR79) Mr. Sasser further testified that he had contact with Respondent relative to a will dispute case. (TR77) Respondent called Mr. Sasser and stated that he wanted to discuss the matter before filing a claim. (TR78) Respondent stated that the client that he represented would be entitled to relief. (TR78) In both cases, Respondent acted as if he was the attorney. (TR79-80)

Respondent's objections to the referee's findings as they relate to Mr. Sasser contain nothing more than Respondent's testimony, not that of Mr. Sasser. In fact, Mr. Sasser testified

that he had no idea whether Respondent was acting under the instructions of his attorney-employer. (TR91)

7. The referee's findings as to Gene Auvil contained in paragraph IIB6 are supported by Mr. Auvil's testimony at the final hearing.[2]

Mr. Auvil, a licensed attorney, testified that he had numerous conversations with Respondent. (DTR6) In several conversations, Respondent used the terms "our clients" and "my clients." (DTR8) In the case involving the Lawrences and the Koningsburgs, Respondent called Mr. Auvil concerning an agreement which Mr. Auvil had drafted. (DTR6-7) In the Kline case, Respondent called Mr. Auvil to discuss a possible settlement. (DTR7-8) During one conversation concerning a case, Respondent told Mr. Auvil that he had not "gotten into the matter far enough yet to decide about that" and that he had not "studied it enough yet to know if there's going to be litigation." (DTR9)

On the other hand, Respondent's factual assertions as contained in his objections have no support in the record. Mr. Auvil was never informed that Respondent was acting on the instructions of his attorney-employer (DTR15). Moreover, the clients were never told that Respondent was not an attorney. (DTR17)

Rather than point out areas where the referee found facts which were not in evidence, Respondent's response merely reargues his case by attempting to explain his actions. Respondent does so by citing facts which are allegedly in evidence without citation to

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2 Mr. Auvil's testimony was submitted by way of deposition, therefore, all cites to the record will be to his deposition and cited DTR.

a transcript or any record showing that Respondent's recollections accurately represent the facts. This is insufficient to refute the findings of the referee. The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So.2d 797 (Fla. 1980). Respondent further questions the credibility of witnesses and the weight to be given their testimony, a task reserved for the referee. The Florida Bar v. Wager, supra.

Furthermore, Respondent's explanation for his actions does not excuse the fact that he was engaging in the practice of law without a license. Respondent argues that all of his actions were done at the direction of his licensed attorney-employer. Any fees that were quoted, advice that was given, or telephone calls to opposing counsel that were returned were done so at the direction of his employer and were actually her advice. Respondent argues that he was the conduit of the information rather than the generator.

Assuming arguendo that Respondent's arguments are true, his actions still constitute the unlicensed practice of law. This Court has continuously held that the giving of legal advice by one not an attorney is prohibited as the unlicensed practice of law. The Florida Bar v. Brower, 402 So.2d 1171 (Fla. 1981); The Florida Bar v. Williams, 388 So.2d 563 (Fla. 1980); The Florida Bar v. Moore, 345 So.2d 728 (Fla. 1977). The same is true in regard to negotiating or communicating with opposing parties or counsel. The Florida Bar v. Morton, 432 So.2d 54 (Fla. 1983); The Florida Bar v. Walzak, 380 So.2d 428 (Fla. 1980). The fact that the information communicated or the advice given came from a licensed attorney is irrelevant if this fact is not specifically made known to the client. This requirement is more essential where, as here, the clients never met with or talked to the licensed attorney-employer. As the referee found, many of the clients assumed that respondent was an attorney because of his actions. Such holding out, whether

implicity or explicitly, is clearly prohibited and should be enjoined in this case. The Florida Bar v. Brower, 402 So.2d 1171 (Fla. 1981); The Florida Bar v. Williams, 388 So.2d 563 (Fla. 1980); The Florida Bar v. Moore, 345 So.2d 728 (Fla. 1977).

II. Respondent's General Exceptions

Respondent's major point under this section is that he never told anyone that he was an attorney, his name never appeared in any sign as being an attorney, and he was identified in business cards and by name plate as a legal assistant. As argued above, the fact that Respondent never stated that he was an attorney does not change the fact that he was perceived to be an attorney by the public. Clients thought they were talking to an attorney because of the advice given and because of the fact that he was commonly known as judge. Moreover, many of the witnesses testified that they did not recall seeing any disclaimer. (See cites to record contained in part I.)

The situation presented here is similar to that presented in The Florida Bar v. Lugo-Rodriquez, 317 So.2d 721 (Fla. 1975) wherein this Court agreed with the referee that the use of the title "notary" by one advertising to handle immigration matters implied that the person was an attorney as this was the common meaning given to the title by Spanish speaking people. Therefore, although the Respondent was not calling himself an attorney, this was the impression that was given and nothing was done to advise that he was not an attorney. This Court held that the Respondent was holding himself out as an attorney and enjoined him from doing so in the future. Consequently, the referee's finding that the Respondent in the present case was engaging in the unlicensed practice of law although he did not affirmatively represent that he was an attorney has support and should be approved.

III. Remedies

The referee's report finds that the Respondent engaged in the unlicensed practice of law and recommends that this Court enter a permanent injunction preventing Respondent from engaging in the practice of law and specifically from impliedly or expressly holding himself out as a licensed attorney. This remedy is specifically authorized by Rule 10-5 of the Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law. In response, Respondent argues that an injunction is not needed. Clearly, an injunction is needed as this is the only way to ensure that Respondent will not continue the same acts in the future.

The referee further finds that although the Respondent is guilty of engaging in the unauthorized practice of law, an adjudication of indirect criminal contempt should be withheld. Therefore, Respondent's statement that The Florida Bar claims Respondent was in contempt of this Court is irrelevant.

Finally, Respondent states that The Florida Bar has petitioned this Court to allow nonattorneys to explain to the public how to fill in various forms. This statement is incorrect and not relevant to the inquiry before this Court as the amendment to Rule 10 would not allow the Respondent to continue the course of conduct which the referee found violated the prohibition against the unlicensed practice of law.

IV. Issues That Must Be Considered and Decided by the Court

The final section of Respondent's Response to Report of Referee outlines six issues of policy which Respondent feels this Court should address. Objections to a referee's report is not the proper vehicle in which to address these issues. Under Rule 10-7 the Respondent may request a formal advisory opinion if he wishes the Court to address these issues. Therefore, Petitioner will not

address these issues at this time. Should this Court wish to consider Respondent's issues in this context, Petitioner will promptly file a supplemental response.

V. Conclusion

As Respondent has failed to show error in the referee's report, this Court should uphold the finding of the referee and permanently enjoin the Respondent from engaging in the unlicensed practice of law in the State of Florida.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing has been sent by U.S. mail to Mr. Monroe W. Treiman, Respondent, at 133 South Brooksville Avenue, Brooksville, Florida 33512, and to Mr. Lawrence E. Taylor, Bar Counsel, Post Office Box 208, Leesburg, Florida 32749-0208, this 5 day of August, 1987.

Lori S. Holcomb