

IN THE SUPREME COURT OF FLORIDA

MERRELL G. VANNIER,  
Petitioner,

v.

THE FLORIDA BAR,  
Respondent.

CONFIDENTIAL

CASE NO. 61,691  
TFB #06C80HF3

**FILED**  
SID J. WISSE  
MAR 25 1988  
CLERK, SUPREME COURT  
By *[Signature]*  
Chief Deputy Clerk

THE FLORIDA BAR'S ANSWER BRIEF

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**STATEMENT OF THE CASE**

This disciplinary proceeding is before this Court upon Respondent's Petition for Review of the Report of the Referee finding Respondent Merrell G. Vannier in violation of Florida Bar Code of Professional Responsibility Disciplinary Rule 2-103(A) (solicitation of employment); DR 5-101(A) (accepting employment without full disclosure of the attorney's adverse interest); and DR 7-102(A)(8) (engaging in illegal conduct or conduct contrary to a disciplinary rule). The referee recommended Respondent Vannier's disbarment from the practice of law in Florida and assessment of costs of this proceeding.

The Petitioner in this Petition for Review is Merrell G. Vannier and the Respondent is The Florida Bar. In this answer brief, each party will be referred to as they stood before the Referee. Record references in this brief are to portions of a twelve volume trial transcript with exhibits and pleadings as referenced by the Referee's Index and Report, and Respondent Vannier's Opening Brief and Appendix.

## STATEMENT OF THE FACTS

In the interest of clarity, the Bar sets out the following statement of facts.

From March, 1975, through April, 1978, Gabriel Cazares was Mayor of the City of Clearwater, Florida. 2 T p.158. Prior to 1975, a building in downtown Clearwater known as the Ft. Harrison Hotel, served as the center of cultural, social and business activity for Pinellas County, as it had since 1925. 1 T p.73. In 1975, the Mayor was informed by representatives of the Southern Land Development and Leasing Corporation and United Churches of Florida, that the Ft. Harrison Hotel was purchased by the Southern Land Development and Leasing Corporation and would be leased to the United Churches of Florida. 1 T p.72.

Following the purchase of the Ft. Harrison and the occupation of the building by the United Churches of Florida, uniformed guards were observed patrolling the area around the Ft. Harrison. 1 T p.74; 1 T p.78. The guards appeared on the streets of downtown Clearwater, carrying night sticks and mace. 1 T p.74, 78. As a result, numerous citizens contacted the Mayor with complaints. 1 T p.73; 2 T p.163. In response, the Mayor began an inquiry. He questioned a few of the guards, who would only respond that they were there "to protect themselves". 1 T p.74.

The Mayor then spoke with an individual named Art Merin who informed him that both the Southern Land Development and Leasing Corporation and the United Churches of Florida were formed by the Church of Scientology of California.

Mr. Merin stated that the corporations were used as fronts during the purchase of the Ft. Harrison and a California based organization named "The Church of Scientology" (an international organization founded by science fiction writer L. Ron Hubbard), was now the actual owner of the Ft. Harrison. 1 T p.77, 78; 1 T p.89. The conversation with Mr. Merin, who described himself as spokesman and "Operating Thetan" for the Scientologists, 1 T p.75, failed to satisfy the Mayor's concerns about the group. 1 T p.78.

Soon afterwards, Mayor Cazares was invited to appear on a radio talk show hosted by Bob Snyder where he answered questions telephoned by concerned citizens. 1 T p.75 & 76; 2 T p.163. As a result of his appearance on the show, his inquiries and public statements, he became an "enemy" of the Scientologists and a target of the Scientology Fair Game Policy. Complainant's Exhibit 1-0; 1 T p.122, 123; 2 T p.198, 199. The Scientologist's Fair Game Policy, as set out by L. Ron Hubbard, 2 T p.199; 8 T p.81 - is a declaration that a person who seeks to suppress or damage the organization becomes "fair game" and may be tricked, sued or lied to, or destroyed. 8 T p.81; 1 T p.199, Complainant's Exhibit 2.

Covert operations entitled the "Mayor Cazares Handling Project" were designed by the Scientology Guardian's Office and its Information Bureau to remove Mayor Cazares from office and destroy his reputation. Complainant's Exhibit 12A, p.24, 25; Complainant's Exhibit 12B "Mayor Cazares Handling Project. On January 30, 1976 as part of this "Handling Project", the Scientologists held a press conference in Clearwater at Scientology headquarters (known by its code name "Flag" in reference to L. Ron Hubbard's Flagship Apollo) in the Ft. Harrison Hotel at which they released a "fact sheet" on Mayor Cazares containing several distorted facts about the Mayor's past. 1 T p.79-84, 11 T. p.29, 30. In furtherance of the Fair Game Policy, on February 6, 1976, the Scientologists brought a federal suit against the Mayor seeking \$1,000,000.00 in damages for defamation. Complainant's Exhibit 1B.

