

SUPREME COURT OF FLORIDA

THE FLORIDA BAR, )  
Complaint, )  
VS. )  
DAVID PASCOE, )  
Respondent. )

Case No. 70,336 (TFB Nos. 01-86N61  
and 01-86N96)

FILED  
NOV 10 1987  
CLERK OF COURT

✓  
Apparently no lower tribunal.  
Respondent's brief. →

Brief in support of the First Amended Petition For Review

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STATEMENT OF THE CASE AND OF THE FACTS

This is an attorney disciplinary proceeding which has reached the step of Respondent's requested review of the Referee's Report. The Referee has recommended public reprimand, probation for 18 months, take and pass the ethics portion of the FL Bar exam, and pay all costs.

ARGUMENT WITH REGARD TO EACH ISSUE

III., AS TO COUNT II, ARTICLE XI, RULE 11.02(3)(A).

The act of accepting a pipe fashioned from an empty Coors beer can that contained about 1/10th of a gram of lighted marijuana from about the third person that had smoked from it, taking one puff, and passing it to the next person is not an "act contrary to good morals". If it is, about 85% of the adult population of the United States are without good morals. Consider the recent disclosure of U.S. Supreme Court nominee Douglas Ginsburg and prominent legislators (attachments #1 & #2) that have admitted prior use. The admissions are excellent evidence that taking one puff of marijuana is in the opinion of the majority of the people of the U.S. not an act of poor morals and if it is, the great majority are guilty of it, and therefore the importance of this infraction should be minimized. "A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general. Unless the offense is one which by its very commission implies a base and depraved nature, the question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances (The FL Bar V. Davis, 361 So. 2d 159, Fla. 1978, as it quotes 9 FL Jur., Criminal law Sec. 8).

Incidentally, I was the only one arrested of the

approximately 6 people, the person that made and loaded the pipe wasn't even arrested, the police officer called me by name, "ok. . . Pascoe your under arrest", the police officer was a plain clothes detective that I had accused of physically beating a confession out of my client about 6 months earlier in a very well publicised case where my client was sentenced to about 120 years of prison.

III., AS TO COUNT II, DR 1-102(A)(3).

The act has no "moral turpitude" involved (attachment #3, definition of "moral turpitude" From Black's) The conduct was done at night with a few good friends and certainly not flounced in the public's eye.

III., AS TO COUNT III, DR 7-106(C)(1).

I never "stated or alluded to any matter that I had no reasonable basis to believe is relevant to the case or that would not be supported by admissible evidence" (see attachment #4). All matters I stated were relevant to the case and were supported by admissible evidence. Both cases were similar. Both involved violations of U.S. law in the Northern District of FL. My clients maximum possible sentence was one year and the other defendant's was 25 years. My client with no prior criminal law record received the maximum of one year and the other was put on probation with no jail time after paying many thousands of dollars to the U.S..

Everything stated was relevant. A glaring example of unequal sentencing that should of been corrected and

probably would undoubtedly be disallowed under the present sentencing guidelines. All facts stated were public record and very readily admissible.

III., AS TO COUNT III, DR 7-106(C)(6).

I engaged in no "undignified or discourteous" conduct which is degrading to a tribunal. What I did was not "undignified" nor "degrading" but I stated the truth. There was no "conduct" but stated truthfull facts.

One could, in some instances, label the truth as degrading and/or undignified. A lawyer should not be punished for stating the truth in defense of his client even though it may be considered degrading and/or undignified to some. A lawyer should be complimented on having the courage to state the facts that may in some manner be "undignified" and/or "degrading" to a Court when those facts are the truth and relevant to the defense of the lawyer's client. Occasionally a Court is wrong and the wrong should be at least brought to the Court's attention and hopefully rectified.

III., AS TO COUNT III, DR 6-101(A)(2).

I handled it with preparation adequate to the circumstances. It was my first case of that variety involving the filing suit against many governmental agencies for the violation of constitutionally protected rights. I spent many hours in research (attachment # 9) but failed to note the distinction between "persons", (attachment # 5) and governmental agencies.

III., AS TO COUNT IV, DR 7-106(C)(6).

I never referred to Court of Appeal judges as being "thin-skinned". Circuit Judge Erwin Fleet asked me if I didn't think the Court of Appeal Judges may have been offended by my hand written reply to their Order To Show Cause. I told him that I didn't consider my answer as a court pleading and that if they were offended by my hand written reply that I thought that would be mighty thin-skinned of them (attachment #6). I don't know if they were offended, it was only a possibility that was mentioned by the Honorable Judge Fleet.

