

FILED
JOHN A. TOMASINO
MAY 26 2017
CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

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)

REPORT OF REFEREE
(HEARING ON PETITION TO TERMINATE OR MODIFY SUSPENSION)

I. **SUMMARY OF PROCEEDINGS**

This Report results from the hearing conducted to address whether respondent's immediate, emergency suspension from the practice of law in this State issued by the Florida Supreme Court should remain in place, or be modified or dissolved. The hearing also concerned clarification as to whether Michael G. Horton, respondent's son and law partner, would be allowed access to the law firm's operating and trust accounts. Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rules 3-5.2 and 3-7.6, Rules of Discipline, the following proceedings have occurred:

On May 1, 2017, The Florida Bar filed its Petition for Emergency Suspension against respondent to initiate these proceedings. On May 3, 2017, the

Court issued its order suspending respondent from the practice of law pursuant to Rule 3-5.2. Thereafter, respondent filed an Emergency Motion for Relief and Clarification Regarding Order of Suspension on May 8, 2017. On May 9, 2017, the bar filed its response, and the undersigned was appointed as referee. On May 12, 2017, respondent filed a Motion to Dissolve or Modify Order of Emergency Suspension.

The hearing on respondent's motions was held on May 19, 2017. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits taken in evidence, and this, the Report of Referee, are part of the ongoing record in this case, which will be forwarded to the Supreme Court of Florida after the final hearing in this matter.

II. FINDINGS OF FACT

Jurisdictional Statement.

Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary of Case.

This referee heard arguments made by the bar and respondent. As the referee is unable to rule as to whether respondent appears to be causing great public harm, the standard as applied under 3-5.2(i) is that the referee will recommend

dissolution or amendment, whichever is appropriate, to the extent that bar counsel cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying rule violations. As respondent is not challenging whether the bar can demonstrate a likelihood of prevailing on the merits of any element of the rule violations, the motion to dissolve the emergency suspension will therefore be denied under subsection (i) of the rule.

As to the motion to clarify the order of suspension and the stipulation of the parties on the record, I find that the Order of Emergency Suspension does not extend to Michael G. Horton, and the operating and trust accounts are not frozen as to Michael G. Horton. Respondent will continue to not have access to those accounts as previously stated in the Order of Emergency Suspension. The parties represent that there are no known restitution issues to be addressed at this time.

Respondent shall provide through counsel will provide the following records as required under Chapter Five of the Rules Regulating The Florida Bar no later than the 10th of each month to bar counsel for the bar's review during the pendency of this matter: monthly trust account bank statements; all bank deposit slips and receipts with copies of deposited items; the front and back of all cancelled checks; the client's receipts and disbursements journal for the trust account; all client ledgers for clients who had funds in the trust account during the audit period; monthly reconciliations; monthly comparisons and documentary

support for the disbursements and transfers from the trust account, such as closing or settlement statements.

III. RECOMMENDATIONS AS TO EMERGENCY SUSPENSION

Pursuant to the provisions of Rule 3-5.2(g), this referee recommends the following:

A. That the order of emergency suspension, dated May 3, 2017, is not modified as against Dennis L. Horton.

B. The Order of Emergency Suspension does not extend to Michael G. Horton, and the firm's operating and trust accounts are not frozen as to Michael G. Horton.

C. The Florida Bar's costs in these proceedings will be addressed in the final Report of Referee.

Dated this _____ day of _____, 2017.

A handwritten signature in black ink, appearing to read "Phillip A. Pena", written over a horizontal line.

PHILLIP A. PENA
Referee

Original To:

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