

Mailed

OCT 15 1991

Decision 91-10-019 October 11, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EQUAL ACCESS PROPOSITION,

Complainant,

vs. PACIFIC BELL,

PACIFIC BELL,

Defendant.

FIRST GENERATION GRP. INC.,
dba FIRST LAW GROUP,

Complainant,

vs. PACIFIC BELL,

PACIFIC BELL,

Defendant.

Case 91-08-064
(Filed August 28, 1991)
Case 91-08-065
(Filed August 28, 1991)

Mustafa Ansari, for First Generation dba
First Law Group/Oakland Legal Group,
complainant.

Thomas Perkins, for Equal Access
Proposition, complainant.

Brad L. Walter, Attorney at Law, for
Pacific Bell, defendant.

Lawrence C. Blazer, Deputy District
Attorney, Alameda County District
Attorney's Office, Consumer and
Environmental Protection Division,
intervenor.

OPINION

These complaints were filed on August 28, 1991 by First
Generation, doing business as First Law Group and/or Oakland Legal
Group (complainant) against Pacific Bell (defendant, Pacific) and
by Equal Access Proposition (complainant) against Pacific. Both

complainants list their mailing address as: 600 Grand Avenue, Suite 304B, Oakland, California. First Law Group and Equal Access Proposition both allege that "the Alameda District Attorney's office and Public [sic] Telesis Company conspired to violate Plaintiff [sic] right to Commercial speech by disconnecting Plaintiff's phone lines without cause." The complainants seek the immediate restoration of their respective telephone services.

Pacific's Tariff Rule 31, "Legal Requirements for Refusal or Discontinuance of Service," governs this case. Section 1 requires Pacific to disconnect existing service to a customer upon receipt from any authorized official of a law enforcement agency of a magistrate's written finding that probable cause exists to believe the telephone facilities have been or are to be used in the commission or facilitation of illegal acts. The character of such acts, absent immediate action, must pose significant dangers to public health, safety, or welfare.

Notice of evidentiary hearing was provided to complainants,¹ Pacific, and the Alameda County District Attorney's office (Alameda County DA). The Alameda County DA, as the concerned law enforcement agency under Rule 31, has the burden of both:

1. Proving that the use of the telephone service is prohibited by law, or that the phone service is used as an instrumentality to violate or to assist in the violation of the law and that the character of such acts

¹ A clerical error resulted in the defendant and the intervenor not being served with notice of the September 17th hearing until September 11, 1991. Under Rule 52 of the Commission's Rules of Practice and Procedure, "the Commission shall give notice of hearing not less than ten days before the date of hearing, unless it be found that public necessity requires hearing at an earlier date." Mustafa Ansari, on behalf of both complainants, requested that the hearing be held within the 20-day period provided under Pacific's Tariff Rule 31, notwithstanding the date of notice.

is such that, absent immediate and summary action, significant dangers to public health, safety, or welfare will result; and

2. Persuading the Commission that the service should not be restored.

An evidentiary hearing to determine whether service should be restored immediately on an interim basis and permanently, was held before Administrative Law Judge (ALJ) Reed in San Francisco on September 17 and 18, 1991. The hearing took place within the 20-day period dating from the filing of the complaint required by Rule 31. The ALJ consolidated the cases under Rule 55 of the Commission's Rules of Practice and Procedure since the proceedings appeared to involve related questions of law and fact. Testimony was received from Paul J. Seidel, a Deputy District Attorney with Santa Clara County, Inspector Evencio Hurtado of the Consumer and Environmental Protection Division of the Alameda County DA, Thomas Perkins, the representative of Equal Access Proposition and an employee of First Law Group, and David Page, another employee of First Law Group. Complainants and Pacific reached a stipulated agreement that Pacific had committed no wrongdoing in and of itself, and had acted in response to the warrant presented by the Alameda County DA. The parties summarized their arguments orally and the matter was submitted on September 30.

First Law Group's Motion for Interim Relief

In its Motion for Interim Relief, First Law Group argues that the First Amendment protects commercial speech, and that the Alameda County DA has not met its two-part burden in this case. Initially, complainant maintains that the Alameda County DA has "failed to assure it self [sic] that the subject commercial [sic] speech is unlawful." (Motion and Memorandum in Support for a Judgment on the Pleading, p. 2.)

