

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

CASE NO. 76,563

vs.

HUGH MACMILLAN, JR.
Respondent.

_____ /

REPLY BRIEF OF RESPONDENT

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I.

THE OVERALL CIRCUMSTANCES OF THIS CASE DO NOT SUPPORT THE SEVERE SANCTION SOUGHT BY THE BAR, BUT STRONGLY SUGGEST THAT A 91-DAY SUSPENSION WOULD BE MORE A APPROPRIATE PENALTY.

The Bar expends much effort in stretching the very thin record in this case in a vain attempt to support its hyperbole and mischaracterization of Mr. MacMillan's admitted mistakes. For example, the Bar attempts to create the false impression that Mr. MacMillan resisted and refused to pay for the three missing pieces of jewelry. What the Bar fails to make clear, however, is that Scott Ellison's guardianship was completely closed in April, 1989, and the issue of the missing pieces of jewelry was not even mentioned. (TR 140-43). The first time that Mrs. Ellison, Scott's mother, brought up the issue of payment for the jewelry was in her letter to Mr. MacMillan of January 10, 1990, which included an appraisal of the missing items. Concurrently, Mrs. Ellison sent a copy of this original request to the Bar. See Resp. Exhibit 1.¹ (TR 42-44). After receiving Mrs. Ellison's letter, Mr. MacMillan promptly resolved the issue.

The Bar also speculates that knowledge of the omission of the two week, in-out transfer from the guardianship report might have moved the probate judge to revoke the letters of guardianship and impose forfeiture of the attorney's fees. Bar's Answer Brief at 20. But the Bar has no basis for such speculation, and indeed had

¹ The Bar utterly mischaracterizes this letter conveying the appraisal and requesting payment as being a "grievance."

the opportunity to examine the very probate judge who handled the Ellison guardianship and who actually approved the guardianship report, Judge Edward Rodgers, when he testified on Mr. MacMillan's behalf. (TR 89-97; 117; Resp. Exhibit 2). Having failed to ask the very probate judge who approved the report what he would have done had he known of the two-week transfer, the Bar is certainly not now entitled to conjecture.

The Bar spends much time discussing charges it could not even prove. The Bar's claim at the hearing that Mr. MacMillan improperly obtained fees was flatly rejected by the Referee, and the Bar's attempt to resurrect this unfounded charge should be discounted. Likewise, its claim at the hearing that Mr. MacMillan intentionally misrepresented a piece of the missing jewelry to Mrs. Ellison was also rejected by the Referee for lack of proof.

In an effort to cultivate a motive for stealing from Scott's guardianship account, the Bar repeatedly asserts, without record support, that Mr. MacMillan was suffering financial stress and strain. The Bar, however, offered no evidence as to Mr. MacMillan's financial condition. The only mention of this issue is Mr. MacMillan's acknowledgement that he "needed the funds" when he made the two-week transfer. But the Bar omits the very next portion of the record on the issue of finances, which flatly refutes the Bar's inference and speculation:

Q What is the basis for your making installment payments to Mrs. Ellison in payment to Scott for the items of jewelry that were missing? Was the basis of the

