IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v. CASE NO. 77,871

DANIEL E. SCHRAMEK,
individually and d/b/a
SCHRAMEK & ASSOCIATES, and
The L.A.W. CLINIC, INC., a
Florida for-profit corporation,

Respondents.

_____/

RESPONSIVE BRIEF OF PETITIONER THE FLORIDA BAR

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STATEMENT OF THE CASE AND OF THE FACTS

A summary of the proceedings is set forth in the report of the referee filed with this court on or about November 12, 1992. Petitioner hereby adopts the summary of proceedings set forth in the report as Petitioner's Statement of the Case and of the Facts.

In addition to the pleadings attached to the referee's report and filed with this court, Respondents filed a "Petition for Review of Interlcutory (sic) Rulings of the Referee" on or about May 20, 1992. The Petition sought review of the rulings of the referee entered up to that point. The Petition was not accompanied by a brief, therefore, The Florida Bar was not able to file a response. The Petition for Review is still pending.

SUMMARY OF THE ARGUMENT

Article V, section 15 of the Florida Constitution gives this court inherent authority to regulate the unlicensed practice of law. This court therefore has jurisdiction to hear this case and adopt the report of the referee. The fact that the State Attorney also has the authority to bring a criminal action for engaging in the unlicensed practice of law does not relieve this court of jurisdiction, nor does the order of recusal of the first referee.

The findings of the referee are supported by the evidence and Respondents have failed to show that the findings are clearly erroneous or wholly lacking in evidentiary support. There is therefore sufficient basis upon which to approve the referee's report.

Finally, the Respondents do not have the authority to practice law and were not granted this authority by this court. Unless and until Respondents are duly licensed to practice law in Florida, they should be enjoined from doing so.

ARGUMENT

I. THIS COURT HAS JURISDICTION TO REGULATE THE UNLICENSED PRACTICE OF LAW.

For the most part Respondents' "Objection to Referee Judge Helio Gomez's Report and Recommendations to the Supreme Court of Florida in Reference to the Above-Styled Action" (hereinafter "Objections") is nothing more than unsupported allegations of conspiracy and violation of constitutional rights. However, in several paragraphs in their Objections, Respondents argue that this Court does not have jurisdiction to regulate the unlicensed practice of law. The arguments have no basis in law and are totally without merit.

The fact that this court has jurisdiction to regulate the unlicensed practice of law is clearly set forth in case law. In State ex rel. The Florida Bar v. Sperry, 140 So. 2d 587 (Fla. 1962), rev'd on other grounds, 373 U.S. 379 (1962) this court was faced with the question of whether it had this authority. As held by this court,

> [t]he question then is whether the authority imposed in Section 23, Article V, also carries with it the power to prevent the practice of law by those who are not admitted to the practice. We think that it must and it does for if it does not the express power to control admissions would

be meaningless.

* * *

> It would indeed be an anomaly if the power of the courts to protect the public from the improper or unlawful practice of law were limited to licensed attorneys **and** did not extend or apply to incompetent and unqualified laymen and lay agencies. Such a limitation of the power of the courts would reduce the legal profession to an unskilled vocation, destroy the usefulness of licensed attorneys, as officers of the courts, and substantially impair and disrupt the orderly and effective administration of justice by the judicial department of the government; and this the law will not recognize or permit.
>
> **The** express power contained in our state constitution makes unnecessary any discussion of the inherent power of the courts to regulate the practice of law and those who engage in it.

140 **So.** 2d 588-589. The holding of Sperry was affirmed by this court in The Florida Bar v. Moses, **380** ***So.*** 2d 412, 417 (Fla. 1980) wherein it was held that "[i]nherent in our supervisory power is the authority to prohibit the unauthorized practice of law." (Emphasis in original.)

The rules under which Petitioner brought the action against Respondents also set forth this court's jurisdiction. Rule 10-1.1(a) of the Rules Regulating The Florida Bar (renumbered Rule 10-1.1) states "[p]ursuant to the provisions of article V, section 15, of the Florida Constitution, the Supreme Court of Florida has inherent jurisdiction to prohibit the unlicensed practice of law." Clearly, this court has jurisdiction to regulate the unlicensed practice of law.

A second component of Respondents' jurisdictional argument is that this court lacks jurisdiction because the jurisdiction to prohibit the unlicensed practice of law rests with the Executive

Branch under the State Attorney pursuant to Florida Statute S454.23. Respondents' Objections, pp. 1-2. The reverse of this argument was before the Circuit Court of the Eleventh Judicial Circuit sitting in its appellate capacity in State v. Neiman, Case No. 91-200 AC (March 20, 1992) and was rejected. (For the convenience of the court, a copy of the opinion is attached hereto in Appendix A.) In Neiman the defendant argued that the State Attorney did not have jurisdiction to prosecute him for the unlicensed practice of law as that jurisdiction lay exclusively with The Florida Bar and this court. In finding that both the State Attorney and The Florida Bar have jurisdiction in matters involving the unlicensed practice of law, the court held that "while the rule provides that the jurisdiction of the Florida Supreme Court to prohibit the unlicensed practice of law is inherent, it does not provide that such jurisdiction is exclusive." (Emphasis in original.) Similarly, the fact that the State Attorney has jurisdiction to prosecute the misdemeanor of unlicensed practice of law does not preclude jurisdiction resting in this court as well.

Respondents' final jurisdictional argument is based on the order of recusal entered by Judge Mitcham on July 6, 1992. The order states in full:

ORDER OF RECUSAL

> The Court hereby disqualifies itself from making further rulings and/or making any further recommendations for the following reasons:
>
> 1. This judge along with fifteen (15) other judges of the Thirteenth Judicial Circuit, have been sued by the Respondents in the United States District Court, Middle District of Florida.

Respondents maintain that because the order says "The Court," Judge Mitcham relinquished the jurisdiction of the Supreme Court of Florida and any other court over this case. Nothing could be further from the truth. The order merely recuses the referee from hearing the case. "A recusal . . . ends the judge's power to take part in the disposition of the case." State ex rel. Cobb v. Bailey, 349 So. 2d 849 (Fla. 1st DCA 1977). Jurisdiction is not recused nor does the referee have the authority to "recuse" jurisdiction or dismiss a case through an order of recusal. This fact was recognized by this court in its subsequent order appointing Judge Gomez to act as referee. Had jurisdiction been "recused," such an order would not have been entered. Clearly, this court has jurisdiction to proceed in this matter and approve the recommendations set forth in the report of the referee.

11. THE EVIDENCE SUPPORTS THE FINDINGS AND RECOMMENDATIONS OF THE REFEREE.

Nowhere in their Objections do Respondents deny that they engaged in the unlicensed practice of law nor do they deny that their actions caused public harm. Instead, Respondents argue that Petitioner failed to show unlicensed practice of law because Petitioner only showed public harm and public harm is not relevant to the unlicensed practice of law. This argument is without merit.

As found by the referee, Respondent Daniel E. Schramek operates Schramek & Associates and the L.A.W. Clinic, Inc. The Respondents' business is that of providing legal services to the public. The term

of art currently being used to describe the business is "legal technician."

The activities of Respondents are governed by this court's ruling in The Florida Bar v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978). Brumbaugh holds that nonlawyers

> may sell printed material purporting to explain legal practice and procedure to the public in general and . . . may sell sample legal forms. . . . Further, we hold that it is not improper for [the nonlawyer] to engage in a secretarial service, typing such forms for . . . clients, provided that [the nonlawyer] only copy the information given . . . in writing by [the] clients. However, [the nonlawyer] must not, in conjunction with [the] business, engage in advising clients as to the various remedies available to them, or otherwise assist them in preparing those forms. . . . More specifically, [the nonlawyer] may not make inquiries nor answer questions from . . . 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 the court hearing. . . . While [the nonlawyer] may legally sell forms . . . and type up instruments which have been completed by clients, [the nonlawyer] must not engage in personal legal assistance . . . including the correction of errors and omissions.

355 So. 2d at 1194. See also The Florida Bar v. Furman, 376 So. 2d 378 (Fla. 1979) and The Florida Bar v. Furman, 451 So. 2d 808 (Fla. 1984). It is not only in the filling out of forms where the nonlawyer may engage in the unlicensed practice of law, a nonlawyer also engages in the unlicensed practice of law if the nonlawyer holds himself or herself out in such a way as to cause the client to place some reliance on the nonlawyer to properly prepare the forms. Brumbaugh, 355 So. 2d at 1193-1194.

Brumbaugh has been somewhat modified by the adoption of Rule 10-1.1(b) of the Rules Regulating The Florida Bar (renumbered 10-2.1(b)). Rule 10-1.1(b) provides that "for purposes of this chapter, it shall not constitute the unlicensed practice of law for

nonlawyers to engage in limited oral communications to assist a person in the completion of a legal form approved by the Supreme Court of Florida. Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the form and inform the person how to file the form." As found by the referee, this rule is not applicable in this case as Supreme Court Approved Forms were not in existence at the time of the conduct forming the basis of the Petition against Respondents and the forms used by Respondents are not included in the forms later approved by this court. Respondents' conduct is therefore governed by Brumbaugh.

In applying the case law it is clear that Respondents engaged in the unlicensed practice of law. As found by the referee, Respondents "gave legal advice to Charles Shannon including the effect of Section 61.30, Florida Statutes, Child Support Guidelines; what Mr. Shannon should give the judge, what Mr. Shannon should and should not say to the judge, and what Mr. Shannon's appellate rights were." Report of Referee, p. 5. Further, Respondents "drafted a Motion for Modification of Final Judgment of Dissolution of Marriage and Motion for Non-Jury Trial . . . all based on verbal communications with Charles Shannon." Id. at p. 6. These findings are based on the testimony of Charles Shannon and show that Respondents violated Brumbaugh and engaged in the unlicensed practice of law.

The referee also found that Respondents "gave legal advice to Mary B. Muckler regarding the effects of a living trust, and prepared for Mary B. Muckler a living trust and quit claim deed . . ." Report

of Referee, **p. 7** This finding is based on Respondents' Amended Answer to Show Cause and shows that Respondents violated Brumbaugh and engaged in the unlicensed practice of law. See also The Florida Bar Re: Advisory Opinion - Nonlawyer Preparation of Living Trusts, No. **78,358** (Fla. Dec. **24, 1992)** (not yet reported).

The referee also found that Respondents "gave legal advice in connection with The Violet C. Gillespie Living Trust" and Respondents "prepared a quit claim deed . . . which was ineffective in transferring the title of the condominium into the living trust." Report of Referee, p. 9. This finding is based on the testimony and exhibits received at the hearing and shows that Respondents violated Brumbaugh and engaged in the unlicensed practice of law. See also The Florida Bar Re: Advisory Opinion - Nonlawyer Preparation of Living Trusts, No. 78,358 (Fla. Dec. **24, 1992)** (not yet reported).

Not only is it clear that Respondents engaged in the unlicensed practice of law, it is also clear that Respondents' actions caused public harm. ***See*** Report of Referee pp. **5-10, 12.** Respondents argue that "the issues of potential harm to the public are not relevant to the unlicensed practice of law . . ." Respondents' Objections, p. **5.** While Petitioner feels that public harm should not always be a necessary component in the area of unlicensed practice of law, it is an element which this court looks for. As held in The Florida Bar v. Brumbaugh, **355** So. 2d **1186, 1192** Fla. 1978) "[i]n determining whether **a** particular act constitutes the practice of law, our primary goal is the protection of the public " Therefore, public harm is relevant and rather than defeating the referee's finding of

unlicensed practice of law, the finding of public harm caused by Respondents supports it.

Finally, Respondents argue that the testimony at the hearing was from attorneys who were biased and prejudiced against Respondents. Respondents ignore the fact that a former customer, Charles Shannon, and a former business associate, Richard Campbell, testified. Moreover, as Respondents chose not to remain at the hearing, Respondents are unable to judge the credibility of the witnesses.

On the other hand, the referee was at the entire hearing and was able to judge the witnesses and their testimony. The credibility of witnesses and the weight to be given their testimony is a question for the trial court. Marsh v. Marsh, 419 So. 2d 629 (Fla. 1982). On appeal, "this court is not entitled to substitute its judgment for that of the trial court on questions of fact, likewise the credibility of the witnesses as well as the weight to be given the evidence by the trial court." Goldfarb v. Robertson, 82 So. 2d 504, 506 (Fla. 1955). Consequently, any perceived bias will not act as a basis to reject the findings of the referee.

