

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v. Case No. 93,101
(TFC Case Nos. 973111(18A)
CANDICE L. MIRAVALLE, 973200(18A)
individually, and 983119(18A)
EXPRESS LEGAL SERVICES, INC.,
a Florida corporation,

Respondents.

RESPONDENTS' INITIAL BRIEF

OBJECTION TO REPORT OF REFEREE,
OBJECTION TO SUMMARY JUDGMENT AGAINST RESPONDENTS
CANDICE L. MIRAVALLE AND EXPRESS LEGAL SERVICES, INC.
and
REQUEST FOR ORAL ARGUMENT

Respondents
CANDICE L. MIRAVALLE
Individually and on behalf of
EXPRESS LEGAL SERVICES, INC.
129 W. Hibiscus Blvd.

Melbourne FL 32901
(407) 729-6399

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I. ISSUE

Respondents' Objection to Report of Referee and
Objection to Summary Judgment against Respondent CANDICE L.
MIRAVALLE AND EXPRESS LEGAL SERVICES, INC.

The pleadings filed in the above-styled cause and the evidence and oral testimony presented to the referee at the hearing which occurred on June 1, 1999, do not support the findings of fact or conclusions of law of the referee.

The pleadings filed in the above-styled cause and the evidence and oral testimony presented to the referee at

the hearing which occurred on June 1, 1999, do not support entry of Summary Judgment against Respondents.

The matters raised by the referee at the hearing on June 1, 1999, do not support the findings of fact or conclusions of law of the referee.

The matters raised by the referee at the hearing on June 1, 1999, do not support entry of Summary Judgment against Respondents.

II. TABLE OF CITATIONS

Citation	Page
Chapter 10 of the Rules Regulating the Florida Bar	14, 15
<u>Florida Accountants Association v. Dandelake</u> ,	18, 19,
20,	
98 So2nd 323, 70 ALR 425 (Fla. 1957),	21

III. HISTORICAL INFORMATION OF RESPONDENTS

Prior to opening the business known as EXPRESS LEGALSERVICES, INC., Respondent

CANDICE L. MIRAVALLE received a Bachelor's Degree in "Allied Legal Services" (paralegal) through the University of Central Florida. Additionally, Respondent CANDICE L. MIRAVALLE had been employed as a paralegal for attorneys in Melbourne, Florida, performing paralegal duties; including research of forms and their contents necessary for the attorneys to adequately represent and prepare pleadings for their clients.

Respondent CANDICE L. MIRAVALLE incorporated and opened the business known as EXPRESS LEGAL SERVICES, INC. on October 1, 1987, three months after the Court ruling which modified Chapter 10 of the Rules regulating the Florida Bar; approximately six (6) years before any forms were first approved by the Supreme Court of Florida but which have been modified on two (2) occasions subsequent thereto.

As the result of no forms being available for approximately six (6) years, Respondent CANDICE L. MIRAVALLE:

a. Excepting those areas of which Respondent CANDICE L. MIRAVALLE was knowledgeable of legal form requirements due to her employment by the attorneys, found it necessary to seek information (research) on other subject matters to develop forms which provided the elements/allegations necessary for the proper preparation of pleadings/documents to meet the needs of her customers.

b. Petitioned the Court for approval of forms which she had developed; but was denied approval without review.

Despite various matters having been brought to the attention of Petitioner in the past (i.e. preparation of dissolution of marriage pleadings, adoption pleadings, and answer pleadings), one of which included the personal deposition of Respondent CANDICE L. MIRAVALLE, no objection has been found to the handling of those matters by Respondents.

Despite the matter of Respondents' preparation of bankruptcy pleadings being brought before the United States Bankruptcy Court, Middle District of Florida, which also included the personal deposition of Respondent CANDICE L. MIRAVALLE concerning the procedure for obtaining the information and oral communication between the customers of Respondents, no objection was found to Respondents' continuing preparation of bankruptcy pleadings; in particular, a written agreement was entered by Respondent CANDICE L. MIRAVALLE and the United States Bankruptcy Trustee.