As a result of the defamatory content of the erroneous fact sheet published by the Scientologists, Mayor Cazares and his wife, Margaret, filed separate suits against the Scientologists for libel and slander on February 27, 1976. Complainant's Exhibits 1C and 1D. Mr. and Mrs. Cazares were initially represented in the libel suits by Attorney Patrick Doherty. 1 T p.87.

On March 29, 1976, Missouri Attorney, Merrell G. Vannier arrived in Clearwater. At the time of his arrival, Vannier was a "Guardian Activity Scientologist" with the "Guardian Organization". Complainant's Exhibit 6A, p.7. The Guardian Organization is an autonomous organization, in charge of covert and



overt information gathering. 11 T p.35; 8 T p.65. The purpose of the Guardian Organization was designed to make the entire Scientology organization "well thought of" by all scientologists and the public in general. As a Guardian Activity Scientologist, Vannier operated as an undercover agent assigned to gather information for the organizations purposes. 6 T p.225.

To protect Respondent Vannier's identity as he collected information, he was assigned the code name "Ritz". Complainant's Exhibit 6A, p.7, 10 and p.10. To ensure Respondent Vannier's "cover", the Guardian Organization designed an elaborate project to cover up his membership and participation in Scientology activities. Complainant's Exhibit 6B; Complainant's Exhibit 9; Complainant's Exhibit 13. Demonstrative of the insidiousness of this activity, part of the project included the infiltration of the Tallahassee office of The Florida Bar to remove and delete incriminating portions of his Bar application and replace it with an altered application. Complainant's Exhibit 6A.

Further, at the time of Vannier's arrival in Clearwater, it was common knowledge in the community that the State Attorney's office was conducting an investigation into alleged criminal activities of the Scientologists. 5 T p.12. The State Attorney's Office was targeted by the Scientologists as an "area of priority to infiltrate". Complainant's Exhibit 1-0. Upon his arrival, Respondent Vannier, who was then awaiting admission the The Florida Bar, applied to the State Attorney's office in April

or May, 1976 and offered to work without pay. 5 T p.15. Vannier's success in gaining the position with the State Attorney's office is noted by the Guardian Office documents. Complainant's Exhibit 9, "Exhibit #1". Respondent did not reveal his position and/or affiliation with the Scientologists to State Attorney James T. Russell or his other supervisors at the State Attorney's office. 5 T p.22. Respondent remained at the State Attorney's Office for approximately two months. He was released by Mr. Russell for improperly intercepting a telephone call and rendering improper advice to a police officer concerning a Scientology request to turn over State Attorney files. 5 T p.18-20.

As part of the "Cazares Handling Project", respondent was to gain employment as the attorney on Mr. and Mrs. Cazareses' suits and channel information back to the Guardian office and gain access for the Guardian Organization to all Cazareses' files. Complainant's Exhibit 12, "Exhibit 39", p.14 of 19.

In July, 1976, Respondent Vannier was admitted to The Florida Bar and in August, 1976, aggressively sought employment at the law firm of Phillips, MacFarland, Gould. 9 T p.7. The Phillips, MacFarland firm had handled legal matters for Mr. Cazares in the past. 9 T p.8. In July, 1976, Vannier's wife, Francine, also a Scientologist, gained a position as a volunteer in Mayor Cazares' campaign office, as ordered in the Handling Project. 1 T p.103-105; Complainant's Exhibit 12, "Exhibit 40", p.6. As "Mrs. Ritz", Francine Vannier's orders were to introduce

the Mayor to her husband to suggest that he hire the "firm" as counsel. As per the plan, Francine Vannier introduced her husband to the Mayor. 1 T p.109, Complainant's Exhibit 6A, p.95-96.

In accordance with the "Handling Project", Respondent Vannier solicited the Mayor's case against the Scientologists, contacting him on several occasions for that purpose. 1 T p.111. On December 23, 1976, when Patrick Doherty, the Mayor's counsel, withdrew from the representation of Mr. and Mrs. Cazares, the Mayor acquiesced to Vannier's persistent requests. 1 T p.113-114; Complainant's Exhibit 12 "Exhibit 39", p.13. Respondent Vannier asked Norris Gould, a partner in the Phillips firm if he could take over all of Gabe Cazares' legal matters, handled by the firm. 9 T p.10. At no time did respondent tell Mr. Gould or other members of his firm that he was a Bureau Activity Scientologist. 9 T p.34,35.