As shown above, the evidence supports the findings and recommendations of the referee. "This Court will not reverse the findings of a referee unless the findings are clearly erroneous or wholly lacking in evidentiary support." The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So. 2d 797, 801 (Fla. 1980). As such is not the case here, the findings and recommendations should be adopted by this court.

III. THE FLORIDA BAR v. MARINA DOES NOT GIVE RESPONDENTS OR ANY OTHER NONLAWYER THE RIGHT TO PRACTICE LAW.

In their conclusion, Respondents bring up an incongruity they feel was created by this court's interlocutory rulings in The Florida Bar v. Marina Securities & Marina Trust Services, Inc., 591 So. 2d 185 (Fla. 1991) (Case No. 77,375) (hereinafter "Marina") and the present action. Respondents argue that in Marina and the present action this Court allowed Daniel E. Schramek to represent two corporations. [1] Respondents argue that Mr. Schramek's representation of the corporations could cause more harm than the unlawful activities which formed the basis of Petitioner's complaint. While Petitioner does not necessarily disagree with this statement, this fact does not remove the other activities from the unlicensed practice of law.

Moreover, Marina does not give Mr. Schramek or any other nonlawyer the right to practice law or represent a third party or corporation in court. It is clear that in order to represent a third party in court one must be a member in good standing of The Florida Bar or admitted pro hac vice. State ex rel. The Florida Bar v.

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[1] The parties in the present action are Daniel E. Schramek individually and doing business as Schramek & Associates and The L.A.W. Clinic, Inc. Through the course of this litigation Mr. Schramek has represented himself, Schramek & Associates and The L.A.W. Clinic, Inc. Although Mr. Schramek's representation of the other parties was improper, Petitioner chose not to object. Petitioner does not acquiesce in Mr. Schramek's conduct nor does Petitioner believe that Mr. Schramek's actions are allowed by the case law. In fact, Petitioner strongly believes to the contrary.

Sperry, 140 So. 2d 587 (Fla. 1962), rev'd on other grounds, 373 U.S. 379 (1963); Gelkop v. Gelkop, 384 So. 2d 195 (Fla. 3d DCA 1980); Rule 2.060, Fla. R. Jud. Admin. It is also clear that a Corporation may not appear pro se but must appear in court through a licensed attorney. Szteinbaum v. Kaes Inversiones y Valores, 476 So. 2d 247, 248 (Fla. 3d D.C.A. 1985); Nicholson Supply Co. v. First Federal Savings & Loan Ass'n., 184 So. 2d 438 (Fla. 2d D.C.A. 1966). [2] Although the law is clear and has not been changed, Mr. Schramek attempts to rely on an interlocutory order of this court in Marina for the proposition that a nonlawyer may represent a corporation and a third party in court. A brief history of the Marina litigation will show that reliance on the orders in Marina is misplaced and does not establish any precedent which would allow nonlawyer representation.[3]

On or about February 11, 1991 The Florida Bar filed a Petition Against Unlicensed Practice of Law against Marina. The Petition alleged that Marina was engaged in the unlicensed practice of law by preparing living trusts for third parties. In response, an answer and several motions were filed by Mr. Schramek on behalf of Marina. Apparently, Mr. Schramek had a business arrangement with Marina wherein Mr. Schramek received a fee for preparing the trusts. As Mr.

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[2] The only exception to this rule is in Small Claims Court where a corporation may be represented by an officer of the corporation or an employee authorized by an officer of the corporation. SCR 7.050.

[3] On July 24, 1992, the referee took judicial notice of the pleadings filed in the Marina case.

Schramek was not named as a party, The Florida Bar moved to strike the pleadings filed by Mr. Schramek and to disqualify him from appearing in the action. Several other motions were filed and on or about May 30, 1991 this court entered an order denying all pending motions. As to the Motion to Disqualify, the order reads as follows: "Petitioner's motion to disqualify Daniel E. Schramek from appearing in this matter is denied."

In response to the court's order, The Florida Bar filed a Motion for Clarification on or about June 3, 1991 asking this court whether it was allowing Mr. Schramek to appear to represent his own interests or the interests of Marina. This court entered the following order on July 2, 1991: "Petitioner's Motion for Clarification is hereby denied." Marina then contacted counsel for The Florida Bar and, without the participation of Mr. Schramek, a stipulation was entered into which enjoined Marina from engaging in the unlicensed practice of law. The stipulation was approved by this court on October 24, 1991. Marina, 591 So. 2d 185 (Fla. 1991).

Prior to the final order, The Florida Bar filed a Motion for Reconsideration of this court's denial of the Motion for Clarification. The Motion was based on the discovery that Mr. Schramek and several individuals were using the Marina orders to represent corporations or third parties in court. On August 30, 1991 this court entered the following order: "Petitioner's Motion For Reconsideration of this Court's Denial of Petitioner's Motion for Clarification filed on June 3, 1991 is denied."

Mr. Schramek has interpreted the above orders as allowing a corporation or third party to be represented by a nonlawyer. As

stated in Respondents' Answer to Show Cause filed with this court June 20, 1991, "A corporation CAN be represented in the Supreme Court of Florida by any person and DOES NOT have to be represented by a licensed attorney, see . . . Marina." (For the convenience of the court, a copy of all of the pleadings of record cited in Petitioner's brief are attached hereto in the Appendix. This pleading is attached in Appendix B.) Respondents' Motion for Clarification and Motion to Issue Order Authorizing Daniel E. Schramek to Practice Law Before this Court states that "Daniel E. Schramek has been authorized to practice law, in the same capacity as a licensed attorney without restrictions or limitations, before this Court pursuant to . . . Marina." (See Appendix C.)

Mr. Schramek then takes the orders one step further. According to Ms. Schramek, the decisions in Marina not only "inferred that [he] could represent a corporation before the Supreme Court in the same capacity as a licensed attorney . . . [but] . . . also inferred that [Mr. Schramek] could represent anyone else in any other court in the state, without limitations or restrictions and in the same capacity as a licensed attorney." (See article written by Mr. Schramek attached to Petitioner's Memorandum in Support of Petitioner's Motion to Strike Notice of Appearance of Susan L. Mokdad as Co-Representative attached hereto in Appendix D.) [4] Mr.

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[4] In Respondents' view this inference comes from the definition of "person" found in Florida Statute §542.17(3) which includes "corporation". (See Respondents' Memorandum attached hereto in Appendix E.) Florida Statute §542.17(3) is the definitional section of the Florida Antitrust Act of 1980.

Schramek further states that just as the orders infer the authority for him, they infer "the right for anyone to represent anyone before any court in this state." (See Appendix D.) As stated by Mr. Schramek in the Marina case, "it is clear from . . . this Court's decision in this case that the Florida Bar and the legal profession can no longer mislead the public into requiring them to hire a licensed attorney to properly redress litigation issues in the courts of this state." (See Respondents' Response to Petitioner's Motion for Reconsideration of Petitioner's Motion to for Clarification and Motion to Strike attached hereto in Appendix F.)

The inference drawn by Mr. Schrarnek and relied upon by other individuals is totally inaccurate, unsupported and a far stretch from what the orders seem to have allowed -- the appearance of Mr. Schramek as agent for Marina in the Marina litigation then pending before this court. That nothing else could have been intended, implied or inferred is supported by the case law.

The orders entered by this court upon which Mr. Schramek relies were interlocutory in that they did not dispose of the case. Braddon v. Doran Janson Co., 453 So. 2d 66 (Fla. 3d DCA 1983); Alderman v. Puritan Dairy, 199 So. 44 (Fla. 1940). The orders did not act as an end to the judicial labor or the cause as the issues raised in the Petition were still pending and had to be addressed by this court. As the orders were interlocutory and no more than a denial without reason or opinion, they have no precedential or stare decisis value outside of the Marina case and cannot be used to infer a decision that did not occur. Terry v. State, 467 So. 2d 761 (Fla. 4th DCA 1985) (decisions without opinion should not be

relied upon as precedential authority in other cases); Acme Specialty Corp. v. City of Miami, 292 So. 2d 379 (Fla. 1974) (a per curiam affirmance without opinion does not stand for any of the pronouncements of principles of law made in the pleadings or the briefs); Florida Insurance Guaranty Assoc. v. Celotex Corp., 547 So. 2d 696 (Fla. 4th DCA 1989) (a denial of a petition for certiorari without opinion on a motion denying a motion to disqualify opposing counsel is without precedential value). Therefore, any reliance on the Marina orders as standing for a proposition of law applicable to any other case is misplaced. The general rules which prohibit nonlawyer representation of third parties and corporations stand intact and are in no way changed by any of the orders in Marina. Mr. Schramek therefore does not have the authority to practice law.[5]

CONCLUSION

The Objections filed by Respondents do not refute the referee's findings that Respondents engaged in the unlicensed practice of law and caused public harm. The arguments and allegations raised by

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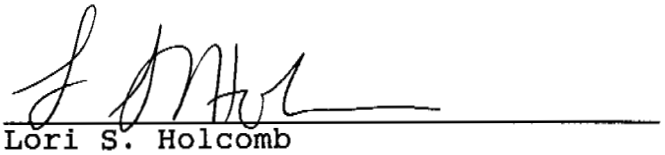
[5] As evidenced by Respondents' Memorandum attached hereto in Appendix E, Respondents also argue that the Constitution of the United States allows a nonlawyer to represent a third party or corporation in court. In support of this argument Respondents point to the sixth amendment of the United States Constitution; Faretta v. California, 422 U.S 806 (1975) and Johnson v. Avery, 393 U.S. 483 (1969). Neither the Constitution nor the case law supports Respondents' argument. If this Court so desires, Petitioner will submit a brief supplemental memorandum of law on this point.

Respondents are without merit. Therefore, for the protection of the public, Petitioner, The Florida Bar, respectfully requests that this court approve the report of the referee and issue an opinion enjoining Respondents from engaging in the unlicensed practice of law. For the benefit of the parties, other litigants and the orderly administration of justice, The Florida Bar also requests that any opinion issued by this court address the matters raised by the Marina case. Only a clear statement from this court regarding the effect of the Marina orders will prevent further confusion and waste of judicial resources.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by U.S. Mail to Daniel E. Schramek, 1064 62nd Terrace South, St. Petersburg, Florida 33705 this 29th day of December, 1992.

Lori S. Holcomb

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND,
IF FILED, DISPOSED OF.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY
APPELLATE DIVISION
CASE NO. 91-200 AC

State of Florida,

Appellant,

vs.

Bryan Neiman,

Appellee.

Opinion filed MARCH 20, 1992.

An Appeal from the County Court, Criminal Division, in and for Dade County, Florida.

CCJ, Henry Oppenborn.

Robert A. Butterworth, Attorney General, by Charles M. Fahlbusch, Assistant Attorney General, for Appellant.

Baily, Gerstein, Carhart, Rashkind, Dresnick & Rippingille by Paul M. Rashkind, Esquire, for Appellee.

The Florida Bar, *amicus curiae,* by Lorie S. Holcomb, Esquire.

Before Salmon, Muir, Fierro, JJ.

Fierro, J.

1. The Defendant was charged with the misdemeanor of unauthorized practice of law in violation of F.S. 454.23 (1989). The trial court dismissed the charge based on the Defendant's argument that the court lacked subject matter jurisdiction and the Supreme Court of Florida has inherent and exclusive jurisdiction to prohibit the unlicensed practice of law under Article V, Section 15, Florida

Constitution:' Section 454.021(2), Florida Statute, Chapter 10, Rules Regulation The Florida Bar, Section 10-1.1(a). The defendant argues that The Florida Bar is charged with the exclusive responsibility to consider, investigate and prosecute persons alleged to have committed the unlicensed practice of law and that jurisdiction to prosecute this conduct is vested in The Florida Bar as an official arm of the Supreme Court.

2. The state contends that while The Florida Bar has a set of rules for them to follow in investigating practice of law complaints, Florida Statute 454.23[2] makes the unauthorized practice of law a misdemeanor which the county court has inherent jurisdiction to hear.

