Neal J. Blaher

From: Neal J. Blaher [njblaher@blaherlaw.com]
Sent: Friday, December 05, 2014 12:54 PM
To: Sonia Rosa; Debra Sullivan
Cc: Jan K. Wichrowski; JoAnn M Stalcup
Subject: RE: Neal Jonathan Blaher hearing - NOTICE TO REFEREE / CIRCUIT JUDGE MIRMAN

Upon receiving a copy yesterday of the first email from Florida Bar counsel to the Referee, I was made aware of the requirement that the Referee conduct a hearing on whether to terminate or modify the emergency suspension entered by the Florida Supreme Court within 7 days of the court's order. I also sat by as an observer as the Bar and the Referee's Judicial Assistant exchanged emails to set such a hearing. Based on these communications and the text of Rule 3-5.2(g), I perceived that a motion to terminate the emergency suspension was expected of me, and I proceeded to file such a motion. (Only this afternoon did I receive, via regular, first class mail, an Order from the Supreme Court of Florida dated December 2, 2014, and postmarked December 3, 2014, advising me of some of this information that had not been provided to me before.)

Initially, Bar Counsel attempted to circumvent the mandate of the Rule by trying to characterize the hearing as merely a "case management conference" to decide whether the motion in question needed to be considered, even though consideration of the motion actually was mandated by the Rule. When the Referee rejected that attempt, Bar Counsel proceeded to express the intention of proceeding with a full-blown trial on the merits of the Petition. The timing of the Bar's notice of this intention effectively provided me with less than 24 hours to prepare a defense to my right to continue practicing law --- a right I attained and then retained for over 25 years, without ever being questioned.

This morning Bar Counsel stepped forward with yet another submission. This one makes more transparent how the Bar's actions, for reasons completely unfathomable to me, have become a personal and vengeful mission to discredit and attack me. Bar Counsel continues to ignore (and not mention or disclose) that no money is "missing." "Misappropriation" means to take or steal property to which one is not entitled and not return it. An "advance" is to draw funds that are expected, and when those funds are received, the account is replenished, the result being ***no money is missing***. The omission of this fact is what exposes Bar Counsel's continued mischaracterizations and inexplicably adversarial stance. The Bar's mission is found further in its offer to "assist" the Referee in writing his report to the Supreme Court.

And shortly before deciding to send this email, I discovered Bar Counsel's omission of the filled-out Errata Sheet, accompanied by my signed Subscription of Deponent, from the deposition transcript Counsel filed with the Supreme Court yesterday. I had spent 2 hours preparing that Errata Sheet at The Florida Bar office when I was asked to come in and review the transcript back in October. (I have just filed a Motion to Strike The Florida Bar's filing for this reason). Quite frankly, I have seen less adversarial positions and conduct from even the most aggressive, uncivil and unprofessional opposing counsel in some of the cases I have handled for clients.

Ever since the Bar began its campaign to shut me down despite the cooperation and forthcoming communications it received from me, I have seriously considered simply closing down my practice. As an attorney who has prided himself on a level of professionalism far exceeding the Rules of Professional Responsibility (and having clients and colleagues who could attest to that character, and gladly would do so if asked), I could not accept the notion of effectively being put on trial as a common criminal. Put another way, after 25 years of practicing my profession with the utmost diligence, integrity and compassion, I was unwilling to be subjected to an inquisition.

Now the Bar is seeking to press for a trial with less than 24 hours' notice for me to try and defend myself, including having to rebut allegations of an auditor in this short time span, when I, myself, lack the same level of training. I did not initiate the scheduling of this hearing. I only filed a motion after the Bar unilaterally initiated the process. So in addition to finding myself being subjected to a criminal trial, I am now being deprived of due process by being given insufficient opportunity to prepare a defense.

