IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC96531

v.

TFB File No. 1999-00,487 (02)

ALAN JOHN KARAHALIS,

Respondent.

___________________________/

ANSWER BRIEF

Donald M. Spangler, Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5845
Florida Bar No. 184457

John Anthony Boggs, Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 253847

John F. Harkness, Jr., Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 123390

CERTIFICATE OF TYPE, SIZE AND STYLE and ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that the Answer Brief of Complainant is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

TABLE OF CONTENTS

TABLE OF CITATIONS iii

PRELIMINARY STATEMENT . . . . v.

STATEMENT OF THE CASE . . . . 1.

STATEMENT OF THE FACTS . . . . 3.

SUMMARY OF ARGUMENT . . . . 4.

ARGUMENT . . . . 5.

I. THE DISCIPLINE RECOMMENDED BY THE REFEREE HAS A REASONABLE BASIS IN CASE LAW AND SHOULD BE AFFIRMED 5

II. AGGRAVATING FACTORS AND SERIOUSNESS OF MISCONDUCT OUTWEIGH MITIGATING CIRCUMSTANCES 8

CONCLUSION 12

CERTIFICATE OF SERVICE 13

TABLE OF CITATIONS

Cases Cited | Page No.

Florida Cases:

The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1983) . . . . 9.

The Florida Bar v. Bustamante, 662 So.2d 687 (Fla. 1995) . . . . 11.

The Florida Bar v. Corbin, 701 So.2d 334 (Fla. 1997) . . . . 5.

The Florida Bar v. Cruz, 490 So.2d 48 (Fla. 1986) . . . . 7.

The Florida Bar v. Davis , 657 So.2d 1135 (Fla. 1995) . . . . 7.

The Florida Bar v. Fredericks, 731 So.2d 1249 (Fla. 1999) . . . . 5.

The Florida Bar v. Friedman, 646 So.2d 188 (Fla. 1994) . . . . 10.

The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997) . . . . 11.

The Florida Bar v. Gross, 610 So.2d 442 (Fla. 1992) . . . . 8.

The Florida Bar v. Lechtner, 666 So.2d 892 (Fla. 1996) . . . . 6., 8.

The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997) . . . . 5.

The Florida Bar v. Rambo, 530 So.2d 926 (Fla. 1988) . . . . 7., 10.

The Florida Bar v. Rendina, 583 So.2d 314 (Fla.1991) . . . . 8.

The Florida Bar v. Riccardi, 264 So.2d 5 (Fla. 1972) . . . . 7.

The Florida Bar v. Vining, 707 So.2d 670 (Fla. 1998) . . . . 5.

The Florida Bar v. Wheeler , 653 So.2d 391 (Fla. 1995) . . . . 7., 10.

The Florida Bar v. Williams, 753 So.2d 1258 (Fla. 2000) . . . . 5.

The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994) . . . . 11.

Nell v. State, 277 So.2d 1(Fla. 1973) . . . . 6.

State v. Lopez, 552 So 2d 997 (Fla. 3d DCA, 1988) . . . . 6.

Other Authority:

United States v. Sun-Diamond Growers of California, 526 U.S. 398 (1999) . . . . 5.

Florida Statutes:

§838.015 Fla. Stat. 1997 . . . . 6.

PRELIMINARY STATEMENT

Complainant/Appellee, THE FLORIDA BAR, will be referred to as "The Florida Bar" throughout this Answer Brief. Respondent/Appellant, ALAN JOHN KARAHALIS, will be referred to as "Respondent" or "Mr. Karahalis".

References to the Rules Governing The Florida Bar shall be designated as "Rule" or "R. Regulating Fla. Bar" with the appropriate number.

References to the Report of Referee shall be by the symbol ROR followed by the appropriate page number, i.e., "ROR-12".

Respondent's Amended Brief shall be referred to as "Amended Brief" with the appropriate page number, i.e., "Amended Brief at p. 4".

References to specific pleadings filed with the Referee will be made by identification and reference to its title, i.e., "Motion for Summary Judgment"

STATEMENT OF THE CASE

The Florida Bar adopts in part Respondent's Statement of the Case but offers the following as a more complete Statement of the Case. The Florida Bar filed a complaint against Respondent with the Supreme Court of Florida on September 16, 1999 and simultaneously sent its Request for Admissions to Respondent. (Complaint with exhibit; Request for Admissions). This matter involved reciprocal discipline based upon a Massachusetts disciplinary order, which was attached to The Florida Bar's complaint as Exhibit A, setting forth in detail the facts underlying the discipline.

