

22580

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
THE STATE BAR  
98 DHC 16

THE NORTH CAROLINA STATE BAR, )  
)  
Plaintiff )  
)  
v. )  
)  
ROGER W. RIZK, )  
)  
Defendant )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

This matter was heard on June 25, 1998, before a hearing committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Chair, Fred H. Moody, Jr. and A. James Early, III. The Defendant, Roger W. Rizk, was represented by James B. Maxwell. The Plaintiff was represented by Douglas J. Brocker. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The Plaintiff, The North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina and the Rules & Regulations of the State Bar promulgated thereunder.
2. The Defendant, Roger W. Rizk (hereafter "Rizk"), was admitted to the State Bar on December 8, 1995, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, Rizk was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Charlotte, Mecklenberg County, North Carolina.

4. In January 1996, Rizk opened a Checking Account at BB&T which was his Office Operating Account. In April 1996, Rizk also opened an account at BB&T which was designated as his "IOLTA Account" and served as his Trust Account.

5. On October 3, 1996, there was a Mediation in Mr. Rizk's office in the Teague matter which, ultimately, resulted in a \$5,000.00 compromise settlement being reached. As part of that settlement, and on October 3, 1996, Rizk received a check from Integon Insurance Company for \$5,000.00 to fund that settlement. Included in that settlement were amounts for Rizk's attorney fees, medical bills of Ms. Teague and the Mediation expenses.

6. In 1996, Rizk agreed to represent Sarah Teague in a personal injury claim.

7. On October 3, 1996, the \$5,000.00 settlement check from Integon was deposited into Rizk's Operating Account. On that same date, checks were issued from the Operating Account to Ms. Teague in the amount of \$2,750.00; to the Mediator in the amount of \$212.50; and to Rizk's Trust Account in the amount of \$1,000.00. The remaining amount (\$1,037.50) stayed in the Operating Account and represented Rizk's attorney fees and cost in the Teague matter.

8. The \$1,000 transferred to Rizk's Trust Account represented funds that Rizk and Ms. Teague agreed would be held in trust and used to pay Ms. Teague's outstanding medical bills. At the time of the settlement, there were more than \$2,000.00 in medical bills outstanding for Ms. Teague, as a result of her automobile accident. Rizk's intention, which he conveyed to Ms. Teague, was to attempt to negotiate with the health care providers to accept, in compromise of their claims, the sum of no more than \$1,000.00.

9. On October 7, 1997, while Rizk was in New York on a personal trip, he called his office and directed his legal assistant, Mary Rash, to transfer into his Personal Account \$1,000.00, which he needed. Ms. Rash, believing that she had been instructed to deposit the Teague money from the Trust Account, wrote a check from the Trust Account in the amount of \$1,000.00 and, on that day, deposited it into Rizk's Personal Account.

10. Rizk never paid the medical bills on behalf of Ms. Teague, nor did he replace the \$1,000.00 in his Trust Account up until the time he was served with a Subpoena for Cause Audit on July 29, 1997. Thereafter, Rizk paid all of the medical bills due on behalf of Ms. Teague to the various health care providers with no compromise, and those medical bills exceeded \$2,300.00.

11. On at least one other settlement claim, Rizk deposited funds from a Worker's Compensation claim into his Operating Account, rather than into his Trust Account. He represented James Ferguson in a Florida Worker's Compensation claim and settled that claim for \$33,750.00 with CIGNA Property and Casualty Insurance Company.

12. On May 30, 1996, while in Florida, Rizk settled Ferguson's claim. He did not have Trust Account checks with him and issued a check from his Operating Account to Ferguson in the amount of \$30,000.00, which represented Ferguson's portion of the settlement.

13. On June 3, 1996, upon his return to North Carolina, Rizk deposited the entire CIGNA check into his Operating Account and retained \$3,750.00 in his Operating Account as his fee.

