

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.  
31,303(09C)]

Case No. SC11-1218  
[TFB File No. 2010-

PAUL WILLIAM MOSES, II,

Respondent.  
\_\_\_\_\_ /

**REPORT OF THE REFEREE ACCEPTING CONSENT JUDGMENT**

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On June 16, 2011, The Florida Bar filed its Complaint against respondent in these proceedings. All of the pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar,

subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary Of Case. Respondent was a licensed insurance agent (as well as an attorney but not practicing) during the relevant time. He was prohibited as an insurance agent from profiting from the death of a client by naming himself as a beneficiary of a policy on the client's life unless he had an "insurable interest." From 1999 to 2006, respondent was the broker and financial advisor for Verlee Tennant. He is unrelated to her by blood or law. In the Spring of 2004, he sold some annuities for her. In the Fall of 2004, he obtained her permission to take a policy out on her life. She signed an application for life insurance in the amount of \$370,912. At that time she was 85 years old. Ms. Tennant claimed that after talking to her son, she later called respondent and told him she no longer wanted to do this. The respondent claimed she did not and provided documentation that appears to support his position. Nevertheless, the policy was issued with all premiums paid by respondent and/or respondent through the trust and all notices regarding the insurance policy going to respondent at his brokerage company, PWM Capital Strategies.

On the application for the policy, respondent listed TTSI Irrevocable Trust, K.M. Kern, Trustee, as owner and primary beneficiary of the policy

and TTSI, Inc., as contingent beneficiary. Respondent indicated on the application that the beneficiaries' relationship to the proposed insured was that of "Family Trust" and "Family Corp." as though the listed trust and corporation were Ms. Tennant's and/or her family's trust and corporation. This was a misrepresentation even though the respondent contends it was unintentional alleging that he misread this portion of the application. Mr. Kern had never met Ms. Tennant, had no relationship to her and had no economic interest in whether she lived or died. He indicated he did not know the identity of the beneficiaries of the TTSI Irrevocable Trust. Ms. Tennant, under oath, stated that she did not know TTSI, its beneficiaries, or Mr. Kern and that she did not want them to have an interest on her life or to profit from her death.

Ms. Tennant indicated that she found out that respondent had gone ahead and submitted the policy in November 2008. Ms. Tennant or her agent sent a statement to the insurance company, ReliaStar, and the company opened an investigation. The company, in a letter dated November 25, 2008, indicated it was canceling the policy. Therein, it was noted that respondent had said he had no relationship to the trust or the insurance contract. The insurance company's position was that respondent had a beneficial interest in the TTSI trust and the insurance contract but found that there was no

insurable interest between Ms. Tennant, the trust and respondent. The company noted that when asked why the policy was purchased, respondent claimed Ms. Tennant was one of his biggest clients and if she died he would lose a significant portion of his income. The company cancelled the policy and said it was putting the accumulated value of the policy \$17,838.62 toward its costs and the commissions respondent had received on the policy.

Respondent, through the trust, sued for a determination that he had an insurable interest and in the alternative, to have the premiums refunded. The court found that respondent had no insurable interest under Florida Statutes 627.404 and denied his request that the premiums he paid be refunded. The court ordered the TTSI trust pay attorney's fees to the opposing party pursuant to Florida Statutes 57.105. Although respondent spoke with the members of the grievance committee regarding this matter, he failed to provide a written narrative in response to the Bar's inquiries in the matter.

### III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 for the commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise; 4-1.8(c) for soliciting any substantial gift from a client, including

a testamentary gift, or preparing on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client; 4-8.4(g)(1) for failing to respond, in writing, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyer's conduct. A written response shall be made within 15 days of the date of the initial written investigative inquiry by bar counsel; and, 4-8.4(g)(2) failing to respond, in writing, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyer's conduct. A written response shall be made within days of the date of any follow-up written investigative inquiry by bar counsel.

#### IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

##### 6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION

6.12 Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

## 7.0 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

### 9.22 AGGRAVATING FACTORS

(a) prior disciplinary offenses; (b) dishonest or selfish motive; (h) vulnerability of victim; and (i) substantial experience in the practice of law.

### 9.32 MITIGATING FACTORS

(c) personal or emotional problems; (k) imposition of other penalties or sanctions; and (l) remorse.

## V. CASE LAW

I considered the following case law prior to recommending discipline:

*The Florida Bar v. Baker*, 810 So. 2d 876 (Fla. 2002) – The attorney received a 91-day suspension for forging his wife’s name on documents regarding the sale of their house, having his secretary notarize the forged signature, and then present the forgery to his attorney for the closing. The court noted “[w]hile Baker forged several legal documents, he did not commit a fraud on the court. Moreover, importantly, Baker's alleged misconduct was not connected to his law practice”.

*The Florida Bar v. Shankman*, 908 So. 2d 379 (Fla. 2005) – The attorney received a 91-day suspension for receiving a \$20,000 bonus from a client, failing to disclose the bonus to his law partners and the clients he took to another law firm, sharing fees with a nonlawyer and neglecting a client matter.

*The Florida Bar v. Anderson*, 638 so.2d 29 (Fla. 1994) – The attorney received a 90-day suspension for drafting testamentary instruments naming himself and his sister as beneficiaries. The court stated 90 days was appropriate because the attorney lacked the intent to benefit from the instruments but was rather attempting to give the testator's intent of shielding the bequest from her intended beneficiary's creditors.