On September 21, 1999, the Honorable Kathleen F. Dekker was appointed as Referee in this matter. Respondent served his answers to the Request for Admissions on October 29, 1999. The Florida Bar filed its Motion for Summary Judgment on November 2, 1999. A Notice of Hearing for December 7, 1999 was sent to Respondent at his record bar address. Mr. Karahalis filed his Respondent's Opposition To Complainant's Motion For Summary Judgment on December 2, 1999. Summary judgment was granted The Florida Bar on December 7, 1999. In the order granting summary judgment, the referee noted that Respondent had notified her that he would not appear. (Summary Judgment Order). The referee adjudicated Mr. Karahalis guilty of the misconduct alleged as set forth in Exhibit A of The Florida Bar's complaint. (Summary Judgment Order). A final hearing for discipline was set for February 1,

2000. Mr. Karahalis was notified of the hearing date. On February 2, 2000, Mr. Karahalis did not appear at the final hearing. The Report of the Referee was filed with the Supreme Court on February 7, 2000. The Referee recommended that Respondent be found guilty of violating Rule 3-4.6. The following disciplinary sanctions were recommended:

A. Disbarment from the practice of law in Florida.

B. Payment of The Florida Bar's costs.

In arriving at the disciplinary recommendation, the Referee also considered the personal history, past disciplinary record, aggravating and mitigating factors, and violations of duties owed the public. (ROR pages 4-6). The referee commented in the report that the circumstances and the amount of money involved in this matter were egregious. (ROR page 5).

The Report of the Referee was considered at a meeting of the Board of Governors which ended April 7, 2000. The parties had until April 24, 2000 to file a petition for review. Respondent filed a petition for review on April 21, 2000. Respondent's Initial Brief was mailed on May 23, 2000 and received by The Florida Bar on May 26, 2000. The brief did not comply with the Rules of Appellate Procedure or the Administrative Order of the Supreme Court regarding the submission of a diskette and Respondent was required to amend his brief.

STATEMENT OF THE FACTS

The Florida Bar adopts the Statement of Facts as set forth in Respondent's Amended Brief. In his amended brief, Mr. Karahalis acknowledged this was a matter of reciprocal discipline and the judgment of the Massachusetts Supreme Judicial Court was conclusive as to a finding of misconduct. Mr. Karahalis also acknowledged in his amended brief that the sanctions imposed in Massachusetts had no binding effect in Florida.

SUMMARY OF ARGUMENT

The recommended discipline of disbarment by the referee should be affirmed. The misconduct by respondent, for which The Florida Bar filed a complaint for reciprocal discipline, involved bribing a congressman. Disbarment for misconduct involving bribery has a basis in existing case law.

The mitigating circumstances were not substantial enough in this matter to mitigate the recommended penalty. The seriousness of the misconduct and the aggravating circumstances, which included a prior disciplinary history, outweigh the mitigating circumstances.

ARGUMENT

I. THE DISCIPLINE RECOMMENDED BY THE REFEREE HAS A REASONABLE BASIS IN CASE LAW AND SHOULD BE AFFIRMED

The recommended discipline of a referee will be followed when it is reasonably supported by case law. The Florida Bar v. Williams, 753 So.2d 1258 (Fla. 2000); The Florida Bar v. Fredericks, 731 So.2d 1249 (Fla. 1999); The Florida Bar v. Vining, 707 So.2d 670 (Fla. 1998); The Florida Bar v. Corbin, 701 So.2d 334 (Fla. 1997); The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997).

In the instant case, the facts of the misconduct were set out in the order of the Supreme Judicial Court of Massachusetts. Respondent directly gave Congressman Mavroules $7,000.00 and he gave $5,000.00 to Mavroules son-in-law for the purpose of having Respondent's uncle transferred to a prison nearer relatives. Even though Respondent's uncle was transferred, Congressman Mavroules took no action to effectuate the transfer. In his amended brief, Respondent admits to a wrongful act but contends that there was no criminality involved because the federal bribery statute requires a specific intent to give something of value in exchange for an official act. United States v. Sun-Diamond Growers of California, 526 U.S. 398 (1999). However, the facts admitted to by Respondent would be a violation of the bribery statute in Florida. The Florida statute prohibiting bribery is distinguishable from the federal

statute by a lack of such a quid pro quo. State v. Lopez, 552 So 2d 997 (Fla. 3d DCA 1988). Subsection two of the Florida bribery statute, §838.015 Fla. Stat. 1997, provides as follows:

> "(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose."

Respondent was never convicted of any crime but his misconduct, nevertheless, was characterized as bribery by the Supreme Judicial Court of Massachusetts. In its opinion the Massachusetts court stated:

> "The Respondent knew that the purpose of these payments was to induce a public official to utilize his official position in facilitating the transfer of the respondent's uncle to a prison in Florida, which respondent knew was illegal. The respondent's uncle was subsequently transferred to a minimum security facility in Florida, but not because of the bribe." (Page 3 of Exhibit A attached to Complaint)

The sanction in a Bar disciplinary action must serve three purposes, "The sanction must be fair to society; the sanction must be fair to the attorney; and the sanction must be severe enough to deter other attorneys from similar misconduct." The Florida Bar v. Lechtner, 666 So.2d 892, 894 (Fla. 1996). In his dissenting opinion in

Nell v. State, 277 So.2d 1(Fla. 1973), Justice Boyd, in discussing bribery, stated:

> "The consent of the governed is essential to the very existence of government in this county. When the public loses confidence in public officials, respect for and allegiance to government diminishes. Because bribery erodes the foundations of government, it is one of the most despicable of all crimes. Those who pay or receive a price to influence the conduct of public officials place the personal enrichment of the participants above the public welfare, and walk in the shadows of treason." *Id.*, page 8.

