IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DENNIS L. HORTON,

Respondent.

_____/

Supreme Court Case
No. SC17-782

The Florida Bar File
No. 2017-30,371 (07B) (CES)

REPLY/CROSS-ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Rules

PRELIMINARY STATEMENT

Complainant will be referred to as The Florida Bar, or as the bar. Dennis L. Horton, respondent, will be referred to as respondent throughout this brief.

References to the Report of Referee shall be by the symbol RR followed by the appropriate page number.

References to specific pleadings will be made by title. References to the transcript of the final hearing are by symbol T, followed by the volume, followed by the appropriate page number. (e.g., T Vol. I, p. 289). References to the sanction hearing held on October 23, 2017 are by T followed by the date and then appropriate page number. (e.g., T October 23, 2017 p. 10). References to the May 19, 2017 hearing on Respondent's Emergency Motion for Leave and Clarification Regarding Order of Suspension and Motion to Dissolve or Modify Order of Suspension are by T followed by the date and then the appropriate page number (e.g., T May 19, 2017 p. 10).

References to the bar's exhibits shall be by symbol TFB Ex. followed by the appropriate exhibit number and, where appropriate, Bates Number (e.g., TFB Ex. 1, Bates Number 000040). References to respondent's composite exhibit number 1 shall be by the symbol R Ex. 1 followed by the appropriate tab number and the page number (e.g., R Ex. 1, A-15).

SUMMARY OF ARGUMENT

Respondent engaged in a pattern of misconduct where he exploited vulnerable elderly clients for his own benefit and intentionally violated his professional and fiduciary duties. He failed to maintain his trust accounts in substantial minimum compliance with the rules despite being a long-time and experienced practitioner in the areas of estate planning and real estate transactions. He routinely and knowingly commingled client trust funds in his operating account where those funds were used to cover persistent shortages in that account. Respondent's testimony at the final hearing clearly demonstrated his lack of remorse and, more concerningly, his lack of understanding as to his professional and fiduciary duties owed to his clients (T October 23, 2017 pp. 99-103). Further, respondent engaged in cumulative misconduct of a similar nature, which warrants the imposition of harsher sanctions than would be warranted in the instance of isolated misconduct. The Florida Bar v. Parrish, 43 Fla. L. Weekly S204a (Fla. May 3, 2018).

Rule 3-5.2 of the Rules Regulating The Florida Bar is not unconstitutional, did not violate respondent's due process rights nor did it result in an *ex parte* proceeding against respondent. This Court specifically addressed the due process aspects of the rule in its order amending R. Regulating Fla. Bar 3-5.2 in 1991. The

Florida Bar re Amendment to the Rules, 593 So. 2d 1035, 1036 (Fla. 1991). The rule provides an accused attorney with an opportunity to seek dissolution of the emergency suspension order. Respondent filed such a motion on May 12, 2017, which the referee heard on May 19, 2017 (T May 19, 2017). Therefore, respondent was afforded due process. The rule also provides for an expedited resolution of the charges leading to the emergency suspension. Therefore, the rule affords due process in the manner required by the Supreme Court of the United States and is not unconstitutional. Finally, it is well settled in Florida that attorneys do not have a property right with respect to the license to practice law. The practice of law is a privilege, not a right, and it is revocable for cause. R. Regulating Fla. Bar 3-1.1.

ARGUMENT

ISSUE I

THE REFEREE'S RECOMMENDATION OF A TWENTY-FOUR MONTH SUSPENSION NUNC PRO TUNC TO THE DATE OF THE EMERGENCY SUSPENSION ORDER IS NOT SUPPORTED BY THE CASE LAW AND STANDARDS AND THE APPROPRIATE SANCTION IS DISBARMENT