At respondent's insistence, Mr. and Mrs. Cazares confided in Vannier in every aspect of their personal, financial and political status. 2 T p.136,137. During the course of his representation, Vannier suggested that the Mayor resign from office so that a legal defense fund could be established. 2 T p.137.

Following his appearance as attorney of record in the Cazareses' suits, respondent visited the office of Robert Hayden, attorney for John and Nancy McLean, former ranking members of the Scientologists. Mr. Hayden represented the McLeans in McLean v.

Church of Scientology of California, United States District Court, Middle District of Florida, Case No. 81-174-Civ; 9 T p.124.

Since 1973, Ms. McLean has been a defendant in sixteen (16) separate lawsuits brought against her by the Scientologists. 6 T p.216; 7 T p.63. Over the years, Ms. McLean collected a mass of information involving the Scientologists, including several irreplaceable documents to be used in her litigation. 6 T p.217. This collection of documents was housed in a large trunk approximately five (5) feet long. 9 T p.123. Respondent Vannier contacted Attorney Hayden and, introducing himself as the Cazares attorney, asked if he could review Ms. McLean's files. Complainant's Exhibit 1-K. He did not reveal to Mr. Hayden that he was a Bureau Activity Scientologist. 9 T p.115. Had Mr. Hayden known that Respondent Vannier was a Scientologist, he would not have allowed him access to the McLean documents. 9 T p.122. As the Cazareses' attorney, Respondent Vannier was allowed to review Ms. McLean's documents at Mr. Hayden's office. Following this visit, the files mysteriously disappeared. 9 T p.118.

During his representation of Mr. and Mrs. Cazares, using the code name "Ritz", Respondent Vannier secretly channelled confidential information concerning the Cazares and their litigation back to the Guardian Organization and was credited by the organization as obtaining "excellent results". Complainant's Exhibit 6B, p.7; Complainant's Exhibit 9, "Exhibit 8".

In July, 1977, documents were confiscated from Scientology Headquarters in Los Angeles, California by the Federal Bureau of Investigation. Complainant's Exhibit 9, Declaration of Philip E. Mostrom. Shortly after the F. B. I. raid on Scientology Headquarters, Respondent Vannier disappeared suddenly from the law office of Phillips, MacFarland and Gould. 9 T p.43. He left his diplomas on the wall, gave no forwarding address and failed to provide for the continuing representation of his clients. 9 T p.43-45. He later appeared in California, where he made application to a higher position with the United States Guardian Organization, for which he was accepted. Complainant's Exhibit A-1; 8 T. p.74-78. At present, he is an applicant for admission to the California Bar and he and The California Bar are awaiting the outcome of these proceedings. 12 T p.8.

## SUMMARY OF ARGUMENT

The referee's recommendations and conclusions of law are abundantly supported by the record. The evidence received by the referee was considered for its probative value and reliability and was properly admitted in a disciplinary proceeding.

Much of the evidence to which respondent objects as hearsay is admitted by respondent's stipulation, or is otherwise substantiated and authenticated by his own pleadings and by other of his statements in this record.

The referee's consideration of the nature of the Guardian Organization of the Scientologists was not a violation of respondent's freedom of speech, religion and association in that: (1) The Guardian Organization is a covert information gathering operation within the Scientology Organization; (2) The essence of respondent's conflict was that he acted as a Bureau Activity Scientologist, an operative for the Guardian Organization; (3) As an operative, he channelled the confidential information concerning his client to the Scientologist's Guardian Office, an adverse party in litigation; (4) The Bar does not concede that Scientology is a religion.

Respondent's argument is that an attorney, who engages in unethical conduct on behalf of an organization that labels itself a church, has a First Amendment right to immunity from disciplinary proceedings. This idea is repugnant to the principles of the Constitution and the ethical standards of the legal profession.

The referee's recommendation that Merrell Vannier be disbarred has been more than substantiated by clear and convincing evidence in this record. Respondent Vannier's allegiance to the Scientology Guardian Organization superseded his fidelity to his clients as mandated by the Canons of the Code of Professional Responsibility. The referee's recommendation of disbarment should be upheld because, not only did Merrell Vannier act in conflict with his client's interests, his conduct in this matter is a perversion of his Oath and a defilement of the standards of our profession.

