

On July 6, 1992, Circuit Judge **Bob** Anderson Mitcham entered an Order recusing himself as referee from the case. Subsequently, on July 10, 1992, this matter was reassigned to the undersigned referee, with directions to file a report within one hundred eighty (180) days of the date of the Order of Referral.

Prior to the undersigned's appointment, Judge **Bob** Anderson Mitcham had entered an order on May 11, 1992, scheduling a final hearing in this matter, and a copy of the Order was forwarded to the respondents.

On the morning of August 10, 1992, **this** referee conducted a final hearing. The petitioner appeared through its counsel Howard Ross and John Yanchunis. The respondent, Daniel E. Schramek, appeared on his own behalf and on behalf of the other respondent, The L.A.W. Clinic, Inc. This referee then heard arguments from petitioner and respondents with regards to a document entitled "Notice to Court and Former Respondent's Objection to Trial Scheduled August 10, 1992" which had been filed with this referee on the morning of the trial. After careful consideration of the arguments, this referee overruled the respondents' objections and directed that the hearing **proceed** forward. Although Daniel E. Schramek was present at the beginning of the hearing, Daniel E. Schramek eventually left the hearing on his own accord and never returned for completion of either the hearing on August 10, 1992, or the second day of the hearing conducted on August 11, 1992.

During the hearing, the Court received into evidence sixty-two

(62) exhibits as well as the proffered testimony of Daniel E. Schramek, which had been given by the respondent during the investigation which led **up** to the filing by The Florida Bar of the petition against the unlicensed practice of law and took judicial notice of certain facts and documents as reflected in various orders entered by this Referee,. Moreover, the Court was presented with the testimony of petitioner's witnesses: Daniel E. Schramek, Charles Shannon, Joanne Killian, S. Michael Ostow, Richard Campbell and Frank Logan.

At the close of the petitioner's case, this referee granted petitioner's ore tenus motion to conform the pleadings to the evidence presented at the final hearing.

On November 3, 1992, this referee conducted a hearing on petitioner's motion to tax cost, which hearing had been noticed to the parties. On the morning of the hearing, Daniel Schramek presented the referee with a document entitled "Respondent's Objection to Petitioner's Motion to Tax Cost."

At the hearing on petitioner's motion to tax cost, the petitioner was represented by counsel. Respondents, although having received notice of the hearing, did not appear. Despite respondents' absence, this referee conducted the hearing on petitioner's motion.

All of the pleadings, attachments thereto, motions requesting this referee to take judicial notice **and** the documents either attached thereto or mentioned therein, and exhibits received in

evidence, including the testimony of Daniel E. Schramek, the transcript of the final hearing and this report, constitutes the record in this case and are forwarded to the Supreme Court of Florida.

11. FINDINGS OF FACT

A. Jurisdictional Statement. Respondents, at all times material herein, were not and are not members of The Florida Bar, and were not therefor licensed to engage in the practice of law in the State of Florida. (Respondents' Amended Answer to Show Cause and Respondents' Supplemental Motion to Dismiss; Petitioner's Exhibit 53).

B. As set forth in detail below, this referee finds that the respondents did engage in the practice of law in the State of Florida as said practice has been defined in The Florida Bar v. Furman, 451 So.2d 808 (Fla. 1984); The Florida Bar v. Kaufman, 452 So.2d 5265 (Fla. 1984); The Florida Bar v. Kaiser, 397 So.2d 1132 (Fla. 1981); The Florida Bar v. Brumbaugh, 355 So.2d 1186 (Fla. 1978); The Florida Bar v. Moran, 273 So.2d 390 (Fla. 1973); The Florida Bar v. Scussell, 240 So.2d 153 (Fla. 1970); The Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962), rev'd on other grounds, 373 U.S. 379 (1963), without obtaining admission into The Florida Bar.

1. Daniel E. Schramek resides at 1064 62nd Terrace S., St. Petersburg, Pinellas County, Florida. Mr. Schramek has in the past done business as Schramek & Associates. (Respondents' Amended Answer to Show Cause and Respondents' Supplemental Motion to

Dismiss; Petitioner's Exhibit 53).

2. The **L.A.W. Clinic, Inc.**, is a corporation incorporated under the laws of the State of Florida. (Respondents' Amended Answer to Show Cause and Respondents' Supplemental Motion to Dismiss; Petitioner's Exhibit 53).