14. During 1996, the following six clients of Rizk gave him funds representing filing fees for claims they were intending to file in either state or federal court:

- A. September 5, 1996, Gerald Porter gave Rizk a check in the amount of \$125.00.
- B. On November 6, 1996, Greg Metcalf gave Rizk a check in the amount of \$65.00 for filing fees.
- C. On December 4, 1996, James W. Bradt issued a check to Rizk in the amount of \$125.00 for filing fees.
- D. On December 10, 1996, Ruth Butler issued a check to Rizk in the amount of \$120.00 for filing fees in a lawsuit for Janet Barros.
- E. On December 11, 1996, Brenda Harper gave Rizk a check in the amount of \$125.00 for filing fees.
- F. On December 11, 1996, Gerald Pendleton gave Rizk a check in the amount of \$150.00 for filing fees.

15. In each instance listed in paragraph 14 above, Rizk's clients' filing fees were deposited into his Operating Account.

16. After the filing fees were deposited into his Operating Account, Rizk either: (1) used those funds to pay filing fees on behalf of his clients, (2) returned the funds to the clients, or (3) continued to hold those funds in trust.

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over the Defendant, Roger W. Rizk, and of the subject matter.

2. The Committee finds by clear, cogent and convincing evidence that the Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline, pursuant to N.C.G.S. §84-28(b)(2) by violating the Rules of Professional Conduct, as follows:

- A. In his representation of Sarah Teague:

- (1) Rizk commingled client funds with his own funds in violation of Rule 10.1(a) & (c), by depositing Teague's \$5,000.00 settlement check into his Operating Account.
- (2) Rizk commingled and unintentionally appropriated client funds in violation of Rule 10.1(a) & (c), by permitting \$1,000.00 of the Teague settlement proceeds, which were designated for payment of Teague's medical bills, to be deposited into his personal account and by subsequently using those funds for his own use and benefit.
- (3) Rizk violated Rule 10.2(e), by failing to promptly pay Teague's medical expenses from funds he was supposed to be holding in a fiduciary capacity for her benefit.
- (4) Rizk violated Rule 7.1(a)(2) and Rule 6(b)(3), by failing to carry out his contract of employment and failing to act with reasonable diligence in promptly paying her medical and health care providers.

The Committee does not find by clear, cogent, and convincing evidence, however, that Rizk intentionally misappropriated Teague's funds or otherwise committed criminal acts or engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(b) & (c). The Committee further finds that Ms. Teague received her portion of the settlement proceeds, and that subsequent to the filing of this grievance, Rizk fully paid all health care providers on behalf of Ms. Teague.

- B. Rizk commingled client funds with his own funds in violation of Rule 10.2(a) & (c), by depositing his client's, James Ferguson's, settlement proceeds into his Operating Account rather than his Trust Account. The Committee further finds, however, that Rizk distributed Ferguson's portion of the funds to him.
- C. Rizk commingled client funds with his own funds in violation of Rule 10.1(a) & (c), by depositing client funds for use as filing fees into his Operating Account rather than Trust Account. The Committee finds Rizk commingled filing fees for Gerald Porter, Gerald Pendleton, Greg Metcalf, James Bradt, Brenda Harper, and Ruth Butler. The Committee further finds, however, that Rizk eventually distributed those funds for the benefit of his clients or in one instance continues to hold the funds in trust.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, and upon the evidence and arguments of the parties concerning the appropriate discipline, as well as the consideration of the Brief filed on behalf of the Plaintiff, the Hearing Committee hereby makes the additional:

## FINDINGS OF FACTS REGARDING DISCIPLINE

1. The Defendant's conduct is aggravated by the following factors:
  - A. Prior disciplinary offenses and five prior sanctions by the federal courts;
  - B. A pattern of misconduct;
  - C. Multiple offenses;
  - D. Substantial experience in the practice of law in Florida and North Carolina; and
  - E. Issuance of a letter of warning to the Defendant within three (3) years immediately preceding the filing of the Complaint.
  
2. The Defendant's conduct is mitigated by the following factors:
  - A. Personal or emotional problems;
  - B. Timely good faith efforts to make restitution or to rectify consequences of his misconduct;
  - C. Full and free disclosures to the Hearing Committee and cooperative attitude toward the proceedings;
  - D. Good reputation and character, including significant participation in voluntary bar, civic, and community organizations;
  - E. Remoteness of prior offenses.

