

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC09-333

v.

TFB File No. 2007-90,309(02S)

JEFFREY A. MILLER

Respondent.

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**REPORT OF REFEREE**

**I. Summary of Proceedings**

The undersigned being duly appointed as referee to conduct disciplinary proceedings in this matter, according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On February 18, 2009, The Florida Bar filed its Complaint of Minor Misconduct against Respondent as well as its Request for Admissions in these proceedings. Respondent filed his answer and responses to requests for admissions on March 20, 2009. On May 7, 2009, a final hearing was held in this matter. All of the aforementioned pleadings, responses, correspondence, and exhibits received in

evidence and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys have appeared as counsel for the parties:

For The Florida Bar: Kathy J. Bible, Tallahassee, Florida

For the Respondent: Alfred A. LaSorte, Jr. West Palm Beach, Florida

## **II. Findings of Fact**

### **A. Jurisdictional Statement**

Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of The Supreme Court of Florida.

### **B. Narrative Summary of Case**

The Respondent disseminated, or caused to be disseminated, a print advertisement which was distributed in or around the Broward County courthouse in December 2006. The Advertisement announced “While You Wait Divorce Papers—Marital Settlement Agreement Included” and stated prices for the papers of “No Kids \$99” and “Kids 149.” It further stated that “divorce papers are prepared by or under the direct supervision of a lawyer.” Respondent’s name appears in the advertisement.

The advertisement was not timely filed for review, was missing any cost disclosure

and contained information regarding the respondent's law firm and the service provided by his law firm of forms preparation in family law cases.

The Bar had alleged in its complaint that the advertisement was also misleading in its description of the services provided. Respondent stated in his Answer that the advertisement in question was not an advertisement for legal services and was therefore not subject to the Rules Regulating The Florida Bar regarding advertising.

During the initial phase of the hearing, the Bar presented the live testimony of respondent and the live testimony of the sworn complainant, Jerome S. Siegel, of Fort Lauderdale, Florida. The advertisement in question, Exhibit A to the Bar's complaint, was admitted into evidence, along with the sworn complaint of Mr. Siegel, pages from Mr. Miller's firm website in 2007 and pictures of a vehicle with information about respondent's firm that is usually parked in front of the West Palm Beach courthouse. Respondent's counsel presented the live testimony of respondent and documentary evidence of two contracts signed by individuals who contracted with respondent and his firm for document preparation services.

The sworn complainant, Mr. Siegel, testified that he saw the advertisements in question strewn about the entrance to the Broward County courthouse in December 2006 with respondent's name and information prominently displayed on the advertisements. This disturbed him and he filed a sworn complaint regarding

respondent's advertisement. Mr. Siegel testified that this was the only instance in his 35 years of practicing law in which he has filed a bar complaint against another attorney.

Respondent testified that he disseminated the print advertisement described by Mr. Siegel and prepared it on his office computer. The advertisement (Exhibit A to the Bar's complaint) was on a yellow card. An original copy of the advertisement was admitted into evidence as the Bar's Exhibit 1 in this proceeding. On one side of the card it stated: "While you Wait Divorce Papers \*Marital Settlement Agreement Included.\*" The advertisement further stated prices "No kids \$99 and Kids \$149." The location of Mr. Miller's office was listed "across the street from the courthouse Suite 301." On the other side of the card was listed the name of Mr. Miller's law firm, "Divorce Clinic, Miller Law Associates, P.A.," his name, the location of his office, his law firm's phone number and the web address of his law firm's website, [www.DivorceYes.com](http://www.DivorceYes.com). The advertisement also stated:

Divorce papers are prepared by or under the direct supervision of a lawyer. Document preparation is a non-legal service. No client-attorney relationship is created. Don't waste your money with "paralegals."

The advertisement ended with smaller print stating "This is not a solicitation for legal services."

Pages from respondent's website [www.DivorceYes.com](http://www.DivorceYes.com) were admitted into evidence, having been authenticated by Mr. Miller as accurate representations of his website during 2007, when they were printed from the internet. These pages discussed the legal services provided by Mr. Miller's firm and recommended low cost limited legal representation in family law cases that his firm provided then and still provides.

