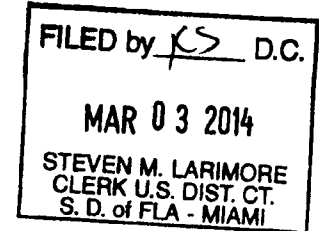


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2014-13

IN RE: JEFFREY A. NORKIN
Florida Bar # 969966

ORDER OF SUSPENSION



The Supreme Court of Florida has entered an Order of Suspension dated October 31, 2013, suspending attorney Jeffrey A. Norkin from the practice of law for two years. *See The Florida Bar v. Norkin*, No. SC11-1356, 2013 WL 5878901 (Fla. Oct. 31, 2013). The Clerk served Mr. Norkin 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 Suspension.

On February 3, 2014, Mr. Norkin filed a Response to Order to Show Cause. In this response, Mr. Norkin raises a multitude of arguments as to why this Court should refrain from imposing the same discipline as that handed down by the Florida Supreme Court. Several of Mr. Norkin's arguments contain overlapping positions that require similar legal analysis and can be broken down into four primary contentions: (1) that the actions Mr. Norkin is accused of do not support the discipline imposed in the Order of Suspension either legally or factually; (2) that Mr. Norkin has been deprived of procedural due process in the disciplinary proceedings; (3) that his disability was not correctly weighed as a mitigating factor and was instead mischaracterized on the record; and (4) that the discipline imposed violates Florida law. For the reasons that follow, the Court does not find merit in Mr. Norkin's arguments that would preclude the issuance of reciprocal discipline.

Discipline by federal courts does not automatically flow from discipline by other courts. *Theard v. United States*, 354 U.S. 278, 282 (1957). When considering reciprocal discipline based on a state court discipline order, the Supreme Court has held that a federal court should recognize, and give effect to, the “condition created by the judgment of the state court unless, from an intrinsic consideration of the state record,” it appears: (1) that the state procedure, from lack of notice or opportunity to be heard, was wanting in due process; (2) that the proof of facts relied on by the state court to establish misconduct was so infirm as to give rise to a clear conviction that the Court could not, consistent with its duty, accept the state court's conclusion as final; or (3) that to do so would, for some other grave and sufficient reason, conflict with the Court's duty not to discipline except upon the conviction that, under the principles of right and justice, it is constrained to do so. *Selling v. Radford*, 243 U.S. 46, 51 (1917); *see also Matter of Calvo*, 88 F.3d 962, 966-67 (11th Cir. 1996); Rule 5(e), S.D. Fla. Rules Governing Attorney Discipline (requiring *Selling*-based analysis before imposing reciprocal discipline).

Mr. Norkin alleges that the factual events surrounding his disciplinary sanction have been exaggerated as to their impact and are insufficient to justify discipline, relying heavily on the referee's finding that there was an “absence of dishonest or selfish motive.” This argument misses the point. Whether or not his actions actually offended or were absent a dishonest or selfish motive does not diminish the inappropriateness and unprofessionalism of those actions. The record contains more than sufficient evidence, taken objectively, of repeated conduct that falls short of the standards of this honored and respected profession, as documented by the sworn testimony of witnesses during the disciplinary hearings, transcripts of court proceedings, and documents (letters and e-mails) submitted into the disciplinary record.

Mr. Norkin's procedural due process claims focus on an alleged lack of notice of the potential for discipline; that he was convicted of uncharged crimes; that he was not given the right to confront witnesses and cross-examine; and was given no appellate remedy. First, there is clear precedent that the Florida Supreme Court's "scope of review is somewhat broader than that afforded to the [referee's] findings of fact because, ultimately, it is . . . [the court's] responsibility to order an appropriate punishment." *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989). Second, as stated in the opinion of the Florida Supreme Court and supported by the facts, the "uncharged acts" that Mr. Norkin "challenges are, for the most part, simply findings of fact based on the evidence presented before the referee." *Norkin*, 2013 WL 5878901, at *4. Third, attorneys facing disciplinary proceedings are not entitled to receive all the guarantees afforded the accused in a criminal case. *Sealed Appellant 1 v. Sealed Appellee 1*, 211 F.3d 252, 254-55 (5th Cir. 2000). Although due process in a disciplinary context does include notice and an opportunity to be heard, it does not require confrontation and cross-examination of witnesses. *In re Karten*, 293 Fed.Appx. 734, 736 (11th Cir. 2008); *The Florida Bar v. Vannier*, 498 So. 2d 896, 898 (Fla. 1986). Finally, as far as the available appellate remedy, the Florida Supreme Court has the ultimate say as to the appropriate discipline, *see Anderson, supra*, so any appellate remedy would have to be directed to that court, which Mr. Norkin took full advantage of by moving for a rehearing as well as filing several additional motions that the court took under consideration.

Mr. Norkin also contends that the Florida Supreme Court did not take proper account of his "physical disability," while also requesting that any comments related to this disability be stricken from the record. Contrary to this assertion, the Florida Supreme Court did cite to these factors in its opinion and approved the referee's recommendation for Mr. Norkin to undergo a

mental health evaluation and participate in any recommended counseling. *Norkin*, 2013 WL 5878901, at *11 and *15. The evidence of this “disability,” as described in the report of the referee, may explain Mr. Norkin’s behavior but does not excuse it. Furthermore, this Court is without the ability to strike any specific language from the Florida record or disrupt the disciplinary sanctions imposed by the state. *See In re Williams*, 398 F.3d 116, 118 (1st Cir. 2005).

As for Mr. Norkin’s arguments as to the legality of the state court discipline, that is not a proper question for this Court. The question before this Court is whether it should decline to give reciprocal force to the state court’s disciplinary order, not to directly review the legality of the discipline issued.


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 suspended 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 he 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 Suspension upon the attorney at his court record address.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this 27th day of February, 2014.



FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

c: Honorable Ed Carnes, Chief Judge, Eleventh Circuit
All Miami 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
Clerk of Court
Clerk of Court, 11th Circuit
Southern District Bankruptcy Court
National Lawyer Regulatory Data Bank
Florida Bar
Attorney Admissions Clerk
Library
Jeffrey A. Norkin