

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC10-543

v.

TFB File No. 2010-00,407(4A)OSC

ROBERT V. PALMER,

Respondent.

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REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

PROCEDURAL HISTORY

1. On March 25, 2010, The Florida Bar filed its Petition for Contempt and Order to Show Cause in this matter.

2. On May 25, 2010, the Florida Supreme Court issued its Order to Show Cause on or before June 9, 2010, why Respondent should not be held in contempt.

3. On June 8, 2010, Respondent filed his Motion for Enlargement of Time.

4. On June 15, 2010, the Florida Supreme Court allowed Respondent until June 24, 2010, to serve his response.

5. On June 24, 2010, Respondent filed his Motion for Statement of Particulars.

6. Respondent did not set his motion for hearing.

7. This court was appointed to try this matter on September 15, 2010.

8. On October 11, 2010, this matter was noticed for a telephonic case management hearing to take place on November 5, 2010.

9. On November 5, 2010, Respondent failed to appear at the hearing.

10. At that hearing, the court set this matter for final hearing on January 12, 2011, in Jacksonville, Florida.

11. At no time has Respondent answered the Petition in this cause.

12. On December 22, 2010, Respondent filed his Second Request Motion for Statement of Particulars.

13. Respondent did not set that motion for hearing either.

14. On January 12, 2011 – the day of the final hearing – Respondent appeared in court and after his arraignment and not guilty plea, he insisted on his right to have counsel appointed.

15. As a result, the matter was continued to allow Respondent to file a proper Affidavit of Indigency since he was unable to answer the court's questions concerning his finances.

16. The court gave Respondent five days to file the affidavit before determining how to proceed.

17. At that time, the court also denied Respondent's Motion for Statement of Particulars finding that all of the relevant information was already contained in the Bar's Petition and the attached sworn statement.

18. Additionally, the Court granted the Bar's *ore tenus* motion to compel discovery responses giving Respondent 15 days from the appointment of counsel or the denial of same to respond to the Bar's discovery.

19. On January 20, 2011, Respondent filed his Case Management Report and Motion for Continuance.

20. In his motion, Respondent stated that he has “. . . decided that it is in his best interest to represent himself . . . .”

21. On January 25, 2011, the court granted Respondent's Motion for Continuance.

22. On February 3, 2011, the court reset the final hearing on this case for March 11, 2011, in Jacksonville, Florida.

23. On February 11, 2011, Respondent filed his Motion to Take Deposition and his Notification of Exercise of Rights again confirming therein that he was representing himself.

24. On February 15, 2011, The Florida Bar filed its Motion for Sanctions alleging that Respondent, despite being ordered to do so, had failed to respond to discovery.

25. On February 25, 2011, the court denied Respondent's Motion to Take Deposition.

26. On March 7, 2011, Respondent filed his Complaint Charging Fraud on the Court by Referee Traynor, Bar Counsel Carlos Leon and The Florida Bar in Case No. SC10-453.

27. On March 11, 2011, the parties appeared for the final hearing. To the extent that Respondent's last filing constituted a motion for a continuance and for recusal, the court denied it. The court also granted The Florida Bar's motion for sanctions to the extent that Respondent, while allowed to testify, would not be permitted to introduce documents that had not been produced in discovery. The court then conducted a *Faretta* inquiry<sup>1</sup> to be sure Respondent understood the

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<sup>1</sup> Consistent with *Stermer v. State*, 609 So. 2d 80 (Fla. 5th DCA 1992)(In order to ensure that defendant's decision to waive right to counsel and to represent himself is knowingly and intelligently made, trial court must make inquiry on the record to demonstrate defendant's understanding and appreciation of the seriousness of the charges and his capacity for self-representation).

advantages and risks of representing himself. Finding that Respondent did fully understand, the final hearing then took place.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and this report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

## II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a disbarred former member of The Florida Bar, permanently enjoined from practicing law but nevertheless subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

Ms. Williams testified that in the 1990's, Respondent had done legal work for her and her mother. Then one day in 2009, while driving down Cassat Avenue, she saw All Florida Legal Clinic. She called the number that was listed and Respondent answered the phone. She explained that she needed to get guardianship over a person that lived with her and asked if Respondent could help her with that. According to Ms. Williams' testimony, Respondent said he could help with that matter and asked her to come into the office. She told him that she was driving nearby and would come in right away. That was in early August 2009. Inside, she saw Respondent's credentials, so she decided to hire Respondent for the

guardianship matter. Ms. Williams testified that she waited for a while in the office and then, because she felt she was being ignored, she asked the assistant about Respondent. The assistant told her Respondent was not in the office and Ms. Williams responded that he had told her to come right in to meet him and she had done so. Ms. Williams then called Respondent again and, after making excuses, he told her to return another day.

A few days later, Ms. Williams returned to All Florida Legal Clinic. At the office, Respondent's assistant told Ms. Williams that they could provide the service she required and that it would cost \$550 which Ms. Williams paid. Ms. Williams testified that the assistant called Respondent about the price and he told her the amount which she then repeated. Ms. Williams paid Respondent \$550.00 as is evidenced by his signature on her check dated August 7, 2009.

Respondent's assistant told Ms. Williams that the necessary documents would take 10 days to prepare. Not wanting to bother, Ms. Williams waited about three weeks later, and having heard nothing from Respondent's office, Ms. Williams called Respondent's office and was told that the documents were pending with Respondent.

Later, Ms. Williams realized there was a problem since she still had not heard from Respondent and had not received the promised documents. After numerous calls to the office without being able to speak to Respondent, Ms.

Williams asked for a refund but her request was repeatedly ignored. Ms. Williams finally was able to speak to Respondent but he made excuses again and nothing was ever resolved.