First Law Group also contends that it was unable to obtain a copy of the original affidavit filed in this matter. Consequently, complainant describes the two affidavits available to it as "conclusory" and "woefully insufficient to support the high standard required to support the disruption of plaintiffs commercial speech based on the grounds of illegal communication." (Id.) Finally, First Law Group asserts that the Alameda County DA has not proven that "plaintiff's speech is so unlawful and so injurious to the public that the subject speech must be disrupted."

Testimony of Paul J. Seidel

Deputy District Attorney Seidel testified on behalf of the Alameda County DA. He sponsored Exhibits 1-3: the preliminary and permanent injunctions, and proof of service, issued by Santa Clara County against Ansari and various named legal clinics. He described the events and circumstances surrounding the issuance of the preliminary injunction in January 1988 and the permanent injunction in March 1991. Seidel stated that he had been receiving complaints, in Santa Clara County, about Ansari and his businesses for a number of years. He testified that the businesses operated under numerous names, in differing locations, and for various periods of time.

Seidel contended that he had personally discussed with Ansari the terms and effect of the injunctions. He stated that while the permanent injunction, obtained through default judgment, was currently being appealed, no stay of the permanent injunction had ever been sought or granted.

Ansari vigorously objected to Seidel's testimony, on the grounds that it was irrelevant and covered a period of time too remote from the matters alleged in the instant proceeding.

Testimony of Inspector Evencio Hurtado

Inspector Hurtado testified on behalf of the Alameda County DA. Three affidavits of Hurtado, dated July 26, July 30, and August 15, 1991, were the basis of three Findings of Probable

Cause issued on the same dates by Judge Larry J. Goodman of the Alameda County Superior Court. The affidavits and Findings of Probable Cause were received into evidence. The Findings were based on "probable cause to believe that the telephone numbers² listed in the affidavits and used by Mustafa Ansari doing business as First Law Group, 600 Grand Avenue, Oakland, California," were being used to violate and assist in the violation of Business and Professions Code Section 6125,³ Business and Professions Code Section 17500,⁴ and Penal Code Section 166.⁵

2 The telephone numbers referred to were the following numbers provided by Pacific Bell to complainants: (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463. The area code 510 numbers until recently were in area code 415.

3 Business and Professions Code Section 6125 (Practicing law without a license) states:

"No person shall practice law within this state unless he is an active member of the State Bar."

4 Business and Professions Code Section 17500 (False Advertising) states:

"It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in any state or any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the

(Footnote continues on next page)

Hurtado summarized the allegations contained in the affidavit on the record. Hurtado has been an inspector with the Alameda County DA's Consumer and Environmental Division since January 1989. Prior to joining the DA's Office in December 1982, he was employed with the Oakland Police Department from March 1975 to December 1982. During the last two and one-half years, in his present assignment, Hurtado has investigated numerous white collar crimes, including the unlicensed practice of law.

Hurtado stated that in February 1991, he prepared and submitted a Declaration In Support of Issuance of Arrest Warrant (Declaration) for the criminal activities⁶ of Mustafa Ansari and

(Footnote continued from previous page)

proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding two thousand five hundred dollars (\$2,500.00), or by both."

5 Penal Code Section 166(4) (Violating court orders) states:

"Criminal contempts. Every person guilty of any contempt of Court, of either of the following kinds, is guilty of a misdemeanor:"

"Willful disobedience of any process or order lawfully issued by any Court."

6 The charges included five counts of practicing law without a license (Business and Professions Code Section 6125), six counts of violating a court order (Penal Code Section 166), and one count of false advertising (Business and Professions Code Section 17500).

one of his employees, David Page. Neither Ansari nor Page is a member of the State Bar. The Declaration led to the February 20th filing of criminal charges against Ansari and Page in the Fremont-Newark-Union City Municipal Court. The two were arrested and released, with the matter now pending.

Hurtado maintained that Ansari and his agents and employees, under a variety of names,⁷ have been actively practicing law without a license in Santa Clara and Alameda Counties for a number of years. In the course of his investigations, he discovered that a preliminary injunction (now, a permanent injunction), with statewide application, had been ordered against Ansari and his businesses by a Santa Clara County Superior Court judge. Hurtado also stated that his office had received numerous complaints about Ansari, his employees and businesses from judges in the county, from aggrieved people who had sought legal services, and from the State Bar.

