

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Petitioner,

Case No. 93,101  
[TFB Case Nos. 973111(18A)  
973200(18A)  
983119(18A)]

v.  
CANDICE L. MIRAVALLE,  
individually, and  
EXPRESS LEGAL SERVICES, INC.,  
a Florida Corporation,  
Respondents.

---

**THE FLORIDA BAR'S ANSWER BRIEF**

JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 561-5600  
ATTORNEY NO. 123390

MARY ELLEN BATEMAN  
Director of the UPL Department  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 561-5600  
ATTORNEY NO. 324698

AND

BARRY W. RIGBY  
Branch UPL Counsel  
The Florida Bar  
1200 Edgewater Drive  
Orlando, FL 32804  
(407) 425-0473  
ATTORNEY NO. 613770

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
TABLE OF OTHER AUTHORITIES .....	iii
SYMBOLS AND REFERENCES .....	iv
STATEMENT OF THE CASE .....	1
STATEMENT OF THE FACTS .....	3
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	6
<b><u>ISSUE I</u></b>	
<b>THE REFEREE’S FINDINGS OF FACT ARE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND SUMMARY JUDGMENT WAS PROPER.</b>	
<b><u>ISSUE II</u></b> .....	11
<b>THE REFEREE’S CONCLUSIONS OF LAW ARE SUPPORTED BY THE UPL DECISIONS OF THE SUPREME COURT OF FLORIDA.</b>	
<b><u>ISSUE III</u></b> .....	16
<b>AN INJUNCTION SHOULD ISSUE AGAINST RESPONDENTS.</b>	
CONCLUSION .....	17
CERTIFICATE OF SERVICE .....	19
APPENDIX .....	20
APPENDIX INDEX .....	21
COMPLIANCE WITH RULE 9.210(a)(2) .....	22

**TABLE OF AUTHORITIES**

	<b><u>PAGE</u></b>
<u>The Florida Bar v. American Senior Citizens Alliance,</u> 689 So. 2d 255 (Fla. 1997) .....	13
<u>The Florida Bar v. Brower,</u> 402 So. 2d 1171 (Fla.1981) .....	13
<u>The Florida Bar v. Brumbaugh,</u> 355 So. 2d 1186 (Fla.1978) .....	11, 13, 14
<u>The Florida Bar v. Catarcio,</u> 709 So. 2d 96 (Fla. 1998) .....	6, 14
<u>Florida Accountants Associations v. Dandelake,</u> 98 So. 2d 323 (Fla. 1957) .....	15
<u>The Florida Bar v. Davide,</u> 702 So. 2d 184 (Fla.1997) .....	12, 14, 15
<u>The Florida Bar v. Furman,</u> 376 So. 2d 378 (Fla. 1979) .....	11
<u>In re Joint Petition of The Florida Bar and Raymond James and Associates,</u> 215 So. 2d 613 (Fla.1968) .....	14
<u>The Florida Bar v. Schramek,</u> 616 So. 2d 979 (Fla. 1993) .....	13, 14
<u>The Florida Bar v. Smania,</u> 701 So. 2d 835 (Fla. 1997) .....	9, 15
<u>State ex rel. Florida Bar v. Sperry,</u> 140 So. 2d 587 (Fla.1962) .....	16
<u>The Florida Bar re: Amendment to Rules Regulating The Florida Bar (Chapter 10),</u>	

510 So. 2d 596 (Fla. 1987) ..... 12

**TABLE OF OTHER AUTHORITIES**

**PAGE**

Florida Bar Rules Governing the Investigation and  
Prosecution of the Unlicensed Practice of Law

Rule 10-1.1 ..... 12

Rule 10-2.1 ..... 5, 12

Florida Rules of Civil Procedure

Rule 1.510 ..... 9

## **SYMBOLS AND REFERENCES**

In this brief, the Petitioner, The Florida Bar, shall be referred to as “Petitioner.”

The Respondents, Candice Miravalle and Express Legal Services, Inc. will be referred to collectively as “Respondents.” When the context requires, Respondent Candice Miravalle will be referred to as “Respondent Miravalle.”

The Report of the Referee dated July 13, 1999 will be referred to as “ROR” followed by the referenced page number(s) of the Appendix. (ROR, A \_\_\_\_\_)

The Summary Judgment dated July 13, 1999 will be referred to as “SJ” followed by the referenced page number(s) of the Appendix. (SJ, A \_\_\_\_\_)

The record evidence (affidavits and interrogatory answers) upon which the Summary Judgment and Report of the Referee were based will be referred to by their proper names, followed by the referenced page number(s) of the Appendix. (Affidavit of \_\_\_\_\_, A \_\_\_\_\_) Because this case was decided on Summary Judgment, with no live testimony, Petitioner makes no reference to the transcript of the hearing at which the Motion for Summary Judgment was argued, but instead relies solely on the affidavits and interrogatory answers contained in the appendix.

If Petitioner makes reference to a specific section of Respondents’ Initial Brief, Petitioner will refer to the Initial Brief as “IB” followed by the referenced page number. (IB \_\_\_\_)

“UPL” shall mean unlicensed practice of law.