3. The Defendant argues that there is a conflict between the statute which makes the unauthorized practice of law a crime, F.S. 454.23 (1989), and the rules governing the investigation and prosecution of the unlicensed practice of

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'Section 15, Attorneys: Admission and Discipline. The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

2 454.23 Penalties - Any person not licensed or otherwise authorized by the Supreme Court of Florida who shall practice law or assume or hold himself out to the public as qualified to practice in this state, or who willfully pretends to be or willfully takes or uses any name, title, addition or description implying that he is qualified, or recognized by law as qualified, to act as a lawyer in this state, and any person entitled to practice who shall violate any provisions of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in s775.08 or s775.083.

law, Rules 10-1.1 - 10-9.1, and, therefore, the rules have superseded the statute provision pursuant to the provisions of F.S. 25.371 (1989).[3]

Article V, Section 15, does not mention the unauthorized practice of law and, while it does grant exclusive jurisdiction and concerns related subjects, it does not grant exclusive jurisdiction over the unauthorized practice of law. Defendant further relies on F.S. 454.021(2) which provides as follows:

> (2) The Supreme Court of Florida, being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state.

Again the unauthorized practice of law is not mentioned in this statute and does not appear to grant exclusive jurisdiction over the unauthorized practice of law.

Rule 10-1.1(a) of the Rules Regulating The Florida Bar, provides:

> (a) Pursuant to the provisions of Article V, Section 15, of the Florida Constitution, the Supreme Court of Florida has inherent jurisdiction to prohibit the unlicensed practice of law. All references herein to "the court" shall mean the Supreme Court of Florida.

Therefore, while the rule provides that the jurisdiction of the Florida Supreme Court to prohibit the unlicensed practice of law is inherent, it does not provide

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[3] 25.371, Effect of Rules. When a rule is adopted by the Supreme Court concerning practice and procedure and such rule conflicts with a statute, the rule supercedes the statutory provision.

that such jurisdiction is exclusive. Although Chapter 10 of the Rules Regulating The Florida Bar does set forth procedures to be used by the Bar in prosecuting actions to prevent unlicensed practice, nothing appears to prohibit prosecution by the State Attorney's Office. In fact, Rule 10-3.1(f), makes furnishing information to law enforcement agencies a duty of the standing committee on the unlicensed practice of law.

4. All statutes not superseded by the rules or in conflict with the rules remain in effect. ~~In Re:~~ Clarification of Florida Rules of Practice and Procedure, Florida Constitution, Article V, Section 2(a), 281 So.2d 204, 205 (Fla. 1973); Modified on Other Grounds, 297 So.2d 301 (Fla. 1974).

Even if the Supreme Court were held to have granted itself exclusive jurisdiction to prohibit the unlicensed practice of law under Rule 10.1.1(a), there would still be jurisdiction for criminal penalization of the unlicensed practice of law under F.S. 454.23 (1989).

The Supreme Court perceived no conflict between the statutes which criminalized certain types of solicitation of legal business in either its rules or the Florida Constitution, which specifically grants exclusive jurisdiction over attorney discipline to the Supreme Court. Pace v. State, 368 So.2d 340 (Fla. 1979).

F.S. 25.371 (1989) is inapplicable to the case at bar. It only applies to rules concerning practice and procedure, not substantive matters. *id.*

The difference between procedural and substantive law is defined as follows:

> As related to criminal law and procedures, substantive law is that which declares what acts are crimes and prescribes the punishment therefor, while procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished.: State v. Augustine, 197 Kan. 207, 416 P.2d 281 (1966); State v. Garcia, *229* So.2d *236*, 238 (Fla. 1969).

F.S. 454.23 clearly defines the crime, declares it a first degree misdemeanor and prescribes the punishment. It is, therefore, a matter of substance, not of procedure,

The Florida Constitution provides authority for county courts to hear criminal misdemeanor cases. Article V, Section 6 provides:

> (4) County courts shall have original jurisdiction in all criminal misdemeanor cases not cognizable by the circuit court, of all violations of municipal and county ordinances and of all actions at law in which the matter in controversy does not exceed the sum of Two Thousand Five Hundred Dollars ($2,500.00) exclusive of interest and costs, except those within the exclusive jurisdiction of the circuit courts . . . (emphasis added).

In the case of Pace v. State, 368 So.2d 340, 345 (Fla. 1979), the Florida Supreme Court passed upon the same constitutional provision which the Defendant relies upon in his argument. In Pace the Defendant, a bar member, was convicted in county court of violation of the anti-solicitation statute, F.S., s877.02(1). On appeal he

argued that Article V, Section 15, of the Florida constitution, granted exclusive jurisdiction to the Supreme Court over the discipline of persons admitted to the bar and, therefore, the anti-solicitation conflicted with, and was in violation of, the Constitution. The court stated with regard to this contention:

> The appellant's other major contention is that the anti-solicitation statute, as applied to lawyers, violates the Florida Constitution by intruding upon this court's exclusive jurisdiction over the discipline of members of the bar of this state. Article V, Section 15, Florida Constitution, provides 'The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.'
>
> The appellant argues that the legislature may not criminalize conduct by a lawyer committed in the course of his practice of law unless the conduct is criminal *per se*. To adopt this view would be to say that the legislature may not punish conduct deemed harmful to public welfare if the conduct also falls within the purview of this court's authority to discipline lawyers for violating the Code of Professional Responsibility in the course of their practice of law. Simply because certain conduct is subject to professional discipline is no reason why the legislature may not proscribe the conduct. Under the police power the legislature may enact penal legislation that affects the legal profession just as it can with regard to other occupations and professions.
>
> The legislature, drawing upon its knowledge of conditions inimical to the public welfare in the community and perceiving that solicitation of legal business by an attorney or by others acting in his behalf represents a social evil which for many years had been denounced as an unethical practice and the legal profession had constitutional power to make such practice a criminal offense. State Ex Rel. Farber v. Williams, 183 So.2d 540 (emphasis added). Pace v. State, 368 So.2d 340, 345 (Fla. 1979).

The state has the right to proceed against this Defendant just as it did in Pace, supra. Carricarte v. State, 384 So.2d 1261, 1263-1264 (Fla. 1980); Gaer v. State, 372 So.2d 80 (Fla. 1979).

Accordingly, we reverse the lower court's order of dismissal and remand the cause for further proceedings consistent with this Opinion.

REVERSED AND REMANDED.

SALMON, and MUIR JJ. concur.

APPENDIX B

SUPREME COURT OF FLORIDA

THE FLORIDA BAR, **

Petitioner, **

vs. ** CASE NO. 77,871

DANIEL E. SCHRAMEK, individually and d/b/a SCHRAMEK & ASSOCIATES, and The L.A.W. CLINIC, INC., a Florida for-profit corp. **

Respondents. **

**

RESPONDENTS' ANSWER TO SHOW CAUSE, RESPONDENTS' MOTION TO DISMISS, AND RESPONDENTS' COUNTERPETITION

COMES NOW, the Respondents, DANIEL E. SCHRAMEK, Pro Se, and DANIEL E. SCHRAMEK, doing business *as* The L.A.W. CLINIC, INC., **by and** through his appointed agent, **Daniel** E. Schramek, pursuant to F.S. 607.011 (Note **30)** Actions and **Proceedings,** West Stuart Acreage, Inc. v. Hannett App., 427 So.2nd 323 (1983), and files this, the answer to the Court's order to show cause and moves this Court to **Dismiss** this action, end in support thereof would state *as* follows:

Respondents Agree with counts I, II, III, and **V.**

IV.

Respondents are unaware of such authorization and no evidence has been presented to support such authorization.

VI.

Respondents deny that they have engaged in the unlicens-**ed** practice of law in Pinellas *and* Hillsborough County, Florida, by any of the following acts:

A. Charles A. Shannon, 111

1. Respondents, for their own personal monetary gain, DID NOT advise Charles Shannon, III as to legal remedies available to him and DID NOT cause damage to Charles A. Shannon, III.

2. Charles A. Shannon was advised by licensed attorneys that it would be unlikely for him to reduce his child support payments. However, Mr. Shannon understood his Constitutional rights to proceed and requested the respondents' assistance. He was also interested in eliminating in-the-rears support payments totally $1,500.00 and requested the respondents to prepare this paperwork for him to proceed, wherein he successfully had the court discharge the in-the-rears support payments to the financial benefit of Mr. Shannon, which he stated to the respondents was his primary goal.

3. Respondents, for their own personal monetary gain, DID NOT advise Charles A. Shannon, III that he could have his child support payments reduced because of the new guidelines that had been passed by the State of Florida.

4. Agree.

5. Respondents, for their own personal monetary gain, DID NOT advise Charles A. Shannon, III of what type of legal pleadings he would need. Mr. Shannon requested the type of pleadings based on the legal advice he had received from a licensed attorney.

6. Respondents, for their own personal monetary gain, did prepare a Motion for Modification of Final Judgment of Dissolution of Marriage, which IS A LEGAL FORM APPROVED BY THE SUPREME COURT OF FLORIDA, pursuant to Florida Rules of Civil Procedure, Forms Section 1.901 through 1.998, Forms for Use with the Rules of Civil Procedure.

7. Respondents did prepare a Request for Non-Jury Trial, which IS A LEGAL FORM APPROVED BY THE SUPREME COURT OF FLORIDA, pursuant to Florida Rules of Civil Procedure, Forms Section 1.901 through 1.998, Forms for Use with the Rules of Civil Procedure.

8. Respondents did prepare a Request for Non-Jury Trial, which IS A LEGAL FORM APPROVED BY THE SUPREME COURT OF FLORIDA, pursuant to Florida Rules of Civil Procedure, Forms Section 1.901 through 1.998, Forms for Use with the Rules of Civil Procedure.

9. Respondents, for their own personal monetary gain, DID NOT advise Charles A. Shannon, III of what he should and should not say at the hearing, pursuant to Rule 10-1.1(b) Definition of UPL under the Rules Governing the Unlicensed Practice of Law of the Rules Regulating the Florida Bar.

10. Agree.

11. Respondents DID NOT offer to prepare the appellate papers for Charles A. Shannon, III after the Court denied the motion. Mr. Shannon asked the respondents if they could prepare a Notice of Appeal for him.

12. Agree.

13. Deny. The conduct of the Respondents has NOT caused harm *to* the public and continuation of that conduct DOES NOT have potential for harm to the public.

B. Mary B. Muckler

1. Respondents, for their own personal monetary gain, DID NOT advise Mary B. Muckler as to the legal effects of a Living Trust,

2. Respondents, for their own personal monetary gain, PUBLISHED a Living Trust and prepared a Quit Claim Deed neither of which is a legal form required to be approved by the Supreme Court of Florida or any other court.

3. The Quit Claim Deed prepared by the Respondents was NOT defective, and DID NOT require that the real property to be included in the estate proceedings after the death of Mary B. Muckler in order to clear title to the real property resulting in increased expenses to the estate. These expenses are routine expenses under probate proceedings.

4. Respondents DID NOT fail to properly instruct Mary B. Muckler and were not required or authorized to complete the transfer of her assets into the Living Trust. Asset transfer was the responsibility of Mary B. Muckler and the resulting increase in expenses by the estate was a result of her failure to transfer her assets according to Respondents instructions. Any expenses associated with probate are routine expenses and not a result of any actions or lack of action by the Respondents.

5. Respondents deny that the quit claim **deed** was improperly prepared and agree with remaining statement according to **(4)** above.

6. **Agree.**

7. Deny. The conduct of the **Respondents** HAS **NOT** caused harm to the public and the continuation of that conduct **DOES** NOT have potential for harm to the public.

C. Violet Gillespie

1. Respondents, for their own personal monetary gain, DID NOT advise Violet Gillespie as to the legal effects of a Living Trust.

2. Respondents, for their own **personal** monetary gain, PUBLISHED a Living Trust, Pourover Will, Power of Attorney, and prepared a Quit Claim Deed none of which are legal forms **required** to be approved **by** the Supreme Court of **Florida** or any other court.

3. Deny. The Quit Claim **Deed** prepared by **Respondents** was NOT improperly **prepared.** The loss of sale of the property was not the result of any action or lack of action by the Respondents. Any expenses associated with probate are routine expenses and not a result of any actions or lack of action by the Respondents.

4. Agree. Violet Gillespie, at her discretion, appointed **the individuals** as successor trustees. Respondents **published** the living trust at Violet Gillespie's request and instructions. The language is considered sufficient and proper.

5. Deny. The Living Trust DID provide for contingent beneficiaries in the event that one of the three beneficiaries dies. There was NO need for a judicial construction of the Trust at the expense of the estate. The attorneys involved HAVE mislead and misrepresented Violet Gillespie's relatives for the attorneys' own personal financial gain.

