

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

ALAN HOWARD RAMER,  
Respondent.

Supreme Court Case  
No. SC20-1027

The Florida Bar File  
No. 2019-70,706 (11E)

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**REPORT OF REFEREE**

**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 July 16, 2020, The Florida Bar filed its Complaint against Respondent in these proceedings. On August 7, 2020, Respondent filed his Answer and Affirmative Defenses.

On September 15, 2020, a Case Management Conference was held. The court also held a hearing and granted The Florida Bar's Motion to Strike Respondent's Affirmative Defenses that same day.

On October 16, 2020, a hearing on The Florida Bar's Partial Motion for Summary Judgment and Respondent's Cross-Motion for Summary Judgment was

held. The court granted The Florida Bar's motion and denied Respondent's cross-motion for Summary Judgment.

On October 30, 2020, Respondent filed a Motion for Reconsideration of the Referee's Ruling on Alleged Rule Violations. A response in opposition to this motion was filed by the Bar on November 9, 2020. The Motion was heard prior to the beginning of the Final Hearing and was denied.

On December 4, 2020, a final hearing was held solely to determine the appropriate discipline this matter. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the Report of Referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

The Respondent made a motion for involuntary dismissal at the close of The Florida Bar's case because, inter alia, Respondent argued The Florida Bar had not proven any facts, appropriate notice, intent, willful conduct or rule violations. This motion was denied.

The following persons appeared at the final hearing:

On behalf of The Florida Bar: Tonya Avery, Bar Counsel  
444 Brickell Avenue, Suite M-100  
Miami, Florida 33131

On behalf of the Respondent: Louis Thaler Esq.  
3850 Bird Road, Suite 903  
Coral Gables, Florida 331146

The Respondent appeared at all stages of this proceeding.

## **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. In granting the Bar's Motion for Partial Summary Judgment, the Referee relied on the Bar's proof of undisputed material facts, resulting in the referee finding Respondent guilty as charged on all rule violations. Those undisputed facts constitute the Referee's findings of fact.

This is a reciprocal discipline action, based on an Order of Suspension entered on May 24, 2019, by the Honorable K. Michael Moore, of the United States District Court for the Southern District of Florida, upholding the Report and Recommendation of the Ad Hoc Committee on Attorneys Admission Peer Review and Attorney Grievance ("Committee) dated April 12, 2018, which imposed a six-month suspension. The court further ordered that Respondent not be reinstated until he provided proof of completing the remedial requirements set forth in the first Report and Recommendation.

1. Respondent represented the defendants in the case styled *Coach, Inc., et al., v. Chung Mei Wholesale Inc., et. al.*, Case Number 15-22829, an entity being

sued for selling counterfeit Coach merchandise in violation of the Lanham Act as well as violations of related Florida statutory and common law.

2. On or about August 10, 2016, a jury returned a verdict in favor of the plaintiffs. Following the verdict, the plaintiffs filed a motion seeking attorneys' fees as the prevailing party in the trademark infringement case.

3. In awarding attorneys' fees, the court found that the record reflected that Respondent needed remedial assistance. The court then referred the Respondent to the Ad Hoc Committee for mentoring, supervision, and monitoring to ensure that respondent's conduct met the standards of professionalism that the court expects from attorneys practicing before it.

4. Upon referral, the committee investigated Respondent's conduct in the *Coach* proceedings, as well as past cases handled by the Respondent for the Southern District of Florida.

5. With regard to the *Coach* proceedings, the Committee's investigation revealed that respondent failed to comply with court orders and the local rules for the Southern District of Florida.

6. For example, as counsel for the defendants, Respondent failed to comply with multiple discovery requests by the plaintiffs. Initially, plaintiffs attempted to obtain the defendants' response without judicial intervention. When their efforts

failed, the plaintiffs sought recourse through the courts. The court then imposed a deadline of February 8, 2016, for the defendants to respond.

7. The Respondent filed an untimely and incomplete response a day after the responsive pleading was due.

8. On or about March 15, 2016, a hearing was held on Plaintiff's Motion to Compel discovery responses. The court ordered defendants to provide complete responses to plaintiffs' discovery requests. The court also ordered defendants to pay a sanction of \$500.00 for plaintiffs' attorney fees on or before March 21, 2016.

9. Neither Respondent nor the defendants complied with the court order.

10. On or about March 22, 2016, a second discovery hearing was held. The court ordered the defendants to produce responsive pleadings to the plaintiffs' discovery request. The court also ordered defendants to pay an additional sanction of \$500.00 for attorney fees to the plaintiffs by April 12, 2016.

11. It was not until after the plaintiffs requested yet another discovery hearing that the defendants paid the \$1000.00 sanction to the plaintiffs for their attorney fees.

