

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

CASE No. 70,448
CASE No. 71,504

v.

R. DOUGLAS MACPHERSON
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, and Rule 3-7.5 Rules of Discipline, a final hearing hearing was held on February 3, 1988. 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 and THOMAS E. DEBERG
For The Respondent:	<u>Pro Se</u>

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent is Charged: After considering all the pleadings and evidence before me, I find that the Complaint, Answer and Admissions contained in the file make any detailed findings of fact superfluous. I simply set forth my conclusions succinctly and with little expansion, recognizing that the cumbersome and confusing method of amending and numbering utilized by The Bar and the respondent's delay in responding to requests for admissions creates some difficulty in relating the Answers and Admissions to the charges.

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

Case No. 70,448: As to Count 1, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); and DR 6-101(A)(3) (neglect of a legal matter).

As to Count 2, I recommend that the respondent be found not guilty.

As to Count 3, I recommend that the respondent be found not guilty.

As to Count 4, I recommend that the respondent be found guilty of

violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); DR 6-101(A)(3) (neglect of a legal matter); and DR 7-101(A)(2) (a lawyer shall not intentionally fail to carry out a contract of employment entered into with a client).

As to Count 5, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law).

As to Count 6, I recommend that the respondent be found guilty of violating DR 6-101(A)(3) (neglect of a legal matter).

As to Count 7, I recommend that the respondent be found not guilty.

As to Count 8, I recommend that the respondent be found guilty of violating DR 6-101(A)(3) (neglect of a legal matter).

As to Count 9, I recommend that the respondent be found not guilty.

Case No. 71,504:

As to Count 1, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); and DR 6-101(A)(3) (neglect of a legal matter).

As to Count 2, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); DR 6-101(A)(3) (neglect of a legal matter); and DR 7-101(A)(2) (intentionally failing to carry out a contract of employment entered into with a client).

As to Count 3, I recommend that the respondent be found not guilty.

As to Count 4, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); and DR 6-101(A)(3) (neglect of a legal matter).

As to Count 5, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); and DR 6-101(A)(3) (neglect of a legal matter).

As to Count 6, I recommend that the respondent be found not guilty.

As to Count 7, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); and DR 6-101(A)(3) (neglect of a legal matter).

As to Count 8, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); and DR 6-101(A)(3) (neglect of a legal matter).

As to Count 9, I recommend that the respondent be found guilty of violating DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law); and DR 6-101(A)(3) (neglect of a legal matter).

IV. Recommendation as to Disciplinary Measures to be Applied:
The referee's recommendation of discipline is as follows:

1. Respondent be publicly reprimanded;

2. Respondent be suspended from the practice of law for a period of six (6) months and until reimbursement is made to those clients entitled thereto and all costs are paid. Further, since the respondent is presently suspended for non-payment of Bar dues, that this disciplinary suspension not take effect until the present suspension for non-payment of dues is lifted. Further, that should this total suspension be for more than three (3) years, that the respondent be required to take and successfully pass The Florida Bar Examination; and

3. Thereafter, respondent be placed on probation for one (1) year under the supervision of a member of the grievance committee of the circuit in which respondent practices, with quarterly reports of caseload status made to that supervisor.

V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline, pursuant to Integration Rule 11.06(9)(a)(4), and Rule 3-7.5(K)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

1. Age: 33 years old

2. Date admitted to The Bar: 12/16/80

3. Past Disciplinary Record: The respondent does not have a prior disciplinary record.

4. Mitigating Factors: Absence of a prior disciplinary record, alleged absence of a dishonest or selfish motive, alleged personal and emotional problems, and alleged remorse as to most of the offenses. The referee finds much of the respondent's conduct traceable to his discharge from a salaried position (for reasons unrelated to these charges, immaterial and irrelevant thereto) at a time when he was stretched to the limit financially and entered into the private practice of law without adequate capitalization. If there is anything worthy of faint praise in his conduct, it is that he did not invade trust money and that the number of clients to whom he was derelict in his duties was relatively few compared with his overall caseload.

5. Aggravating Factors: The Bar argued the multiplicity of offenses, some bad faith and alleged obstruction of the disciplinary proceedings by the respondent absenting himself from receipt of notices and alleged indifference to making restitution.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar:


A. Grievance Committee Level	
1. Administrative Costs	\$150.00
2. Court Reporter	557.25
3. Investigation Costs	4,992.20
4. Bar Counsel Expense	63.33
5. Witness Fees	54.96
B. Referee Level	
1. Administrative Costs	\$150.00
2. Court Reporter	1,396.25
3. Investigation Costs	183.86
4. Bar Counsel Expense	52.96
5. Referee's Expenses	23.60

TOTAL \$7,624.41

VI. It is apparent that other costs might be incurred in the future if further proceedings are necessary in this matter. It is recommended that such future costs, together with the foregoing costs be charged to the respondent 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 14 day of march, 1988.

, IN FINSHAW'S COURT, FLORIDA



THE HONORABLE HARRY W. FOGLE
Referee

Copies furnished to:

R. Douglas MacPherson, Respondent
Bonnie L. Mahon, Assistant Staff Counsel
John T. Berry, Staff Counsel