Under these circumstances I see no point in trying to defend myself against the missiles that the Bar intends to launch at me today. As stated above, I do not deserve to be treated, nor will I tolerate being treated, like a common criminal by being put on trial as such. Accordingly, I will not be appearing at today's hearing. Instead, I will now move forward with the process not of entering suspension mode, but of closing my practice altogether. Once I have the opportunity to finalize these actions, I will submit a more formal filing to the Supreme Court attesting to completion, thereby satisfying the Bar's efforts to shut me down and "protect" the public from the great harm of having a truly good and honorable lawyer within the ranks of The Florida Bar. This will be accomplished before the end of this month.

-Neal J. Blaher

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-----Original Message-----
From: Sonia Rosa [mailto:RosaS@circuit19.org]
Sent: Thursday, December 04, 2014 1:58 PM
To: Debra Sullivan

Cc: Jan K. Wichrowski; JoAnn M Stalcup; njblaher@blaherlaw.com
Subject: RE: Neal Jonathan Blaher hearing

The hearing for tomorrow at 2:00 pm is on Respondent's Motion to Dissolve Emergency Suspension which had to be heard within 7 days.

Attached please find a copy of the Notice of Hearing on Respondent's Motion.

Thank you.

Sonia Rosa
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Phone: 772.288.5575
E-SERVICE ADDRESS: rosas@circuit19.org
***Telephonic Attendance at UMC Hearings* is via COURTCALL 1-888-882-6878.**
See website www.circuit19.org, Judge Mirman's page for procedures/calendars/online calendaring system.
Calendar for scheduling: **https://slccjis.stlucieco.gov/attorney_calendar/**
Calendar for viewing docket: **https://slccjis.stlucieco.gov/cjis_stats/view_calendar/default.aspx**

From: Debra Sullivan [mailto:DSullivan@flabar.org]
Sent: Thursday, December 4, 2014 10:17 AM
To: Sonia Rosa
Cc: Jan K. Wichrowski; JoAnn M Stalcup; njblaher@blaherlaw.com
Subject: Neal Jonathan Blaher hearing

Ms. Rosas,

Here is the Supreme Court Case Docket sheet along with the rule itself. We would only need to have a very quick hearing today or tomorrow to decide. Please let me know something as soon as possible.

Thanks!!

Rule 3-5.2(g) states: The referee shall 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.

The referee, the Honorable Lawrence M. Mirman, was assigned on 12/2/14 (Tuesday), so according to the rule the hearing needs to be held on or before the 9th (next Tuesday), with his report being due on or before the 16th (the following Tuesday).

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December 15, 2014

VIA EMAIL, jstalcup@flabar.org
JoAnn Marie Stalcup, Bar Counsel
The Florida Bar, Orlando Branch Office
The Gateway Center, Suite 1625
1000 Legion Place
Orlando, Florida 32801-1050

Re: File No. 2014-31,028 (18A)

Dear Ms. Stalcup:

This letter responds to yours dated December 9, 2014.

Most of your letter attempts to respond to my email communication from December 5, 2014, in particular my point that I was given insufficient advance notice of what essentially would be a full evidentiary hearing on the charges that have been made against me. I believe the record will speak for itself, so that no further comment on much of your narrative is necessary.

I would, however, mention a point made in my December 5th message that was not addressed in your letter. Again for reasons I will not attempt to understand, it would appear that the Supreme Court notified both The Florida Bar and the Referee of its rulings in a more expedited fashion than it notified me. I received both of the Orders issued by the Supreme Court solely by regular, first class mail. The second Order did not arrive until the afternoon of December 5, when I received my postal mail. In other words, I received the Supreme Court's Order only an hour or two before commencement of the hearing arising from that Order. It was for this reason that I had been quite puzzled earlier in the week by the sudden expedited scheduling of a hearing on a motion that, as far as I knew, was still before the Supreme Court and not the Referee. The email exchange that took place that week made it clear that both the Referee and the Bar had received earlier notice. Therefore, nothing can truly rebut the absence of due process here.

This was not the first time that due process was absent from these proceedings. When the Bar opted to pursue an emergency petition, it knew full well that, from a procedural standpoint, it was depriving me of the right to answer before issuance of a Supreme Court injunction. Although I attempted to file a response anyway, the subsequent actions by the Supreme Court made it clear that it would not (and did not) consider my response. Given the level of cooperation I gave the Bar during its review and the nature of my position, there can be no other explanation for the Bar's procedural tactic: To deprive me of my right to practice law after a 25+ year unblemished record, and at the same time prevent me from presenting my position.

