

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

**FILED**

SID J. WHITE

DEC 2 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

THE FLORIDA BAR,  
Complainant,

vs.

MERRELL G. VANNIER,  
Respondent.

CONFIDENTIAL

Case No. 61,691

(TFB #06C80HF3)

REPORT OF REFEREE

- I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Florida Bar a final hearing was held on January 30, January 31, February 1, April 30, May 1, May 2 and May 3, 1985.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Diane Victor Kuenzel and  
John Fernandez

For the Respondent: Bennie Lazzara and Carl Kohlweck  
( a California Attorney admitted  
for this proceeding only.)

- II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged:

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

The references to volume number are to the pencilled numbers on each volume of the trial transcript.

The Church of Scientology of California is the "mother church", the highest ecclesiastical body of all scientology churches, (Vol. 11, p. 33, lines 23-25), which were affiliated with it by tithing (Vol. 11, p. 21 and 22) information gathering and storage, etc. Corporate and geographical distinctions are irrelevant.

The policies, tenets and doctrine as found by L. Ron Hubbard were binding and adhered to by all members of the Church of Scientology (Vol. 11 p. 39, lines 17 through 22.)

Specific Counts

1. Count 1 - (Solicitation) - the alleged violation of DR 1-102(A) (1); 1-102(A) (4); 1-102(A) (6) and 2-103(A).

In December of 1976 the Respondent solicited the representation of the Cazares in their suits against the Church

of Scientology. T-1, pg. 111 through 113, particularly (p.111, lines 14 through 18; p. 112, lines 15-22 and p. 113, lines 21-24. 2-279, lines 9-13, 2-283-8. At no time did the Cazares initiate or seek the services of the Respondent before he suggested his employment. (p.113, lines 4-6)

This was a violation of DR 2-103(A)

2. Count 2 - (Conflict of Interest - Cazares) the alleged violation of Rules 1-102(A) (1); 1-102(A) (4); 1-102(A) (6); 5-101(A); 5-105(A); 5-105(B) and 5-105(C).

On the date the Respondent undertook the representation of the Cazares, December 23, 1976, he was a member and affiliated with the Church of Scientology. The Respondent was a member of the Church of Scientology during the years 1974 to 1980. (Complainant's Exhibit 1A, letter dated February 14, 1980.) Complainant's Ex. 3, admissions) He was a "loyal BI GAS," with the information gathering arm of the church. ( Vol. 6, p. 224, 225, lines 2-5) (Complainant's Ex. 6A, page 7, lines 13-24) Before 1974, he was employed by and affiliated with the Church of Scientology in Missouri. (Complainant's Exhibit 4, Bar Application, "Employment since 16th Birthday") from May, 1973 to August, 1984.

The following facts justify the conclusion that he knew that the interests of the church were adverse to those of the Cazares.

On February 6, 1976 The Church of Scientology filed suit against Gabriel Cazares. (Complainant's Ex. 1B). The Respondent moved to Clearwater in March, 1976. Between January and the summer of 1976, Cazares was frequently printed in the media as taking a position against the Scientologists and went on talk shows and unfavorably portrayed the Scientologists. (Vol. 2, page 163) While Cazares was Mayor he made unfavorable statements against the Church of Scientology. (Vol. 2, p. 161). The Respondent's wife worked in Cazares campaign office in July of 1976. (Vol I, pgs. 103-105) The Respondent was told before he undertook the representation of the Cazares that the Cazares lost confidence in their former attorney because he was suspected of having some connection with the Church of Scientology.

