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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 78,590
[TFB Case No. 91-30,857 (18C)

v.

LANE W. VAUGHN,

Respondent.

ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this brief, the Appellant, Lane W. Vaughn, shall be referred to as "the respondent".

The Appellee, The Florida Bar, shall be referred to **as** "The Florida Bar" or "the Bar".

The transcript of the pre-trial conference held on November 1, 1991, shall be referred to as **"PT".**

The transcript of the final hearing held on November 15, 1991, shall be referred to **as** "T".

The Amended Report of Referee dated February **24**, 1992, shall be referred to as **"RR".**

The respondent's Initial Brief shall be referred to **as** "RB".

STATEMENT OF THE CASE AND FACTS

The Florida Bar accepts paragraph one of the statement of the case on page one of the respondent's Initial Brief as accurate. However, the Bar submits the following statement as to the facts in this matter,

On July 29, 1991, the Eighteenth Judicial Circuit Grievance Committee "C" found probable cause against the respondent for violating Rule of Discipline 3-4.3 for engaging in conduct contrary to honesty and justice and the following Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; and 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. The respondent, properly and timely noticed of the hearing, failed to appear in his own defense. On September 9, 1991, the Bar filed its formal Complaint which was served on the respondent by certified mail to his record Bar address. On September 30, 1991, the Bar served its Requests For Admission on the respondent by certified mail to his record Bar address. The respondent did not timely respond to the Bar's Requests. On November 1, 1991, the Referee, the Honorable Lawrence J. Davis, held a pre-trial conference with the Bar and the respondent. The respondent attended by telephone. The Referee gave the respondent an additional five days to respond to the Bar's

Requests For Admission. The Bar received the respondent's response to the Requests For Admission on November 7, 1991.

The final hearing was held on November 15, 1991. Although the respondent was personally advised of the time, date and place of the final hearing by the Referee at the pre-trial conference just two weeks earlier and he was duly noticed of the final hearing date and time in writing, the respondent failed to appear at the final hearing until the Referee personally contacted him by telephone after which time the respondent attended the final hearing by telephone. The Referee submitted his report on January 30, 1992. However, the Referee had inadvertently described one of the respondent's past discipline cases incorrectly. Therefore, the Referee submitted an amended report on February 24, 1992, to include the correct description of the respondent's past disciplinary case. On March 24, 1992, the respondent submitted his Petition For Review seeking a review of paragraphs three, four and six of the Referee's report. On April 30, 1992, the respondent submitted his Initial Brief. This Brief is in answer to the respondent's Initial Brief.

SUMMARY OF THE ARGUMENT

The respondent argues in his Initial Brief that the Referee should not have found him guilty of violating Rule of Professional Conduct **4-8.1(b)** concerning his failure to respond to the Bar in **a** disciplinary action. He claims that he did participate in the disciplinary proceedings against him and if, in fact, the Referee believed that the respondent had not properly responded to the Bar, the Referee should not have imposed such a harsh discipline, particularly because he was found not guilty of all the other charges the Bar brought against him.

It is the Bar's position that the respondent failed to timely respond to the Bar despite proper notice of the proceedings and the charges against him. The respondent's reasons for not participating throughout these proceedings are not sufficient to excuse his misconduct. The Referee properly used his discretion under The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981) in recommending that the respondent be found guilty of violating Rule of Professional Conduct **4-8.1(b)** and, based upon the respondent's past disciplinary history, a thirty day suspension is the appropriate discipline in this case.

ARGUMENT

ISSUE I

THE REFEREE'S FINDING THAT THE RESPONDENT WAS GUILTY OF VIOLATING RULE OF PROFESSIONAL CONDUCT 4-8.1(b) WAS APPROPRIATE GIVEN THE EVIDENCE OF THE RESPONDENT'S LACK OF COOPERATION AND/OR PARTICIPATION IN THE BAR PROCEEDINGS.

At the final hearing on November 15, 1991, the Referee found the respondent not guilty of all of the charges brought against him by the Bar but found him guilty of violating Rule of Professional Conduct 4-8.1(b) which states, in pertinent part, that "a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not: (b)... fail to respond to a lawful demand for information from an admissions or disciplinary authority..." (Emphasis added). Although Rule 4-8.1(b) was not specifically charged in the Bar's Complaint, the Referee found that paragraph six of the Complaint put the respondent on notice that the charge of failing to respond to the Bar would be presented at the final hearing. (RR p. 5). Further, the Referee could include findings not charged in the Bar's complaint under the authority of The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981).

In his Initial Brief, the respondent appears to concede that the Referee did have the authority to include findings in his report that were not specifically charged in the Bar's formal complaint pursuant to Stillman. (RB p. 3). However, the

respondent also asserts "there is ample evidence to indicate that the respondent herein had no specific intent to fail or refuse to cooperate with the Bar." (RB **p. 6).** The Bar respectfully disagrees with that assertion. During the final hearing and in his Initial Brief, the respondent made statements that other attorneys had advised him not to respond in writing to the Bar. (T **p.** 41-42, **90-91;** RB **p. 6).** The respondent did not reply to the Bar's initial requests, either in writing or verbally, that he respond to the complainant's allegations and he did not advise the Bar that he was taking the advice of these "other attorneys" until the final hearing. Further, the respondent has provided no testimony and/or other evidence that these attorneys actually gave him that advice. Assuming such advice was actually given, it appears clear by his own testimony that the respondent deliberately and intentionally failed to respond to the Bar's inquiries.

