UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2021-48
CASE # 18-MC-25055

IN RE: HOWARD WEIL RUBINSTEIN
FLORIDA BAR # 104108
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ORDER OF DISBARMENT

On October 23, 2015, the Court entered an Order Adopting Report and Recommendation, disbarring attorney Howard W. Rubinstein from the practice of law before the United States District Court for the Southern District of Florida. *See In Re: Report and Recommendation Regarding Howard W. Rubinstein of Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance*, AO 2015-69 (S.D. Fl. Oct. 23, 2015) ("October 23, 2015 Order") (ECF No. 13). The October 23, 2015 Order was based in part[1] upon reciprocal discipline of a Judgment of Probated Suspension from the District Court of Travis County, Texas, 98th Judicial District dated August 5, 2014. *Commission for Lawyer Discipline v. Rubinstein*, No. D-1-GN-13-001156 (Dist. Ct. of Travis County, 98th Judicial Distr. of Texas, Aug. 5, 2014) ("Texas Judgment") (ECF No. 1).

Rubinstein appealed the October 23, 2015 Order to the Eleventh Circuit Court of Appeals. (ECF Nos. 15 and 17). On November 27, 2018, the Eleventh Circuit vacated the October 23, 2015 Order and remanded "the case for further proceedings consistent with this decision." *In re: Howard W. Rubinstein*, No. 16-10081, 2018 WL 6179420, at *5 (11th Cir. Nov. 27, 2018)

[1] The other basis for discipline concerns Rubinstein's conduct in Florida, which has been bifurcated from this reciprocal discipline case under case number 18-mc-25276.

("Eleventh Circuit Decision") (ECF No. 18). The Eleventh Circuit Decision held that upon remand "the Southern District is free to enter a new order imposing reciprocal discipline without further process" based upon the Texas Judgment. *Id*. Upon issuance of the Eleventh Circuit Decision, the Court immediately set the matter for a hearing on December 26, 2018, for "further proceedings consistent with [the Eleventh Circuit] decision." (ECF No. 21). After the Court granted a continuance, Rubinstein appeared at a hearing on January 17, 2019. *See In re: Howard W. Rubinstein*, Case No. 18–mc–25276, ECF No. 10 (S.D. Fla. May 7, 2020) (ECF No. 14). At the hearing, Rubinstein requested an extension through April 30, 2019 to present a written response to the Court regarding, what, if any, the nature of the reciprocal discipline in his case should be. *Id*. at 15. The Court granted Rubinstein's request. *Id.*

Rubinstein filed a Response Concerning Imposition of Reciprocal Punishment, arguing that the reciprocal discipline to be imposed "should be a probated suspension of two years, or the same punishment as in the Texas Judgment" and "be considered time-served as Mr. Rubinstein's license has been suspended in the Southern District since the October 23, 2015 Order of Disbarment in this matter." (ECF No. 29 at 1).

After discussion at a regularly scheduled Judges' Meeting held on May 16, 2019, and by unanimous vote of all active Judges and Senior Judges eligible to vote, the Court issued an Order of Disbarment on May 21, 2019. *See In re: Rubinstein*, S.D. Fla. Admin. Order No. 2019-37 (May 21, 2019) ("Disbarment Order") (ECF No. 30). Rubinstein appealed the Disbarment Order to the Eleventh Circuit Court of Appeals on August 12, 2019. *See In re: Howard Rubinstein*, Case No. 19-13109 (ECF No. 1) (11th Cir. 2019) (originally docketed under Case No. 18-mc-25276, ECF No. 22).

On April 23, 2021, the Eleventh Circuit issued an order finding that the Court "abused its

discretion in disbarring Rubinstein without sufficiently explaining its decision" and therefore vacated and remanded for the Court to develop "a record that will enable appellate review of the decision of the District Court." ("Eleventh Circuit Mandate") (ECF No. 34). In response, the Court makes the following findings as grounds for Rubinstein's disbarment.

