

FILED

SID J. WHITE

FEB 26 1992

CLERK, SUPREME COURT.

By 
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

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

v.

LANE W. VAUGHN,
Respondent.

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)

11. 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 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

111. 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 4-3.1(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:

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 personal checking account violations.

b. The Florida Bar v. Vaughn, 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
Lawrence J. Davis
Referee

CERTIFICATE OF SERVICE

1 **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**.


Cathy Hunter
Judicial Assistant