The respondent also failed to attend the grievance committee hearing on this mattes. The respondent claims he was in a trial in Tampa and he never received the notice of the grievance committee hearing. Pursuant to Rule of Discipline **3-7.11(b),** service of pleadings and documents to the attorney's last record **Bar** address is sufficient notice **and** service. **The** respondent tried to excuse his failure to attend the grievance committee hearing because the notice was sent to his father's law office, but that office **also was** his (respondent's) record Bar address. His father's secretary signed the post office receipt in a timely

manner on June 13, 1991, and the grievance committee hearing was not until July **29**, 1991. (T. p. **43,** Bar Ex. **3).** Although the respondent claims his father's secretary did not work for the respondent, (T **p. 41-43, 57-59),** the **Bar** contends, and the Referee so found, that the respondent's excuses regarding his father's secretary are irrelevant given that there was proper service by certified mail on the respondent pursuant to Rule **3-7.11(b).** (RR p.4, para. **27).**

The respondent failed to timely respond to the Bar's Requests for Admission. At the pre-trial conference on November 1, 1991, the Referee gave the respondent an additional five days to respond to the Requests. Although the respondent did submit his responses within the five days, it is questionable whether he would have submitted them at all had the Referee not specifically told him to respond and given him the additional time to do **so.**

At the final hearing the respondent was not present before the Referee at the appointed time. This, the Bar submits, is a clear example of the respondent's lack of concern during these disciplinary proceedings. The respondent was timely noticed of the final hearing date pursuant to Rule **3-7.11(b)** and he **was** specifically advised of the final hearing date and time by the Referee at the pre-trial conference two weeks prior to the final hearing. The Referee even moved the hearing time from 9:00 a.m. to 9:30 a.m. for the respondent's convenience for his traveling purposes. (PT p. **6).** The respondent was not present before the

Referee until the Referee telephoned the respondent at his home. During the final hearing, the Referee found that the respondent had been duly noticed and had been advised of the date and time for the hearing at the pre-trial conference and therefore, he was going to conduct the final hearing by telephone. Again, the respondent would not have even participated at the final hearing had the Referee not contacted him at home by telephone.

In this matter the respondent has shown a continuing pattern of not cooperating or participating in the disciplinary proceedings. At times the respondent's failure to respond to the Bar was intentional and at other times the respondent demonstrated a willful lack of concern as to these matters. The Bar submits that under these circumstances, it was appropriate for the Referee to find the respondent guilty of violating Rule of Professional Conduct 4-8.1(b).

ISSUE II

THE REFEREE'S RECOMMENDATION OF A THIRTY DAYS SUSPENSION WAS WARRANTED EVEN THOUGH THE REFEREE FOUND THE RESPONDENT NOT GUILTY OF ALL OF THE OTHER CHARGES AND BASED UPON HIS PAST DISCIPLINARY HISTORY.

In his report, the Referee recommended the respondent receive a thirty day suspension for violating Rule of Professional Conduct 4-8.1(b). His guilt of that offense is clear. The respondent argues, however, that this is too harsh a discipline given the fact that the Referee found him not guilty

of all of the other charges the Bar brought against him. The respondent further argues that in past Bar disciplinary cases the fact that an attorney failed to cooperate with the Bar was used in recommending an aggravated discipline after the attorney had already been found guilty of other violations of the Rules. The respondent cites numerous cases in support of his thesis that a recommended finding of guilt of Rule 4-8.1(b) is not justified because the Referee recommended a finding of not guilty on the other offenses alleged in the complaint. He states that "the distinguishing feature in each of those cases, however, is that the attorney was found guilty of some or all of the charges alleged in the Bar's complaint". (RB p. 3). He fails to point out, however, that every single case he cites is clearly and unalterably distinguishable from the case at bar: each case cited by him in his brief was tried by Rules in effect prior to January 1, 1987, the effective date of the Rules Regulating The Florida Bar. There was no counterpart to Rule 4-8.1(b) in existence. This may well be the reason the Referees in those cases, and this Honorable Court, only used the lack of cooperation as aggravation rather than as a separate offense. It is true that this situation is one of first impression in Bar disciplinary cases in Florida. However, there is substantial precedent for the Bar's position to be found, in that other state Bar disciplinary authorities have disciplined attorneys for failing to cooperate in the disciplinary process.

