IN THE SUPREME COURT OF FLORIDA

ROY L. BEACH,
Appellant/Respondent
v.

THE FLORIDA BAR,
Appellee/Complainant

Case No.: 85,005
[TFB Case No. 94-30,540 (90A)]

INITIAL BRIEF IN SUPPORT OF

EXCEPTION TO REPORT OF REFEREE

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(407)896-2099
Fla. Bar No.:306657
Respondent/Appellant

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STATEMENT OF THE CASE

Margery Rose filed a complaint with the Florida Bar complaining that she had not received certain documents which she had hired Kenneth King, a paralegal, to prepare. The Florida Bar investigated the relationship between the Respondent and Mr. King and the nature of the work performed by Mr. King. They concluded that Mr. King was engaged in the unauthorized practice of law and that the Respondent was helping him in that unauthorized practice as well as sharing legal fees with a non-lawyer. The Bar had also concluded that the Respondent had entered into an attorney/client relationship with Ms. Rose, that the Respondent had failed to properly safeguard Ms. Rose, had entered into a conflict of interest concerning the dispute between Mr. King and Ms. Rose and that the Respondent had used information from one client to the detriment of that client.

A trial was had before the Hon. Judge Herring and the Respondent denied all allegations against him. The Bar put forth the testimony of Ms. Rose and the transcripts of previous hearings before the Bar panels. The Respondent put forth the testimony of Mr. King and himself. Judge Herring eventually concluded that there was no attorney/client relationship between the Respondent and Ms. Rose and that the allegations against the Respondent which were based on such a relationship failed. The hearing officer also concluded that Mr. King was engaged in the unauthorized practice of law and that the Respondent

had assisted him in that unauthorized practice and had shared legal fees with a nonlawyer. A subsequent hearing was held for the purposes of determining an appropriate sanction and the Respondent testified at that hearing. The Bar put forth no witnesses at that hearing. The Bar, which had planned on asking for a 91 day suspension upon winning on all counts, requested a 90 day suspension since it had only prevailed on two of the allegations against the Respondent and the Respondent had been previously disciplined. The Respondent submitted that a more appropriate penalty would be one which had a smaller suspension, perhaps followed by a period of supervision which would allow him to continue representing his clients.

The hearing officer recommended a 90 day suspension. The Respondent filed an Exception to Hearing Officer's Recommendation which contested the sufficiency of the evidence finding the unauthorized practice of law and the severity of the recommended punishment. The Exception has been accepted by this Court as a petition for review. The Bar has cross-petitioned the determination of those points found adversely to them and seeks the imposition of a harsher sentence.

STATEMENT OF THE FACTS

The Respondent had entered into an agreement wherein the Respondent would review any legal documents prepared by Mr. King to check for their legal sufficiency prior to those papers being given to the individuals who hired Mr. King. In addition, the Respondent would give a thirty minute consultation to any such individuals. Mr. King would charge his customers for the work done on their behalf and his list of charges included an amount for review of the paperwork by the Respondent and a consultation with him. Mr. King would pay the Respondent a fixed amount for that review and consultation. That amount was paid regardless of the amount actually received by Mr. King.

Mr. King would schedule and appointment to see the potential customer and would get information from that customer concerning the problem at hand. Mr. King would then consult with the Respondent to determine what paperwork would be needed and he would then report back to the customer. The customer would then be quoted a price and, if agreeable, Mr. King would be hired by the customer. The customer would be told upfront that they were not hiring the Respondent, that the service being offered was an alternative to hiring a lawyer and that they would be representing themselves before the judge. The customer signed a document acknowledging their self-representation. Mr. King would then prepare the documents and submit them to the

Respondent for review and correction before giving them to the customer. If the customer wished to avail themselves of the consultation with the Respondent, such would be arranged.

Ms. Rose had hired Mr. King to prepare paperwork concerning a visitation problem she had with her ex-husband. Mr. King followed the procedure outlined above and prepared the paperwork as requested by Ms. Rose. After the work was done Ms. Rose changed her mind about visitation and wanted to change primary residential care and control. Mr. King, after consulting with the Respondent, changed the paperwork as requested. Ms. Rose then changed her mind again and only wanted visitation. A dispute arose between Mr. King and Ms. Rose as to whether or not the paperwork had been prepared and over her perceived inability to have a consultation with the Respondent. Mr. King eventually submitted a bill to Ms. Rose showing her the amount of time and effort put forth on her behalf and pointing out that she had received services far in excess of that which she had originally contracted and paid for. Mr. King never sought to collect the excess money that he was entitled to under the terms of his agreement with Ms. Rose.