Further, Hurtado testified that in his February 1991 Declaration, he specifically identified six complainants, who contacted the office from February to October 1990 and who had been variously harmed through having employed the legal services of First Law Group. His summary described individuals denied relief because of flawed or inaccurately filed legal documents, services contracted for and never obtained, and requests for refunds which were never received. Hurtado also testified that the complainants described in his July 26th affidavit (Exhibit 5) were six different individuals and judges, four of whom had contacted the Alameda County DA's office within three weeks of the affidavit.

⁷ "Mustafa Ansari aka: Erroll Stewart, dba: First Generation Legal Group, aka: California Legal Clinics, Bay Area Legal Group, Bay Area Legal Group, Inc. and First Law Group." (Exhibit 5 (Attachment B).)

Hurtado recounted the stories of a number of the complainants in order to illustrate the resulting dangers "to the public health, safety and welfare." Specifically, he described the impact on the life of an Alameda woman who had purchased a Dominican Republic divorce in 1987 from one of the legal clinics run by Ansari. She remarried, and when her second husband died, began receiving Social Security benefits as the surviving spouse of the second husband. The Social Security Administration, discovering in 1990 that the first marriage had never ended and the second one was therefore invalid, terminated her spousal benefits and demanded the return of over \$20,000 in previous payments.

Hurtado's July 26th affidavit, more than sixty-five pages long, included the Declaration, letters from judges and complainants, complainants' receipts, a copy of a First Law Group paralegal agreement, yellow page advertisements and copies of the preliminary and permanent injunctions issued by Santa Clara County. Based on his experience and the documentation and observations stated in the affidavit, Hurtado concluded that First Law Group and its representative, Ansari, "are engaged in a continuing pattern of unlawful criminal conduct, including the unlicensed practice of law, false advertising, and violating court orders."

Testimony of Timothy Perkins

Called as a witness by the Alameda County DA, Perkins identified himself as a paralegal at First Law Group. He stated that he did not know whether or not First Law Group was a corporation. Further, he stated that he did not know what Ansari's status was within the organization, other than chief executive officer or CEO. Perkins contended that he had first associated with Ansari at the San Jose Legal Clinic and has had a business relationship with him for a number of years.

He stated that he had been trained by and had worked with several attorneys over the years. He maintained that he was familiar with and had also worked at Bay Area Legal Group. Perkins

acknowledged that he was aware of the Alameda woman who had purchased the "Dominican Republic divorce" (Exhibit 4), and admitted that she had sued and won a judgment against him in an Alameda County small claims case. He further stated that he had not satisfied the judgment because he "did not feel it was appropriate." However, several minutes later during an additional line of questioning on "Dominican Republic divorces," he indicated that he was not familiar with the subject. Perkins contended that he had seen or was aware of the preliminary and permanent injunctions issued against Ansari and the named legal clinics.

Additionally, Perkins asserted that his current caseload was very large. He stated that the Alameda woman's case represented the only complaint he had received of his work. Finally, Perkins maintained that he was the owner of complainant's Equal Access Proposition. He stated that the business had not yet been incorporated nor had a license been obtained, but Ansari had given him permission to operate out of the First Law Group offices. He further asserted that he had ordered the telephone listed under Equal Access Proposition and would be paying its bills. When questioned, he indicated that he was unaware that individuals answered "First Generation" or "First Law Group" at the telephone number listed for his organization.

Testimony of David Page

David Page testified⁸ for complainant First Law Group, where, he stated, he was a paralegal. He asserted that he had been

⁸ When Page took the witness stand, Deputy District Attorney Blazer advised the ALJ that since criminal charges (practicing law without a license, violating a court order and false advertising) were pending against him, Page should be asked whether he had consulted an attorney about the potential for self-incrimination in the testimony that he was about to give. Page responded to a series of questions that he had spoken to his attorney, was aware of his rights, and wished to testify.

trained and was supervised by Ansari. He stated that he submitted questionnaire forms that clients filled out to the office legal secretary who typed the clients' responses onto legal forms and other documents. These forms and documents are then filed in court by a courier. Page asserted that he did not give legal advice to clients and did not determine the court or jurisdiction where a document was to be filed. He stated that the clients select the jurisdiction, court and action to be filed. In addition, Page contended if the clients or First Law Group find a matter to be too complex for the office, it is referred to an attorney. Page estimated that he had a very large caseload which he managed by computer.