## STATEMENT OF THE CASE

On May 29, 1998, The Florida Bar filed a Petition Against the Unlicensed Practice of Law against Respondents Candice L. Miravalle and Express Legal Services, Inc. The Petition alleged that Respondents had engaged in the unlicensed practice of law by: 1) preparing legal documents for customers which were not Florida Supreme Court approved forms and engaging in oral communications with customers in order to obtain information to prepare these legal documents; and 2) advertising in a manner which could cause the public to believe that Respondents offered legal services.

On June 5, 1998, the Supreme Court of Florida entered an Order to Show Cause directing the Respondents to file an answer to the Petition. On July 9, 1998, Respondents served a multi-part pleading which included an Answer and motions to dismiss as well as a Counterpetition, *pro se*.

Petitioner served its response to this pleading and motion on July 15, 1998, said response including a Motion to Strike the Counterpetition. On September 30, 1998, the Supreme Court of Florida entered an order denying Respondents' motions to dismiss. This September 30, 1998 order also struck Respondents' Counterpetition, and directed that a referee be appointed.

The Honorable Kenneth R. Lester, Jr. was appointed referee on October 18, 1998. After appointment of the referee, Petitioner amended its Petition, and the Respondents

amended their defenses. The parties engaged in written discovery. Petitioner filed a Motion for Summary Judgment on March 9, 1999, and each party filed affidavits and interrogatory answers supporting their respective positions.

Petitioner's Motion for Summary Judgment was argued before the referee on June 1, 1999. Contrary to statements in Respondents' Initial Brief (IB1), there was no testimony at the hearing on the Motion for Summary Judgment. At the conclusion of the hearing, the referee directed the parties to file memoranda supporting their positions within thirty days. Each party did so. The referee entered a Summary Judgment for Petitioner and the Report of the Referee on July 13, 1999. Respondents filed their Initial Brief objecting to the Summary Judgment and Report of the Referee on August 25, 1999. This Answer Brief is filed in response.



## STATEMENT OF THE FACTS

The following facts are derived from the findings of fact in the Summary Judgment. (SJ, A9)

Respondent Miravalle, at all times material, was not a member of The Florida Bar, and is not a member of The Florida Bar. Respondent Express Legal Services, Inc. is a Florida Corporation owned and operated by Respondent Miravalle. In or about December, 1995, Respondent Miravalle prepared a Marital Settlement Agreement and Final Judgment of Dissolution of Marriage for Peter and Holly Berkowitz. In or about August, 1996, Respondent Miravalle prepared a Motion to Reopen a bankruptcy case, a Motion for Order of Cancellation and Discharge of Judgment, Motion to Declare Judgement is Not Lien on Homestead and to Quiet Title, and orders relating thereto for Frances Totten. In or about September, 1997, Respondent Miravalle prepared a Motion to Reopen a bankruptcy case and a Notice of Service for Joseph Delpino.

These documents were not forms approved by the Supreme Court of Florida. Respondent Miravalle, as she acknowledged in her Answers to Petitioner's Interrogatories, and as she continues to admit in the Initial Brief: a) engaged in oral communication with customers to obtain the information to prepare these documents; b) took information from other documents in order to prepare these documents; c) engaged in legal research with regard to these documents; and d) drafted and typed these

documents. Respondent ran newspaper ads during 1997, 1998 and 1999 with the phrase “Are you ignoring your legal needs because you can’t afford an attorney?” These ads contained the business name and listed the legal areas in which Respondents offered services.

Petitioner maintains that the manner in which Respondents prepared the legal documents in question, as well as the business name and advertisements, constitutes the unlicensed practice of law and should be enjoined.

## **SUMMARY OF THE ARGUMENT**

Respondents challenge the Report of the Referee. Although Respondents argue that Petitioner presented no evidence to support its position, the record shows otherwise. In their Initial Brief, Respondents continue to admit essential material facts of the case -- that they prepared legal documents with information obtained orally from customers. Respondents maintain that Rule 10-2.1, Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, allows this. Respondents simply misunderstand that Rule 10-2.1 applies only to forms approved by this Court. The documents in question were not approved forms.

Respondents do not dispute the content of their ads. With regard to the ads, the referee simply found that the ads in question were run by Respondents during relevant time periods. The referee's conclusions of law, that the ads hold Respondents out as providing legal services, are consistent with this Court's previous rulings.

Respondents' advertisements, as well as the manner in which they prepare legal documents, constitute the unlicensed practice of law. There were no genuine issues of material fact before the referee. This Court should ratify the Summary Judgment, adopt the Report of the Referee, and enter a permanent injunction against Respondents.

## **ARGUMENT**

### **ISSUE I**

#### **THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND SUMMARY JUDGMENT WAS PROPER.**

A referee's findings of fact in an unlicensed practice of law case are presumed to be correct, and they should be upheld unless the challenging party can conclusively show that the facts are not supported by the evidence or are clearly erroneous. *The Florida Bar v. Catarcio*, 709 So. 96 (Fla. 1998)

In support of its Motion for Summary Judgment, Petitioner filed three affidavits. The Affidavit of Mary Ellen Bateman (A16) established that the documents in question were not forms approved by the Supreme Court of Florida. The affidavit of Ricky Sheffield (A54) established the authenticity of the of advertisements in question, as well as the dates during which the advertisements were run. The affidavit of George Turner (A60) established the authenticity of the advertisements, as well as stated that the advertisements had run as recently as March, 1999. Petitioner also filed Respondents' Interrogatory Answers in support of its Motion for Summary Judgment (A68)

