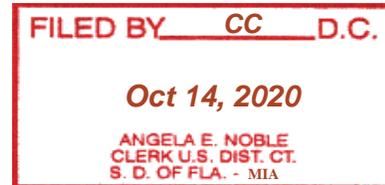


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2020-75
CASE # 20-MC-23327

IN RE: TARA ANNE DEMETRIADES
FLORIDA BAR # 179973



ORDER OF SUSPENSION

On August 7, 2020, this Court received an email notice from attorney Tara Anne Demetriades that her New York Bar license has been suspended. (ECF No. 2). The disciplinary order referenced and attached to the email notice is a July 7, 2020, Order entered by United States District Judge Ann M. Donnelly of the United States District Court for the Eastern District of New York, suspending Demetriades from the practice of law. *See In Re Demetriades*, No. 17-MC-300 (E.D.N.Y. July 7, 2020) (ECF No. 1) (“Order of Suspension”). This Order of Suspension found that Demetriades committed “multiple violations of the New York Rules of Professional Practice” in regard to her conduct in connection with her disability law practice. *Id* at 2. The Clerk served attorney Demetriades 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. 3).

On September 1, 2020, Demetriades filed a Response to Order to Show Cause. (ECF No. 5). In this response, Demetriades argues, with the substance of the arguments being made in documents filed in the appeal of her discipline, that the Order of Suspension lacks procedural due process; has been appealed and a motion to stay has been filed and is pending; lacks any basis in law and fact; and that the imposition of reciprocal discipline would result in a grave injustice. *Id*.

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.

Each of Demetriades' arguments as they pertain to Rule 8(e) will be discussed in turn.

Procedural History of EDNY Court Discipline

Chief Magistrate Judge Roanne Mann of the Eastern District of New York filed a complaint with the Committee on Grievances of the United States District Court for the Eastern District of New York ("NY Committee") after having presided over numerous cases and observed Demetriades' behavior on two particular matters over which she presided. (ECF No. 5-33). On August 8, 2017, the NY Committee issued a Statement of Charges, detailing eight counts of violations by Demetriades of the New York State Rules of Professional Conduct. (ECF No. 5-19). That same day, the NY Committee filed an Order to Show Cause to Demetriades to "show cause . . . why the Committee should not impose discipline." (ECF No. 5-18). Demetriades submitted a Verified Answer on August 30, 2017, presenting affirmative defenses and requesting a full due process hearing. (ECF No. 5-21)

A hearing took place on October 17, 2017, before United States Magistrate Judge Peggy Kuo with Demetriades and her attorney appearing, wherein it was determined how to proceed. (ECF No.

5-22). Specifically, Demetriades requested the disciplinary proceedings to be bifurcated into a liability phase and a sanctions phase. *Id.*

On December 14, 2017, the NY Committee filed a Pre-Hearing Conference Submission on Behalf of Committee on Grievances of the Board of Judges for the Eastern District of New York, in which the NY Committee provided the Court a memorandum discussing the applicable law in regards to the eight disciplinary counts against Demetriades. (ECF No. 5-23).

On January 19, 2018, the NY Committee and Demetriades submitted a Stipulation as to Chief Magistrate Judge Mann's testimony regarding the factual grounds of her grievance against Demetriades. (ECF No. 5-33).

An evidentiary hearing occurred over three days from January 23-25, 2018, with Demetriades and her attorney in attendance. (ECF Nos. 5-25, 5-26, and 5-27).

Pursuant to the first phase (liability), Judge Kuo issued a Report and Recommendation ("Liability R&R") on May 30, 2018, recommending that Demetriades "be found liable under Counts One (Competence), Two (Diligence), Three (Delay of Litigation), Four (Conduct before a Tribunal), and Five (Fairness to Opposing Party and Counsel), and not liable under Counts Six (Lawyer's Responsibility for Conduct of Nonlawyers), Seven (Unauthorized Practice of Law), and Eight (Misconduct)." (ECF No. 5-30 at 49-50). On June 28, 2018, Demetriades, through her attorney, filed Objections to Report and Recommendation. (ECF No. 5-36).