A referee's findings of fact for rule violations are treated with the same deference by this Court as the referee's factual findings in general and this Court generally will not reweigh the evidence and substitute its judgment for that of the referee. Parrish, 43 Fla. L. Weekly S204a. With respect to the referee's finding that respondent's conduct violated rule 4-8.4(c), the referee clearly found respondent's various explanations for his acts of misconduct not to be credible (RR 16-19). The referee discussed at length in his report his reasons for finding respondent's actions violated Rule 4-8.4(c) (RR 16-19). Respondent prematurely paid himself personal representative fees from Ms. Barry's estate, which he accomplished using his position as her attorney-in-fact, very shortly before her death. Respondent transferred virtually all of the funds in her personal account to his trust account. Had the funds been in her personal account at the time of her death, respondent could not have accessed them prior to being appointed as personal representative. The day after Ms. Barry's death, respondent paid his

personal representative and attorney's fees from the trust account to his operating account. He admitted at the final hearing that he knew he had not been appointed by the court as personal representative at the time he made the payment to himself. (T Vol. II pp. 246-247). Respondent filed the matter for probate the same day as the transfer and he testified that he ". . . thought [he] might get appointed that day." (T Vol. II p. 247). It did not escape the referee's notice that, after the $15,000.00 check respondent wrote from Mr. Lowman's account was dishonored by the bank, respondent paid himself additional personal representative and attorney's fees from Ms. Barry's funds and deposited those monies to his chronically overdrawn operating account. (RR 16-17). Respondent's intent was clear. He needed immediate access to Ms. Barry's estate funds to cover shortages in his operating account. Regardless of whether he ultimately was entitled to the amount taken as fees, respondent's method was dishonest.

Similarly, the referee discussed, at great length, in his report respondent's actions with respect to his manipulation of payments from Mr. O'Connell's account that constituted a clear violation of rule 4-8.4(c). Respondent paid himself $82,845 in fees in 2016 yet testified he was entitled to only $40,000.00, so he refunded the difference to Mr. O'Connell (RR 17-18). Respondent was not able to offer a satisfactory explanation as to the reason he paid himself $42,845.00 above

what he indicated he had earned (RR 18). Additionally, although respondent testified he used the funds from Mr. O'Connell's investment account only for Mr. O'Connell's expenses, the bar's auditor determined that, on three occasions, respondent used these funds for his own financial matters (RR 18). Respondent's testimony did not comport with the financial records. After the bar commenced its investigation (TFB Ex. 2), respondent wrote Mr. O'Connell a letter attempting to explain his fees for the prior two years (TFB Ex. 18). Respondent intentionally failed to disclose to Mr. O'Connell the total amount of money he paid himself 2015 and 2016. Instead, he gave Mr. O'Connell the final figures based on the total payments less the money respondent returned to Mr. O'Connell's account. If respondent's total fee payments were fully earned and documented, then no reason existed for respondent to not provide the correct full accounting showing the total fee amounts paid, the total fee amounts respondent refunded, and the net fees paid. Respondent had a fiduciary duty to provide Mr. O'Connell with complete and accurate information. Clearly, respondent's use of Mr. O'Connell's funds was dishonest and his failure to provide accurate information and invoices contemporaneous with the expenditures was an attempt to obscure his actions. Even if Mr. O'Connell did not wish to receive any invoices, respondent had a fiduciary duty to fully document his handling of his client's life savings.

This Court does not view violations of rule 4-8.4(c) as minor because basic, fundamental dishonesty is a serious flaw that historically this Court has not tolerated. The Florida Bar v. Gilbert, 43 Fla. L. Weekly S148c (Fla. March 22, 2018); citing The Florida Bar v. Rousso, 117 So. 3d 756, 767 (Fla. 2013), quoting The Florida Bar v. Rotstein, 835 So. 2d 241, 246 (Fla. 2002). Here, respondent engaged in multiple acts of dishonest conduct. Cumulative acts of misconduct of a similar nature warrant the imposition of a more severe sanction that an isolated instance of misconduct or cumulative misconduct of a dissimilar nature. The Florida Bar v. Ratiner, 238 So. 3d 117, 123 (Fla. 2018). Cumulative misconduct includes instances where multiple acts of misconduct are charged by the bar in one disciplinary case. The Florida Bar v. Williams, 604 So. 2d 447 (Fla. 1992); The Florida Bar v. Keane, 536 So. 2d 990 (Fla. 1988). In Ms. Williams' case, the bar charged her with eight counts alleging multiple rule violations for failing to preserve a client's property, neglecting legal matters, failing to maintain her personal integrity, and making false and misleading statements. The referee recommended a public reprimand, ninety-day suspension and a two-year period of probation. This Court found disbarment was warranted because the cumulative effect of Ms. Williams' misconduct, demonstrated her unfitness to practice law. Williams, 604 So. 2d at 452. Similarly, in Mr. Keane's case, this Court considered

