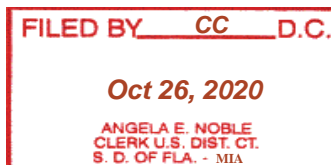


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2020-80
CASE # 20-MC-21933

IN RE: TINA MARIE TALARCHYK
FLORIDA BAR # 794872



**ORDER ON MOTION FOR RECONSIDERATION AND TO VACATE ORDER OF
SUSPENSION**

THIS CAUSE came before the Court upon Tina Marie Talarchyk’s Motion for Reconsideration and to Vacate Order of Suspension. (ECF No. 9). On September 21, 2020, Talarchyk was reciprocally suspended from practice in this Court (“Reciprocal Suspension”). *See In re: Talarchyk*, S.D. Fla. Admin. Order No. 2020-67 (Sept. 21, 2020) (ECF No. 8). The reciprocal discipline was based upon 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). Now, Talarchyk requests that this Court reconsider its Reciprocal Suspension and that it should be “vacated, [1] as the Order [of Suspension] it is founded upon is not final, still under review in this jurisdiction, [2] [she] was denied due process regarding potential discipline against her, and [3] subsequent review is properly performed under Rule 6 [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 (“Attorney Rules”)] and not Rule 8.” (ECF No. 8 at 2). She also raises the arguments that the Bankruptcy Court did not have jurisdiction when it issued the Suspension Order and that there was an infirmity of proof. (ECF No. 8 at 11–12).

Most of the arguments raised in the current motion are premised on issues that the Court

has already addressed in its Reciprocal Suspension. A motion for reconsideration is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing. *See Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005) (A motion for reconsideration cannot be used “to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.”); *Gonzalez v. Sec’y for Dep’t of Corr.*, 366 F.3d 1253, 1291–92 (11th Cir. 2004) (A motion for reconsideration “was never intended to permit parties to relitigate the merits of claims or defenses, or to raise new claims or defenses that could have been asserted during the litigation of the case.”). Of the remaining arguments, only two have not been raised previously in Talarchyk’s Response to Order to Show Cause (ECF No. 6) and addressed in this Court’s Reciprocal Suspension, and one which uses Attorney Rule 8(e) terminology but simply restates an earlier argument; these arguments are discussed below.

Attorney Rules 8 and 6

Talarchyk argues that this matter should have been analyzed under Attorney Rule 6, specifically citing Rule 6(c)(1), rather than Rule 8, distinguishing that Rule 6 concerns discipline within the jurisdiction of the Southern District and that Rule 8 concerns discipline outside the District. (ECF No. 9 at 4–6).

The title of Attorney Rule 6(c)(1) reflects that this rule concerns “Internal Referral[s]” where a judge “refer[s] in writing to the [Ad Hoc] Committee [on Attorney Admissions, Peer Review, and Attorney Grievance (hereinafter “Committee”).” Whereas Attorney Rule 8(a) concerns discipline imposed “by any other court of the United States.” The United States Bankruptcy Court for the Southern District of Florida is an “other court of the United States,” distinct from the United States District Court for the Southern District of Florida, and the

Suspension Order was not an internal referral to the Committee but rather an independent determination of discipline. As explained in the Suspension Order, without reservation, “[p]ursuant to Local Rule 2090-2(B)(1), 11 U.S.C. § 105(a), Ms. Talarchyk is SUSPENDED from practice before the United States Bankruptcy Court for the Southern District of Florida” and the only referral mentioned was “to the Florida Bar Attorney Consumer Assistance Program (ACAP) to investigate whether further proceedings against Ms. Talarchyk may be necessary as a result of this Order.” (ECF No. 1 at 16–17). As referenced, the discipline was pursuant to Bankruptcy Local Rule 2090-2(B)(1), which provides an independent basis for discipline, in that “[u]pon order to show cause entered by at least one judge, any attorney appearing before the court may, after 30 days’ notice and hearing and for good cause shown, be suspended from practice before the court, reprimanded or otherwise disciplined, by a judge whose order to show cause initiated the disciplinary proceedings.” *See In re Gleason*, 492 Fed. Appx. 86, 88 (11th Cir. 2012) (“Under the bankruptcy court’s local rules, a single judge has the authority to discipline an attorney, including the authority to suspend him from practice after providing notice and a hearing.”).

Certified Copy

Further claimed under the above argument is that because the District Court was not provided a “certified copy” of the Suspension Order as required by Attorney Rule 8(b), reciprocal discipline should be vacated. (ECF No. 9 at 7). However, Attorney Rule 8(b) does not require this Court to provide a certified copy to the attorney, only that “[u]pon the filing of a certified copy of a judgment or order” the Court may refer the case to the Committee. This Court became aware of the discipline by the Bankruptcy Court via email and thereupon verified the Suspension Order through CM/ECF. Per Bankruptcy Court policy, “persons who presently require certified documents . . . may opt to view the documents directly by accessing the court’s database, instead

of requiring paper certified copies.” See <https://www.flsb.uscourts.gov/faq/certified-copy-how-do-i-obtain-certified-copy-document-or-entire-case-file> (last visited 10/15/20). The Court verified the accuracy of the suspension order by viewing it through CM/ECF.

Infirmity of Proof

While raised as an infirmity of proof argument, Talarchyk simply restates an argument concerning the claim that she could not be held in violation of a court order if the legality of the order has not been determined on appeal. (ECF No. 9 at 12). As this concerns the legality of the Order of Suspension, review of this issue is not appropriate in this forum.

Having reviewed and considered these remaining issues, the Court concludes that neither vacation nor modification of the discipline is warranted, accordingly,

IT IS ORDERED that Talarchyk’s Motion for Reconsideration and to Vacate Order of Suspension is DENIED. Talarachyk shall remain suspended and may not resume the practice of law before this Court until reinstated by order of this Court. See Attorney Rule 12(a).

DONE AND ORDERED in Chambers in Miami, Miami-Dade County, Florida, this 26th day of October, 2020.



K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: Douglas C. Broeker, Esq., counsel for Tina Marie Talarchyk
Tina Marie Talarchyk