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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)]

RESPONDENT'S REPLY AND ANSWER BRIEF

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SUMMARY OF ARGUMENT

The Florida Bar has failed to cite to any evidence in the record below which would support the Referee's determination that the Respondent assisted another (Mr. King) in the unauthorized practice of law (UPL). As pointed out in the Respondent's Initial Brief, Mr. King gathered information as allowed by The Florida Bar re: Advisory Opinion - Nonlawyers Preparation of Living Trusts, 613 So.2d 426 (Fla. 1992); prepared documents for review and approval by a licensed attorney, Florida Bar v. Larkin, 298 So.2d 371 (Fla. 1974); and passed onto the legal consumer information given by the Respondent, Florida Bar v. Florida Service Bureau, Inc., 581 So.2d 900 (Fla. 1991). The Bar, in it's Brief does not even bother to address the points raised by the Respondent with regards to those cases.

The Referee's conclusion that the Respondent did not have an attorney client relationship with Ms. Rose and that accordingly the Respondent did not violate any duties arising from such a relationship is supported by evidence in the record below and the Bar has failed to demonstrate the lack of any evidence to justify that finding by the Referee.

The Bar has failed to cite to any evidence in the record to justify the harsh penalty sought by the Bar or a sanction harsher than the one imposed by the Referee or which would not support the imposition of a sanction as advocated by the Respondent .

I. THE FLORIDA BAR HAS NOT CITED TO ANY EVIDENCE IN THE RECORD WHICH WOULD SUPPORT THE REFEREE'S CONCLUSION THAT THE RESPONDENT ASSISTED ANOTHER IN THE UNAUTHORIZED PRACTICE OF LAW BY HELPING ANOTHER PERFORM TASKS NOT AUTHORIZED UNDER THE CASE LAW OF FLORIDA.

The Florida Bar, in it's Answer Brief, asserts that the testimony clearly reveals that the paralegal who was working with the Respondent, Mr. King, was not a mere scrivener performing legal services which paralegals may legally do. Bar Brief page 14. It should be noted that the Bar does not cite to any part of the record to point out specific testimony which would support that contention or which would refute the points raised in the Respondent's Initial Brief. The Bar does not even discuss Florida Bar v. Larkin, 298 So.2d 371 (Fla. 1974) and Florida Bar v. Florida Service Bureau, Inc., 581 So.2d 900 (Fla. 1991) and glosses over The Florida Bar re: Advisory Opinion - Nonlawyers Preparation of Living Trusts, 613 So.2d 426 (Fla. 1992). The Bar does not even try to argue that the preparation of documents by a nonlawyer for review by a lawyer before presentation to the client is contrary to Larkin, supra and thus constitutes the unauthorized practice of law. Also noticably lacking is any discussion of the total lack of evidence to support the Referee's conclusion that Mr. King's activities

differ from those of a paralegal employed in a law firm. The Bar points to no evidence which would result in the questions raised in the Respondent's Initial Brief on pages 15 and 16 being answered any differently than what is set forth in the Initial Brief. They do, however, make arguments which were never raised below in a feeble attempt to justify their position.

The Bar, on page 14 of it's Brief, argues that the Respondent "... dispensed legal advice to legal service consumers he never met, based upon Mr. King's knowledge of the consumers' legal problems." One sentence later, they state that "... the respondent told Mr. King to ask Ms. Rose for more information ...". Which is it? Did I base the information on Mr. King's knowledge or did I base it upon information solicited from the consumer? It is clear, from the UNCONTRADICTED testimony, that Mr. King would gather information as allowed under The Florida Bar re: Advisory Opinion - Nonlawyers Preparation of Living Trusts, supra. and, if I felt that additional information was needed, I asked for it before Mr. King told the consumer what kind of paperwork would be needed and before anybody prepared any paperwork for the consumer. The mere gathering of information by Mr. King is not UPL. I told him what paperwork would be needed and the consumer decided what paperwork would be prepared based upon what the consumer would be willing to pay for.

On page 15 of their Brief, the Bar makes reference to a "feeder operation" and to the Respondent's improperly acquiring clients through that operation. This was never argued below

and the Respondent was never required to defend against such a position. It is patently unfair to bring up a new matter not argued below and ask this Court to approve the lower tribunal's decision based on an argument that the Referee did not consider and that the Respondent had no opportunity to rebut.