his pattern of misusing public funds while serving as a Public Defender, which resulted in criminal charges where adjudication of guilt was withheld. This Court held that his actions constituted cumulative misconduct because his acts were more than just isolated instances of poor judgment. Keane, 536 So. 2d at 991-992. He took advantage of his position as the elected Public Defender to repeatedly commit unethical and illegal acts. Id. at 991. Similarly, respondent engaged in a pattern of misconduct where he took advantage of his position of trust as an attorney and fiduciary for his elderly clients for his own benefit. Additionally, respondent routinely deposited credit card payments representing trust funds to his operating account where they often remained for protracted periods of time and were used to cover shortages in the operating account (T Vol I pp. 102-106; TFB Ex. 21 Bates Numbers 000758-000762). In other words, respondent misused client trust funds, a far more serious transgression than technical trust account recordkeeping violations. The misuse of client funds is one of the most serious offenses an attorney can commit and warrants the imposition of far more than a mere public reprimand. The Florida Bar v. Martinez-Genova, 959 So. 2d 241, 246 (Fla. 2007).

Finally, with respect to respondent's argument that he advised Mr. Lowman to seek the advice of an attorney in Georgia, where he was residing at the time respondent sent him the amended trust document naming respondent as a

significant beneficiary, Mr. Lowman refuted this claim during his sworn statement. Mr. Lowman testified that it was his idea to make respondent a fifty percent beneficiary, explaining that, because he expected respondent to take care of him at some point later in his life, he felt it only fair to ". . . take care of [respondent] later on . . ." (TFB Ex. 5 Bates Number 000028). Respondent never advised Mr. Lowman to seek the advice of independent counsel or to seek the advice of an attorney in Georgia before executing the trust amendment (TFB Ex. 5 Bates Number 000028). Respondent merely told Mr. Lowman that he needed to check with his new law partner to make sure his partner was agreeable with respondent being named a beneficiary (TFB Ex. 5 Bates Number 000028).

In recent years, this Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct to protect the legal profession from dishonor and disgrace. The Florida Bar v Dopazo, 232 So. 3d 258, 263 (Fla. 2017); Parrish, 43 Fla. L. Weekly S204a. Respondent's elderly clients reposed great trust in him. Mr. O'Connell and Mr. Lowman relied on respondent to manage all their financial affairs during a time when they were less able to do so themselves. Respondent's trust accounting issues, standing alone, may warrant the imposition of a less harsh sanction than disbarment. Respondent's abuse of his clients' trust, however, strikes at the very heart of the purpose of the legal profession. Such misconduct

tarnishes the public's perception of attorneys and damages the level of trust that the attorney-client relationship requires. Such a breach of respondent's ethical and fiduciary duties warrants the imposition of disbarment.

ISSUE II

THE REFEREE'S FINDING OF REMORSE AS A MITIGATING FACTOR IS NOT SUPPORTED BY THE EVIDENCE AND TESTIMONY

Respondent's misconduct cannot be considered as separate acts. With the exception of his trust account recordkeeping deficiencies, respondent's misconduct was the result of an ongoing pattern that occurred in response to his financial crisis. Respondent's attempts to minimize his misconduct demonstrates his lack of true remorse. The length of respondent's current emergency suspension has been due to his decision to waive the time requirements in the processing of this case. See respondent's Notice of Waiver filed on July 7, 2017. Therefore, the length of his existing emergency suspension cannot be argued as a mitigating factor justifying a one-year suspension retroactive to the effective date of his suspension.