Speaking of tactics, also communicated to me for the first time when I received your letter was that "[t]he presumptive discipline for misappropriation is disbarment." Neither the conversation we had following my deposition, nor any other communication I had received to that point, gave any indication that such a direction was contemplated.

What I have learned from all this is that being forthright and cooperative with The Florida Bar's disciplinary staff serves no purpose other than to provide the Bar with the material it needs to reach whatever pre-ordained outcome it wishes to achieve. This includes finding scapegoats who can be used as examples of the Bar's vigilance in its enforcement activities, regardless of the true merits of any particular case. A sole practitioner, of course, has fewer political connections and thus provides fertile ground for being used as one of these targets. This allows your department to justify its existence and create job security for its staff. If you and your colleagues take offense with these observations, I suggest you consider the words that have been used to describe me in these proceedings.

I will now turn my attention to the "offer" in your letter to sign some sort of consent. Initially, I question why my cooperation with the Bar did not result in a conversation about a more civil outcome such as this ***before*** the Bar took its "emergency" action. That being said, I may be agreeable to a consent; however, I will not agree to some standard form that serves your interests while failing to acknowledge the position I have taken in these proceedings. More specifically, I would agree to a consent to "discontinue my practice of law" in the State of Florida based on my belief (with which The Bar, in the consent document, certainly may --- and obviously will --- disagree) that a fair hearing is not possible based on the events that have transpired throughout this investigation and subsequent proceeding. I will not agree to some sort of admission of guilt (because I strongly contest that suggestion) nor anything else that would wrongfully distort my reputation. Through my practice of law, I have assisted and made things right for countless individuals for over 25 years. I am not about to sign an admission that could call any of that into question.

This is the only right thing to do here. If The Bar disagrees and refuses a consent that actually fits the situation, then it is again revealing its true motivation here to make an "example" of me regardless of the level of any alleged misconduct. But let me be clear here: Whether or not an agreement can be reached on a consent, I will monitor the "press release" the Bar issues (in particular, the paragraphs I see in *The Florida Bar News*) to make certain it fully discloses what transpired here. In particular, I expect a sentence to be included that reports my position with regard to fee advances and my disagreement with the Bar over that interpretation. It further must acknowledge the fact that, at the time of the Bar's filing, there were no "shortages" in the trust account, as your own auditor's report reflects. As you well know, I previously checked The Florida Bar website and discovered that the Bar had posted its Emergency Petition, but not my response, thereby misrepresenting the full story. If any further attempts are made to present just one side, I will not hesitate to bring legal action. The Bar's actions have prevented me from future practice of law; but it cannot prevent me from pursuing legal actions on my own behalf.

Consistent with my philosophy with clients, my preference, once again, is to enter into a consent, but only if it is balanced and accurately represents both sides of the dispute. I will not be a party to any further documents that try to label me a thief or any other type of criminal.

Speaking of which, after further reflection, I do not find acceptable the labeling of my response to your Petition under my profile on The Florida Bar website as a "miscellaneous document." How is it that documents filed by The Florida Bar and by the Florida Supreme Court can be listed as titled, and only my response cannot be? Why does the Bar seem so determined to conceal my position?

Sincerely,

/s/Neal J. Blaher
Neal J. Blaher

Neal J. Blaher

From: Neal J. Blaher [njblaher@blaherlaw.com]
Sent: Thursday, December 18, 2014 1:47 PM
To: JoAnn M Stalcup
Subject: RE: The Florida Bar Matter

Ms. Stalcup,

Your letter of December 9, 2014, states in the next-to-last paragraph that "the bar will agree to resolve the matter by way of a Disbarment on Consent." In my response dated December 15, I stated that I would be agreeable to a "consent to 'discontinue my practice of law' in the State of Florida," with an inclusion of both my position of the matter and The Florida Bar's position on the matter. In your email below, you now state that the Bar is "unable" to enter into any sort of consent.