IV. STATEMENT OF CASE AND OF THE FACTS

This matter initiated upon: a. A Complaint from a "then licensed" attorney (but recently suspended arising out of his arrest on criminal charges for the purchase of cocaine, sale of or delivery of cocaine, battery/domestic violence, two (2) count of aggravated

assault/domestic violence including one involving a pregnant woman, attempted purchase of cocaine and attempted delivery of cocaine) setting forth that Respondents had harmed customers necessitating the attorney to do extensive work to correct the actions of Respondent which harmed the customers. The investigation revealed that the allegations made by the attorney were unsubstantiated and false; specifically, the investigator could find no proof of any actions taken by the attorney. When the "local" committee for the unlicensed practice of law met, it was agreed by the committee that Respondents had not engaged in the unlicensed practice of law.

b. A facsimile sent to Petitioner of the documents prepared by Respondents for a customer concerning a bankruptcy matter for the removal of a Judgment (in which bankruptcy the customer had initially been represented by an attorney but which attorney failed to obtain an Order removing the Judgment); no complaint alleging the unlicensed practice of law was attached. Petitioner just assumed the facsimile was a complaint. When the "local" committee for the unlicensed practice of law met, the committee felt the matter was too difficult of a concept for the customer to have understood and for which it was decided that Petitioner should proceed against Respondents.

c. Documentation sent by an attorney, for a creditor in a bankruptcy matter, to Petitioner which Respondents had prepared for their bankruptcy customer. Additionally, oral communications occurred between the attorney and Petitioner

which Petitioner set forth in its pleadings but which were untrue and never substantiated in Court (in particular, that Respondents advised their customer to not execute a Deed in Lieu of Foreclosure offered by the attorney for the creditor prior to his appearance in Bankruptcy Court when, in fact, the customer had never met or communicated with the attorney until the customer appeared in Court and was explained by the Bankruptcy Judge of the attorney's offer).

Based upon the foregoing, Petitioner commenced the above-styled cause against Respondents by filing a Petition against the Unlicensed Practice of Law which was subsequently amended by Petitioner's filing of an Amended Petition against the Unlicensed Practice of Law.

Respondents answered Petitioner's Amended Petition denying the allegations set forth therein. Additionally, Respondents filed (a) two (2) Motions to Dismiss, (b) an Amended Affirmative Defenses, and (c) an Amended Counterpetition; all of which were denied.

Respondents subsequently amended their pleadings to raise additional affirmative Defenses; all of which Petitioner denied but which the referee did not specifically address.

The parties subsequently propounded upon each other Interrogatories for which each party subsequently filed for the Court record the responses to the Interrogatories.

Petitioner filed a Motion for Summary Judgment setting forth that there is no genuine issue of material fact and there were "undisputed facts which demonstrate by clear and convincing evidence that Respondents engaged in the unlicensed practice of law" by:

a. Performing legal research for customers. b. Drafting legal documents. c. Engaging in oral communication with customers to obtain information to prepare legal documents which were not Florida Supreme Court approved forms.

Additionally, Petitioner set forth that Respondent EXPRESS LEGAL SERVICES, INC, through its business name and by the contents of advertisements, held itself out as being able to provide legal services to the public.

In further support of its Motion for Summary Judgment, Petitioner filed the Affidavit of Mary Ellen Bateman that the forms used by Respondents were not Supreme Court approved forms and the Affidavits of Ricky Sheffield and George B. Turner concerning the advertisements for EXPRESS LEGAL SERVICES, INC. with attachments to the Affidavits which consisted of the advertisements themselves.

Respondents filed their objection to the Motion for Summary Judgment setting forth that:

a. All facts are in dispute. b. Typing of legal documents is allowed by Chapter 10 of the Rules Regulating the Florida Bar and pursuant to Petitioner's Answer to Interrogatories which

Respondents filed in this action.

c. Engaging in oral communications with customers is allowed by Chapter 10 of the Rules regulating the Florida Bar and pursuant to Petitioner's Answer to Interrogatories which Respondents filed in this action.

d. There is no prohibition against the use of forms not approved by the Florida Supreme Court pursuant to Petitioner's Answer to Interrogatories which Respondents filed in this action.

e. There is no prohibition to oral communications with customers pursuant to Petitioner's Answer to Interrogatories which Respondents filed in this action.

f. The use of the name EXPRESS LEGAL SERVICES, INC., is used in conjunction with the advertisements and clearly implies that the business is not provided by attorneys.

