IN THE SUPREME COURT

OF FLORIDA

CASE NO. 96,531

THE FLORIDA BAR,

Complainant

VS.

ALAN JOHN KARAHALIS,

Respondent

PETITION FOR REVIEW

By Respondent

REPLY BRIEF OF ALAN JOHN KARAHALIS

Respondent

Alan J. Karahalis, Pro Se
2 Trafalgar Drive, S. 9
Beverly, MA 01915
978-921-4932
Attorney Number 336319

TABLE OF CONTENTS

1. TABLE OF CITATIONS

Cases Cited — Page No.

Florida Cases:

Other Authority:

2. ARGUMENT IN RESPONSE AND REBUTTAL TO ARGUMENT PRESENTED IN ANSWER BRIEF

The Florida Bar in it's Answer Brief appears to lend credence to Respondent's contention that there was no criminality under the federal bribery statute because it required a specific intent to give something of value in exchange for an official act, citing United States v. Sun-Diamond Growers of California, 526 us. 398 (1999), as the Congressman took no action to effectuate the uncle of Respondent's prison transfer. Moreover, there is nothing the Congressman could have done as he plays no role in such matters. It asserts the facts admitted to by Respondent would be a violation of the current bribery statute in Florida as no quid pro quo is necessary. There is no similar statute in Massachusetts. Perhaps this is why the Massachusetts Supreme Judicial Court was silent on the issue of what laws the Respondent may have violated in its opinion in the Matter of Karahalis, 429 Mass. 121, 706 Mass. 2d 655 (1999). Maybe there would have been a violation of Florida law in 1985, but Respondent would suggest that this conduct occurred in Massachusetts and to postulate what the result in Florida may have been is not a determinative factor here. The Respondent was not

granted immunity so it is arguable whether he faced a real likelihood of criminal exposure. However, his conduct is wrong, whether illegal or not. The issue is what disciplinary sanction should be applied. The Florida Bar has cited a line of cases involving bribery. The Florida Bar v. Riccardi, 264 So.2d 5 (Fla. 1972) (disbarment for conviction on charge of bribery of Internal Revenue Agent); The Florida Bar v. Rambo, 530 So.2d 926 (Fla. 1988) disbarment for delivering bribe on behalf of client to county commissioner); The Florida Bar v. Wheeler, 653 So.2d 391 (Fla. 1995) (attorney granted immunity for testimony at trial against fellow conspirators in a scheme involving payments to judges for appointment as a special prosecutor); The Florida Bar v. Gross, 610 So.2d 442 (Fla. 1992) (disbarring attorney for five years for lowering a bond for a bribe when he was judge); The Florida Bar v. Rendina, t83 So.2d 314 (Fla. 1991) (disbarring attorney for a minimum of five years for attempting to bribe an assistant state attorney). These cases are distinguishable from that of Respondent. Those matters involved either conduct while acting either as a judge, an attorney or in behalf of a client, or where there was a financial interest at stake for the

attorney. The Respondent would suggest that his conduct was not while acting as an attorney in behalf of a client or where he had a financial motive, or while as a judge. He was involved in a family situation and that was his sole motivation. It was a unique case in Massachusetts attorney discipline law as it appears to be in Florida. This case should be distinguished. The Referee found his act to lack dishonesty or have a selfish motive. It was out of family loyalty and nothing more.

The Florida Bar also argues that certain mitigating factors such as alcohol and drug use and mental and emotional troubles and cooperation with law enforcement have not outweighed disbarment. The Florida Bar v. Davis, 657 So.2d 1135 (Fla. 1995) (alcohol and drug use considered as mitigation did not outweigh seriousness of misconduct; disbarment for judge who accepted bribes and omitted other acts of misconduct); The Florida Bar v. Wheeler, 653 So.2d 391 (Fla. 1995) (attorney claimed mental and emotional troubles and cooperation with law enforcement were mitigating factors; disbarment for attorney who entered into payment schemes with judges for court appointments). This line of cases are also distinguishable from that of

