

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. SC06-8
[TFB Case Nos. 2004-32,079(18A),
2005-31,231(18A),
2005-31,336(18A),
2006-30,024(18A)]

v.

Case No. SC06-1602
[TFB Case No. 2006-31,784(18A)]

CHRISTOPHER RUMSEY QUALMANN,
Respondent.

_____ /

AMENDED REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, a hearing was held on March 23, 2007. A hearing as to sanctions was held on April 27, 2007. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - JoAnn Marie Stalcup

For The Respondent - *pro se*

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent Is Charged: After considering all the pleadings and evidence, pertinent portions of which are commented on below, this referee finds:

The respondent admitted to the following allegations contained in the bar's complaint:

COUNT I
[TFB Case No. 2004-32,079(18A)]

1. Respondent was employed by the law firm of Forizs and Dogali (hereinafter referred to as the "Law Firm") between September 15, 2003, through June 29, 2004.

2. The Law Firm's main office was located in Tampa, Florida. Respondent was employed by the Law Firm to work in the Law Firm's Orlando office.

3. Respondent's employment contract with the Law Firm prohibited him from representing clients without the Law Firm's knowledge or consent.

4. Respondent was also required to notify the Law Firm of all of his existing clients, in order for those clients to be entered into the Law Firm's records, for administrative as well as billing purposes.

5. Respondent was made aware of the Law Firm's procedures regarding receipt of trust funds and legal fees. All such matters were handled, deposited and processed exclusively through the Law Firm's main office. Respondent had no access to the Law Firm's trust account or operating account at any time during his employment with the Law Firm.

6. Respondent misappropriated a fee belonging to the Law Firm from the Law Firm's client, Nancy O'Dell.

7. Ms. O'Dell was instructed by the respondent, in or around March 2004, to make her check payable to the respondent rather than to the Law Firm.

8. Ms. O'Dell made out a \$500.00 check payable to the respondent on March 16, 2004. The respondent negotiated the check.

9. Respondent failed to advise the Law Firm of receipt of the funds.

10. Respondent failed to forward Ms. O'Dell's check to the Law Firm's main office for proper processing.

COUNT II
[TFB Case No. 2004-32,079(18A)]

11. While employed by the Law Firm, respondent represented John Piccione and his company, International Equity Holdings, Inc., in a federal suit styled as Chappo & Co., Inc. v. International Equity Holdings, Inc., Case No. 02-CIV-2408. Respondent was admitted *pro hac vice* as lead trial counsel for Mr. Piccione and his company.

12. The Honorable Richard C. Casey, United States District Judge, New York, New York, established summary judgment deadlines in the case.

13. On November 19, 2003, respondent wrote the court indicating he had been injured causing him to request a final extension of time with respect to the summary judgment deadlines entered by the court.

14. The court granted the respondent's request.

15. On or about January 14, 2004, the opposing party's counsel sent correspondence to the court and respondent requesting that summary judgment be entered in favor of his client.

16. On or about January 15, 2004, respondent wrote to the court requesting that the court grant him additional time to respond to the opposing counsel's request. This correspondence was sent to the court via facsimile transmission on or about January 15, 2004.

17. Respondent advised the court he was out of the office on "personal matters" and requested that the court take no action on opposing counsel's request until he was back in the office and could more fully formulate a response.

18. Respondent indicated in his signature block that he had dictated the letter and authorized it to be delivered in his absence and without his signature to avoid delay.

19. However, respondent did not dictate the letter and authorize that it be delivered in his absence.

20. Rather, respondent signed the letter using his initials followed by his secretary's initials to indicate that she had initialed the letter and sent it in respondent's absence.

21. Respondent's secretary was not aware respondent prepared and sent this letter.

22. Respondent's secretary did not authorize the respondent to sign her initials to the correspondence.

23. Respondent made a misrepresentation to the court in order to obtain an extension of time to respond to the opposing counsel's request that the court grant summary judgment in favor of his client.

COUNT III

[TFB Case No. 2004-32,079(18A)]

24. The respondent represented American Express and agreed to handle collection matters for them.

25. Respondent misrepresented to American Express in periodic status reports that matters were progressing when, in fact, they were not.

26. Respondent misrepresented to American Express that complaints had been completed and/or that complaints had been filed when, in fact, the complaints had not been completed and/or had not been filed.

COUNT IV
[TFB Case No. 2004-32,079(18A)]

27. The bar served the respondent at his record bar address on October 6, 2004, with notice that he was required to respond to the complaint filed by Andy Dogali on or about July 8, 2004, no later than October 25, 2004, and that no continuances would be granted.

28. On October 25, 2004, the respondent sent a letter indicating his detailed response to the issues raised by Mr. Dogali would be filed by October 27, 2004.

