

047

FILED

301/3012E

JUN 17 1996

7/1

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_  
Clerk Deputy Clerk

THE FLORIDA BAR,

Petitioner,

v.

RONALD YORK, SR. INDIVIDUALLY  
AND D/B/A ADVANCED PARALEGAL  
SERVICE

Case No. 85,606  
(TFB Nos. 930106(13),  
930162(13), 940071(13),  
940259(13), 940327(13),  
950037(13) & 950074(13))

Respondent

\_\_\_\_\_ /

ANSWER BRIEF

OF

THE FLORIDA BAR

Loretta C. O'Keefe  
Branch UPL Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821  
Florida Bar No. 901539

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
SYMBOLS AND REFERENCES .....	iii
STATEMENT OF THE CASE AND OF THE FACTS ....	1
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	4
I. <u>THE REFEREE'S FINDINGS AND RECOMMENDATION</u> <u>ARE CORRECT AND SHOULD BE APPROVED.</u>	4
A. <u>Respondent has Failed to Show that</u> <u>the Referee's Findings are Clearly</u> <u>Erroneous or Wholly Without</u> <u>Evidentiary Support.</u>	4
B. <u>The Recommendation that Respondent</u> <u>be Enjoined from Engaging in the</u> <u>Unlicensed Practice of Law through</u> <u>his Accident Victim Assistance</u> <u>Program is the Proper Sanction.</u>	7
II. <u>RESPONDENT'S ACTIVITIES CREATE PUBLIC HARM</u> <u>AND RESPONDENT SHOULD BE ENJOINED FROM</u> <u>ENGAGING IN THE UNLICENSED PRACTICE OF</u> <u>LAW</u>	9
CONCLUSION .....	11
CERTIFICATE OF SERVICE .....	12

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Pages</u>
<u>The Florida Bar v. Brumbaugh,</u> 355 So. 2d 1186 (Fla. 1978).....	9
<u>The Florida Bar v. Lipman,</u> 497 So. 2d 1165, 1168 (Fla. 1986).....	4
<u>The Florida Bar v. MacMillan,</u> 600 So. 2d 457, 459 (Fla. 1992).....	7
<u>The Florida Bar v. Moses,</u> 380 So. 2d 412, 417 (Fla. 1980).....	9
<u>The Florida Bar v. Nen,</u> 597 So. 2d 266 (Fla. 1992).....	4
<u>The Florida Bar v. Schramek,</u> 616 So. 2d 979, 983 (Fla. 1993).....	8
<u>The Florida Bar v. Sperry,</u> 140 So. 2d 587 (Fla. 1980), <u>judg. vacated</u> <u>on other grounds</u> , 373 U.S 379 (1963).....	9
<u>The Florida Bar v. Wagner,</u> 212 So. 2d 770, 772 (Fla. 1968).....	4

### SYMBOLS AND REFERENCES

In this Brief, The Florida Bar will be referred to as "The Florida Bar," or "the Bar." The Respondent, Ronald York, Sr., d/b/a Advanced Paralegal Service, will be referred to as "Respondent."

"S-1" will refer to the Agreed Pre Trial Statement dated September 26, 1995. "S-2" will refer to the Additional Stipulation dated October 6, 1995 and "S-3" will refer to the Third Joint Stipulation dated October 6, 1995.

"TR-1" will refer to the Transcript of testimony before the Referee at the final hearing conducted on November 3, 1995 in this matter. "TR-2" will refer to the Transcript of testimony before the Referee at the conclusion of the final hearing conducted on January 24, 1996.

"RR" will refer to the Report of Referee dated March 15, 1996.

## STATEMENT OF THE CASE AND THE FACTS

Respondent, Ronald York, has petitioned this Court to review the referee's findings and recommended sanction. The Petitioner, The Florida Bar, herein answers Respondent's Initial Brief. This case involves whether Respondent's activities in conducting his Accident Victim Assistance Program constitute the unlicensed practice of law.

The referee found by clear and convincing evidence that Respondent engaged in the unlicensed practice of law by reviewing customers potential property damage claims, listening to customers verbal recitations of the facts of the accident, reviewing reports and statutes, writing demand letters and memorandums and sending them to insurance companies and at-fault parties, serving as a representative for customers to accept responses from demands, and offering to accept payments for customers from insurance companies and at fault parties. RR at 15-16.

Referee also found by clear and convincing evidence that Respondent has engaged in the unlicensed practice of law when he threatens other parties with the filing of a lawsuit with or on behalf of his customers. RR at 15-16.

Based on these findings, the referee recommended that Respondent be enjoined from engaging in the unlicensed practice of law through his program known as the Accident Victim Assistance Program or any other similar program by any other name. RR at 16.

