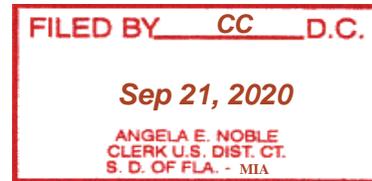


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2020-67
CASE # 20-MC-21933



IN RE: TINA MARIE TALARCHYK
FLORIDA BAR # 794872

ORDER OF SUSPENSION

On May 7, 2020, Southern District of Florida Bankruptcy Judge Paul G. Hyman, Jr. entered an Order Suspending Attorney Tina Marie Talarchyk from Practice Before the U.S. Bankruptcy Court for the Southern District of Florida (“Order of Suspension”). *See In re: Tina M. Talarchyk*, Case No. 13-11065-BKC-PGH, Dkt. No. 398 (Bankr. S.D. Fla. May 7, 2020) (ECF No. 1). This Order of Suspension found that Talarchyk “willfully violated multiple court orders.” *Id.* The Clerk served attorney Talarchyk by certified mail with an Order to Show Cause why this Court should not impose the same discipline, accompanied by the Order of Suspension. (ECF No. 2).

On August 17, 2020, Talarchyk, through her attorney, filed a Response to Order to Show Cause. (ECF No. 6). In this response, Talarchyk raises several arguments as to why the imposition of reciprocal discipline would be inappropriate and that the Order to Show Cause should be discharged. They can be summarized as follows: (1) the Order of Suspension is “legally defective” as having been issued without jurisdiction, based on an order that was superseded and merged out of existence, and that the requirements specified in the Order have been complied with; (2) the Order of Suspension is legally defective in that it relies on an order that has “no legal effect” as it compelled disclosure of “confidential and privileged” documents, the documents were to be reviewed by an examiner instead of being filed, and that the Order was issued without a hearing; (3) the Bankruptcy Court failed to acknowledge that Talarchyk paid the amount required in a previous order to the Clerk

of Court and that The Florida Bar reviewed the Trust Account records, records which were requested by the Bankruptcy Court; (4) the debtor, as the client, has expressed “her support and contentment with not only the results of the Chapter 11 proceeding but also, the work of” Talarchyk; and (5) that the imposition of reciprocal discipline should not proceed until the appellate court has ruled on the appeal.

Rule 8(e) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys, Local Rules of the United States District Court for the Southern District of Florida, establishes the procedures for reciprocal discipline following a final adjudication in another court and the grounds in which reciprocal discipline may be contested:

(e) A final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purpose of a disciplinary proceeding in this Court, unless the attorney demonstrates that the Court is satisfied that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears that:

- (1) the procedure in that other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) there was such an infirmity of proof establishing misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) the imposition of the same discipline by this Court would result in grave injustice; or
- (4) the misconduct established is deemed by this Court to warrant substantially different discipline.

Given the limited ways in which the imposition of reciprocal discipline can be contested, as set out in Rule 8(e), many of Talarchyk’s arguments do not warrant review. Those arguments that question the ultimate legality of the discipline are not proper questions for this Court. The question before this Court is whether it should give reciprocal force to the Suspension Order by the Bankruptcy Court, not to conduct appellate review. Thus, whether or not this Court agrees with Talarchyk’s challenges to the legality of the Order is irrelevant to the question of reciprocal discipline. Furthermore, whether or not Talarchyk’s client approved of her actions also has no relevance to the legitimacy of reciprocal discipline which is based on a finding in the Order of Suspension that

Talarchyk failed to comply with court orders.

In regard to the argument that Talarchyk complied with the Bankruptcy Court orders in submitting a payment to the Clerk of Court as requested and having The Florida Bar review the Trust Account records, does not address the Bankruptcy Court's concerns in the Order of Suspension. In particular, the payment, even if made, was not the main focus of the Order of Suspension, rather it was the Accounting records. The Accounting records in turn were ordered to be submitted to the Bankruptcy Court, not the Florida Bar, as expressed by the Bankruptcy Court in the Order of Suspension: "In the Motion to Stay Pending Appeal, Ms. Talarchyk asserts that the Florida Bar investigated her trust account records in 2016. . . . The Court is puzzled that she is willing to provide the Accounting to the Florida Bar and yet still refuses to comply with its orders requiring her to produce the Accounting to this Court." (ECF No. 1 at 9 n.2).

As to the claim that the Order of Suspension is improper because it was issued without a hearing, although a relevant Rule 8(e) argument, is without merit. Talarchyk does not claim to have requested a hearing and the docket¹ does not indicate that one was provided. To raise a Rule 8(e)(1) argument, the opportunity to be heard has to be lacking to the extent to "constitute a deprivation of due process." However, as evident from the docket, Talarchyk was provided an opportunity to contest the Order of Suspension and actively did so by filing multiple appeals. Talarchyk has made no argument that she was in any way limited as to the arguments or evidence that she could present without a hearing, or that her choice of response—appeal—was in any way inadequate. Absent some showing that Talarchyk was unable to adequately present her arguments in regard to the discipline imposed, the fact that there was no hearing held does not provide a basis for relief from reciprocal

¹ The Court has taken judicial notice of the docket sheet for the United States Bankruptcy Court for the Southern District of Florida proceedings available from the Public Access to Court Electronic Records (PACER) website. See Fed. R. Evid. 201; *Cash Inn of Dade, Inc., v. Metro. Dade Cnty*, 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.").

discipline.

Finally, Talarchyk's argument that these proceedings should be stayed until the conclusion of the appellate proceedings fails on the basis that the record shows that no stay has been imposed upon the Order of Suspension. Pursuant to Attorney Rule 8(c), only where "the discipline imposed in the other jurisdiction has been stayed there, [will] any reciprocal disciplinary proceedings instituted or discipline imposed in this Court . . . be deferred until such stay expires." Talarchyk did file a Motion to Stay in the appellate proceeding (ECF No. 16, Case No. 20-cv-60503), but that was denied by the District Court (ECF No. 23, Case No. 20-cv-60503). As the Order of Suspension has not been stayed, reciprocal disciplinary proceedings can proceed.

Rule 8(a) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys, Local Rules of the United States District Court for the Southern District of Florida, requires that "[a]n attorney admitted to practice before this Court shall, upon being subjected to reprimand, discipline, suspension, or disbarment . . . promptly inform the Clerk of the Court of such action." Rule 8(d) provides in pertinent part that after expiration of the time for submitting a response to an 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 8(a) and (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."),

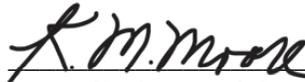
IT IS ORDERED that said attorney be suspended from practice in this Court, effective immediately. The attorney may not resume the practice of law before this Court until reinstated by order of this Court. *See* Rule 12(a). The Clerk of Court shall strike this attorney from the roll of attorneys eligible 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 serve by certified mail a copy of this Order of Suspension upon the attorney at her court record and Florida Bar addresses.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this 21st day of September, 2020.



K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All South Florida Eleventh Circuit Court of Appeals Judges
All Southern District Judges
All Southern District Bankruptcy Judges
All Southern District Magistrate Judges
United States Attorney
Circuit Executive
Federal Public Defender
Clerks of Court – District, Bankruptcy and 11th Circuit
Florida Bar and National Lawyer Regulatory Data Bank
Library
Douglas C. Broeker, Esq., counsel for Tina Marie Talarchyk
Tina Marie Talarchyk