Respondents filed the affidavits of Joseph Delpino (A64), Peter Berkowitz (A66) and Denise Beasley (A67) in opposition to the Motion for Summary Judgment. The

Delpino affidavit disputes an allegation of the Amended Petition, that Respondent Miravalle gave specific legal direction to Mr. Delpino with regard to a deed in lieu of foreclosure. Respondents are correct that an issue of fact exists as to that allegation, but that allegation in no way formed the basis of the Summary Judgment. The Berkowitz affidavit simply states that he did not believe Respondents were attorneys. That is not an issue in this case. The Beasley affidavit fails to address the substance of Petitioner's position with regard to the ads, that a person reading the ads could believe that Respondents offer personal legal services to the public. Thus, none of the affidavits filed by Respondents created a genuine issue of material fact with regard to those issues upon which the Summary Judgment was based.

Respondents also filed Petitioner's interrogatory answers (A79). These interrogatory answers, in particular the answers to interrogatories 10 through 13, clearly establish the manner in which nonlawyers are allowed to engage in document typing and form completion. (A86 - A89) When read in conjunction with the record evidence and the admissions in Respondents' Initial Brief, these interrogatory answers support the position of Petitioner, that Respondents engaged in the unlicensed practice of law by engaging in oral communication to obtain information to prepare documents which were

not Florida Supreme Court approved forms.<sup>1</sup>

Based on the record evidence, the uncontroverted facts are as follows.

1. None of the documents attached as exhibits to the Petition are Florida Supreme Court approved forms. (Affidavit of Mary Ellen Bateman<sup>2</sup>, A16)

2. The Respondents custom-prepared the documents in question. The Respondents did not simply type information into blanks on forms. (Respondents' Answers to Interrogatories, Interrogatory 4, A73, A76 - A77) In their Initial Brief, Respondents continue to make reference to preparation of documents, but do not make mention of completion of forms. (IB14 - IB16)

3. Respondent Miravalle engaged in oral communication with regard to the subject matter of the documents in question. (Respondents Answers to Interrogatories, Interrogatory 4, A73, A76 - A77) In their Initial Brief, Respondents admit engaging in

---

<sup>1</sup>Respondents make repeated reference to Petitioner's Interrogatory Answer 13 (A88 - A89) supporting their contentions and opposing Petitioner's argument. (IB14 - IB16) This interrogatory answer clearly sets forth that oral communication is allowed only when using Supreme Court approved forms. Since the documents in question are not approved forms, Respondent Miravalle's admitted oral communication is the unlicensed practice of law. Respondents' assertions in their Initial Brief, that this interrogatory answer supports their position, rises to the level of a misrepresentation to this Court.

<sup>2</sup>The exhibits to the Affidavit of Mary Ellen Bateman, A18 - A53), are identical to the exhibits to the Amended Petition Against the Unlicensed Practice of Law.

oral communication to obtain information to prepare the documents in question. (IB14 - IB16)

4. The Respondents derived information for the documents in question from other documents supplied by customers. (Respondents' Answers to Interrogatories, Interrogatory 4, A73, A76 - A77)

5. The Respondents' advertisement offers legal services, both through the business name and text of the ads. (Affidavit of Ricky Sheffield, A54) The language of the advertisement is not disputed.

Summary Judgment must be decided on the record evidence. The record evidence must show that there is no genuine issue as to any material fact. Rule 1.510, Fla.R.Civ.P. In an unlicensed practice of law prosecution under Chapter 10, Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, Petitioner need not show the non-existence of genuine issues of fact as to every allegation. If there are uncontroverted facts which constitute the unlicensed practice of law, an injunction is proper, even if issues of fact remain as to other allegations in the petition. *See The Florida Bar v. Smania*, 701 So. 2d 835 (Fla. 1997) (injunction against UPL issued after entry of partial summary judgment as to a portion of the case). The affidavits and interrogatory answers filed by Respondents simply did not create issues as to the facts found by the referee.

Based on the foregoing, there were no genuine issues of material fact before the referee. The referee's findings of fact in the Summary Judgment and Report of the Referee are supported by competent substantial evidence.<sup>3</sup>

---

<sup>3</sup> In their Statement of Case and of the Facts, Respondents make statements which hover somewhere between complete ignorance of the unlicensed practice of law investigative process and outright fabrication. In particular, in direct contradiction to Respondents' statements, the local UPL committee found that Respondents had engaged in egregious UPL activity. Although Petitioner and Respondents obviously disagree as to these assertions by Respondents, these assertions are not supported by the record evidence, and they are irrelevant to the issues in this case and those facts found by the referee. Thus, despite Respondents' protestations to the contrary, there were no *genuine* issues of *material* fact before the referee.



**ISSUE II**  
**THE REFEREE’S CONCLUSIONS OF LAW ARE SUPPORTED  
BY THE UPL DECISIONS OF THE SUPREME COURT OF  
FLORIDA.**

Rules and case law distinguish between the manner in which a nonlawyer may complete forms: a) which are Florida Supreme Court approved forms, versus b) forms and documents which have been created by an entity through some other process, whether that entity is a commercial legal form company, software company, attorney, or nonlawyer legal technician such as Respondents.