29. Despite his assurances to the contrary, the respondent failed to submit any written response pursuant to R. Regulating Fla. Bar 4-8.4(g).

30. Respondent failed to comply with the bar's correspondence dated October 6, 2004 which required a written response be submitted no later than October 25, 2004.

31. Moreover, contrary to his assurances otherwise, the respondent failed to submit his written response on October 27, 2004.

COUNT V
[TFB Case No. 2005-31,231(18A)]

32. Connie Kunkle hired respondent on or about December 30, 1998, to represent her on a contingency fee basis in a claim for damages against Tactica International, Inc.

33. Respondent filed suit on Ms. Kunkle's behalf in federal district court on or about January 24, 1999. The case was styled Kunkle v. Tactica International, Inc., Case No. 6:98-cv-01307-PCF.

34. On or about March 29, 1999, the court filed an order to show cause directing respondent to show cause on or before April 15, 1999, why the case should not be dismissed for failure to comply with Federal Rule of Civil Procedure 4(m).

35. Respondent responded on or about April 8, 1999, and the matter was not dismissed.

36. The case was referred to a magistrate who, on or about April 12, 1999, filed his report recommending dismissal as a result of subject matter jurisdiction.

37. On or about May 3, 1999, the court filed its order dismissing Ms. Kunkle's case. The order provided that respondent could refile the action and pay the filing fee.

38. On or about June 2, 1999, respondent moved for permission to file an amended complaint but the court denied his motion on or about June 22, 1999, because the respondent failed to request leave to file an Amended Complaint before the case was dismissed and failed to object to docket number 8 (Report and Recommend for Dismissal – Lack of Subject Matter Jurisdiction).

39. Respondent did not advise Ms. Kunkle of the dismissal of her case.

40. Respondent misled Ms. Kunkle into believing her case was progressing when, in fact, it had been dismissed.

41. In or about August 2002, respondent filed a new action in federal district court on Ms. Kunkle's behalf. The case was styled Kunkle v. Tactica International, Inc., Case No. 6:02-cv-931-Orl-22JGG.

42. On or about August 16, 2002, the court issued the customary Interested Persons Order requiring respondent to identify all interested persons within 10 to 20 days. Respondent failed to respond as required.

43. On January 28, 2003, the court entered an order requiring respondent to show cause within 11 days why the case should not be dismissed for failure to prosecute and for failure to respond to the Interested Persons Order.

44. Respondent failed to respond to the court's order to show cause.

45. On February 18, 2003, the court entered an order dismissing the case for failure to prosecute without prejudice.

46. Respondent failed to advise Ms. Kunkle of the order to show cause.

47. Respondent failed to advise her of the second dismissal of her claim, and led her to believe her case was progressing normally when, in fact, it was not.

48. Throughout the representation, respondent failed to maintain adequate communication with Ms. Kunkle.

COUNT VI

[TFB Case No. 2005-31,336(18A)]

49. Gary A. Duke hired respondent in or around 2004 to represent his minor son who had been interrogated by the police and a school board administrator without Mr. Duke being present.

50. Mr. Duke paid respondent \$500.00 to handle the matter.

51. Mr. Duke understood respondent would write a letter to the police department and to the school board regarding the handling of the matter.

52. Respondent failed to take any action in the matter and failed to provide Mr. Duke with any legal services after receipt of the fee.

53. Respondent misrepresented to Mr. Duke that he had prepared and mailed the letters when, in fact, he had not done so.

54. The Florida Bar served respondent at his record bar address on March 3, 2005, with notice of Mr. Duke's grievance.

55. Despite the requirements of R. Regulating Fla. Bar 4-8.4(g) that he submit a written response, respondent failed to do so.

56. The Florida Bar served respondent at his record bar address on April 5, 2005, by certified mail, return receipt requested, with notice of Mr. Duke's grievance. Respondent was required to submit a written response within 10 days.

57. Respondent faxed correspondence to the bar on April 15, 2005, informing the bar that his response would be completed and hand delivered the following Monday.

58. Despite his representations to the bar, respondent failed to submit a written response pursuant to R. Regulating Fla. Bar 4-8.4(g) to the grievance filed by Mr. Duke.

COUNT VII

[TFB Case No. 2006-30,024(18A)]

59. Rodney Congreaves was referred to respondent through a pre-paid legal services program to prepare a patent application in or about December 2003.

60. Respondent advised Mr. Congreaves that he had experience in this area of law.

61. Respondent did not advise Mr. Congreaves that he was not a registered patent attorney.

62. Mr. Congreaves paid respondent \$1,500.00 to prepare the patent application.

63. Respondent prepared and filed the patent application on Mr. Congreaves' behalf.

64. The Patent Office notified respondent that the patent application was incomplete.

65. Respondent failed to respond to the notice and failed to amend the application to comply with the requirements for a complete patent application.