As my last letter stated, the only conclusion that can be drawn from this is that the Bar wishes to conceal my position and force me to sign a consent that specifically omits any statement of my position. Such a stance serves no ascertainable purpose other than what I have been stating over the past month, namely, that the Bar has acted maliciously, vindictively (in response to my candid statements in the filings I have submitted), and otherwise has attempted to completely damage the reputation I have developed in my more than 25 years of practice. Why else would the Bar refuse the kind of evenhanded consent I proposed when I also have represented that I will be closing my law practice anyway, thereby accomplishing the Bar's purpose? And why else would the Bar list my filing on its website as a "miscellaneous document" while identifying its own filings and the Supreme Court Orders by their names?

Obviously, the Bylaws of The Florida Bar have placed far too much power in the office of Bar Counsel to enable them to act in such a manner. If the Bar continues in this manner by refusing to present the whole story, then I will have no choice but to find another forum to accomplish full disclosure and vindicate my position, and to further expose how the Bar conducts these proceedings.

-Neal Blaher

-----Original Message-----
From: JoAnn M Stalcup [mailto:jstalcup@flabar.org]
Sent: Wednesday, December 17, 2014 5:49 PM
To: njblaher@blaherlaw.com
Subject: The Florida Bar Matter

Dear Mr. Blaher:

Please be advised the bar will be unable to enter into a resolution with you at this time. At this time, it is the bar's position the matter will be required to go to a final hearing during which both parties can present evidence and the referee will be required to make a determination whether the bar has proven the allegations made against you by the requisite standard: clear and convincing evidence.

I expect the final hearing date will be discussed during the telephonic case management conference currently scheduled for December 24, 2014. Unless you waive the time requirements outlined under the rule, the final (evidentiary) hearing and, if required, any sanction hearing will need to be conducted in time for the referee to file his final report by on or before March, 2, 2015.

Generally speaking, the evidentiary portion of a final hearing and the sanction portion (if a sanction hearing is necessary) are conducted at different times (most often on a different day) in order to provide the respondent with time to present mitigation. The rules, however, do not require the sanction hearing to be conducted on a separate day, only that the hearings are bifurcated in that there must be a finding of guilt before a sanction hearing is conducted. Thus, in the past I have had referees hear the evidence in the morning, make a determination regarding rule violations, and conduct the sanction portion in the afternoon. In other cases, I have had referees conduct the evidentiary portion of the hearing, make a ruling on the bench, and then conduct the sanction hearing the next day or even several weeks later. And, of course, there are situations where the referee hears the evidence, defers ruling and then notifies the parties at a later date of the ruling as to rule violations, and then, if necessary, a sanction hearing is conducted. Much of the timing in this regard is up to the referee with input from the parties. Of course, all of this is governed by the time parameters outlined in the rule. In this instance, it is 90 days from the date the referee was appointed.

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Neal J. Blaher

From: Neal J. Blaher [njblaher@blaherlaw.com]
Sent: Thursday, December 18, 2014 8:31 PM
To: JoAnn M Stalcup
Subject: RE: The Florida Bar Matter

Although our differences remain, I greatly appreciate the letter you have written here, and the efforts that you, yourself, have made.

I understand that the dictates of the rules require the proceedings to continue. I also maintain that there is nothing I can do to change the outcome, and must act on that basis. Furthermore, the requirements of a consent, even with the modifications you have suggested to advocate on my behalf, simply are not something to which I can agree.

I therefore remain on track to close out my practice, and in fact have nearly completed that task. I look forward to pursuit of a much more rewarding and far less adversarial and unwelcoming career path, perhaps the "silver lining" in the Bar's campaign against me.

