

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JORGE LOUIS CUETO,

Respondent.

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Supreme Court Case  
No. SC00-890

The Florida Bar Case  
No. 2000-71,354(11H)

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Complainant's Reply Brief

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## **ARGUMENT**

### **THE REFEREE ERRED BY FAILING TO DISBAR THE RESPONDENT**

Respondent's initial argument appears to be that the Referee's recommendation as to discipline is not "off the mark." Specifically, Respondent suggests that when a lawyer is convicted of one count of a third degree felony with no jail time (Respondent's brief, p. 14) he should not be treated the same way as for a first degree felony.

This Court has recently made it clear that it is not locked into that type of analysis or persuaded by such an argument. In The Florida Bar v. Karahalis, 26 Fla.L.Weekly S99 (Fla. Feb. 2, 2001)<sup>1</sup>, the respondent was disbarred. Respondent made an unlawful payment to a Massachusetts congressman to have his uncle transferred from one federal prison to another. No criminal charges were filed. This court, nevertheless, disbarred the respondent subsequent to a four year suspension by the Massachusetts Bar.

Although the Karahalis decision stresses the role of aggravating factors, it also reflects this Court's view that such attempts to improperly influence public officials strike "at the very heart of the attorney's responsibility to the public and

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<sup>1</sup> Not released for permanent publication.

profession.”

Also, in our initial brief, the The Florida Bar relied upon The Florida Bar v. Cruz, 490 So.2d 48 (Fla. 1986). Respondent concedes that Cruz is similar to the instant case, and further that Respondent found no case on point to support his position. Cruz is strikingly similar to Karahalis. Cruz was one of two men who bribed a warden to give special privileges to an inmate. Whether Cruz had committed a first, second, or third degree felony was not even considered by this Court. Cruz was disbarred.

Respondent argues that the important factor in that case was that Cruz was a U.S. Marshal at the time of the bribery. However, that is totally irrelevant. His discipline was based upon two felonies, neither of which pertained to the employment of the bribing party as a government official. His discipline was based solely upon two criminal counts applicable to offenders occupying any position, whether or not they are government officials.

Respondent also stresses mitigation and the weight which it should be given. The Bar would suggest that the mitigation evidence was much stronger in Cruz.

In that case, this Court summarized the character evidence in detail:

Respondent then introduced three witnesses to testify in his behalf, two of whom participated in the federal trial proceedings. The first of these witnesses was the United States District Court judge who presided at

respondent's trial and accepted respondent's guilty plea. He testified that respondent is religious, "not a criminal type," and "essentially a very good person." The judge also testified that with respect to the offense, respondent was more of an aider or abettor really rather than a conspirator, in the strict sense of the word. He never got anything for it, but there was enough there so that a jury could have nailed him, if it had elected to do so. I don't know whether the decision to plead guilty was the right decision or not ...

... I wish the sentence could have been less and maybe it should have been. Respondent called as his second witness the probation officer who conducted the investigation for respondent's PSI report. The investigator testified that respondent had an "exemplary background," that he did not feel respondent had used his position as an attorney to violate any laws, and that respondent's involvement in the events surrounding the crime was the result of poor judgment rather than an attempt to further a criminal conspiracy. Respondent also called as a witness Bishop Armando Leon, who testified favorably concerning respondent's character. (At 49. Emphasis supplied).

Despite the strong character evidence, provided by more objective witnesses than in the instant case, respondent was disbarred for the bribery convictions. The mitigation was only the basis for a retroactive disbarment, not a retroactive suspension. This Court stated:

It is apparent from this record that the referee gave credence to the mitigating testimony concerning the limited extent of respondent's participation of this offense because she recommended his disbarment be effective on August 29, 1983, the date of respondent's

suspension, thereby allowing respondent to seek readmission in less than a year from the date the Referee filed her report. (At 49).

Respondent suggests that the Bar seeks to ignore the Florida Standards for Imposing Lawyer Sanctions and particularly standards pertaining to mitigation.

However, the Bar's position is consistent with Cruz; namely that, under appropriate circumstances, relatively little weight will be given to mitigation.

