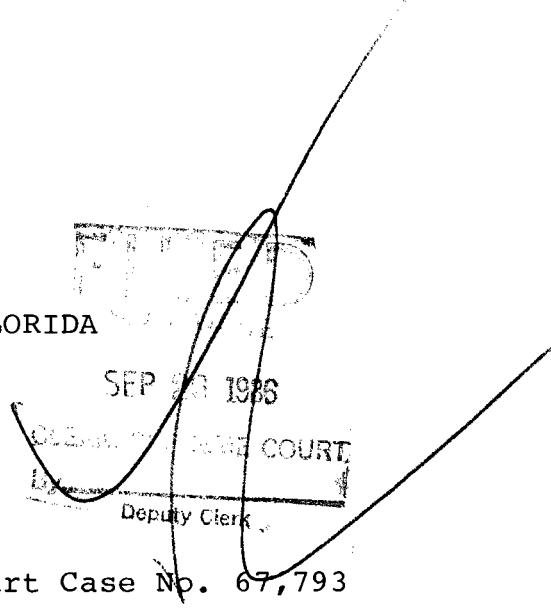
IN THE SUPREME COURT OF FLORIDA



THE FLORIDA BAR,)

Complainant,)

vs.)

ANDREW PAVLICK,)

Respondent.)

Supreme Court Case No. 67,793

REPLY BRIEF OF COMPLAINANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

INTEGRATION RULE OF THE FLORIDA BAR

ARTICLE XI

ARGUMENT

RESPONDENT SHOULD BE DISBARRED BASED UPON HIS CONVICTION OF A FELONY AND THE ABSENCE OF SUBSTANTIAL MITIGATING FACTORS. (Argument IV of Initial Brief)

Respondent's argument that he has already been sufficiently punished should not be considered a mitigating factor (Answer Brief of Respondent at 8, 9, 20). Any attorney who has been incarcerated as the result of a felony conviction is subject to similar pressures. The disciplinary system becomes a sham if the criminal sanction of imprisonment mitigates the disciplinary sanction; if the unethical conduct is serious enough to constitute a felony and justify incarceration, such conduct should result in a severe disciplinary sanction.

Furthermore, The Florida Bar acknowledges the fact that Respondent has had no prior disciplinary history. The Florida Bar, however, disputes Respondent's claim that, except for one complaint involving a fee dispute, he has never had an ethical complaint filed against him[1] (Answer Brief of Respondent at 2, 20). While the absence of prior discipline may be considered by the referee in determining an appropriate sanction, The Florida Bar maintains that such circumstance, alone, is insufficient to mitigate discipline

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1/ Respondent has been the subject of several complaints filed within the last three (3) years.

in the instant case because of the serious nature of the misconduct involved (creation of false testimony).

Respondent asserts that the principles set forth in The Florida Bar v. Carbonaro, 464 So.2d 549 (Fla. 1985) control the case sub judice. In so arguing Respondent overlooks the mitigating factors cited by the referee in Carbonaro, to wit:

> At the time Respondent committed the crime for which he is being disciplined, he suffered from a personality disorder for which he has sought and received psychiatric treatment.

Carbonaro, supra at 550.

There is no evidence of a medical or psychological problem present as a mitigating factor in the instant case.

In addition, Carbonaro showed great remorse for his criminal acts whereas Respondent has and continues to deny his involvement in any criminal activity. Moreover, Carbonaro's illegal and unethical conduct was unrelated to the practice of law. In the instant case, Respondent's unethical conduct is directly related to his practice of law in that it involves assisting his clients in fabricating testimony to be used in judicial proceedings.

The Florida Bar maintains that article XI, Rule 11.10 of the Integration Rule of The Florida Bar is clear and unambiguous in its holding that a final conviction is conclusive proof of guilt of the offense charged and that such final conviction results in suspension for a minimum of three years. There is neither a provision in the

Intergration Rule nor case law which supports Respondent's position that the type of plea underlying the conviction (i.e. nolo contendere; "Alford") affects the disciplinary sanction.

Further, Respondent cites The Florida Bar v. Lancaster, 448 So.2d 1019 (Fla. 1984) for the proposition that criminal cases involving nolo contendere pleas have resulted in suspensions less than the three (3) years mandated by article XI, Rule 11.07(4), Integration Rule of The Florida Bar. In response, The Florida Bar asserts that the three-year suspension required by Rule 11.07(4) applies only to felony convictions. Since Lancaster involves a nolo contendere plea to misdemeanors with a withhold of adjudication, the provision for a three-year suspension pursuant to Integration Rule 11.07(4) does not apply. Notwithstanding this fact, Lancaster was suspended by this Court in an opinion wherein three justices dissented in favor of disbarment.

The Florida Bar v. Miller, 322 So.2d 502 (Fla. 1975) is cited by Respondent as a second case in which a three-year suspension was not imposed. The criminal conduct in Miller involves filing a false income tax return. In its opinion, this Court characterized Miller as "unique" and one in which enforcement of Rule 11.07(4) was suspended by petition to the Court and pursuant to agreement between the parties.

Finally, Respondent cites The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982) as a third case wherein a three-year suspension was not imposed. Respondent, however, overlooks the mitigating factors involving Pettie's assistance to law enforcement:

> respondent voluntarily initiated contact with law enforcement authorities, cooperated with those authorities, suffered economic loss, closed his law practice, admitted his wrong, and risked his life to help further the investigation.

Pettie, supra at 738.

The Florida Bar contends that the cases cited by Respondent to justify more lenient discipline do not apply to the instant case in that these cases involve unique or mitigating factors which are not present in the case sub judice.

CONCLUSION

The Florida Bar submits that the referee's report should be rejected and Respondent disbarred.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Reply Brief of Complainant was mailed to Sid White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, FL 32301 and that a true and correct copy was mailed to ANDREW PAVLICK, 2780 Galloway Road, Suite 100, Miami, Florida 33165, this 25 day of September, 1986.

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