In his report, the referee did not cite to any evidence in the record for support of his finding as to the mitigating factor of remorse (RR 28-30). Even in the presence of all the mitigating factors found by the referee, including remorse, the facts, the cumulative nature of respondent's misconduct and the aggravating factors warrant disbarment.

ISSUE III

RESPONDENT WAS AFFORDED DUE PROCESS AND RULE 3-5.2 DOES NOT CREATE AN EX PARTE PROCEEDING

The constitutionality of a rule is determined by applying the rational basis test. The Florida Bar v. St. Louis, 967 So. 2d 108, 121 (Fla. 2007), citing generally DeBock v. State, 512 So. 2d 164, 168 (Fla. 1987), held that there was a rational basis for holding attorneys to a different standard than other regulated professionals. This Court further stated in Mr. St. Louis' case that "the rational basis test is two pronged: (1) whether there is a legitimate state interest to be served; and, if so, (2) whether the rule bears some reasonable relationship to that legitimate state interest." St. Louis, 967 So. 2d at 121.

The purpose of rule 3-5.2 is the immediate protection of the public where the unrebutted evidence clearly and convincingly establishes that the accused attorney ". . . *appears* to be causing great public harm . . . ." (Emphasis added.) Rule 3-5.2(g) of the Rules Regulating The Florida Bar complies with due process requirements and, therefore, is not unconstitutional. An accused attorney has the opportunity to ". . . move *at any time* for dissolution or amendment of an emergency order by motion filed with the Supreme Court of Florida. . . and . . . will immediately be assigned to a referee designated by the chief justice. . . The referee will hear a motion to terminate or modify a suspension or interim probation

imposed under this rule within 7 days of assignment and submit a report and recommendation to the Supreme Court of Florida within 7 days of the date of the hearing." (Emphasis added). R. Regulating Fla. Bar 3-5.2(g); 3-5.2(i). The hearing on the underlying charges must be held in an expeditious manner and the referee must file his or her report and recommendation within ninety days of appointment. The rule provides protection for an accused attorney where the time limits are not met (unless the accused attorney has waived those time limits, as respondent did here). "If the time limit specified in this subdivision is not met, that portion of an emergency order imposing a suspension or interim probation *will be automatically dissolved*, except upon order of the Supreme Court of Florida, provided that any other appropriate disciplinary action on the underlying conduct still may be taken." (Emphasis added). Finally, the rule provides that this Court will expedite the consideration of a referee's report regarding emergency suspension and, if oral argument is granted, will schedule it as soon as practicable. R. Regulating Fla. Bar 3-5.2(m). Further this Court specifically addressed the due process aspects of rule 3-5.2 in its order amending it in 1991. This Court stated:

> . . . [W]e adopt the proposal submitted by The Florida Bar, but modify it to reflect some of the concerns raised by Henry Trawick, Jr. . . . . Many of the other changes reflected in the appendix are technical. Several, however, are substantive and are necessary, we believe, to make this rule meet the requirement of due process.

> First, we agree with Mr. Trawick that affidavits should not become a basis for depriving attorneys of their livelihoods if in fact these affidavits are meritless. Thus, we have heightened the standard by which such affidavits will be reviewed in this Court upon a motion to dissolve an emergency order. Under this new standard, the affidavit or affidavits must allege facts that, if true, would demonstrate clearly and convincingly that an attorney appears to be causing great public harm. We also have specified that, in the hearing on a motion to dissolve or modify an emergency order, The Florida Bar will bear the burden of demonstrating a likelihood of succeeding on the merits of the underlying complaint. Although emergency suspension and probation are not entirely like a temporary injunction, we agree with Mr. Trawick that the two are sufficiently similar to require that a somewhat similar burden be placed on The Florida Bar. See, e.g., Department of Business Regulation v. Provende, Inc., 399 So. 2d 1038 (Fla. 3d DCA 1981). These requirements help conform these procedures to the requirements of due process." The Florida Bar re Amendment to the Rules, 593 So. 2d 1035, 1036 (Fla. 1991).