12. Respondent also failed to comply with court ordered mediation. Specifically, on or about October 16, 2015, the court scheduled the mediation for April 4, 2016. Counsel for the plaintiffs flew from New York to Miami, Florida to

attend the court scheduled mediation. However, neither the Respondent nor his clients appeared.

13. The following day, on or about April 5, 2016, the plaintiffs filed a Motion for Sanctions against the defendants for their failure to appear at the mediation.

14. Respondent asserted a calendaring error for his and his clients' failure to attend the mediation.

15. On or about May 9, 2016, the court granted plaintiffs' Motion for Sanctions. The court found the defendants had a history of noncompliance and that their failure to attend the mediation was not substantially justified.

16. Additionally, Respondent failed to comply with certain Local Rules for the Southern District Court of Florida.

17. For example, pursuant to an order entered by the court on or about May 18, 2016, the court struck Defendants' response to the plaintiffs' motion for partial summary judgment due to noncompliance with Local Rule 56.1 (Motions for Summary Judgment). Here the court found that defendants' response "lumped-together" a two-paragraph section entitled "Undisputed Facts in Opposition" that did not separate which facts corresponded to the Plaintiffs Statement of Undisputed Material Facts.

18. Similarly, the Committee found that Respondent failed to comply with Rule 7.3(b) (Good Faith Effort to Resolve Issues by Agreement) of the Local Rules for the Southern District Court of Florida. Respondent repeatedly failed to respond to plaintiffs' telephone calls and emails attempting to confer on motions and discovery disputes. Plaintiff's counsel then began to label all emails that required a response with "*RESPONSE REQUESTED*," but the Respondent still refused to respond.

19. In addition to the incidents described above, the Ad Hoc Committee found that Respondent failed to file responsive pleadings to Plaintiff's motions that required a response, such as, Plaintiffs' Motion for Order to Show Cause and Plaintiff's Motion for Permanent Injunction. In both instances, defendants did not respond, resulting in the court granting the Plaintiffs' Motion for Permanent Injunction on or about September 15, 2016.

20. Respondent repeatedly failed to comply with court orders up to and including the conclusion of the trial. For instance, during the jury's deliberation the court directed all counsel to remain within fifteen minutes of the courtroom. Yet, Respondent failed to comply forcing the court, jury, and plaintiffs' counsel to wait over an hour before the jury verdict could be published.

21. The Ad Hoc Committee detailed similar instances of misconduct engaged in by Respondent in other cases before the United States District Court for

the Southern District of Florida. Specifically, in *LBC Compass Group v. Nova Marine Co. Ltd.*, Case No. 02-60862-CV, the court heavily criticized Respondent's client, *Nova*, and other defendants for failing to comply with the local rules for the United States District Court for the Southern District of Florida and the Federal Rules of Civil Procedure. Here Respondent and other defense counsel repeatedly filed papers that were mislabeled as ex parte motions, contained grammatical and spelling errors, and failed to contain memorandum of law.

22. Likewise, in *Mystique Inc. v. 138 International, Inc.*, Case No. 07-22937 CV-Torres, the court found that Respondent's client willfully and intentionally violated discovery orders.

23. While the court in *Mystique* did not find enough evidence to render respondent liable for the obstruction of the discovery process, and thus no sanctions were imposed against Respondent individually, the court did note that Respondent could have done more to determine whether his clients possessed any information that was responsive to plaintiffs' discovery requests. Further, the court found that Respondent made no effort to independently investigate the various inconsistencies in the clients' written and oral responses.

24. On or about March 13, 2018, Respondent testified before the Committee to address their concerns regarding the foregoing incidents. Regarding his clients' noncompliance with discovery requests, Respondent informed the



Committee that he did not appreciate the significance of his own need to provide a response to the plaintiffs' discovery requests, because he knew that his clients would not comply with same.

25. Respondent neither informed the court of the defendants' compliance related issues nor did he file appropriate motions for relief regarding same.

26. The Ad Hoc Committee issued a Report and Recommendation that found Respondent demonstrated utter disregard for the local rules of court. The committee also found that Respondent lacked a fundamental knowledge of federal practice.

27. For these reasons, the Committee recommended the following remedial actions: (1) that Respondent be suspended for six (6) months; (2) that he complete a CLE general course on federal practice, including the Federal Rules of Civil Procedure and, if possible, the local Rules for the United States District Court for the Southern District of Florida; (3) that he complete an evaluation by the Florida Bar's Practice Resource Institute; and (4) that he appear before the full Ad Hoc Committee prior to any reinstatement.

28. On or about June 13, 2019, Respondent filed an objection to the report and argued that the recommended suspension was beyond the scope of the referral.

29. The court then referred the case back to the Committee for reconsideration regarding Respondent's objection to the suspension.

30. In its Second Report and Recommendation, the Committee argued that the Respondent knew or should have known that a suspension was a possible consequence of him being referred to the Committee, and that he had the opportunity to respond to the Report and Recommendation.

