

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

THE FLORIDA BAR,

Petitioner,

CASE No. SC08-1815

GREGORY L. HOOVER

Respondent.

STIPULATED 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(c) of the Rules Regulating The Florida Bar, the following proceedings occurred:

1. On or about October 7, 2008, Petitioner filed a Petition Against the Unlicensed Practice of Law (“the Petition”) against Respondent. Respondent filed an Answer and Affirmative Defenses to the Petition on or about November 12, 2008.

2. On or about January 7, 2009 the Supreme Court of Florida issued an Order designating the Chief Judge of the Eighteenth Circuit to appoint a referee.

3. A Case Management Conference was held on March 9, 2009 in this matter. Petitioner was represented by Ghunise L. Coaxum.

Respondent was present. All parties were given the date of the final hearing.

4. A final hearing was scheduled for May 5, 2009. A Notice of Hearing was sent to Petitioner and Respondent on March 10, 2009.

5. On or about March 13,2009, the Petitioner filed a Motion to Amend the Petition along with an Amended Petition.

6. On or about April 8, 2009 the Petitioner filed a Request to Produce.

7. On May 5, 2009, the undersigned granted the Petitioner's Motion to Amend the Petition and accepted the Amended Petition as filed.

8. On May 5, 2009, this matter was tried before the undersigned as referee. Petitioner was represented by Ghunise L. Coaxum and Respondent failed to appear.

9. At trial, Gary Bergenske, Kelli Murray and Anne Seims testified on behalf of Petitioner. ___ exhibits were introduced by Petitioner and received into evidence.

All of the aforementioned pleadings, attachments and exhibits received in evidence constitute the record in this case and forwarded to the Supreme Court of Florida with this order.

II. Findings of Fact

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

That based on the testimony and the exhibits, Respondent, at all times material herein, was not and is not a member of The Florida Bar, and was not therefore licensed to practice law in the state of Florida.

As to Count I

Witness Gary Bergenske testified that Gregory L. Hoover contacted him via e-mail about including him in a federal law suit against 600 North Developers, Inc., also known as The Plaza.

Mr. Bergenske testified that on September 17, 2007, he entered into a contract with Gregory L. Hoover for plaintiff inclusion in the federal lawsuit.

Mr. Bergenske testified that he understood that Respondent would be drafting and filing all the legal pleadings in the law suit.

Mr. Bergenske identified the copy of the contract he signed.

Mr. Bergenske testified that he paid Gregory L. Hoover \$2,500.00 as specified in the contract.

Mr. Bergenske identified the copy of the check he wrote to Respondent for \$2,500.00 dated September 17, 2007.

Mr. Bergenske identified the copy of an e-mail he received from Respondent asking him to identify any professional or financial involvement with a list of persons and entities.

Mr. Bergenske testified that Respondent told him the filing fees would be \$350.00.

Mr. Bergenske identified the copy of the check he wrote to Respondent for \$350.00 dated October 4, 2007.

Mr. Bergenske testified that Respondent told him it would cost \$90.00 to hire an accountant.

Mr. Bergenske identified the copy of the check he wrote to Respondent for \$90.00 dated November 13, 2007.

Mr. Bergenske testified that Respondent told him it would cost \$268.00 to retain an attorney to handle the final settlement stage.

Mr. Bergenske identified the copy of the check he wrote to Respondent for \$268.00 dated October 30, 2007.

Mr. Bergenske testified that Respondent would call him periodically to give him updates about the litigation and answer any questions.

Mr. Bergenske testified that after collecting the check for \$90.00 Respondent told him that the litigation was in the settlement phase and should be completed by the end of December, 2007.

Mr. Bergenske testified that shortly after that time Respondent stopped answering any telephone calls and e mails.

As to Count II

Witness Kelli Murray testified that on or about August 15, 2007 she was solicited via e-mail by Respondent. In the e-mail Respondent represented that he had been working on filing a law suit against The Plaza Resort and Spa in federal court and would be doing so within ten days.

Ms. Murray identified the e-mail correspondence from Respondent.

Ms. Murray testified that Respondent Hoover told her that he would include her and her husband Enon Winkler in the litigation.

Ms. Murray testified that she and Mr. Winkler later met with Respondent in person and he asked for \$1,500.00 to include them in the litigation.

Ms. Murray identified a copy of the check she wrote to Respondent for \$1,500.00.

Ms. Murray testified that following the payment Respondent would send group e-mails to the plaintiffs to update them about the status of the litigation.

Ms. Murray testified that the group e mails eventually stopped and became e-mails from Respondent to individuals and telephone calls from Respondent to individuals.

Ms. Murray testified that on October 12, 2007 Respondent filed a Complaint for Money Damages, Preliminary Injunctions and Permanent Injunctions with the United State District Court for the Middle District Court of Florida Orlando Division.

Ms. Murray testified that Respondent provided her with a courthouse stamped copy of the complaint on October 12, 2007.

Ms. Murray identified the copy of the complaint.

On or about October 12, 2007 Respondent asked Ms. Murray for \$350.00 for the cost of filing the complaint.

Ms. Murray identified a copy of the check for \$350.00 she made payable to Respondent on October 12, 2007.

On October 17, 2007, the U.S. District Court for the Middle District Court of Florida entered an Order dismissing the complaint.

The court concluded that Respondent was not a lawyer and could not file suit on behalf of the seventeen named plaintiffs.

The hereby undersigned took judicial notice of the order from the U.S. District Court for the Middle District Court of Florida.