On December 27, 2018, the NY Committee issued an Order adopting Judge Kuo's Liability R&R "in its entirety." (ECF No. 5-4).

On April 6, 2020, Judge Kuo issued a Report and Recommendation on the second phase (sanction), recommending that Demetriades "be suspended from the practice of law in this Court for a period of no less than three months and no more than six months; and that she be required to obtain

professional counseling for stress management for at least three months.” (“Sanctions R&R”) (ECF No. 5-31 at 16).

On July 7, 2020, United States District Judge Ann M. Donnelly for the Eastern District of New York issued an Order of Suspension, finding that Demetriades violated Rules 1.1(a), 1.3(a) and (b), Rule 3.2, 3.3(a), 3.3(f)(2), 3.3(f)(3), and 3.4(c) of the New York Rules of Professional Conduct. (ECF No. 1).

On September 1, 2020, Demetriades filed a Notice of Appeal of the Order of Suspension to the United States Court of Appeals for the Second Circuit. (ECF No. 5-29). Demetriades also filed an Emergency Motion to Stay with the Second Circuit. (ECF No. 4-2).

Analysis

Lack of Procedural Due Process / Notice

Demetriades argues that the Magistrate Judge and NY Committee did not afford her procedural due process. (ECF No. 5). Specifically, that the Statement of Charges “cit[ed] only to a summary of 51 cases . . . without any reference as to which charges applied to which cases or the particular misconduct involving activity in any of the 51 cases.” *See* Affidavit in Support of the Motion to Stay (ECF No. 4-1 at 12). Furthermore, that “it is not even arguable that the Committee failed to provide Ms. Demetriades with due process of law, by inter alia, failing to provide notice of the false statement charge (Rule 3.3(a)) and lack of knowledge charge (Rule 1.1(a)) until after the trial began.” *See* Reply Affidavit (ECF No. 4-3 at 7).

To raise a Rule 8(e)(1) argument, notice and the opportunity to be heard has to be lacking to the extent to “constitute a deprivation of due process.” Judge Donnelly in the Order of Suspension cites the Committee’s findings that Demetriades was provided adequate notice, in that “the Statement of Charges together with the appendix, the documents produced in discovery, and Committee

counsel's pre-hearing memorandum gave the respondent fair notice of the charges against her.” (ECF No. 1 at 3). Furthermore, Judge Donnelly notes that Demetriades “had ample opportunity to address the charges against her; she filed an answer, a pre-hearing memorandum, a post-hearing memorandum, objections to both of Judge Kuo’s Reports and Recommendations, and participated in a three-day evidentiary hearing.” *Id.*

Due process requires that notice be provided that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Review of these documents cited in the Order of Suspension and confirmation on the record of the multiple opportunities to contest the charges persuades this Court that Demetriades was provided adequate notice and opportunity to be heard. Demetriades was not deprived of due process of law.

Case on Appeal and Emergency Motion to Stay Filed

Without making an explicit argument, Demetriades states that the Order of Suspension is currently on appeal and that pending before the appellate court is an Emergency Motion to Stay. (ECF No. 5 at 1–2). There is no indication that because of the appeal or ruling on the Emergency Motion to Stay that the Order of Suspension has been delayed to any degree.

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.” As the Suspension Order has not been stayed, reciprocal disciplinary proceedings can proceed.

Lacking any Basis in Law or Fact

Demetriades argues that the disciplinary proceeding lacks “evidentiary support for the Court’s

findings ‘on the merits.’” (ECF No. 5 at 2). She argues there is an “absence of record evidence supporting the Committee’s finding that I misrepresented the status of an attorney working with my law firm” (conduct before a tribunal); that she “acted competently in representing my clients” (competence); and that the NY Committee supported its “charges with hearsay evidence in the absence of independent fact finding.” (ECF No. 4-1 at 4 and 4-2 at 19 (“Memorandum of Law in Support of Emergency Motion to Stay Enforcement of Order”)).