Throughout this case, including the Initial Brief, Respondents have blurred the distinction between those forms which this court has approved, and those legal documents (including forms) which have been created by another person or entity. The issue involves the difference between form typing, form completion, and document preparation.

Sale and typing of legal forms is specifically permitted by the decisions of this court in *The Florida Bar v. Furman*, 376 So. 2d 378 (Fla. 1979) and *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla.1978) . Those decisions, however, prohibit personal assistance in completing the forms. The customer must physically write the information into a blank on a sample form, or the typist may use a written questionnaire to elicit the factual information, which must be copied into the blanks on the form

(verbatim, without modification) by the typist. *Brumbaugh*, 355 So. 2d at 1194. Any type of assistance in determining what to insert in the forms is prohibited. In anticipation of the Florida Supreme Court approving forms, Rule 10-2.1 (then Rule 10-1.1) was amended to include a “safe harbor” for limited oral communications. *See The Florida Bar re: Amendment to Rules Regulating The Florida Bar (Chapter 10)*, 510 So. 2d 596 (Fla. 1987). Under that rule, when using Florida Supreme Court approved forms, nonlawyers may engage in limited oral communications to obtain the facts needed to complete the forms. In that limited situation, the customer does not have to physically write the factual information to be copied by the typist.

When using non-Florida Supreme Court approved forms, the safe harbor does not apply. Nonlawyers who wish to offer to the public non-Florida Supreme Court approved forms cannot engage in personal service with regard to those forms. They are allowed only to act as a sort of office supply store plus typist. Once the customer has selected a form offered by the nonlawyer, the only role for the nonlawyer is to copy written information provided by the customer into blanks on the form. Oral communication to obtain facts to complete non-Florida Supreme Court approved forms is the unlicensed practice of law. *The Florida Bar v. Davide*, 702 So. 2d 184 (Fla.1997)

If the customer tenders documents as a source of information or as a means of transmitting the information, then that customer is relying on the typist to select

information from the documents and insert it properly. It is improper for the legal technician to assume this responsibility, thereby inducing the customer to rely on the legal technician's expertise. *The Florida Bar v. Brower*, 402 So. 2d 1171 (Fla.1981)

When discretion shifts from the customer to the typist, form completion has become document preparation, even if the document is based on a form. Legal document preparation has long been and continues to be the practice of law. *The Florida Bar v. Schramek*, 616 So. 2d 979 (Fla. 1993)

In the case at bar, in each of the three transactions in question, customers met with Respondents and tendered papers from which Respondents took the information to prepare the documents in question. (Respondents' Answers to Interrogatories, Interrogatory 4, A73, A76 - A77) This practice creates an incurable situation in which customers rely on Respondents' expertise. As noted previously, in their Initial Brief, the Respondents continue to refer to their work as preparation of documents, and not as completion of forms. (IB14 - IB16)

In *The Florida Bar v. American Senior Citizens Alliance*, 689 So. 255 (Fla. 1997), the referee invited this court to clarify the proper role of nonlawyers in living trust preparation. At that time, this Court reaffirmed *Brumbaugh* as establishing the limitations on secretarial services engaged in the sale and completion of legal forms. The bottom line is that, twenty years after the *Brumbaugh* decision, nonlawyers still may only

type information provided in writing (or orally if using a Supreme Court approved form) by customers into blanks on forms. Everything else remains the unlicensed practice of law.<sup>4</sup>

If a nonlawyer modifies a Florida Supreme Court approved form, it is the unlicensed practice of law. *Schramek*, 616 So. 2d 979, 982. If a nonlawyer engages in oral communication to obtain information to type a non- Florida Supreme Court approved form, it is the unlicensed practice of law. *The Florida Bar v. Catarcio*, 709 So. 96 (Fla. 1998); *Davide*, 702 So. 2d 184 (Fla.1997). If a nonlawyer creates a document for a particular client's need, it is no longer a form, and it is the unlicensed practice of law. *Schramek*, 616 So. 2d 979; *In re Joint Petition of The Florida Bar and Raymond James and Associates*, 215 So. 2d 613 (Fla.1968). And if a nonlawyer offers legal services through advertisement, it is the unlicensed practice of law. *See Catarcio, Davide, and Raymond James.*

---

<sup>4</sup>Petitioner recognizes the advancement of technology and the reality that most "forms" are now completed through the use of computers. Petitioner urges this court to retain *Brumbaugh* as defining the limits of nonlawyer document typing services and to continue to prohibit nonlawyer legal document preparation, lest the unwitting customer mistake a typists' computer proficiency for legal knowledge. Document typists may use computers for non-approved forms and stay within the *Brumbaugh* parameters by: 1) maintaining banks of pre-printed computer-generated forms; 2) requiring customers to choose the forms and to complete or modify the forms in writing, without guidance from the typist.

Respondents completely disregard the opinions of this Court relating to unlicensed practice of law, but instead choose to rely on the opinion of the court in *Florida Accountants Associations v. Dandelake*, 98 So. 2d 323 (Fla. 1957). In *Dandelake*, this Court found that non-CPAs could properly refer to themselves as “accountants.” In the UPL context, this Court has enjoined persons from holding out in a manner which suggests that legal services are provided, even if the respondent was not specifically holding out as an attorney. *Davide*, 702 So. 2d 184 (Fla.1997). Furthermore, this Court has addressed the constitutional issues raised by Respondents on several occasions. *See Smania*, 701 So. 2d 835 (Fla. 1997). Thus, the *Dandelake* decision is not persuasive in light of the multitude of relatively recent UPL decisions.