The bar's Petition for Emergency Suspension and this Court's order of emergency suspension entered on May 3, 2017 were not entered *ex parte*. Black's Law Dictionary defines an *ex parte* motion as being one that is ". . . made to the court without notice to the adverse party; a motion that a court considers and rules on without hearing from all sides." Approximately two months prior to filing the Petition for Emergency Suspension, the bar advised respondent's prior counsel of its intent to pursue emergency suspension in this matter (T May 19, 2017 p. 23).

Further, respondent was served with a copy of the Petition for Emergency Suspension. The facts alleged in the bar's petition were based not only of the bar's Staff Auditor's report but also on respondent's sworn statement wherein he admitted to much of the misconduct alleged (TFB Ex. 20 Bates Numbers 000540-000548, 000554-000556, 000563, 000565, 000575, 000580-000581; TFB Ex. 21 Bates Numbers 000667-000669, 000686, 000694-000695, 000723, 000727-000728, 000734-000738, 000745, 000755-000756, 000758-000762). Respondent then availed himself of the remedies provided by rule 3-5.2 by filing Respondent's Emergency Motion for Relief and Clarification Regarding Order of Suspension on May 8, 2017 and his Motion to Dissolve or Modify Order of Emergency Suspension on May 12, 2017. The referee was appointed on May 9, 2017 and held an expedited hearing on the emergency suspension and on respondent's two motions on May 19, 2017. During the hearing, respondent made essentially the same arguments presented in his Initial Brief on Cross-Appeal (T May 19, 2017 pp. 7-18). The referee entered his Report of Referee (Hearing on Petition to Terminate or Modify Suspension) on May 26, 2017 finding that respondent was not challenging whether the bar could demonstrate a likelihood of prevailing on the merits of any element of the rules violations [Report of Referee (Hearing on Petition to Terminate or Modify Suspension) dated May 26, 2017, p. 3].

No merit exists to respondent's argument that he was not causing great public harm because his misconduct, if any, occurred in the past and, because his financial situation had been remedied, was unlikely to re-occur in the future. In The Florida Bar v. Guerra, 896 So. 2d 705, 706-707 (Fla. 2005), this Court held that an attorney's discontinuation of the underlying misconduct was not a valid basis to dissolve or amend an emergency suspension order. This Court further stated that it was to be understood that an attorney would cease misconduct once the violations were discovered. In respondent's case, he repaid the loan from Mr. Lowman, with interest, after Mr. Lowman complained to the bar and respondent was notified of the bar's investigation into the matter (T Vol. I p. 78). The misconduct concerned respondent's actions in entering into an improper business transaction with his client. Repayment of the loan was appropriately considered by the bar and the referee as a mitigating factor. It does not cancel out respondent's acts of misconduct, however. Respondent's claim that he has now resolved his financial crisis and the fact that he does not appear to owe any further restitution are irrelevant to the issues present in this disciplinary case. Respondent engaged in a course of conduct over a period of time that, as an experienced practitioner, he knew or reasonably should have known was impermissible. From the outset of these proceedings, respondent demonstrated a lack of awareness that it was

unethical for him to remedy his personal financial problems by using client funds, regardless of whether the clients volunteered those funds. The referee clearly did not give credence to respondent's claim that the funds he paid himself from Mr. O'Connell's account were earned fees (RR 17-18). Finally, the referee found respondent's premature payment of his personal representative fees from Ms. Barry's estate was due to respondent's admitted need to find the funds necessary to cover shortages and was not, as respondent claimed, merely a timing and oversight problem (RR 16-17). Respondent's actions have never been acceptable, as the referee noted in his report (RR 29). Had Mr. Lowman not complained to the bar, respondent's misconduct would not have come to light and may not have ended. Respondent continues to display a lack of awareness of the severity of his misconduct.