In Louisiana State Bar Association v. Tucker, **560 So.2d 435** (La. 1989), the Committee on Professional Responsibility instituted disciplinary proceedings against Tucker in four **cases** of mishandling of fees and/or client funds. Tucker failed to respond to the committee's letters during the investigation of the complaints and he failed to attend some of the hearings on the matters. The Commissioner found Tucker guilty in two of the cases and also found him guilty of violating Rule **8.4(g)** concerning his failure to respond to the committee. Upon a rehearing, the Louisiana Supreme Court found the Bar had not proven the allegations in the remaining cases by clear and convincing evidence and reversed the previous finding of guilt on those charges. However, the court upheld the finding that Tucker **was** guilty of not responding to the committee in each of the four cases. The court imposed a public reprimand as discipline on those violations alone.

In a Missouri case, In Re: Stricker, **808** S.W.2d **356** (Mo. banc 1991), a point was made by a Justice on the Missouri Supreme Court which is particularly relevant to the instant matter. Stricker was found guilty in several **cases** of neglect and lack of adequate communication with clients. He was **also** found guilty of failing to cooperate with the committee in one of the cases. The Special Master found Stricker not guilty of the general allegations in that case but found him guilty of violating Rule **4-8.1(b)** for failing to cooperate with the committee in its investigation of that complaint. The Missouri Supreme Court held

that violations of Rule 4-8.1(b), which reads "failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter," may constitute attorney misconduct warranting sanctions. The court went on to state:

> The basis of the misconduct for failing to cooperate does not rest upon the merit of the complaint, rather cooperation with the Committee is expected of all attorneys so that such matters may receive prompt resolution. Had the respondent responded to the letter from the Committee outlining the evidence later presented at the disciplinary hearing, this matter could have been expeditiously dispatched without need for hearing and review by this Court. At **p.** 363. (Emphasis supplied).

This is also true in the present case. Because the Referee found the respondent not guilty of the allegations in the Bar's Complaint it is possible that had the respondent replied to the Bar's inquiries and/or participated in the grievance committee hearings, this matter would have never reached the Referee level. Despite initial investigation by the Bar, material evidence tending to disprove the Bar's charges was not provided to Bar Counsel by the respondent until after the final hearing. (RR p.2). The respondent's failure to present any defense at the early stages of the investigation resulted in the utilization of the Referee's and this Court's time which may have been unnecessary had the Bar been able to obtain important documentation from the respondent at the initial stage of the investigation.

In another Missouri case, In Re: Staab, 719 S.W.2nd **780** (Mo.

banc 1986), the Bar's committee charged Staab with repeatedly failing to cooperate with the Bar's investigation of the complaints against him. The Missouri Court indicated it was joining "a growing majority of states who explicitly entertain as attorney misconduct the failure to cooperate with disciplinary authorities". (At p. 784). The court further stated:

> Isolated instances might be inadvertence or simple neglect. However, the well-evidenced repetition of non-cooperation on this record justifies the conclusion that the respondent does not fully understand the profound duty imposed by his profession. The Bar committee and its members "giv[e] their time and services to maintain a high standard in the legal profession and [are] entitled to expect at least a courteous response and a prompt cooperation." In Re: Breding, 188 Minn. 367, 368, 247 N.W. 694 (1933). Certainly, this court should expect no less of members of this self-regulating profession if the Court is to maintain the public's confidence and the profession's integrity (At p. 784).

[See also In Re: Vails, 768 S.W.2d 78 (Mo.banc 1989) and State Ex Rel. Nebraska State Bar v. Kirshen, 441 N.W.2d 161 (Neb. 1989)].

It is apparent that this Court, as well as courts of other states, has had little regard for attorneys who fail to participate in the disciplinary proceedings, despite whether or not other rule violations have been found against the attorney. Referees have also indicated that this failure on the part of attorneys demonstrates a lack of concern for the proceedings of The Florida Bar which reflects adversely on the attorney's fitness to practice law. This sentiment was evidenced in The

Florida Bar v. Tato, 435 So.2d 807 (Fla. 1983), which was a disbarment case for neglect. The Referee found, among other things, that the attorney had failed to cooperate with the Bar and failed to attend final hearings. In aggravation the Referee found:

> Respondent's conduct in these proceedings indicates that he has as little regard for these proceedings as he does for his clients interests. I find that the respondent's conduct demonstrates a willful disregard for the disciplinary system as well as the standards of professional conduct under which attorneys must operate. (At p. 808).

In The Florida Bar v. Bartlett, 509 So.2d 287 (Fla. 1987), this Court held that "a lawyer's willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question a lawyer's fitness for the practice of law". (At p. 289). [See also The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989)].

The respondent has been involved in two prior disciplinary cases. In case numbers 86-21,985 (18C), 86-21,092 (18C) and 87-27,597 (18C), the respondent received a private reprimand by appearance before the Board of Governors of The Florida Bar for personal checking account violations. In The Florida Bar v. Vaughn, 562 So.2d 348 (Fla. 1990), the respondent received a public reprimand for engaging in improper personal behavior. (RR p.6). The Referee considered the respondent's prior disciplinary history when recommending the discipline to be imposed in this case. Further, this Court considers a respondent's previous

disciplinary history and increases the discipline where appropriate. The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982). The Bar submits a thirty day suspension is the appropriate discipline based upon the circumstances in this case and considering the respondent's prior disciplinary history. Additionally, the Bar contends that in Standard 7.2 from the Florida Standards For Imposing Lawyers Sanctions as cited by the respondent on page five of his Initial Brief, suspension is appropriate in this case. It is the Bar's position that the respondent's failure to cooperate with the Bar violated his duty as a professional which caused injury and disruption to the disciplinary system. Under Standard 7.2 a suspension would be appropriate in this situation.

