IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

DAVID PASCOE,

Respondent.

CASE NO. ~~70,336~~
(TFB Nos. 01-85N61 & 01-86N96)

Report Amended

AMENDMENT TO REPORT OF REFEREE

It having come to my attention that a typographical error was made in the Report of Referee filed in this cause on September 24, 1987, said report is hereby amended as follows:

PAGE 5 - As to Count I - Paragraphs 2 and 3:

Disciplinary Rule 2-101(e)(5) and 2-101(e)(6) should be corrected to read 2-101(C)(5) and 2-101(C)(6).

PAGE 6 - As to Count III - Paragraphs 1 and 2:

Disciplinary Rule 7-106(e)(1) and 7-106(e)(6) should be corrected to read 7-106(C)(1) and 7-106(C)(6).

PAGE 6 - As to Count IV - Paragraphs 2 and 3:

Disciplinary Rule 7-106(e)(6) and 7-106(e)(7) should be corrected to read 7-106(C)(6) and 7-106(C)(7).

DATED this 12th day of October, 1987.

William H. Anderson
WILLIAM H. ANDERSON, Referee

Copies to:

Susan V. Bloemendaal
Bar Counsel, The Florida Bar
600 Apalachee Parkway
Tallahassee, Florida 32301

David Pascoe, Respondent
120 Wellington Road
Fort Walton Beach, Florida 32548

John T. Berry, Esquire
Staff Counsel, The Florida Bar
600 Apalachee Parkway
Tallahassee, Florida 32301

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs. CASE NO. 70,336
(TFB Nos. 01-85N61 & 01-86N96)

DAVID PASCOE,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on September 4, 1987. 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: Susan V. Bloemendaal

For the Respondent: David Pascoe (self)

II. 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 upon below, I find:

As to Count I

1. In December, 1984, the Respondent placed an advertisement in The Playground Daily News, a Fort Walton Beach, Florida, newspaper (TR-11). The advertisement suggested that one should buy a divorce for one's spouse as a Christmas gift (Bar Exhibit 2).

2. Respondent received a cease and desist letter concerning the advertisement from the Ethics Counsel of The Florida Bar (Bar Exhibit 3, TR-14), but rejected The Florida Bar's opinion that the advertisement was ethically improper (Bar Exhibit 4, TR-15). Respondent did not cause the advertisement to be published further after receiving the Bar's letter (TR-14).

As to Count II

1. On July 27, 1984, Respondent was observed smoking marijuana with several other people, using a beer can pipe outside the Back Side Beer Saloon in Fort Walton Beach, Florida (Answer to Request for Admissions, Para. E; Bar Exhibit 5; TR-23-26, 28-30).

2. Respondent passed the beer can pipe to a Fort Walton Beach policeman, and was promptly arrested and charged with possession of less than 20 grams of marijuana and possession of drug paraphernalia (Answer to Request for Admissions, Para. F; Bar Exhibit 5; TR-23-26, 28-30).

3. The drug paraphernalia charge was dropped and Respondent entered a plea of nolo contendere to the charge of possession of less than 20 grams of marijuana (Bar Exhibits 6 & 7; TR-30).

4. Respondent did state to the Grievance Committee that he was aware of the illegality of marijuana, but would continue to use it in the future (Bar Exhibit 7).

As to Count III

1. Respondent filed a civil suit for a client in Federal Court. The suit alleged that Respondent's client's civil rights had been violated by the activities of the Escambia County Sheriff. The matter was heard by the Honorable Winston Arnow of the United States District Court for the Northern District of Florida, Pensacola Division (Answer to Request for Admissions, Para. I).

2. Respondent filed suit against the wrong parties in the action and as a result, the case was dismissed and the defendants' legal fees were assessed against Respondent (Answer to Request for Admissions, Para. J; TR-36-40).

3. Respondent testified before the Grievance Committee that it was his belief that earlier dealings he had with Judge Arnow might have been a factor in the judge's decision to dismiss the suit (Answer to Request for Admissions, Para. K; TR-10).

4. Respondent testified before the Grievance Committee that in 1982 he had filed a motion for reduction of sentence in which he attacked the sentence given by Judge Arnow, and made statements therein implying that justice was for sale (Answer to Request for Admissions, Para. L; Bar Exhibit 8; TR-41-42).

5. As a result of these allegations, Respondent received a letter from the Honorable William Stafford, Chief Judge for the United States District Court for the Northern District of Florida, suggesting that Respondent apologize to Judge Arnow (TR-45; Bar Exhibit 9).