31. The committee then reconsidered its earlier suspension recommendation, and, instead, recommended that if Respondent performed the remedial requirements as set forth in the first report and recommendation then there would be no reason that he should be suspended.

32. Respondent did not complete the remedial requirements as set forth in the first Report and Recommendation.

33. Consequently, the court ordered that the six-month suspension take effect. The court further ordered that Respondent not petition for reinstatement until he has completed the remedial requirements as set forth in the first Report and Recommendation and that prior to his reinstatement he should appear before the Committee for further report and recommendation.

34. At the time of this filing, Respondent has not been reinstated by the United States District Court for the Southern District of Florida.

### **III. RECOMMENDATION AS TO GUILT:**

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

I find that by operation of Rule 3-4.6, Rules Regulating The Florida Bar, the order entered on May 24, 2019, by the Honorable K. Michael Moore of the United States District Court for the Southern District of Florida, and the Report and Recommendation of the Ad Hoc Committee on Attorneys Admission Peer Review and Attorney Grievance dated April 12, 2018, constitutes conclusive proof of Respondent's misconduct as alleged in The Florida Bar's complaint in this disciplinary proceeding.

Accordingly, as indicated in my Order granting Summary Judgment in favor The Florida Bar, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-1.1 (Competence); Rule 4-1.3 (Diligence); Rule 4-3.4(a) (A lawyer must not unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding); Rule 4-3.4(c) (A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); and Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice...) of the Rules Regulating The Florida Bar.

#### **IV. CASE LAW**

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Rosenberg, 169 So.3d 1155(Fla. 2015), the Respondent received a one year suspension for misconduct including multiple discovery violations committed over the course of a year. His refusal to comply with court orders requiring him to produce documents resulted in sanctions against both him and his client.

In The Florida Bar v. Marcellus, 249 So.3d 538 (Fla. 2018), the Respondent, who was the husband in his own divorce proceeding, was suspended for 18 months for obstructing the wife's access to evidence, knowingly disobeying an obligation under the rules of a tribunal, intentionally failing to comply with a legally proper discovery request, and conduct involving dishonesty, fraud, deceit, or misrepresentation, along with other rules

In The Florida Bar v. Picon, 205 So.3d 759 (Fla. 2016), the Respondent received a 91 day suspension for lack of diligence and competency, for knowingly disobeying an obligation under the tribunal, and for engaging in conduct prejudicial to the practice of law.

#### **V. STANDARDS FOR IMPOSING LAWYER SANCTIONS**

I considered the following Standards prior to recommending discipline:

#### **4.4 LACK OF DILIGENCE**

**4.4(b)(2)** Suspension is appropriate when a lawyer causes injury or potential injury to a client and: (1) knowingly fails to perform services for a client or (2) engages in a pattern of neglect with respect to client matters.

#### **4.5 LACK OF COMPETENCE**

**4.5(b)** Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client.

#### **6.2 ABUSE OF THE LEGAL PROCESS**

**6.2(b)** Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to client or other party or causes interference or potential interference with a legal proceeding.

#### **7.00 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL**

**7.1(b)** Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

#### **VI. AGGRAVATING AND MITIGATING FACTORS:**

I considered the following factors prior to recommending discipline:

##### **A. Aggravating Factors**

- 3.22(b)(3) a pattern of misconduct
- 3.22(b)(4) multiple offenses
- 3,22(b)(7) refusal to acknowledge the wrongful nature of the conduct;  
and

- 3.22(b)(9) substantial experience in the practice of law (R was admitted to practice in 1988, over 32 years ago.)

B. Mitigating Factors:

- 3.3.(b)(1) absence of a prior disciplinary record.

**VII. 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. 90-day suspension.

B. Respondent should be provided with thirty (30) days to close his practice, during which time he should eliminate all indicia of Respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of Respondent's status as an attorney, whatsoever. Respondent will no longer hold himself out as a licensed attorney; and

C. Payment of The Florida Bar's costs in these proceedings. The Florida Bar shall file a Motion for Costs to be considered by this Referee.

**VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD**

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

A. Personal History of Respondent:

Age: 67

Date admitted to the Bar: September 29, 1988

**IX. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:**

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against Respondent.

Dated this 18<sup>th</sup> day of February 2021.

\_\_\_\_\_/s/\_\_\_\_\_  
Honorable Victoria del Pino,  
Referee  
Lawson E. Thomas Courthouse  
175 NW 1st Ave., Ste 2915  
Miami, FL 33128-1898

Original To:

John A. Tomasino, Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

Louis Thaler, Attorney for Respondent, via email at [louisthaler16@gmail.com](mailto:louisthaler16@gmail.com)  
Tonya L. Avery, Bar Counsel, via email at [tavery@floridabar.org](mailto:tavery@floridabar.org)  
Patricia A. Savitz, Staff Counsel, via email at [psavitz@floridabar.org](mailto:psavitz@floridabar.org)