

Supreme Court of Florida

THURSDAY, MAY 20, 2010

CASE NO.: SC08-1278

Lower Tribunal No.: 2008-90,049(02S)
2008-90,094(02S)

THE FLORIDA BAR

vs. GARY ELVIN DOANE

Complainant(s)

Respondent(s)

Upon consideration of the report of the referee and the briefs in this case, the referee's findings of fact and recommendations of guilt are approved. The referee's recommended sanction is disapproved and the Court hereby directs that respondent receive a public reprimand to be administered by the Board of Governors of The Florida Bar at a date and time to be determined by the Board.

Respondent is further placed on probation for one year, effective immediately, under the following terms and conditions:

(1) attendance at the next scheduled Advertising Workshop of The Florida Bar; and

(2) prior to publication, approval of all advertisements by The Florida Bar's Standing Committee on Advertising.

Further, Respondent is hereby enjoined from the use of the term "Expert" or "Experts" in all legal advertisements and any trade name.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Gary Elvin Doane in the amount of \$2,240.46, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined.

QUINCE, C.J., and PARIENTE, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

PARIENTE, J., concurs with an opinion, in which CANADY and PERRY, JJ., concur.

LEWIS, J., dissents with an opinion.

PARIENTE, J., concurring.

The respondent is not being disciplined because he held himself out as a “specialist” or “expert” in an area of law in which he was certified. He is being disciplined because he used the trade name “Legal Experts,” when he was a sole practitioner who was not certified by The Florida Bar in all fields of specialization. The use of this trade name is misleading to the public.

This lawyer had been using this trade name since April 2006, prior to our approval of the Bar’s request to allow lawyers who are board-certified by The Florida Bar to identify themselves as “experts.” Even as approved, the rules provide that an attorney who is board-certified in a particular area of the law by The Florida Bar may use the designations “board certified,” “specialist,” or “expert,” but he or she needs to include the area of certification. As set forth in rule 4-7.2(c)(6)(A) of the Rules Regulating the Florida Bar, a lawyer who is certified by The Florida Bar in a particular area of the law “may inform the public and other lawyers of the lawyer’s certified areas of legal practice. Such communications should identify The Florida Bar as the certifying organization and may state that the lawyer is ‘certified,’ ‘board certified,’ a ‘specialist in (area of certification),’ or an ‘expert in (area of certification).’ ”

To use the trade name “Legal Experts” or even “Legal Specialists” violates the rules in two ways. First, as mentioned, the respondent is a sole practitioner.

Second, he can only use the designation “legal expert” or “legal specialist” with the area of certification. The use of the trade name in respondent’s legal advertisements and communications is a clear violation of rule 4-7.2(c)(6)(A) and a clear abuse of the Florida certification plan as set forth in chapter 6 of the Rules Regulating the Florida Bar. The use of the trade name is misleading to the public, and I concur in the Court’s decision that Gary Elvin Doane should be publicly reprimanded for his actions.

CANADY and PERRY, JJ., concur.

LEWIS, J., dissenting.

Under rules fashioned by The Florida Bar and approved by a majority of this Court, solo practitioner Gary Elvin Doane became board-certified in the area of civil trial law. According to misdirected rules but rules certainly in full force and effect, he became authorized to use the title “expert.” Thereafter, Doane utilized advertisements that referred to the trade name of his law firm as “Legal Experts, L.L.C.” and “Legal Experts, P.L.” The Florida Bar contends that this trade name and type of advertising violates certain rules regulating lawyers in Florida.

Accordingly, the majority now enjoins Doane from the use of either the singular term “expert” or the plural term “experts” in all legal advertisements and any trade name. I dissent from this foreseeable result which is the natural and inevitable

consequence of this Court allowing lawyers to mislead the public with bar-sanctioned, advertising-based deception by use of the title “expert.”

Doane has been caught in the tangled morass of problematic rules created by this Court and The Florida Bar in the march for certification of lawyers as “experts.” The Florida Bar requested and a majority of this Court approved amendments to the rules regulating advertising of legal certifications to allow individual lawyers to identify themselves as “experts.” See In re Amendments to the Rules Regulating the Fla. Bar, 978 So. 2d 91 (Fla. 2007); In re Amendments to the Rules Regulating the Fla. Bar—Advertising, 971 So. 2d 763 (Fla. 2007). To no avail, I dissented with regard to the advertising pandering of adding the deceptive designation of the useless and misleading term “expert” to the arsenal of salutations that board-certified attorneys may unleash on the public. See 971 So. 2d at 765. The use of the hyperbolic term “expert” may mislead the public to believe that they are purchasing the legal representation of an “expert” attorney who is a preeminent mind in a field of law and therefore better able to obtain a desirable result for the client due to this possibly inaccurate and unverifiable moniker.

Now, an individual in accordance with the Rules Regulating the Florida Bar and this Court’s approval was allowed to hold himself out under the very inappropriate label of “expert,” but is being disciplined under these disjointed

advertising rules for engaging in practices which The Florida Bar urged this Court to allow. I do not dissent because I approve of the actions taken by Doane—in fact, I fully disapprove of the concept of The Florida Bar designating “experts.” However, the fundamental and primary problem rests in this Court’s approval of the use of the term “expert” in the first place. This Court should have never allowed attorneys to exploit inexperienced clients by adopting the unverifiable, qualitatively based designation of “expert.” This nonsensical advertising farce is demonstrated by a situation recently before this Court. We first allowed a lawyer to be identified as an “expert” in appellate law only to discover that he was not qualified to handle capital cases before this Court. This resulted in the Court reporting the deficiencies and actually precluding him from handling capital cases here. See Admin. Order No. AOSC10-6 (Fla. Sup. Ct. Feb. 19, 2010).

Accordingly, I must dissent from this Court’s decision to sanction a lawyer for engaging in the use of a deceptive and misleading moniker that this Court previously approved when it amended the rules to allow lawyers to advertise and market themselves as legal “experts.”

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



jn

Served:

HON. PHILIP JAMES YACUCCI, JR., JUDGE
KENNETH LAWRENCE MARVIN
KESHARA DARCEL DAVIS
JAN K. WICHROWSKI
GARY ELVIN DOANE