

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

BERNARDO ROMAN III,

Respondent.

Supreme Court Case
No. SC16-1330

Lower Tribunal Case(s):
2014-70,055 (11G)
2015-70,460 (11G)

**RESPONDENT'S ANSWER TO THE COMPLAINT
AND AFFIRMATIVE DEFENSES**

Bernardo Roman III, Respondent, (hereinafter, "Mr. Roman") files this Answer to the Complaint and states:

1. The allegations in Paragraphs 1, 2 and 3 are Admitted.
2. The allegations in Paragraph 4 are Denied as written because they present disputed issues of fact and law. Mr. Roman demands strict proof of these allegations.
3. The allegations in Paragraph 5 are Denied. The allegations in Paragraph 5 as written present disputed issues of fact and law. In addition, the allegations fail to identify the factual basis for the allegations, including what false allegations were made and what evidence was possessed by Mr. Roman which proved those allegations false. The allegations further fail to identify any discovery request Mr. Roman failed to comply with, and what evidence he withheld. Accordingly, Mr. Roman demands strict proof of these allegations.
4. The allegations in Paragraphs 6 and 7 are Denied as written because they are factually incorrect. Mr. Roman demands strict proof of these allegations.
5. The allegations in Paragraph 8 are Denied are written. First, Mr. Roman has no knowledge of the allegations presented in the first three sentences of Paragraph 8. Second, the

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last sentence of Paragraph 8 contains a misleading statement intended to confuse the trier of fact. The record in the *Bermudez* case, including transcripts, various court orders and the opinion in *Bert v. Bermudez*, 95 So.3d 274 (Fla. 3d DCA 2012), shows the misleading manner in which the last sentence is written. Mr. Roman demands strict proof of these allegations.

6. The allegation in Paragraph 9 is Denied because it is not true. The allegation in Paragraph 9 is misleading as written. The record in the *Bermudez* case, including transcripts, various court orders and the opinion in *Bert v. Bermudez*, 95 So.3d 274 (Fla. 3d DCA 2012), shows the misleading manner in which the last sentence is written. Mr. Roman demands strict proof of this allegation.

7. The allegations in Paragraph 10 are Denied because they are factually incorrect. Mr. Roman demands strict proof of these allegations.

8. The allegations in Paragraph 11 are Denied as written because they are factually incorrect and they present conclusions from statements taken out of context. Mr. Roman demands strict proof of these allegations.

9. The allegations in Paragraph 12 are Denied as written because they are factually incorrect and allege conclusions which have no factual basis or support, and are otherwise not true. Accordingly, Mr. Roman demands strict proof of these allegations.

10. The allegations in Paragraph 13 are Denied as written because they are factually incorrect and allege conclusions which have no factual basis or support and are otherwise not true. In addition, the allegations fail to identify either the statements in the affidavit which were allegedly false and fails to identify the numerous documents of which Mr. Roman had possession and which allegedly refuted any statement in the affidavit or how these referenced documents refuted anything in the affidavit. Accordingly, Mr. Roman demands strict proof of these

allegations.

11. The allegations in Paragraph 14 are Denied as written because they are factually incorrect, and allege conclusions which are either based upon incorrect factual basis and/or incorrect or misleading identification of questionable documents. In addition, most, if not all of the referenced documents were produced at different stages of the proceedings, which causes the allegations in Paragraphs 13 and 14 to conflict. Accordingly, Mr. Roman demands strict proof of these allegations.

12. The allegations in Paragraph 15 are Denied as written because they are factually incorrect, and omit a material fact regarding the sanctions imposed by the Court. Accordingly, Mr. Roman demands strict proof of these allegations.

13. The allegations in Paragraph 16 are Denied as written because they are factually incorrect. Accordingly, Mr. Roman demands strict proof of these allegations.

14. The allegations in Paragraph 17 are Denied as written because they are factually incorrect. Accordingly, Mr. Roman demands strict proof of these allegations.

15. The allegations in Paragraph 18 are Admitted as to the decision of the Circuit Court for Miami-Dade County, Florida. However, this decision is not yet a final order subject to appeal. This decision will be appealed once ripe for appellate review.

16. The allegations in Paragraph 19 are Admitted as to the decisions of the Third District Court of Appeals and the Circuit Court for Miami-Dade County, Florida. However, the decision of the Circuit Court for Miami-Dade County, Florida is not yet a final order subject to appeal. This decision will be appealed once ripe for appellate review.

