

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

FILED

SID J. WHITE

PUB AUG 14 1985

CLERK, SUPREME COURT

By 013
Chief Deputy Clerk

THE FLORIDA BAR,)
Complainant,)
v.)
LOUIS VERNELL, JR.,)
Respondent.)

Supreme Court Case No. 11F84M35
Florida Bar Case No. 11F84M35

REPORT OF REFEREE

I. Pursuant to the undersigned being duly appointed as a referee by Order of the Supreme Court of Florida dated October 31, 1984 to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Florida Bar, hearings were held on July 31, 1985. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are or will be forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Patricia S. Etkin and
Thomas E. Backmeyer

For the Respondent: Mallory H. Horton

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

A. That the chronology of events is accurately set forth in paragraphs 1 through 29, 32 and 33 of the Complaint. That, in addition to the foregoing, pertinent material is set forth in Complainant's Exhibits 1 through 7 and Respondent's Exhibits 1 through 9. The referee took into particular consideration Respondent's Exhibit 1, which is an alleged agreement signed by Mr. William Fahrenkopf, now deceased, along with a Statement in affidavit form marked Respondent's Exhibit No. 2, signed by Mr. Fahrenkopf on January 31, 1984, the Statement of Settlement marked Complainant's Exhibit No. 4, and the Deposition of Mr. Sheldon Schlesinger, dated June 21, 1985.

As to Count I

Based on the foregoing, the referee finds clear and convincing evidence and recommends that the Respondent be found guilty of altering a check to include himself as payee, which the referee feels to be improper and in violation of Disciplinary Rules 1-102(A) (4) and (6) of the Code of Professional Responsibility and Integration Rule 11.02(4).

As to Count II

The referee finds that while Respondent's method of delivering

the funds to his client may have been improper as set forth by the recommendation of guilty as to Count I, the fact is that the Respondent did turn over to this client a check in the amount of \$482,900.98, which was an appropriate amount under the Settlement Statement marked Complainant's Exhibit No. 4, plus the Agreement with Mr. Fahrenkopf pursuant to the letter of July 19, 1981, marked Respondent's Exhibit No. 1. The referee, therefore, finds that the Complainant has failed to show by clear and convincing evidence that the proper amount of money due Mr. Fahrenkopf, pursuant to the Settlement Statement and Agreement, set forth hereinabove, in the amount of \$482,900.98 was not delivered to Mr. Fahrenkopf and, therefore, recommends that the Respondent be found not guilty as to Count II.

As to Count III

The referee finds that the Respondent, Louis Vernell, obtained \$200,000.00 as his portion of the attorney's fee in the case of William Fahrenkopf pursuant to the Settlement Agreement approved and accepted by Mr. Fahrenkopf, marked Complainant's Exhibit No. 4 and, in addition, received an additional \$100,000.00 fee from Mr. Fahrenkopf pursuant to the letter dated July 19, 1981, marked Respondent's Exhibit No. 1; said disbursements being with the knowledge and approval of Mr. Fahrenkopf pursuant to his voluntary statement under oath dated January 31, 1984, marked Respondent's Exhibit No. 2. Therefore, the referee recommends that the Respondent be found not guilty as to Count III of the Complaint.

III. The referee, having recommended that the Respondent be found guilty as to Count I of the Complaint and pursuant to the request of the Florida Bar counsel, hereby sets a hearing for Thursday, the 12th day of September, 1985 at 3:00 o'clock P.M. to hear testimony on the recommendation of discipline to be recommended by the referee pursuant to Rule 11.06(9)(a)(4).

Dated this 9th day of August, 1985.

W. HERBERT MORIARTY

W. Herbert Moriarty, Referee

Copy furnished:

John T. Berry, Esq.
Thomas E. Backmeyer, Esq.
Mallory H. Horton, Esq.
Robyn Greene
John F. Harkness
Patricia S. Etkin
Sid J. White, Clerk

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IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,)	
Complainant,)	Supreme Court Case
-vs-)	No. 66,013
LOUIS VERNELL, JR.,)	The Florida Bar Case
Respondent.)	No. 11F84M35

SUPPLEMENTAL REPORT OF REFEE

The Referee, pursuant to his Order dated August 9, 1985, held a hearing on September 12, 1985 to hear testimony on the recommendation of discipline to be recommended by the Referee pursuant to Rule 11.06(9)(a)(4).

- I. As Referee in this matter, I hereby recommend that the Respondent, Louis Vernell, Jr., receive a public reprimand as a result of the court's finding of guilt as to Count I of the Complaint.

The court recommends the public reprimand so that Mr. Vernell and all other members of the Florida Bar be advised that when a check is received on behalf of a client with a client being made payee on said check, under no circumstances should the check be altered to include himself as payee even though the funds due the client are paid to him in their entirety. The Referee must emphasize that while the Respondent was found to be guilty as to Count I, the client received all funds due him in this matter by the Respondent, as set forth in the client, Mr. Fahrenkopf's voluntary statement under oath, dated January 3, 1984, marked Respondent's Exhibit No. 2, and further, Mr. Sheldon Schlesinger, Esq., the co-attorney for Mr. Fahrenkopf, has no grievance against the Respondent, Mr. Vernell, in that Mr. Fahrenkopf, the client, received the funds due him and was satisfied.

The Referee, prior to recommending the discipline set forth hereinabove, has considered the personal history and the prior disciplinary record of the Respondent as set forth in the Affidavit of Mr. John T. Berry, staff counsel for the Florida Bar, including the private reprimand of Respondent dated November 20, 1964, along with the reported cases of the Florida Bar, Complainant, v. Louis Vernell, Respondent 296 So. 2d 8 (1974 and The Florida Bar, Complainant v. Louis Vernell, Respondent 374 So.2d 473 (1979).

- II I find the following costs were reasonably incurred by the Florida Bar:

Administrative Costs
(Integration Rule 11.06(9)(a))
Grievance Level \$ 150.00
Referee Level 150.00

Court Reporter:
Grievance Committee Hearings 872.78
Final Hearing (7/31/85) 761.40
Deposition of Sheldon Schlesinger 156.00
Transcript of hearings (11/29/83)
and 12/2/83 in Dade Circuit Court 192.60
Case No. 83-41234(03) 112.10

Investigative Costs:
(per affidavit of staff investigator,
attached as Exhibit "A" 1,561.75

Deposition of Mr. Vernell 346.33

TOTAL \$4,302.96

It is apparent that other costs may be incurred. It is recommended that all such costs and expenses be charged to the Respondent.

Dated this *16th* day of September, 1985.



W. Herbert Moriarty, Referee

Copy furnished:

John T. Berry, Esq.
Thomas E. Backmeyer, Esq.
Mallory H. Horton, Esq.
Robyn Greene
John F. Harkness
Patricia S. Etkin
Sid J. White, Clerk