

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

DAVID R. MACKENZIE,  
Respondent.

Supreme Court Case  
No. 67,516

The Florida Bar Case  
Nos. 17B84F76, 17B85F40,  
17B85F72 and 17B85F81

FILED  
DEC 23 1985  
CLERK, SUPREME COURT  
Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

1. The Florida Bar filed its Complaint and Request for Admissions in this cause on August 20, 1985. The undersigned was duly appointed as Referee by the Chief Justice of the Supreme Court of Florida by order dated September 5, 1985. Respondent did not file any responsive pleadings. Accordingly, The Florida Bar filed a Motion for Judgment on the Pleadings on October 22, 1985 which came on for hearing on November 20, 1985.

The following attorneys appeared for the respective parties:

On behalf of The Florida Bar: Richard B. Liss, Esquire  
On behalf of Respondent: No appearance

II. FINDINGS AS TO SUFFICIENCY OF NOTICE AND FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED:

After considering all pleadings, documentary evidence and testimony, the undersigned referee finds:

1. That Respondent is, and at all times hereinafter mentioned was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. That copies of the Complaint and Request for Admissions filed by The Florida Bar were mailed to Respondent by certified mail and regular mail to his last mailing address as shown by the official records of The Florida Bar, to wit: 5950 W. Oakland Park Boulevard, Suite 209, Lauderhill, Florida 33313.

3. That the aforesaid transmittals were returned to The Florida Bar undelivered by the postal service.

4. That a copy of the Notice of Hearing on The Florida Bar's Motion for Judgment on the Pleadings and Argument on Disciplinary Sanctions was sent by regular mail to Respondent at his last mailing address as shown by the official records of The Florida Bar and this transmittal was also returned as undelivered by the postal service.

5. That Florida Bar Integration Rule, article XI, Rule 11.01(2) states:

... mailing by registered or certified mail of papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise.

6. That Florida Bar Integration Rule, article XI, Rule 11.13(2) provides:

... service of process if [sic] not required to obtain jurisdiction over respondents in disciplinary proceedings; but due process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

7. That The Florida Bar has fully complied with the notice requirements set forth in the aforesaid provisions of the Integration Rule of The Florida Bar.

8. That, in addition, The Florida Bar utilized the services of a staff investigator in an attempt to locate Respondent.

9. That the efforts of said staff investigator are set forth in his testimony which was presented at the November 20, 1985 hearing.

10. That The Florida Bar also published a legal notice of the scheduled November 20, 1985 hearing in the Broward Review on five (5) separate days, to-wit: November 8, 12, 13, 14, 15, 1985.

11. That, based upon the foregoing, at all times material to the prosecution of the various allegations giving rise to the complaint sub judice, The Florida Bar has diligently pursued its obligation to contact Respondent and provide him with notice of all proceedings, pleadings and hearings. In point of fact, The Florida Bar has far exceeded that which is required of it in this regard.

12. That Respondent has chosen to absent himself from his law practice by deliberately abandoning same and has also chosen to make himself unavailable for these proceedings.

13. That Respondent has vacated his last known residence, leaving no forwarding address, thereby precluding his receipt of notice of these proceedings at said residence.

14. That The Florida Bar's Motion for Judgment on the Pleadings was granted at the hearing conducted on November 20, 1985. As a consequence thereof, all allegations against Respondent contained in The Florida Bar's complaint are incorporated by reference as if set forth fully herein and shall constitute the Referee's findings of fact.

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

The undersigned Referee recommends that Respondent be found guilty of all violations of the Code of Professional Responsibility and the Integration Rule of The Florida Bar enumerated in The Florida Bar's complaint, to-wit: Disciplinary Rules 1-102(A) (1), (3), (4), (5) & (6), 2-110(A) (1), (2) & (3), 6-101(A) (3), 7-101(A) (2) & (3), 9-102(A), 9-102(B) (3) and 9-102(B) (4) of the Code of Professional Responsibility and article XI, Rules 11.02(3) (a), 11.02(4), 11.02(4) (b) and 11.02(4) (c) of the Integration Rule of The Florida Bar.

IV. STATEMENT AS TO PAST DISCIPLINE:

Respondent has not been the subject of disciplinary sanctions except for the instant matter.

V. STATEMENT OF COSTS AND RECOMMENDATIONS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

The undersigned finds the following costs were reasonably incurred by The Florida Bar:

|  |          |
|--|----------|
| Court Reporter Attendance and Transcript,<br>Grievance Committee hearings..... | \$549.15 |
| Administrative Costs at Grievance Committee<br>Level .....                     | \$150.00 |
| Investigative Costs .....  | \$230.61 |
| Notice in Broward Review .....   | \$ 71.75 |
| Court Reporter Attendance and Transcript,<br>Referee level proceedings .....   | \$114.10 |
| Administrative Costs at Referee Level .....                                    | \$150.00 |

Bar Counsel Travel Expense ..... \$ 27.63

TOTAL COSTS ..... \$1,293.24

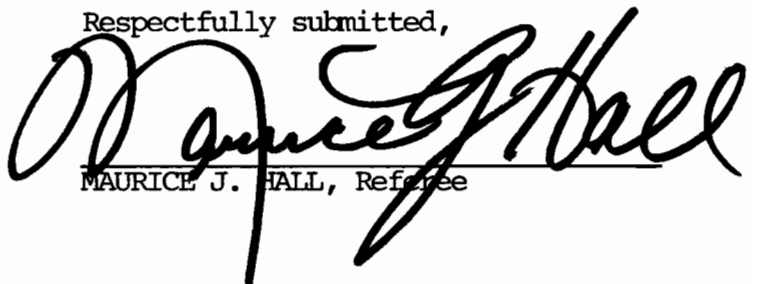
It is recommended that Respondent be taxed the aforesaid costs pursuant to article XI, Rule 11.06(9) (a) of the Integration Rule of The Florida Bar.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The undersigned recommends that Respondent be disbarred from the practice of law in this jurisdiction for a period of ten (10) years. Respondent's abandonment of his law practice evidences a total disregard for the fundamental ethical obligations owed to clients. That act in conjunction with the other specific acts of neglect, fraud, misrepresentation, breach of fiduciary obligations and trust account violations set forth in The Florida Bar's complaint amply supports this disciplinary recommendation. Costs of these proceedings should be taxed against Respondent in the amount of One Thousand Two Hundred Ninety Three Dollars and Twenty Four Cents (\$1,293.24) , with execution to issue and with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's Final Order in this cause, unless time for payment is extended by the Board of Governors of The Florida Bar.

DATED this 12<sup>th</sup> day of December, 1985, at West Palm Beach, Palm Beach County, Florida.

Respectfully submitted,

  
MAURICE J. HALL, Referee

Copies furnished :

David R. Mackenzie, Respondent  
5950 West Oakland Park Blvd., Suite 209  
Lauderhill, Florida 33313

Richard B. Liss, Attorney for Complainant