Based upon the foregoing Aggravating and Mitigating factors and the arguments of counsel for each party, the Hearing Committee hereby enters the following:

### ORDER OF DISCIPLINE

1. The Defendant is hereby **SUSPENDED** from the practice of law for a period of four years, effective 30 days from the service of this Order on the Defendant. The Suspension is **STAYED** for a period of four years, upon compliance with the following terms and conditions:
  - A. During the first 12 months of the Stayed Suspension, Rizk and any other individual(s) in his office who would have authority to write checks out of his Trust Account must receive training on the proper maintenance, operation, and handling of client funds in a Trust Account from Bruno E. DeMolli or another designated State Bar representative.

- B. Rizk must retain a Certified Public Accountant, approved by the State Bar, who will conduct audits of Rizk's Operating and Trust Accounts and provide an audit report to the State Bar. For the first two years of the stayed suspension, Rizk must ensure that the reports are received quarterly. During the second two year period of the Stayed Suspension, Rizk must ensure that the reports are received bi-annually. These reports and accounting fees shall be at Rizk's expense, and under no circumstances shall the State Bar be responsible for such expenses or fees.

The report provided by the CPA must meet the minimum requirements as set forth in the Guidelines for Outside Audit Reports on Attorney Trust Accounts, attached as Exhibit 1.

The following is the schedule of deadlines for receipt of these audit reports, which shall cover the 3 or 6 months immediately preceding the month in which the audit report is due:

1998: October 31 (e.g., for 7-9/98)  
1999: January 31, April 30, July 31, October 31  
2000: January 31, April 30, July 31  
2001: January 31 (e.g., for 7-12/2000), July 31  
2002: January 31, June 30

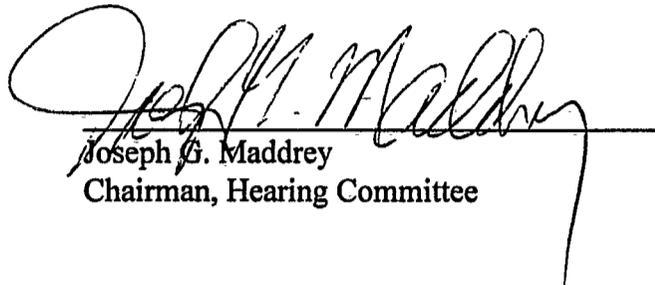
- C. During all four years of the Stayed Suspension, Rizk must handle his Trust Account in accordance with the Rules and Regulations of the State Bar and the Revised Rules of Professional Conduct, including but not limited to maintaining client ledgers and performing quarterly reconciliations of these client ledgers with his Trust Account bank statements.
- D. During each of the first three years of the Stayed Suspension, in addition to all other Continuing Legal Education requirements for the year, Rizk must take an additional three-hour block of ethics. In other words, Rizk must take the normal 12 hours of CLE each year, plus an additional three-hour ethics block of CLE each year, for a total of 15 CLE hours for each of the first three years of the Stayed Suspension.
- E. During all four years of the Stayed Suspension, Rizk shall not violate any Revised Rule of Professional Conduct or state or federal criminal laws.
- F. During all four years of the Stayed Suspension, Rizk shall commit no conduct which causes any federal, state, or administrative hearing judge or court to impose sanctions on him or a client he is representing. Rizk shall provide to the State Bar any order imposing sanctions on him or a client he is representing during the Stayed Suspension within 10 days of entry of such an order.

2. The State Bar shall deliver a copy of this Order to the Honorable Lacy H. Thornburg, United States District Judge for the Western District of North Carolina.

3. Rizk shall be taxed with the costs of this proceeding as assessed by the Secretary and pay such costs within 30 days of service of such costs on him by the Secretary..

This the 1<sup>st</sup> <sup>September</sup> day of July, 1998.

Signed by the undersigned Chair of the Hearing Committee with the unanimous consent of the other members of the Hearing Committee.

  
Joseph G. Maddrey  
Chairman, Hearing Committee