Ms. Rose eventually sued Mr. King in small claims court and, after court ordered mediation, they entered into an agreement wherein Mr. King would pay her one-half ($\frac{1}{2}$) of her filing fee and deliver the papers to her ex-husband within a certain time frame. When the process server hired by Mr. King was unable to deliver the papers as specified, Ms. Rose sought

a default for the full amount that she had paid. Such a judgment was entered.

Ms. Rose then filed a complaint with the Bar which was sent to the Respondent by the Bar. The sworn allegations in that complaint lead the Respondent to conclude that representations made to the trial court handling the case against Mr. King were contrary to the sworn allegations made against the Respondent The Respondent, who had never met or talked with Ms. Rose, then sought to get the judgment against Mr. King vacated based upon the information supplied to the Bar by Ms. Rose and which was, in turn, supplied to the Respondent by the Bar. The information given to the county trial court came strictly from the information supplied to the Bar by Ms. Rose. The judgment was vacated and the matter was set for trial but Ms. Rose dismissed that complaint a few days later.

At the trial held herein, Ms. Rose testified that she never considered the Respondent to be her attorney in any manner and that she had hired Mr. King to prepare paperwork for her and that she had indeed signed an acknowledgment that she would be representing herself in court. Mr. King's testimony confirmed that testimony of Ms. Rose and explained the normal procedure used by him in preparing paperwork for his customers. He also testified that his service was set up as a lower cost alternative to people having to hire an attorney and was geared for lower and middle class income people who needed help in court but who could not afford an attorney.

After the trial, the hearing officer stated that he would have to review all of the evidence before he could make his decision. He would inform the parties of that decision as soon as possible and would, if needed, take testimony in mitigation should he determine that the Bar had proved it's case. The majority of the allegations against the Respondent were dismissed by the hearing officer who found that there was no attorney/ client relationship between the Respondent and Ms. Rose but that Mr. King had engaged in the unauthorized practice of law. A subsequent hearing was held and the Respondent testified as to the nature of his practice (small, one man firm with no associates able to take over his case load and protect his clients) and of the fact that he was representing ten (10) different clients who could not afford to hire another attorney and who would be greatly harmed if the Respondent was suspended as requested by the Bar.

SUMMARY OF ARGUMENT

It is incumbent upon the Florida Bar to prove, by clear and convincing evidence, that the Respondent violated the rules governing the Florida Bar before he can be disciplined for violating those rules. The Bar failed to present any evidence, let alone "clear and convincing evidence", that Mr. Kenneth King was engaged in the unauthorized practice of law. If Mr. King was not engaged in the unauthorized practice of law, then the Respondent could not possibly have helped him in that unauthorized practice nor could he have shared legal fees with a nonlawyer. The Referee's finding of an infraction of the rules should be vacated.

Even if the record supports a finding that Mr. King engaged in the unauthorized practice of law, the penalty imposed by the Referee does not take into account the mitigating evidence submitted at the penalty phase of the proceedings below and, as a result, is too harsh and should be reduced.

I. THE BURDEN OF PROOF WAS ON THE FLORIDA BAR TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT ASSISTED ANOTHER IN THE UNAUTHORIZED PRACTICE OF LAW AND THAT HE SHARED A LEGAL FEE WITH A NONLAWYER. THE BAR FAILED IN THAT PROOF.

The Referee has found that the Respondent has helped a third party, Kenneth King, to engage in the unauthorized practice of law and that the Respondent shared legal fees with a non-lawyer, to wit Mr. King. In order to make such a finding, the Bar had the burden of proving such acts by clear and convincing evidence.

This Court, in the case of Florida Bar v. McCain, 361 So.2d 700 (Fla. 1978) stated that:

> "The evidence presented by the Bar must be clear and convincing before we may find that the code governing lawyers has been breached." at 706.

The evidence before the Referee is not clear and convincing.

