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FILED
SID J. WHITE
JAN 29 1996
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a referee)

THE FLORIDA BAR,

Complainant,

v.

RAYMOND E. CRAMER,

Respondent.
_____/

Case No. 84,716
[TFB Case No. 94-30,052 (09A)]

RESPONDENT'S REPLY BRIEF

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ARGUMENT OF RESPONDENT'S REPLY BRIEF

POINT I

POLK COUNTY WAS IMPROPER VENUE FOR TRIAL BY THE REFEREE

Rule 3-7.6 (c) states:

The trial shall be held in the county which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced in Florida whichever shall be designated by the Supreme Court of Florida;

The Complainant has cited **no** cases which allow the venue to be changed by consent of the parties or otherwise. The rule states "shall", not "may", "can", "should", "could" or any type of permissive language, but uses "shall" which is mandatory. This rule has not been complied with and should be sent back for trial in the proper venue.

POINT II

THE REFEREE DID NOT MAKE A REPORT

Rule 3-7.6(k)(1) states:

Contents of Report. Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, **the referee shall make a report** and enter it as part of the record,-------

Again, the Complainant has cited **no** cases in support of their position and only cites that this practice is often done in bar cases which is supposed to lend some credence to the practice. If the rule meant that bar counsel was to make a report and submit it to the referee for his signature, would not the rule have stated exactly that?

This is not a report of the referee, but is almost a verbatim copy of the bar,s original complaint which was signed by the referee so he would not have to take the time to do it. The rule contemplated the referee taking the time to seriously draft his findings of fact and conclusions of law and submitting to this court, not merely signing some biased draft preparedby the bar. If the rules do not mean what they say, then what good are they? This report should be stricken as not in compliance with the rules.

POINT III

THE REFEREE'S FINDINGS OF FACTS ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

The Complainant fails to dispute any of the facts cited by the Respondent as uncontroverted in numbered paragraphs 1-8, page 4,5 of respondent's brief. The reason that they are not disputed by the Complainant is that they are uncontrovered by the record as shown by the references in the record. If these facts are undisputed, which they are, there can be **no** violations of Rules 3-4.3; 4-4.1(a); 4-8.4(b); or 4-8.4(c). To find to the contrary would be completely ignoring the undisputed facts.

Complainant's argument on page 27 where they state:

> "Apparently FNW's initial decision to deny him the equipment financing was a sound one in light of the fact he ultimately defaulted."

is a typical of the entire Complainants' argument and resembles the argument that the illegal warrantless search is warranted because of all the illegal drugs found. They have about the same amount of merit.

The evidence clearly shows that this transaction was completely above board with all parties being fully apprised of the facts. There can be no fraud or dishonesty when all parties involved in a transaction are fully apprised of all of the facts and agree to them. If any thing is a fraud, it is the action of FNW and the bar in this matter. The bar and FNW have tried to make it something that it was not. Careful attention should be given to the undisputed facts as cited by the Respondent in his initial brief and referred to in this response which distinctly indicate no violations.

POINT IV

THE REFEREE'S RECOMMENDATION OF DISBARMENT IS INAPPROPRIATE GIVEN THE FACTS OF THIS CASE

. The only violation the respondent is guilty of is failing to answer in **writing** the original complaint which the respondent admitted and not obtaining a written power of attorney to sign Mr. Owen's name to the lease documents. All other violations are not supported by any facts at the trial and do not warrant disbarment.

There are numerous cases where disbarment was not justified for conviction of a felony and is certainly not justified in this case

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies (7) of the foregoing response brief have been furnished by U. S. Mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927: a copy to staff counsel, 880 North Orange Avenue, Orlando, Fla., 32801 this 25 th day of January, 1996.

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