

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, )  
In Re: LOUIS VENERLL, JR. )  
(Petition for Reinstatement) )

The Supreme Court Case No. 70,594  
The Florida Bar File No: MRE87005

THE FLORIDA BAR'S REPLY BRIEF

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## INTRODUCTION

The Florida Bar adopts the abbreviations set forth in the Complainant's Initial Brief and, in addition, sets forth the following abbreviations:

"I" Refers to Complainant's Initial Brief dated October 14, 1987.

"A" Refers to Petitioner's Answer Brief dated November 4, 1987.

STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar states no additions to the Statement of Case and Facts set forth in the Complainant's Initial Brief. However, The Florida Bar takes exception to Petitioner's blanket reference to "offending portions" of said Statement (A.1). To bar counsel's knowledge and belief, there is nothing contained within the Complainant's Initial Brief which cannot be supported by the record or the pleadings.

Further, bar counsel would point out that Petitioner's statement that "The Florida Bar was provided copies of all of Petitioner's trust account records" (A.8) is incorrect insofar as Mr. Vernell has not produced any bank records, or even a list of bank accounts, with regard to the instant case concerning his Petition for Reinstatement.

## ARGUMENT

### I

WHETHER THE REFEREE'S DENIAL OF THE FLORIDA BAR'S MOTION FOR CONTINUANCE WAS A CLEAR ABUSE OF DISCRETION BASED ON THE CIRCUMSTANCES OF THIS CASE.

With regard to any reliance on The Florida Bar v. Lipman, 497 So.2d 1165 (Fla. 1986) (A.6), bar counsel would distinguish that case from the instant case. Lipman involved a disciplinary case where a potentially unfit and malignant attorney was attempting to stall his removal from the honored membership of The Florida Bar. The instant case involves a reinstatement proceeding where a thrice publicly disciplined attorney, who has already gone through one reinstatement, is attempting to again install himself to the honored membership of The Florida Bar. Since Mr. Vernell was suspended for 91 days, the clear mandate of this Court was to require proof of rehabilitation. In order to test proof of rehabilitation, reinstatement proceedings have been devised to allow The Florida Bar the opportunity of investigation. Necessarily, a careful investigation takes time. Although the parties to this proceeding attempted to reduce this time factor to accommodate Mr. Vernell, the pure mechanics of the situation, unfortunately, could not be accomplished within the time constraints imposed by the Referee. It is noteworthy that these time constraints were not those of this Court.

With regard to argument about bar counsel setting the Reinstatement Hearing date of August 6, 1987, bar counsel

would agree that the Referee's secretary originally tried to set a July date (A.6). However, this merely reinforces The Florida Bar's position that the Referee was predisposed towards reinstatement. As set forth in The Florida Bar's Motion for Continuance dated July 31, 1987, "The August 6, 1987 Reinstatement Hearing date was set unrealistically and prematurely based upon a good faith desire to accomodate Petitioner's desire to expedite these proceedings."

With regard to argument about the procedure followed by The Florida Bar (A.7), bar counsel would point out that the Petition for Reinstatement was sent to the local board members on June 26, 1987. The reactions of the local board members were either to withhold opinion pending a review of the Report of Investigation or to indicate that tax and financial information should be more carefully examined. The Petitioner points out that "five of the six local Board members in Miami were opposed to Petitioner's Reinstatement to the Bar before any evidence whatsoever was submitted to the Referee" (A.7). However, no decisions were made until the Report of Investigation was reviewed by the local board members in late July 1987 since the Report of Investigation was not forwarded until July 29, 1987. In fact the "five of the six" decision of the local board members was made after the Report of Investigation was received. The Florida Bar's position to the Referee was to seek an examination of Petitioner's bank records. Basically, The Florida Bar's position with regard to the reinstatement was in limbo until the bank records were produced and

examined. However, without an examination of the bank records, The Florida Bar opposed the reinstatement (T.130).

Further, The Florida Bar, not "incredibly," does point to The Florida Bar in Re Roth, 500 So.2d 117 (Fla. 1986). Bar counsel has stated the position of The Florida Bar several times that there was no intent to delay these proceedings (T.5). In good faith, bar counsel offered to forego another hearing (H.32), if the bank records proved in order. This reinstatement had been pending 76 days since filing when the Reinstatement Hearing occurred and certainly would have been over by now had Respondent complied with the requests for bank information. These requests had been made and known from the very beginning of the investigation (H.24-25)

With regard to Petitioner's preoccupation with "footnote 8" of Complainant's Initial Brief, bar counsel admits he miscalculated the date of expiration of Mr. Vernell's suspension. The suspension expired May 6, 1987, not April 6, 1987 as represented in footnote 8. However, the premise and intent of that footnote was not false as characterized in the Petitioner's Answer Brief (A.10).

The footnote clearly begins:

According to Roth, Mr. Vernell was eligible to file his Petition for Reinstatement a reasonable time prior to the expiration of the suspension order, 500 So.2d at 118. (I.5).

A miscalculation occurred when bar counsel stated:

The suspension expired on April 6, 1987, but the Petition was not filed until May 21, 1987. (I.5).

The remainder of the footnote states:



The Florida Bar should not be penalized for conducting a thorough investigation and accused of dilatory tactics where Mr. Vernell have filed his Petition 45 days earlier than he did (I.5).

Aside from the miscalculation, there is nothing false about the premise and intent of the footnote. In Roth, which involved a three-year suspension, the Court allowed the suspended attorney to file a Petition for Reinstatement nine months before the expiration of the suspension order. Based on Roth, Mr. Vernell clearly could have filed his Petition for Reinstatement before the expiration of the 91-day suspension.

Finally, with regard to the reference to Petitioner's testimony that all of his trust account records were provided to The Florida Bar "prior to final hearing" (A.8), bar counsel will state that no trust account records have ever been produced in the instant case involving the Petition for Reinstatement. Bar Counsel can only surmise that Petitioner is referring to any limited records which he may have produced during the disciplinary phase involving the "Schlesinger check" of or about August 1983.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing were sent by Federal Express to Sid J. White, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and a true and correct copy was sent by Federal Express to John A. Weiss, Counsel for Petitioner, 101 North Gardsden Street, Tallahassee, Florida 32302, on this 17th day of November, 1987.

*Louis Thaler*

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