The unrefuted testimony presented below was that Mr. King would interview people who had problems relating to dissolution and post-dissolution matters. Mr. King would then consult with the Respondent about the information gathered and about what the person wanted to be done. The Respondent would instruct Mr. King as to what forms would be needed and how to prepare

them. Mr. King would relay this information to the person who would then have Mr. King prepare the documents for an agreed upon price. If a price was agreed upon, then Mr. King would draft the documents and submit them to the Respondent for review and approval before giving them to the person. The Respondent would also give the person a thirty minute consultation about his case. This consultation included advice on procedures and evidence. The person knew up front that he/she was not hiring the Respondent to represent him/her in court and that he/she would have to go before the judge by theirself to get the relief that they were seeking in the documents prepared by Mr. King. Mr. King never held himself out as a lawyer nor did he tell anyone that he would represent them in court in any way. Mr. King would pay the Respondent a certain amount for the consultation with the person and the review of the paperwork. The amount paid would vary based upon the amount of time needed to review a particular problem.

The unrefuted testimony then boils down to a nonlawyer gathering information and, based upon that information, preparing legal documents under the supervision of an attorney.

This Court, in the case of The Florida Bar re: Advisory Opinion - Nonlawyers Preparation of Living Trusts, 613 So.2d 426 (Fla. 1992) held that:

> "... gathering the necessary information for the living trust does not constitute the practice of law, and non-lawyers may properly perform this activity." at 428.

In Florida Bar v. Larkin, 298 So.2d 371 (Fla. 1974) this Court stated that:

> "We ... find that the respondent's preparation of wills and antenuptial agreements for others, both of which affect important rights of persons under the law, WITHOUT THE REVIEW AND APPROVAL OF AN ATTORNEY LICENSED TO PRACTICE IN THIS STATE, constitutes the unauthorized practice of law." at 373. (Emphasis added.)

It is pointed out that it was not the preparation of wills and antenuptial agreements by a nonlawyer that constituted the unauthorized practice of law. It was the preparation of those documents WITHOUT THE REVIEW AND APPROVAL OF AN ATTORNEY LICENSED TO PRACTICE IN THIS STATE, that constituted the unauthorized practice of law.

Mr. King was engaged in two activities that this Court has already stated did not constitute the unauthorized practice of law. He gathered information necessary for the preparation of legal documents (Florida Bar re: Advisory Opinion, supra.) and he prepared legal documents affecting the rights of others, which documents were reviewed and approved by an attorney licensed to practice in this state prior to giving those documents to the person (Larkin, supra.)

The Referee concluded that Mr. King's consulting with the Respondent after obtaining information from the person and the telling the person what the Respondent had told Mr. King would be needed in the way of documents to handle that person's particular problem was no different than Mr. King going to the

law library, researching the matter, and then telling the person what to do. That conclusion is flawed.

In the case of Florida Bar v. Florida Service Bureau, Inc., 581 So.2d 900 (Fla. 1991), the Bar tried to convince this Court that the Respondent therein was engaged in the unauthorized practice of law. In that case the Respondent, which assisted landlords in eviction cases, told customers (which included undercover investigators for the Bar) what the eviction procedure entails but gave no legal advice and did not charge for that information. In finding no UPL violation this Court noted that:

> "The information given was no greater than that which anyone could glean from reading the eviction statute." at 901.

There is no evidence that Mr. King told anybody any thing which could not be readily gleaned from reading the dissolution statutes or that he charged any money for that information. So even if we assume that Mr. King's relaying to the person what the Respondent told Mr. King is no different from Mr. King's going to the library and reading the statutes before reporting to the person, this Court has already ruled that such action does not constitute the unauthorized practice of law. He would have been doing nothing different from the Respondent in the Florida Services case, supra; to wit telling the person what the dissolution or post-dissolution proceedings entailed (which information is readily gleaned from a reading of the dissolution statute) without giving them any legal advice.

In addition, the library, as noted by this Court in the Florida Service case, supra, is full of books written by people who, although they may be licensed in other jurisdictions, are not necessarily licensed to practice law in Florida. If a lay person were to read one of those books and follow the advice contained therein, the author is not charged with the unauthorized practice of law. If the original author of a book on legal matters is not guilty of UPL, then how could the mere repeating of what may be in that book be UPL? If repeating what is in a book is not the giving of legal advice, then how can the repeating to a third party of what an attorney told you constitute UPL? What constitutes UPL is the giving of legal advice. There is no evidence that Mr. King gave any advice to anybody other than his repeating what the Respondent told him.