D. Marina Securities, Inc. and Marina Trust Securities.

1. Respondent, Daniel E. Schramek, did sign an Answer to Show Cause and Motion to Dismiss, which IS A LEGAL FORM APPROVED BY THE SUPREME COURT OF FLORIDA, pursuant to Florida Rules of Civil Procedure, Forms Section 1.901 through 1.998, Forms for Use with the Rules of Civil Procedure, as an agent for two (2) corporations, in the case of The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375 filed in the Supreme Court of Florida.

2. On or about March 13, 1991, Respondent, Daniel E. Schramek, did sign a Motion for Change of Venue, which IS A LEGAL FORM APPROVED BY THE SUPREME COURT OF FLORIDA, pursuant to Florida Rules of Civil Procedure, Forms Section 1.901 through 1.998, Forms for Use with the Rules of Civil Procedure, as an agent for two (2) corporations, in the case of The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375 filed in the Supreme Court of Florida.

3. Deny. A corporation CAN be represented in the Supreme Court of Florida by any person and DOES NOT have to

be represented by a licensed attorney, *see* The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375 filed in the Supreme Court of Florida, May 30, 1991.

WHEREAS, there has not been an evidenciary hearing to show supportive evidence as to the allegations of the petitioner; and

WHEREAS, the Respondents have denied all the allegations of the petitioner,

WHEREFORE, the Respondents pray that this Honorable Court DENY the Petitioner's petition for a permanent injunction preventing and restaining Respondents from engaging in the acts complained of and from otherwise engaging in the practice of law in the State of Florida; GRANT the Respondents' Motion to Dismiss this action; tax the costs of this proceeding against the Petitioner; an GRANT other and further relief to the Respondents as this Court may deem proper and just.

Daniel E. Schramek, Respondent, Pro Se,
and Agent for Respondents
1064 62nd Terrace South
St. Petersburg, Florida 33705
(813) 866-0141

RESPONDENTS' COUNTERPETITION

COMES NOW, the Respondent, Daniel E. Schramek, and files this his Counterpetition against the Petitioner, and says:

I

Counterpetitioner, Daniel E. Schramek, doing **business** as The L.A.W. Clinic, Inc., is a Citizen of the State of **Florida** and a resident of **the** city of St. **Petersburg**, Pinellas County, **Florida.**

11

Counterrespondent, The Florida Bar, are at all times pertinent to this Counterpetition and acting as a person to deprive Counterpetitioner, under color of law, his **Rights** protected under the Constitution of **the** State of Florida.

III

The Counterrespondent was acting under color of **alleged state laws**, rules and **practices.**

IV

Florida Statute Chapter 542, Combinations Restricting Trade or Commerce, cited as the "Florida Antitrust **Act** of 1980", Section 542.18, Restraint of trade or commerce, wherein: "Every contract, combination, or conspiracy in restraint of trade or commerce in this state is unlawful".

V

Section 542.19, Monopolization; attempts, combinations, or conspiracies to monopolize, wherein: "It is unlawful for any person to monopolize, attempt to monopolize, or **combine** or conspire with any **other** person or persons to monopolize any **part** of trade or commerce in this state."

VI

Section 542.17, Definitions, (3) "Person" means any individual, corporation, firm, partnership, limited partnership, incorporated or unincorporated association, professional association, or other **legal**, commercial, or governmental entity, including the State of Florida, its departments, agencies, political subdivisions, and units of government.

VII

Section 542.16, Purpose, "The Legislature **declares** it to be the **purpose** of this act to complement the body of federal law prohibiting restraints of trade of commerce in order to foster effective competition. It is the intent of the Legislature that this act be liberally construed to accomplish its beneficial purpose".

VIII

Counterrespondent has engaged in the violation of Florida Statute Chapter 542, Section 542.18 and Section

542.19, against the Counterpetitioner, by one or more of the following acts:

A. Marina Securities, Inc. and Marina Trust Securities.

1. Counterrespondent acted to restrain the counterpetitioner's trade in the State of Florida by filing a petition for an injunction against Marina Securities and Marina Trust Securities of Vero Beach, Florida, a licensing agent for the counterpetitioner; The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375 filed in the Supreme court of Florida.

2. This action was an attempt by the counter-respondents to intimidate, coerce, harass, and to discredit the business relationship of the counterpetitioner and his licensing agent, thus effecting the counterpetitioner's ability to conduct trade in this state, independently or with licensing agents such as Marina Securities.

3. This action was an attempt by the counterrespon-dents to intimidate, coerce, harass, and to discredit the business relationships of the counterpetitioner and his clients, thus effecting the counterpetitioner's ability to conduct trade in this state, independently or with licensing agents such as Marina Securities.

B. Daniel E. Schramek, doing business as The L.A.W. Clinic, Inc.

1. Counterrespondent **acted** *to* restrain the counterpetitioner's trade in the State of Florida by filing **a** petition for an injunction against the Counterpetitioner, The Florida Bar v. Daniel E. **Schramek,** doing business as The **L.A.W.** Clinic, Inc., Case No. 77,871, file in **the** Supreme Court of Florida, May **1991**.

2. This action was an attempt by the counterrespondents to intimidate, **coerce**, harass, and to discredit the **business** relationships of the counterpetitioner and his clients, thus effecting the counterpetitioner's ability to conduct trade in this state, independently or with others such as Marina Securities.

WHEREAS, the Counterrespondent has conspired *to* restrain the Counterpetitioner's trade in the **state** of Florida, conspiring to monopolize the providing of **legal** services in **the** state of Florida, absent any court order, without jurisdiction, under color of law, in violation of state law; and

WHEREAS, the Counterrespondent's acts have affected **the** Counterpetitioner's ability to effectively trade in this state; and

WHEREAS, as a result of these actions by the Counter-respondents, the Counterpetitioner **requests** that this Court grant declaratory and injunctive relief, restraining the Counterrespondent from further harassing, threatening, intimidating, coercing, extorting, attempting to prosecute, prosecuting, or threatening *to* prosecute counterpetitioner, in restraint of trade in this state.

WHEREIN, the Counterpetitioner **requests** evidenciary hearings concerning this counterpetition and oral arguments before this Court.

WHEREFORE, Counterpetitioner prays for this Honorable Court *to* ORDER and ADJUDGE Relief for the Counterpetitioner:

1. Issuing declaratory relief restraining the Counterrespondent from further harassing, threatening, intimidating, coercing, extorting, attempting to prosecute, prosecuting, or threatening to prosecute Counterpetitioner, in restraint of trade.

2. Issuing permanent injunctive relief restraining the Counterrespondent from further harassing, threatening, intimidating, coercing, extorting, attempting to prosecute, prosecuting, or threatening to prosecute Counterpetitioner, in restraint of trade.

3. Awarding Counterpetitioner compensatory relief for the reasonable cost, expenses and attorney fees (42 USC **1988)** of this action and punitive relief as deemed fair and just by the court; and

4. Granting Counterpetitioner such other and further **relief** as may **be** deemed just and **proper.**

AND **FURTHER ORDER** AND **ADJUDGE:**

1. A federal criminal investigation *of* the actions of the Counterrespondent against **the** Counterpetitioner for indictment of the Counterrespondent on criminal charges for Restrain Trade in violation of **state** and **federal** Anti-Trust laws.

Daniel E. Schramek, Respondent, Pro Se,
and Agent for Respondents
1064 62nd Terrace South
St. Petersburg, Florida *33705*
(813) 866-0141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Attorney Joseph R. Boyd, Attorney for the Petitioner, at P.O. Box 14267, Tallahassee, Florida 32317, on this 20th day of JUNE, 1991.

Daniel E. Schramek

APPENDIX C

SUPREME COURT OF FLORIDA

THE **FLORIDA** BAR,	**	
Petitioner/Counterrespondent,	**	
VS.	**	CASE NO. 77,871
DANIEL E. SCHRAMEK, individually and **d/b/a** SCHRAMEK & **ASSOCIATES, and** The L.A.W. CLINIC, INC., a Florida for-profit corp.	**	
Respondents/Counterpetitioners.	**	
	**	

MOTION FOR CLARIFICATION
MOTION TO ISSUE ORDER AUTHORIZING DANIEL E. SCHRAMEK TO PRACTICE LAW BEFORE THIS COURT

COMES NOW, the Counterpetitioners, DANIEL **E. SCHRAMEK** and DANIEL E. SCHRAMEK, doing **business** as The **L.A.W.** CLINIC, INC., by and through their **appointed** agent, Daniel E. Schramek, pursuant to The Florida Bar **v.** Marina Securities, ~~Inc.~~ ~~and~~ Marina Trust Services, Inc., Supreme Court of Florida, Case No. 77,375 (1991), and **Stuart** Acreage, **Inc. v.** Hannett App., 427 So.2nd 323 (1983), and **moves** this Court to Clarify the Counterrespondent's legal representatives in this action, clarify service of motions and **pleadings** on proper **individuals, issue order** authorizing Daniel E. Schramek to practice law before this court, and in support thereof **would** state:

1. It is unclear to the Respondent/Counterpetitioner in this action who the attorney of record is for the Petitioner

based on the original pleadings and subsequent pleadings filed in this action.

2. The service of motions and pleadings in this action must be clarified specifically by the Court in order to allow proper communication and service on the Petitioner/Counter-respondent in this action.

3. Clarification of Daniel E. Schramek's authorization *to* practice law before this court as attorney of record for the Respondent/Counterpetitioner, without restrictions or limitations, in the same capacity as a licensed attorney.

4. Memorandum *of* Law in support *of* this *motion* is attached, hereto.

WHEREAS, argument for granting clarification of the issues *in* this motion is clearly stated in the Memorandum of Law, attached, hereto.

WHEREFORE, the Respondent/Counterpetitioners pray that this Honorable ***Court*** clarify the following *issues:*

1. Define who is the Petitioner/Counterrespondent's Attorney of Record.

2. Define who the Respondent/Counterpetitioner is required to serve all motions and pleadings *on,* pursuant to

Fla.R.C.P., Rule 1.080(c), i.e. the Petitioner/Counterrespondent's attorney of record.

3. Define Daniel E. Schramek as the authorized Attorney of Record for the Respondent/Counterpetitioner in this action.

4. Issue a court order authorizing Daniel E. Schramek to practice law before this court as attorney of record for the Respondent/Counterpetitioner, without restrictions or limitations, in the same capacity as a licensed attorney.

5. Define "Practice of Law".

Daniel E. Schramek

Daniel E. Schramek, Agent for
Respondents/Counterpetitioners,
1064 62nd Terrace South
St. Petersburg, Florida 33705
(813) 866-0141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Attorney Joseph R. Boyd, Attorney for the Petitioner, at P.O. Box 14267, Tallahassee, Florida 32317, on this 9th day of AUGUST, 1991.

Daniel E. Schramek

Daniel E. Schramek

SUPREME COURT OF FLORIDA

COPY

THE FLORIDA BAR, Petitioner/Counterrespondent,	**	
vs.	**	CASE NO. 77,871
DANIEL E. SCHRAMEK, individually and d/b/a SCHRAMEK & ASSOCIATES, and The L.A.W. CLINIC, INC., a Florida for-profit corp.	**	
Respondents/Counterpetitioners.	**	

MEMORANDUM OF LAW IN SUPPORT MOTION CLARIFICATION AND MOTION TO ISSUE ORDER AUTHORIZING DANIEL E. SCHRAMEK PRACTICE LAW BEFORE THIS COURT

COMES NOW, the Counterpetitioners, DANIEL **E. SCHRAMEK and DANIEL E. SCHRAMEK, doing** business **as** The **L.A.W. CLINIC,** INC., **by and through** their **appointed** agent, **Daniel E.** Schramek, **pursuant to** The **Florida** Bar v. **Marina Securities,** ~~Inc. and~~ **Marina Trust Services,** ~~Inc.~~, **Supreme Court** of **Florida, Case No. 77,375** (1991), **and Stuart** Acreage, ~~Inc. v.~~ Hannett App., **427 So.2nd 323** (1983), **and files** this **Memoran-**dum of Law in support **of Motion** for **Clarification** and **Motion to Issue Order Authorizing Daniel** E. Schramek to Practice **Law** Before **this Court,** and in **support thereof** would **state:**

STATEMENT OF FACTS

1. **The** Petitioner/Counterrespondent **filed** the **original pleadings indicating** Joseph R. **Boyd as** Attorney **of Record** by

the act of Mr. Boyd signing the original pleadings for the Petitioner, The Florida Bar.

2. There has not been a "Notice of Appearance" filed by any other attorney (i.e. Mr. Miller, Mr. Hill, etc.) as counsel for the Petitioner, except by Lori S. Holcomb (August 5, 1991) with her motion *to* strike.