3. Neither respondent is licensed to practice law in the State of Florida. (Respondents' Amended Answer to Show Cause and Respondents' Supplemental Motion to Dismiss; Petitioner's Exhibit 53)

4. Daniel E. Schramek and The **L.A.W. Clinic, Inc.** have engaged in the unlicensed practice of law.

5. Daniel E. Schramek and The **L.A.W. Clinic, Inc.** should be enjoined from the unlicensed practice of law.

Findings of Fact - Charles A. Shannon, 111:

6. Daniel E. Schramek and The **L.A.W. Clinic, Inc.** gave **legal** advice to Charles Shannon including the effect of Section 61.30, Florida Statutes, Child Support Guidelines; what Mr. Shannon should bring with him to the hearing, what information Mr. Shannon should give to the judge, what Mr. Shannon should and should not say to the judge, and what Mr. Shannon's appellate rights were. (Testimony of Charles Shannon; Exhibits 16-22)

7. Daniel E. Schramek and The **L.A.W. Clinic, Inc.** advised Charles Shannon of remedies available to him and possible courses of action (Testimony of Charles Shannon).

8. Daniel E. Schramek and The **L.A.W. Clinic, Inc.** held

themselves out to the public in such a manner that the public placed some reliance on them to give legal assistance.

9. The legal advice given to Charles Shannon by Daniel E. Schramek and The L.A.W. Clinic was incorrect. (Fla. Stat. 61.30(1))

10. As the result of the incorrect legal advice, Charles Shannon was required to pay a portion of his former wife's attorneys' fees in addition to the fee he paid to The L.A.W. Clinic, Inc. (Testimony of Charles Shannon; Petitioner's Exhibit 22)

11. Daniel E. Schramek and The L.A.W. Clinic, Inc. drafted a Motion for Modification of Final Judgment of Dissolution of Marriage and a Motion for Non-Jury Trial (Petitioner's Exhibits 3, 19 and 20), all based on verbal communications with Charles Shannon.

12. Neither a Motion for Modification of Final Judgment of Dissolution of Marriage nor a Motion for Non-Jury Trial are included among the forms contained in Florida Rules of Civil Procedure, Forms 1.901 through 1.996. (Petitioner's Exhibit 13).

13. The Supreme Court Approved Simplified Forms (Petitioner's Exhibit 15) did not exist until the publication of the opinion in Rules Regulating The Florida Bar --Approval of Forms, Rule 10-1.1(b), 581 So.2d 902 (Fla. 1991)

14. Although they did not exist in 1989 when Daniel E. Schramek and The L.A.W. Clinic, Inc. performed services for Mr,

Shannon, the forms approved by the Supreme Court of Florida do not include a Motion for Modification of Final Judgment of Dissolution of Marriage relating to reductions in child support nor do they contain a Motion for Non-Jury Trial.

15. Daniel E. Schramek and The L.A.W. Clinic, Inc. attempted to secure a waiver, disclaimer or limitation of liability in their Invoice Statement (Petitioner's Exhibit 18).

Findings of Fact - Mary B. Muckler:

16. Daniel E. Schramek and **The** L.A.W., Clinic, Inc. gave legal advice to Mary B. Muckler regarding the effects of a living trust, and prepared for Mary B. Muckler a living trust and a quit claim deed, neither of which was a legal form approved by the Supreme Court of Florida (Respondents' Amended Answer to Show Cause and Respondents' Supplemental Motion to Dismiss; Petitioner's Exhibit 53).

17. The quit claim deed prepared by Daniel E. Schramek and The L.A.W. Clinic, Inc. was defective. Among other things, the quit claim deed purported to convey to a living trust prepared by respondents certain real property **owned** by Mary B. Muckler **and** her deceased husband. Although the property was vested in Mary B. Muckler's name only, the quit claim deed entered by the respondents failed to recognize this fact. Moreover, respondents prepared the quit claim deed in a manner which would require the signature of Mary B. Muckler's deceased husband, and in executing the documents

respondents entered a signature on the appropriate line **for** Mary B. Muckler's deceased husband, and Daniel E. Schramek notarized the signature (Testimony of Frank Logan, S. Michael Ostow; Respondents' Amended Answer to Show Cause and Respondents' Supplemental Motion to Dismiss; Petitioners' Exhibits 1-3, **26-52**, 53).

18. In preparing the living trust, the respondents failed to properly advise Mary B. Muckler and failed to properly complete the transfer of her assets into the living trust, including but not limited to, the largest single asset resulting in the need to include those assets in a probate proceeding resulting in an increased expense to Mary B. Muckler's estate upon her death (Testimony of Frank Logan, Michael Ostow; Petitioner's Exhibits **5**, **6**).