**ISSUE III**  
**AN INJUNCTION SHOULD ISSUE AGAINST RESPONDENTS.**

This is a proceeding for injunctive relief. The relief sought by Petitioner is to enjoin activity in which, by law, Respondents may not engage legally. An injunction deprives Respondents of nothing to which they have a right. *See State ex rel. Florida Bar v. Sperry*, 140 So. 2d 587, 596 (Fla.1962). The Respondents have known of Petitioner's position with regard to their advertisements, at least since the Amended Petition was filed in November, 1998. Yet Respondents continued to run the same advertisements through the date when Petitioner filed its Motion for Summary Judgment in March, 1999. Respondents have made it abundantly clear that they will not modify their activity short of an injunction being issued.

## CONCLUSION

The case law is clear as to the limitations imposed on nonlawyer legal technicians. The Respondents engage in the unlicensed practice of law through their advertisements, including their business name, as well as by providing personal service to customers. Although minor details of the transactions in question may be disputed, there are more than enough undisputed material facts to support an injunction in this case.

Petitioner respectfully requests this Court to ratify and affirm the Summary Judgment, adopt the Report of the Referee, and enter a permanent injunction against Respondents as set forth in the Summary Judgment and Report of Referee, awarding costs to Petitioner as specified therein.

Respectfully submitted,

JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 561-5600  
ATTORNEY NO. 123390

MARY ELLEN BATEMAN  
Director of the UPL Department  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 561-5600  
ATTORNEY NO. 324698

AND

BARRY W. RIGBY  
Branch UPL Counsel  
The Florida Bar  
1200 Edgewater Drive  
Orlando, FL 32804  
(407) 425-0473  
ATTORNEY NO. 613770

BY: \_\_\_\_\_  
BARRY W. RIGBY  
Branch UPL Counsel



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief and Appendix have been sent by regular U.S. Mail to the Clerk of the Court, the Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing was furnished to Candice L. Miravalle, Express Legal Services, Inc., 129 W. Hibiscus Blvd., Melbourne, Florida, 32901; and a copy has been forwarded to Mary Ellen Bateman, Director of the UPL Department, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this \_\_\_\_\_ day of September, 1999.

---

Barry W. Rigby  
Branch UPL Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Petitioner,

Case No. 93,101  
[TFB Case Nos. 973111(18A)  
973200(18A)  
983119(18A)]

v.  
CANDICE L. MIRAVALLE,  
individually, and  
EXPRESS LEGAL SERVICES, INC.,  
a Florida Corporation,  
Respondents.

---

**APPENDIX TO THE FLORIDA BAR'S ANSWER BRIEF**

JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 561-5600  
ATTORNEY NO. 123390

MARY ELLEN BATEMAN  
Director of the UPL Department  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 561-5600  
ATTORNEY NO. 324698

AND

BARRY W. RIGBY  
Branch UPL Counsel  
The Florida Bar  
1200 Edgewater Drive  
Orlando, FL 32804  
(407) 425-0473  
ATTORNEY NO. 613770

**INDEX TO APPENDIX**

Report of the Referee ..... A1

Summary Judgment ..... A9

Affidavit of Mary Ellen Bateman ..... A16

Affidavit of Ricky Sheffield ..... A54

Affidavit of George Turner ..... A60

Affidavit of Joseph Delpino ..... A64

Affidavit of Peter Berkowitz ..... A66

Affidavit of Denise Beasley ..... A67

Respondents' Interrogatory Answers ..... A68

Petitioners' Interrogatory Answers ..... A79

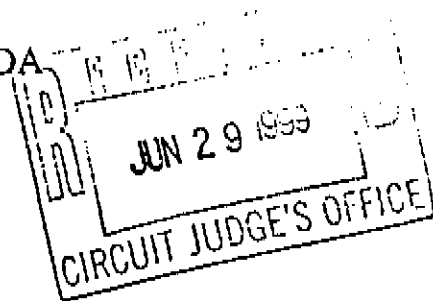
**COMPLIANCE WITH RULE 9.210(a)(2)**

The undersigned hereby certifies that the foregoing brief complies with Fla.R.App.P. 9.210(a)(2) in that it was prepared using 14 point Times New Roman.

---

Barry W. Rigby  
Branch UPL Counsel  
ATTORNEY NO. 613770

IN THE SUPREME COURT OF FLORIDA



THE FLORIDA BAR,

Petitioner,

CASE NO. 93,101

(TFB Case Nos. 973111(18A)  
973200(18A)  
983119(18A))

v.

CANDICE L. MIRAVALLE,  
individually, and  
EXPRESS LEGAL SERVICES, INC.,  
a Florida Corporation,

Respondents.

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct proceedings herein according to Rule 10-7.1(b)(6), Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, the following proceedings occurred:

On May 29, 1998, The Florida Bar filed a Petition Against the Unlicensed Practice of Law against Respondents Candice L. Miravalle and Express Legal

Services, Inc. On June 5, 1998, the Supreme Court of Florida entered an Order to Show Cause directing the Respondents to file an answer to the Petition. On July 9, 1998, Respondents served a multi-part pleading which included an Answer and motions to dismiss as well as a Counterpetition, pro se.