The Respondent also argues that the Bar is limited by its Petition for Review and cannot argue that the Referee improperly failed to find a violation of Rule of Professional Conduct 4-8.4(c) (Conduct involving dishonesty, fraud, deceit or misrepresentation). It is important to note that disbarment is appropriate despite the absence of such a specific finding. In Cruz, supra, there was no specific finding of a violation of the comparable rule. Pursuant to Disciplinary Rule 1-102 "Misconduct," the governing rule in Cruz is as follows:

- (A) A lawyer shall not:
  - (1) Violate a Disciplinary Rule.
  - (2) Circumvent a Disciplinary Rule through actions of another.
  - (3) Engage in illegal conduct involving moral turpitude.
  - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
  - (5) Engage in conduct that is prejudicial to the administration of justice.
  - (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

A (4) is the provision comparable to 4-8.4(c). Cruz was found guilty of violating only A(1), (3) and (5) and not (4) pertaining to dishonesty. Nevertheless, his conduct justified disbarment.

Respondent also argues that bribery is different from unlawful compensation. As stated in our initial brief, the crimes of unlawful compensation (§838.016) and bribery (§838.015) need not include dishonesty on the part of the party giving the bribe or the party receiving it. Moreover, both crimes are characterized by involving a corrupt act which is specifically defined by §838.014(6) as an act being done with “wrongful intent.” Therefore, the same facts can often support both offenses. In State v. Sune, 360 So.2d 1128 (Fla. 3<sup>rd</sup> DCA 1978), the respondent made a deal with the State Attorney’s Office by pleading to the unlawful compensation offense. Both are felonies of the third degree and the language is almost identical. The term “corruptly” is included and defined as the same conduct in both crimes.

By way of analogy, our initial brief pointed out that cases under §838.015 have explicitly held that one is guilty of bribery even if his payment is for doing an act that the “bribee” is legally bound to do. State v. Saad, 429 So.2d 757 (Fla. 3<sup>rd</sup> DCA 1983) explains that:

...[o]ne is guilty of bribery if he corruptly pays or accepts unlawful compensation even for doing an act that the

bribee is legally bound to accomplish. 11 C.J.S. Bribery §2(e)(4) (1938); 12 Am.Jr.2d Bribery §12 (1964). Thus in People v. Furlong, 140 A.D. 179, 184, 125 N.Y.S. 164, 168 (1910), aff'd, 201 N.Y. 511, 94 N.E. 1096 (1911), the court said:

The corruption aimed at is not simply the doing of things which may be improper in themselves, but even the doing of proper things as the result of an improper agreement. The statute would be violated as much by an agreement for compensation from private parties to take special pains to decide, even properly a matter coming before the officer, as it would by an agreement to decide it improperly. In other words, the statute reaches out as much against the influencing of the officer's judgment or decision as it does against the improper result of such influence. The offense is so subtle in its fruits that the law endeavors to lay the ax at its very roots.

[2] In our system at least, the end does not justify the means. The effectuation of Saad's intent to get his money by short-circuiting and subverting that system may, and must, be held accountable to the criminal law. See also, Trushin v. State, 384 So.2d 668 (Fla. 3d DCA 1980); aff'd, 425 So.2d 1126 (Fla. 1982); State v. Napoli, 373 So.2d 933 (Fla. 4th DCA 1979). Reversed.

(Emphasis added)

State v. Lopez, 522 So.2d 997 (Fla. 3rd DCA 1988) is strikingly similar to this case. Payment to a putative building inspector for nothing more than "timely, prompt and cooperative" efforts was sufficient to satisfy the corrupt intent element of the bribery statute. Also, in State v. Gonzalez, 528 So.2d 1356 (Fla. 3rd DCA 1988), the Court held that payment intended to influence a performance of any act



by a public servant is a criminal violation, even if payment is for doing an act the public servant is legally bound to do.

A finding of dishonesty is not a prerequisite for disbarment as Cruz and the cases cited above illustrate. Also, as stated in our initial brief, the acts involved in Respondent's plea and conviction include corrupt behavior by statutory definition and that meets the requirement for disbarment. Cruz, supra.

Furthermore, Respondent's claim that the Bar cannot pursue the contention that the Referee improperly acquitted Respondent of a violation of 4-8.4(c) is dubious at best. That argument is based upon an extremely narrow and restrictive view of the Bar's Petition for Review since the Bar is addressing a finding based substantially upon admissions and uncontradicted evidence and whether Respondent is guilty of the rule violation as a matter of law. A technical or restrictive view of a Petition for Review is inappropriate. The Bar has discovered no case supporting this position in regard to a Petition for Review, but there are several cases pertaining to the scope of a notice of appeal. Those cases recommend a broader and not a narrow interpretation of a notice of appeal. First Union National Bank of Florida v. Yost, 622 So.2d 111 (Fla. 1<sup>st</sup> DCA 1993); Tunstall v. Folsom, 616 So.2d 1123 (Fla. 1<sup>st</sup> DCA 1993); Skinner v. Florida Power Corp., 564 So.2d 572 (Fla. 1<sup>st</sup> DCA 1990); Florida Sugar Cane v. Florida Department of

Environmental Regulation, 602 So.2d 544 (Fla. 1<sup>st</sup> DCA 1991).

