UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
ADMINISTRATIVE ORDER 2012-69

IN RE: ROSEMARIE J. QUIDER
N/K/A ROSE J. SPANO
Florida Bar # 473189
_____/

ORDER OF RECIPROCAL DISBARMENT

The Supreme Court of Florida has entered an Order of Disbarment dated July 17, 2007, permanently disbarring Rose J. Spano from the practice of law. *See The Florida Bar v. Spano*, 973 So.2d 1125 (Fla. 2007). That Order of Disbarment was predicated upon an uncontested report of referee. The Clerk attempted to serve attorney Spano by certified mail with an Order to Show Cause why this Court should not impose the same discipline, accompanied by the Supreme Court of Florida's Order of Disbarment. Service at Spano's court record address was signed for by Rose J. Spano.

On July 20, 2012, Spano filed a Response to the Court's Order to Show Cause. In this response, Spano argues that the issuance of identical discipline by this Court is unwarranted and would result in grave injustice. In support, Spano raises five claims: (1) the disciplinary orders were entered illegally without a hearing; (2) there was evidence of bad faith and false representations by Bar counsel; (3) no hearing was provided to contest the allegations raised by Bar counsel; (4) Rule 3-7.6 of the Rules Regulating The Florida Bar requires a hearing and no such hearing was provided; and (5) there is no evidence to support the discipline ordered. This Court does not find merit in these claims that would preclude the issuance of reciprocal discipline.

"[D]isbarment by federal courts does not automatically flow from disbarment by state courts." *Theard v. United States*, 354 U.S. 278, 282 (1957). Nonetheless, a state court disbarment should be accorded federal effect, unless it appears from an "intrinsic consideration" of the state record that: (1) the

state disbarment proceeding lacked due process; (2) the proof supporting the disbarment by the state court was so infirm as to give a federal court the "clear conviction" that a reciprocal disbarment order is inappropriate; or (3) another grave reason convinces the federal court that the state court disbarment should not give rise to a federal court disbarment, under the principles of right and justice. *Matter of Calvo*, 88 F.3d 962, 966-67 (11th Cir. 1996) (citing *Selling v. Radford*, 243 U.S. 46, 51 (1917); *see also* Rule 5(e), S.D. Fla. Rules Governing Attorney Discipline (requiring *Selling*-based analysis in disbarment actions).

Taking into consideration the areas in which reciprocal discipline can be contested, the arguments in the response can be categorized into allegations of due process violations (claims (1), (3), and (4)) and those claiming grave injustice (claims (2) and (5)). Each will be discussed in turn.

Lack of Hearing – Arguments (1), (3), and (4)

Spano argues that the Orders of discipline (August 6, 2004; February 24, 2005, and April 8, 2005) were issued without a hearing that would enable her to contest the allegations against her. Although not entirely clear at this point, it appears that the August 6th and February 24th suspension orders were entered in a separate, but related disciplinary case that proceeded under Florida Supreme Court Case No. SC04-397. The April 8th disbarment order proceeded under Florida Supreme Court Case No. SC04-2011, and was followed by the Florida Supreme Court's Order of permanent disbarment dated July 17th, 2007. In support of her argument, she has attached the affidavit of attorney Alvin E. Entin, who stated that he has "personal knowledge that the attorney was given no actual hearing before the Florida Supreme Court on the entry of a Suspension Order dated August 6, 2004, based on a Motion for Judgment on the Pleadings." Mr. Entin further wrote that as attorney of record on that case, he never received a copy of the Motion for Judgment on the Pleadings from The Florida Bar. Spano also attached an affidavit from

attorney Paul G. Finizio, who stated that, to his knowledge, Spano "was never afforded a hearing on an erroneously entered suspension order."