Further, the Church of Scientology had Cazares on its list of individuals to be destroyed by the church, (Complainant's Exhibit 12A, pgs. 24 & 25; Exhibit 12B) and the Respondent was working in Clearwater as a loyal "BI GAS". (The "BI GAS" position was an undercover information gathering position). As a loyal BI GAS the Respondent had to adhere to the "fair game policy" of the church with reference to public figures deemed enemies. (Vol. 8, pages 80-81 and page 241, lines 21,22 and page 261, line 25. Complainant's Exhibit 2). The "fair game policy" is a policy which permits members to trick, cheat and lie to obtain results against enemies of the church. He was the individual known

as "Ritz" who is repeatedly referred to in Complainant's Exhibits 5, 6A and 9 as obtaining excellent results during the early months of 1977 but following the representation undertaken in December 1976.

The following circumstantial facts corroborate the conclusion that the Respondent not only knew that his interests were contrary to those of Cazares but knowing that, he undertook affirmative actions to enable the Scientologist's to carry out their plans to ruin Cazares:

1. Respondent actively sought representation of Cazares as previously noted. (See count 1 above)
2. He voluntarily sought work in the State Attorney's Office without pay at a time when an investigation of the Scientologists was underway. (See count 6 below)
3. He examined the files of Nancy McLean which had been accumulated in extensive litigation against the church of Scientology. This was done with the permission of her attorney, Robert Hayden, which permission would not have been given had Mr. Hayden known of the Respondent's affiliation with the Scientologists. Following the Respondent's review of the files, the files mysteriously disappeared. Vol. 6, page 225, lines 8 to 14.
4. Respondent examined the files and notes maintained by attorney Walter Logan in litigation brought by the Scientologists against Cazares. Mr. Logan represented Cazares. While the examination was with permission, there is no explanation how some of these same notes and comments of Mr. Logan got into the Scientologist's records, i.e. the Ritz documents. (Complainant's Exhibit 5. Vol. 4 pages 121, 123 lines 9-12 and pages 184-186).
5. Respondent hastily left his employment with the law firm he was working for without any notice whatever, (Vol. 9, page 43) and never returned.

While the foregoing is a mere summary from the record and may be said to be circumstantial evidence only, the undersigned finds that the inferences therefrom presents clear and convincing evidence of a violation of DR5-101A.

3. Count 3 - the alleged violation of Disciplinary Rule 1-102(A) (1); 1-102(A) (4); 1-102(A) (5); 1-102(A) (6) and 7-102(A) (8).

As noted in the previous findings the Respondent, Merrill G. Vannier, was a member of the Church of Scientology on the pertinent dates referred to herein.

At a time when there was pending a suit by the Church of Scientology against John McLean and Nancy McLean (see Complainant's Exhibit 1J), the Respondent contacted the attorney representing John McLean and Nancy McLean and examined such attorney's files. (See complainant's Exhibit 1K; Vol. 9, p. 110, lines 22-25; p. 113, lines 17-19; p. 121, lines 2-4; p. 127, lines 22-25). At the time the Respondent was a "BIGAS," the information gathering arm of the church as previously noted. The attorney for the McLeans would not have let the Respondent review the files if he had known that the Respondent was a Scientologist. (Vol. 9, p. 122, lines 16-22). The Respondent had an ethical and moral duty to advise the McLeans attorney of his church affiliation before he examined and reviewed his files. This constituted a violation of DR 7-102(A) (8).

4. Count 4 - (Conflict of Interest - Gabriel Cazares) - the alleged violation of DR 1-102(A) (1); 1-102(A) (4); 1-102(A) (5); 1-102(A) (6); 5-101(A) and 7-102(A) (8).

The undersigned finds that there is no clear and convincing evidence to support the allegation contained in paragraph 38 of the complaint, i.e., that Respondent, as counsel for Gabriel Cazares presented for Gabriel Cazares' signature a document entitled "Retraction/Apology" (see Exhibit M to the complaint and the copy thereof marked, for identification only, as complaintant's Exhibit 1M) and advised Gabriel Cazares to sign said document.

5. Count 5 - (Conflict of Interest - Gabriel Cazares) - the alleged violation of DR 1-102(A) (1); 1-102(A) (4); 1-102(A) (5); 1-102(A) (6); 5-101(A) and 7-102(A) (8).