In conclusion, the Bar asserts that in this matter the point is not that the respondent was found not guilty of the other disciplinary charges against him. The issue is that the respondent's disregard for the disciplinary procedures demonstrates a lack of understanding as to his responsibilities as an attorney and a member of The Florida Bar. The Referee attempted to correct this problem by recommending the respondent be suspended for thirty days. The Bar submits that perhaps by suspending the respondent, he will take greater care to timely respond to the Bar's inquiries should a complaint be filed against him in the future. If so, any unnecessary expenditure of time and effort could be avoided by all parties involved in the disciplinary process. The Bar seeks only to proceed with those

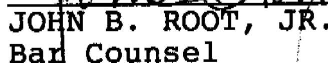
disciplinary matters wherein an attorney has actually violated the Rules Regulating The Florida Bar. It is unfortunate that a disciplinary matter proceeds all the way to the Supreme Court of Florida only because the respondent failed to cooperate with a grievance investigation by The Florida Bar and to provide information which he had in his possession.

CONCLUSION

Based upon the foregoing, The Florida Bar respectfully requests that this Court approve the Referee's findings of fact and recommendations as to guilt and order the respondent be suspended for a period of thirty days and that he be required to pay the Bar's costs in prosecuting this matter.

CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that the original and seven **(7)** copies of The Florida Bar's Answer Brief have been furnished by ordinary U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, **32399-1925;** a copy **of** the foregoing has been furnished by ordinary U.S. mail to respondent, Lane W. Vaughn, at his record Bar address, 2007 **S**. Melbourne Court, Post Office Box 370, Melbourne, Florida **32902-0370;** and **a copy** of the foregoing has been furnished by ordinary mail to Staff Counsel, The Florida Bar, **650** Apalachee Parkway, Tallahassee, Florida, **32399-2300,** on this 18th day of May, **1992.**



JOHN B. ROOT, JR.
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant, Case No. 78,590
[TFB Case No. 91-30,857 (18C)

v.

LANE W. VAUGHN,

Respondent.

APPENDIX TO COMPLAINANT'S ANSWER BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

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Case No. 78,590
(TFB Case No. 91-30,857 (18C)

v.

LANE W. VAUGHN,
Respondent.
_______________________/

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, the final hearing was held on November 15, 1991. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are 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-John B. Root, Jr.

For the Respondent-In pro se (by telephone)

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 on below, I find:

1. The respondent, Lane Vaughn, is and at all times hereinafter mentioned, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar. Response to Request for Admissions by Lane Vaughn, dated November 6, 1991.

2. Mitchell Eric Miller was charged by a capias on June 14, 1990 with two counts of aggravated assault and bond was set at $10,000.00 on the capias. Referee Proceeding, Complainants Exhibit 2.

3. A friend of Mr. Miller's, named Leon Whalen was also charged in the same incident and was represented by Lane Vaughn. Referee Proceeding, p. 68, L 4-11; p. 70, L 9-14.

4. At some unknown time after the capias was issued but approximately around August 23, 1990, Mr. Miller learned

about the charges and consulted Lane Vaughn. Referee Proceeding, p. 10, L 25; p. 11, L 1-11; p. 21, L 8-15; p. 48, L 21-25; p. 49, L 1-11.

5. Lane Vaughn took Mr. Miller in front of a Judge on August 30, 1990 and bond was set at $2,500. An appearance date of September 28, 1990 at 8:45 A.M. in Melbourne was set for Mr. Miller's next court date. This date was on the court papers as well as on the bond. Court exhibit, sent to Referee on December 16, 1991 by Bar Counsel; Referee Proceeding, p. 13, L 2-5; p. 25 L 8-12; p. 28, L 1-8; P. 54, L 15-25; p. 55, L 1-6.

6. Neither Lane Vaughn nor Mr. Miller made the Court appearance on September 28, 1990. The Court papers indicate a wrong location was given and the Court set a new appearance date for October 1, 1990 at 10:00 A.M. Referee proceeding, Complainant's exhibit 2.

7. No warrant was ever issued to arrest Mr. Miller for a Failure to Appear. Referee Proceeding, Complainant's exhibit 2; Referee Proceeding, p. 16, L 21-25; p. 17, L 1-4; p. 46, L 9-25.

8. Mr. Miller called Lane Vaughn's office upset and spoke to Cindy Smith. Cindy Smith made some calls and informed Mr. Miller that no warrant had been issued for his arrest. Referee Proceeding, p. 39, L 2-11; p. 64, L 5-21.

9. Lane Vaughn made a court appearance with Mr. Miller on October 1, 1990. At that time he filed his Notice af Appearance and Demand for Trial which was dated September 28, 1990. Referee Proceeding, Complainant's exhibit 2.