At the hearing on Petitioner's Motion for Summary Judgment,

a. Petitioner, in support of its Motion, presented as their only evidence:

1. Respondents' Answers to Interrogatories which set forth that (a) Respondent CANDICE L. MIRAVALLE performed research for her customers, (b) Respondents drafted the legal documents, (c) Respondents engaged in oral communication to obtain information and (d) Respondents accepted documents which provided information.

2. The Affidavit of Mary Ellen Bateman that the forms used by Respondent were not Supreme Court approved forms.

3. The advertisement of Respondent EXPRESS LEGAL SERVICES, INC.

b. Respondents, in defense of the Motion: 1. Presented Petitioner's Answers to Interrogatories which set forth that nonlawyers may use forms which have not been approved by the Supreme Court of Florida and may have oral communications to obtain information for the forms.

2. Asked the referee to consider Chapter 10 of the Rules Regulating the Florida Bar which allows for oral communication to elicit information to complete forms.

3. Argued that no clarification of the research performed by Respondents was requested by Petitioner.

4. Argued that no clarification of the discussions between Respondents and their customers was requested by Petitioner.

5. Argued that no evidence was presented by Petitioner concerning the content of the discussions between Respondents and their customers.

6. Argued that no evidence was presented by Petitioner in support of its contention that the usage of the word "legal", both in Respondents' name and advertisements, misleads

customers. Additionally, Respondents argued that Respondents' name and advertisements clearly indicate that neither Respondent is a lawyer nor providing the services of a lawyer.

c. The Court:

1. Queried about the handling of one specific situation for discussions between Respondents and their customer in which it was acknowledged by Petitioner in that specific situation that oral discussions between Respondents and their customers would be proper.

2. Acknowledged that people don't go to attorneys and assumed why people would go to somebody other than attorneys for various reasons; (a) they can't afford, (b) they don't trust them (attorneys), (c) they think they (attorneys) have the whole system rigged and they want somebody outside the system. Additionally, the Court, not meaning to be facetious, couldn't understand why anyone would be looking at the ad of Respondents if they didn't need somebody to do some type of legal service though the Court acknowledged that the "stumbling block" was the word "legal".

3. Acknowledged that the situation indicates that Respondents are trying to do everything they can (to comply).

4. Noted that the Florida Bar would not be preparing forms for approval by the Florida Supreme Court for use by non-lawyers for Bankruptcy Court matters to which Petitioner acknowledged that it was not for the Florida Bar "to really go there".

V. SUMMARY OF ARGUMENT

Petitioner has presented no evidence to the Court to support any of its allegations that:

- a. Respondents engaged in the practice of law by: (1) Performing legal research, (2) Drafting legal documents, (3) Engaging in oral communication to obtain information, (4) Preparing legal documents which were not Supreme Court approved forms.
- b. Respondents' usage of the word "legal" in their name and advertisement misleads customers.

VI. ARGUMENT

Petitioner has presented no evidence to the Court to support any of its allegations; specifically,

1. Respondents admit that legal research was performed for customers. However, the legal research performed was not the practice of law due to it having been performed by Respondent CANDICE L. MIRAVALLE while employed by attorneys or having been performed out of necessity so Respondents may properly assist their customers and for which Respondents may not be penalized.

As set forth in the historical information about Respondents, due to no Supreme Court legal forms being available for usage by non-lawyers, it was necessary for Respondents to seek information (research) for the documents required and content requirements of the documents which Respondents prepare for their customers. Additionally, legal research was performed by Respondents concerning "procedural direction" for the customers of Respondents; i.e. filing fees, number of copies. Petitioner never queried as to the category of legal research performed by Respondent and has only assumed what legal research was performed.

Other than Respondents' admission to performing research as provided above-herein, Petitioner has presented no evidence or testimony of research or any other category of research which Respondents have performed which would constitute the practice of law.