On page 16 of their Brief, the Bar makes the assumption that the Respondent's use of King and King as a conduit could result in the wrong advice being given based upon faulty communication. They state, with no citation to the record to point out the evidence supporting their statement, that a real danger existed that Mr. King could have misinterpreted or misunderstood what he had been told by the Respondent and thus passed wrong information on to Ms. Rose. Again, this point was never mentioned below and the Respondent was never given an opportunity to rebut. The Respondent would point out that there is no evidence in the record below to even suggest that the perceived harm (wrong advice being given based upon faulty communication) ever occurred or that such harm never occurs in a law firm which employs paralegals. The burden of proof is on the Bar, not the Respondent. Florida Bar v. McCain, 361 So.2d 700 (Fla. 1978) and Florida Bar v. Nue, 597 So.2d 266 (Fla. 1992). The Bar HAS to present evidence on a point before the Respondent is required to address the issue with his proof.

On pages 16 and 17 of their Brief, the Bar argues that the public would be mislead into thinking that they would be

"... getting the safeguards of a lawyer at a discount price." Where is the evidence to support the argument that the public did not get "...the safeguards of a lawyer at a discount price."? They argue that the arrangement between the Respondent and Mr. King is "... even more egregious than a nonlawyer giving legal advice after conducting legal research." (page 17). What kind of fuzzy thinking leads to that conclusion? A nonlawyer's passing on of information from an attorney to a third party is WORSE than a nonlawyer reading a book and then passing on information to a third party?

On page 17 of their Brief, the Bar argues that the poor do not deserve "... substandard representation by an attorney who hides behind a paralegal service." Where is the citation to the record which contains the evidence that the service that Ms. Rose received was substandard? Where is the pleading that put the Respondent on notice that he was going to have to defend himself against allegations that the work done for Ms. Rose was substandard or legally defective? There are none because the Bar never charged that the work done was substandard and the Bar never put forth any testimony that would support such a conclusion. The closest the Bar comes is Ms. Rose's statements that there were problems with the paperwork prepared for her but she did not know what was wrong. The Bar is, once again, arguing facts and matters not presented to the Referee in a blatant attempt to prejudice this Court against the Respondent and thus shift attention away from their utter failure to put

forth any "competent, substantial evidence" to support the charges levied against the Respondent.

The Bar argues that the case at bench is similar to the case in The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So.2d 797 (Fla. 1980). Let's look at that case more closely. In that case, nonlawyer owners of the business exercised control over the lawyers working for the business. Is there any evidence that a nonlawyer exercised any form of control over the Respondent here? No.

In that case, the attorneys were encouraged to use standardized forms because forms meant a higher turn over of clients and resulted in a higher compensation to the attorneys. Is there any evidence that the Respondent here was encouraged to do any work in a certain manner because the usage of forms, etc., would give the Respondent a higher rate of compensation? No.

In that case, the nonlawyer owners set policy which limited the amount of fees to be charged and which limited the amount of time that a client was allowed to spend with the attorney. Is there any evidence that anybody other than the Respondent herein established any policy limiting the amount of fees that the Respondent would charge or the amount of time that the Respondent would spend with any individual on that person's case? No.

In that case, the Referee found that the manner of operating the business caused a conflict between the company's profit motive and the client's legal needs. Is there any evidence that

the manner of operation of the Pro Se Assist program caused a conflict between a profit motive and the person's legal needs? No.

In what manner then does the case before this Court compare with the case in Consolidated Business? There is only one. An alleged harmed inflicted on one customer, Ms. Rose and that harm can only be sustained IF Mr. King gave legal advice other than what the Respondent told him to pass on. The Bar's conclusion that the "... only difference between the respondent's arrangement with King and King and the situation with Consolidated Business and Legal Forms, Inc. is that the respondent was an independent contractor instead of an employee." (Page 19) is totally without support in the record, was not argued below, and is another example of the Bar trying to convict the Respondent at any costs, regardless of the merits or fairness of the methods used.

The case of The Florida Bar v. Schultz, 613 So.2d 11 (Fla. 1993) cited by the Bar in it's Brief is readily distinguishable from the case before the Court. In Schultz the proposed clients were lead to believe that the respondent attorney would be drafting the paperwork for them and would be, in essence, their attorney in that transaction. This was not the case and the respondent in Schultz actually went so far as to sue the proposed clients on behalf of the company which had wanted to sell the clients a living trust. In this case, the proposed customer was told upfront that the Respondent would not be representing

them and the proposed customer would sign a written acknowledgment to that effect. Indeed, Ms. Rose, the complainant below, signed just such an acknowledgment.