The Rules Regulating The Florida Bar did not require the bar to notify respondent of its intention to take the sworn statement of the complaining witness, Edward Lowman, during the investigative phase. The bar took Mr. Lowman's sworn statement on February 6, 2017 prior to the filing of any formal disciplinary proceedings against respondent (TFB Ex. 5). The statement was taken as part of the bar's initial investigation into Mr. Lowman's grievance against respondent. Further, the Florida Rules of Civil Procedure did not apply at that time because no

formal complaint/petition for emergency suspension had been filed. After the Petition for Emergency Suspension was filed, respondent had ample opportunity to take a formal deposition of Mr. Lowman but chose not to do so as part of discovery. At the time the bar took Mr. Lowman's sworn statement on February 6, 2017 (TFB Ex. 5), the bar had no way to know that, by the time the final hearing was held on August 24, 2017, Mr. Lowman would be unable to travel to attend the final hearing due to serious medical issues (T Vol. I p. 27). Additionally, respondent did not seek to have Mr. Lowman appear telephonically at the final hearing.

Finally, respondent states that the bar's Petition for Emergency Suspension was primarily based on the affidavit of the bar's auditor, Matthew Herdeker. However, the bar's Petition included lengthy transcripts of respondent's sworn statements and his admissions of misconduct. Respondent admitted during his sworn statement that he took loans from Mr. Lowman, that Mr. Lowman was his client at the time and that he did not advise Mr. Lowman in writing to seek the advice of independent counsel (TFB Ex. 20 Bates Numbers 000546, 000549-000550, 00054-000557, 000559-000560, 000563). As such, respondent corroborated the statements made by Mr. Lowman in both his grievance (TFB Ex. 1) and in the testimony given in during his sworn statement (TFB Ex. 5).

Respondent also admitted during his sworn statement that he paid himself personal representative fees from the Barry estate account prior to being appointed by the court as personal representative (TFB Ex. 21 Bates Numbers 000686-000687). Further, with regard to respondent's client, Mr. O'Connell, he admitted during his sworn statement that he paid himself a large sum of money in fees that he "figured [he] had earned" (TFB Ex. 21, Bates Number 73). Respondent did not keep any contemporaneous records or invoices documenting the services he allegedly rendered (TFB Ex. 21 Bates Numbers 00728, 00734). Respondent admittedly did not provide Mr. O'Connell with any type of accounting of those payments until November 22, 2016, after the bar notified respondent of its investigation into Mr. Lowman's grievance (TFB Ex. 21 Bates Numbers 000735-000737; TFB Ex. 2).

Respondent's argument that he has a property interest in his license to practice law is disingenuous and without merit. The case law is well settled in Florida that an attorney does not possess a property right with respect to the license to practice law. The Florida Bar v. Glant, 684 So. 2d 723, 724 (Fla. 1996); State ex rel. Evans, 94 So. 2d 730 (Fla. 1957); Lambdin v. State, 9 So. 2d 192, 193 (Fla. 1942). This Court, in St. Louis, 967 So. 2d at 121, further stated that the Rules Regulating The Florida Bar do not infringe on a liberty or property right because "the practice of law is not a right but a conditional and revocable privilege." In

DeBock, 512 So. 2d at 168, this Court stated, "in order to dispel the implication nascent in DeBock's argument that he somehow has a 'right' to practice law, we point out what should be obvious to all members of the bar: '[a] license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause.' Rule 3-1.1, Rules Regulating The Florida Bar."

This Court also addressed respondent's argument in The Florida Bar. v. Tipler, 8 So. 3d 1109, 1118 (Fla. 2009). Mr. Tipler argued that the practice of law was akin to a property right and came with the same due process protections applicable to deprivation of property claims. Tipler, 8 So. 3d at 1118. He compared his right to practice law to a parent's fundamental right to raise a child. This Court disagreed. Citing R. Regulating Fla. Bar 3-1.1, this Court found that a license to practice law conferred no vested right to the holder. Instead, it was a conditional privilege that was revocable for cause. Id.

