

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
JAMES C. MCKENZIE,
Respondent.

Case No. 72,575
TFB Nos. 87-23,020(06E)
87-23,023(06E)

FILED
SID J. WALTER
JUL 28 1989
CLERK SUPREME COURT
BY _____
Deputy Clerk

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.5, Rules of Discipline, a final hearing was held on April 6, 1989 and a disciplinary hearing was held on May 1, 1989. The enclosed pleadings, orders, transcripts and exhibits are forwarded to The Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: BONNIE L. MAHON

For The Respondent: PRO SE

11. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings and evidence before me, I find the following:

As to Count 1 of the Bar's Complaint (TFB No. 87-23,020(06E)), I find that the Bar's Exhibits No. 19, 21, 22, and 25, which were letters directed to the trial judge from the respondent, constitute evidence that the respondent violated Disciplinary Rules 1-102(A)(5), DR 1-102(A)(6) and DR 7-106(C)(1). In addition, the Court finds that the respondent's correspondence to the trial judge was extremely unprofessional. Further, I find that the judicial system and the legal profession cannot tolerate the type of conduct engaged in by the respondent.

The Bar's evidence was insufficient to establish a violation of DR 7-106(C)(5).

As to Count 2 of The Bar's Complaint (TFB No. 87-23,023(06E)), I

find that the lawsuit filed by the respondent on behalf of Mrs. Shrock and against Judge David Seth Walker, opposing counsel, and others, was entirely without merit. It was filed merely to harass opposing counsel and Judge Walker in an attempt to force them to take some action that would be to the benefit of respondent's client. The respondent testified at the final hearing that he filed the lawsuit against Judge Walker, Mr. Colclough, Mr. Boake and others to intimidate Mr. Colclough into not moving forward with the partition action, and in addition, to cause Judge David Seth Walker to have to recuse himself from the partition action. In addition, the respondent admitted during his testimony at the final hearing in this cause, that he counseled his client, Mrs. Shrock, that she should refuse to comply with the Judge's Order directing her to sign a listing contract; however, he took no steps whatsoever to appeal that Order. Further, it appears to the referee that the lawsuit filed by the respondent against Judge Walker and the other parties was done as a vendetta, out of spite.

At the final hearing, and in addition, in a memorandum sent to the referee subsequent to the final hearing, the respondent argued that Judge Walker lacked jurisdiction to enter the Order which required respondent's client to sign a listing contract for the sale of her home. However, the respondent admitted while testifying that Judge Walker had personal jurisdiction of the parties and subject matter jurisdiction over partition actions. The respondent and his client stipulated with opposing counsel that the marital home of the Bishop's would be placed for sale with a realtor, as is indicated in the Final Judgment of Partition, yet the respondent sought to sue Judge Walker for entering an Order requiring the respondent's client to do that which was stipulated to by all parties.

I find that the respondent's conduct constitutes a violation of DR 1-102(A)(1), DR 1-102(A)(5), DR 1-102(A)(5), DR 1-102(A)(6), DR 7-102(A)(1), DR 7-102(A)(2), and DR 7-102(A)(7). I find that the evidence was insufficient to establish a violation of DR 1-102(A)(4).

111. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I recommend that the respondent be found guilty of violating the following Disciplinary Rules:

As to Count 1, I recommend that the respondent be found guilty of violating DR 1-102(A)(5) (engage in conduct that is prejudicial to the administration of justice); DR 1-102(A)(6) (engage in any other conduct that adversely reflects on his fitness to practice law); and DR 7-106(C)(1) (in appearing in his professional capacity before a tribunal, a lawyer shall not state or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence). I recommend that the respondent be found not guilty

of violating DR 7-106(C) (5) (a lawyer shall not fail to comply with known local customs of courtesy or practice of the Bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply).

As to Count 2, I recommend that the respondent be found guilty of violating DR 1-102(A) (1) (a lawyer shall not violate a Disciplinary Rule); DR 1-102(A) (5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice); DR 1-102(A) (6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law); DR 7-102(A) (1) (in his representation of a client, a lawyer shall not file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another); DR 7-102(A) (2) (in his representation of a client, a lawyer shall not knowingly advance a claim or defense that is unwarranted under existing law); and DR 7-102(A) (7) (in his representation of a client, a lawyer shall not knowingly counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent). I recommend that the respondent be found not guilty of violating DR 1-102(A) (4).

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent be suspended from the practice of law for a period of ninety-one (91) days. In addition, I recommend that the respondent should be required to take and pass the ethics portion of The Florida Bar exam prior to reinstatement to The Florida Bar. Further, I recommend that the respondent be required to pay the reasonable costs incurred by The Florida Bar in this proceeding.