3. Pursuant to the Florida Rules of Civil Procedure, Rule 1.080(b),(c),(g), defining Service of Pleadings and Papers:

a. Rule 1.080(b) indicates "when service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court."

b. Rule 1.080(c) indicates "in actions when the parties are unusually numerous '(i.e. members representing the Florida Bar, such as President, President-elect, etc.),' the court may regulate the service Contemplated by these rules on motion or on its initiative in such a manner as may be found to be just and reasonable."

c. Rule 1.080(g) indicates that "if a party who is not represented by an attorney files a paper that does not show service of a copy on other parties, the clerk shall serve a copy of it on other parties as provided in subdivision (b) of this Rule."

4. Daniel E. Schramek has been authorized to practice law, in the same capacity as a licensed attorney without restrictions or limitations, before this Court pursuant to The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375, 1991.

5. Pursuant to Florida Statutes Chapter 454, Attorneys-At-Law, Section 454.23, Penalties: indicates that "Any person not licensed or otherwise authorized by the Supreme Court of Florida who shall practice law or ... shall be guilty of a misdemeanor of the first degree ..."

6. The "Practice of Law" is not specifically defined by statute, court rule, or case law of the State of Florida.

SUMMARY OF FACTS

1. It has not been clearly stated or defined as to who is the Attorney of Record for the Petitioner/Counterrespondent.

2. There is a question at issue concerning the filing of a "Notice of Appearance" to determine and define who shall have standing and authorization to address issues before this court and to file motions and pleadings.

3. Fla.R.C.P., Rule 1.080, govern service of all motions and pleadings filed before this court.

4. Daniel E. Schramek has been authorized to practice law, in the same capacity as a licensed attorney without restrictions or limitations, before this Court pursuant to The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375, 1991, and is acting in the same capacity in this action before this court.

5. Pursuant to F.S. 454.23, Daniel E. Schramek appears to be in compliance with said statute as a result of this court's authorization for Mr. Schramek to practice law in the same capacity as a licensed attorney without restrictions or limitations, before this Court pursuant to The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375, 1991.

6. The "Practice of Law" has not been specifically defined by statute, court rule, or case law of the State of Florida.

SUMMARY OF ARGUMENT

It appears that the attorney of record, based on the act of signing the original pleadings, is Joseph R. Boyd. Since James Fox Miller, Benjamin H. Hill III, John F. Harkness,

Jr., and Howard P. Ross, President, President-elect, Executive Director and Bar Counsel of the Florida Bar, respectively, have not filed a "Notice of Appearance" as Counsel for the Petitioner, then these individuals have only been indicated as members of The Florida Bar, the Petitioner, and have no standing or authority to file motions or pleadings in this action.

The issue of service of motions and pleadings upon the parties in this action, pursuant to Fla.R.C.P., Rule 1.080, involve defining the attorney of record for both parties in this action and proper service upon the parties. This court has jurisdiction, pursuant to said rule, to define and establish these issues.

It has already been established that Daniel E. Schramek has been authorized to practice law, in the same capacity as a licensed attorney without restrictions or limitations, before this Court pursuant to The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375, 1991.

It is therefore established, that Mr. Schramek is also authorized by this court to practice law before this court in this action in the same capacity as the above cited case, without restrictions or limitations.

Also, it is therefore established, that Mr. Schramek is practicing law as an authorized attorney-at-law, pursuant to and in compliance with F.S. 545.23 and pursuant to this court's action in The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375, 1991.

The only remaining issue is the defining of the "Practice of Law" pursuant to constitutional law, statutory law, court rule, and case law.

CONCLUSION

It is clear that this court has jurisdiction in defining the attorney of record for the parties in this action. It is also clear, pursuant to Fla.R.C.P., Rule 1.080, that this court has jurisdiction in defining how service of all motions and pleadings filed in this action shall be served upon the parties in this action.

It is clear that this court has already established that Daniel E. Schramek has been authorized to practice law, in the same capacity as a licensed attorney without restrictions or limitations, before this Court pursuant to The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375, 1991.

It is also clear that Mr. Schramek must therefore be authorized by this court to practice law before this court in this action in the same capacity as the above cited case, without restrictions or limitations.

Also, it is clear that Mr. Schramek is practicing law as an authorized attorney-at-law, pursuant to and in compliance with F.S. 545.23 and pursuant to this court's action in The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375, 1991.

For the benefit and clarification of both parties in this action it is clear that the "Practice of Law" should be defined by this court.

Daniel E. Schramek

Daniel E. Schramek, Agent for
Respondents/Counterpetitioners,
1064 62nd Terrace South
St. Petersburg, Florida 33705
(813) 866-0141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Attorney Joseph R. Boyd, Attorney for the Petitioner, at P.O. Box 14267, Tallahassee, Florida 32317, on this 9th day of AUGUST, 1991.

Daniel E. Schramek

Daniel E. Schramek

APPENDIX D

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v. CASE NO. 77,871

DANIEL E. SCHRAMEK,
individually and d/b/a
SCHRAMEK & ASSOCIATES, and
The L.A.W. CLINIC, INC., a
Florida for-profit corporation,

Respondents.

_____/

MOTION TO STRIKE NOTICE OF APPEARANCE OF SUSAN L. MOKDAD AS CO-REPRESENTATIVE

PETITIONER, The Florida Bar, hereby moves to strike the Notice of Appearance filed by Susan L. Mokdad on or about December 2, 1991 and, as grounds thereof, would show this court as follows:

1. On December 11, 1991 the undersigned was hand delivered a Notice of Appearance of Susan L. Mokdad to appear as co-representative of Respondent, Daniel E. Schramek, in the above-referenced matter. Although the Notice states that it was filed on December 2, 1991, the undersigned was not copied at that time.

2. Susan L. Mokdad is not a member of The Florida Bar, and therefore, does not have the authority to represent a third party. See affidavit of Jo Ann Smith attached hereto as Exhibit "A."

3. The interlocutory ruling of the Supreme Court of Florida in a matter totally unrelated to the case at bar does not give a nonlawyer the authority to represent a third party.

The grounds raised in this motion are more fully set forth in the Memorandum of Law attached hereto and incorporated herein.

WHEREFORE, Petitioner, The Florida Bar, requests that this court strike the Notice of Appearance filed by Susan L. Mokdad and enter an order that she may not appear as a representative of Respondents in this matter.

Respectfully submitted,

Lori S. Holcomb
Fla. Bar #501018
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600

Howard P. Ross
Fla. Bar #68722
Post Office Box 41100
St. Petersburg, Florida 33743
(813) 381-2300

John A. Yanchunis
Fla. Bar #324861
Post Office Box 1578
St. Petersburg, Florida 33731-1578
(813) 823-3837

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by U.S. Mail to Daniel E. Schramek, 1064 62nd Terrace South, St. Petersburg, Florida 33705 this 23rd day of December, 1991.

Lori S. Holcomb

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF LEON

Before me, the undersigned authority, personally appeared Jo Ann Smith, who first being duly sworn, says:

I am employed by The Florida Bar in the office of membership records in Tallahassee, Florida. As part of my duties in the membership records department of The Florida Bar, I am custodian of records concerning all members of The Florida Bar.

The records of The Florida Bar reflect Susan L. Mokdad is not a member thereof. Further the official membership records indicate that Susan L. Mokdad was not a member as of December 17, 1991, and has never been a member thereof.

FURTHER AFFIANT SAYETH NOT.

Jo Ann Smith

Sworn to and subscribed before me
this 17th day of December, 1991.

Notary Public

My commission expires:

Notary Public, State of Florida
My Commission Expires April 4, 1993
Bonded Thru Troy Fain - Insurance Inc.

EXHIBIT "A"

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v. CASE NO. 77,871

DANIEL E. SCHRAMEK,
individually and d/b/a
SCHRAMEK & ASSOCIATES, and
The L.A.W. CLINIC, INC., a
Florida for-profit corporation,

Respondents.

_____/

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO STRIKE NOTICE OF APPEARANCE OF SUSAN L. MOKDAD AS CO-REPRESENTATIVE

It is clear that in order to represent a third party in court you must be a member in good standing of The Florida Bar. State ex rel. The Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962), rev'd on other grounds, 373 U.S. 379 (1963); Gelkop v. Gelkop, 384 So.2d 195 (Fla. 3d DCA 1980); Rule 2.060, Fla. R. Jud. Admin. It is also clear that Susan L. Mokdad is not now and never has been a member of The Florida Bar. See affidavit of Jo Ann Smith attached to Petitioner's Motion as Exhibit "A." Nevertheless, Respondents and Ms. Mokdad rely on an interlocutory order of the Supreme Court of Florida in the totally unrelated case of The Florida Bar v. Marina Securities, Inc. and Marina Trust Services, Inc., Case No. 77,375 (hereinafter "Marina") for the proposition that a nonlawyer may represent a third party in court. As a brief history of the Marina

litigation illustrates, reliance on the orders in Marina is misplaced and does not establish any precedent which would allow nonlawyer representation.

On or about February 11, 1991 The Florida Bar filed a Petition Against Unlicensed Practice of Law against Marina. The Petition alleged that Marina was engaged in the unlicensed practice of law by preparing living trusts for third parties. In response, an answer and several motions were filed by Daniel Schramek as agent of Marina. Apparently, Mr. Schramek had a business arrangement with Marina wherein Mr. Schramek received a fee for preparing the trust. As Mr. Schramek was not named as a party, The Florida Bar moved to strike the pleadings filed by Mr. Schramek and to disqualify Mr. Schramek from appearing in the action. Several other motions were filed and on or about May 30, 1991 the Supreme Court of Florida entered an order denying all pending motions. As to the Motion to Disqualify, the order reads as follows: "Petitioner's motion to disqualify Daniel E. Schramek from appearing in this matter is denied."

In response to the Court's order, The Florida Bar filed a Motion for Clarification on or about June 3, 1991 asking the Court whether it was allowing Mr. Schramek to appear to represent his own interests or the interests of Marina. The Court entered the following order on July 2, 1991: "Petitioner's Motion for Clarification is hereby denied." Marina then contacted undersigned counsel and, without the participation of Mr. Schramek, a stipulation was entered into which enjoined Marina from engaging in the

unlicensed practice of law. The stipulation was approved by the Supreme Court of Florida on October 24, 1991.

Prior to the final order, The Florida Bar filed a Motion for Reconsideration of the the Court's denial of the Motion for Clarification. The Motion was based on the discovery that several individuals, Mr. Schramek and Ms. Mokdad among them, were using the Marina orders to represent corporations or third parties in court. On August 30, 1991 the Court entered the following order: "Petitioner's Motion For Reconsideration of this Court's Denial of Petitioner's Motion for Clarification filed on June 3, 1991 is denied."

According to Mr. Schramek the decisions in Marina "inferred that [he] could represent a corporation before the Supreme Court in the same capacity as a licensed attorney . . . [and] also inferred that [he] could represent anyone else in any other court in the state, without limitations or restrictions and in the same capacity as a licensed attorney." See article authored by Mr. Schramek attached hereto (emphasis supplied). According to Mr. Schramek, just as the orders infer the authority for him, they infer "the right for anyone to represent anyone before any court in this state." Id. The inference drawn by Mr. Schramek and Ms. Mokdad is totally inaccurate, unsupported and a far stretch from what the orders seem to have allowed -- the appearance of Mr. Schramek as agent for Marina in the Marina litigation then pending before the Court. That nothing else could have been intended, implied or inferred is supported by the case law.

The orders entered by the Court upon which Mr. Schramek and Ms. Mokdad rely were interlocutory in that they did not dispose of the case. Braddon v. Doran Janson Co., 453 So.2d 66 (Fla. 3d DCA 1983); Alderman v. Puritan Dairy, 199 So. 44 (Fla. 1940). The orders did not act as an end to the judicial labor or the cause as the issues raised in the Petition were still pending and had to be addressed by the Court. As the orders were interlocutory and no more than a denial without reason or opinion, they have no precedential or stare decisis value outside of the Marina case and cannot be used to infer a decision that did not occur. Terry v. State, 467 So.2d 761 (Fla. 4th DCA 1985) (decisions without opinion should not be relied upon as precedential authority in other cases); Acme Specialty Corp. v. City of Miami, 292 So.2d 379 (Fla. 1974) (a per curiam affirmance without opinion does not stand for any of the pronouncements of principles of law made in the pleadings or the briefs); Florida Insurance Guaranty Assoc. v. Celotex Corp., 547 So.2d 696 (Fla. 4th DCA 1989) (a denial of a petition for certiorari without opinion on a motion denying a motion to disqualify opposing counsel is without precedential value). Therefore, any reliance on the orders as standing for a proposition of law applicable to this or any other case is misplaced.