## ARGUMENT

I. THE REFEREE'S RECOMMENDATION SHOULD BE APPROVED AS ALL EVIDENCE ADMITTED BY THE REFEREE WAS PROPERLY CONSIDERED FOR ITS RELIABILITY AND PROBATIVE VALUE AND WAS PROPERLY ADMITTED IN A DISCIPLINARY PROCEEDING.

The record clearly supports the Bar's central allegation that Respondent Merrell Vannier acted as an agent for the Guardian Organization of the Scientologists while at the same time representing two clients, the Mayor and Mrs. Gabriel Cazares, in litigation against the Scientologists. That Merrell Vannier was a Scientologist during the years in question is undisputed. Respondent's Response and Affirmative Defense to Complaint, Vol. II, p.3; Complainant's Exhibit #3, 6 T p.133.

Merrell Vannier was identified as a Guardian Activity Scientologist, whose code name was "Ritz", by his Scientology supervisor, Assistant Guardian Information, Joseph Lisa. Complainant's Exhibit 6A & 6B.

A. ADMISSIBLE EVIDENCE IN DISCIPLINARY PROCEEDINGS.

This and other evidence adduced during the final hearing was properly admitted after careful consideration by the referee for its authenticity, reliability and probative value. When considering the admission of evidence in such a proceeding, it must be noted that the Integration Rule of The Florida Bar, promulgated by this Court, defines a disciplinary proceeding as



neither civil nor criminal. A disciplinary proceeding is a quasi-judicial proceeding that is administrative in character. Integration Rule, article XI, Rule 11.06(3) (9).

Despite the administrative character of the disciplinary proceeding, the Supreme Court alone, by grant of exclusive jurisdiction, has the power to discipline attorneys as provided in the Integration Rules. Integration Rule, article XI, Rule 11.01 and Rule 11.03. Accordingly, attorney disciplinary proceedings, although administrative in nature, are not governed by the Administrative Procedure Act enacted by the legislature.

As such, disciplinary proceedings are sui generis, comprising an intimate and delicate relationship between courts and lawyers. No other body is as well qualified or as interested in determining whether an attorney is qualified to practice law. Javits v. Stevens, 382 F. Supp. 131, 141 (S.D.N.Y. 1974). The referees are advisory triers-of-fact who preside over the disciplinary proceedings. Such proceedings are not lawsuits between parties litigant but are in the nature of an inquest or an inquiry - a gathering of facts concerning the conduct of the attorney. Mildner v. Gulotta, 405 F.Supp. 182, 195 (U.S.D.C. 1975); Ex parte Wall, 107 U.S. 265, 2 S.Ct. 569, 27 L.Ed. 552 (1882).

The practice of law is not a vested property right: it is a privilege. Lambdin v. State, 9 So.2d 192 (Fla. 1942). In re Hosford, 252 N.E. 843, 846 (S.D. 1934); In re Wilson 258 P.2d 433

(Ariz. 1953). The privilege to practice law is not a privilege or immunity of a citizen of the United States within the meaning of the Fourteenth Amendment to the Constitution of the United States. The Florida Bar v. Sperry, 140 So.2d 587, 596 (Fla. 1962). Due to a lawyer's interaction with the public, the license to practice law is not conferred or withheld on the basis of factors considered in licensing tradesmen or businessmen. Petition of Rubin, 323 So.2d. 257 (Fla. 1975).

In disciplinary proceedings against a member of the Bar, the consideration of public welfare is wholly dominant, and, where a clash of interest occurs, whatever is good for the individual must give way to the security and advancement of public justice. In re Wilson, 258 P.2d 433 (Ariz. 1953). Therefore, constitutional standards are measured within the unique framework of the disciplinary process. Matter of Roberts, 442, N.E.2d. 986 (Ind. 1983).

As disciplinary proceedings are administrative in character, they are not governed by technical rules of procedure. The Florida Bar v. Murrell, 74 So.2d 221, 226 (Fla. 1954). In disciplinary hearings, strict rules of evidence cannot be used to defeat the interest of public welfare. In re Wilson, 258 P2d. 434 (Ariz. 1953). It has long been held the referee is not bound by the technical rules of evidence and that hearsay is generally admissible. The Florida Bar v. Dawson, 111 So.2d 427 (Fla. 1959); The Florida Bar v. Jenkin, 89 So.2d 481 (Fla. 1958); Werner v. State Bar, 150 P.2d 892 (Cal. 1944).

In keeping with the administrative character of the disciplinary hearing, admissible hearsay in an administrative context is determined by its probative value, reliability and fairness of its use. Calhoun v. Bailar, 626 F.2d 145, 149 (9th Cir. 1980). An additional consideration is whether or not the hearsay is corroborated. Id. at 149.