The undersigned finds that there is no clear and convincing evidence to support the allegation contained in paragraph 43 of the complaint, i.e., that Respondent, as counsel for Gabriel Cazares, presented for Gabriel Cazares' signature a document entitled "Agreement" (see Exhibit N to the complaint and the copy thereof marked for identification only as complainant's Exhibit 1N) and advised Gabriel Cazares to sign said document.

6. Count 6 - the alleged violation of DR 1-102(A) (1); 1-102(A) (4); 1-102(A) (6); and 5-101(A).

Between April, May or June of 1976, the Respondent volunteered to work, without pay, at the St. Petersburg Office of the State Attorney for Pinellas County, Florida (T5-p. 15).

At the time he volunteered and worked for the State Attorney's Office, the State Attorney was conducting an investigation into alleged criminal activities of the Church of Scientology of California. (T5-p. 12, lines 17-20).

The State Attorney's investigation was a matter of common knowledge in the community. (T5-p.12, lines 22-25 & p. 13 lines 1-2).

As previously found, the Respondent was a member and affiliated with the Church of Scientology, but he never brought this fact to the attention of the State Attorney's Office (T5, p. 21, line 25, p. 22, lines 1 through 16), notwithstanding the fact that his position in the State Attorney's Office would enable him to look at any files in the office. (T5, p. 36, lines 16 through 18).

That by virtue of the policies of the Church of Scientology, one of which is the "fair game" policy, a policy which permits members to trick, cheat and lie to obtain results against enemies of the church, and Respondent's affiliation with such group, he had a conflict of interest with the State Attorney but failed to advised the State Attorney's Office before undertaking his duties. This constituted a violation of DR 5-101(A).

III. Recommendation as to whether or not the Respondent should be Found Guilty:

As to each count, I recommend the following:

- Count 1 - GUILTY
- Count 2 - GUILTY
- Count 3 - GUILTY
- Count 4 - NOT GUILTY
- Count 5 - NOT GUILTY
- Count 6 - GUILTY

IV. Having found the Respondent guilty on four counts the discipline recommended is disbarment.

Ordinarily, based on the nature of the charges on which guilt has been found, the undersigned would only recommend suspension for a limited period of time, especially in view of the Respondent's exhibits 37, 38 and 39 and the further fact that some punishment has already been inflicted on the Respondent because of the length of this proceeding.

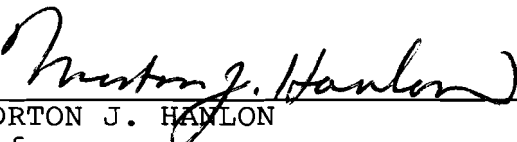
However, the undersigned is recommending disbarment because the record in this case fully supports the conclusion that the Respondent would place his Scientology commitment, allegiance and ethics (see paragraphs 6, 7, p. 5 of Application in complainant's Exhibit 1(A)) above the ethics on which the Florida Bar is founded and on which all members of the profession depend. He reapplied for a staff position with the church in September of 1980 notwithstanding his prior ethical problems which are directly attributable to his commitments to the Church of Scientology.

The "fair game" policies of the Church of Scientology directed against those persons who do not embrace their tenets and are deemed to be enemies, are repugnant to all fair minded people.

The Respondent fully participated in the "fair game" policy once, there is no showing that he will not do so in the future. The policies, tenets and doctrine as found by L. Ron Hubbard are binding and adhered to by all members of the church. (Vol. 11, p. 39, lines 17 through 22).

V. It is recommended that all costs be taxed to Respondent.

DATED this 27<sup>th</sup> day of November, 1985.

  
MORTON J. HANLON  
Referee

copies furnished to:

Bennie Lazzara, Jr., Esquire  
Diane Victor Kuenzel, Esquire  
John Fernandez, Esquire  
Carl Kohlweck, Esquire