As Ms. Mokdad does not have the authority to act as co-representative of Respondent, Daniel E. Schramek, Petitioner, The Florida Bar, hereby requests that this court strike the Notice of Appearance filed by Susan L. Mokdad and enter an order that she may not appear as a representative of Respondents in this matter.

Respectfully submitted,

Lori S. Holcomb
Fla. Bar #501018
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600

Howard P. Ross
Fla. Bar #68722
Post Office Box 41100
St. Petersburg, Florida 33743
(813) 381-2300

John A. Yanchunis
Fla. Bar #324861
Post Office Box 1578
St. Petersburg, Florida 33731-1578
(813) 823-3837

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by U.S. Mail to Daniel E. Schramek, 1064 62nd Terrace South, St. Petersburg, Florida 33705 this 23rd day of December, 1991.

Lori S. Holcomb

The Silver Bullet
THE PRO SE LITIGANTS OF FLORIDA

813-251-9306/253-5937

TAMPA DIVISION
Susan Mokdad
901 S. Rome Avenue
Tampa, Florida 33606

DEREGULATION OF THE FLORIDA BAR
PRO SE LITIGANTS OPENS THE JUDICIAL SYSTEM TO WE THE PEOPLE

DEREGULATION OF THE FLORIDA BAR

THE END OF THE LEGAL MONOPOLY

Attorneys have enjoyed the benefits of the world's largest and most lucrative monopoly for decades. They have violated both federal and state statutes which prohibit such activity under anti-trust laws. Yet, they continue to flagrantly ignore and circumvent the law, using this monopoly to control legal services in this country, taking advantage of the consumers, and denying access to the courts for millions of Americans every year. Legal reform groups from around the country have attacked this monopoly for the past twenty years, both at a state and federal level. There are a number of pending federal law suits against various state bar associations around the country, including Florida. However, no affirmative action by the courts has been taken to resolve the monopoly issue in these cases and the oppression of legal services by the state bar associations continue.

CHANGE WAS INEVITABLE

It began around the world with Poland, Czechoslovakia, East Germany, and finally with the Soviet Union. The people of those countries could no longer live with the oppression and tyranny of their government. The masses began fighting for theirright to be "free". Freedom from tyranny and oppression, freedom to choose their futures, freedom to pursue their happiness, and freedom to have justice for all.

After 74 years of reign, the communist party is no longer in power. The people of the Soviet Union are free to run their own independent countries. Who would of guessed this would have happened for the people of the Soviet Union and for others around the world. What it took was the determination of the human spirit, the inalienable right to be free, and the power of the masses.

OPPRESSION AND TYRANNY IN AMERICA

This country is not without its oppression and tyranny. It happens on local, state, and federal levels. It is insidious in nature and most people do not know it exists until it affects them directly. The longer it is allowed to exist, the harder it is to eliminate. Americans are fighting for those freedoms which have been taken away and fighting to keep the freedoms we still have. One of the most important freedoms is our right to "due process of the law" and that freedom has been denied to most Americans as a result of the legal monopoly.

THE LEGAL MONOPOLY

The legal profession controls one of the largest monopolies in the world. From the International Bar Association, the American Bar Association, to the local Bar Association, the control of legal services has existed for over 70 years. Monopolization is defined as " a market condition where all or so nearly all of an article of commerce within a district is brought within the control of one person or company, that competition or free traffic in that article is excluded". The legal profession, through its Bar Associations, control and monopolize legal services in violation of both federal and state anti-trust laws. State statutes passed by attorney controlled legislatures and rules promulgated by the State Bar operating under the State Supreme Court prohibiting the unlicensed practice of law are used to intimidate, harass, coerce, and control legal services.

ACCESS TO THE COURTS

Due to the monopoly of the legal profession, access to the courts has been limited to those who have the ability to pay for justice in this country. Justice can be bought at the highest price and justice can be denied without it. A typical example is the recent LaTorre case in Pinellas County, where for 1.7 million dollars the LaTorre, bought his justice. Where would someone without those resources be today, if they were in LaTorre's shoes? The answer is, without a doubt, in jail. The issue is not whether LaTorre was guilty or innocent, but that he bought his verdict and that's not justice. Justice is for all and not, just for those who can afford it. The legal monopoly denies justice to at least 90% of the American people. Those with average to low incomes cannot afford the cost of legal services from attorneys and are thus denied access to the courts and thus denied due process of the law.

THE ALTERNATIVE, COMPETITION

How can there be access to the courts for everyone? The answer is simple, the deregulation of the legal profession, by allowing low cost competition for legal services and developing better procedures within the courts. In the early 1970's California began a wave of divorce clinics around the state operated by independent paralegals providing low cost legal services as nonlawyers. The California Bar attacked these clinics by charging them with the "unlicensed practice of law" and still today that battle continues; there is pending legislation in California today, to abolish unlicensed practice of law rules. However, while the battle rages, 90% of all divorces in California are done through one of the over 200 such clinics which have survived the attacks of the State Bar.

In Florida, the battle began in 1974 by Rosemary Furman, a legal secretary in Jacksonville who began a low cost clinic primarily helping low income families with their legal needs. Rosemary was also attacked by the Florida Bar Association for the unlicensed practice of law. This was not a criminal violation, because she did not hold herself out to be an attorney, it was simply a violation of the Bar's own illegal rules. The Florida Bar's only action against Rosemary was to file a civil petition for an injunction and restraining order to prevent Rosemary from competing with the Bar for legal services. This action was through the Supreme Court of this state and the injunction was granted in 1979 and an appeal pursued until 1984. As a result, the Bar rules were modified in an attempt to pacify the consumers of Florida. Rosemary Furman retired in 1984 and her former business is still operating today with three offices in Jacksonville.

THE FINAL CHAPTER, LITIGATION WITH THE BAR

In 1986, my battle with the Florida Bar began over the unlicensed practice of law (UPL); it appeared to be a typical case of David versus Goliath. I was to find out later that during the pursuing five years, there would be over individuals which the Florida Bar would coerce and intimidate into signing cease and desist orders stating that they would not practice law without a license.

The Bar's relentless pursuit against me began in 1988 with the local Unlicensed Practice of Law Committee and a subpoena to appear before them to answer charges that I was practicing law without a license and to bring with me the documents which I used in my business. I formally objected to the subpoena, however, I decided to go to this hearing to let them know how I felt about the issue of UPL. This hearing lasted for over three hours, was behind closed doors, and I was informed by the committee that I was bound by rules of confidentiality and prohibited to talk about the meeting to anyone. I immediately sent out a press release on the meeting, to challenge this confidentiality rule. I also filed a motion with the Supreme Court asking for a waiver of this rule. I was granted the waiver and the Bar literally backed off on their pursuit of me, at that time.

LEGAL REFORM ISSUES

At this point I became active in legal reform by getting involved with HALT, a legal reform group out of Washington, DC. I became their local activist, chairman of their local committee, member of their national member advisory committee and then their state director of Florida. I was very outspoken and criticized the Bar and the legal profession on their actions against me and others. I spoke before various Bar committees and became well known within the legal profession as an outspoken critic.

The two national issues for legal reform were the self regulation of the legal profession by state Bar Associations and the unlicensed practice of law (the legal monopoly). I spent most of 1988 and 1989 pursuing the self regulation issue and to this date self regulation still exists to the detriment of the consumers of Florida. In late 1989, I began addressing the UPL issue. The Florida Bar had not taken any actions against me for almost a year and a half, but my actions against UPL must have rekindled the flame.

A NEW ANGLE TO THE PURSUIT, SCARE TACTICS

Since the Bar's effort to initiate a UPL action against me failed, both politically and prac-

Continued Page 16

DEREGULATION

tically, they had to take another approach. They couldn't coerce and intimidate a cease and desist order out of me like they had done with so many others before me, so they had to attempt scare tactics. On April 18, 1990, I was arrested for alleged forgery and notary fraud charges concerning a pro bono divorce case that I had performed in August of 1989. After the state attorneys office had interviewed all my divorce clients, they finally found one that they could coerce and intimidate into assisting them in their pursuit to run me out of business. These charges were third degree felony charges and I faced up to 30 years in prison, if convicted. Under the circumstances, the Bar and the State Attorney's Office expected a plea bargain from me. It would have been simple, sign a cease and desist and the charges would be dropped. If I pursued defense of the charges, hiring an attorney could financially force me out of business.

SELF-REPRESENTATION AND FEDERAL SUIT

The Bar and the State Attorney's Office didn't expect nor did they want what happened next. I represented myself and denied the allegations and made the court case a media event, criticizing the Bar and the State Attorney's Office. Two weeks after my arrest, I filed a federal lawsuit against members of the Bar, the local UPL committee members, two circuit judges, the state attorney, the [illegible] investigator, my former [illegible]ot, and a local attorney, for [illegible]iracy to restrain trade a[illegible] violations of my civil and constitutional rights. My criminal case lasted a full year, with various motions and pleadings alleging discriminatory and selective prosecution. My case is currently under appeal.

UPL ACTION

In March, 1990, while my criminal case was preceding, the Bar's tactics were to keep me in multiple litigations, thus filing a UPL action against me by filing a civil petition with the Supreme Court against Marina Securities, Inc. a company in Vero Beach, Florida, which had a licensing agreement with my company, The L.A.W. Clinic, Inc. (L.A.W. is an acronym for Legal Alternatives Way). The licensing agreement allowed them to act as representatives for my company in selling living trust services. They had been a licensing agent for my company for approximately 16 months when the petition was filed against their company. The licensing agreement also required that I would represent them in any UPL action taken against them, by the Bar.

MY ANSWER AND THE BAR'S RESPONSE

I filed an answer to the petition denying all the allegations of practicing law without a license; I signed the answer as "Agent for Marina Securities, Inc.", in the same capacity as an attorney would representing the defendants.The Bar's response was filing a "Motion to Strike Defendants Response and a "Motion to Disqualify Daniel E. Schramek from Appearing in this Matter" on the grounds that I was not a licensed attorney and that only licensed attorneys can repre-

[illegible]ent a corporation in t[illegible]ate of Florida; they suppor[illegible]ar motions by citing tw[illegible]ases laws indicating that [illegible]were right.

My response to these motions was in the form of an objection and I cited eight (8) case laws that supported my position that I had a legal and constitutional right to represent Marina in this action as a nonlawyer with all the rights and privileges of a licensed attorney. I also filed a motion for change of venue because I believed that the Supreme Court could not be objective and that there was a conflict of interest since the Supreme Court justices were members of the opposing party, the Florida Bar.

FLORIDA SUPREME COURT'S LANDMARK DECISION

It came down to objectivity and upholding the law by the Supreme Court justices. I had filed my objections to the Bar's motions on April 3, 1991, and on June 3, 1991, just 60 days later, I received the most exciting Supreme Court ruling in the history of legal reform. On May 30, 1991, the Supreme Court issued a ruling that denied the Bar's motions to strike my answer and to disqualify me from appearing in the Marina matter. This decision inferred that I could represent a corporation before the Supreme Court in the same capacity as a licensed attorney.

This decision would abolish the unlicensed practice of law rules making them ineffective and allowing anyone to represent a corporation in any litigation. On June 3rd, the Bar immediately file a motion for clarification, seeking to ask the court if they really meant what they had just decided, asking the Court to place limitations and restrictions on my representation of Marina. I immediately filed my objection to this motion citing it would deny due process of the law for Marina if my representation was limited or restricted in any way.

THE BAR'S CONTINUED PURSUIT AGAINST ME

In an attempt to over litigate against me, the Bar filed another UPL action against me personally; I was served on June 3, 1991, the same day I received the supreme Court's landmark decision. The irony in this suit against me was that the Bar had cited the Marina case as an allegation that I was practicing law without a license by representing Marina in the capacity of an attorney.

This new case against me allowed me to go a step further with the Bar. I filed my answer and other routine motions, but the most significant motion was my "Motion to Abolish Chapter 10 of the Rules Regulating the Florida Bar" and my "Counterpetition for Anit-Trust Violations" against the Bar. I have already motioned the Court for summary judgement on the counterpetition and the other motions are still pending as of this date.