There is, however, a major difference between Mr. King's going to a library to research a matter and Mr. King's going to the Respondent for direction in how to handle a particular problem. The major difference is that going to the law library would not give Mr. King the benefit of an analysis of the fact specific situation that going to a trained attorney would provide. The books in the library cannot tailor an opinion or legal decision to the specific facts of a particular case.

Thus there is a major difference between Mr. King consulting with the Respondent and reporting back to someone and his researching case law and reporting back to that same person. The second course of action does not give the recipient

the benefit of a trained lawyer's insight and experience as applied to that particular set of facts.

The Referee found that when Mr. King (Mr. X) took down data from a third person (Ms. Y), consulted with the Respondent about the specific legal matter of concern (problem) to that third person (Ms. Y), then reported back to that third person (Ms. Y) what Mr. King had been told by a licensed attorney, Mr. King committed UPL. That conclusion, in addition to being contrary to this Court's opinions in the Florida Bar re: Advisory Opinion case, the Larkin case, supra, and the Florida Service case supra, is too broad and would apply to too many different fact situations.

If a husband (Mr. X) consulted with an attorney about the financial difficulties (problem) of his new wife (Ms. Y) as a result of her former divorce, and then told his wife everything the attorney told him and what the attorney recommended that Ms. Y do about the problem, then under the Referee's line of reasoning the husband (Mr. X) has committed UPL.

If the Chairman of the Board of General Motors (Ms. Y) tells a vice president of the company (Mr. X) that she is concerned with a series of complaints and a possible product liability case (problem) and asks Mr. X to consult with an attorney and report back with recommended courses of action, then the vice president, using the line of reasoning of the Referee, would be guilty of UPL if he followed his boss's instructions.

There is no fundamental difference between the above two scenarios and what Mr. King did.

The Referee makes a finding that Mr. King's actions are different from those of a paralegal employed by a law firm. This finding is flawed as there is no evidence before the Referee to support such a conclusion. The only testimony presented to the Referee was the testimony of the complaintant Ms. Rose, Mr. King, and the Respondent.

Ms. Rose never testified about the standard practice of a paralegal in a law firm. She testified about her involvement with Mr. King and the Respondent.

Mr. King never testified about the practices of paralegals in a law firm. He only testified about his involvement with Ms. Rose and the Respondent.

The Respondent never testified about what is or is not the normal practice of a paralegal in a law firm. Indeed, as the Referee pointed out, the Respondent argued that the actions of Mr. King were no different from the actions of a paralegal in a law firm. Assuming that the Respondent's argument can be taken as testimony of what constitutes normal paralegal activity, then the Referee's conclusion directly contradicts that UNREFUTED testimony. At no time did the Bar ask for or receive judicial notice of what constitutes the normal practice of a paralegal nor did it present any evidence of the same.

As was stated in the case of Florida Bar v. Nue, 597 So.2d 266 (Fla. 1992):

"In bar discipline proceedings, the referee MUST find the evidence of a lawyer's misconduct proven by clear and convincing evidence." at 268. (Emphasis supplied.)

Even if we accept that the standard of clear and convincing evidence is a lesser burden than a preponderance or greater weight of the evidence, it still requires SOME evidence before a conclusion can be made. The Referee made a conclusion that Mr. King's activities are different from those of a paralegal employed by a big law firm and yet there is no evidence in this record that would allow anyone to conclude what a paralegal in a big law firm does or does not do.

Is there any testimony that a big firm paralegal does not collect information from people with legal problems? No.

Is there any testimony that a big firm paralegal does not convey the collected information to an attorney for the attorney to analyze? No.

Is there any testimony that an attorney, after reviewing the collected information, does not tell the big firm paralegal what would be needed in the way of documents to correct the problem and to pass that information on to the person with the legal problem at hand? No.

Is there any testimony that the person affected does not then instruct the big firm paralegal to proceed as instructed by the attorney? No.

