

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

BERNARDO ROMAN, III,

Respondent.

Supreme Court Case
No. SC16-1330

The Florida Bar File Nos.
2014-70,055(11G)
2015-70,460(11G)

THE FLORIDA BAR'S RESPONSE TO NOTICE OF BANKRUPTCY

COMES NOW, The Florida Bar, by and through its undersigned counsel and files its Response to Respondent's Notice of Bankruptcy, and states:

1. On February 1, 2018, Respondent filed his Notice of Bankruptcy, and indicated that pursuant to 11 U.S.C. §362, the Florida Bar proceedings pending against Respondent are stayed. Respondent's assertion is without merit.

2. Disciplinary proceedings are exempted from the automatic stay provisions of the Bankruptcy Code by the police and regulatory power exception. 11 U.S.C. § 362 (b)(4); *In re McAtee*, 162 B.R. 574 (Fla. N.D. 1993). *See also, Risker v. Comm'n For Lawyer Discipline*, 94 S.W.3d 625 (Tex. App. 2002)(Attorney disciplinary proceeding fell under police and regulatory power exception in bankruptcy code, and therefore was not subject to automatic stay when attorney filed for bankruptcy. The disciplinary proceeding was for purpose of

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enforcing the state Supreme Court's regulatory power over attorneys licensed by state); and *In re Friedman & Shapiro, P.C.*, 185 B.R. 143 (S.D.N.Y. 1995)(Disciplinary actions to regulate the professional conduct of attorneys falls squarely into the exception to the automatic stay.).

3. Similarly, Respondent will not be permitted to discharge in bankruptcy any costs imposed in the disciplinary case. *See ie., In re Feingold*, 730 F.3d 1268 (11th Cir. 2013)(Costs and expenses assessed against an attorney in disciplinary proceedings are in the nature of a “fine, penalty or forfeiture,” payable to and for the benefit of a “governmental unit,” which an attorney cannot discharge when he later files for bankruptcy.)

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing has been furnished by email to The Honorable Dava Tunis, Referee, at the Richard E. Gerstein Justice Building, 1351 NW 12th Street, Room 623, Miami, FL 33125; with copies to Bernardo Roman III, Respondent, via email to bromanlaw@bellsouth.net; and to Adria E. Quintela, Staff Counsel, The Florida Bar, via email to aquintel@flabar.org, on this 2nd day of February, 2018.

A handwritten signature in black ink, appearing to read "Jm Falcone", with a long horizontal flourish extending to the right.

Jennifer R. Falcone, Bar Counsel