10. A Demand for Discovery dated September 28, 1990 was filed in the Clerk's office on October 2, 1990. The State's answer to Demand for Discovery was filed in the Clerk's office on October 24, 1990 and was dated October 23, 1990. Referee Proceeding, Complainant's exhibit 2.

11. Mr. Miller knew to be in Court on October 1, 1990 because either Lane Vaughn called and told him or Lane's secretary told him or he was in Lane Vaughn's office with co-defendant, Leon Whalen, and learned about the date. Referee Proceeding, p. 26, L 14-16; p. 28, L 21-25; p. 29, L 1.

12. Mr. Miller agreed to pay Lane Vaughn $7,000.00 to represent him on the two charges. This was a flat fee with no agreement as to how payment was to be made. Referee Proceeding, p. 11, L 12-17; p. 12, L 3-4.

13. Lane Vaughn received a total of $1,300.00 from Mr.

Miller. The money was paid in installments of $300.00 and $1,000.00. Referee Proceeding, p. 11, L 18-23.

14. The $300.00, which was borrowed from his parents by Mr. Miller, was paid to Lane Vaughn at a bondsman's office. Bond was posted for Mr. Miller on August 30, 1990. Referee Proceeding, p. 11, L 21-25; p. 12, L 1-2.

15. Mr. Miller later paid Lane Vaughn $1,000.00 at the Melbourne Courthouse. Mr. Miller couldn't remember the date of the payment. Referee Proceeding, p. 12, L 5-11.

16. Lane Vaughn met with Mr. Miller and his co-defendant, Mr. Whalen, at Lane's office on at least two or three occasions. Referee Proceeding, p. 29, L 2-24; p. 66, L 8-10.

17. Lane Vaughn's secretary, Cindy Smith, recalls Mr. Miller coming to the office on at least three or four occasions with Leon Whalen, at which time Lane Vaughn would discuss their cases with them. She also recalled Mr. Miller coming in without Mr. Whalen on a couple of occasions. Referee Proceedings, p. 65, L 17-22; p. 66, L 6-10; p. 67, L 17-25; p. 68, L 1-3.

18. Any phone calls by Mr. Miller to Lane Vaughn were answered by Mr. Vaughn if he was in the office and if not, Ms. Smith would make a return call to Mr. Miller when Lane Vaughn came in. Referee Proceeding, p. 64, L 22-25; p. 65, L 1-14; p. 69, L 2-11.

19. Lane Vaughn was representing Leon Whalen on a sexual battery charge as well as on the charges arising out of the same incident as Mr. Miller. When Mr. Whalen couldn't pay Lane Vaughn's fees, Lane quit representing him. Referee Proceeding, p. 31, L 16-25; p. 32, L 1-22.

20. Subsequent to the time Lane Vaughn quit representing Leon Whalen, he received a letter from an attorney, Kenneth Studstill, dated November 30, 1990, informing Mr. Vaughn that Mr. Studstill represented Mr. Miller and could Mr. Vaughn return any of Mr. Miller's money to him. Referee Proceeding, p. 39, L 12-24; p. 66, L 3-20; P. 75, L 14-25; p. 76, L 1-5.

21. Kenneth Studstill's Notice of Appearance is dated November 6, 1990 and Mr. Vaughn's Notice of Appearance is dated September 28, 1990. Referee Proceedings, Complainants exhibit 2.

22. 38 days elapsed between Lane Vaughn's Notice of Appearance and Kenneth Studstill's.

23. Lane Vaughn attended a bond hearing with Mr. Miller and one court appearance. He also met in his office with Mr.

Miller and Leon Whalen together. He also met in his office with Mr. Miller by himself on one or two occasions. Mr. Vaughn's office also received calls from Mr. Miller and they were answered by Cindy Smith or Lane Vaughn.

24. During the Bar's investigation of this matter, the respondent did not reply to the Bar inquiry letters and he did not appear at the grievance committee hearing despite receipt of proper notice at his record Bar address. Referee Proceeding, Complainant's Exhibit 3, Referee Proceeding, p. 41, L 4-25; p. 42, L 1-25; p. 43, L 1-25.

25. The respondent claimed to have been involved in a four week trial in Tampa before U.S. District Court Judge Elizabeth A. Kovachevich. However, he did not advise The Florida Bar grievance committee members that he was appearing in court on the date of the hearing or ask for a continuance. Referee Proceeding, p. 41, L 15-20; p. 42, L 20-25; p. 43, L 16-25; p. 50, L 2-23; p. 52, L 15-22.

26. The respondent also did not appear for the final hearing on November 15, 1991, despite proper notice at his record Bar address and despite the fact that he was personally and specifically advised by this referee at a pretrial conference on November 5, 1991, that the final hearing would be held in my courtroom on November 15, 1991, at 9:30 A.M. In fact this referee changed the time from 9:00 A.M. to 9:30 A.M. for the respondent's convenience. As a result of the respondent's failure to appear, this referee telephoned the respondent at home and thereafter conducted the final hearing by telephone conference call. Receipt For Notice of Hearing; Transcript of Proceedings held on Friday, November 5, 1991. Referee Proceeding, pages 4, 5, and 6.