Petitioner served its Response to this pleading and motion on July 15, 1998, said response including a Motion to Strike the Counterpetition. On September 30, 1998, the Supreme Court of Florida entered an order denying Respondents' Motion to Dismiss for Failure to State a Cause of Action, Motion to Dismiss for Lack of Jurisdiction, Motion to Transfer Venue, Affirmative Defenses, and Request for Judicial Notice. This September 30, 1998 order also struck Respondents' Counterpetition, and directed that a referee be appointed.

The undersigned was appointed referee on October 18, 1998. On October 26, 1998, Petitioner filed a Motion for Leave to Amend. This motion was granted, and the Amended Petition was served on November 6, 1998. A Case Management Conference which had been scheduled for November 24, 1998 was canceled.

On December 2, 1998 Respondents served an Amended Answer, Amended Motion to Dismiss for Failure to State a Cause of Action, Amended Motion to Dismiss Counts II and III for Lack of Jurisdiction and Res Adjudicata, Amended Affirmative Defenses, Amended Request for Judicial Notice and Amended

Counterpetition. On December 14, 1998, Petitioner filed its Response to Amended Answer; Response to Amended Motions to Dismiss, Reply to Amended Affirmative Defenses, Response to Amended Request for Judicial Notice, and Motion to Strike or in the Alternative Motion to Dismiss Amended Counterpetition.

Each the Respondents and Petitioner served interrogatories and a request for production upon the other. A Case Management Conference was scheduled for March 30, 1999. Petitioner filed a Motion for Summary Judgment on March 9, 1999, and scheduled it for March 30, 1999. At the request of the Respondents, the March 30, 1999 hearing was rescheduled for June 1, 1999.

Petitioner filed Respondents' answers to its interrogatories in support of its Motion for Summary Judgment. Petitioner also filed affidavits in support of its Motion for Summary Judgment. Respondents also filed Petitioner's answers to their interrogatories and affidavits opposing the Motion for Summary Judgment. Respondents filed a motion to amend their pleadings, and Amendments to Pleadings, as well as an objection to the Motion for Summary Judgment on March 19, 1999.

The following matters were noticed for hearing on June 1, 1999: A) Case management conference; B) Petitioner's Motion for Summary Judgment; C) Respondents' Motion for Leave to File Amendments to Pleadings, or, in the

alternative, for Leave to Amend Pleadings; D) Respondents' Motions to Dismiss the Amended Petition; E) Petitioner's Motion to Strike or in the Alternative, Motion to Dismiss Amended Counterpetition. A hearing was held on these matters on June 1, 1999. The undersigned allowed the Respondents to amend their pleadings, struck the Respondents' Counterpetition and denied Respondents' Motions to Dismiss. The undersigned gave the Petitioner twenty days to respond to Respondents' amended pleadings and gave the parties thirty days to file memoranda on the issue of summary judgment. The Petitioner filed its reply to Respondents' Amendments to Pleadings on or about June 15, 1999. Each party filed a memorandum on the issue of summary judgment on or about June 30, 1999.

Pursuant to Rule 10-7.1(c)(3), which allows a referee to exercise the powers generally reposed in the court pursuant to the Florida Rules of Civil Procedure, the undersigned entered a Summary Judgment for Petitioner on July 13<sup>th</sup>, 1999. This Report of Referee constitutes the written order as to the other rulings made at the June 1 hearing, and it adopts and incorporates the Summary Judgment by reference.

All of the aforementioned pleadings, attachments thereto, the transcript of the June 1, 1999 hearing, the Summary Judgment, and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.



## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Statement. Respondent Candice L. Miravalle, at all times material hereto, was not and is not a member of The Florida Bar, and was not therefore licensed to engage in the practice of law in the State of Florida. Respondent Express Legal Services, Inc. is a Florida corporation, and as such cannot be licensed to practice law.

### B. Summary of Allegations.

In its Amended Petition Against the Unlicensed Practice of Law, the Petitioner, The Florida Bar, alleged among other things, as follows:

1. Respondent Candice L. Miravalle owns and operates a business known as Express Legal Services, Inc. located in Melbourne, Brevard County, Florida.

2. Respondent Miravalle engaged in the unlicensed practice of law in the following ways:

- a. In or about December, 1995, Respondent Miravalle prepared a Marital Settlement Agreement and Final Judgment of Dissolution of Marriage for Peter and Holly Berkowitz. These documents were not forms approved by the Supreme Court of Florida. Respondent Miravalle obtained information to prepare these documents by engaging in oral communications, and by taking information

from other documents. Respondent Miravalle performed legal research with regard to these documents and prepared these documents.

b. In or about August, 1996, Respondent Miravalle prepared a Motion to Reopen a bankruptcy case, a Motion for Order of Cancellation and Discharge of Judgment, Motion to Declare Judgment is Not Lien on Homestead and to Quiet Title, and orders relating thereto for Frances Totten. These documents were not forms approved by the Supreme Court of Florida. Respondent Miravalle obtained information to prepare these documents by engaging in oral communications, and by taking information from other documents. Respondent Miravalle performed legal research with regard to these documents and prepared these documents.