### SUMMARY OF ARGUMENT

The evidence presented in the stipulations and at the final hearing was competent and substantial, the evidence supports the referee's findings and therefore, the findings are not clearly erroneous.

The referee's recommendation that Respondent be enjoined from engaging in the unlicensed practice of law through his Accident Victim Assistance Program is the appropriate sanction because Respondent provides legal services to accident victims through his Accident Victim Assistance Program. Furthermore, Respondent has caused harm to the public by holding himself out as being capable to represent accident victims and handle property damage claims. Therefore, this Court should enter the injunction against Respondent as recommended in the Report of Referee.

## ARGUMENT

I. THE REFEREE'S FINDINGS AND RECOMMENDATION ARE CORRECT AND SHOULD BE APPROVED.

A. Respondent has Failed to Show Referee's Findings are Clearly Erroneous or Wholly Lacking in Evidentiary Support.

Although the final judgment of this matter resides with this Court, the referee is given the initial fact finding responsibility. The Florida Bar v. Wagner, 212 So. 2d 770, 772 (Fla. 1968). It is the duty of the referee to weigh the credibility of the witnesses that come before him and to resolve any conflicts in the evidence. The Florida Bar v. Lipman, 497 So. 2d 1165, 1168 (Fla. 1986). Therefore, the referee's findings will be accorded substantial weight and they will not be overturned unless clearly erroneous or lacking in evidentiary support. Wagner at 772.

As the party seeking to overturn the referee's findings and recommendation in this matter, Respondent has the burden of showing the referee's report is clearly erroneous or lacking in evidentiary support. See, The Florida Bar v. Nen, 597 So. 2d 266 (Fla. 1992). However, Respondent's objections to the Report of Referee are merely conclusory, immaterial and they fail to



demonstrate that the findings of the referee are without support in the record much less clearly erroneous.

In his first objection, Respondent denies that he is the "President" of Advanced Paralegal Service. This is an immaterial objection as Respondent admits that he is the owner, operator and sole proprietor of that same company. TR-1 at 19 and S-1 at 4.

Respondent then objects to the list of services offered by Advanced Paralegal Service arguing that he does not offer living trust forms anymore. However, Respondent stipulated to the introduction of Exhibit A, Advanced Paralegal Service Business Information letter, which states that the services provided by his business include "living trusts and wills." S-1 at 7.

Respondent also objects to the referee's finding that Respondent attempted to solicit Raffaele DiDonato on September 30, 1992 for his Accident Victim Assistant Program and that Respondent continued the solicitation the next day in a telephone conversation with Bill Wagner, Esq. The facts that support these findings were introduced into evidence pursuant to the agreed pre-trial statement as Exhibit G and Exhibit H. S-1 at 7.

Respondent also agreed in the pre-trial statement that he had a telephone conversation with a person whom he believed was Raffaele DiDonato's father and that Respondent offered to assist

Mr. DiDonato with his property damage claim. S-1 at 4. As Respondent offered no evidence at trial to rebut or contradict these stipulations, there is no error in the referee's findings.

Respondent "vigorously" objects to referee's conclusion that Mr. Daniel Rhodes was not present when the letter introduced in evidence as Exhibit C was drafted and mailed by Respondent to Mr. Russ Christy. Although Respondent argues that there is no evidentiary basis in the hearing transcripts to support this finding of fact, Respondent testified on November 3, 1995 that he signed this letter for Mr. Rhodes as Mr. Rhodes was in the military and he was not available. T-1 at 37. Respondent further testified that he called Mr. Rhodes for his approval of the letter by phone before he mailed it out. T-1 at 37. Based on Respondent's testimony, there is sufficient factual support for Referee's findings as to Exhibit C.

Objecting to the referee's finding that Respondent is not a licensed public adjuster under Florida Statutes Section 626.854, Respondent states that this issue was never part of the petition or complaint filed by The Florida Bar. The fact that Respondent was not a licensed public adjuster was included as a fact jointly admitted in the agreed pre-trial statement. S-1 at 6. The issue of whether Respondent was acting as a public adjuster was also

raised numerous times by Respondent as a defense to the allegations that he was engaging in the unlicensed practice of law. T-1 at 97-99, 116-123, 125-126.

The additional objections from Respondent simply reiterate the argument that the referee's findings and conclusions are erroneous and unsupported by the record. However, it is well documented in the Report of Referee that each finding and conclusion was based on the referee's review of the facts and exhibits that were entered into evidence by stipulation and the testimony that was presented at trial. Since the referee's findings are based on substantial, competent evidence, this Court must not reweigh the evidence and substitute its judgment for that of the referee. See, The Florida Bar v. MacMillan, 600 So. 2d 457, 459 (Fla. 1992). As a matter of law, the referee's findings must be accepted because Respondent has failed to meet his burden of persuasion.