The Bar has failed to point to any evidence which would support the Referee's findings that Mr. King had engaged in the unauthorized practice of law and, accordingly, that the Respondent had helped Mr. King in his UPL. There is no competent, substantial evidence to support that conclusion. This Court disapproved the referee's findings and stated in The Florida Bar in re Inglis, 471 So.2d 38 (Fla. 1985):

> "... we must accept the referee's findings of facts UNLESS they are not supported by competent, substantial evidence." at 41. (Emphasis added.)

The Referee's findings of fact that Mr. King engaged in UPL are not supported by competent, substantial evidence and must be disapproved. Any sanctions imposed as a result of those faulty findings of fact should be vacated.

II. THE REFEREE CORRECTLY CONCLUDED THAT THERE WAS NO ATTORNEY CLIENT RELATIONSHIP BETWEEN THE RESPONDENT AND MS. ROSE.

In it's Brief, page 27, the Bar points out that a potential exists for conflict in an instance where an attorney gets paid

for preparation of documents for an individual by a corporation trying to sell those documents to the individual if the attorney becomes more concerned with earning the money than in adequately protecting the client. The Bar cites to Florida Bar re Advisory Opinion, supra. The Bar then points out that the Respondent

> "... was paid by the paralegal service for every case he reviewed, regardless of whether or not the customer actually needed to take a legal action."

This is a fine example of the Bar's total lack of understanding of the poor state of the record below. The Respondent never testified that he got paid if the consumer did not hire Mr. King. Nor did any other witness. Just like any other lawyer who is in business for himself, the Respondent only gets paid if a consumer engages his services. If nobody engaged the services of Mr. King, then there would have been no paperwork prepared and with no paperwork prepared there would be nothing for the Respondent to review. No review, no payment. It would be very easy for the Respondent to accept the erroneous contention of the Bar as he could then argue that his getting paid regardless of whether or not the consumer hired Mr. King would evidence a sound reason for the Respondent to be impartial since his telling the consumer that no paperwork was needed would not cause the Respondent any financial hardship. It would be easy, but it would be wrong both ethically and factually.

The Bar, on page 28 of it's Brief, stated that:

> "Instead, the respondent and King and King kept

generating additional documents at Ms. Rose's expense."

That statement is diametrically opposed to the unrefuted testimony of Mr. King. Mr. King stated, clearly and concisely, that Ms. Rose was only charged for the initial set of paperwork that was prepared on her behalf. This paperwork, after completion, was changed several times at her request and neither Mr. King nor the Respondent ever sought any more money from her as a result. This is so even though the contract that she had signed, and which was introduced in evidence by the Bar, clearly stated that any additional work performed would call for additional fees for the extra services rendered. Mr. King even went so far as to prepare a bill for Ms. Rose which showed that the work that had been done on her behalf would have cost her twice what she had paid initially. The UNREFUTED TESTIMONY clearly shows that work above and beyond that originally contracted for by Ms. Rose was done for her at NO COST to her. The conclusion that the Respondent and Mr. King "...kept generating additional documents at Ms. Rose's expense." is unsupported by the evidence and was not argued at trial below.

The Bar, in it's Brief, page 28, goes on to state:

> "Further, the respondent determined what legal documents were necessary based upon a layperson's untrained assessment as to what information was important

Did the Bar read the trial transcript? Did the Bar even read it's own Brief? On page 14 of the Bar's Brief, the Bar states:

> "... the respondent told Mr. King TO ASK FOR MORE INFORMATION to maybe beef up the petition. This is what she has to establish: the change of circumstances and so forth." (Emphasis supplied.)

The Bar on page 28 of it's Brief is trying to convince this Court that the Respondent made his recommendations based on Mr. King's untrained assessment of the situation and yet on page 14 of that same Brief they cite to the transcript evidence which clearly established that the Respondent instructed Mr. King to gather additional information and what type of information to gather!!

The Bar, on page 24 of it's Brief stated that:

> "Although Mr. King testified that the county court directed Mr. King to have the respondent represent him despite being aware of Mr. King's intention to call the respondent as a witness, the respondent presented no evidence to support this...".