If hearsay evidence is corroborated by otherwise competent, substantial evidence, it is admissible. Spicer v. Metropolitan Dade County, 458 So.2d 792, 794 (Fla. 1984). Hearsay in an administrative context is not only admissible - but can constitute substantial evidence if convincing to a reasonable mind. McKee v. United States, 500 F.2d 525 (Ct.Cl.1974); Richardson v. Perales, 402 U.S. 389, 91 S. Ct. 1420 (1971).

The evidence admitted in these proceedings, to which respondent objects, was admitted by respondent's stipulation or otherwise authenticated in his pleadings and statements on the record. Almost all of the evidence admitted is corroborated by other competent evidence introduced by the Bar. All of the evidence was admitted after the referee's careful consideration of its authenticity, reliability and probative value.

B. EVIDENCE PROPERLY ADMITTED

Again for the sake of clarity, the Bar will present the evidence to which respondent objects as follows:

1. Documentary Evidence

(a) Complainant's Exhibit 1-A Personnel File: At the pre-trial conference, respondent stipulated to its authenticity, subject to relevancy. Index-Vol V; Pre-trial Order, dated January 29, 1985; 5 T p. 248, 249. The relevancy of Complainant's Exhibit 1-A was later demonstrated to the referee.

(b) Complainant's Exhibit 1-0: Again, the authenticity of Exhibit 1-0 was stipulation acknowledged by respondent at the pre-trial conference, subject to relevancy, which was established by the Bar. Index-Vol V, Pre-trial Order, dated January 29, 1985.

(c) Complainant's Exhibit 3: Request for Admission and Response by Merrell Vannier. In Complainant's Exhibit 3, Respondent Vannier admits that he was a Scientologist during the years 1974-1981. Complainant's Exhibit #3, response to Request for Admission, Items 3 through 11. Merrell Vannier admitted in his Response and Affirmative Defenses to Complaint dated February 14, 1984, that he was a Scientologist during the period relevant to the Bar's Complaint. Respondent's counsel stipulated to the admission of Items 1 through 11 at the final hearing. 4 T. p.164.

(d) Complainant's Exhibit 6A & 6B: Video deposition and transcript of Peter Joseph Lisa. Complainant's Exhibit 6A & 6B consists of a video tape deposition and

transcript of Peter Joseph Lisa, Assistant Guardian Information for the Scientologist's Clearwater headquarters in 1976 and 1977 and Deputy Guardian Information, United States in California in 1980 and 1981. 8 T p. 142. The deposition was taken on September 29, 1984 in the civil case, McLean v. The Church of Scientology of California, United States District Court, Middle District of Florida, Case No. 81-174-Civ-T-R. Mr. Lisa was deposed by Walt Logan, attorney for the plaintiffs. Mr. Lisa's counsel, Bennie Lazzara, who is also counsel for Mr. Vannier in these proceedings was present at the deposition. Mr. Vannier is a named defendant in the case. Issues in the civil case and those in the instant case are substantially the same.

During the instant proceeding, respondent stated to the referee that Mr. Lisa was unavailable to testify. 4 T p. 143, 147. As a result of the above, the referee admitted Complainant's Exhibit 6A & 6B. Immediately thereafter, respondent produced Mr. Lisa for trial, where he attested to the authenticity and veracity of his statements given during the deposition on September 29, 1984. 8 T p. 137, 157. The authenticity and reliability of Complainant's Exhibit 6A & 6B was adequately shown by the Bar and considered by the referee.

Mr. Lisa also confirmed that he was Assistant Guardian Information at "Flag" (Clearwater) in charge of gathering information on certain individuals, including Gabriel Cazares. 8 T. p.159. Furthermore, respondent's counsel substantiates that

the exhibits attached to Complainant's Exhibit 6A (the "Ritz" documents) are vital evidence and that it is Mr. Lisa's explanation that gives them meaning. 4 T. p.144.

(e) Complainant's Exhibit 9. This exhibit represents certified copies of documents relating to "Ritz" received from the Federal Bureau of Investigation and authenticated by attached sworn declaration from Supervisor Special Agent Philip K. Mostrom as those documents seized on the premises of Scientology Headquarters on July 8th and 9th, 1977. Special Agent Mostrom's declaration authenticates Complainant's Exhibit 9 and renders the Exhibit sufficiently reliable for admission in these proceedings. Respondent's counsel objected on the grounds an "affidavit" rather than a "declaration" was necessary to authenticate the documents, after conceding that "in California we use declarations for everything". 5 T. p.110.

