

IN THE SUPREME COURT OF FLORIDA

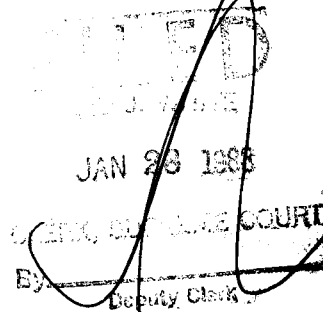
THE FLORIDA BAR,  
Complainant,

vs.

DAVID A. PASCOE,  
Respondent.

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Case No. 70,336



COMPLAINANT'S  
REPLY BRIEF ON CROSS-PETITION

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TABLE OF CONTENTS

	<u>PAGE</u>
ARGUMENT	1
CONCLUSION	3
CERTIFICATE OF SERVICE	3

## ARGUMENT

This Cross Reply Brief is submitted for the purposes of rebuttal to those arguments made by Respondent in his Reply to The Florida Bar's Brief on Cross-Petition.

Respondent, in his Reply Brief, argues that his late filing of a brief in the criminal appeal, as charged in Count IV of the Bar's Complaint, was due to deliberate attempts on the part of the assistant state attorney to "nail" him. Respondent provides no explanation for the fact that he filed the initial brief more than ten (10) days after the date he had requested in his motion for extension of time. Respondent reiterates explanations previously made to the Referee for his errors and omissions in handling the aforementioned criminal appeal. Good faith errors made by attorneys are not ordinarily the subject of disciplinary proceedings. The Referee's Findings of Fact as to Count IV sets forth a factual pattern which demonstrates a pattern of errors and omissions in Respondent's handling of the criminal appeal. This pattern caused the First District Court of Appeal such concern that it relinquished jurisdiction to a trial court for a determination as to Respondent's competence to continue handling the appeal. The trial court found Respondent not to be competent and the District Court of Appeal subsequently referred the matter to The Florida Bar for appropriate action. A grievance committee for The Florida Bar found probable cause and the Bar's formal complaint was filed. An

evidentiary hearing was held before the Referee, who found that, by clear and convincing evidence, Respondent's conduct was violative of the Code of Professional Responsibility.

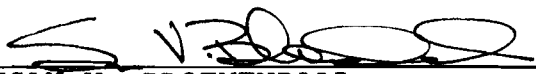
One of the primary purposes behind disciplinary proceedings is the protection of the public. At the very minimum the public is entitled to representation by an attorney who takes seriously the rules of procedure. An attorney has a duty to his client as well as the courts to make diligent effort to follow the rules of procedure and, in the event a good faith error is made, to take whatever steps necessary to correct the error.

The Florida Bar stands by its position that Respondent's conduct leading to his arrest for smoking marijuana in an outside area of a public establishment, while in the presence of other individuals, adversely reflects on his fitness to practice law. In his Reply Brief, Respondent poses rhetorical questions which appear to imply that penalizing such behavior would inhibit the ability of attorneys to "socialize freely." That is simply not a logical conclusion. Attorneys are free to socialize as long as the socialization does not include the illegal use of drugs or any conduct in violation of criminal statutes. Surely, free association can take place without the smoking of marijuana.

CONCLUSION


In conclusion, Respondent should be appropriately disciplined based upon the totality of his misconduct as recited in the Report of the Referee. Previously decided cases and the Florida Standards for Imposing Lawyer Sanctions support the imposition of a suspension of ninety-one (91) days and, upon reinstatement, a period of probation eighteen (18) months in length, during which Respondent would be required to attain a passing score on the Multistate Professional Responsibility Examination.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Cross Reply Brief has been forwarded by certified mail # P675195 272, return receipt requested, to Respondent, DAVID A. PASCOE, ESQUIRE, at his record Bar address of 120 Wellington Road, Fort Walton Beach, Florida 32548, this 28th day of January 1988.

  
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SUSAN V. BLOEMENDAAL  
Bar Counsel