V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline pursuant to Rule 3-7.5(K) (4), Rules of Discipline, I considered the following personal history and prior disciplinary record of the respondent, to wit:

~~_____~~ JCC

(2) Date Admitted to Bar: June 1, 1976

(3) Prior Disciplinary Record: In 1983, the respondent received a Public Reprimand for neglecting a legal matter, failing to deliver to a client all funds to which the client was entitled, engaging in conduct prejudicial to the administration of justice and engaging in conduct reflecting on his fitness to practice law. In addition, the respondent received a Public Reprimand in 1984 for engaging in conduct which constituted a conflict of interest.

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CONFIDENTIAL
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TFB Nos. 87-23,020(06E)
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vs.

JAMES C. MCKENZIE,
Respondent.

SECOND AMENDED
STATEMENT OF COST

The following costs listed below have been incurred by
The Florida Bar in the above-referenced case:

Grievance Committee Level
Administrative Costs..... 150.00

Court Reporter Expenses
Kanabay & Kanabay
(3/24/88)
Attendance..... 43.50
Transcript..... 299.00

Court Reporter Expenses
Kanabay & Kanabay
(3/24/88)
Attendance..... 99.00
Transcript..... 269.75

Staff Counsel Expenses
Richard A. Greenberg
(9/8/88)
Mileage (15 miles @ \$0.30) 4.50
Parking..... .50

Referee Level
Administrative Costs..... 150.00

Staff Counsel Expenses
Richard A. Greenberg
(11/3/88)
Mileage (15 miles @ \$0.30) 4.50
Parking 1.80

Court Reporter Expenses
Betty M. Lauria
(11/3/88)
Appearance 35.00

Court Reporter Expenses
Betty M. Lauria
(11/8/88)
Transcript 67.50
Postage 2.00

~~Staff Counsel Expenses
Richard A. Greenberg
(2/22/89)
Mileage (35 miles @ \$0.30) 10.5
Parking20
Meals 6.00~~

*Denied
JC Cheatewood*

Staff Counsel Expenses
Bonnie L. Mahon
(2/23/89)
Mileage (40 miles @ \$0.30) 12.00

Staff Counsel Expenses
Bonnie L. Mahon
(3/8/89)
Mileage (20 miles @ \$0.30) 6.00
Parking 1.50

Staff Counsel Expenses
Richard A. Greenberg
(3/8/89)
Mileage (15 miles @ \$0.30). 4.50
Parking 1.80

Court Reporter Expenses
Betty M. Lauria
(3/13/89)
Appearance 35.00
Transcript 56.25
Postage... 1.00

Court Reporter Expenses
Betty M. Lauria
(3/17/89)
Conference Call..... 35.00

Staff Counsel Expenses
Bonnie L. Mahon
(3/24/89)
Mileage (40 miles @ \$0.30). 12.00

Court Reporter Expenses
Deborah Kurtz & Associates
(3/24/89)
Transcript 28.00

Staff Counsel Expenses
Bonnie L. Mahon
(3/27/89)
Mileage (34 miles @ \$0.30) 10.20

Staff Counsel Expenses
Bonnie L. Mahon
(4/5/89)
Mileage (20 miles @ \$0.30). 6.00
Parking 2.50

Staff Counsel Expenses

Bonnie L. Mahon

(4/6/89)

Mileage (20 miles @ \$0.30) 6.00
Parking..... 3.60

Court Reporter Expenses

Betty M. Lauria

(4/6/89)

Transcript..... 175.00
Postage..... 2.40

Staff Investigator Expenses of Ernest J. Kirstein, Jr.
for Processing and Service of Subpoenas

Hours (6.8 hrs. @ \$16.00) 108.80
Mileage (80 miles @ \$0.30) 24.00

Staff Investigator Expenses of Joseph McFadden
for Processing and Service of Subpoenas

Hours (3.8 hrs. @ \$16.00)..... 60.80
Mileage (74 miles @ \$0.30) 22.20

Staff Counsel Expenses

Bonnie L. Mahon

(5/1/89)

Mileage (20 miles @ \$0.30)..... 6.00
Parking..... 1.50

Court Reporter Expenses

Betty M. Lauria

(5/1/89)

Appearance 35.00
Transcript..... 262.70
Pace Delivery..... 6.00

TOTAL AMOUNT DUE \$2,069.50

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SECOND AMENDED STATEMENT OF COSTS has been hand delivered to James C. McKenzie, respondent; and a copy sent by U. S. Regular Mail to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; this 2nd day of June, 1989.


BONNIE L. MAHON