(f) Complainant's Exhibit 5 consists of an additional set of "Ritz" documents produced in discovery in McLean v. Church of Scientology of California. Exhibit 5 is authenticated by an affidavit executed by Attorney Larry Fuentes wherein he attests that he represents the Church of Scientology in the McLean litigation and that, on behalf of his client, he produced the documents in response to a Request for Production. The documents were produced by Mr. Fuentes in response to a request by plaintiff's counsel for all documents referring to Merrell Vannier by that name or any code name. 4 T. p.174-176. As a

result of his request, Mr. Logan received the "Ritz" documents. 4 T. p.174. As such, Complainant's Exhibit 5 was demonstrated to be authentic and relevant as admissible evidence in these proceedings.

(g) Complainant's Exhibit 12, is a sentencing memorandum with attached Exhibits 39 and 40, entitled "Mayor Cazares Handling Project". Exhibit 12 was filed by the United States Attorney's Office in the criminal case U.S. v. Kember, No. 78-401(2)(3), United States District Court (D.C.). Exhibit 12 is properly certified by the Deputy Clerk. Respondent's counsel stated that the sentencing memorandum was based on a stipulated record received into evidence by the Court. 3 T. p.97. As for relevancy, Exhibits 39 and 40, "The Mayor Cazares Handling Project", are Scientology documents detailing the plan to destroy Mayor Cazares. The exhibits include specific references to respondent and his wife and his employment at the Phillips, McFarland firm. Therefore, Exhibit 12 is properly admissible due to its authenticity and probative value.

(h) Complainant's Exhibit 2: Introduction to Scientology Ethics. Exhibit 2 was properly authenticated by Ms. McLean. Her knowledge of the inner workings of the Scientology organization was well established in direct testimony. 6 T. p.214-216, 256-262; 8 T. p.63-67. Furthermore, Ms. McLean's expertise in the area of Scientology is acknowledged by respondent's counsel. 3 T. p.100. Exhibit 2, represents

a "teaching" by L. Ron Hubbard, respondent's own "expert" witness in the area of Scientology, John G. Peterson\* stated that individual "parishes" adhere to the principle of L. Ron Hubbard. 11 T. p.39.

2. Testimony

(a) Nan McLean: The predicate for Ms. McLean's expertise concerning the Scientology organization was well established in these proceedings and corroborated by respondent's counsel. 3 T. p.100

(b) State Attorney James T. Russell: It appears from respondent's Brief that he objects to the entire testimony of State Attorney James Russell as hearsay. Opening Brief, p.5-7, 46, while, at the same time, conceding to a substantial portion of the facts elicited from Mr. Russell's testimony. Opening Brief, p.2. The remaining portion of Mr. Russell's testimony is certainly admissible in that it is, for the most part, non-hearsay. As for this remainder, any testimony given by Mr. Russell concerning out-of-court statements made in the course of supervising his office would certainly be admissible under Dawson, supra.

\*NOTE: The Bar points out that respondent states that Mr. Peterson knew for a fact that respondent did not render legal services to the Scientologists in 1976 and 1977 and that Vannier was not part of an intelligence operation in Clearwater in 1976 (Opinion Brief, p. 21). When asked at the hearing - Q. "So, you had no knowledge of what, if any, activities Merrell Vannier engaged in while a Scientologist during those years (1976 & 1977)?" A. "Not direct knowledge."



While the documentary evidence and testimony presented by the Bar to the referee in the six day final hearing was massive, it certainly did not constitute "massive hearsay" as respondent argues. The evidence was properly authenticated and was admitted by the referee either as a result of respondent's stipulations, or after careful consideration of each piece of evidence as to its reliability and probative value.

This Court can readily observe by the record that respondent's due process rights have been vociferously safeguarded by both his Florida counsel and California counsel, in a manner and to an extent perhaps unsurpassed in a Florida disciplinary proceeding. Accordingly, the evidence admitted in these proceedings is more than sufficient and reliable to sustain the referee's recommendation and said recommendation should be approved.

II. THE REFEREE'S RECOMMENDATIONS SHOULD BE APPROVED IN THAT THE RECOMMENDATION IS BASED ON RESPONDENT'S INDIVIDUAL CONDUCT IN FURTHERING THE INTERESTS OF AN ORGANIZATION ADVERSE TO HIS CLIENT.

Respondent's individual conduct and interests are well established in this record. It is those interests, and that conduct alone, upon which the referee based his recommendation. The essence of the Bar's charge is, that it is those interests led Merrell Vannier to act as an agent or operative for the Guardian Organization. Merrell Vannier's individual conduct was responsible for the betrayal of his client. It is not the Scientologists who are the subject of this disciplinary

proceeding; it is Merrell Vannier. It is Merrell Vannier whom the referee found guilty of solicitation, conflict and improper conduct.