This issue also was addressed in Peterson v. The Florida Bar, 720 F. Supp. 2d 1351 (M.D. Fla. 2010). The court held that "it is an absolute prerequisite for a substantive due process claim that the plaintiff show deprivation of a protectable interest in life, liberty or property." Petersen, 720 F. Supp. 2d at 1365. Peterson brought an action for declaratory and injunctive relief against the bar, and other parties, after his application for re-certification as an elder law specialist was

denied. Peterson brought his action under 42 U.S.C. §1983 and asserted violations of his constitutional rights, including procedural and substantive due process under the Fourteenth Amendment, freedom of speech under the First and Fourteenth Amendments, and accessibility to the courts under the First and Fourteenth Amendments. Id. at 1357. In considering his due process claims, the court noted that the concept of substantive due process was intended to protect rights that were implicit in the concept of ordered liberty. Id. at 1363. The scope of substantive due process, however, was quite narrow and unenumerated rights could not be obtained by judicial expansion. As such, the court found no merit to Peterson's argument that he had a property and liberty interest in being re-certified in elder law. What interest, if any, Peterson had in being re-certified was created by law and not by the Constitution, and thus, was not fundamental. Id. at 1364. Peterson's alternative argument, that his due process rights were violated by the bar because the denial of his re-certification was an arbitrary government action, also lacked merit. Not only did Peterson fail to demonstrate that he suffered the violation of a fundamental right, he also failed to demonstrate that he was deprived of a protectable interest in life, liberty or property. Id. Similarly, respondent's argument that he has a claim under 42 U.S.C. §1983 is without merit because the

"license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause." R. Regulating Fla. Bar 3-1.1.

Rather than accept responsibility for his actions, respondent accused the bar of prosecutorial misconduct in seeking an emergency suspension and then publicizing it. Any negative publicity respondent suffered was the direct result of his own misconduct and not any action taken by the bar. An order of emergency suspension is a public disciplinary sanction. R. Regulating Fla. Bar 3-5.4(a). "Unless otherwise directed by the court, and subject to the exceptions set forth below, all public disciplinary sanctions may be published for public information in print or electronic media." R. Regulating Fla. Bar 3-5.4(c). The bar routinely makes available press releases when public disciplinary orders are entered by this Court. The bar treated respondent's emergency suspension no differently than any other attorney receiving such a sanction. Whether local news outlets publish disciplinary orders is not under the bar's control. In this instance, the local news elected to cover respondent's emergency suspension. This was not done at the behest of the bar, contrary to respondent's subjective belief. Because the practice of law is not a property right, respondent has no viable claim for damages to his reputation.

Rule 3-5.2 regulates the practice of law for the public's best interest. The bar has a substantial interest in ensuring the public is protected from an attorney who may be engaging in a course of conduct that could result in significant harm if not immediately addressed, such as misappropriating client funds or, in respondent's case, soliciting personal loans from vulnerable elderly clients, misusing his position as an attorney in fact to use a client's funds to cover shortages and misusing client trust funds by routinely depositing them to his operating account where they were used to cover shortages and insufficient funds fees charged by the bank. Therefore, Rule 3-5.2 passes the rational basis test and is constitutional.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a twenty-four-month suspension *nunc pro tunc* to the date of respondent's emergency suspension order and instead impose as a sanction immediate disbarment and payment of costs currently totaling $24,881.07.

Carrie Constance Lee, Bar Counsel

CERTIFICATE OF SERVICE

I certify that this document has been E-Filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal and that a copy has been furnished by United States Mail via Certified Mail No. 7160 3901 9843 2748 4563, return receipt requested to Brett Alan Geer, The Geer Law Firm, L. C., 3030 North Rocky Point Drive West, Suite 150, Tampa, Florida 33607-7200 and via E-Mail to brettgeer@geerlawfirm.com; and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323 via E-mail at aquintel@floridabar.org on this 31st day of May, 2018.

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CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that this brief has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

Carrie Constance Lee, Bar Counsel