An assumption is insufficient evidence for the Court to grant Summary Judgment in favor of Petitioner on this matter.

There are insufficient pleadings and no evidence for the Court to grant Summary Judgment in favor of Petitioner on this matter.

2. Respondents admit to preparing legal documents. Pursuant to Petitioner's response to Respondents' Interrogatories, Interrogatory #13, and Chapter 10 of the Rules Regulating the Florida Bar, Respondents may prepare legal documents; including forms which are not Supreme Court approved forms.

Petitioner's response to Interrogatory #13 and Chapter 10 of the Rules Regulating the Florida Bar in themselves clearly oppose Petitioner's allegation that Respondents' preparation of legal documents is the practice of law.

Other than Respondents' admission to the preparation of legal documents, which Respondents contend is allowable pursuant to the foregoing, the only evidence which Petitioner presented to the Court on this matter was the Affidavit of Mary Ellen Bateman that the documents prepared were not Supreme Court approved forms; it does not address or

have any bearing on the preparation of forms not approved by the Supreme Court. No other evidence or testimony was presented by Petitioner.

There are insufficient pleadings and no evidence for the Court to grant Summary Judgment in favor of Petitioner on this matter.

3. Respondents admit to engaging in oral communication to obtain information for the preparation of the legal documents.

Once again, pursuant to Petitioner's response to Respondent's Interrogatories, Interrogatory #13, and Chapter 10 of the Rules Regulating the Florida Bar, Respondents may engage in oral communication to obtain information for the preparation of legal documents.

And again, Petitioner's response to Interrogatory #13 and Chapter 10 of the Rules Regulating the Florida Bar in themselves clearly oppose Petitioner's allegation that Respondents' engagement in oral communication to obtain information for the preparation of legal documents is the practice of law.

Other than Respondents' admission to the engagement in oral communication to obtain information for the preparation of legal documents, which Respondents contend is allowable pursuant to the foregoing, Petitioner has presented no evidence as to the content of the oral communications engaged in by Respondents with their customers; no deposition, no affidavit.

There are insufficient pleadings and no evidence for the Court to grant Summary Judgment in favor of Petitioner on this matter.

4. Respondents admit to preparing legal documents which were not Supreme Court approved forms,

Pursuant to Petitioner's response to Respondents' Interrogatories, Interrogatory #13, Respondents may prepare legal documents which are not Supreme Court approved forms.

Petitioner's response to Interrogatory #13 clearly opposes Petitioner's allegation that Respondents' preparation of legal documents which are not Supreme Court approved forms is the practice of law.

There are insufficient pleadings and no evidence for the Court to grant Summary Judgment in favor of Petitioner on this matter.

5. Respondents admit to the usage of the word "legal" in their name and advertisements. Respondents, however, deny that the usage of the word "legal" misleads the public.

Respondents admit that the advertisement sets forth that Respondents provide ordinary legal services to the public. However, the word "services" has a broad definition; the "preparation of forms", whether approved by the Supreme Court or not, is a service; the "providing of procedural direction" is a service.

Respondents further state that the name EXPRESS LEGAL

SERVICES, INC., is used in conjunction with the advertisements of EXPRESS LEGAL SERVICES, INC. which clearly imply that the services provided are not provided by attorneys. There are over forty (40) words in the advertisement of EXPRESS LEGAL SERVICES, INC. from which Petitioner has extracted two (2) words out of context to formulate their belief of an alleged misinterpretation by the customers of the business.

Other than Respondents' admission to the usage of the word "legal" in their name and advertisements and the presenting into evidence of Respondents' advertisement, by the advertisement itself, the Affidavit of George Turner and the Affidavit of the representative of the publication in which the advertisement is displayed, Petitioner has presented no evidence as to any customer of Respondents' claiming a misinterpretation or being misled by the advertisement or name of EXPRESS LEGAL SERVICES, INC.; no deposition, no affidavit.

There are insufficient pleadings and no evidence for the Court to grant Summary Judgment in favor of Petitioner on this matter.