- B. The Recommendation that Respondent be Enjoined from Engaging in the Unlicensed Practice of Law through his Accident Victim Assistance Program is the Proper Sanction.

The Supreme Court of Florida has the inherent power under the Florida Constitution to prevent the practice of law by those not admitted to practice law and it may enforce its authority

through either injunction or contempt proceedings because the unlicensed practice of law constitutes a contempt of Court. The Florida Bar v. Schramek, 616 So. 2d 979, 983 (Fla. 1993).

The referee found that as a matter of law Respondent had engaged in activities that constitute the unlicensed practice of law. RR at 16. Specifically, the referee held that sending demand letters and memorandums to at-fault parties or their insurance companies to effectuate the settlement of property damage claims and threatening to file lawsuits with or on behalf of his customers was the practice of law. RR at 16. Because Respondent performed these unlicensed practice of law activities as part of his Accident Victim Assistance Program, the referee recommended that Respondent be enjoined from engaging in any further unlicensed practice of law through his Accident Victim Assistance Program or any other similar program. RR at 16.

An injunction in this matter is the proper sanction for conduct that constitutes a contempt of this Court and enjoining Respondent's activities through his Accident Victim Assistance Program is appropriate because through this program Respondent provides legal services to accident victims. In The Florida Bar v. Schramek, 616 So. 2d 979 (Fla. 1993), this Court permanently enjoined Daniel E. Schramek from engaging in the unlicensed

practice of law individually and through his businesses known as Schramek & Associates and The L.A.W. Clinic, Inc. The limits of the injunction are sufficiently defined because as in The Florida Bar v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978), the recommended injunction in this case prevents activities that constitute the unlicensed practice of law but it also allows Respondent to continue to sell legal forms and provide typing services. Therefore, this Court should enter the injunction against Respondent as recommended in the Report of Referee.

II. RESPONDENT'S ACTIVITIES CREATE PUBLIC HARM AND  
RESPONDENT SHOULD BE ENJOINED FROM ENGAGING IN THE  
UNLICENSED PRACTICE OF LAW.

This Court's primary responsibility in defining and regulating the practice of law is to protect the public from "incompetent, unethical, or irresponsible representation." The Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980).

In The Florida Bar v. Sperry, 140 So. 2d 587 (Fla. 1962), judg. vacated on other grounds, 373 U.S. 379 (1963), this Court stated that prohibiting the unlicensed practice of law is done "to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the public interest,

lawyers are bound to observe."

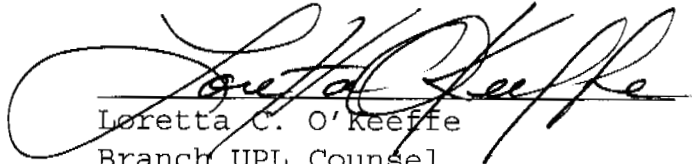
In this case, Respondent argues that his activities do not rise to the level of the unlicensed practice of law because there was no evidence introduced at trial to show that Respondent's activities caused public harm. However, this argument must fail because although there was no evidence of direct public harm, Respondent can not be allowed to practice law until he causes harm to one of his customers. Simply by the fact that Respondent is representing accident victims without having been examined and qualified to practice law creates the potential for serious public harm. Additionally, Respondent's argument is without merit because the public suffers when those not qualified to practice law hold themselves out as qualified and worthy of the trust and confidence of those who have legal problems, the solution of which requires trained advice and counsel. See, Sperry at 595.

As Respondent has held himself out as qualified to represent accident victims and handle property damage claims, Respondent has created harm to the public. Thus, this Court's concerns for protecting the public will be served by enjoining Respondent from engaging in the unlicensed practice of law.

CONCLUSION

For all the foregoing reasons the referee's findings of fact and conclusions of law should be approved by the Court and the referee's recommendation that Respondent be enjoined from any further unlicensed practice of law through his Accident Victim Assistance Program should be approved.


Respectfully Submitted,



Loretta C. O'Keefe  
Branch UPL Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821  
Florida Bar No. 901539

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief has been furnished by overnight mail via Airborne Express to Sid J. White, Clerk, The Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; and copies were furnished by regular U.S. Mail to Ronald York, Sr., Respondent, 802 E. Waters Avenue, Tampa, Florida, 33604-3130 and to Mary Ellen Bateman, UPL Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399 this 14<sup>th</sup> day of June, 1996.

  
Loretta C. O'Keefe