Grounds for Disbarment

1. Texas Judgment

The Texas Judgment found that Rubinstein, through his actions, violated several Texas Disciplinary Rules of Professional Conduct, most notably Rule 3.03(a)(1) ("A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.") and 8.04(a)(3) ("A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation."). (ECF No. 1). These violations were found to have occurred when Rubinstein, "in eleven applications for Pro Hac Vice status in various courts . . . failed to disclose his prior disciplinary history which included a disbarment by the Texas State Bar in September 1983 (he was reinstatement [sic] in September 1993) and a two-year probated suspension in Texas in January 2006." ("First Report and Recommendation" filed December 3, 2018) (ECF No. 7) at 3–4.

2. Rubinstein's Response to Texas Discipline

Rubinstein was given an opportunity to respond to the Texas Judgment before the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance ("Committee") and his response was summarized in the First Report and Recommendation:

> When questioned by the sub-committee and the Committee about this conduct, Respondent admitted that he was "fully responsible" for all representations that were made and admit[ted] that inaccurate representations were made in certain applications for Pro Hac Vice in United States District Courts in California and Illinois. [FN 6. There were issues during his testimony as to the number of times he had submitted false applications with Respondent incorrectly believing that it was done less frequently than it actually had occurred.] Although admitting that

> these applications were his responsibility, he was generally very cavalier about his applications, who had filled them out, how carefully they were or were not read, and about his obligations to read and keep abreast of the rules in the courts in which he was practicing.
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> With regard to falsely stating in many Pro Hac Vice applications that he had never been disbarred, he offered a variety of excuses, including that he had relied upon local counsel to fill out the applications which he considered merely "ministerial," (although he admitted never having told his various local counsel who had filled out his applications that he had ever been disbarred) [FN 7. Transcript of May 11, 2015 Hearing at p. 35.] and that the form in U.S. District Courts in California had changed in 2010 or 2011, and that he had not read the applications carefully enough. However, in response to seven Request[s] for Admissions propounded by the Texas Bar in its disciplinary action against Mr. Rubinstein concerning the fact that he had falsely answered application questions by failing to disclose that he had been disbarred when asked, the Respondent admitted doing so, "but believed [the] court was only concerned with matters 20 years old or less." (Response to Request for Admissions Nos. 7, 20, 32, 41, 45, 46, and 59). [FN 8. In some applications Mr. Rubinstein declared under penalty of perjury "no" to the question "[h]as the applicant ever been: censured, suspended, disbarred, or otherwise disciplined by any court." In other applications he declared under penalty of perjury "I have never been disbarred from practice in any court."] These admissions seem to conflict with his position that he had not read the applications carefully or that they had been filled out by others.

Id. at 4–5. The Committee surmised that Rubinstein "executed or authorized his signature to be affixed to numerous Pro Hac Vice applications which falsely stated that he had never been disbarred, or otherwise sanctioned. And even when he was made aware of the problem, he took no steps to correct them." *Id*. at 11.

3. Other Guidance

The Court takes guidance from the Florida Supreme Court that "[w]hen considering lawyer discipline, we must impose a discipline that is severe enough to deter other attorneys who might be prone to engage in similar conduct." *The Florida Bar v. Adorno*, 60 So. 3d 1016, 1035 (Fla. 2011). The types of conduct subject to Texas disciplinary proceedings—misrepresentations and false statements—are not to be taken lightly:

> The vice of misrepresentation is not that it is likely to succeed but that it imposes an extra burden on the court. The burden of ascertaining the true state of the record would be intolerable if misrepresentation was common. The court relies on the lawyers before it to state clearly, candidly, and accurately the record as it in fact exists.

In re Boucher, 837 F.2d 869, 871 (9th Cir. 1988).

In addition, Rule 1(a)[2] of the Rules Governing Attorney Discipline ("Attorney Rules"), Local Rules of the United States District Court for the Southern District of Florida, establishes that the American Bar Association Model Rules of Professional Conduct ("Model Rules") govern, in part, how attorneys practicing before this Court are to conduct themselves. Of particular relevance is Model Rule 3.3, Candor Toward the Tribunal, which provides that a lawyer shall not knowingly "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Model Rules of Pro. Conduct r. 3.3 (Am. Bar Ass'n. 2019). This rule is crucial in a profession that, as stated in the preamble to the Model Rules, "is largely self-governing." *Id.* at Preamble and Scope.

