IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,	)	PUBLIC
Complainant,	)	Supreme Court CASE NO. 67,793
vs.	)	
ANDREW PAVLICK,	)	
Respondent.	)	

REPORT OF REFEREE

I. Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to Article II of the Integration Rule of the Florida Bar, hearings were held on April 23, 1986. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Patricia S. Etkin and Paul Morris

For the Respondent: Burton Young and Nicolas Manzini

II. The Complaint against the Respondent, ANDREW PAVLICK, arises as the result of said Respondent entering an "Alford" plea on October 26,1984 in the United States District Court for the Eastern District of Michigan Southern Division, Case No. 84-20350 to misprision of a felony in violation of Title 18, United States Code, Section 3 (Accessory After the Fact), as result of which, he was sentenced to one year in custody to be released as if on parole after the serving of one third of term and a $250.00 fine.

This case involves the difficult decision of whether or not this attorney in fact conspired to have his client lie before a grand jury investigation or was indicted as the result of another attorney and prior co-counsel testifying against him in order to have himself excused from a pending indictment.

The chronology of evidence in this case is of some importance and will be recited briefly as follows:

On or about June 20, 1979 certain individuals by the name of Clyde Willis, Christopher Piser and Robert Lover were arrested in a vessel off the coast of Louisiana said vessel containing a substantial amount of marijuana.

That subsequent to the arrest, the Respondent, Andrew S. Pavlick, of Miami, Florida, was hired to defend the aforementioned parties as the result of an indictment and trial to be held in New Orleans, Louisiana.

Subsequent to being retained as counsel for the Defendants, the Respondent Pavlick hired co-counsel in New Orleans by the name of Louis B. Merhige. While the Re-

spondent, Mr. Pavlick was familiar with criminal proceedings, having had experience as a prosecutor for a couple of years after leaving law school, his main practice was civil litigation and therefore, he felt it appropriate to hire record counsel in New Orleans. The trial of the three defendants was held in August or September of 1979 and all three were convicted and sentenced to terms in prison. It should be noted that on appeal Misters Love and Pizer were acquited by the court of appeals, while the conviction of Mr. Wills was affirmed.

A short time after the trial the Defendants were advised that they were to appear for a debriefing in New Orleans and to testify in front of the grand jury in New Orleans. Mr. Merhige alleged in his testimony before the grand jury in Michigan that a meeting was held in Tallahassee, Florida on October 13, and October 14, 1979 where Mr. Merhige, the three defendants and Mr. Pavlick were present. At said meeting, Mr. Merhige testified before the Michigan grand jury that Mr. Pavlick initiated a story to hide from the grand jury the names of the true owners of the vessel and backers of this marijuana operation. Mr. Merhige alleged that it was Mr. Pavlick who initiated a scheme whereby the defendants would testify in front of the grand jury that the backer of the entire operation was one Jose Ignacio Azpetitia, who had recently been shot and killed in Miami, Florida on February 19, 1979. In fact, in October 1979, at a debriefing and in testimony before the grand jury the defendants told a story blaming the operation on the deceased Mr. Azpetitia, which in fact was a lie.

In December of 1982 Mr. Pavlick himself was called before the grand jury in New Orleans, Louisiana and asked to divulge the name of the person who paid his attorney's fee for the defense of the defendants. Mr. Pavlick refused to divulge the name on the ground that it was attorney-client privilege. This refusal was upheld by the local federal judge and subsequently on appeal by the Fifth Circuit Federal Appeals Court sitting in Texas, however the Federal Appeals Court, on Petition by the United States Government, sitting en banc, reversed, by a split vote, its prior decision that Mr. Pavlick's testimony concerning the payment of his fees was privileged and, in fact, Mr. Pavlick subsequently testified before the grand jury and divulged said information.

Mr. Pavlick was indicted June 19, 1984 in Michigan on two counts, Count I was Conspiracy to Import Marijuana in Violation of 21 United States Code Section 963 and Count II Conspiracy to Possess With Intention to Distribute and Distribution of Marijuana in violation of 21 United States Code Section 846.

