IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	)	
Complaint,	)	
	)	
VS.	)	Case No. 70,336
	)	
DAVID PASCOE,	)	
Respondent.	)	

FILED
SID J. WHITE
JAN 4 1988
CLERK, SUPREME COURT
By Deputy Clerk

RESPONDENT'S REPLY BRIEF

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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

I will not repeat what I stated in my Brief In Support Of The First Amended Petition For Review but I will try to only comment on alleged facts pertaining to the FL Bar's Answer Brief Of Complainant and their Initial Brief Of Cross - Petition.

According to my calculations, both briefs were filed by the FL Bar one day late. Briefs that are critical of me being late in filing a brief.

I had no opportunity to complain as to costs. I received the Referee's report charging me costs on 25 September 1987 and a copy of the Complaint's letter to the Referee informing the Referee of the costs on 24 September 1987. The Certificate on the Complaint's letter stated I was mailed a copy on 23 September, the letter is dated 23 September, the Referee's report is dated 24 September and I received it on 25 September. It was included in the Referee's report after the hearing with no mention of it at the hearing. I'm aware that the Respondent should be assessed the costs but he should have the opportunity to critically examine them first. The FL Bar obviously uses costs as a punishment. The more the Respondent contests it, the higher the costs and the more time lost from his practice. The Complainant are experts in the field. The Respondent is a first time novice in disciplinary proceedings.

Public reprimand is too severe a punishment. As

stated in Rules Of Discipline, "Minor misconduct. Minor misconduct is the only type of misconduct for which a private reprimand is an appropriate disciplinary sanction.

1. Criteria. In the absence of unusual circumstances misconduct shall not be regardeed as minor if any of the following conditions exist:

a. The misconduct involves misappropriation of a client's funds or property.

b. The misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights or valuable property rights) to a client or other person.

c. The respondent has been publicly disciplined in the past three (3) years.

d. The misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past five (5) years.

e. The misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent.

f. The misconduct constitutes the commission of a felony under applicable law." (3-5.1(b), Rules of Discipline, p. 53, FL Bar Journal, 8 September 1987). None of the criteria are present. This is the first time for me. Punishment should be gradually applied. A bunch of mole hills do not make a mountain. As stated in above rule, "In the absence of unusual circumstances misconduct shall not be regarded as minor if any of the following circumstances exist". In other words, even if one or more

of the conditions are present, the misconduct could still be considered "minor" if "unusual circumstances" are present. In this case, the FL Bar wants obvious minor misconduct to be considered major. Me-thinks an over-kill. Going for way more than what the facts prescribe in anticipation of a compromise of more than what the facts prescribe.

As to the appeal that I handled in the criminal law case, as stated by the FL Bar (top of p. 7 of their Initial Brief Of Cross-Petition), when I was appointed, the brief was due 9 calendar days later. My motion for an extension went to the Assisstant State Attorney, Ace Grinstead with a request he signed the stipulation of having no objections and forward to the Court for signature. Instead, Mr. Grinstead pidgeon-holed it and said nothing to nobody. An obvious action to nail me; and he was successful. The reason why my answer to the Appeals Court's order to show cause was late was because it was at first sent to the Public Defender's Office, then to Attorney Michael Gates, and finally to me. Yes, I admit I stated I felt I was not competent to handle appeals but I also qualified that statement with "I withdraw my comment that I don't believe that I'm competent to handle appeals. I am. I think I comptently handled this one. I don't want to be appointed to any more because it just takes too much time, too much down time, lost time in researching the rules of the game -- the rules of appellate procedure." and "I've gone ahead

and requested the Clerk to withdraw my name from appeals." And mind you, this was on an Ander's brief.

FL Bar states "Respondent . . . advised . . . the First District Court of Appeals was thin-skinned because they had objected to his handwritten pleading's" (top of p. 8, Initial Brief of Cross-Petition). That's not what I said. The Appeals Court never even said it offended them. What I actually said was:

"COURT: Mr. Pascoe, now you received an Order to Show Cause from the District Court.

PASCOE: Yes, sir.

COURT: And your response to that Order was this handwritten memorandum?

PASCOE: Yes, sir.

COURT: What reason would you offer to the District Court as to why you filed it in a handwritten form rather than complying with the normal procedures for it to be in a typewritten form?

PASCOE: Well, I think handwriting as long as it's legible is just as good as typewritten. I realize that normal procedure would be to have it typewritten, but I don't really see any problem with it being handwritten. One thing about it being handwritten, it speeds it up, gets it out faster.

COURT: You don't have any problem relative to the dignity of the profession or the respect for the Court in responding in handwritten instead of a normal typewritten form? You didn't think that might offend them?

PASCOE: I thought that was a possibility that that might offend them. I didn't realize -- I didn't think of it as a very important possibility, but there is always that possibility. If that offended them, I have no apologies for it. I think they are -- if that offended whoever received it I think they're very thin-skinned." Another half truth by the FL Bar.

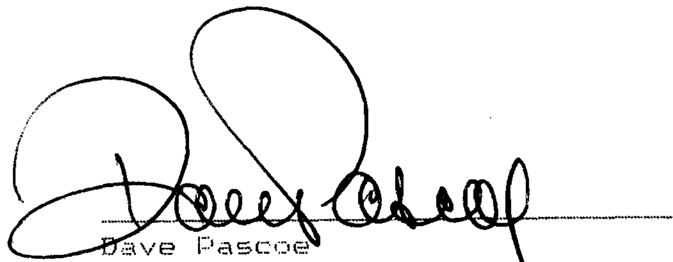
Agreed the Ander's brief had no Table Of Contents and its omission was intentional. The Ander's brief was a total of 5 pages thick.

FL Bar states that my taking of a puff from a marijuana pipe "seriously adversly reflects on the lawyer's fitness to practice law" (middle of p. 16, Initial Brief Of Cross-Petition). If that's true, who's going to practice law? Do we need to cultivate lawyers from their birth and not allow them to socialize freely?

My civil rights case was very well researched. Many hours spent before I filed against the Defendants. My first one, a very meritorious cause, but I failed to note that "person" of 42 USCS § 1983 did not include most governmental agencies. The annotations to 42 USCS 1983 are 1,621 pages thick.

CERTIFICATE

I CERTIFY I mailed a copy of this to the FL Bar this 2 day of January, 1988.



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