Respondent. Again, these cases involved a judge accepting bribes, and attorney bribing a judge for court appointments, and attempting to bribe a prison warden, all clearly distinguishable from Respondent's conduct. Respondent does not assert any outside mitigating factors such as drug, or alcohol use, mental and emotional troubles, but only suggests mitigation from the facts found in his actions and cited within by the Massachusetts Supreme Judicial Court in its decision, i.e. family loyalty, and selfless motive. For reasons, unique to this matter, Respondent suggests that his conduct does not warrant the sanction in these lines of cases cited by the Florida Bar. The Florida Bar's position is essentially, that no mitigating circumstances matter under the above case law it has cited. Respondent suggests that mitigation should not be precluded given the set of factors present here. Conversely, the Florida Bar argues that if any mitigating factors do matter, they are outweighed by aggravating facts and the seriousness of the misconduct. It points out a prior history of misconduct by Respondent consisting of a private reprimand and a public censure. The censure was imposed for in 1991 for behavior occurring in 1989, well past the 1985 conduct present in

this matter. Neither matter was of sufficient gravity to warrant any suspension from practice and Respondent would suggest that suspension would be appropriate enhancement of discipline given this history, and not disbarment.

Respondent in his Brief, contends that at the time of this conduct in 1985, he did not have substantial experience in the practice of law as concluded by the Referee, and then used as an aggravating factor. Respondent's position is that the Referee's conclusion that he had substantial experience at the time of disciplinary proceeding 15 years later is not the proper time, but that the relevant time should be in 1985 when this conduct occurred. The Florida Bar, in its Answer Brief, recites that "Respondent fails to point out in his Amended Brief that the bribery was not discovered until 1992." This misses the Respondent's point that when presented with this situation in 1985, that his experience at that time should be the relevant inquiry when the Referee made a conclusion about the state of his experience in the practice of law. Therefore, his lack of experience in 1985 should be treated as a mitigating factor.

The Florida Bar, in its Reply Brief, also recites that "Respondent also argues that the Referee only considered and acted upon an Order of Suspension from Massachusetts without having the benefit of the complete record considered in Massachusetts." Respondent acknowledged in his brief that this is all that is needed in a reciprocal discipline matter and that the Order of Suspension is conclusive evidence of guilt. Respondent's argument was that the Referee should consider all the facts as recited in the Massachusetts opinion, Matter of Karahalis, infra, which is attached as Exhibit "A" to the Complaint of the Florida Bar. The Florida Bar and the Referee used the facts cited in that decision as it's only evidence of what occurred and Respondent does not contend there is anything improper with that. But the Referee did not consider any of the other facts recited by the Massachusetts Supreme Judicial Court, more specifically found in the concurring opinion of Justice Lynch and cited in his Amended Brief. The Referee only considered the most damaging facts found in that opinion and gave either no or insufficient consideration to the other facts. Whether Respondent was present or not at the hearing, the facts found in the

Massachusetts decision, both harmful and helpful, should have been considered.[1] Summary judgment had already been granted based on the Massachusetts decision prior to the hearing. It is suggested that in addition to considering the facts harmful to Respondent, the Referee should have considered all the unique facts presented in this matter found in the Massachusetts decision.

In summary, Respondent acknowledges what he did was wrong, whether or not it was in contravention of a criminal statute. However, his conduct is distinguishable from cases cited by the Florida Bar as it has a unique set of facts. The Respondent did not act as an attorney in behalf of a client or with a financial interest as in those matters. He acted in behalf of a

---

1. The Report of the Referee stated on page 1, "in lieu of an appearance the Court considered his request, relayed by phone to counsel for the Florida Bar, that the Court review the concurring opinion In The Matter of Karahlis, Case No. SJC-07593, decided by the Supreme Judicial Court of Massachusetts." Moreover, at that time the Florida Bar's recommendation was for a three year suspension not to be imposed retroactive to the date of the Massachusetts Suspension. Thereafter, the only change in Respondent's actions has been his cooperative attitude toward these proceedings as found by the Referee.

family member and not for pecuniary gain, and there was an absence of a dishonest or selfish motive. Disbarment does not have to be the sanction.

Respectfully submitted,

_____

Alan J. Karahalis, Pro Se
2 Trafalgar Drive, S. 9
Beverly, MA 01915
978-921-4932
Attorney Number 336319

CERTIFICATE OF SIZE AND STYLE OF
TYPE AND ANTI VIRUS SCAN

The undersigned hereby certifies that the within Brief is reproduced in 14 point, proportionately spaced Times New Roman font, and that the diskette filed with this Brief has been scanned and found to be free of virus by Norton Anti Virus for Windows.

_____

Alan J. Karahalis

CERTIFICATE OF SERVICE

I, Alan J. Karahalis, hereby certify that on the 21st day of July 2000, I served a copy of the within Brief, by mailing postage prepaid, to:

Donald M. Spangler
Bar Counsel
Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

_____
Alan J. Karahalis