It is Mr. Pavlick's contention that, facing a trial which could result in ten years imprisonment as a result of this indictment of June 19, 1984 and because of his family, he pled guilty on October 26, 1984 to a new charge of Accessory After the Fact in violation of United States Code Section 3 and subsequently received a term of imprisonment not to exceed one year to be released as if on parole after serving one third of his term of incarceration and a fine of $250.00, which term Mr. Pavlick has served.

This case revolves itself around two main questions: Question No. 1. Did Mr. Pavlick meet with Mr. Merhige and the three Defendants at a hotel in Tallahassee, Florida on October 13th and/or 14th, 1979 to conspire to have the defendants lie before the grand jury investigation in New Orleans with regard to the deceased Mr. Azpetitia's owning the vessel and backing the marijuana operation. Mr. Merhige testified before the grand jury in Michigan that this meeting occurred and it was mainly on that basis that Mr. Pavlick was indicted on the two count indictment in Michigan on June 19, 1984. Mr. Pavlick denies this and states that he was never in Tallahassee on those dates and never conspired to get the defendants to lie to the grand jury.

The second question is whether Mr. Pavlick at the time he pled guilty to the charge of Accessory After the Fact in violation of 18 United States Code Section 3 on October 26, 1984, did so not because he was guilty of said crime but only because this was a plea bargain to reduce the two count indictment of June 19, 1984, for which he could face up to ten years imprisonment and that he did so because of pressure from his wife, who did not want him to go to trial.

I am most impressed with the testimony of Mr. George B. Slattery, who administered a polygraph test to Mr. Pavlick. Mr. Slattery's expertise in polygraph testing is well known in South Florida and his curriculum vitae is a part of this file. Mr. Slattery's testimony is that, in his opinion, Mr. Pavlick was telling the truth when Mr. Pavlick said that he was not at the Tallahassee meeting on October 13th or 14th, 1979 nor did he tell his clients to lie in front of the grand jury.

It appears to this court that this case may be reduced to confrontation of testimony by the attorney, Louis Merhige and Respondent Andrew Pavlick concerning the alleged meeting in Tallahassee on October 13th or 14th, 1979. Mr. Pavlick has passed a polygraph test on this matter. Mr. Merhige has refused to take a polygraph test on this matter. Mr. Merhige's testimony is suspect because it was given to extricate himself from a pending indictment by the Michigan grand jury and he was successful in doing so.

III. I recommend that the Respondent be found guilty and specifically that he be found guilty of Article XI Rules 11.02(3) (a) and (b) Integration Rules of the Florida Bar as Mr. Pavlick, in fact, pled to a felony charge as recited above. There is great question in my mind concerning the background of this plea under the circumstances enumerated above.

IV. I recommend that the Respondent be suspended from the practice of law for a period of two years from the date of the conviction with automatic reinstatement at the end of the period of suspension as provided in Rule 11.10(4).

V. I considered the following personal history and prior disciplinary record of the Respondent, to wit: the testimony reveals that Mr. Pavlick has no prior disciplinary convictions although there is a pending disciplinary procedure against him with regard to the dispute of an attorney's fee.

The testimony reveals that Mr. Pavlick has been an exemplary father and family man and has participated in community activities. I was particularly impressed by the testimony of Mr. Pavlick's wife and accept the testimony of Mr. Pavlick that he did submit to an "Alford" plea to the reduced felony charge, rather than go to trial with the possibility of a long prison term, because of his family.

VI. I hereby retain jurisdiction to determine the reasonable costs expended by the Florida Bar and hereby set a hearing to determine said costs on Monday, July 7, 1986 at 2:30 P.M.. It is recommended that all such reasonable costs be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning thirty 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 6th day of June, 1986.

W. Herbert Moriarty, Referee

Copy furnished:

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Nicolas A. Manzini, Esquire
Burton Young, Esquire
Paul Morris, Esq.
John T. Berry, Esquire
John F. Harkness, Jr., Esquire