NO EVIDENCE? What does counsel for the Bar call sworn testimony given before a judge under penalty of perjury? Jello? Mr. King was put under oath and questioned before the Referee. He was subject to cross-examination by the Bar's attorney, and the Respondent believes he was even questioned by the Referee, but the Respondent does not have a copy of the trial transcript and thus cannot state such for certain. There was clearly evidence on the point. The weight of the evidence was for the Referee, not the Bar, to determine.

The Bar cites The Florida Bar v. Davis, 419 So.2d 325 (Fla. 1982) for the proposition that an attorney owes a duty, in certain cases, to third parties and that he can be disciplined

for a breach of that duty. That case is readily distinguished from the case at bench.

In Davis, supra, the Respondent sold time shares in a piece of real estate titled to certain corporations of which he was a part owner, officer and director. When foreclosure loomed, they continued to sell time shares. When the foreclosure was complete, the innocent purchasers lost their time shares. This Court felt that the respondent, upon learning of the foreclosure, should have immediately stopped the sell of time shares to the public and because he did not do so, then he had engaged in conduct in violation of the Florida Bar Rules. The respondent knew that he could not deliver the clear title to the purchasers as promised and yet he continued to sell time shares and make the promises which he knew he could not fulfill.

In the case before the Court, no promises of any kind were made to Ms. Rose which could not be carried out. The Referee found, from the clear and uncontradicted testimony of Ms. Rose, that she never intended the formation of an attorney client relationship between her and the Respondent and she never, at any time, viewed the Respondent as her attorney. She signed a written acknowledgment stating that she knew she would be representing herself and that any kind of representation by the Respondent would have to be negotiated between her and the Respondent. The formation of an attorney client relationship in this case is a fiction which only the Bar believes existed and not any of the people outside of the ivory tower of the

Bar.

The Bar, on page 24 of it's Brief, submitted that:

> "... the attorney-client privilege can only exist where some form of attorney-client relationship has been established,...".

This conclusion ignores the clear wording of The Preamble of the Rules of Professional Conduct quoted by the Bar on the page immediately proceeding. The Preamble, as quoted by the Bar, states that:

> "Most of the duties flowing from the client-lawyer relationship ATTACH ONLY AFTER THE CLIENT HAS REQUESTED THE LAWYER TO RENDER LEGAL SERVICES AND THE LAWYER HAS AGREED TO DO SO. But there are some duties, such as that of confidentiality under Rule 4-1.6, which MAY attach when the lawyer agrees to consider whether a client-lawyer relationship SHALL BE ESTABLISHED." (Emphasis supplied.)

The Preamble does not support their position. The Preamble states that the duty of confidentiality MAY attach when a lawyer agrees to consider WHETHER OR NOT A CLIENT-LAWYER RELATIONSHIP SHOULD BE ESTABLISHED. It does not condition the attorney-client confidentiality upon the establishment of an attorney-client relationship. The privilege attaches upon a lawyer's contemplation of representing the client. The failure of the lawyer to agree to represent the person, or the person's decision not to hire the attorney, does not negate the confidentiality privilege. The Bar wants this Court to hold that ANY kind of contact between a lawyer and a consumer establishes an attorney client relationship regardless of the intent or wishes of the

parties involved. This is clearly contrary to the Preamble and is unjustified.

The Bar, in it's Brief, pages 27 and 28, makes much ado about the Respondent's failure to state that he never:

> "... advised the Kings that no documents would be needed for an individual because that person's legal needs did not require the preparation of any documents. There is no indication that the paralegal service, whose nonlawyer employees conducted all initial interviews, told any customer, after consulting with respondent, that no legal documents were needed."

It is true that no such evidence was presented to the Referee BUT it is equally true that there is no evidence that the Respondent did not do just that. Testimony of what the Respondent and Mr. King did or did not do in other instances was NOT MATERIAL to the charges before the Referee and thus the Respondent did not attempt to present any such evidence. The burden of proof was on the BAR, not the Respondent, to come up with "clear and convincing evidence" to establish a violation by the Respondent. McCain, supra. Since when does NO EVIDENCE equal CLEAR AND CONVINCING EVIDENCE? It doesn't. The Bar is trying, once again, to convict the Respondent on "evidence" which is not in the record and on a point that was not argued below so as to give the Respondent a chance to refute it or for the Referee to consider.