19. Because **of** the defective deed, the heirs of **Mary** B. Muckler were required to probate the estate of Mary B. Muckler in order to clear the title to the real property, resulting in increased expense to the estate (Testimony of Frank Logan; Petitioner's Exhibits 1-3, **26-52**).

20. Had a quit claim deed been properly prepared and the assets of Mary B. Muckler properly transferred into the living trust, the probate proceeding would have been avoided and the cost to the estate substantially reduced (Testimony of Frank Logan, **S.** Michael Ostow).

21. In an attempt to avoid liability for their poor representation in handling of the affairs of Mary B. Muckler, the

respondents required Mary B. Muckler to sign a certification of satisfactory representation which stated that Mary B. Muckler had been adequately and satisfactorily represented, all which were untrue as set forth above.

22. The conduct of the respondents resulted in substantial harm to Mary B. Muckler and her heirs (Testimony of Frank Logan, S. Michael Ostow; Petitioner's Exhibits **28-52**).

Findings of Fact - Violet C. Gillespie:

23. Daniel E. Schramek and The L.A.W. Clinic gave legal advice in connection with The Violet C. Gillespie Living Trust including Instructions: Retitle Your Assets Under the Name of Your "Living Trust" (Petitioner's Exhibit 25) and in the attempts to transfer assets into the Living Trust (Petitioner's Exhibit 26).

24. The legal advice given in connection with The Violet C. Gillespie Living Trust was incorrect. (Testimony of Joanne Killeen)

25. As the result of the incorrect legal advice, the estate of Violet C. Gillespie lost a sale of a condominium and was required to spend money for legal services that would not have been necessary if correct legal advice had been given and to **pay** monthly maintenance fees, taxes and insurance for the condominium. (Testimony of Joanne Killeen)

26. Daniel E. Schramek and The L.A.W. Clinic, Inc. prepared a **quit claim** deed (Petitioner's Exhibit 23) which was ineffective in transferring the title of the condominium into the living trust.

(Testimony of Joanne Killean; Petitioner's Exhibit 23)

Findings of Fact - Marina Securities, Inc. and Marina Trust Services, Inc.:

27. In a proceeding commenced by The Florida Bar against Marina Securities, Inc. and Marina Trust Services, Inc. before the Supreme Court of Florida, which case was assigned case number 77,375, the respondent, Daniel E. Schramek, prepared an answer to show cause and a motion to dismiss, an a legal form not approved by the Supreme Court of Florida. These documents were prepared and signed by Daniel Schramek as agent for both Marina Securities, Inc. and Marina Trust Services, Inc. (Petitioner's Exhibits 5-12).

28. On or about March 13, 1991, Daniel E. Schramek signed a motion for change of venue, which is not a legal form approved by the Supreme Court of Florida, as an agent for Marina Securities, Inc. and Marina Trust Services, Inc., which motion was filed in the pending case of The Florida Bar vs. Marina Securities, Inc. and Marina Trust Services, Inc. A corporation cannot be represented in the Supreme Court of Florida by any person other than a licensed attorney. (Petitioner's Exhibit 5).

ADDITIONAL FINDINGS OF FACT:

29. Daniel E. Schramek has attempted to franchise the business of selling legal services to the general public. (Testimony of Richard Campbell; Petitioners Exhibit 54)

30. Respondents, pursuant to a branch office licensing agreement entered into with Richard Campbell, set up a business in

Pensacola, Florida, engaged in offering legal services, which utilized legal forms not approved by the Supreme Court of Florida. (Testimony of Richard Campbell; Petitioner's Exhibits 54-62).

31. Pursuant to the branch office licensing agreement, Richard Campbell would operate an office in Pensacola which offered legal services. Moreover, pursuant to this same agreement, Richard Campbell was obligated to pay all of the operating costs of this office and the cost of advertisements. Based upon information supplied to Richard Campbell by customers on an application form prepared by respondents, respondents, in exchange for a certain percentage of the fee collected from the customers, would prepare legal forms. (Testimony of Richard Campbell; Petitioner's Exhibits 54-62).

32. During respondents' business relationship with Richard Campbell, respondents, for a fee, prepared legal forms based upon information which Richard Campbell had obtained from forms which were not approved by the Supreme Court of Florida. (Testimony of Richard Campbell; Petitioner's Exhibits 54-62). Both the activities employed and the legal forms utilized constitutes the unlicensed practice of law.