The imposition of reciprocal discipline can be contested under Rule 8(e)(2) where it is established that “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.” As documented below, none of the claims cited by Demetriades lack an “infirmity of proof.”

Conduct Before a Tribunal

NY Rule 3.3(a) prohibits a lawyer from knowingly making “a false statement of fact” to a tribunal. The NY Committee found that Demetriades violated NY Rule 3.3(a) “by misrepresenting to the Court that [another attorney] was an associate at her firm.” (ECF No. 5-30 at 39). Judge Kuo found that Demetraides “acknowledged in her testimony that she knows an associate is distinct from a contract attorney” and thus “knowingly made a false statement of fact to a tribunal” when she indicated that an attorney was an associate of her firm when they were not. *Id.*

Competence

NY Rule 1.1(a) defines “competent representation” as having “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” As found in the Liability R&R, Demetriades was found to have violated two of the three counts raised by the NY Committee in regards to NY Rule 1.1(a): “(2) lacking knowledge of New York state law claims which her

clients could bring in addition to their ADA claims, through which they could recover compensatory damages; and (3) failing to comply with court rules and orders through late and deficient filings.” (ECF No. 5-30 at 29-30). As to the lack of knowledge, Demetriades was found to be ignorant of the New York disability law by failing to advise “her clients regarding the claims they waived by signing her limited scope retainer agreements.” *Id.* at 30. The Court found that “clients need to be advised of remedies available to them in the jurisdiction where the suit is brought, even if they choose not to exercise them all.” *Id.* at 30-31. As to the failure to comply with court orders, Demetriades “attributed these failures to taking on too many cases,” which Judge Kuo found to be a matter of practice management, which itself is “a question of attorney competence.” *Id.* at 31.

Hearsay Evidence

Disciplinary “proceedings are not criminal proceedings, and relaxed rules of evidence apply, . . . [thus] ‘hearsay is admissible and there is no right to confront witnesses face to face.’” *Matter of Calvo*, 88 F.3d 962, 967 (11th Cir. 1996) (quoting *The Florida Bar v. Vannier*, 498 So.2d 896, 898 (Fla. 1986)). Any reliance on hearsay testimony by the Eastern District of New York in rendering its suspension order will not prevent the imposition of reciprocal discipline based upon that order.

Grave Injustice

Demetriades argues “that the imposition of reciprocal discipline by this tribunal would result in a grave injustice to both myself and my clients.” (ECF No. 5 at 1). She claims that reciprocal suspension will cause “irreparable reputational harm” and that she “will be impaired from performing numerous existing legal contracts with clients.” (ECF 4-3 at 12). She stresses that the Order of Suspension would cause reciprocal discipline across multiple jurisdictions, “effectively resulting in my suspension from the practice of law in every court of which I am a member.” *Id.* at 23.

This argument falls under Rule 8(e)(3), where “the imposition of the same discipline by this Court would result in grave injustice.” A “grave injustice” analysis does not focus on the effect of the reciprocal order but rather on the original order and whether the punishment rendered fits the misconduct. *See In re Kramer*, 282 F.3d 721, 727 (9th Cir. 2002) (“we inquire only whether the punishment imposed by another disciplinary authority or court was so ill-fitted to an attorney's adjudicated misconduct that reciprocal disbarment would result in grave injustice”); *In re Attorney Discipline Matter*, 98 F.3d 1082, 1088 (8th Cir. 1996) (no grave injustice found where disbarment imposed by the state court “was within the appropriate range of sanctions”).

Demetriades’ misconduct does not warrant substantially different discipline for the same reasons that an order of reciprocal discipline will not result in a grave injustice. As long as the discipline that Demetriades received “was within the appropriate range of sanctions” for the conduct in question, there is no grave injustice in imposing reciprocal discipline. *Id.* As detailed in the Order of Suspension, Demetriades’ violations were weighed with the factors outlined in the American Bar Association’s Standard for Imposing Lawyer Sanctions and fell within the recommended duration of suspension. (ECF No. 1).

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 14th day of October, 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
Tara Anne Demetriades