This is particularly true in view of this Court's responsibility to determine the proper discipline. The Florida Bar v. Anderson, 538 So.2d 852 (Fla. 1989). It is also particularly true when reviewing the record in the context of the statute to which the Respondent pled guilty. As stated, the crime of unjust compensation involves corruption as a matter of law.

Furthermore, since Respondent argues that the sole issue is the nature of the felony (Respondent's brief, p. 12) the question of violation of 4-8.4(c) becomes academic. Respondent was guilty of the felony which includes the word "corruptly" within and participated in a large network of corruption as one of 15 defendants in a multiple count indictment (ROR p. 2). That indictment clearly undermined public faith in the Courts.

Respondent benefitted by not going to trial. (T. 101, 103) Respondent also benefitted by getting his contingency fees guaranteed, and within a shorter time than if a trial would have been required. Both the Respondent and the bribed adjuster were affected. The adjuster was inherently inclined to settle case rather than go to trial because settlement would provide a fee. A trial would not.

Respondent's "defense" may also be indicative of why he would not be a good candidate for rehabilitation. His brief states:

Respondent was a brand-new lawyer, practicing for about a year; when he was approached by an adjuster from the county and told that he had to pay to the adjusters ten percent of the total recovery of any of his clients with claims before the county or their cases would be placed in limbo. Respondent, a new lawyer, succumbed (as apparently did numerous other lawyers in Dade County) to the pressure brought by the adjusters. He testified that he did not realize at the time that his conduct was criminal. T. 16, 36, 88. Once in a situation like that, it is difficult to extricate oneself from it. Respondent was not able to do so. (p. 16, Respondent's brief).

Respondent's repeated testimony that he didn't know his conduct was criminal raises innumerable questions. For example, is he a candidate for rehabilitation if he doesn't know right from wrong? Why couldn't he expose the systematic extortion rather than join it? Why couldn't he discontinue the practice when his case load was substantial?

Respondent's brief also indulges in mischaracterizations:

1. The Bar did not cite The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1983) for the proposition that all illegal conduct is dishonest conduct. (Respondent's brief, p. 21). Rather, our brief points out that Pettie upon which the Referee relied does not in any way relate to the statutes which the Respondent violated.
2. No authority supports Respondent's assertion that the crime of bribery

requires that the bribee be paid to do something he would not otherwise do.

(Respondent's brief, p. 22). The cases cited by the Bar above, Saad, Lopez, and Gonzalez, hold the exact opposite.

3. The Bar does not cite Saad, Lopez, and Gonzalez for the proposition that Respondent could "possibly" have been convicted of bribery. (Respondent's brief p. 23). Rather, the Bar has identified the similarity between the two statutes and the key factor "corruptly," as appearing in both statutes. Therefore, bribery cases can also be considered as authority for disbarment in regard to an unlawful compensation conviction, at least in regard to the issues herein.

Finally, Respondent argues that his total case load of 2,500 cases included only 35 cases with the county. (Brief, p. 85, T. 86). Does that establish that Respondent's conduct is less corrupt? Does it prove anything more than that Respondent had only thirty five clients who had a personal injury claim against the county? Are not thirty five cases involving corrupt practices a significant and substantial number regardless of Respondent's total case load? The answers should be readily apparent when reviewed in the additional context of six years of blindness toward what is criminal, and unethical behavior involving a widespread system of corruption known to Respondent.

The criminal statute which was the basis of Respondent's conviction declares that Respondent did corruptly provide unlawful compensation. Corruption of the system of justice must be viewed as the most serious offense that a lawyer can commit. The applicable standards and cases require disbarment instead of a suspension. Therefore, Respondent should be disbarred.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and seven copies of this Complainant's Answer Brief was forwarded Via Airborne Express to the Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927, and a true and correct copy was mailed to John A. Weiss, Attorney for Respondent, at 2937 Kerry Forrest Parkway, Suite B-2, Tallahassee, Florida 32308, and to John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

I HEREBY CERTIFY that the Brief of The Florida Bar 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.

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