33. Through the branch office staffed by Richard Campbell, respondents offered legal services in the areas of landlord/tenant, divorces, living trusts, bankruptcy, and adoptions. (Testimony of Richard Campbell; Petitioner's Exhibits 54-62).

34. The legal services utilized by respondents through the

branch office were defective and resulted in harm to the public. (Testimony of Richard Campbell). In the area of bankruptcy, customers of respondents were given incorrect legal advice in such areas as the exemptions to which individuals filing for bankruptcy were entitled. Equally, if not just as dangerous, was **the** information Mr. Schramek did not give before assisting someone in filing bankruptcy, such as but not limited to the various types of bankruptcy that can be filed under the Bankruptcy Code, and issues relating to discharge and the nondischargeability of debts. (Testimony of Richard Campbell).

CONCLUSIONS OF LAW

1. The practice of law by a person without a license is prohibited. Section **454.23** of the Florida Statutes provides that "[a]ny 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. . ." shall be guilty of a misdemeanor of the first degree. **5454.23**, Fla. Stat. (1992).

2. In 1987 the Florida Supreme Court promulgated 10-1.1 of the Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law. Pursuant to subsection (b) of that rule, the unlicensed practice of law is defined "as prohibited by statute, court rule, and case law of the State of Florida." For purposes of Chapter 10, the section further provides that "**it** shall

not constitute the unlicensed practice of law for non-lawyers 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 non-lawyers are restricted to those communications reasonably necessary to elicit factual information to complete the form and inform the person how to **file** the form."

Counselling persons as to their rights under Florida law regarding domestic or marital relations and assisting another in the preparation of any legal documents relating to domestic or marital relations constitutes the unlicensed practice of law.

3. In the Florida Bar v. Sperry, 140 Sa. 2d 587, 591 (Fla. 1962), the Supreme Court opined that "performance of services representing another before the courts is the practice of law." Id. at 591. Recognizing that the practice of law also can occur outside **the** judicial system, the Court stated that the practice of law "also includes the giving of legal advice and counsel to others as to their rights and obligations under the law the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in the court." Id. Although refraining from attempting to set forth a broad definition of the practice of the law, the Supreme Court, to the extent required to settle the case before it, did state:

{i}f the giving of such advice and the performance of such service affect important

right of a person under the law, and that the reasonable protection of the rights and property of those advised and served requires that the person giving such advice possess legal skill and the knowledge of law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Id.

4. Following **its** decision in Sperry, the Supreme Court has on several occasions addressed the issue of what constitutes the unlicensed practice of law. In The Florida Bar v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978), the Court recognized that the parameters set forth in its decision in Sperry were broad and is given content by the Court only as it applies to the specific circumstances of each case. The Court refrained once again, however, from attempting to formulate a lasting, all encompassing definition of the practice of law "for the reason that under our system of jurisprudence, such practice must necessarily change with the everchanging business and social order." Id. at 1192, citing State Bar of Michigan v. Cramer, 399 Mich. 116, 249 N.W. 2d, 1, 7 (1976).

5. In Florida Bar v. Furman, 376 So. 2d 378 (Fla. 1979), the Supreme Court was confronted by the issue of determining whether or not a secretarial business was engaging in the unlicensed practice of law. In Furman, the Court prohibited non-lawyers from preparing papers necessary for filing and securing dissolutions of marriage, as well as providing detailed instructions as to how legal

documents should be filed, service secured, hearings set and a briefing session as to the questions and answers which may be offered at trial. Id. at 379.

The Court enjoined Ms. Furman from engaging in the following activities:

[Respondent] must not, in conjunction with her business, engage in advising clients as to the various remedies available to them, or otherwise assist them in preparing those forms necessary for a dissolution proceeding. More specifically, [respondent] may not make inquiries nor answer questions from her clients as to the particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at the court hearings. Our specific holding with regard to the dissolution of marriage also applies to other unauthorized legal assistance such as the preparation of wills or real estate transaction documents. While [respondent] may legally sell forms in these areas, and **type** up instruments which have been completed by clients, she must not engage in personal legal assistance in conjunction with her business activities, including the correction of errors and omissions.

Id. at 381, quoting, The Florida Bar v. Brumbaugh, 355 So. 2d at 1184.