However, when considering the nature of a conflict in disciplinary proceedings, it is impossible to understand the nature of adverse interest inherent in a conflict without an understanding of the nature of those interests and the extent to which they are adverse. Therefore, the referee's consideration of adverse interests in this case was necessary and proper.

III. THE REFEREE'S RECOMMENDATIONS SHOULD BE APPROVED BECAUSE THE RECORD SUPPORTS THE REFEREE'S REPORT.

This is a case of first impression involving an attorney who, acting as a spy for an organization that is an adverse party in litigation, seeks to betray and destroy his own client. However, this is not the first case in Florida where an attorney's beliefs, as they relate to the practice of law have been discussed by this Court. In The Florida Bar v. Wilkes, 179 So.2d 193 (Fla. 1965), Respondent Wilkes sought review of a recommendation by the referee and the Board of Governors that he be disbarred. The referee's recommendation stemmed from a charge that respondent had been disbarred in New York and turned on the issue of whether or not the out of state disbarment should be the sole determinant in imposing disciplinary upon the attorney rather than an independent appraisal of the attorney's fitness to practice law. Id. at 197. The referee recommended disbarment on the theory that the New York judgment was binding on Florida as

to the discipline awarded. The Court reviewed this finding, as well as the referee's discussion concerning respondent's personal beliefs in the existentialist philosophy. In his report, the referee stated that respondent's belief in existentialism, wherein respondent described himself as a "solitary, isolated attorney beating the gong of revolt against the legal profession's established order and mores....is wholly repugnant to the reputable practice of The Law and the respondent, being a firm believer and active follower of that philosophy, is not a fit person to practice law". Id. at 200. This Court, in disapproving this particular finding by the referee, stated that the record did not support the referee's conclusion concerning the existentialist beliefs and further stated that mere belief in an unorthodox philosophy does not in itself make one unfit to practice law. Id. at 201. The Bar asks this Court to note the clear distinction between Wilkes and the instant case. The referee's recommendation concerning Respondent Vannier are not premised on Mr. Vannier's beliefs, but on his conduct. It is the egregious nature of his conduct that is violative of the standards of the profession. Unfortunately for Mayor Cazares and the legal profession, Merrell Vannier's conduct unlike Wilkes was not limited to "mere belief".

IV. THE REFEREE'S RECOMMENDATION SHOULD BE APPROVED BECAUSE THE RECORD SUPPORTS THE RECOMMENDATION BY CLEAR AND CONVINCING EVIDENCE.

In his argument alleging bias on the part of the Bar's witnesses, respondent asks this Court to presuppose that to

ensure a fair hearing, all witnesses must be neutral, devoid of all motive and bias. In disciplinary proceedings, aggrieved complaining witnesses, who are generally victims of attorney misconduct can hardly be expected to give "neutral" testimony. It is incomprehensible that an attorney who is guilty of egregious conduct as was the betrayal of trust in the instant case, can seriously ask this Court to reverse a finding against him by arguing that he was prejudiced by the hostility of the very witnesses who were victims of his conduct. The referee's recommendations are wholly supported by the record in these proceedings.

As the Court stated in The Florida Bar v. Hirsch, 389 So.2d 856 (Fla. 1978), it is the responsibility of the Supreme Court in disciplinary proceedings to review the determination of guilt made by the referee upon the facts in the record. In The Florida Bar v. Welch, 272 So.2d 139 (Fla. 1972), the Court stated "we have carefully reviewed the record and find no error in the referee's determination of guilt".

V. THE REFEREE'S RECOMMENDATIONS AND FINDINGS SHOULD BE UPHELD AS THEY ARE SUPPORTED BY THE FACTS IN THE RECORD.

The referee reached his conclusion and findings after careful consideration of all the pleadings and evidence in the Report of Referee. The referee's findings are consistent with the record. The Bar demonstrates that the referee's findings are supported by the record as follows:

1. That Vannier "examined the files and notes maintained by

Walter Logan" is supported by Mr. Logan's testimony. 4 T. p.120-123, 184-186. The records indicates that Mr. Logan's comments and memos surfaced in Scientology documents. Complainant's Exhibit 5 "Exhibit 5".