Is there any testimony that the paralegal in the big firm does not then proceed to draft the documents in question for review and approval by an attorney? No.

Is there any testimony that a paralegal in a law firm never prepares paperwork for a client to use pro se? No.

Is there any testimony that the papers, after being reviewed by an attorney, are not given to the person by the big firm paralegal? No.

Is there any testimony that clients of a big firm always talk with an attorney in that firm before taking the paperwork with them? No.

Is there any testimony that paralegals did not quote a fee for the preparation of documents, collect that fee, and turn over a portion of that fee to the reviewing attorney? No.

There is no testimony of any kind, let alone anything substantial or competent, which would lead to the conclusion that a paralegal in a big firm does anything different from what Mr. King did. As this Court pointed out in Duval Utility Co. v. Florida Public Service Commission, 380 So.2d 1028 (Fla. 1980):

> "Competent substantial evidence is such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred [or]... such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." at 1031.

Even if we assume that the collection of a fee is what distinguishes Mr. King's activities from that of a paralegal in a big firm, that does not make his actions rise to the level of UPL. Such a distinction makes no sense. If something is the practice of law then it is the practice of law whether you get

paid or not. If something is the unauthorized practice of law then it is the unauthorized practice of law whether you get paid or not. If the collection of a fee is the basis for making Mr. King guilty of UPL, then we would have the absurd result that Mr. King's actions would not be UPL if he had done them for free. By an extension of that logic, an attorney who appeared in Court to argue before a judge and to present evidence, cross-examine witnesses, etc., would not be engaged in the practice of law if he handled the case pro bono.

We can thus see that the Referee's conclusion that Mr. King's actions in this case are not the normal actions of a paralegal working with an attorney is flawed. It is either unsupported by any evidence or it goes directly against the unrefuted testimony of the Respondent. The record in this case is woefully inadequate to support such a finding. Duval Utility, supra. Either way the conclusion that Mr. King's actions are different from any paralegal working in a law firm should be rejected.

The evidence is clear and convincing that Mr. King only engaged in activities which this Court, in it's previous rulings, has stated do not constitute the unauthorized practice of law. There is no difference between what Mr. King did and what has been set forth in the Larkin case supra, the Florida Service case supra, and the Florida Bar re Advisory Opinion case, supra.

Without the finding that Mr. King's actions are different from a paralegal in a law firm, and with no evidence that Mr.

King did anything not approved in the Larkin case supra, the Florida Service case supra, and the Florida Bar re Advisory Opinion case supra, there is no basis for the conclusion that Mr. King engaged in UPL. With no UPL on the part of Mr. King, the Respondent cannot be found to have assisted in the UPL by another nor in the sharing of a legal fee with another. The Bar had the burden of proving it's allegations by clear and convincing evidence. McCain, supra, Nue, supra.

The First District Court of Appeals, in overturning the revocation of a teaching license because of lack of evidence in Boyette v. State, Professional Practices Council, 346 So.2d 598 (Fla. 1st DCA 1977) held that:

> "... courts should be no less solicitous of setting aside agency action where an individual's livelihood is jeopardized as a result of insubstantial or incompetent evidence." at 600.

That is what we have in the case before the Court. Insubstantial or incompetent evidence jeopardizing an individual's livelihood. The Bar presented no evidence to show that Mr. King gave legal advice or that his actions differed from those of a paralegal employed by a law firm. The only evidence presented to the Referee was that Mr. King collected data to be used in the preparation of a legal document (Florida Bar re Advisory Opinion, supra); that he told people what the Respondent told him (Florida Service, supra); that he prepared documents which were reviewed by an attorney licensed to practice law in this

state (Larking, supra); that he collected a fee for this document preparation and he paid the Respondent for reviewing the documents. The Referee's findings that the Respondent had engaged in assisting the unauthorized practice of law and that he shared legal fees should thus be overturned and the Respondent should be found not guilty.

II. THE PENALTY RECOMMENDED BY THE REFEREE FAILS TO TAKE INTO ACCOUNT THE MITIGATING CIRCUMSTANCES AND IMPOSES TOO HARSH A SANCTION ON THE RESPONDENT WHICH IS DETRIMENTAL AND UNFAIR TO THE RESPONDENT AND THE PUBLIC.

