22580

WAKE COUNTY

NORTH CAROLINA

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
00G0432

NORTH CAROLINA STATE BAR, Complainant	)	
v.	)	ORDER OF RECIPROCAL DISCIPLINE PROCEEDING
ROGER W. RIZK, Respondent	)	

Pursuant to the authority vested in me as Chair of the Grievance Committee of the North Carolina State Bar by 27 N.C. Admin. Code Chapter 1, Subchapter B, §§ .0105(a)(12) and .0116(b) of the N.C. State Bar Discipline & Disability Rules and based upon the record in this matter, the undersigned finds as follows:

1. By order dated August 16, 2001, the Supreme Court of Florida issued an Order of Discipline against respondent Roger W. Rizk (hereafter "Rizk"). The Supreme Court of Florida found that Rizk failed to act with reasonable diligence and promptness in representing a client and imposed a public reprimand. The conduct in that matter occurred on or before June 8, 1998.

2. On approximately October 1, 2001, a Notice of Reciprocal Discipline Proceeding was served upon Rizk by the North Carolina State Bar via certified mail. The Notice advised Rizk that the North Carolina State Bar was considering imposing identical discipline, based upon the issuance of the Order of Discipline in Florida.

3. Rizk responded to the notice on October 26, 2001 by stating that he did not contest the imposition of reciprocal discipline.

BASED UPON THE FOREGOING FINDINGS the Chair of the Grievance Committee makes the following CONCLUSIONS OF LAW:

1. The North Carolina State Bar has jurisdiction over the subject matter of this proceeding and over the person of respondent, Roger W. Rizk.

2. The Grievance Committee has complied with the procedure for imposition of reciprocal discipline set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0116(b) of the N.C. State Bar Discipline & Disability.

3. The Supreme Court of Florida's August 16, 2001 Order of Discipline against Rizk establishes that Rizk engaged in conduct constituting violations of Rule 1.3 of the North Carolina Revised Rules of Professional Conduct, which justifies the imposition of reciprocal discipline in this state.

4. The Public Reprimand imposed by the Supreme Court of Florida is the equivalent of a Reprimand as described and set out in North Carolina General Statute Section 84-28(c)(4). Respondent should be reprimanded in the state of North Carolina, and

THEREFORE IT IS HEREBY ORDERED THAT:

1. Respondent, Roger W. Rizk, is hereby reprimanded based upon the findings and conclusions in the Order of Discipline of the Supreme Court of Florida, which is attached hereto and incorporated herein by reference.

2. Respondent is hereby taxed with the costs of this proceeding, set at $50, and hereby ordered to pay the costs within 30 days of service of the Order upon him.

This the 17 day of Dec, 2001.

Calvin E. Murphy, CHAIR
Grievance Committee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Order of Reciprocal Discipline Hearing was served upon defendant herein by depositing a copy thereof into the U.S. Mail in a postage prepaid envelope addressed as follows:

Mr. Roger W. Rizk
6047 Nations Ford Rd.
Charlotte, NC 28217

This the 10 day of January, 2002

Douglas J. Brocker
Deputy Counsel

Supreme Court of Florida

THURSDAY, AUGUST 16, 2001

CASE NO.: SC00-2568
Lower Tribunal No.: 2000-01,098(02)

THE FLORIDA BAR vs. ROGER WADE RIZK

Complainant(s) Respondent(s)

The Court approves the uncontested referee's report and reprimands respondent.

Judgment is entered for The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, for recovery of costs from Roger Wade Rizk in the amount of $795.00, for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

bhp
Served:

HON. NIKKI ANN CLARK, JUDGE
BRIAN DAVID BURGOON
MICHAEL P. BIST
EDWARD ITURRALDE
ROGER W. RIZK
JOHN ANTHONY BOGGS

A TRUE COPY
Attest:
THOMAS D. HALL, Clerk
Supreme Court of Florida
By
Deputy Clerk

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CLERK, SUPREME C
BY

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ROGER WADE RIZK,

Respondent.

Case No. SC00-2568

TFB File No. 2000-01,098 (02)

REPORT OF THE REFEREE – Consent

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On or about December 12, 2000, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. The Respondent filed his Answer and Response to Request for Admissions on December 29, 2000. The Complainant propounded Interrogatories to the Respondent on January 08, 2001 and Respondent filed his answers thereto on February 09, 2001. On April 23, 2001 a Case Management Conference was held in this matter. All of the aforementioned pleadings, responses thereto, exhibits received in evidence and this

Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

Respondent represented William Nolan Roberts (hereafter "Roberts") against his employer, in a matter alleging same gender sexual harassment, styled *William Nolan Roberts vs. Benjamin Moore Paint Co.*, and filed in the United States District Court for the Middle District of Florida.