Mr. Miller testified that although he was responsible for the distribution of the advertisement described above, Bar's Exhibit 1 in evidence, he believed it to be an advertisement for non-legal services only and stated that he saw his law firm's document preparation service as a valuable low cost service to individuals who could not afford a lawyer. He testified that pro se's would be better served having a lawyer fill out the forms than non-lawyers, whom he sees as his competitors, not lawyers like Mr. Siegel, who testified that he charges a minimum \$3500 retainer for a divorce. That is why, Miller explained, that he wanted the recipients of the advertisement to know that a law firm was preparing the papers. Respondent denied that he was advertising for legal services. He explained that he included his firm's trade name, since he uses it on all of his pleadings, business cards and all printed materials, as another bar rule requires. Respondent testified that the Supreme Court has held that document preparation is not a legal service and that non-lawyers can lawfully

complete forms for customers. The Florida Bar v. Brumbaugh, 355 So.2d 1186 and The Florida Bar v. Rosemary Furman, 376 So.2d 378. Respondent stated that the document preparation services advertised could be performed in a short time and forms could be prepared while customers waited for them through a special program Mr. Miller had designed on his law office computer system for this purpose.

Mr. Miller testified that he had researched the issue of provision of non-legal services by lawyers and had determined that this was not the practice of law; however, he admitted that he had never contacted the Bar's Ethics hotline to ask whether his proposed advertisement was an advertisement for legal services under Rule 4-7.2, Rules Regulating The Florida Bar. Mr. Miller further stated that he had never filed the advertisement for review by the Bar's Ethics Department and had not filed the ad with the late fee as requested by the Bar after this discipline case was opened.

Mr. Miller authenticated copies of agreements signed by persons who came to his law firm for document preparation and these were admitted into evidence. These agreements stated that the individual was not hiring the attorney for a legal service. However, these agreements have the trade name of respondent's law firm listed at the top of the page "Broward Divorce Clinic" and also state "Sponsored by: Miller Law Associates, P.A. [www.DivorceYes.com](http://www.DivorceYes.com)" at the top of the page of these agreements.

C. Findings of Fact as to Each Item of Misconduct Charged to Respondent

Based upon the evidence described above, I find that respondent's advertisement, the Bar's Exhibit 1 in evidence, was in fact an advertisement for legal services subject to the Rules Regulating The Florida Bar. There was no need to mention Mr. Miller's law firm at all in the advertisement if it were truly for non-legal document preparation services alone. Mr. Miller's law firm is referred to prominently in the Bar's Exhibit 1 with the name of the firm, 'Divorce Clinic, Miller Law Associates, P.A.," Mr. Miller's name, Jeff Miller, Esq., and his website [www.DivorceYes.com](http://www.DivorceYes.com) prominently displayed on one side of the advertisement.

Further, the advertisement emphasizes the fact that the form preparation service advertised will be prepared "by or under the supervision of a lawyer" to distinguish Mr. Miller's services from those of form preparation services owned by non-lawyers. The advertisement states specifically, "Don't waste you money with 'paralegals'" to further emphasize the difference in services provided by a law firm and those provided by non-lawyers.

The evidence further established that the advertisement was not filed with The Florida Bar Standing Committee on Advertising prior to or concurrently with the first dissemination of the advertisement as required by Rule 4-7.7(a), Rules Regulating The

Florida Bar. The advertisement was never filed for review with the late filing fee as recommended by the Bar either.

The advertisement contained references to fees “no kids \$99” and “kids \$149” but did not state whether the client would be liable for any costs or expenses in addition to those fees.

The evidence showed that respondent and his firm can prepare family law forms quickly and therefore the phrase “Divorce Papers While you Wait” is not inherently misleading nor does it create expectations in the public that cannot be met by respondent or his firm.

### **III. Recommendations as to Guilt**

As to the first allegation, found in paragraph 7 of the Complaint, that the language creates a false, misleading expectation, the Court finds for the Respondent. Certainly if you can walk into the courthouse at that time and fill out the papers in the morning and get your divorce in the afternoon, then that’s not an unrealistic expectation.