6. Respondent replied to Judge Stafford's letter with a handwritten reply which stated that he had no evidence to support the allegations against Judge Arnow (TR-46-47; Bar Exhibit 10).

As to Count IV

1. Respondent was appointed to handle the appeal of a criminal matter (Answer to Request for Admissions, Para. O; TR-59-60).

2. On August 8, 1985, eight days after the initial brief was due and seventeen days after his appointment, Respondent sent two original motions to the Office of the State Attorney. The motions should have been filed with the Clerk of the Court (Answer to Request for Admissions, Para. P; TR-63-67; Bar Exhibit 12).

3. One of the motions sent to the State Attorney's Office by Respondent requested that the court order the transcription of the plea proceeding, although the transcript had previously been filed with the clerk on May 31, 1985 (Answer to Request for Admissions, Para. Q; Bar Exhibit 12).

4. The second motion requested a continuance to file the "designation" and brief, alleging that neither had been done. The designation had previously been filed with the clerk on May 28, 1985 (Answer to Request for Admissions, Para. R; Bar Exhibit 12). Because Respondent's motions were not filed with the First District Court of Appeal, no extension of time was granted (Bar Exhibit 12). On October 31, 1985, Respondent was ordered by the First District Court of Appeal to show cause why the appeal should not be dismissed (Answer to Request for Admissions, Para. T; TR-69). Even though Respondent's motion requested an extension of time for the filing of the brief until October 28, 1985, he did not file the initial brief until after November 8, 1985 (Bar Exhibit 12; TR-69-70, 73).

5. Respondent's response to the First District Court of Appeal order to show cause was filed late, and was handwritten on a 5"x8½" interoffice memo form (Bar Exhibit 11; Answer to Request for Admissions, Para. V; TR-71).

6. In an order dated December 4, 1985, the First District Court of Appeal relinquished jurisdiction to the trial court for a period of 30 days, in order to direct an inquiry to Respondent and submit finding to the court. The trial court was directed to inquire specifically about the following:

1. Whether counsel had discharged the duties assigned to him under the court's order;

2. Whether counsel should be discharged, and new counsel appointed to represent appellant; and

3. Whether the conduct of David Pascoe warranted the imposition of sanctions.

The trial court was further directed to report its findings to the First District Court of Appeal (Bar Exhibit 11).

7. Upon receipt of the First District Court of Appeal's order, the trial judge, the Honorable Erwin Fleet, ordered Respondent to file a memorandum in answer to the three questions propounded by the District Court of Appeal (Answer to Request for Admissions, Para. BB). In response to this order, Respondent filed a one-page response (TR-76-77; Bar Exhibit 12). Respondent was ordered to appear, and did appear, before Judge Fleet for a hearing in this matter (Bar Exhibit 12).

8. In answer to Judge Fleet's inquiry regarding his competency to handle criminal appeals, Respondent first replied that he was not competent to handle appeals, then withdrew his comment (Bar Exhibit 12). Respondent advised Judge Fleet that in his opinion, the First District Court of Appeal was "thin-skinned" because they had objected to his handwritten pleadings (Bar Exhibit 12).

9. I cannot determine whether or not Respondent testified before the Grievance Committee that, although he would not characterize his handwritten response as a "pleading", he believed that handwritten pleadings were acceptable regardless of rules of procedure to the contrary. However, he did testify to essentially that effect before Judge Fleet at the hearing (Bar Exhibit 12).

10. As a result of the hearing before Judge Fleet, the court found: (1) that Respondent had not discharged his duties as appellant counsel with the competency normally expected of an attorney; (2) that Respondent was not competent to handle criminal appeals and

his name should be removed from the list of attorneys eligible for such appointments; (3) that Respondent was not sufficiently familiar with the Florida Rules of Appellate Procedure so that he could competently represent his client; and (4) that there was a serious question as to Respondent's attitude toward respect for his profession and the judicial system in general. The trial court found that as a result of his conduct, Respondent had violated Disciplinary Rule 6-101 and ethical considerations of Canon 6 of the Code of Professional Responsibility of The Florida Bar (Bar Exhibit 12; Answer to Request for Admissions, Para. HH; TR-80-82).

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint, I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the Respondent be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to-wit:

Disciplinary Rule 2-101(e))5), in that he, on behalf of himself, did use a form of public communication which appeals primarily to a layperson's desire for revenge, or spite.