By order of the District Judge entered on January 17, 1995, said action was dismissed with prejudice, the order reciting the court's understanding that a cause of action for same gender sexual harassment was not recognized in the United States Eleventh Circuit.

On or about February 15, 1995, Respondent filed a Notice of Appeal to the United States Eleventh Circuit Court of Appeals, and on December 28, 1995, the appellate court affirmed the lower court's dismissal[1].

On or before May 13, 1997, Respondent mailed a Petition for Writ of Certiorari to the United States Supreme Court, which was received in the clerk's office on May 20, 1997, and which was rejected by letter dated June 2, 1997, on the basis that the petition did not comply with the rules of the court. The clerk's rejection letter specified the deficiencies of the petition, enclosed a copy of the Rules of Court and a Memorandum concerning the preparation of a petition, and allowed Respondent an additional sixty days from June 2, 1997, within which to file a corrected petition.

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[1] *Roberts v. Benjamin Moore & Co.*, 74 F.3d 1252 (11th Cir. 1995)

Respondent failed to file a corrected petition within the sixty day period allowed, and on September 18, 1997, the clerk's office wrote to Respondent, returning the filing fee and advising that since the corrected petition had not been filed within the allowed sixty day period, the petition could not be filed.

Respondent mailed a corrected petition to the clerk's office, which was received on May 15, 1998, whereupon the clerk's office wrote to Respondent on May 15, 1998, rejecting the petition for the reasons expressed in its letter of September 18, 1997, i.e., that the corrected petition had not been timely filed.

On June 8, 1998, Respondent wrote to his client, Roberts, informing him that the Supreme Court had declined to accept his case for appellate review, but failing to inform Roberts that the reason for declining was Respondent's failure to file a proper petition and failure to timely file a corrected petition.

On June 9, 1997, nineteen days after Respondent's defective petition had been received by the clerk's office, the United States Supreme Court granted a Petition for Writ of Certiorari in a same gender sexual harassment case [2], and on March 4, 1998, issued an opinion holding that same gender sexual harassment cases are actionable[3]

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rule 4-1.3 (Diligence) of the Rules of Professional Conduct of The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. the imposition of a public reprimand; and

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[2] *Oncale vs. Sundowner Offshore Services, Incorporated*, 520 U.S. 1263, 117 S.Ct 2430, 138 L.Ed. 2d 192 (1997).

[3] *Oncale vs. Sundowner Offshore Services, Incorporated*, 523 U.S. 75, 118 S.Ct 998, 140 L.Ed. 2d 201 (1998).

B. Payment of The Florida Bar's costs in these proceedings.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 55 years old

Date admitted to the Bar: November 13, 1970

B. Aggravating Factors:

Prior Discipline: In *The Florida Bar File No.* 1999-00,387(02) (SC94,371) by order dated May 13, 1999, respondent received a public reprimand and probation for commingling funds. This was reciprocal discipline based upon similar discipline imposed by the North Carolina authorities.

In *The Florida Bar File No.* 1999-00,552(02) (SC96,089) by order dated Ju 29, 2000, respondent received a ten day suspension for lack of diligence and communication.

Other Aggravating Factors: 9.22(i) Substantial experience in the practice of law.

C. Mitigating Factors:

9.32(b) Absence of a dishonest or selfish motive.
9.32(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

9.32(g)	Character or reputation.
9.32(k)	Imposition of other penalties or sanctions.
9.32(l)	Remorse.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

1.	Administrative Costs	$750.00
2.	Court Reporter's Fees	45.00
	TOTAL	$795.00

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 12 day of July, 2001.

NIKKI ANN CLARK, Circuit Judge/Referee
Leon County Courthouse
301 South Monroe Street
Tallahassee, Florida 32301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to JOHN A. BOGGS, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; EDWA[redacted]D ITURRALDE, Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahas[redacted], Florida 32399-2300; and ROGER WADE RIZK, Respondent, at his record Bar address of 6047 Nations Ford Road, Charlotte, North Carolina 28217, on this 12 day of July, 2001.

NIKKI ANN CLARK, Referee

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A TRUE COPY
Attest:
THOMAS D. HALL, Clerk
Supreme Court of Florida
By Lela Blakely
Deputy Clerk

SUPREME COURT OF THE STATE OF FLORIDA

[redacted]