17. The allegations in Paragraph 20 is Admitted as to the decision of the Circuit Court for Miami-Dade County, Florida. However, this decision is not yet a final order subject to

appeal. This decision will be appealed once ripe for appellate review.

18. The allegations in Paragraph 21, 22 and 23 are Denied as written because they are factually incorrect. The allegation that Judge Marcia Cooke of the District Court for the Southern District of Florida imposed sanctions against Mr. Roman and the Miccosukee Tribe of Indians of Florida is Admitted. However, Judge Cooke's decision has been appealed and it is pending review by the United States Court of Appeals for the Eleventh Circuit.

19. The allegations in Paragraph 24, 25, 26, 27, 28 and 29 are Denied as written because they are factually incorrect and allege conclusions which are not correct and are not supported by the true and relevant facts. Accordingly, Mr. Roman demands strict proof of these allegations.

20. The allegations in Paragraph 30 are Admitted.

21. The allegations in Paragraph 31 are Denied as written because they are factually incorrect and call for conclusions not supported by the relevant facts. Mr. Roman demands strict proof of these allegations.

22. The allegations in Paragraph 32 are Admitted as to the placement of a 911 call to the Coral Gables Police Department and the accurate representations made during such call.

23. The allegations in Paragraph 33, 34 and 35 are Denied as written because they are factually incorrect. Mr. Roman demands strict proof of these allegations.

24. The allegations Paragraph 36 are Denied. Mr. Roman demands strict proof of these allegations.

25. The remedies being sought in the Wherefore Clause are Denied.

AFFIRMATIVE DEFENSES

1. Mr. Roman's First Affirmative Defense is that at all times material hereto he

was properly litigating all possible claims and defenses within the scope of the Rules Regulating the Florida Bar, and his conduct did not violate any of the referenced rules.

2. Mr. Roman's Second Affirmative Defense is that at all times material hereto he was litigating all possible claims and defenses within the scope of, and as permitted by the Florida Rules of Civil Procedure and the Federal Rules of Civil Procedure.

3. Mr. Roman's Third Affirmative Defense is that at all times material hereto he was acting in good faith within the bounds of zealous advocacy in reliance on the evidence and his client's objectives and instructions. At all material times, Mr. Roman was acting in good faith reliance upon the information and representations by his client, and had a good faith believe that the representations and information was true.

4. Mr. Roman's Fourth Affirmative Defense is that he lacked the scienter necessary to prove any violation of the Rules Regulating the Florida Bar that require proof of the same, and that the Florida Bar cannot prove such scienter by clear and convincing evidence.

5. Mr. Roman's Fifth Affirmative Defense is that many of the allegations by the Florida Bar involve matters already addressed and determined by the state and federal courts in the underlying litigation and decided in favor of Mr. Roman. Consequently, the Florida Bar should be estopped from re-asserting these allegations under the doctrine of res judicata.

6. Mr. Roman's Sixth Affirmative Defense is that many of the allegations as to the *Bermudez* case involve disputed issues of fact and law, and the finder of fact, Circuit Judge Ronald Dresnick, made findings of fact and conclusions of law, which negate the current allegations by the Florida Bar. These findings of fact and conclusions of law by Judge Dresnick included the imposition of sanctions in the amount of \$50,000.00 against Lewis Tein for willful violations of the discovery rules, based upon an Evidentiary Hearing. Accordingly, the Florida

Bar's disciplinary proceedings may not serve as a forum or vehicle to reverse or question those judicial findings of fact and conclusions of law.

7. Mr. Roman's Seventh Affirmative Defense is that the Florida Bar's Grievance Process was conducted in violation of the provisions of Rule 3-3-4(c)(4) of the Rules Regulating the Florida Bar which require any member of the Grievance Committee who is either biased or prejudiced toward the complainant or respondent to remove himself or herself from the process. In the case at bar, the Investigating Member exhibited extreme bias and prejudice against Mr. Roman, and such extreme bias and prejudice is reflected in the Final Report that he authored and which contains materials misrepresentations of fact.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished served via electronic E-Portal Notice, email, and regular mail to Jennifer R. Falcone, Esquire, Bar Counsel, The Florida Bar, at 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131 and to Adria E. Quintela, Esquire, Staff Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 on this 25th day of August, 2016.

Respectfully submitted,

/s/

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