Ms. Murray testified that on or about October 29, 2007 Respondent sent an e-mail asking that she and Mr. Winkler sign the Conclusion and Certificate of Service page for the amended complaint that he had drafted and also that she pay \$200.00 for a re-filing fee.

As to Count III

Witness Alana J. De Garmo did not appear at the final hearing to provide testimony.

The Petitioner did not present any testimony or evidence to support restitution for this Count.

Ms. De Garmo was listed as one of the plaintiffs in the complaint Respondent filed with the United State District Court for the Middle District Court of Florida Orlando Division

As to Count IV

Witness Anne R. Seims testified that on or about July 6, 2007 she was at the law library in Viera, Florida discussing a family law matter with the librarian.

Ms. Seims testified that Respondent approached her and said he had overheard her conversation. Respondent told her that he could help her with her legal problems and he referenced laws concerning the rights of grand parents.

Ms. Seims testified that Respondent said he could help her for a fee of \$100.00.

Ms. Seims testified that later that same day she returned to the law library with \$100.00 in cash. Ms. Seims testified that at that time Respondent presented her with a receipt/agreement for services that reflected a \$150.00 fee.

Ms. Seims identified the receipt/agreement for services that both she and Respondent signed. The agreement provided in part that he would prepare and file Petition to Establish (Grand) Parental Rights for Ms. Seims.

Ms. Seims testified that Respondent provided her with a copy of his résumé and driver's license as identification.

Ms. Seims identified the copies of the résumé and driver's license that Respondent provided to her.

Ms. Seims testified that after several discussions she agreed to pay Respondent \$250.00 for his services.

Ms. Seims testified that she paid Respondent \$250.00 in cash.

Ms. Seims identified a copy of the receipt/agreement for services which reflected that she had paid Respondent in full.

Ms. Seims identified an e-mail correspondence from Respondent dated July 15, 2007 in which he requested a \$100.00 loan.

Ms. Seims testified that she made several inquiries with the clerk's office in Viera, Florida and discovered that Respondent never filed any petitions on her behalf.

As to Count V

Witness Kim Tansino did not appear at the final hearing to provide testimony.

The Petitioner did not present any testimony or evidence.

III. Conclusions of Law

As to Counts I, II, III and IV, the undersigned hereby finds that Respondent's actions as alleged constitute the unlicensed practice of law. In The Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962), judg. vacated on other grounds, 373 U.S. 379 (1963) the Court found that if the giving of [the] advice and performance of [the] services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served

requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

The undersigned hereby finds that Respondent engaged in the unlicensed practice of law by drafting and preparing legal pleadings on behalf of others and giving legal advice to others. See, The Florida Bar v. Smania, 701 So. 2d 835 (Fla. 1997) (Fla. 1997) (holding that it constitutes the unlicensed practice of law to give legal advice to others and to draft, sign or file legal pleadings on behalf of others.); The Florida Bar v. Gordon, 661 So. 2d 295 (Fla. 1995) (holding that it constitutes the unlicensed practice of law to draft legal documents on behalf of others and to give legal advice to others).

The undersigned hereby finds that it constitutes the unlicensed practice of law for Respondent to make representations that he would negotiate a settlement of the law suit on behalf of the witnesses. See, Berganzel v. Mlynarik, 619 N.W. 2d 309 (Iowa 2000) (holding that it constitutes the unlicensed practice of law for a nonlawyer to negotiate settlements on behalf of others.).

While the Petitioner did not present testimony or evidence from Witness De Garmo in Count III of the Petition, the undersigned hereby concludes that Ms. De Garmo's name was listed as a plaintiff in a pleading that was drafted and filed by Respondent.

As to Count V, the undersigned hereby finds that the Petitioner did not present any testimony or evidence and failed to prove the allegations.

IV. Recommendations for Final Disposition of the Cause

The undersigned hereby recommends that a permanent injunction be issued by the Supreme Court of Florida preventing and restraining Respondent from engaging in the acts complained of in Counts I, II, III and IV and from otherwise engaging in the practice of law in the state of Florida, until such time as Respondent is duly licensed to practice law in this state.

V. Statement of Restitution, Monetary Penalty and Costs and the Manner in Which They should Be Taxed

Pursuant to Rule 10- 7.1(d)(3) of the Rules Regulating The Florida Bar, the undersigned hereby finds that there was sufficient evidence and testimony presented during the final hearing to order

restitution. The undersigned hereby recommends that Respondent should make restitution in the following manner:

to Gary Bergenske for \$3,208.00
to Kelli Murray for \$1,500.00
to Anne Seims for \$250.00.

Pursuant to Rule 10-7.1(d)(1) of the Rules Regulating The Florida Bar, the undersigned hereby recommends that Respondent be ordered to pay a monetary penalty of \$4,000.00 which is equal to \$1,000 per incident of unlicensed practice of law that was proven at the final hearing.

Pursuant to Rule 10-7.1(d)(2) of the Rules Regulating The Florida Bar, the hereby undersigned recommends that the costs in the amount of \$140.20 be taxed against the Respondent.

Dated this _____ day of May, 2009.

Rhonda E. Babb
Judge of the County Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to Thomas D. Hall, Clerk of the Supreme Court of Florida, Supreme Court of Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927, and that copies were mailed by regular U.S. Mail to Lori Holcomb, UPL Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Respondent, Gregory L. Hoover, , this _____ day of May, 2009.

Henrietta Frazier, Judicial Assistant