c. In or about September, 1997, Respondent Miravalle prepared a Motion to Reopen a bankruptcy case and a Notice of Service for Joseph Delpino. These documents were not forms approved by the Supreme Court of Florida. Respondent Miravalle obtained information to prepare these documents by engaging in oral communications, and by taking information from other documents. Respondent Miravalle performed legal research with regard to these documents and prepared these documents.

d. Respondent ran newspaper ads during 1997, 1998 and 1999

with the heading "Are you ignoring your legal needs because you can't afford an attorney?" These ads contained the business name and listed the legal areas in which Respondents offered services. Petitioner alleged that the ads and the business name were misleading to the public, as they suggested to the public that Respondents offered legal services which only a licensed attorney can lawfully provide.

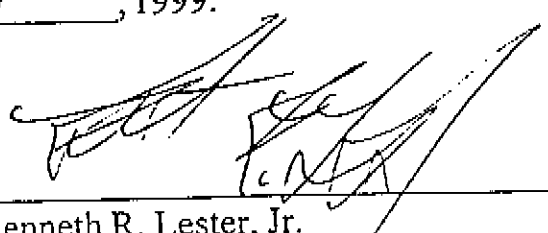
C. Findings of Fact and Conclusions of Law.

The undersigned has made findings of fact and conclusions of law in the Summary Judgment, which is adopted and incorporated herein by reference.

III. RECOMMENDATIONS

The undersigned Referee hereby recommends that the Supreme Court of Florida: a) ratify and adopt the Summary Judgment entered in this matter; b) enjoin Respondents from engaging in the practice of law as set forth in the Summary Judgment; c) tax costs against the Respondents in the amount of 517.23 as set forth in the Summary Judgment.

Dated this 13<sup>th</sup> day of July, 1999.

  
\_\_\_\_\_  
Kenneth R. Lester, Jr.  
Circuit Judge/Referee

301 North Park Avenue  
Sanford, FL 32771

copies furnished to:

Barry W. Rigby  
Branch UPL Counsel  
The Florida Bar  
1200 Edgewater Drive  
Orlando, FL 32804-6314

Candice L. Miravalle  
Express Legal Services, Inc.  
129 W. Hibiscus Blvd.  
Melbourne, FL 32901

Marilyn J. McAllister  
Judicial Assistant

Dated July 13<sup>th</sup>, 1999

IN THE SUPREME COURT OF FLORIDA

JUN 29 1999

THE FLORIDA BAR,

Petitioner,

CASE NO. CASE NO. 93,101

(TFB Case Nos. 973111(18A)  
973200(18A)  
983119(18A))

v.

CANDICE L. MIRAVALLE,  
individually, and  
EXPRESS LEGAL SERVICES, INC.,  
a Florida Corporation,

Respondents.

**SUMMARY JUDGMENT AGAINST RESPONDENTS**  
**CANDICE L. MIRAVALLE AND EXPRESS LEGAL SERVICES, INC.**

**THIS MATTER** came on to be heard before me on the motion of Petitioner, The Florida Bar, for Summary Judgment, and the undersigned having reviewed the record evidence consisting of pleadings, answers to interrogatories, and affidavits, and having heard the argument of counsel for the Petitioner and the argument of Respondent Candice L. Miravalle, and having read memoranda submitted by each party, and otherwise being fully advised in the premises, hereby make the following findings of fact:

1. Respondent Miravalle owns and operates Express Legal Services, Inc., a corporation located in Melbourne, Brevard County, Florida.

A9

2. Respondent Miravalle, at all times material, was not a member of The Florida Bar, and is not a member of The Florida Bar.

3. In or about December, 1995, Respondent Miravalle prepared a Marital Settlement Agreement and Final Judgment of Dissolution of Marriage for Peter and Holly Berkowitz. These documents were not forms approved by the Supreme Court of Florida. Respondent Miravalle, as she acknowledged in her Answers to Petitioner's Interrogatories: a) engaged in oral communications with Mr. and Mrs. Berkowitz to obtain information to prepare these documents; b) took information from other documents in order to prepare these documents; c) engaged in legal research with regard to these documents; and d) drafted and typed these documents.

4. In or about August, 1996, Respondent Miravalle prepared a Motion to Reopen a bankruptcy case, a Motion for Order of Cancellation and Discharge of Judgment, Motion to Declare Judgement is Not Lien on Homestead and to Quiet Title, and orders relating thereto for Frances Totten. These documents were not forms approved by the Supreme Court of Florida. Respondent Miravalle, as she acknowledged in her Answers to Petitioner's Interrogatories: a) engaged in oral communications to obtain information to prepare these documents; b) took information from other documents in order to prepare these documents; c) engaged in legal research with regard to these documents; and d) drafted and typed these

documents.

5. In or about September, 1997, Respondent Miravalle prepared a Motion to Reopen a bankruptcy case and a Notice of Service for Joseph Delpino. These documents were not forms approved by the Supreme Court of Florida. Respondent Miravalle, as she acknowledged in her Answers to Petitioner's Interrogatories: a) engaged in oral communication with Mr. Delpino to obtain the information to prepare these documents; b) took information from other documents in order to prepare these documents; c) engaged in legal research with regard to these documents; and d) drafted and typed these documents.

