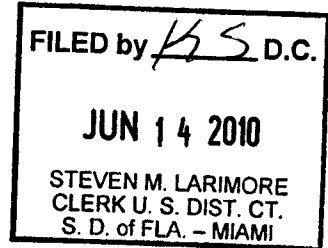


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2010-72

IN RE: DANIEL ANTONIO BENITO  
FLORIDA BAR #114324

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ORDER OF SUSPENSION

This matter is before the Court on an Order to Show Cause why this Court should not impose reciprocal discipline identical to that exercised by the Florida Supreme Court. That Court issued an Order dated March 3, 2009, granting the Florida Bar's Petition For Emergency Suspension suspending the attorney from the practice of law in the State of Florida pending further order. The attorney has filed a response to the Order To Show Cause stating that suspension by this Court "is unwarranted because at the present time the Florida Bar has been unable to prove by clear and convincing evidence that Respondent has committed any act warranting attorney discipline." According to the docket of the state court proceedings, subsequent to the emergency suspension, the Florida Bar has filed a formal Complaint for discipline alleging various trust account violations, and attorney Benito is vigorously contesting those allegations. The matter is presently pending before a referee and is awaiting decision.

The case law governing reciprocal disbarment proceedings is well settled. The Supreme Court has held that "disbarment by federal courts does not automatically flow from disbarment by state courts." *Theard v. United States*, 354 U.S. 278, 282 (1957). State court disbarment, however, should be recognized in federal courts unless after "intrinsic consideration" of the state record it appears that: (1) the state proceeding lacked due process; (2) the proof in the state proceeding was so infirm "as to give rise to a clear conviction on our part that we could not, consistently with our duty, accept as final the conclusion" of the state court; or (3) "some other

grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under principles of right and justice, we were constrained so to do.” See *In the Matter of Calvo*, 88 F. 3d 962, 966-967 (11th Cir. 1996) (citing *Selling v. Radford*, 243 U.S. 46, 51 (1917)); see also S.D. Fla. Discipline Rule 5(e) (imposing a *Selling* based analysis for reciprocal discipline matters).

Respondent has failed to meet these compelling standards. While he contends that the Florida Bar has been unable to prove he has committed acts warranting discipline, to the contrary, the Florida Supreme Court did find sufficiently compelling evidence to suspend him on an emergency basis. He points to nothing that would demonstrate that the state proceedings have lacked due process, that the proof was so infirm that the Florida Supreme Court’s determination should not be accepted, or that reciprocal suspension would be a grave injustice. The attorney does attempt to point out weaknesses in the Florida Bar’s evidence, but much of the troubling facts alleged by the Florida Bar’s auditor remain unchallenged in his response to this Court. Ultimately those factual disputes remain for final determination in the state’s proceedings. In the meantime, nothing presumably would have prohibited the attorney from moving to have the emergency suspension lifted if the record merited such action. Even a cursory review of the state docket reveals that the attorney has had an ample opportunity to appear and present his arguments. The fact remains that the attorney is currently suspended from practicing in the State of Florida, *albeit* on a temporary basis. Under Rule 1 of this Court’s Special Rules Governing The Admission And Practice of Attorneys, he must be a “member in good standing of The Florida Bar” to practice in this Court, which he currently is not. Given this background, the attorney has established nothing that should prevent this Court from recognizing in this Court. Accordingly, it is

ORDERED AND ADJUDGED that attorney Daniel Antonio Benito be suspended from practice in this Court, effective immediately. The Clerk shall immediately revoke the attorney's CM/ECF password.

IT IS FURTHER ORDERED that this suspension is based upon the Florida Supreme Court's Order granting the Florida Bar's Petition for Emergency Suspension dated March 3, 2009. The suspension in this Court shall remain in place until further Order of Court. Should the underlying state suspension be lifted at any time in the future, this Court will entertain a Petition from the attorney for like action.

IT IS FURTHER ORDERED that the attorney shall keep this Court advised of the progress of the state court disciplinary proceedings, and shall notify this Court upon the issuance of a final determination in that matter by the Florida Supreme Court.

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

IT IS FURTHER ORDERED that the Clerk shall serve by certified mail a copy of this Order of Suspension upon the attorney at his court record address.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this

10<sup>th</sup> day of June, 2010.

  
FEDERICO A. MORENO  
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished as follows:  
See attached

- c: 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, 11<sup>th</sup> Circuit
- National Lawyer Regulatory Data Bank
- Florida Bar
- Attorney Admissions Clerk
- Library
- Daniel Antonio Benito