-Neal Blaher

-----Original Message-----
From: JoAnn M Stalcup [mailto:jstalcup@flabar.org]
Sent: Thursday, December 18, 2014 3:19 PM
To: njblaher@blaherlaw.com
Subject: RE: The Florida Bar Matter

Mr. Blaher,

I informed you that the bar would be willing to resolve the matter by way of a Disbarment on Consent as outlined by the rules. You countered the bar's offer to settle the matter indicating you would be willing to "consent to discontinue practicing law" in the State of Florida. First, the rules do not contemplate such a consent, the rules contemplate a Disbarment on Consent. Second, I am not permitted to bind the bar to anything. I have numerous superiors who must agree to any resolution and/or discipline sought in any given case. Your counter offer was discussed with my superiors and I was informed that the bar was not going to accept your counter offer. Your statements in correspondence and in your responses to the emergency suspension petition and the request for admissions make it reasonable for the bar to have determined you do not believe you have violated the rules governing attorney conduct. You disagree with the bar's interpretation of the rules and whether your conduct supports a finding you had shortages in your trust account and misappropriated client funds from some of your clients to cover advanced attorney fees for other clients. Likewise you disagree with the bar's allegation that you sought to conceal the shortages by failing to accurately reflect the status of matter on your trust account records.

Thus, at this point, unless you and the bar can reach mutually agreeable terms for a Disbarment on Consent, the only option available is to proceed to final hearing. At that time, as outlined in my previous emails to you, you will have an opportunity to place all of your concerns and/or evidence before the referee for him to make appropriate rulings. Given the fact a hearing has not yet been set, you should have sufficient time to prepare for such hearing and if you determine you need additional time, you can provide a written waiver of the tine frames outlined in the rules. Once a hearing has been conducted and the referee has made his rulings, you and/or the bar are free to seek review of such findings whether they be factual and/or in regard to any sanction recommendation.

The bar has not acted maliciously in this matter. Based upon the Board of Governor's Standing Board Policy, the Rules Regulating The Florida Bar, the Standards for Lawyer Sanctions, and the case law, the bar has moved forward as appropriate given the bar's position that your conduct was in violation of the rules governing attorney conduct. The bar is not and has not attempted to provide only "one side" of this case. As previously explained to you, I was unsure why your response was not placed on the bar's website. Upon your inquiry, I immediately took action to address the matter and kept you fully updated regarding what information I was being provided. The only explanation I can provide at this time is that it is a bureaucratic issue and one that I have asked be addressed. Your pleading being contained on the website as a "miscellaneous document" is and was not for any nefarious purpose, rather it was simply the only way at that time the document could be handled to ensure its placement on the website after the system was updated, or by the next morning. Any person interested in reviewing the documents regarding your file on the bar's website have access to all documents listed and can review each one. As such, your response/answer is available and the bar is not attempting to be "one sided" in that regard.

I am more than willing to go back to my superiors with language addressing some of your concerns to seek approval of the Disbarment on Consent. But, to be frank, the bar does not believe the bar has been unfair in this matter nor does the bar feel that you cannot obtain a fair proceeding. Consequently, the bar will not agree to such language. On the other hand, I may be able to get them to agree to language that indicates "while you disagree with the bar's interpretation of the rules, you recognize that based upon the bar's interpretation you have violated the rules" or something to that effect.

However, if you enter into a Consent, the Consent **requires** you to admit that the allegations contained in the Consent, if proven, would constitute a violation of the rules as outlined in the consent. You are required to consent to being disbarred, not simply discontinuing practicing in the State of Florida, and you have to agree to payment of the costs associated with the proceeding. You will be considered a disbarred attorney and any person seeking information regarding your status will be told that or the website will inform them that you are disbarred.

As indicated previously, I cannot bind the bar, but I can go to my superiors with reasonable resolutions and see if they will agree to same. Ultimately, though, it is up to them, not me. Nevertheless, I am happy to move forward attempting to seek a resolution of the matter is it can be worked out. If, however, you do not find you can resolve the matter based upon what the Consent requires, then there is simply no choice but to move forward because the matter is pending and simply closing your practice does not resolve the bar proceeding.

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From: "Neal J. Blaher" <njblaher@blaherlaw.com>
To: "JoAnn M Stalcup" <jstalcup@flabar.org>
Date: 12/18/2014 01:46 PM
Subject: RE: The Florida Bar Matter