

Supreme Court of Florida

COPY

THE FLORIDA BAR,
Complainant,

vs.

MARY ANN SMANIA
and CAROLYN FANKHANEL,
Respondents.

Nos, 85,818 & 85,819

[September 4, 1997]

PER CURIAM.

We have for review the complaint of The Florida Bar and the referee's report regarding the unlicensed practice of law by Mary Ann Smania and Carolyn Fankhanel. We have jurisdiction. **Art. V, § 15, Fla. Const.**

The Florida Bar filed separate petitions against Mary Ann Smania and Carolyn Fankhanel, alleging the unlicensed practice of law. The cases were consolidated and Judge Robert M. Evans was appointed as referee.

The referee's report contains the following findings of fact. Fankhanel, publisher of a news journal entitled "The Grass Roots Journal," signed and filed a notice of appearance in a dissolution action to which she was not a party, stating that she had agreed to act as a representative for Norma Vaughan, one of the parties to the dissolution action. A memorandum of law filed in the dissolution action was signed by Fankhanel and Smania. An "Affidavit for Appointment of Counsel" was contemporaneously filed with the memorandum of law. The affidavit, prepared and signed by Vaughan but edited by Smania

and Fankhanel, appointed Smania and Fankhanel and indicated that they would be paid for their services.

The initial brief filed and served in Vaughan's subsequent appeal was signed by Smania and Fankhanel. Smania's signature also appeared on an objection to a notice of appearance filed by Vaughan. The objection also stated, "The fees of Legal Reform Practitioners Smania and Fankhanel have just gone up." Fankhanel and Smania identify themselves as "Legal Reform Practitioners" and admit they are not licensed to practice law in Florida or any other state.

On a motion for partial summary judgment filed by the Bar, the referee concluded that the preparation and filing of legal documents by Smania and Fankhanel for Norma Vaughan constituted the unlicensed practice of law. Consequently, all pleadings signed and filed by them were subject to being struck as defective. The referee further determined that Smania and Fankhanel's actions could result in harm to future litigants who might rely on Smania and Fankhanel's advice, representation, and assurances.

The referee recommended that Smania and Fankhanel each be restrained and enjoined from: appearing in court on behalf of others other than as a witness; drafting, signing, or filing pleadings or memoranda of law for others; giving legal advice for compensation; and engaging in the practice of law in Florida in any other matter until the respective respondent is duly licensed to practice in Florida. Finally, the referee recommended that costs not be taxed against Smania and Fankhanel.

The respondents do not challenge the referee's findings of fact or recommendations **as** to guilt in the traditional manner. However, **Smania** filed a "Motion to Strike Report of Referee and Standing Order for Court to **Recognize Smania as a Separate Legal Entity,**" in which she claims, among other matters, that the referee had no jurisdiction over her. There is no merit to **this** argument. Rule 3-3.1 of the Rules Regulating the Florida **Bar** expressly states that referees are "agencies for the Supreme **Court** of Florida" for the purpose of administering **this Court's** exclusive jurisdiction over the discipline of persons admitted to the practice of law' and have "such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or cause." We therefore deny the motion **as** to this and all other matters raised in the motion. We also **find** no merit to Fankhanel's "Objection to the Untimely and Outrageously Inaccurate 'Referee' **Report,** Memorandum Brief, and Request for Oral Arguments."

As to the recommendation of discipline, the Bar filed an objection, taking issue with that portion of the referee's report recommending that Smania and Fankhanel be enjoined from giving **legal** advice for compensation. We agree. **As** the Bar correctly points out, compensation **is** not a necessary element of proving that an individual has engaged in the unlicensed practice of law, See Florida Bar v. Keehley, 190 So. 2d 173 (Fla. 1966) (approving finding by referee that **lack** of compensation did not legalize respondent's actions); Florida Bar v. Greene, 589 So. 2d 281 (Fla. 1991) (approving

¹ Art. V, § 15, Fla. Const. This authority carries with it the power to prevent the unlicensed practice of law. State ex rel. Fla. Bar v. Sperry, 140 So. 2d 587 (Fla. 1962), vacated on other grounds, 373 U.S. 379 (1963).

referee's **finding** that **attorney** under suspension had engaged in the practice of law **notwithstanding** that attorney had not charged for services). Thus, we approve the referee's report with the caveat that Smania and Fankhanel **may** not **give** legal advice, regardless of whether they charge compensation.

We hereby permanently enjoin Smania **and** Fankhanel each from appearing in court on behalf of others other than **as** a witness; drafting, **signing**, or filing pleadings or memoranda of law for others; giving legal advice; and engaging in the practice of law in **Florida** in any other matter until the respective respondent **is** duly licensed to practice in **Florida**.²

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, GEUMES, HARDING, WELLS and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

² The referee also recommended that the restraining order be **issued so as** not to conflict with the publishing of news journals, periodicals, or **other** forms of free speech. By issuance of this injunction, we do not intend to interfere with the **free** speech rights of either Smania or Fankhanel. However, as nonlawyers, **the** activities **from** which they are hereby enjoined do not constitute protected speech. See Florida Bar Re Advisory Opinion-Nonlawyer Preparation of Living Trusts, 613 So. 2d 426, 428 (Fla. 1992); The Florida Bar Re Advisory Opinion--Nonlawyer Preparation of Pension plans, 571 So. 2d 430, 433 (Fla. 1990); Florida Bar v. Furman, 376 So. 2d 378, 379 (Fla. 1979).

Two Original Proceedings - The Florida Bar

**John F. Harkness, Jr., Executive Director;
John T. Berry, Staff Counsel; ~~Mary~~ Ellen
Bateman, UPL Counsel and Lori S. Holcomb,
Assistant UPL Counsel, Tallahassee, Florida;
and Barry W. Rigby, Branch UPL Counsel,
Orlando, Florida,**

for Complainant

**Mary Ann Smanie, pro se, Oakland Park,
Florida; Carolyn Fankhanel, pro se, St.
Petersburg, Florida; and Linsey Moore,
Melbourne, Florida,**

for Respondents