In *The Florida Bar v. Herman*, 8 So. 3d 1100, 1108 (Fla. 2009), quoting *The Florida Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2003), the court stated “this Court ‘has moved towards stronger sanctions for attorney misconduct’ in recent years.”

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. Suspension from the practice of law for a period of 91 days.

B. Attendance at and completion of the Professionalism Workshop prior to filing any petition for reinstatement to the practice of law. Professional Workshops are held in various locations throughout the state. Susan Austin, Florida Bar Program Administrator, will contact you once a workshop has been scheduled or you may contact Ms. Austin at 850-561-5719 to find out when and where the next workshop will be scheduled. The fee associated with this workshop is \$750.00. Please note that the fee for this workshop must be paid prior to and not the day of the workshop. The Professionalism Workshop begins promptly with late arrivals being turned away and being required to reschedule for another date.

C. Upon reinstatement to the practice of law, respondent shall be placed on probation for a period of three years. The terms and conditions of probation are as follows:

(1) Within thirty days of the imposition of probation, respondent will notify the bar of the name, telephone number and address of the licensed mental health counselor he has retained. Respondent shall attend therapy sessions with a licensed mental health counselor during the period of probation with a view toward assessing and combating the effect the requirements and stresses of the practice of law have had on his conduct as an attorney. Respondent shall participate in a stress management regimen,



the terms of which would be dictated by the mental health counselor. It is respondent's responsibility to ensure that the counselor submits quarterly reports to The Florida Bar during the probationary period. The quarters are March 31, June 30, September 30 and December 31. The reports shall confirm respondent's counseling and inform The Florida Bar of respondent's management of the stresses of practicing law and continuing ability to engage in the active practice of law. Respondent is responsible for the submission of the quarterly statements to The Florida Bar.

(2) Within 30 days from the date probation is imposed, respondent shall contact Florida Lawyers Assistance, Inc. (FLA, Inc.), at 800-282-8981 for an evaluation to insure that the stresses and vicissitudes of respondent's professional responsibility are able to be adequately handled by respondent. Sixty days from the date the probation is imposed, respondent shall provide the Bar's headquarters office with proof that he has scheduled an evaluation. Respondent shall abide by all recommendations made by FLA, Inc. including, but not limited to, entering into a rehabilitation contract. Should a rehabilitative contract result from the FLA, Inc. evaluation, respondent agrees to be placed on probation for the period of the FLA contract, but such probationary period shall not exceed three years.

(3) Respondent will pay a Florida Lawyers Assistance, Inc., registration fee of \$250.00 and a probation monitoring fee of \$100.00 a month to The Florida Bar's headquarters office. All monthly monitoring fees must be remitted no later than the end of each respective month in which the monitoring fee is due. All fees must be paid to the Bar's headquarters office in Tallahassee. Failure to pay shall be deemed cause to revoke probation.

(4) Respondent will undergo an office procedures and recordkeeping analysis by and under the direction of the Law Office Management Assistance Service (hereinafter LOMAS) of The Florida Bar. Respondent shall cooperate with LOMAS in the conduct thereof. Respondent shall fully comply with and implement, at respondent's sole expense, all recommendations made by LOMAS, which recommendations shall be in accordance with the Office Procedures and Record Keeping Guidelines of LOMAS.

(5) Respondent shall be required to contact LOMAS staff within 30 days from the date probation is imposed and shall schedule a review within 60 days from that date. A final review by LOMAS staff shall be conducted not less than 45 days prior to the termination of probation. This final review shall confirm compliance with, and implementation of, the recommendations of LOMAS. LOMAS may require such additional

interviews or reviews as it may, in its sole discretion, deem necessary or advisable.

(6) Respondent shall pay all fees and expenses of LOMAS incurred or required in connection with the conduct of its analysis. The minimum fees and costs to be associated with this LOMAS review shall be \$1,250.00 review fee and \$500.00 travel fee. Respondent shall be responsible for any additional fees and/or costs associated with this review. LOMAS shall provide the Lawyer Regulation Department of The Florida Bar with status reports as to the ordered analysis.

D. Respondent shall be responsible for all costs of this disciplinary proceeding.

E. Within 10 days of signing this consent agreement, respondent agrees to provide the bar with a list of his current clients, case numbers, if court pleadings have been filed, and list of his opposing counsel for each case. The list shall include the names, telephone numbers and addresses for each client and opposing counsel. Respondent agrees to keep updating the list on a monthly basis until the suspension order is final.

## VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 42

Date admitted to the Bar: September 22, 1994

Prior Discipline: Respondent received a prior admonishment received on August 30, 2007, for failing to pay child support which the domestic court determined was willful

**VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED**

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

|                     |                   |
|---------------------|-------------------|
| Investigative Costs | \$823.1           |
| Copy Costs          | \$52.1            |
| Administrative Fee  | <u>\$1,250.0</u>  |
| <b>TOTAL</b>        | <b>\$2,126.15</b> |

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 14<sup>th</sup> day of February, 2012.

/s/ Michelle T. Morley

HONORABLE MICHELLE T MORLEY  
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Frances R. Brown-Lewis , Bar Counsel, The Florida Bar, 1000 Legion  
Place, Suite 1625, Orlando, Florida 32801-1050

Chandler Robinson Muller, Respondent's Counsel, at Muller & Sommerville  
P.A., P.O. Box 2128, Winter Park, Florida 32790-2128

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 East  
Jefferson Street, Tallahassee, Florida 32399-2300

/s/ Danielle Brannen

Judicial Assistant