Disciplinary Rule 2-101(e)(6), in that he, on behalf of himself, did use a form of public communication which is intended or is likely to attract clients by use of showmanship and hucksterism, including the use of garish and sensational language.

As to Count II

I recommend that the Respondent be found guilty, to-wit:

Article XI, Rule 11.02(3)(a) of the Integration Rules of The Florida Bar, in that he did publicly commit acts contrary to good morals, the misdemeanors of possession of marijuana and possession of drug paraphernalia.

Article XI, Rule 11.02(3)(b) of the Integration Rules of The Florida Bar, in that he did publicly commit the misdemeanors of possession of marijuana and possession of drug paraphernalia.

Disciplinary Rule 1-102(A)(3), in that he did engage in illegal conduct involving moral turpitude by publicly committing the misde-

meanors of possession of marijuana and possession of drug paraphernalia.

As to Count III

I recommend that the Respondent be found guilty, to-wit:

Disciplinary Rule 7-106(e)(1), in that he did, while appearing in his professional capacity before a tribunal, allude to other matters that he had no reasonable basis to believe was relevant to the case, and would not be supported by admissible evidence, by his reference to a sentence imposed in another case which was clearly not similar to the case in question.

Disciplinary Rule 7-106(e)(6), in that he did, while appearing in his professional capacity before a tribunal, engage in undignified or discourteous conduct which is degrading to the tribunal, by implying that justice is for sale in the tribunal.

Disciplinary Rule 6-101(A)(2), in that he did handle a legal matter without preparation adequate in the circumstances, by failing to determine the proper legal entities to be made parties defendant in a suit instituted by him.

As to Count IV

I recommend that the Respondent be found guilty, to-wit:

Disciplinary Rule 6-101(A)(3), in that he did neglect a legal matter entrusted to him, by failing to file required pleadings and brief at the time required by rules of procedure, and by failure to acquaint himself with the rules of appellate procedure, after undertaking to handle a criminal appeal.

Disciplinary Rule 7-106(e)(6), in that he did engage in undignified and discourteous conduct which is degrading to a tribunal, by referring to Court of Appeal judges as being "thin-skinned", by disregarding appellate rules and filing undignified pleadings in improper form, and showing a general disregard for the rules of appellate procedure.

Disciplinary Rule 7-106(e)(7), in that he did intentionally and habitually disregard the rules of appellate procedure, by not filing pleadings properly, failing to meet deadlines set by the rules, filing pleadings not in the form prescribed by the rules, and failing to acquaint himself with the rules of appellate procedure.

Disciplinary Rule 1-102(A)(1) and Disciplinary Rule 1-102(A)(6), in that he did violate a disciplinary rule and engaged in other conduct which adversely reflects on his fitness to practice law, as set forth above.

IV. Recommendation as to Disciplinary Measures to be applied:

I recommend that the Respondent receive a public reprimand and be placed on probation for a period of 18 months. The terms of probation recommended are as follows:

1. The Respondent shall take and pass the ethics portion of the Florida Bar examination.

2. The Respondent shall pay all costs of these grievance proceedings.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the Respondent:

Age: 57

Dated admitted to Bar: January 2, 1975

Prior disciplinary convictions and disciplinary measures imposed therein: None known

VI. Statement of costs and manner in which cost should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Administrative Costs (2 cases)	$ 300.00
	2. Transcript Costs	260.95
	3. Bar Counsel/Branch Staff Counsel Travel Costs	183.75
B.	Referee Level Costs	
	1. Administrative Costs (2 cases)	300.00
	2. Transcript Costs	428.82
	3. Bar Counsel/Branch Staff Counsel Travel Costs	116.63
	4. Audit costs pursuant to Rule 11.02(4)(c)	-0-
C.	Miscellaneous Costs	
	1. Telephone charges	None known
	2. Staff Investigator expenses	None known
	TOTAL ITEMIZED COSTS:	$ 1,590.15

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, 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 September, 1987.

WILLIAM H. ANDERSON, Referee

Copies to:

Susan V. Bloemendaal
Bar Counsel, The Florida Bar
600 Apalachee Parkway
Tallahassee, Florida 32301

David Pascoe, Respondent
120 Wellington Road
Fort Walton Beach, Florida 32548

John T. Berry, Esquire
Staff Counsel, The Florida Bar
600 Apalachee Parkway
Tallahassee, Florida 32301