During cross-examination, Page stated that he was not aware of whether or not First Law Group was a corporation. He contended that Ansari was the chief executive officer or CEO. He stated that he had never seen the preliminary injunction issued against Ansari; however, he indicated that he was aware of it. Page acknowledged that he knew the three individuals cited in the Alameda County DA's July 26th affidavit, and that they were former clients of his. However, he maintained that he was unaware that their complaints or problems had not been resolved. Finally, Page agreed with Ansari's assertion during re-direct that the complaints in question represented an extremely small percentage of his caseload.

Discussion

It has been determined that telephone service is an interest in property entitled to protection against taking without due process. There must be probable cause to believe that facilities are being or are to be used to commit illegal acts, and that the character of the acts is such that, absent summary action, significant dangers to public health, safety, and welfare will result. (Goldin v. Pub. Util. Comm., 23 C.3d 638, 663 (1979))

Prior to termination of service, the law enforcement agency must show an impartial tribunal that there is probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. (Sokol v. Pub. Util. Comm., 65 C.2d 247, 256 (1966).) The Commission's obligation is to review the showing made before the magistrate in order to determine whether probable cause for summary termination existed. "In a civil administrative proceeding of this nature, where the liberty of the subscriber is not at stake, it is sufficient for purposes of the interim protection involved that the Commission limit itself to the face of the affidavits and an assessment of their adequacy to support the magistrate's finding." (Goldin v. Pub. Util. Comm. at 668.)

The Alameda County DA introduced the affidavits on which issuance of the three Findings of Probable Cause of July 26, August 7, July 30, and August 15, 1991 were based. Portions of the July 26th affidavit were objected to as inadmissible hearsay by complainant. The ALJ correctly instructed complainant that in hearings before the Commission, the technical rules of evidence need not be applied (Public Utilities Code Section 1701) so long as the substantial rights of the parties are preserved. (Rule 64 of the Commission's Rules of Practice and Procedure.) If evidence is objectionable on the grounds of hearsay, it will be weighed accordingly when all the evidence in the case is reviewed. This is consistent with the court's view. "[The Commission] should admit the subject evidence if it determines, disregarding those aspects of the affidavits which clearly fail to withstand constitutional scrutiny, that a sufficient basis for admission exists." (Id. at 669.)

The United States Supreme Court has adopted the "totality of the circumstances" analysis to determine the sufficiency of an affidavit in support of a search warrant. According to the court:

"The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth

in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a 'substantial basis for...conclud(ing)' that probable cause existed." (Illinois v. Gates, 462 U.S. 213, 238-239 (1983).)

In California, the totality of the circumstances test is used to assess whether a search warrant affidavit based on hearsay establishes probable cause. (People v. Rothen, 203 CA3d 684 (1988).)

Inspector Hurtado testified as to his observations, actions and the complaints received by the Alameda County DA that were described in his July 26th affidavit. He was available for complainants' cross-examination. Likewise, Deputy District Attorney Paul J. Seidel, whose statements were incorporated in the affidavit, took the stand and was available for cross-examination. While the affidavit incorporated the statements of four complainants, it contained corroborating documentary evidence from at least five other complainants. Therefore, although the affidavit contains hearsay, we find that the totality of the allegations leads a reasonably prudent person to believe that violations of Business and Professions Code Section 6125, Business and Professions Code Section 17500, and Penal Code Section 166 were occurring at 600 Grand Avenue, Suite 304B, Oakland. We find that those violations were made possible in large part by the use of several telephone numbers,⁹ since prospective customers used

⁹ Telephone numbers: (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463.

those numbers, advertised in the yellow pages of the phone book, to contact First Generation, First Law Group, Oakland Legal Group or any of the other names used by the legal clinics affiliated with Ansari at the Oakland address.