Ms. Williams then asked her prepaid legal plan to send Respondent a letter asking for a refund but she still received no response. At that point, Ms. Williams filed her complaint with The Florida Bar. Subsequently, Respondent's wife sent Ms. Williams a refund of \$275.00 but Ms. Williams has never received the balance.

Ms. Williams admits that she did not meet Respondent at the office on either of her visits to the office, but she nevertheless recognized his voice every time she spoke to him as the voice of an older man and the same voice she heard in court.

The Florida Bar also presented evidence that Respondent is the registered owner of "All Florida Legal Clinics" and identifies himself as a "retired" lawyer. Additionally, the Bar argues that it constitutes the practice of law for a nonlawyer to hold himself out as an attorney either expressly or impliedly. This includes using "legal" in the name of one's business [*The Florida Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000)], using the title "attorney" or "lawyer" [*The Florida Bar v. Gordon*, 661 So. 2d 295 (Fla. 1995)], and using any other title which holds the person out as being able to provide legal services [*The Florida Bar v. Borges-Caignet*, 321 So. 2d 550 (Fla. 1975)].

In light of the foregoing, this court finds that Respondent had direct contact with Ms. Williams in the nature of consultation, explanation, recommendation, advice, and assistance in violation of the Supreme Court's orders in Supreme Court Case Numbers 75,557 and 83,999. Additionally, Respondent's interaction with Ms. Williams, as described herein, constituted engaging in the practice of law in violation of the Supreme Court's orders in Supreme Court Case Numbers 75,557 and 83,999.

Finally, I find that Respondent has continued to engage in the practice of law by being the registered owner of "All Florida Legal Clinics" and identifying himself as a "retired" lawyer. Additionally, as the Bar correctly argued, Respondent has further engaged in the practice of law by hold himself out as an attorney both expressly and impliedly. This includes using "legal" in the name of his business [*The Florida Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000)], using the title "attorney" or "lawyer" [*The Florida Bar v. Gordon*, 661 So. 2d 295 (Fla. 1995)], and using any other title which holds the person out as being able to provide legal services [*The Florida Bar v. Borges-Caignet*, 321 So. 2d 550 (Fla. 1975)].

### III. RECOMMENDATIONS AS TO GUILT.



I recommend that Respondent, by his actions, be found guilty of violating the orders of the Supreme Court of Florida in Case Nos. 75,557 and 83,999 and is thereby guilty of indirect criminal contempt as follows:

Respondent's actions, as noted above are, a direct violation of the Supreme Court's order of disbarment in Supreme Court Case No. 75,557, in that such conduct was the unauthorized practice of law and a violation of Paragraph 4, Subsections a, c, d, e, f, g, h, l, m, n and p, of the restraining order in Supreme Court Case No. 83,999.

IV. CASE LAW.

I considered the following case law prior to recommending discipline:

<i>TFB v. Schramek</i> , 670 So. 2d 59 (Fla. 1996)	Defendant found in contempt of court order enjoining him from practice of law would be punished by 90 days in jail (with 60 days suspended).
<i>TFB v. Arango</i> , 461 So. 2d 932 (Fla. 1985)	Unauthorized practice of law warrants sentence of 120 days (with 90 suspended if injunction not violated).
<i>TFB v. Furman</i> , 451 So. 2d 808 (Fla. 1984)	Unauthorized practice of law warrants sentence of 120 days (with 90 suspended).
<i>TFB v. Valdes</i> , 507 So. 2d 609 (Fla. 1987)	Engaging in unauthorized practice of law in contempt of Supreme Court's order supports finding of indirect criminal contempt and justified 5 month imprisonment sentence suspended contingent upon successful completion of 100 hours of community service.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED.

I recommend that Respondent, Robert V. Palmer, having been found guilty of indirect criminal contempt in the above-referenced cases be disciplined by:

- A. Incarceration for a period of 60 days.
- B. Payment of costs incurred by The Florida Bar in assisting with the hearings in these proceedings.
- C. Respondent shall refund the remaining \$275.00 to Ms. Williams within 30 days of the Supreme Court's Order in this matter.
- D. Respondent shall remove any diplomas and or licenses at the clinic that give the impression that he is either licensed to practice law or that he is a retired lawyer

VI. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 82

B. Aggravating Factors: Prior Discipline:

By order dated October 31, 1991, Supreme Court Case Number 75,557, Respondent was disbarred from the practice of law in Florida. By order dated November 30, 1995, Supreme Court Case Number 83,999, Respondent was

“permanently and perpetually restrained from engaging in the practice of law in the State of Florida.”

On March 10, 2005, in Supreme Court Case Numbers SC91,838 and SC00-1934, Respondent was found guilty of indirect criminal contempt on three counts of violating the Court’s order disbaring him from the practice of law. Respondent was sentenced to 60-days incarceration on each count to run concurrently but 50 days of each sentence were ultimately reduced resulting in actual incarceration of 10 days concurrent.

C. Mitigating Factors: None

**VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED**

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs, pursuant to to Rule 3-7.6(q)(1)(I), Rules of Discipline	\$ 1,250.00
Court Reporter Fees and Transcripts	493.98
Bar Counsel Travel Expenses	493.53
Investigative Costs and Expenses	811.40
Witness Expenses	<u>47.13</u>
<b>TOTAL</b>	<b>\$ 3,096.04</b>

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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John Michael Traynor, Referee  
Circuit Court Judge  
St. John County Judicial Center  
4010 Lewis Speedway, Ste. 305  
Saint Augustine, FL 32084-8637

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to Respondent, Robert V. Palmer, whose record bar address is 7044 San Sabastian Ave, Jacksonville, FL 32217-2754, Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Carlos Alberto Leon, Bar Counsel, The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
John Michael Traynor, Referee

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