Therefore, "[t]o operate, our judicial system relies in substantial part upon the truthful and candid participation of attorneys" and when "an attorney does not abide by the Standards of Professional Conduct, the judicial system is undermined, the court's resources are taxed, and the public's confidence in the legal profession is shaken." *United States v. Howell*, 936 F. Supp. 767, 773 (D. Kan. 1996) (justifying revocation of an attorney's admission pro hac vice due to the attorney's omissions and misstatements in an affidavit of past revocations of pro hac vice admissions and a formal censure in other jurisdictions).

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[2] The Southern District of Florida's Local Rules Governing Attorney Discipline have been amended following the events at issue in this case. Reference will be made to the rules in effect at the time.

The American Bar Association has also published Standards for Imposing Lawyer Sanctions ("ABA Standards"), which the Eleventh Circuit has looked to in determining the appropriateness of the type of attorney discipline imposed by district courts. *See In re Eichholz*, No. 06-14476, 2007 WL 1223613, at *2 (11th Cir. Jan. 10, 2007) ("The American Bar Association Standards for Imposing Lawyer Sanctions provide that suspension is appropriate for a number of Eichholz's actions."). Section 6.1 of the ABA Standards deals with "False Statements, Fraud, and Misrepresentation," recommending the following sanctions for actions that involve "dishonesty, fraud, deceit, or misrepresentation to a court:"

> 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
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> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
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> 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
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> 6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

ABA Standards, § 6.1. The above standards are illustrative of the type of sanctions needed to impress upon attorneys the absolute requirement to live up to the standards and expectations demanded in the legal profession.

The Court disagrees with the discipline rendered in the Texas Judgment, finding that it is not proportionate with the seriousness of the conduct, especially when Rubinstein appears, as evidenced in the Committee hearing, to not take his responsibilities as an attorney seriously. These responsibilities include a need for honesty and candor, attention to detail, and ensuring that any representations made to a court can be relied upon as being correct. Rather, as recounted in detail by the Committee, Rubinstein demonstrated little concern for his responsibilities by taking a "cavalier" attitude about the pro hac vice applications, offering a "variety of excuses," exhibiting an unwillingness to remediate or correct, and being patently disingenuous in his reasoning as to why he did not disclose prior discipline. The degree of that discipline history—a disbarment in 1983 that lasted ten years and another probated suspension in 2006—makes the omissions from eleven applications all the more startling. Faced with this extensive disciplinary history and Rubinstein's cavalier attitude, yet another probated suspension would be nothing more than an ineffectual slap on the wrist and would not be severe enough to prevent Rubinstein—or other attorneys—from engaging in similar conduct again in the future.

Furthermore, the First Amended Disciplinary Petition which formed the basis for the Texas Judgment, as filed by the Commission for Lawyer Discipline,[3] recounts in detail the nature and extent of Mr. Rubinstein's misrepresentations:

> On or about December 12,2011, in his Motion for Leave to Appear Pro Hac Vice in Cause Number 1:11-cv-08662, *Cosmas v. Preston Products Corp.* and Cause Number 1:11-cv-08671, *Fleishman v. Johnson&Johnson Healthcare Systems, Inc.*, in the United States District Court for the Northern District of Illinois, Respondent, Howard Rubinstein, made several material misrepresentations. Specifically, Respondent: 1) stated that he was never disbarred, suspended or disciplined by any court, thereby failing to disclose that he was disbarred in Texas in 1983 and received a Fully Probated Suspension in Texas in 2006; 2) failed to disclose that he was transferred to inactive status with the State Bar of Texas from June 1, 2005

[3] The Commission for Lawyer Discipline is a committee of the State Bar of Texas.

through November 9, 2005, and again on June 1, 2011; 3) failed to disclose that he was licensed to practice in Texas; 4) failed to disclose that his applications to appear *pro hac vice* in *Weeks v. MeadJohnson Nutrition Co.*, Cause Number 2:09-cv-5835, and *Francis v. Nestle Health Care Nutrition*, Cause Number 2:10-cv-9544, both in the United States District Court for the Central District of California were denied; and 5) failed to disclose that he had filed another application to appear *pro hac vice* in another case he filed on the same date. Additionally, Respondent signed both applications declaring that the statements in the application were true and correct, when they were not.