We find that the weight of the evidence does not support Perkins' assertion that Equal Access Proposition is a business unaffiliated with and separate from First Generation/First Law Group. The only evidence submitted, other than Perkins' testimony under cross-examination, was Exhibit 11, entitled "Reasonable Access Proposition," and which was a plain sheet of paper containing a statement proposing the repeal of "Sections 6125, 6126 and 6127¹⁰ of the Business and Professional (sic) Codes."

We find that the affidavits on which the July 26, July 30, and August 15, 1991 Findings of Probable Cause were based do state probable cause to believe that the identified telephone numbers¹¹ have been or are to be used to facilitate either the unlicensed practice of law, false advertising, violation of a court order, or all three, which are illegal acts. The violation of criminal statutes is not always of a character that, absent summary action, will result in significant danger to public health, safety, and welfare. However, the unlawful practice of law severely threatens the public's individual rights and liberties as well as its financial resources. "California prohibits the unlawful practice of law...to afford protection against persons who are not

10 Section 6126 refers to the penalties for unauthorized practice, advertising or holding out. Section 6127 refers to "the acts and omissions in respect to the practice of law (which) are contempts of the authority of the courts."

11 Telephone numbers: (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463.

qualified to practice the profession." (Gerhard v. Stephens, 68 C.2d 864, 918 (1968).) The affidavits establish probable cause to believe that unless the telephone service is disconnected and remains disconnected, it will be used to facilitate the unlawful practice of law, resulting in significant dangers to public health, safety and welfare.

We find the affidavits herein sufficient to establish probable cause to believe that termination without notice was directly necessary to prevent continued use of telephone facilities as an instrumentality for violating Sections 6125 and 17500 of the Business and Professions Code and Section 166 of the Penal Code. Prompt and immediate action without prior notice was required, in order to shield unsuspecting members of the public from additional harm.

Accordingly, complainants' requests for immediate and permanent reinstatement of telephone service¹² are denied.

Findings of Fact:

1. Complainant does business at 600 Grand Avenue, Suite 304B, Oakland, under the names First Generation, First Law Group and/or Oakland Legal Group (law clinics) and advertises its services in the Oakland yellow pages of the Pacific phone directory under "Attorneys."

2. The law clinics have operated under the business numbers: (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463.

3. The affidavits herein establish probable cause to believe that the law clinics are engaged in violations of Sections 6125 and

12 Telephone numbers: (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463.

17500 of the Business and Professions Code and Section 166 of the Penal Code.

4. The affidavits herein establish probable cause to believe that the basic exchange access lines known as telephone numbers (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463 are being or are to be used as an instrumentality for the violation of Sections 6125 and 17500 of the Business and Professions Code and Section 166 of the Penal Code.

5. The nature of the violation of Business and Professions Code Section 6125 (unauthorized practice of law) and 17500 (false advertising) and Penal Code Section 166 (violating a court order) is such that absent summary termination of telephone service to telephone numbers (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463, a significant danger to the public health, safety, and welfare will result.

6. The Alameda County District Attorney's Office, Division of Consumer and Environmental Protection, has sustained its burden of proving that telephone numbers (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386 and (510) 272-0463 are being used as an instrumentality to violate or assist in the violation of the law, and that the character of those acts is such that if telephone service were not discontinued, significant dangers to public health, safety, and welfare will result.

Conclusion of Law

Rule 31 of Pacific's tariffs requires that telephone service to (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484,

(510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463, and at 600 Grand Avenue, Suite 304B, Oakland, shall be disconnected and that there shall not be any reconnection at or new service at that location to Mustafa Ansari or Thomas Perkins, under the names First Generation, First Law Group, Oakland Legal Group, Equal Access Proposition and their successors, assignees, agents, representatives and employees until further order of the Alameda County Superior Court or this Commission.

ORDER

IT IS ORDERED that the requests of complainant First Generation doing business as First Law Group/Oakland Legal Group and complainant Equal Access Proposition, for immediate and permanent restoration of service to telephone numbers (510) 272-9335, (510) 272-9205, (800) 675-4529, (510) 834-1481, (510) 834-1482, (510) 834-1483, (510) 834-1484, (510) 273-0275, (510) 272-9336, (510) 272-9337, (510) 272-0386, and (510) 272-0463, are denied.

This order is effective today.

Dated October 11, 1991, at San Francisco, California.

JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY

NEAL J. SHULMAN, Executive Director