The Bar, on page 25 of it's Brief, argues that even if Ms. Rose is not considered a client, then the Respondent still triggered a conflict of interests when his interests became

adverse to Ms. Rose's in the civil suit. The Bar then takes four pages and still it fails to explain what the conflict of interest is that the Respondent triggered. The Respondent points out that the clear language of the Rules which the Bar accused the Respondent of violating all require an attorney client relationship. So assuming that Ms. Rose is not considered a client (which assumption is well supported by the evidence presented to the Referee) then there can be no violation of the Rules which clearly requires an attorney client relationship.

The Bar has not demonstrated that there is a lack of competent, substantial evidence to support the Referee's determination that there was no attorney client relationship between the Respondent and Ms. Rose. The burden was on the Bar to show that the Referee's findings of fact are clearly erroneous or lacking evidentiary support. The Florida Bar v. Bustamante, 20 FLW S474 (Fla. Sept. 21, 1995). The Bar has failed in meeting that burden and, since there is ample evidence in the record below to support the Referee's finding of no attorney client relationship, that determination must be accepted and upheld by this Court. Inglis, supra.

III. THE LEVEL OF DISCIPLINE SOUGHT BY THE BAR IS INAPPROPRIATE IN THIS CASE.

The sanctions sought by the Bar are inappropriate.

In support of it's contention that a harsher sanction should be imposed the Bar cites The Florida Bar v. Chase, 492 So.2d 1321 (Fla. 1986). That case is not similar to the instance case at all. In that case, the respondent allowed a nonlawyer to advertise himself as an attorney by putting out business cards which stated the nonlawyer was an attorney, allowing the nonlawyer to use the respondent's name and address on legal papers filed in ongoing litigation, and allowing the nonlawyer to have access to the respondent's trust account. Such conduct, coupled with other violations, easily warranted suspension. All of that conduct was deliberately designed to mislead third parties. In the instant case, none of the complained of conduct was designed to mislead anybody. At no time did Mr. King ever hold himself out as an attorney. The consumer always knew that he was dealing with an alternative to hiring an attorney. The unrefuted testimony is that the Pro Se Assist program was designed to help those who could not afford an attorney. Chase, supra has no bearing on any of the conduct alleged in this case.

In The Florida Bar v. James, 478 So.2d 27 (Fla. 1985), cited by the Bar, the respondent had entered into a partnership with a nonlawyer for the purposes of collecting money due to clients. The nonlawyer manager would review the cases and decide which ones would merit further attention. The manager had free access to the attorney's files. The way the corporation made money encouraged, and resulted in, lawsuits being filed which

should not have been filed. The method of getting paid by the client required that the corporation get paid more than the amount owed under the contract and thus resulted in conflict between the best interests of the client and the corporation. None of those factors are present in the instant case. James is distinguishable from the instant case. There is no evidence which would support a finding that the nonlawyer reviewed the cases and made the determination as to which ones merited further attention. There is no evidence that the nonlawyer had any access to the Respondent's files. There is no evidence that the way the Respondent and the nonlawyer operated created any conflict with the best interests of the consumer. James, supra, should be disregarded.

The Bar argues that the Respondent should be suspended because the Respondent violated Standard 4.22 which prohibits a lawyer's knowing revelation of information relating to the representation of a client. The Bar, in it's Brief, fails to cite to the record the information that the Respondent is alleged to have revealed. The ONLY information revealed to anybody which was in any way detrimental to Ms. Rose is information which SHE gave to the BAR and which the BAR gave to the Respondent. Ms. Rose never gave any information to the Respondent or to Mr. King which was used in anyway against her.

The Bar, in it's Brief on page 35 et seq., has not bothered to inform this Court just exactly what conflict of interest they are referring to (Standard 4.32) or what duty was owed

as a professional and the harm that resulted from the violation of that duty (Standard 7.2).

In continuing it's practice of making assertions which are not supported by any kind of evidence in the record before the Referee, the Bar, on page 36 of it's Brief, states that Orange County does not suffer from a shortage of legal aid services. There is absolutely no evidence of any kind which would support that conclusion. There is evidence to the contrary. If the legal aid services were as available as stated by Bar counsel in their Brief, why would anyone want or need the services of a paralegal or even the usage of simplified forms as approved by this Court?