6. Respondent ran newspaper ads during 1997, 1998 and 1999 with the phrase "Are you ignoring your legal needs because you can't afford an attorney?" These ads contained the business name and listed the legal areas in which Respondents offered services.

7. The undersigned finds that there are no genuine issues of material fact with regard to paragraphs 1 through 6 above. Although Respondents filed affidavits and interrogatory answers in opposition to the Motion for Summary Judgment, the affidavits and interrogatory answers filed by Respondents failed to create any issues of material fact with regard to the matters described in paragraphs 1 through 6 above. There was no record evidence to support any inference that the documents in question

were prepared properly in accordance with the unlicensed practice of law decisions of the Supreme Court of Florida. The undersigned further finds that these facts constitute clear and convincing evidence of unlicensed practice of law.

Based on the foregoing findings of fact, the undersigned makes the following conclusions of law:

8. The acts of the Respondents in preparing the documents at issue in this case have violated the letter and spirit of the decisions of the Supreme Court of Florida in *The Florida Bar v. Schramek*, 616 So. 2d 979 (Fla. 1993); *The Florida Bar v. Brower*, 402 So. 2d 1171 (Fla. 1981); *The Florida Bar v. Furman*, 376 So. 2d 378 (Fla. 1979), app. dismissed 444 U.S. 1061, 100 S.Ct. 1001, 62 L.Ed. 744 (1980); *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978); *In re Florida Bar and Raymond, James & Assoc.*, 215 So. 2d 613 (Fla. 1968), and *The Florida Bar v. Sperry*, 140 So. 2d 587 (Fla. 1962), in that Respondents are not simply operating a secretarial or typing service, but instead render personal services which could reasonably cause members of the public to rely on them to properly prepare legal documents. These activities of the Respondents present the potential for substantial public harm.

9. The Respondents' business name and advertisements have violated the letter and spirit of the decisions of the Supreme Court of Florida in *The Florida Bar v. Catarcio*, 709 So. 2d 96 (Fla. 1998); *The Florida Bar v. Davide*, 702 So. 2d 184



(Fla. 1997); and *In re Florida Bar and Raymond, James, & Assoc.*, 215 So. 2d 613 (Fla. 1968) in that the business name and advertisements suggest to the public that Respondents may provide legal services when, by law, Respondents may only provide secretarial or typing services. The business name and advertisements of the Respondents present the potential for substantial public harm.

Based on the foregoing, it is hereby

**ORDERED AND ADJUDGED** that Respondents Candice L. Miravalle and Express Legal Services, Inc. are permanently enjoined and restrained from engaging in the practice of law in the State of Florida. In particular, Respondents are enjoined from:

A. Using the word "Legal" in a business name, or in any advertisement for services, or in any way suggesting through advertisement or otherwise that they provide legal services;

B. Engaging in personal service with regard to completion of legal forms for customers in the nature of: 1) making recommendations, providing explanation of forms or the law, or otherwise engaging in consultation; 2) engaging in legal research for anyone other than a licensed attorney; 3) suggesting or selecting particular legal forms, language in legal documents, or strategy with regard to legal matters; or 4) in any way engaging in substantive oral communication with customers in order to

complete forms which are not Florida Supreme Court approved forms.

Respondents may engage in oral communication with regard to Florida Supreme Court approved forms, but only to the degree set forth in Rule 10-2.1(a), Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, and in case law.

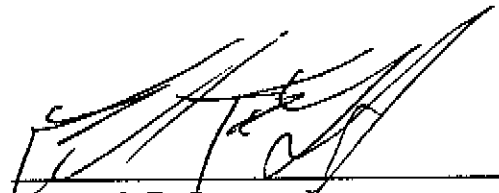
Respondents may provide pre-printed legal information to their customers as set forth in case law, so long as the information is general in nature, and is not offered as applicable to a customer's specific needs.

Respondents may sell and type information into non-Florida Supreme Court approved forms, and they may create such forms as they deem necessary. In assisting with the generation of documents based on non-Supreme Court approved forms, Respondents may only copy information provided in writing by customers into blanks on forms. "Provided in writing" shall mean information written onto a blank sample form by the customer, or written onto a questionnaire by the customer such that Respondents do not exercise independent judgment as to how the information should be inserted into the blanks on the form.

Respondents shall have 90 days from the date this matter becomes final to change their business name and advertisements in a manner which reflects the services they may lawfully provide, such as "Express Secretarial Services" or a similar name.

**Judgment for costs** in the amount of \$ 517.23 is entered against Respondents Candice L. Miravalle and Express Legal Services, Inc., jointly and severally, for which sum let execution issue.

DONE AND ORDERED at Sanford, Seminole County, Florida, this 13<sup>th</sup> day of July, 1999.



Kenneth R. Lester, Jr.  
Circuit Judge/Referee

copies furnished to:

Barry W. Rigby  
Branch UPL Counsel  
The Florida Bar  
1200 Edgewater Drive  
Orlando, FL 32804-6314

Candice L. Miravalle  
Express Legal Services, Inc.  
129 W. Hibiscus Blvd.  
Melbourne, FL 32901

Marilyn J. McAllister  
Judicial Assistant

Dated July 13<sup>th</sup>, 1999