Even if the Respondent is guilty of the two acts as determined by the Referee, the punishment imposed is unfair and the Referee failed to find any mitigating factors.

This Court, in Florida Bar v. Nue, 597 So.2d 266 (Fla. 1992) held that:

> "Discipline for unethical conduct must serve three purposes: First, the judgment must be fair to society, both in terms of protecting the public AND AT THE SAME TIME NOT DENYING THE PUBLIC THE SERVICES OF A QUALIFIED LAWYER AS A RESULT OF UNDUE HARSHNESS IN IMPOSING A PENALTY. Second, the judgment must be fair to the respondent, being sufficient to punish the breach of ethics AND AT THE SAME TIME ENCOURAGE REFORMATION AND REHABILITATION. Third the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations." at 269. (Emphasis added)"

The punishment recommended by the Referee does not work to serve the public nor is it fair to the Respondent.

The Respondent testified that he has a small practice with no associates and several clients who are indigent or unable to afford an attorney to handle their case if the undersigned was suspended for 90 days as recommended by the Bar. The status of the Respondent as a sole practitioner and the fact that he has taken on and continues to represent many clients (10 at the time of the hearing on Aug. 9, 1995) who cannot afford to pay for the services rendered by the Respondent, let alone hire another attorney, and that the Respondent and Mr. King undertook the program complained of by the Bar for the purposes of enhancing public access to the court system for those who could not afford to hire an attorney, should be mitigating factors.

If two people commit the exact same offense and have the exact same background, then the punishment for that offense should not fall more heavily upon one than the other. If the Respondent had been a member of a firm (as either a partner or associate) the punishment recommended by the Referee would not fall as heavily as it does upon a sole practitioner. If a member of a firm is suspended for 90 days, then the firm is not in danger of going out of business. The other members (partners or associates) are still allowed to carry on business, bring in revenue, and to protect the interests of the clients of the suspended member. The other members may find their work load doubled over night, but the clients are protected. The

suspended member may still draw a salary.

If a sole practitioner is suspended, then all income to the firm stops. (The Respondent would remind the Court of the standard language in a suspension order that prohibits an attorney from taking any new clients for the 30 days immediately proceeding the effective date of the suspension and so the disciplined attorney effectively has no new income for the period of the suspension PLUS 30 days.) The income may stop, but the expenses do not. The sole practitioner has no readily viable method of paying the ongoing office expenses, (rent, telephone, utilities, etc.) let alone his personal living expenses. He faces financial ruin and bankruptcy.

Even more important, however, is the fact that his clients now have to either hire another attorney, wait patiently for the sole practitioner's suspension to pass with a corresponding delay in their cases (assuming he is still in business after the suspension), or proceed pro se in handling their case. NONE OF THESE OPTION ARE FAIR TO THE CLIENT. The CLIENT suffers because he made the mistake of hiring a sole practitioner instead of a firm. The Bar is in the business of PROTECTING the Florida public. By suspending a sole practitioner without taking into consideration his status as a sole practitioner as a mitigating factor, the Bar is punishing innocent people; people that it has sworn to protect. Failure to take a sole practitioner's status into account causes the sole practitioner to suffer far more (a much greater financial hardship) than that imposed on

a member of a firm even though the two attorneys may have committed the same wrongdoing.

There is no indication that the Referee considered the Respondent's sole practitioner status as a mitigating factor in deciding what punishment would be appropriate under the facts of this case even though the Respondent presented testimony about the adverse effect a suspension would have on his clients.

This Court has noted in the past that a respondent's refusal to turn away marginal cases and clients unable to pay is a mitigating circumstance. See Florida Bar v. Smiley, 622 So.2d 465 (Fla. 1993). The Respondent testified to his current representation of ten different clients who would not be able to afford other counsel and who could not afford to pay the Respondent what they currently owed him. Despite this non-payment, the Respondent has not sought to withdraw from those cases. (The Respondent would represent to the Court that one of those cases went to trial in late August and was concluded after a non-jury trial. The other nine are still pending.)

A 90 day suspension under the facts of this case is an abuse of discretion, causes the Respondent to suffer financial hardship out of proportion to the act complained of, causes him to turn away potential clients who may not be able to pay a full fee, and causes great hardship to innocent clients and delays in court cases pending to the detriment of the clients and the courts.