I intentionally did not include a table of contents because the brief was only about 5 pages thick. It was an "Anders" brief. I did not show a general disregard for the rules of appellate procedure. I did fail to again review the rules prior to the Anders brief.

III., AS TO COUNT IV, DR 7-106(C)(7).

The only rule I intentionally violated was the requirement of a table of contents. Because the brief was only a few pages thick I considered a table of contents as not needed. There was nothing in the brief "Anders" brief that required a table of contents. Nothing was "habitually". I violated three rules (size of paper, time, table of contents) in the first appeal brief I handled in many years, that's not habitual. I was acquainted with the rules of appellate procedure and even if I wasn't that was no "violation of any established rule

of procedure or of evidence".

III., AS TO COUNT IV, DR 1-102(A)(1).

I did violate DR 1-102(A)(1) in that I did "violate a DR". Apparently it is impossible to violate only one DR. If you violate one DR then you violate this DR. If this DR is proper then another DR should be passed saying it's a violation to violate 2 DRs, etc., etc. .. This is illogical and should be changed. I suppose there must be a logical reason somewhere but I can't fathom it. This DR is no credit to the Court.

III., AS TO COUNT IV, DR 1-102(A)(6).

I have not.

IV.

The penalty is too severe.

I consider my self a very ethical attorney. A person would need to look far to find a more ethical person. In the community I have previously served as scoutmaster for about 12 years, explorer advisor and organizer for about 2 years, and an X-PTA president: "Minor misconduct is the only type of misconduct for which a private reprimand is an appropriate disciplinary sanction "(Rules of Discipline, 3-5.1, (b) & 3-5.1(b)(1)). The Rules of Discipline list the circumstances when it shall not be considered minor and none of the circumstances apply.

Prior to being scheduled to go in front of the Grievance Committee, Robert Davis Bell, esquire, chairman of the Grievance Committee called me on the telephone and

said that it would not be going in front of the Grievance Committee because the complaints were not serious enough but then he got the complaint from the Honorable Judge E. Fleet that I had incompetently handled an appeal. Mr. Bell then scheduled the Grievance Committee to handle Judge Fleet's complaint plus the earlier ones that he previously had said weren't important enough. They took minor complaints and combined them to make a major complaint.

All the complaints are of activities that occurred in 1984 and 1985. In other words 3 to 4 years ago. Twice I filed Demands For Speedy Trial, Hearing, Etc. (attachment #7 and #8).

By combining them all, I was given no prior warning of their seriousness. Instead of gradually increasing punishment which is educational, I was clobbered by one big all encompassing massive many faceted multi-complaint.

#### VI., COSTS.

I request the opportunity to review all costs. I consider the costs too high. In particular, apparently the "administrative costs" are per number of cases. This has always been one case rather than two. "Transcript Costs . . . \$428.82" sounds very high. No part of the transcripts were admitted into evidence nor ever used, I readily consistently testified as to all the facts. I suspect the FL Bar tends to use "costs" as punishment.

## CONCLUSION

The FL Bar at the Referee's hearing recommended I be suspended from the practice of law and the referee recommended probation, take the ethic's portion of the bar exam, and public reprimand for:

1. An inappropriate ad ran once.
2. Taking a puff of marijuana.
3. Listing parties in a suit that unbeknown to me didn't qualify as "persons".
4. Stating the provable relevant truth indiligently defending a criminal law client.
5. In an "Anders" brief I
  - a. failed to include a table of contents.
  - b. used 8 1/2" x 14" rather than 8 1/2" x 11".
  - c. was about 20 days late.

The recommended punishment is too severe. This is the first and hopefully the last time I will be in this position. The FL Bar has bunched a bunch of minor infractions. Minor infractions that, with the exception of the Ander's brief, "are not important enough to bring in front of the Grievance Committee" per Robert Bell, esquire, Chairman of the Grievance Committee. And what about the Anders brief, no table of contents, 8 1/2" x 14" rather than 8 1/2" x 11", and about 20 days late. Are those requirements that crucial?

I have already been punished by:

1. Adverse public publicity in the local newspaper

by publication of the article that the Honorable Judge Fleet had found that I had incompetently handled an appeal (a reporter was naturally right on the spot).

2. The Honorable Judge Fleet having me removed from all appointed cases without notifying me of his action.

3. The Honorable Judge Fleet denying me any attorney's fees or costs on any case I have subsequently taken in front of him.

4. Paying about \$1000.00 in Court ordered costs to defendants that were erroneously listed as defendants.

5. Arrested and subsequent publicity on the one puff of marijuana.

6. Expending about three weeks in defending myself and a lot more grey hairs.

Respectfully request your carefull consideration and appropriate punishment.