The analysis of due process claims in attorney discipline proceedings is limited; review "is narrowly defined . . . as [to] 'want of notice or opportunity to be heard.'" *Calvo*, 88 F.3d at 967 (citing *Selling*, 243 U.S. at 51); Rule 5(e)(1), S.D. Fla. Rules Governing Attorney Discipline ("the procedure in that other jurisdiction as so lacking in notice or opportunity to be heard as to constitute a deprivation of due process"). Contrary to Spano's repeated assertion that the Florida Supreme Court entered suspension and discipline orders "*ex parte*," Spano's own filings and the state court docket[1] nonetheless establish she received notice and took full advantage of the opportunity to participate in those proceedings by submitting written argument in Case No. 04-397. *See, e.g.*, Spano's Response To The Court's Order To Show Cause, Exhibit C (the Florida Supreme Court's suspension Order dated August 6, 2004 indicates that Spano filed a response to its Order To Show Cause). Although attorney Entin's affidavit alleges he was not served with The Florida Bar's Motion for Judgment on the Pleadings, the Court notes that Spano immediately filed both a Petition To Vacate and an Emergency Motion seeking to lift the Florida Supreme Court's August 6th suspension order, which the Florida Supreme Court denied. She has not alleged that she was in any way limited as to the arguments or evidence that she could present, or that these proceedings were in any way inadequate, except for the fact that she was not given an in-court hearing.

Furthermore, as to Case No. SC04-2011, Spano's submissions as well as the Florida Supreme Court's docket sheet demonstrate that she equally participated by repeatedly submitting filings and

[1] The Court has taken judicial notice of the docket sheet for the Supreme Court of Florida's disbarment proceedings available from its website, as well as various orders and pleadings from The Florida Bar's website. See *Cash Inn of Dade, Inc., v. Metropolitan Dade County*, 938 F.2d 1239, 1243 (11th Cir. 1991) ("A district court may take judicial notice of public records within its files relating to the particular case before it or other related cases."); *Williams v. McNeil*, No. 08-22270-CIV, 2009 WL 3187206, at *1 n.2 (S.D. Fla. Sept. 30, 2009) ("This Court takes judicial notice of the electronic docket sheets maintained by the Clerks of the Third District Court of Appeal and Eleventh Judicial Circuit."); Fed. R. Evid. 201.

vigorously defending at virtually every step of those proceedings. She was provided a hearing prior to the issuance of the Florida Supreme Court's order of permanent disbarment dated July 17th, 2007, which forms the basis for this Court's reciprocal discipline proceedings. *See, e.g.*, Spano's Exhibit D, Affidavit of Alvin E. Entin, Esq. ¶9 (Spano was afforded a hearing on June 6th "to explain the circumstances"). Therefore, absent some showing of limitations or other deficiencies on her ability to present her points before the Florida Supreme Court in regards to the July 17th order of discipline, the mere fact that a hearing was not held in earlier proceedings does not provide a basis for relief. Spano has not demonstrated that the procedure followed in the state court here was "so infirm" as to give rise to a "clear conviction" on this Court's part that a reciprocal disbarment order would be inappropriate or that the state procedure was "so lacking in notice or opportunity to be heard as to constitute a deprivation of due process."

Evidence of Bad Faith and False Representations by Bar Counsel (2) and Lack of Evidence to Support Disciplinary Proceedings (5)

Spano claims that "[t]here is other evidence of bad faith on the part of Bar counsel, Hoffman, in the procurement of the entry of these Orders without a hearing" and "evidence of false representations made by Bar Counsel, Hoffman, in the entry of these orders." Spano attempts to support the above claim by citing to an unrelated case where "bar counsel" was criticized in a concurring opinion for making misstatements and inaccurate representations. Also, attorney Alvin E. Entin's affidavit states that "I have personal knowledge that Lorraine Hoffman, as counsel for the Florida Bar, repeatedly insisted to the Florida Supreme Court that the attorney could not represent herself in *pro se* matters. In particular, matters related to child custody proceedings which were pending in Dade County, Florida. This is simply false and/or incorrect legally."

