

IN THE SUPREME COURT OF FLORIDA
Before a Referee

THE FLORIDA BAR,

Complainant,

Case No: SC17-782

v.

DENNIS L. HORTON,

Respondent.

_____ /

ANSWER WITH AFFIRMATIVE DEFENSES;
MOTION TO DISMISS PETITION

Respondent, DENNIS L. HORTON, through undersigned counsel, files his Answer with Affirmative Defenses to the Petition for Emergency Suspension, and a Motion to Dismiss the same, as follows:

1. Without knowledge, denied.
2. Admitted.
3. Denied.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Without knowledge, denied.

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10. Without knowledge, denied.
11. Without knowledge, denied.
12. Without knowledge, denied.
13. Without knowledge, denied.
14. Denied.
15. Denied.
16. Without knowledge, denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Admitted.
22. Admitted.
23. Denied.
24. Denied.
25. Denied.
26. Admitted.
27. Denied.
28. Denied.
29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Admitted.

36. Denied.

37. Denied.

38. Admitted.

39. Admitted.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44 through 59. Admit representing Mr. O'Connell; remainder denied.

Affirmative Defenses

1. Unconstitutionality. The rule of court by which The Florida Bar has petitioned for emergency suspension, Rule 3-5.2, is unconstitutional on its face, and as applied to this case and Respondent. While the rule appears to provide a right of substantive and procedural due process to challenge the sufficiency of a

Petition filed under the rule, in reality no such right of due process is provided to this Respondent or any respondent in seeking to challenge or dismiss a Petition filed by the Bar under said rule.

2. Misleading the Court. Rule 3-5.2 permits the Florida Bar to apply to this Court on an ex parte basis and have the Respondent's license suspended in an ex parte proceeding. The Florida Bar failed to provide complete candor to the Court, including facts adverse to the Bar's position that were known to the Bar in violation of the rules governing ex parte proceedings. Had the adverse facts been pled and heard, ex parte, the Court may have treated the Petition differently, or may have qualified its Order granting it.

3. Administrative Overreach. The Florida Bar presumes to police, the nature, and scope, and quality of the attorney-client relationships it elected to investigate as to Respondent's clients, and presumes to divine the substance of the attorney-client confidences regarding services Respondent provides to the clients.

4. Mitigation. Respondent pleads and will prove identified and other facts tending to mitigate any sanction to be imposed.

Motion to Dismiss

1. The instant Petition is insufficient at law to state a cause for suspending Respondent's law license under the standard set forth in Rule 3-5.2(a)(1).

2. The instant Petition fails to plead insufficient facts law to state or sustain a cause for suspending Respondent's law license under the standard set forth in Rule 3-5.2(a)(1).

3. The instant Petition fails to plead adverse facts known to The Florida Bar in the ex parte proceeding the Bar initiated by filing its Petition under Rule 3-5.2(a)(1). This failure renders the Petition insufficient as a matter of law and ethics to state a cause for suspending Respondent's law license under that rule.

CERTIFICATE OF SERVICE

I CERTIFY that this paper is furnished to bar counsel Carrie C. Lee, Esq., at clee@floridabar.org; mcasco@floridabar.org, aquintel@floridabar.org, avanstru@floridabar.org, at The Florida Bar, 561 E. Jefferson Street, Tallahassee, Florida 32399 on May 22, 2017.

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