

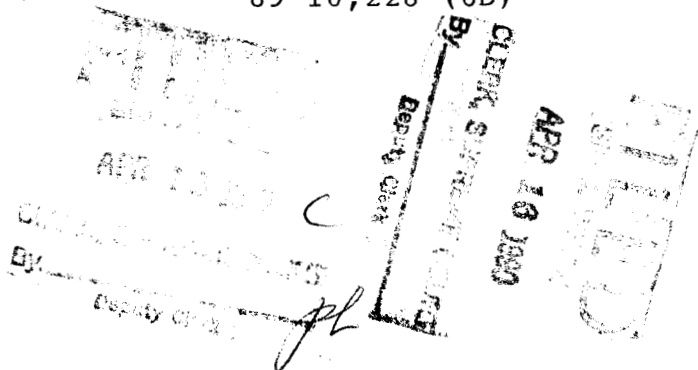
IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

CASE No. 74,292  
TFB Nos. 88-11,260 (6D)  
89-10,228 (6D)

v.

JAMES C. MCKENZIE,  
Respondent.



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 February 28, 1990, and March 2, 1990. 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: David R. Ristoff

For The Respondent: James C. McKenzie, pro se

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

COUNT I  
(TFB No. 88-11,260 (6D))

In 1979, Respondent was retained to represent the Estate of Jack Fisher. Respondent's legal fee for representation of the Fisher Estate was based upon the "Minimum Fee Schedule" of the Clearwater Bar Association. Said Fee Schedule was no longer in existence at the time Respondent was retained. On or about February 5, 1980, Respondent filed an Inventory of

Estate Assets. The Inventory of Estate Assets included a large quantity of assets which were owned as tenants by the entirety by Jack Fisher and his wife. According to the inventory prepared by Respondent, the Fisher Estate listed assets of \$458,314.50. Respondent charged a legal fee of \$13,975.86 based upon the "Minimum Fee Schedule". Subsequent to Respondent's discharge from the case, in July 1981, a Final Accounting of Personal Representative was filed which included only \$853.75 as the total assets in probate. The Final Accounting established total assets at \$853.75, because the great majority of the assets placed on the inventory prepared by Respondent were in fact owned as tenants by the entireties and did not pass through probate. As of July 1981, Respondent had been paid \$4,000.00 in legal fees for his representation of the Fisher Estate. However, Respondent continued to claim his fees were \$13,975.86.

I find that Respondent charged a clearly excessive fee. I further find that Respondent did not competently investigate and review the probate case. Specifically, Respondent should have ascertained that the jointly held stock with the right of survivorship (almost the entire estate) was not a probate asset. Accordingly, Respondent should not have charged a percentage of those jointly held assets.

Also of great importance, I find that the Respondent's testimony at the Final Hearing was less than truthful. Respondent's testimony was shocking and incredible.

COUNT II  
(TFB No. 89-10,228 (6D))

I find the Respondent not guilty.

III. Recommendation as to Whether or Not the Respondent  
Should Be Found Guilty:

COUNT I  
(TFB No. 88-11,260 (6D))

I find Respondent guilty as to the following rules of the Code of Professional Responsibility: (Conduct prior to January 1, 1987), DR 2-106(A) (a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee); DR 6-101(A)(2) (a lawyer shall not handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer

who is competent to handle it); and DR 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation adequate in the circumstances).

COUNT II  
(TFB No. 89-10,228 (6D))

I find the Respondent not guilty.

IV. Recommendation as to Disciplinary Measure to be Applied: I recommend that the Respondent be disciplined by a three (3) year suspension from the practice of law. Further, I recommend that the Respondent be held responsible for the Bar's costs contained in the Bar's Cost Summary.

V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline to be imposed pursuant to Rule 3-7.5(k)(1), Rules of Discipline, I considered the following personal history and prior disciplinary record of the Respondent, to wit:

(1) Age: 66 years old (DOB: 1924)

(2) Date Admitted to Bar: 6/1/76

(3) Prior Disciplinary Record: The Florida Bar v. McKenzie, 432 So.2d 566 (1983), Public Reprimand. The Florida Bar v. McKenzie, 442 So.2d 934 (1983, Rehearing denied 1984), Public Reprimand. The Florida Bar v. McKenzie, S.C. Case No. 72,575, February 22, 1990 - Ninety One (91) Day Suspension.

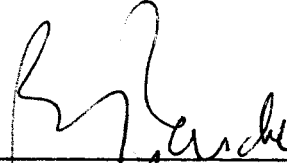
(4) Mitigating Factors: None

(5) Aggravating Factors: Prior disciplinary offenses; Dishonest or selfish motive; Submission of false testimony or evidence before the Referee during the disciplinary proceeding; Refusal to acknowledge the wrongful nature of his conduct; Substantial experience in the practice of law.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find that the costs contained in The Florida Bar's Costs Summary were reasonably incurred by The Florida Bar and that interest at the statutory rate shall

accrue and be payable beginning thirty (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 2 day of April, 1990.



THE HONORABLE BARBARA FLEISCHER  
Referee

Copies furnished to:

James C. McKenzie, Respondent  
David R. Ristoff, Branch Staff Counsel  
John T. Berry, Staff Counsel, Tallahassee