"The burden is on the disbarred attorney to show good cause why he should not be disbarred, and the district court is not required 'to conduct a de novo trial in the first instance of [the attorney's] fitness to practice law.'" *Calvo*, 88 F.3d at 966 (citation omitted). In order to sustain an allegation of an "infirmity of proof," the defendant "must do more than state the existence of his defense." *Committee on Grievances of the U.S. Dist. Court for Eastern Dist. of New York v. Feinman*, 238 F.3d 498, 507 (2d Cir. 2001); *see also In re Kramer*, 282 F.3d 721, 727 (9th Cir. 2002) ("Kramer presents only conclusory assertions of insufficient proof, and those are insufficient to show a violation of the second prong of *Selling*."). Spano fails to meet that threshold burden.

Allegations regarding what transpired in other disciplinary cases are irrelevant to the case that is before this Court. Furthermore, contrary to the directions set forth in this Court's Order to Show Cause, Spano has not submitted a copy of the entire state court record making it nearly impossible to support an argument of infirmity of proof. Rather, she relies primarily on a few underlying orders, which do nothing to bolster her argument, and the affidavit of her counsel. Rather than stating facts that would demonstrate the insufficiency of the proof at the state level, Mr. Entin's statements are legal conclusions regarding the need for a hearing and the purported tolling of the state court orders. Those legal conclusions do not bind this Court. Even if the Court takes as true Mr. Entin's statement that Bar Counsel repeatedly insisted that Spano could not represent herself as pro se, this one "fact" merely describes an argument made by Bar Counsel to the state court.[2] Spano has failed to describe in any reasonable manner of detail the purported

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[22] The state court's actions appear to have been predicated in part on matters beyond simply representing herself in her own custody proceedings. For example, The Florida Bar's Petition For Contempt and Order to Show Cause dated October 12, 2004, cites examples of Spano continuing legal representation in other non-custody matters and continuing to hold herself out as a member of The Florida Bar after her suspension. The Referee's Report dated June 15, 2005 notes in paragraph 4 that Spano continued to hold herself out as a lawyer and member in good standing of The Florida Bar after her disbarment by using her Florida Bar number on pleadings, continued to use her letterhead, continued to use her law office professional association on pleadings, and continued to appear as attorney of record in various cases before a number of different tribunals. This Court, of course, at this point need not decide the extent of the evidence supporting the state court decision. Rather, it is enough to simply note that Spano has not carried her preliminary burden of making a threshold showing of insufficiency.

insufficiency of the evidence to support the Florida Supreme Court's disbarment order beyond her assertion of infirmity of proof in those state court proceedings.

Rule 5(d) of the Rules Governing Attorney Discipline, Local Rules of the United States District Court for the Southern District of Florida, provides in pertinent part that "[a]fter consideration of the response called for by the order [to show cause] . . . the Court may impose the identical discipline or may impose any other sanction the Court may deem appropriate." Given this background, pursuant to Rule 5(d) and the Court's inherent power to regulate membership in its bar for the protection of the public interest, *see Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it."),

IT IS ORDERED that said attorney be disbarred from practice in this Court, effective immediately. The Clerk of Court shall strike this attorney from the roll of attorneys eligible to practice in the United States District Court for the Southern District of Florida, and shall also immediately revoke the attorney's CM/ECF password.

IT IS FURTHER ORDERED by this Court that said attorney advise the Clerk of Court of all pending cases before this Court in which she is counsel or co-counsel of record.

IT IS FURTHER ORDERED by this Court that the Clerk of Court attempt to serve by certified mail a copy of this Order of Disbarment upon the attorney at her court record address.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this 30th day of August, 2012.

FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished as follows:

Honorable Joel F. Dubina, Chief Judge, Eleventh Circuit
All Miami Eleventh Circuit Court of Appeals Judges
All Southern District Judges
All Southern District Magistrate Judges
United States Attorney
Circuit Executive
Federal Public Defender
Clerk of Court
Clerk of Court, 11th Circuit
Southern District Bankruptcy Court
National Lawyer Regulatory Data Bank
Florida Bar
Attorney Admissions Clerk
Library
Rose J. Spano