

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
MAR 4 1996
CLERK, SUPREME COURT
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CASE NO. 84,646 & 85,121
[TFB Case No. 94-31, 627 (07C) & 95-31, 015 (7C)]

THE FLORIDA BAR,

Complainant,

vs.

GARY H. NEELY,

Respondent.

RESPONDENT'S REPLY BRIEF IN SUPPORT OF PETITION FOR
REVIEW OF REPORT OF REFEREE, HONORABLE JAMES A. RUTH

REPLY BRIEF OF RESPONDENT

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The Florida Bar v. Brumbaugh,

355 So.2d 1186 (Fla. 1978) 5

ARGUMENT

As to Supreme Court Case No. 84,646; TFB 94-31,627 (07C)

The Bar is in the unenviable position of having to argue that Mrs. Veronica Cottle, the Complainant in this case, is able to reliably recount events as they happened. That is clearly not the case, for example, Mrs. Cottle suggests that she found Mr. Neely by calling Directory Assistance and asking for "Attorney Gary Neely on Ridgewood Avenue" (TI-38). According to Mrs. Cottle, this was in the early part of 1993, "February or March, somewhere around there" (TI-37). According to Mrs. Cottle's testimony, this would have been thirteen or fourteen years after the time when Mrs. Cottle says the Florida Bar told her Neely "had been disbarred" (TRI-70).

Mrs. Cottle also insisted that Mr. Neely gave her a **personal** check to refund \$500.00 of the original \$1,000.00 he had obtained from her. Mrs. Cottle further denied that the check was drawn on American Financial Services, but when shown Respondent's Exhibit 2, Mrs. Cottle admitted that it did look like a copy of the check that Neely had given her. The check was drawn on the account of American Sunstate Financial of 547 North Ridgewood Avenue, Daytona Beach, Florida.

Additionally, it did not appear that Mrs. Cottle ever informed either attorney Gary Bloom, or the Respondent, Gary Neely, that she had already filed, in July, 1992 the malpractice suit against Attorney Donald Matthews in Jacksonville.

A receipt was given to Mrs. Cottle for the thousand dollars that she gave Neely, which is Florida Bar Exhibit 2. Respondent

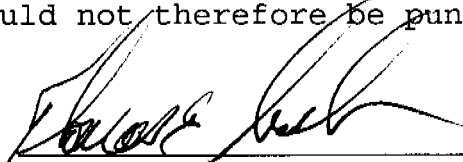
suggest that the receipt is for "services, for research of quiet title suit and possible lawsuit against Donald Matthews."

Respondent suggests that one need not be a lawyer to do legal research, and suggest that the conduct of legal research is not the practice of law. The essence of the practice of law is the rendering of legal advice, not the conduct of research. Mrs. Cottle had already filed suit on her own behalf, and Attorney Chris DeMetros was in fact representing Donald Matthews in defense of that law suit. The fact that Respondent Neely found a very simple solution to the problem that was the basis of the lawsuit against Matthews and the cloud on the title seems to have been overlooked by the Bar. Neely actually performed a valuable service for Mrs. Cottle and for Matthews by telling DeMetros the solution.

The fact that Respondent Neely actually found the solution to the problem, of course, did not deter Mrs. Cottle from carrying on her pointless and vindictive lawsuit, or pursuing the grievance against Mr. Matthews. That is because Mrs. Cottle, in the words of witness Dan Prey, "is a nut" (TRI-124). Additionally, the Bar glosses over the fact that Mrs. Cottle was attempting to extort \$4,280.00 from Neely by threatening to report him to the Bar if he did not pay her that amount of money (TRI-62).

If the purpose of prohibiting the unlicensed practice of law is to protect the public, The Florida Bar vs. Brumbaugh, 355 So.2d 1186 (Fla 1978) no purpose has been served by the prosecution of Respondent, and no public purpose will be served by punishing him in this case. The public was not harmed by Respondent's actions in

this case. Neely contracted to do research, and he did it. He found the cause of the problem, and a way to correct it. The only reason there is a problem with this case is because of the bizarre behavior of the Complainant in this case. The public was not harmed. Respondent Neely should not therefore be punished.




THOMAS E. CUSHMAN, ATTORNEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished to JAN WICHROWSKI, BAR COUNSEL, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida, 32801, via U.S. Mail; and to JOHN T. BARRY, STAFF COUNSEL, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 29 day of February, 1996.

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