The Bar also argues, page 36 of it's Brief, that establishing a two tier system that would treat the sole practitioner differently from an attorney in a lawfirm or partnership "... would result in an uneven and prejudicial applications of the rules." That is a conclusion which is insulting to this Court. It assumes that this Court is not capable of evaluating each case before it and applying the appropriate sanction. Different courts attempting to apply such a standard might result in the harm complained of but only one court, this Court, makes the final determination of what is an appropriate discipline.

In addition, it fails to address the harm that is being done to the innocent clients by not taking sole practitioner status into account in deciding the appropriate level of

discipline. Where are the protections for the CLIENTS?

On page 38 of it's Brief the Bar, once again, argues matters which are not supported by any kind of evidence in the record below. There is NO evidence that incompetent representation was provided to Ms. Rose. There was no discussion, let alone evidence, below that the Respondent received any "improper referrals". The Bar does not even bother to define what it means by improper referrals and has certainly not given the Respondent any opportunity to rebut, or even admit, that any referrals which may have come from people seeking Mr. King's help were in any way improper. There is no evidence a "miscommunication and misunderstanding" was caused by the passing along of information which the nonlawyer would not know or would not be authorized to relate. Again the Bar does not bother to inform this Court or the Respondent what kind of information they are talking about so as to allow a meaningful discussion of that matter in response to their Brief. There is no citation to any part of the record below to provide the evidence needed to support their conclusion. Did Ms. Rose understand the questions asked her? Would the "miscommunication and misunderstanding" alluded to not occur if an attorney talked directly to Ms. Rose? Is it impossible to say that she would have not understood what was happening even if an attorney sat her down and explained things to her? Was the miscommunication on Ms. Rose's part? Mr. King's part? The Respondent's part? Where is the EVIDENCE, the TESTIMONY, in the record before the Referee to supply the

answers to these questions? If the Bar is going to argue that something happened and that it happened as a result of some specific conduct, then it has the burden to establish by clear and convincing evidence that it happened the way they say it happened and why they say it happened. If they cannot, or do not, produce the evidence needed to support their contentions, the Respondent is under no obligations to do it for them.

The Bar also states that the Respondent allowed, in the case of The Florida Bar v. Beach, investor's funds to be used for purposes other than those for which they had been entrusted to the respondent. That is not true. If the Respondent had misused trust funds, then this Court would not have entered an order suspending him for only 30 days and would most assuredly have required restitution. The misuse of trust funds by an attorney has always drawn a severe penalty from this Court. The Respondent was suspended because of a perceived conflict resulting from the Respondent's not informing the investors that he would also be representing the original investor who had developed the concept in question. The trust funds where never determined to have been improperly used and the Florida Bar refused to pay the complainant in that case since the Court had not ordered any form of restitution. Again, and this is getting boring, the Bar is making misrepresentations and arguments which are totally lacking in evidentiary support.

The Bar submits that the case of The Florida Bar v. Perlmutter, 582 So.2d 616 (Fla. 1991), cited by the Respondent

in his Initial Brief, should not be considered by this Court because the facts are not similar to the misconduct alleged here and the respondent therein entered a conditional guilty plea. I find it interesting that the Bar can cite cases to support it's position which are not similar to the facts herein (Consolidated Business and Legal Forms, Inc., supra, Schultz, supra, Davis, supra, Chase, supra, James, supra) but the Respondent is not. The fact that a guilty plea was entered and a light sentence imposed just means that someone who was caught engaged in outrageous, HARMFUL activity which was engaged in to make a quick buck and who crawled before the Bar and licked it's shoes is entitled to special consideration but someone who honestly tried to help the public and who honestly believes that he has not violated the rules should be tied to a stake and barbequed.

The Bar discusses the Respondent's failure to "appreciate the nature of his offenses." Bar Brief, page 36. Apparently the Respondent's insistence of his innocence is a crime in the eyes of the Bar which makes a harsh penalty appropriate. The Respondent's insistence of his innocence is understandable in light of the Referee's finding that no attorney-client relationship between Ms. Rose and the Respondent existed. The Bar failed to prove that the Respondent had violated certain rules and they find that his insistence of his innocence of violations which they failed to prove is proof of his inability to undergo "reform and rehabilitation". The Bar cites the

Respondent's testimony that the Respondent does not believe an attorney-client relationship exists unless specifically retained by the client. That is exactly what the Preamble of the Rules of Professional Conduct says. There is no client lawyer relationship, in most instances, unless the client asks the lawyer to represent him and the lawyer agrees. Talking to a consumer and answering questions MAY bring the attorney client relationship into being for SOME duties, such as confidentiality, but according to the Preamble, that is not an absolute certainty in all cases. If it was, why use the word MAY instead of SHALL? Why then should the Respondent be more harshly punished because he believes, as did the Referee, that the Respondent did not violate the rules as relating to any alleged lawyer client relationship between the Respondent and Ms. Rose?