27. The respondent indicated that the address he provided to the Bar to receive mail was for his father's law office and that his father's secretary signed a certified mail return receipt with a notice of final hearing. However, I find whether the respondent's father's secretary signed for the notice of hearing is irrelevant and immaterial given that the respondent conceded that the address for his father's law office was the respondent's record Bar address. Referee Proceeding, p. 42, L 18-25; p. 43, L 1-25; p. 45, L 3-9; p. 50, L 22-25; p. 51, L 1-24; p. 52, L 1-14;, p. 57, L 1-25.

28. The respondent also testified that the reason he did not respond in writing to the Bar regarding these charges was because other attorneys advised him not to respond to the Bar. Referee Proceeding, p. 90, L 18-25; p. 91, L 1-25.

III. Recommendations as to whether or not the Respondent should be found guilty:

As to Count I Rule of Professional Conduct 3-4.3

I recommend that the respondent be found NOT GUILTY and specifically that he be found not guilty of violating Rule 3-4.3. The evidence is not clear and convincing that the respondent engaged in conduct that is contrary to honesty and justice.

As to Count II Rule of Professional Conduct Rule 4-1.3

I recommend that the Defendant be found NOT GUILTY on specifically that to be found not guilty of violating Rule 4-1.3. The evidence is not clear and convincing that the respondent failed to act with reasonable diligence in representing his client.

As to Count III Rule of Professional Conduct 4-1.4(a)

I recommend that the respondent be found NOT GUILTY and specifically that he be found not guilty of violating Rule 4-1.4(a). The evidence is not clear and convincing the respondent failed to keep a client reasonably informed about the status of a matter and for failing to comply with reasonable requests for information.

However, under the authority of The Florida Bar v. Stillman, **401 So. 2d 1306** (Fla. 1981) I find that the respondent is GUILTY of violating Rule of Professional Conduct 4-8.1(b) by failing to respond to the Bar's request to reply to the complaining party giving his side of the story; by failing to appear at a **properly** noticed hearing of the grievance committee and by failing to communicate with any Bar authority that he was involved in a criminal trial in Tampa during the period of the grievance hearing. He also failed to appear in person for the Referee Trial and only attended the hearing by telephone after he was contacted by this referee. The respondent claims he was not charged with this specific rule violation. It is my opinion that paragraph 6 of the complaint sufficiently put the respondent on notice that evidence Of failure to cooperate with the Bar would be presented **at the trial.**

IV. Recommendations as to Disciplinary measures to be applied:

I recommend that the respondent be suspended from practicing law for a period of thirty days with automatic reinstatement at the end of the period of suspension as provided in Rule 3-5.1(e) of the Rules of Discipline. The respondent shall **also** be required to **pay** the Bar's costs in prosecuting this matter.

V. Personal History and Past Disciplinary Record: After the

finding of guilty and prior to recommending discipline to be ecommended pursuant to Rule 3-7.5(k)(4), I considered the followin personal history and prior disciplinary record of the respondent, to wit:

Age: 39
Date Admitted to Bar: March 29, 1983
Prior Disciplinary convictions and disciplinary measures imposed therein:

a. Case Nos. 86-21985 (18C), 86-21092 (18C) and 87-27597 (18C), the respondent received a private reprimand by appearance before the Board of Governors for trust account violations.

b. The Florida Bar v. Vaughn, 562 So.2d 348 (Fla. 1990) the respondent received a private reprimand for personal behavior.

VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level costs	
	1. Transcript Costs	$ 59.35
	2. Bar Counsel/Branch Staff Counsel Travel Costs	$ 27.51
B.	Referee Level Costs	
	1. Transcript Costs	$401.70
	2. Bar Counsel/Branch Costs	$ 34.88
C.	Administrative Costs	$500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	$222.80
	TOTAL ITEMIZED COSTS:	$1,246.14

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 30th day of January, 1992.

Lawrence J. Davis
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee was furnished by certified mail, return receipt requested to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927; a copy has been furnished by certified mail, return receipt requested to Lane Vaughn, Esquire, Respondent, P.O. Box 370, Melbourne, Florida 32902-0370; a copy has been furnished by ordinary U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; a copy has been furnished by ordinary U.S. Mail to John Root, Jr., Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801, on this the 30th day of January, 1992.

Judicial Assistant

RECEIVED
FEB 25 1992
THE FLORIDA BAR
ORLANDO

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR

complainant,

v.

LANE W. VAUGHN,
Respondent.

Case No. 78,590
(TFB Case No. 91-30,857 (18C)

AMENDED
REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, the final hearing was held on November 15, 1991. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are 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-John B. Root, Jr.

For the Respondent-In pro se (by telephone)

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 on below, I find:

1. The respondent, Lane Vaughn, is and at all times hereinafter mentioned, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar. Response to Request far Admissions by Lane Vaughn, dated November 6, 1991.