In cases involving bribery, the Court has not been inclined to leniency, absent mitigating circumstances. 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. Riccardi, 264 So.2d 5 (Fla. 1972) (disbarment for conviction on charge of bribery of internal revenue agent). Even when mitigating circumstances have been present in individual circumstances, the Court has found that the mitigating circumstances did not override the seriousness of misconduct involving bribery. 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 committed 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); The Florida Bar v.

Cruz, 490 So.2d 48 (Fla. 1986) (limited involvement in bribery scheme and strong character evidence; disbarment for attorney for attempting to bribe warden of a prison).

Disbarment has been frequently imposed as a sanction when the behavior involves bribery. The Florida Bar v. Lechtner, 666 So.2d. 892 (Fla. 1996) (disbarment without permission to reapply for ten years for attorney convicted of bribing judges and other felonies); 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 a judge); The Florida Bar v. Rendina, 583 So.2d 314 (Fla.1991) (disbarring attorney for for a minimum of five years for attempting to bribe an assistant state attorney). The referee's recommend penalty of disbarment for the misconduct in this matter is reasonably supported by case law.

II. AGGRAVATING FACTORS AND SERIOUSNESS OF MISCONDUCT OUTWEIGH MITIGATING CIRCUMSTANCES

The referee in recommending disbarment considered as aggravating factors substantial experience in the practice of law and the prior disciplinary history of respondent, which included a private reprimand in 1985 in Massachusetts for commingling and misuse of a client's funds in 1983. (Exhibit A attached to complaint at p.6.), and a public censure in 1991 in Massachusetts for behavior occurring in 1989

which involved commingling client and personal funds, advancing settlement funds to clients before receipt of their checks, and failing to pay medical providers promptly. (Id. at p.6.) Reciprocal discipline involving a public reprimand was imposed in Florida for the 1991 Massachusetts public censure.

The mitigating circumstances considered by the referee were absence of a dishonest or selfish motive and cooperative attitude toward the proceedings. In considering the aggravating and mitigating circumstances, the referee found that the aggravating outweighed the mitigating and further found that the amount of money involved and the circumstances of the misconduct were egregious. (ROR-5).

Respondent urges the Court to mitigate the referee's recommended discipline and argues that contrary to the referee's findings, he did not have substantial experience in the practice of law when the bribery occurred. Further the referee should have considered that he was only 31 years old at the time of the incident and the bribery took place in 1985. Respondent fails to point out in his amended brief that the bribery was not discovered until 1992. (Exhibit A attached to complaint at p. 2 fn.2). Even assuming arguendo that inexperience in the practice of law should have been mitigating, it does not excuse the seriousness of respondent's behavior, especially in light of his prior disciplinary history, which this Court considers in assessing whether there should be an enhancement of discipline. The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1983).

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 cannot avail himself of this argument when he failed to appear at the hearing. He could have made the complete record available but he choose not to. The Florida Bar v. Friedman, 646 So.2d 188 (Fla. 1994).

Mr. Karahalis was not convicted nor charged with a criminal offense and he cooperated with federal authorities. However, it is not necessary that there be a conviction to be disbarred for bribery. In The Florida Bar v. Wheeler , 653 So.2d 391 (Fla. 1995), the attorney was granted immunity for testimony at trial against fellow conspirators in a scheme involving payment to judges for appointment as a special public defender. In a subsequent disciplinary hearing, the referee's recommendation of disbarment was approved by the Court. A referee's recommendation of suspension was considered inadequate by the Court in The Florida Bar v. Rambo, 530 So.2d 926 (Fla. 1988) and the Court disbarred the attorney who had delivered a bribe on behalf of his client to a county commissioner, even though the attorney had been granted use immunity and had cooperated by testifying before a federal grand jury and at a trial.

Respondent also urges the Court to consider the concurring opinion of Justice Lynch in the Massachusetts Order of Suspension. The referee did consider the

concurring opinion but found Mr. Karahalis' conduct to be egregious. (ROR 1-2, 5).

In discipline cases involving serious offenses, the Court has imposed disbarment even when the mitigating factors were substantial. The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997); The Florida Bar v. Bustamante, 662 So.2d 687 (Fla. 1995); The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994). In this matter the mitigating circumstances are not substantial enough to outweigh the seriousness of the offense or the aggravating factors.

CONCLUSION

The referee's recommendation of disbarment from the practice of law in the state of Florida, should be adopted by the Court.

Respectfully Submitted,

____

Donald M. Spangler, Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5784
Attorney No. 184457

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief regarding Supreme Court Case No. SC96531, TFB File No. 1999-00,487 (02) has been mailed by certified mail #7099322000321930808, return receipt requested, to Alan John Karahalis, Respondent, at his record Bar address of 2 Trafalgar Drive, Suite 9B, Beverly, MA 01915, on this ________ day of __________________, 2000.

____

Donald M. Spangler, Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5845
Florida Bar No. 184457