This Court must look to a past decision of the Supreme Court of the State of Florida; prior to the recent decisions of the Court concerning the unlicensed practice of law by businesses owned and operated by non-lawyers. In particular, Florida Accountants Association v. Dandelake, 98 So2nd 323, 70 ALR 425 (Fla. 1957), where

the State Board of Accountancy attempted to enjoin accountants, who were not certified public accounts or public accountants holding a certificate of authority from the State Board of Accountancy, from holding themselves out as accountants and from using the word "accountant" in their literature, representations to the public, signs, and stationery. The Court found that the accountants had the constitutional right to do ordinary accounting work without being relegated to the position of employees in offices of certified public accounts and public accountants and could call themselves "accountants" rather than "bookkeepers". Further, the Court found that the prohibition of the foregoing conflicts with the Constitution as it abridged the right of private property and infringed upon the right of contract in matters of private concern bearing no relation to the general or public welfare and tended to create a monopoly in the profession of accounting for the benefit of certified accountants and denied uncertified accountants equal protection of the laws.

In Florida Accountants Association v. Dandelake, the Court found merit in the contention of the accountants that they wanted to do ordinary accounting work without, as they put it, being relegated to the position of 'enslaved laborers' in the offices of certified public accountants and contended that they had a constitutional right to do so. Respondents, in the above-styled cause, make a similar contention; that they want to provide ordinary legal services (document preparation and procedural direction as

provided in Chapter 10 of the Rules Regulating the Florida Bar) to that portion of the public that cannot afford or refuse to employ the services of an attorney and that Respondent want to provide the services without being relegated to the position of 'enslaved laborers' in the offices of lawyers. Additionally, Respondents contend that the prohibition of the foregoing conflicts with the Constitution as it abridged the right of private property and infringed upon the right of contract in matters of private concern bearing no relation to the general or public welfare and tended to create a monopoly in the profession of legal services for the benefit of lawyers and denied uncertified paralegals equal protection of the law.

It is common knowledge that, due to the cost of employing lawyers and the negative attitude of the public toward lawyers, (a) the legal needs of a great portion of the public are not being met and (b) an increasing number of litigants in the Court are proceeding Pro Se. This situation has created a demand for persons who are not lawyers but who can render ordinary legal services to the public by preparing legal forms and providing procedural direction for the public to proceed through the maze of the legal system. This Court has publicly noted the increasing number of Pro Se litigants.

The Court cannot overlook the fundamental right of all citizens to enter into contracts of personal employment; including that of labor and other services. The "Right to Work" Amendment to the Constitution expresses the public policy of this right. The needs of the public to obtain assistance from other sources when they cannot afford or refuse to employ

the services of an attorney must be superimposed upon the fundamental right of all citizens to enter into contracts of personal employment.

Though Florida Accountants Association v. Dandelake, concerned a different profession, it must be compared to the above-styled cause in that that case concerned a profession regulated by the laws of the State of Florida which was attempting to (1) limit the ordinary services which may be offered and performed by those not licensed and (2) restrict the usage of a word, describing their profession, in their literature, representations to the public, signs, and stationery. Based upon the Court's adjudication in Florida Accountants Association v. Dandelake, this Court must deny Petitioner's Motion for Summary Judgment.

VII. CONCLUSION

The Court's adjudication of a Motion for Summary Judgment must be based upon the pleadings and evidence presented; not upon the assumptions of a party.

Petitioner has failed to present any evidence or evidence sufficient upon which the Court may enter Summary Judgment against Respondents. The evidence which Petitioner did present is in contradiction to Petitioner's Answers to Interrogatories which set forth that Respondents may perform those acts which Petitioner has alleged is the practice of law.

Additionally, pursuant to the Court's decision in

Florida Accountants Association v. Dandelake, this Court must deny Petitioner's Motion for Summary Judgment.

WHEREFORE, Respondents respectfully request this Court to:

1. Set aside the Report of Referee and Summary Judgment
Against Respondents CANDICE L. MIRAVALLE and EXPRESS LEGAL SERVICES, INC.
2. Direct this matter proceed henceforth without delay.

VIII. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by US Mail this _____ day of August, 1999, to Barry W. Rigby, 1200 Edgewater Dr., Orlando Fl 32804-6314.

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