6. Five years after this Court's decision in Furman, the Supreme Court was confronted again with the charge that Rosemary Furman was engaging in the unlicensed practice of law. In finding that Ms. Furman was again engaging in the practice of law, the Court held that a non-lawyer who prepares pleadings, explains legal remedies and options to litigating parties, interprets legal effects of statutes, and gives advice and direction on the how or

where to file legal documents constitutes the unlicensed practice of law, The Florida Bar v. Furman, 451 So.2d 808, 812 (Fla. 1984). See also In re Bachmann, 113 B.R. 769, 773 (Bankr. S.D. Fla. 1990). The unlicensed practice of law occurs even when a non-lawyer is completing a form prepared by an attorney. Keyes Company v. Dade County Bar Association, 46 So. 2d 605 (Fla. 1950).

7. The Court adopts the proposed Advisory Opinion, FAO #91001, Nonlawyer Preparation of Living Trusts.

III. RECOMMENDATIONS:

Based upon the foregoing Findings of Fact and Conclusions of Law, it is the recommendation of the undersigned referee as follows:

Daniel E. Schramek and The L.A.W. Clinic, Inc., directly and indirectly through other persons or entities, and each of them should be restrained and enjoined from the following:

- a. Holding themselves out to the public in such a manner that the public will place some reliance on respondents to properly prepare legal forms;
- b. Advising individuals as to various remedies available to them and possible courses of action;
- c. Making inquiries and answering questions as to the particular forms which might be necessary, how best to fill out such forms and how to present necessary evidence at the court hearing;
- d. Engaging in personal legal assistance;

e. Drafting the entire of information for the blanks on preprinted legal forms;

f. Having direct contact in the nature of consultation, explanation, recommendations, advice and assistance in the provision, selection and completion of preprinted legal forms;

g. Suggesting, directing and/or participating in the accumulation of evidence to be submitted with the completed forms;

h. Giving advice and making decisions on behalf of others which require legal skill and a knowledge of the law greater than that possessed by the average citizen;

i. Preparing pleadings, wills, living trusts and any other legal documents for a third party;

j. Completing forms or assisting in the completing of forms that are not included in the Supreme Court Simplified Forms.

k. Completing forms or assisting in the completing of forms that are included in the Supreme Court Simplified Forms, except as allowed by Chapter 10, Rules Governing The Florida Bar.

l. Explaining legal remedies and options to individuals which affect the procedural and substantive legal rights, duties and privileges of the individual;

m. Construing and interpreting the legal effect of Florida law and statutes for third parties;

n. Giving legal advice to individuals or groups concerning the application, preparation, advisability or quality of any legal instrument or document or forms thereof in connection

with dissolution of marriage, alimony and modifications thereof, child support and modifications thereof, the disposition of property inter vivos or upon death, including, but not limited to, trust and wills, and any other legal proceeding or procedure;

o. Advertising that respondents or any of its agents, officers or employees will give legal advice or perform legal services;

p. Otherwise directly or indirectly through other persons or entities engaging in the practice of law in **Florida** unless and until respondents are licensed to do **so** by the Supreme Court of Florida.

q. That the costs of this proceeding be taxed against the respondents.

IV. MANNER IN WHICH COSTS SHOULD BE TAXED

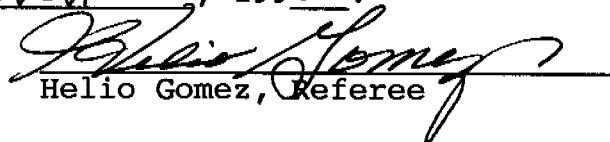
I find the following costs were seasonably incurred by The Florida Bar:

A.	Witness fees	19.92
B.	Service of Process fees	114.55
C.	Transcript of final hearing 8/10/92 - 8/11/92	831.25
D.	Court Reporter's attendance fee for final hearing 8/10/92 - 8/11/92	172.50
E.	Court Reporter's attendance fee for hearing held 7/23/92	45.00
F.	Court Reporter's attendance fee for hearing held 12/11/91	35.00
G.	Court Reporter's attendance fee	

	for hearing held 9/21/90	171.20
H.	Transcript of hearing 9/20/89	572.00
I.	Certified copies of Court documents introduced at final hearing or filed in this case, and charge of Clerk of the Court for photocopying	414.00
J.	Travel expenses of Lori S. Holcomb, Staff UPL Counsel, to attend hearings on 12/11/91 and 3/19/92	767.25
K.	Investigator's time and travel Walter Grander Ernest Kirstein	75.76 1,713.80
	TOTAL	<u>\$ 4,932.23</u>

It is recommended that such costs be charged to respondents and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final.

Dated this 12TH day of Nov., 1992.


Helio Gomez, Referee

Copies furnished to:

John A. Yanchunis, Esq.
Howard Ross, Esq.
Lori Holcomb, Esq.
Daniel E. Schramek