The Bar states, on page 40 of it's Brief, that the simplified forms approved by this Court are readily available for use by the public and that there is no need for pro se litigants to hire a paralegal service to do typing at such a high cost. Again the Bar fails to understand the record below and argues matters not supported by the evidence. Where was it ever stated that the Respondent only assisted those with uncomplicated matters? The simplified forms cannot handle, and are not designed to handle, complex matters such as contested modifications, motions for contempt, etc. The simplified forms are there to handle uncontested matters which do not require any modifications to tailor the pleadings to the specific problem

at hand. As for the fee charged by Mr. King, besides being irrelevant, there are no court orders prohibiting or limiting the amount he is allowed to charge for his services. There is no one putting a gun to the head of anybody and forcing the consumer to pay what was charged. The door was always open and the free market allows the consumer to go elsewhere for a better price.

Lastly the Bar states, on page 40 of it's Brief, that:

> "... Ms. Rose received legal documents prepared by an unlicensed, unqualified person, at the direction of an attorney who never communicated with her to determine what her true needs were and what documents were necessary to satisfy those needs. Ms. Rose paid a discounted price for second-rate legal advice."

Arguments which are not supported by any evidence adduced below appear to be the standard method of operation by the Bar.

They state that the Respondent never communicated with Ms. Rose to determine her legal needs. Did they not read their own brief wherein they quote the Respondent as saying that he instructed Mr. King to go back and ask specific questions of Ms. Rose? Is the Bar saying to this Court that paralegals in big firms NEVER talk to clients to get information for the attorneys? If so, where is the evidence below to support that statement? Is the Bar saying to this Court that attorneys in big firms ALWAYS talk to clients to get information for the attorneys? If so, where is the evidence below to support that statement?

The Bar argues that Ms. Rose was provided second rate legal

advice. Assuming that the quality of the Respondent's legal representation has anything at all to do with an ETHICS violation as opposed to a malpractice suit, where is the evidence that the advice given to Ms. Rose was incorrect? Ms. Rose could not specify what was allegedly wrong with the paperwork. Was it a scrivener's error which was readily correctable? Was it a mistake based upon wrong information given by her? Was it an incorrect statement of the law given by the Respondent? In what manner was the paperwork given to Ms. Rose defective? The Bar has failed utterly to introduce any kind of testimony which would support their conclusion. The burden is on the Bar, NOT the Respondent, to establish the evidentiary record needed to support the charges against the Respondent. The burden is on the Bar to introduce the evidence needed to sustain their arguments. Their personal beliefs as to the guilt or innocence of the Respondent does not justify or excuse their failure or inability to carry this burden.

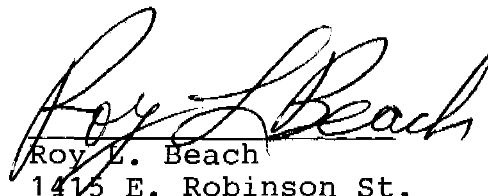
The Bar has failed to cite to any evidence in the record below to support their contention that a 91 day suspension is more appropriate in this case. Their request should be denied and the sanctions, if any, against the Respondent should be determined as argued in the Respondent's Initial Brief.

CONCLUSION

The Bar has completely failed to carry it's burden of proving by clear and convincing evidence that the Respondent assisted Mr. King in the unauthorized practice of law. The Bar has completely failed to cite to evidence in the record to justify overturning the Referee's decision that no attorney-client relationship existed between Ms. Rose and the Respondent. The Bar has failed to cite to any evidence in the record below which would justify a harsher penalty than that imposed or which would justify a disregard of the points raised by the Respondent in his Initial Brief with regards to the standards to be applied in determining what sanctions, if any, should be imposed in this case. The relief sought by the Bar should be denied and the relief sought by the Respondent should be granted.

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 17th day of Nov., 1995.



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