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SID J. WHITE

FEB 12 1961

IN THE SUPREME COURT OF FLORIDA

IN RE: THE FLORIDA BAR'S PETITION
TO AMEND RULES REGULATING THE
FLORIDA BAR

CASE NO. 87,132

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR'S RESPONSE TO COMMENTS OF RONALD C. EUBANKS,
STACEY BURNWORTH, DAWN MILLWOOD, LINDA COOK & LINDA SMITH

COMES NOW, The Florida Bar, and responds to the comments of Ronald C. Eubanks, Stacey Burnworth, Dawn Millwood, Linda Cook, and Linda Smith as follows:

The comments filed by the individuals in this matter all share a common argument -- the adoption of the proposed amendment to Rule 10-7 allowing for restitution in unlicensed practice of law prosecutions is discriminatory because no such rule exists requiring attorneys to pay restitution in disciplinary matters. This is simply not the case. Rule 3-5.1(i) of the Rules Regulating The Florida Bar specifically provides that an attorney may be ordered or agree to pay restitution to a complainant or other person in a disciplinary matter. In fact, the language of the proposed amendment was based on the language of Rule 3-5.1(i) with changes made to delete any reference to attorneys or disciplinary matters. The argument that adoption of the proposed amendment would be discriminatory is devoid of merit.

Mr. Eubanks argues next that there are adequate civil and criminal remedies available to victims of unlicensed practice of law. While a victim of unlicensed practice of law can bring a civil action to recover any fees paid to the nonlawyer, such a remedy would require the victim to expend additional funds which may not be available. In many cases, the victim has paid large fees to the nonlawyer and does not have the ability to pay additional fees and court costs to recover monies converted by the nonlawyer. Although criminal penalties exist for engaging in the unlicensed practice of law, the State Attorney has discretion whether to file charges. Fla. Stat. §454.23. Requiring a victim to rely on the State Attorney's Office does not provide adequate public protection.

Mr. Eubanks contends that adoption of the amendment would be violative of the Separation

of Powers Doctrine, would usurp the authority of the Executive Branch and would deny due process of law to nonlawyers. Although Mr. Eubanks does not state how adoption of the proposed amendment would violate these doctrines, his conclusory statements are without merit.

This Court has the exclusive authority to regulate the practice of law in Florida and to prohibit the unlicensed practice of law. The Florida Bar v. Sperry, 140 So. 2d 587 (Fla. 1962), judg. vacated on other grounds, 373 U.S. 379 (1963); The Florida Bar v. Schramek, 616 So. 2d 426 (Fla. 1993). In furtherance of this authority, this Court adopted Chapter 10 of the Rules Regulating The Florida Bar giving The Florida Bar the authority to investigate and prosecute the unlicensed practice of law. Rule 10-1, R. Reg. Fla. Bar. Rule 10-7 sets forth the procedure for prosecuting individuals who engage in the unlicensed practice of law. The proposed amendment is part of this rule and would only apply in cases where an individual is being prosecuted for engaging in the unlicensed practice of law. A prosecution can take place only after a petition has been filed and an Order to Show Cause issued. Rule 10-7.1(b), R. Reg. Fla. Bar. Should the proposed amendment be adopted, the petition will contain a request that restitution be awarded. The respondent is therefore put on notice of the allegations and relief requested and given an opportunity to respond. Moreover, if restitution is recommended by the referee, the respondent has an opportunity to object to the award of restitution by filing objections to the referee's report with this Court. Rule 10-7.1(d), R. Reg. Fla. Bar. Adoption of the proposed amendment would not violate due process as the nonlawyer would be put on notice and have an opportunity to be heard. Sheffey v. Futch, 250 So. 2d 970 (Fla. 4th DCA 1971) (Due process in non-criminal situations contemplates reasonable notice and an opportunity to appear and be heard.)

The Florida Bar is requesting the adoption of the proposed amendment to Rule 10-7 in response to this Court's order in The Florida Bar v. Warren, 655 So. 2d 304 (Fla. 1995), and in an effort to protect the public and make victims of unlicensed practitioners whole. Restitution has been defined as the "[a]ct of restoring . . . anything to its rightful owner; the act of making good or giving equivalent for any loss, damage, or injury; and indemnification." Black's Law Dictionary, 1180 (5th ed. 1979). Restitution is granted in an effort to reduce loss to members of the public who have been

injured by another's wrongful conduct. It makes the person whole by returning that which was wrongfully taken.

Reducing loss to members of the public is also the rationale for prohibiting the unlicensed practice of law.

The reason for prohibiting the practice of law by those who have not been examined and found qualified to practice 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.

It cannot be denied that the public suffers, as does both the public image of the legal profession and our judicial system, when those not qualified to do so are permitted to hold themselves out as qualified to practice law and as worthy of the trust and confidence of those who have legal problems the solution of which require trained advice and counsel.

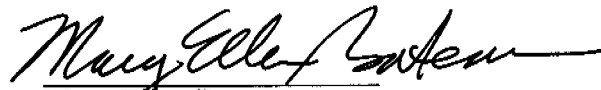
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It is the effort to reduce this loss by the members of the public that primarily justifies . . . the prohibition of the practice to those who have not proved their qualifications and been admitted.

The Florida Bar v. Sperry, supra at 595. Granting restitution therefore falls within the rationale for prohibiting the unlicensed practice of law, i.e. protection of the public. An award of restitution to compensate victims for their loss protects the public and protects the image of the legal profession and the judicial system. Adoption of the proposed amendment would further this goal.

WHEREFORE, The Florida Bar respectfully requests that this Court adopt the proposed amendment to Rule 10-7 of the Rules Regulating The Florida Bar.

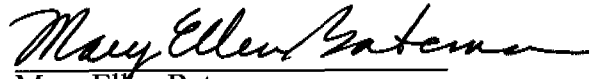
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Ronald C. Eubanks, 3 Maples Street, Northwest, Fort Walton Beach, Florida 32548 and to Stacey Burnworth, Dawn Millwood, Linda Cook and Linda Smith, 211 McLeod Street, Merritt Island, Florida 32953 this 12th day of February, 1996.


Mary Ellen Bateman