SUPREME COURT'S CONFIRMING LANDMARK DECISION

On July 2, 1991, the supreme landmark decision which will affect the history of legal services in this state and around the country. They denied the Bar's motion for clarification, thus confirming that I could represent Marina Securities, Inc. in the same capacity as a licensed attorney, without limitations or restrictions. This decision implied that anyone could represent a corporation before the supreme Court of Florida in the same capacity as a licensed attorney.

This also meant that there could not be rules prohibiting the unlicensed practice of law and thus the deregulation of the legal profession has begun. If you do not have to be a licensed attorney to do what attorneys do, then consumers can hire anyone to represent them in matters before the court or for any other legal matters.

THE IMPORTANT CHALLENGE

The landmark decision by the Supreme Court to allow me to represent Marina before the Supreme Court also inferred that I could represent anyone else in any other court in the state, without limitations or restrictions and in the same capacity as a licensed attorney. The challenge was to test this in lower courts, which would then prove the deregulation of legal services in Florida. The challenge meant that I and others had to file notices of appearance in both county and circuit court cases.

The most significant case in which we filed a notice of appearance to challenge this issue was in the circuit court case of Real Estate Rentals, Inc. versus the City of Tampa, in which Emilio Ippolito filed his notice of appearance to represent his corporation as a nonlawyer, in this matter, citing the authority of the Marina case. As we expected the city attorney filed an objection to this action and wrote a letter (in the form of an affidavit) to the Florida Bar asking for their help in this matter.

The Bar reacted by filing a "Motion for Reconsideration" in the Marina case where the court granted me the right to represent Marina. The Bar's concern to the Supreme Court was that the inference in the Marina decision allowed anyone to represent anyone in any court in the state in the same capacity as a licensed attorney. The Bar asked the Supreme Court to reconsider their decision in the Marina case.

SUPREME COURT'S SECOND CONFIRMING LANDMARK DECISION

The icing on the cake for consumers of Florida was when the Supreme Court of Florida, on August 30, 1991, denied the Bar's motion for reconsideration in the Marina decision. This second confirmation of the Marina decision soundly and unequivocally ruled the right for anyone to represent anyone before any court in this state. The Marina decision and its subsequent double confirmation has set a precedence which will deregulate the legal profession in this state and around the country.

The consumers of this state can now have equal access to the courts without paying a [illegible]nent them. We now have a choice and we are no long[illegible]pendent on the legal [illegible]n for our legal needs. [illegible]no longer the threat of [illegible]censed practice of law.

THE FINAL CHALLENGE AND COMPLETE DEREGULATION

This is just the beginning to the end of the lawyer monopoly. Each and every one of us must continue to challenge the legal profession on this issue not only in Florida, but around the country, from California to New York. The successful challenges to the rights granted by the Supreme Court of Florida will prove that deregulation is complete and that the consumers of this country shall have equal access to the courts and shall not be denied due process of the law.

Daniel E. Schramek
President/CEO
The L.A.W. Clinic, Inc.
Board of Directors
Pro Se Litigants of Florida

...It's been another aggravating, long commute by train, bus or car. Seems like there are always delays and you wind up getting home later than you'd hoped. Don't let that foul mood ruin the rest of your evening, though. Put dinner—and the world—on hold. Take the phone off the hook, change into your most comfortable clothes, turn on the radio or put on a favorite recording. Then slip into your easy chair and relax as you sip a refreshing glass of iced tea topped with a wedge of lemon or lime and perhaps sweetened with sugar. Reflect on the good things that happened during the day and think about upcoming events that you're looking forward to. Maybe you can even map out an easier way to get home from work tomorrow!

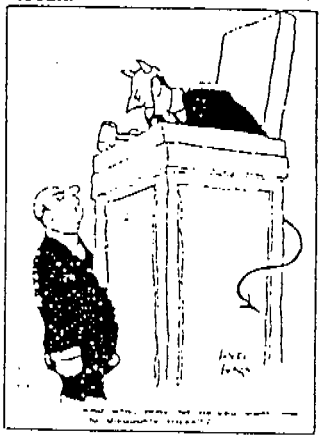
BOB CRAWFORD NOMBRA A JOVEN CUBANO-AMERICANO

El Comisionado de Agricoltora y Servicios as Consomidor Bob Crawford anuncio qoe Carlos M. Cruz, Jr. ha pasado a formar parte de so administracion estatal.

El joven de 22 anos nacido y criado en miami y Hialeah foe nombrado recientemente por Bob Crawford a la posicion de Assistente Administrativo y estara a cargo de todos los asontos Hispanos en el estado de la Florida en cuanto a el departamento respecta.

"La indostnia Agricola, y especialmente la Division de Servicios al Consomidor, la coal proteje al consomidor contra estafas, tienen un gran impacto en las vidas de cada residente de noestro estado", dijo Crawford. "Con la energia y experiencia #ue Carlos poste notstro departamento se beneficiara inmensamente".

Carlos M. Cruz, Jr. es graduado de Bachiller en Administracion Publica de la oniversidad International de la Florida (FIU). Sos padres Carlos y Sofia CruZ residen en Hialeah.



APPENDIX E

SUPREME COURT OF FLORIDA

COPY

THE FLORIDA BAR,	**	
Petitioner/Counterrespondent,	**	
vs.	**	CASE NO. 77,871
DANIEL E. SCHRAMEK, individually and d/b/a SCHRAMEK & ASSOCIATES, and The L.A.W. CLINIC, INC., a Florida for-profit corp.	**	
Respondents/Counterpetitioners.	**	

OBJECTION TO PETITIONER'S MOTION TO STRIKE NOTICE OF APPEARANCE OF SUSAN L. MOKDAD AS CO-REPRESENTATIVE

COMES NOW, the Respondents, DANIEL E. SCHRAMEK and DANIEL E. SCHRAMEK, doing business as The L.A.W. CLINIC, INC., by and through their appointed Counsel, Daniel E. Schramek, pursuant to The Florida Bar v. Marina Securities, Inc., Supreme Court of Florida, Case No. 77,375 (1991), Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), and Johnson v. Avery, 393 U.S. 483, 89 S. Ct. 747 (1969), and files this, their Objection to Petitioner's Motion to Strike Notice of Appearance of Susan Mokdad as Co-Representative, and in support thereof would state as follows:

1. Susan L. Mokdad is not a member of The Florida Bar, and is therefore not licensed to practice law in the State of Florida, pursuant to F.S. 454.23, and does not hold herself out to be a person licensed to practice law in this State, in compliance with F.S. 454.23. Susan L. Mokdad declares herself to be a nonlawyer and a Constitutional Counsel, pursuant

to the Sixth Amendment to the U.S. Constitution, wherein she is a " Friend of the Litigants ", and the Respondents in this action have the right to have " the assistance of counsel for their defense ", pursuant to the Sixth Amendment of the U.S. Constitution and pursuant to decisions of the U.S. Supreme Court under Faretta v. California and Avery v. Johnson, and the decision of the Supreme Court of Florida under The Florida Bar v. Marina Securities, Inc., at the request of the Respondents.

2. The Respondents exercise their right and demand that their rights be upheld to appoint Susan L. Mokdad as their Co-Counsel, under the Sixth Amendment of the U.S. Constitution, as argued successfully in Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), and Johnson v. Avery, 393 U.S. 483, 89 S. Ct. 747 (1969), and as decided upon in an interlocutory ruling by this Court in The Florida Bar v. Marina Securities, Inc., Supreme Court of Florida, Case No. 77,375 (1991).

3. The grounds raised in this pleading are more fully set forth in the Memorandum of Law attached hereto and incorporated herein.

WHEREFORE, the Respondents request that this court deny the Petitioner's Motion to Strike Notice of Appearance of Susan L. Mokdad as Co-Representative and uphold the rights of the Respondents under the Sixth Amendment of The U.S. Constitution and decisions of both the U.S. Supreme Court under

Faretta v. California and the Supreme Court of Florida under The Florida Bar v. Marina Securities, Inc.

Daniel E. Schramek

Daniel E. Schramek, Counsel for
Respondents/Counterpetitioners,
1064 62nd Terrace South
St. Petersburg, Florida 33705
(813) 866-0141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Attorney Joseph R. Boyd, Attorney for the Petitioner, at P.O. Box 14267, Tallahassee, Florida 32317, on this 1st day of February, 1992.

Daniel E. Schramek

Daniel E. Schramek

NOTICE OF NON-SERVICE

I HEREBY NOTICE this Court that the Respondents shall only serve Joseph R. Boyd, as Attorney of Record for the Petitioner, pursuant to Florida Rules of Civil Procedure, Rule 1.080, Service of Pleadings and Papers, until otherwise ordered by this Court.

Daniel E. Schramek

Daniel E. Schramek

f. mcb ASAP 2-11-14

SUPREME COURT OF FLORIDA

COPY

THE FLORIDA BAR,	**	
Petitioner/Counterrespondent,	**	
vs.	**	CASE NO. 77,871
DANIEL E. SCHRAMEK, individually and d/b/a SCHRAMEK & ASSOCIATES, and The L.A.W. CLINIC, INC., a Florida for-profit corp.	**	
Respondents/Counterpetitioners.	**	

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' OBJECTION TO PETITIONER'S MOTION TO STRIKE NOTICE OF APPEARANCE OF SUSAN L. MOKDAD AS CO-REPRESENTATIVE

COMES NOW, The Respondents, DANIEL E. SCHRAMEK and DANIEL E. SCHRAMEK, doing business as The L.A.W. CLINIC, INC., by and through their appointed Counsel, Daniel E. Schramek, pursuant to The Florida Bar v. Marina Securities, Inc., Supreme Court of Florida, Case No. 77,375 (1991), Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), and Johnson v. Avery, 393 U.S. 483, 89 S. Ct. 747 (1969), and files this, their Memorandum of Law in Support of Respondents' Objection to Petitioner's Motion to Strike Notice of Appearance of Susan L. Mokdad as Co-Representative, and in support thereof would state as follows:

STATEMENT OF FACTS

1. Susan L. Mokdad is not a member of The Florida Bar, and is therefore not licensed to practice law in the State of Florida, pursuant to F.S. 454.23, and does not hold herself out to be a person licensed to practice law in this State, in compliance with F.S. 454.23.

2. Susan L. Mokdad declares herself to be a nonlawyer and a Constitutional Counsel, pursuant to the Sixth Amendment to the U.S. Constitution, wherein she is a " Friend of the Litigants ".

3. The Respondents in this action have the right to have " the assistance of counsel for their defense ", pursuant to the Sixth Amendment of the U.S. Constitution and pursuant to decisions of the U.S. Supreme Court under Faretta v. California and JOHNSON v. AVERY, and the Supreme Court of Florida under The Florida Bar v. Marina Securities, Inc., at the request of the Respondents.

4. The Sixth Amendment of the U.S. Constitution guarantees that a person brought to trial in any state or federal court shall be afforded the right to "assistance of counsel for his defense" before he can be validly convicted; 28 U.S.C.A. 1654.

5. Section (1) of the Fourteenth Amendment of the U.S. Constitution and the Fifth Amendment of the U.S. Constitution guarantees that no person shall be denied "due process of law" nor shall any person be denied "equal protection of the law".

6. Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), upheld the rights of Faretta under the Sixth Amendment of the U.S. Constitution which guaranteed Faretta be afforded the right to "assistance of counsel for his defense"; 28 U.S.C.A. 1654. Faretta also upheld Section

(1) of the Fourteenth Amendment of the U.S. Constitution which guaranteed Faretta not to be denied "due process of law" nor be denied "equal protection of the laws".

5. Johnson v. Avery, 393 U.S. 483, 89 S. Ct. 747 (1969), upheld the rights of Johnson under the Sixth Amendment of the U.S. Constitution which guaranteed Johnson be afforded the right to "assistance of counsel for his defense"; 28 U.S.C.A. 1654. Johnson also upheld Section (1) of the Fourteenth Amendment of the U.S. Constitution which guaranteed Johnson not to be denied "due process of law" nor be denied "equal protection of the laws". In the Court's opinion is was made clear that the "power of states to control practice of law cannot be exercised so as to abrogate federally protected rights".

6. The Florida Bar v. Marina Securities, Inc., Supreme Court of Florida, Case No. 77,375 (1991), upheld the rights of Marina under the Sixth Amendment of the U.S. Constitution which guaranteed Marina be afforded the right to "assistance of counsel for its defense"; 28 U.S.C.A. 1654. Marina also upheld Section (1) of the Fourteenth Amendment of the U.S. Constitution which guaranteed Marina not to be denied "due process of law" nor be denied "equal protection of the laws".