Between December 2010 and July 2011, in multiple applications for *pro hac vice* admission to the United States District Court for the Central District of California, Respondent made materially false and misleading statements. Specifically, the following misrepresentations were made: 1) in Cause Number 2:11-cv-02972, *Pelatti v. Nestle USA, Inc.*, Respondent stated he had never been disbarred from practice in any court, failed to disclose that he was licensed in Texas, failed to provide a letter of good standing from the State Bar of Texas as required by the local rules and signed the application declaring that the statements in the application were true and correct, when they were not; 2) in Cause Number 2:10-cv-08964, *Serrano v. Phusion Projects LLC*, Respondent stated he had never been disbarred from practice in any court, failed to disclose that he was licensed in Texas, and failed to provide a letter of good standing from the State Bar of Texas as required by the local rules, omitted from the list of *pro hac vice* applications filed in the Central District two applications he filed at the same time as the instant application, and signed the application declaring that the statements in the application were true and correct, when they were not; 3) in Cause Number 8:10-cv-01217, *Nguyen v. Innovative Ventures, LLC*, on two *pro hac vice* applications, Respondent stated he had never been disbarred from practice in any court, failed to disclose that he was licensed in Texas, failed to provide a letter of good standing from the State Bar of Texas as required by the local rules and signed the application declaring that the statements in the application were true and correct, when they were not; 4) in Cause Number 2:10-cv-09544, *Francis v. Nestle Healthcare Nutrition, Inc.*, Respondent stated he had never been disbarred from practice in any court, failed to disclose that he was licensed in Texas, failed to provide a letter of good standing from the State Bar of Texas as required by the local rules and signed the application declaring that the statements in the application were true and correct, when they were not; and 5) in Cause Number 2:10-cv-07707, *Cosmas v. POM Wonderful*, Respondent stated he had never been disbarred from practice in any court, failed to disclose that he was licensed in Texas, failed to provide a letter of good standing from the State Bar of Texas as required by the local rules and signed the application declaring that the statements in the application were true and correct, when they were not.

(ECF No. 20) at 2–3.

These misrepresentations involved not one, two, or three instances, but *eleven* instances

over two years before two different courts. Within each of these instances, there were often multiple misrepresentations. The errors or omissions were not minor, but rather significant going directly to the heart of factors that courts consider when determining whether to permit an attorney from outside their jurisdiction to practice before their court. The extent and degree of these misrepresentations persuades the Court that Rubinstein's conduct necessitates the appropriate discipline of disbarment as recommended by section 6.11 of the ABA Standards.

In consideration of the above factors, the Eleventh Circuit Mandate, and the authority to impose reciprocal discipline as provided in Rule 5(d) of the Attorney Rules ("the Court may impose the identical discipline or may impose any other sanction the Court may deem appropriate") and the United States Supreme Court (*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.") and *In re Snyder*, 472 U.S. 634, 643 (1985) ("This inherent power derives from the lawyer's role as an officer of the court which granted admission."), the undersigned submitted this matter to the Court for its consideration at a regularly scheduled Judges' Meeting held on May 13, 2021, pursuant to Attorney Rule 3(e). Having reviewed all relevant materials, by unanimous vote of all active Judges and Senior Judges eligible to vote, the Court maintains that disbarment is the appropriate discipline to impose upon Rubinstein for his actions in Texas. *See* Rule 1(a)-(b) of the Attorney Rules (stating that "[a]cts and omissions by an attorney admitted to practice before this Court . . . which violate the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar shall constitute misconduct and shall be grounds for discipline[, . . . including] (1) disbarment, (2) suspension, (3) reprimand, (4) monetary sanctions, (5) removal from this Court's roster of attorney's eligible for practice before this Court, or (6) any other sanction the Court may deem appropriate").

IT IS ORDERED that said attorney be disbarred effective immediately. The attorney may not resume the practice of law before the Court until reinstated by order of the Court. *See* Attorney Rule 9(a). The Clerk of Court shall strike Rubinstein 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 the Court that the Clerk of Court attempt to serve by certified mail a copy of this Order of Disbarment upon Rubinstein at his court record address and upon his attorney of record.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this 24th day of May, 2021.

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
Clinton S. Payne, Chair, Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance
Joel Oster, Esq., counsel for Howard W. Rubinstein
Howard W. Rubinstein