2. That "all Scientology Churches are affiliated by information gathering and storage, etc." is substantiated by respondent's witness Peter Joseph Lisa, Deputy Guardian Information, United States in 1980 and 1981, who testified that he oversaw the collection of information that supported all legal activities in cases in the United States involving investigation, court records, freedom of information and "hat" documents. He stated that it was his responsibility to store and index the documents. 8 T. p.142-143. Mr. Lisa's testimony supports the referee's finding on this issue.

3. Respondent's "expert" witness, Guardian Scientologist John Peterson, testified that all "individual parishes" adhere to the same principles as enunciated by L. Ron Hubbard. 11 T. p.39. Again, the referee's findings are supported by the record.

4. Ms. McLean testified that the handling of a suppressive person had not ceased as of 1976. 8 T. p.81. That the policy remained in effect in 1976 and 1977 is obvious from the Mayor Cazares Handling Project, Complainant's Exhibit 12, and the "Ritz" documents introduced as Complainant's Exhibit 5; Exhibit 6A; Exhibit 9. The record supports that Vannier was a member of the Guardian Organization. Complainant's Exhibit 6A. The Guardian Organization is an autonomous network with its own members, its own personnel and organizational board. 8 T. p.65.

The Guardian Organization was established to make the Scientology Organization thought well of in the field. 8 T. p.65. The duties of a Guardian member are to do whatever is necessary to create a good public image for the Scientology organization and to retain its membership. 8 T. p.66, 75. As such, the referee's finding of fact is not clearly erroneous when considering that Vannier was a member of the covert information gathering organization within the larger organization known as the Scientologists, that respondent spied on and betrayed his client and that respondent subsequently applied for a higher position with the Guardian office. The referee's findings and recommendations should be upheld unless without support in evidence or clearly erroneous. Hirsch, supra.

VI. THE REFEREE'S RECOMMENDATION SHOULD BE UPHELD BECAUSE DISBARMENT IS THE ONLY APPROPRIATE PENALTY.

It is reassuring to note that this is a case of first impression not only in Florida, but in the United States as well. There are simply no disciplinary cases on record involving an attorney who as part of a mission designed by an organization sets out as a spy to obtain and destroy a client who is an adverse party in litigation.

Anyone who has read the record and the briefs in this matter, will recognize two things. First, respondent's attempts to complicate and obfuscate the issues in this case with voluminous pleadings, motions and arguments, as well as the obscure organization of his "Opening" Brief, have had the effect

of hoisting him on his own petard. The consequence of this activity has been such that most of the evidence to which he now objects as inadmissible, has been admitted by way of his stipulation, motion, pleading, or statements made in court.

Second, most people have heard of industrial espionage and most people, particularly those upon whom it has been practiced, are repulsed by this type of activity. Many of the consequences of a citizen's belief that his lawyer, licensed by this Court, could engage in espionage for an adverse party, (regardless of the interest he represents), and be censured only to the extent of reprimand or suspension, are speculative. A disbelief in the ability of the Bar to police itself is not.

Disbarment is the only appropriate penalty as disbarment is generally reserved for the most infamous type of misconduct. The Florida Bar v. Ruskin, 126 So.2d 142 (Fla. 1961). Disciplinary proceedings are instituted primarily in the public interest and to preserve the purity of the Bar. The Florida Bar v. Welch, 272 So.2d 139 (Fla. 1972). As stated before in this Brief, the license to practice law is a privilege. Respondent's calculated and covert betrayal of his client is not only a flagrant abuse of that privilege, but a defilement of his Oath and the integrity to the profession.

NOTE: Respondent Vannier has not practice law in the State of Florida since October, 1977. He presently resides in California, where he is awaiting admission to the California Bar pending the outcome of these proceedings. 12 T. p.5, 6.

CONCLUSION

All evidence presented by the Bar and admitted in these proceedings was properly considered by the referee for its reliability and probative value.

The extensive record in this case, reflects by clear and convincing evidence that respondent is guilty of the violations charged as recommended by the referee.

Disbarment is the only appropriate penalty in this case.

The Bar asks this Honorable Court to uphold the referee's recommendations that respondent be found guilty of violations Disciplinary Rules 2-103(A), DR 5-101(A) and DR 7-102(A) (8) and that respondent be disbarred from the practice of law and assessed costs in this case.

Respectfully submitted,

By: *Diane Victor Kuenzel*  
DIANE VICTOR KUENZEL



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by regular U. S. Mail to BENNIE LAZZARA, JR., Counsel for Respondent, 606 Madison Street, Tampa, Florida, 33602 and to CARL E. KOHLWECK, California Counsel for Respondent, 1821 Wilshire Boulevard, Suite 210, Santa Monica, California, 90403 this 24th day of March, 1986.

*Diane Victor Kuenzel*

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