7. Article I, Section (9) of the Constitution of the State of Florida guarantees "due process of law" to all persons, protecting their rights to life, liberty, and property.

8. Article I, Section (21) of the Constitution of the State of Florida guarantees "access to the courts" to all persons, for redress of an injury, and guarantees "justice shall be administered without sale, denial or delay".

SUMMARY OF FACTS

The Sixth Amendment of the U.S. Constitution guarantees that persons shall be afforded the right to "assistance of counsel for defense"; and 28 U.S.C.A. 1654, guarantees those same rights.

Section (1) of the Fourteenth Amendment of the U.S. Constitution guarantees that persons shall not to be denied "due process of law" nor be denied "equal protection" under the law.

Common Law jurisprudence, as established in The Florida Bar v. Marina Securities, Inc., Supreme Court of Florida, Case No. 77,375 (1991), Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed. 2d 562 (1975), and Johnson v. Avery, 393 U.S. 483, 89 S. Ct. 747 (1969), upholds the rights of "assistance to counsel", "due process of law", and "equal protection of the laws" guaranteed under both Federal and State Constitutions to all persons, as cited herein; and clearly supports the Court's opinion that the "power of states to control practice of law cannot be exercised so as to abrogate federally protected rights".

SUMMARY OF ARGUMENTS

In Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), the Sixth Amendment of the U.S. Constitution guarantees that a person brought to trial in any state or federal court shall be afforded the right to "assistance of counsel for his defense" before he can be validly convicted; 28 U.S.C.A. 1654. Section (1) of the Fourteenth Amendment of the U.S. Constitution guarantees that no person shall be denied "due process of law" nor shall any person be denied "equal protection of the laws". Although Faretta v. California was a criminal proceeding and his assistance of counsel was guaranteed under the Sixth Amendment. Section (1) of the Fourteenth Amendment guarantees this same right under the due process of law and equal protection clauses, and concurrently guarantees the assistance of counsel in civil proceedings.

In Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), the term "counsel" is defined as "a friend of the litigant" and not "a licensed attorney as the legal profession attempts to contend and attempts to define by their own rules. At the time of the writing of the Sixth Amendment, litigants used nonlawyers as their representatives in court actions. In Johnson v. Avery, the Court's opinion stated " that traditional, closed-shop attitude is utterly out of place in the modern world, where claims pile high and much of the work of tracing and pursuing them requires the patience and wisdom of a layman rather than the legal skills

of a member of the bar." However, it is clear in the Faretta case that under the Sixth Amendment that the term "counsel" is defined as anyone whom the litigant chooses to represent them before the court.

In Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), it clearly states on page 2534, footnote 16, that " Counsel, from its Historic roots, were personal friends of the Litigant brought into Court by him so that he might take 'counsel' with them before pleading ".

The same argument is used in Johnson v. Avery, 393 U.S. 483, 89 S. Ct. 747 (1969), wherein the person's right to "assistance of counsel", "due process of law", and "equal protection of the laws" is guaranteed constitutionally; and that the Court made it clear in its opinion that the " power of states to control practice of law cannot be exercised so as to abrogate federally protected rights ".

The Florida Bar v. Marina Securities, Inc., Supreme Court of Florida, Case No. 77,375 (1991), presents an interesting scenario to jurisprudence because it deals with a corporate entity being defined as a "person" under constitutional rights as defined and upheld under common law in the cases cited herein and the defining of an interlocutory decision as being an opinion of the Court.

The first argument on defining a corporation as a "person" is simple when we use the common definitions under statutory law that defines a person: pursuant to F.S. 542.17,

definitions, (3) "Person" means any individual, corporation, firm, partnership, limited partnership, incorporated or unincorporated association, professional association, or other legal, commercial, or governmental entity, including the State of Florida, its departments, agencies, political subdivisions, and units of government. Based on this statutory definition, then corporations are considered persons and shall have the same protected rights constitutionally as defined herein. Thus stated, when rights are granted to a corporation, such as in the Marina case, then those same rights must be granted to all "persons" as described herein.

The second argument is defining the decision of the Florida Supreme Court in the Marina case as of precedential or stare decisis value. Any decision given by a Court shall be construed as an opinion of that court. In the Marina case the decision of the Supreme Court was not an interlocutory judgement because the decision was not on the true and original issue of the case, but was a separate and distinct issue that would not affect the final judgement in the Marina case. Therefore, the Supreme Court's decision on that issue was a separate and distinct final opinion by the Court with precedential and stare decisis value. Any decision or opinion which is given in a Court can be challenged via an appeal by either party. In the Marina case The Florida Bar filed an initial motion for clarification, which was subsequently denied by the Court. The Florida Bar then filed a secondary motion for reconsideration, which was also subsequently denied by the Court, thus confirming the Court's original

opinion twice. The Florida Bar did not appeal the opinion of the Supreme Court in the Marina case, which must be concluded as a non challengeable issue and of true precedential and stare decisis value as common law jurisprudence.

CONCLUSION

It is clear that constitutional law and common law have established and upheld the rights of persons in this country. The right to have "assistance of counsel" is guaranteed under the Sixth Amendment of the U.S. Constitution. The right to "due process of law" is guaranteed under the Fifth and Fourteenth Amendment of the U.S. Constitution, as well as under Article I, Section 9, of the Constitution of the State of Florida. The right to "access to courts" is guaranteed under Article I, Section 21, of the Constitution of the State of Florida. The right to "equal protection of the laws" is guaranteed under the Fourteenth Amendment of the U.S. Constitution. These are protected constitutional rights which shall not be abrogated. Accordingly, any rule or statutory law which must deny any person these constitutionally protected rights must be declared invalid and illegal. Thus, the "power of states to control practice of law cannot be exercised so as to abrogate federally protected rights".

The Justices of this Court have individually and collectively sworn to preserve, protect, defend, and uphold the Constitutions of the United States and the State of Florida.

No Court can deny a litigant his choice of "assistance of counsel", nor deny that person "due process of law" or "access to the courts" and the Court must protect that person with "equal protection of the laws" as defined and protected by constitutional rights.

Daniel E. Schramek

Daniel E. Schramek, Counsel for
Respondents/Counterpetitioners,
1064 62nd Terrace South
St. Petersburg, Florida 33705
(813) 866-0141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Attorney Joseph R. Boyd, Attorney for the Petitioner, at P.O. Box 14267, Tallahassee, Florida 32317, on this 1st day of February, 1992.

Daniel E. Schramek
Daniel E. Schramek

NOTICE OF NON-SERVICE

I HEREBY NOTICE this Court that the Respondents shall only serve Joseph R. Boyd, as Attorney of Record for the Petitioner, pursuant to Florida Rules of Civil Procedure, Rule 1.080, Service of Pleadings and Papers, until otherwise ordered by this Court.

Daniel E. Schramek
Daniel E. Schramek

SUPREME COURT OF FLORIDA

JUDICIAL NOTICE

I HEREBY NOTICE this Court that pursuant to U.S. Supreme Court case HAFER v. MELO, No. 90-681, November, 1991, any judicial actions which violate the constitutional rights of individuals may be used as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CIVIL RIGHTS - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court. (Hafer v. Melo, No.90-681), page 4001.

APPENDIX F

SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	**	
Petitioner,	**	
vs.	**	CASE NO. 77,375
MARINA SECURITIES, INC. and MARINA TRUST SERVICES, INC.,	**	
Respondents.	**	

RESPONDENTS' RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION OF PETITIONER'S MOTION TO FOR CLARIFICATION AND MOTION TO STRIKE

COMES NOW, the Respondents, Marina Securities, Inc. and Marina Trust Services, Inc., by and through their appointed agent, Daniel E. Schramek, pursuant to F.S. 607.011 (Note 30) Actions and Proceedings, West Stuart Acreage, Inc. v. Hannett App., 427 So.2nd 323 (1983), and this Court's order of May 30, 1991 in this case, and files this, their response to Petitioner's motion for clarification, and moves this Court to strike Petitioner's motion for clarification, and in support thereof state:

1. On May 30, 1991, this Court entered an order denying the motions filed by the Petitioner including motion to strike respondents' answer and motion to disqualify Daniel E. Schramek from appearing in this matter. This clearly infers that the Court has accepted the Respondents' Answer to Show Cause as submitted by their appointed agent, Daniel E. Schramek, and that the Court has qualified Mr. Schramek to represent the Respondents in the matter pending before this

Court pursuant to state statute and case law as supported in Respondents' pleadings before this Court.

2. At no time have the Respondents indicated to this Court that Mr. Schramek was appearing on his own behalf as an interested party to protect any interest he may have in the Respondents' corporations. It has been made clear to this Court, by the Respondents' pleadings, that Mr. Schramek has a legal right to represent the Respondents in this litigation pursuant to state statute and case law as supported in Respondents' pleadings before this Court and that the Respondents have appointed Mr. Schramek to represent them accordingly.

3. This Honorable Court cannot set forth limitations or restrictions [any less than or any more than a licensed attorney-at-law] on Mr. Schramek's representation without denying the Respondents "Due Process of the Law", pursuant to Amendment 14 of the Constitution of the United States of America and pursuant to Article I, Section 21, Access to the Courts, Constitution of the State of Florida, wherein any person shall not be denied due and complete process of the law before any court in this country.

4. In paragraph 4, the Petitioner again tries to argue the issue of Mr. Schramek's right to represent Marina in this litigation, of which this Court has already ruled to the

affirmative for the respondents. This Court's order was based on the grounds of supporting case law and was not based on the context of this individual case. The confusion cited by the petitioner appears to be over their concern for protecting their interests in monopolizing legal services in this state and the issue of nonlawyers having the right to represent individuals and/or corporations before courts in this state. It is clear from supporting case law and this Court's decision in this case that the Florida Bar and the legal profession can no longer mislead the public into requiring them to hire a licensed attorney to properly redress litigation issues in the courts of this state.

5. The issue argued in this matter was the constitutional right of Mr. Schramek to represent Marina in this action in the same capacity as a licensed attorney, as supported appropriately and accurately with case law and subsequently granted and ordered to the affirmative by this Court. This Court clearly confirmed case law and clearly inferred in its decision, by denying the motion for clarification filed by the Petitioner, that Mr. Schramek shall be allowed to represent the respondents in the same capacity as a licensed attorney without restrictions or limitations. Petitioner's insistence (paragraph 4) that "this is clearly incorrect based on case law ... inferring that the courts of this state have consistently held that a corporation must be

represented by an attorney ..." is misleading and shows a questionable concern on the part of the petitioner as to who's interest the petitioner is actually concerned with; it is obvious that it is not in the public's interest and that it is in petitioner's own self interests.

6. Petitioner then attempts to persuade this Court to rescind its clear decision, which denied them further clarification, by arguing that "disorder, confusion and injury to the public" will occur without proper clarification. If the petitioner believes that disorder, confusion and injury will occur as a result of nonlawyers representing themselves or others, then I can only speculate (since the petitioner did not clarify what they meant by these terms) that the petitioner meant that the disorder and confusion would occur in the courts because these nonlawyers would be unfamiliar with the rules and procedures of the court thus causing the disorder and confusion and also resulting in injury to the litigants for not being properly represented. The best argument for this issue is that the courts have control over the potential disorder and confusion in the courts by requiring "all" who address the courts shall follow the "Rules of Court" promulgated by this Honorable Court. The potential injury to litigants by not being properly represented is currently occurring each and every day by incompetent licensed attorney and the existing system does not provide

adequate recourse for those litigants to sue these attorneys, meaning that the Bar effectively protects its own; whereas, nonlawyers could easily be sued in court for their incompetence by many willing attorneys. Thus the petitioner's argument for disorder, confusion, and injury is not an affective argument.

7. Petitioner has exceeded the 30 day requirement for appealing non-final orders before this court.

WHEREAS, this Court has an obligation to protect the constitutional rights of the citizens of this state, and

WHEREAS, the petitioner has exceeded the 30 day requirement for appealing non-final orders.

WHEREFORE, the Respondents pray that this Honorable Court strike Petitioner's Motion for Reconsideration.

Daniel E. Schramek, Agent for
Marina Securities, Inc. and
Marina Trust Services, Inc.
Respondents,
1064 62nd Terrace South
St. Petersburg, Florida 33705
(813) 866-0141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Attorney Lori S. Holcomb, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, on this 3rd day of September, 1991.

Daniel E. Schramek, Agent