As to the allegations of paragraph 8, the false and deceptive advertising claim, the Court finds for the Respondent. The reference to \$99.00 and to \$149.00 does not lead a person to believe that that’s all the costs to actually get a divorce.

As to the allegations of paragraph 9, that the advertisement does not disclose whether or not there will be any additional costs or expenses, the Court finds for the Bar. And the Court finds for the Bar on the allegation that this was an advertisement that was not filed in advance with the Bar committee. And of course, inherently the Court finds that this is not just an advertisement for non-legal services, the reason being that even though there is a disclaimer that no client-attorney relationship is created, “Divorce papers are prepared by or under the direct supervision of a lawyer; don’t waste your money on paralegals” certainly indicates to the Court that you’re receiving something other than a paralegal service, something at a higher level. And the Court thinks that really is an advertisement that would lead a reasonable person to believe that they were going to receive legal services.

Pursuant to my finding of fact that the advertisement (Exhibit “A” to the Bar’s Complaint in this matter and Bar’s Exhibit 1 in evidence) is a legal advertisement for respondent’s law firm, advertising his legal services in family law, I recommend that respondent be found guilty of violation of Rule 4-7.7(a) (failure to timely file advertisement for review).

I further recommend that respondent be found guilty of violation of Rule 4-7.2(c)(4) (failure to disclose whether a client will be liable for any expenses in addition to the fee advertised).

I find that respondent is not guilty of violation of Rules 4-7.2(b)(1)(A) (false and misleading information in an advertisement) and is not guilty of violation of Rule 4-7.2(b)(1)(B) (creating unjustified expectations about results the lawyer can achieve in an advertisement).

#### **IV. Recommendation as to Disciplinary Measures to be Applied**

Having found the respondent guilty of two rule violations, I proceeded with the disciplinary phase of the hearing. The parties presented argument regarding the appropriate discipline for respondent.

The Bar is seeking the minimum penalty of a minor misconduct admonishment. The Court finds that to be the appropriate sanction in the case. It was a short duration. Mr. Miller only used the flyer for one month in December of 2006. And certainly, as Respondent argued, it is true that lawyers that will do divorces on a fixed fee basis provide a needed service. It is certainly something that the public benefits from, but unfortunately, this ad was an advertisement for legal services.

After considering all the evidence before me, including respondent's violation of Rules 4-7.7(a) and 4-7.2(c)(4) and respondent's failure to mitigate his conduct by filing his advertisement with the late fee as required by Rule 4-7.7(b)(5) [now renumbered as Rule 4-7.7(b)(7)], I hereby recommend that respondent be found guilty of misconduct justifying disciplinary measures and recommend that respondent

receive an admonishment for minor misconduct and pay the Bar's costs in these proceedings.

A. Standards for Imposing Lawyer Sanctions

In making my recommendations I considered evidence of the rule violated by respondent and Sections 13.1(a), (d) and (g), Florida Standards for Imposing Sanctions. I also considered the following factors.

B. Aggravating Factors

The following sections of the Florida Standards for Imposing Sanctions are applicable: 9.22(i) substantial experience in the practice of law and 9.22(g) refusal to acknowledge wrongful nature of conduct.

**V. Personal History and Past Disciplinary Record**

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

A. Personal History of Respondent

Age: 53

Date admitted to bar: October 31, 1980

B. Aggravating Factors

9.22(i) Substantial experience in the practice of law.

9.22(g) Refusal to acknowledge wrongful nature of conduct.

C. Mitigating Factors

None.

**VI. 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	\$1,250.00
Court Reporter's Appearance Fee	200.00
Bar counsel's travel expenses	722.24
Witness fee and travel reimbursement	43.50
TOTAL	\$2,215.74

It is hereby recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to Rule Regulating The Florida Bar 1-3.6, unless otherwise deferred by the Board of the Governors of The Florida Bar.

Dated this 14 day of July, 2009.

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The Honorable Jack H. Cook, Referee  
Main Judicial Complex  
205 North Dixie Hwy.  
Room 4.2610  
West Palm Beach, FL 33401

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

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