2. Mitchell Eric Miller was charged by a capias on June 14, 1990 with two counts of aggravated assault and bond was set at $10,000.00 an the capias. Referee Proceeding, Complainants Exhibit 2.

3. A friend of Mr. Miller's, named Leon Whalen was also charged in the same incident and was represented by Lane Vaughn. Referee Proceeding, p. 68, L 4-11; p. 70, L 9-14.

4. At some unknown time after the capias was issued but

approximately around August 23, 1990, Mr. Miller learned about the charges and consulted Lane Vaughn. Referee Proceeding, p. 10, L 25; p. 11, L 1-11; p. 21, L 8-15; p. 48, L 21-25; p. 49, L 1-11.

5. Lane Vaughn took Mr. Miller in front of a Judge on August 30, 1990 and bond was set at $2,500. An appearance date of September 28, 1990 at 8:45 A.M. in Melbourne was set for Mr. Miller's next court date. This date was on the court papers as well as on the bond. Court exhibit, sent to Referee on December 16, 1991 by Bar Counsel; Referee Proceeding, p. 13, L 2-5; p. 25 L 8-12; p. 28, L 1-8; P. 54, L 15-25; p. 55, L 1-6.

6. Neither Lane Vaughn nor Mr. Miller made the Court appearance on September 28, 1990. The Court papers indicate a wrong location was given and the Court set a new appearance date for October 1, 1990 at 10:00 A.M. Referee proceeding, Complainant's exhibit 2.

7. No warrant was ever issued to arrest Mr. Miller for a Failure to Appear. Referee Proceeding, Complainant's exhibit 2; Referee Proceeding, p. 16, L 21-25; p. 17, L 1-4; p. 46, L 9-25.

8. Mr. Miller called Lane Vaughn's office upset and spoke to Cindy Smith. Cindy Smith made some calls and informed Mr. Miller that no warrant had been issued for his arrest. Referee Proceeding, p. 39, L 2-11; p. 64, L 5-21.

9. Lane Vaughn made a court appearance with Mr. Miller on October 1, 1990. At that time he filed his Notice of Appearance and Demand for Trial which was dated September 28, 1990. Referee Proceeding, Complainant's exhibit 2.

10. A Demand for Discovery dated September 28, 1990 was filed in the Clerk's office on October 2, 1990. The State's answer to Demand for Discovery was filed in the Clerk's office on October 24, 1990 and was dated October 23, 1990. Referee Proceeding, Complainant's exhibit 2.

11. Mr. Miller knew to be in Court on October 1, 1990 because either Lane Vaughn called and told him or Lane's secretary told him or he was in Lane Vaughn's office with co-defendant, Leon Whalen, and learned about the date. Referee Proceeding, p. 26, L 14-16; p. 28, L 21-25; p. 29, L 1.

12. Mr. Miller agreed to pay Lane Vaughn $7,000.00 to represent him on the two charges. This was a flat fee with no agreement as to how payment was to be made. Referee Proceeding, p. 11, L 12-17; p. 12, L 3-4.

13. Lane Vaughn received a total of $1,300.00 from Mr. Miller. The money was paid in installments of $300.00 and $1,000.00. Referee Proceeding, p. 11, L 18-23.

14. The $300.00, which was borrowed from his parents by Mr. Miller, was paid to Lane Vaughn at a bondsman's office. Bond was posted for Mr. Miller on August 30, 1990. Referee Proceeding, p. 11, L 21-25; p. 12, L 1-2.

15. Mr. Miller later paid Lane Vaughn $1,000.00 at the Melbourne Courthouse. Mr. Miller couldn't remember the date of the payment. Referee Proceeding, p. 12, L 5-11.

16. Lane Vaughn met with Mr. Miller and his co-defendant, Mr. Whalen, at Lane's office on at least two or three occasions. Referee Proceeding, p. 29, L 2-24; p. 66, L 8-10.

17. Lane Vaughn's secretary, Cindy Smith, recalls Mr. Miller coming to the office on at least three or four occasions with Leon Whalen, at which time Lane Vaughn would discuss their cases with them. She also recalled Mr. Miller coming in without Mr. Whalen on a couple of occasions. Referee Proceedings, p. 65, L 17-22; p. 66, L 6-10; p. 67, L 17-25; p. 68, L 1-3.

18. *Any* phone calls by Mr. Miller to Lane Vaughn were answered by Mr. Vaughn if he was in the office and if not, Ms. Smith would make a return call to Mr. Miller when Lane Vaughn came in. Referee Proceeding, p. 64, L 22-25; p. 65, L 1-14; p. 69, L 2-11.

19. Lane Vaughn was representing Leon Whalen on a sexual battery charge as well as on the charges arising out of the same incident as Mr. Miller. When Mr. Whalen couldn't pay Lane Vaughn's fees, Lane quit representing him. Referee Proceeding, p. 31, L 16-25; p. 32, L 1-22.