Such a suspension violates two of the three criteria set

forth in Nue supra with corresponding gain to neither the public nor the Respondent. The Bar put forth no evidence to support a finding that effectively putting the Respondent out of business would protect the public, encourage reformation or rehabilitation on the part of the Respondent or benefit the Respondent's clients.

Every issue of the Florida Bar News contains articles and letters concerning the need for the public to have access to the courts. The testimony in this case is unrefuted in that the Respondent, along with Mr. King, attempted to provide to the public a low cost alternative to the hiring of an expensive lawyer. This was designed to improve access to the court and to promote justice and fairness in our court system. The Florida Bar, in seeking the suspension of the Respondent, is seeking to shut down this avenue of access without providing an alternative for the working stiff who cannot afford to pay $100-200.00 per hour for legal services. A punishment that would best protect the public, the Respondent's existing clients, and help foster the Respondent's reformation and rehabilitation would be a punishment that is CONSTRUCTIVE, not DESTRUCTIVE. If there are problems with the program operated by Mr. King, then suggest improvements to bring it in line and then require the Respondent to implement and follow those improvements. Rather than imposing a penalty that would put the Respondent and Mr. King completely out of business, imposing a terrible hardship upon at least nine innocent clients of the Respondent, and

shutting down what is, for many, the only viable access they have to a fair shake before a judge; this Court should impose a discipline that seeks to alleviate a problem (inadequate court access) instead of destroying something. Such a discipline would protect the Respondent's clients (both paying and non-paying), not deny the public the services of a competent attorney, provide a low cost alternative method of access to the courts for those who cannot afford to pay for an attorney and would set forth guidelines which would encourage other attorneys to become involved in similar type programs in other areas of the state to the betterment of the public.

The Respondent would call to the Court's attention the case of Florida Bar v. Perlmutter, 582 So.2d 616 (Fla. 1991). In that case the respondent admitted to:

1. Threatening citizens with multiple lawsuits,
2. verbally attacking them,
3. narrowing their standing in the community,
4. impunging their motivation and community standing without just cause,
5. threatening retaliation if complaints were made to the Florida Bar,
6. making threats without verifying their validity,
7. sending letters advancing allegations that were prejudicial to the honor or reputation of a party,
8. entering into an excessive fee agreement,
9. and entering into a fee agreement for payment of legal fees to a non-lawyer.

The respondent was given a PUBLIC REPRIMAND!

With the respondent in that case having admitted to NINE different infractions and getting only a public reprimand, it is easy to see that suspending the livelihood of the Respondent

and threatening him with bankruptcy and putting him out of business, as well as the damage to be inflicted on the Respondent's innocent clients, is a punishment out of all proportion to the magnitude of the offense that the Respondent is alleged to have committed. Especially in light of the Referee's comments at the sentencing portion of the proceedings below that he felt this matter was a close and hard call to make and the Respondent's uncontradicted testimony concerning the motivation for engaging in the complained of conduct.

The recommended discipline should be discarded and a more appropriate punishment, such as a public reprimand, which would not work such a hardship on the Respondent or the Respondent's clients should be imposed.

CONCLUSION

The Referee's report should be overturned and the charges dismissed because of a lack of evidence to support the conclusion that Mr. King engaged in the unauthorized practice of law or, in the alternative, that the discipline recommended by the referee be rejected and a lesser discipline, such as a public reprimand be imposed.

REQUEST FOR ORAL ARGUMENT

The Respondent, pursuant to the applicable rules of procedure, does hereby respectfully request oral argument on the issues presented herein.

PRAYER FOR RELIEF

The Respondent does hereby respectfully pray this Court to enter an order overturning the Referee's finding that the Respondent has assisted another in the unauthorized practice of law and that he has shared legal fees with a nonlawyer or, in the alternative, rejecting the Referee's recommended discipline as too harsh and imposing a lesser penalty such as a public reprimand.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing has been furnished to the Clerk of the Supreme Court, 500 S. Duval St., Tallahassee, FL 32399-1927 and a copy of the above has been served on Bar Counsel, 880 N. Orange Ave., Suite 200, Orlando, FL 32801-1085 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 by U.S. Mail this 12th day of Oct., 1995.

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