20. Subsequent to the time Lane Vaughn quit representing Leon Whalen, he received a letter from an attorney, Kenneth Studstill, dated November 30, 1990, informing Mr. Vaughn that Mr. Studstill represented Mr. Miller and could Mr. Vaughn return any of Mr. Miller's money to him. Referee Proceeding, p. 39, L 12-24; p. 66, L 3-20; P. 75, L 14-25; p. 76, L 1-5.

21. Kenneth Studstill's Notice of Appearance is dated November 6, 1990 and Mr. Vaughn's Notice of Appearance is dated September 28, 1990. Referee Proceedings, Complainants exhibit 2.

22. 38 days elapsed between Lane Vaughn's Notice of Appearance and Kenneth Studstill's.

23. Lane Vaughn attended a bond hearing with Mr. Miller

and one court appearance. He also met in his office with Mr. Miller and Leon Whalen together. He also met in his office with Mr. Miller by himself on one or two occasions. Mr. Vaughn's office also received calls from Mr. Miller and they were answered by Cindy Smith or Lane Vaughn.

24. During the Bar's investigation of this matter, the respondent did not reply to the Bar inquiry letters and he did not appear at the grievance committee hearing despite receipt of proper notice at his record Bar address. Referee Proceeding, Complainant's Exhibit 3, Referee Proceeding, p. 41, L 4-25; p. 42, L 1-25; p. 43, L 1-25.

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28. The respondent also testified that the reason he did not respond in writing to the Bar regarding these charges was because other attorneys advised him not to respond to the Bar. Referee Proceeding, p. 90, L 18-25; p. 91, L 1-25.

III. Recommendations as to whether or not the Respondent should be found guilty:

AS to Count I Rule of Professional Conduct 3-4.3

I recommend that the respondent be found **NOT** GUILTY and specifically that he be found not guilty of violating Rule 3-4.3. The evidence is not clear and convincing that the respondent engaged in conduct that is contrary to honesty and justice.

As to Count II Rule of Professional Conduct Rule 4-1.3

I recommend that the Defendant be found **NOT GUILTY** on specifically that to be found not guilty of violating Rule 4-1.3. The evidence is not clear and convincing that the respondent failed to act with reasonable diligence in representing his client.

As to Count III Rule of Professional Conduct 4-1.4(a)

I recommend that the respondent be found NOT **GUILTY** and specifically that he be found not guilty of violating Rule 4-1.4(a). The evidence is not clear and convincing the respondent failed to keep a client reasonably informed about the status of a matter and for failing to comply with reasonable requests for information.

However, under the authority of The Florida Bar v. Stillman, 401 So. 2d 1306 (Fla. 1981) I find that the respondent is GUILTY of violating Rule of Professional Conduct 4-8.1(b) by failing to **respond** to the Bar's request to reply to the complaining party giving his side of the story; by failing to appear at a **properly** noticed hearing of the grievance committee and by failing to communicate with any Bar authority that he **was** involved in a criminal trial in Tampa during the period of the grievance hearing. He also failed to appear in person for the Referee Trial and only attended the hearing by telephone after he was contacted by this referee. The respondent claims he was not charged with this specific rule violation. It is my opinion that paragraph *6* of the complaint sufficiently put the respondent on notice that evidence of failure to cooperate with the Bar would be presented at the trial.

IV. Recommendations as to Disciplinary measures to be applied:

I recommend that the respondent be suspended from practicing **'law** for a period of thirty days with automatic reinstatement at the end of the period of suspension as provided in Rule 3-5.1(e) of the Rules of Discipline. The respondent shall also be required to pay the Bar's costs in prosecuting this matter.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

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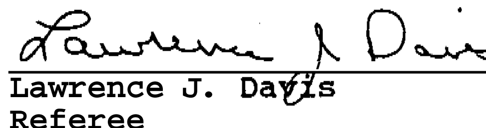
b. The Florida Bar v. Vaushn, 562 So.2d 348 (Fla. 1990) the respondent received a public reprimand for personal behavior.

VI. Statement of *costs* and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level *Costs*	
	1. Transcript Costs	$ 59.35
	2. Bar Counsel/Branch Staff Counsel Travel Costs	$ 27.51
B.	Referee Level Costs	
	1. Transcript Costs	$401.70
	2. Bar Counsel/Branch Costs	$ 34.88
C.	Administrative Costs	$500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	*$222.80*
	TOTAL ITEMIZED COSTS:	$1,246.14

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 24th day of February, 1992.



Lawrence J. Davis
Referee

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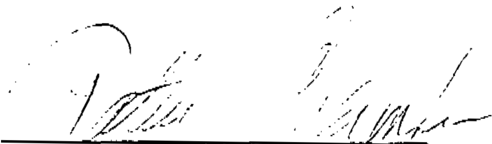
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original *of* the foregoing Report of Referee was furnished by certified mail, return receipt requested to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927; a copy has been furnished by certified mail, return receipt requested to Lane Vaughn, Esquire, Respondent, P.O. Box 370, Melbourne, Florida 32902-0370; a copy has been furnished by ordinary U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; a copy has been furnished by ordinary U.S. Mail *to* John Root, Jr., Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801, on this the 24th day of February, 1992.



Judicial Assistant