66. Mr. Congreaves' patent application was rejected because it failed to meet the requirements for a complete patent application.

67. Throughout the representation, respondent failed to maintain adequate communication with Mr. Congreaves.

68. The Florida Bar served respondent at his record bar address on July 14, 2005, with Mr. Congreaves' grievance.

69. Despite the requirements of R. Regulating Fla. Bar 4-8.4(g) that he submit a written response, respondent failed to do so.

70. The Florida Bar served the respondent at his record bar address, on August 23, 2005, by certified mail, return receipt requested, with notice of Mr. Congreaves' grievance. Respondent was required to submit a written response within 10 days.

71. Respondent sought an extension of time to submit a written response on September 7, 2005, informing the bar that his response would be completed and hand delivered to the bar's office that same day.

72. Despite his representations to the bar, the respondent failed to submit a written response pursuant to R. Regulating Fla. Bar 4-8.4(g) to the grievance filed by Mr. Congreaves.

SC06-1602
[TFB Case No. 2006-31,784(18A)]

73. Respondent represented the defendants in PUSA, Inc. v. Gator Building Maintenance, Inc., John Dooley and Deborah Dooley, Case No. 04-CA-929-15-G (hereinafter referred to as "PUSA, Inc. v. Gator Building Maintenance, Inc.").

74. Counsel for the plaintiff, William Jonathan Denius, filed a motion for summary judgment and, after conferring with respondent to reach a mutually agreeable hearing date and time, set the motion for hearing on March 16, 2006.

75. On or about March 14, 2006, respondent advised Mr. Denius he needed a continuance of the hearing set for March 16, 2006.

76. In support of his request for a continuance, respondent faxed to Mr. Denius a court order in a dependency case where respondent was counsel for the parents purportedly showing a case plan conference was set for the dependency case on March 16, 2006, commencing at 8:30 a.m., which was one hour prior to the time scheduled for the hearing in PUSA, Inc. v. Gator Building Maintenance, Inc.

77. Respondent further advised Mr. Denius that the case plan conference in the dependency case could not be continued.

78. Based upon respondent's representations to him, Mr. Denius agreed to continue the hearing on his motion for summary judgment.

79. In fact, the case plan conference in the dependency case was set for 3:30 p.m. not 8:30 a.m. as represented by the respondent.

80. Respondent did not advise Mr. Denius on May 14, 2006, that, although the start time for the dependency case was set for 3:30 p.m., respondent was in the process of obtaining an earlier start time of 8:30 a.m.

81. Respondent did not advise Mr. Denius of this fact until after Mr. Denius obtained a copy of the order from the Department of Children and Families

on March 15, 2006, which showed the case plan conference was actually set for 3:30 p.m., not 8:30 a.m., and confronted the respondent regarding the altered order.

III. Recommendations as to Whether the Respondent Should Be Found Guilty:
As to each count of the complaint, this referee makes the following recommendations as to guilt or innocence:

This referee determined the respondent voluntarily admitted to the above-referenced allegations as to his conduct, that he was not promised anything in return for making such admissions, that he was not coerced in any way to make such admissions, and that he understood the ramifications of making such admissions. Therefore, this referee recommends that the respondent be found guilty of all the above-referenced allegations.

IV. Rule Violations Found:

The respondent also admitted that his misconduct violated the rules governing attorney conduct. Therefore this referee finds the respondent violated the following Rules Regulating The Florida Bar:

Case No. SC06-8

As to Count I: 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

As to Count II: 4-3.3 for knowingly making a false statement of material fact or law to a tribunal; and 4-8.4(d) for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice.

As to Count III: 4-1.4 for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

As to Count IV: 4-8.4(g)(2) for failing to respond, in writing, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyer's conduct within 10 days of the date of any follow-up investigative inquiries by bar counsel.

As to Count V: 4-1.1 for failing to provide competent representation to a client; 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about

the status of a matter and promptly comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-3.4(c) for knowingly disobeying an obligation under the rules of a tribunal; and 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

As to Count VI: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and 4-8.4(g) for failing to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency when bar counsel or the agency is conducting an investigation into the lawyer's conduct.

As to Count VII: 4-1.1 for failing to provide competent representation to a client; 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and for failing to comply with reasonable requests for information; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(g) for failing to respond, in writing, to any official inquiry by Bar counsel or a disciplinary agency when Bar counsel or the agency is conducting an investigation into the lawyer's conduct.

Case No. SC06-1602

4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice.

V. **Recommendation as to Disciplinary Measures to Be Applied:**

This referee recommends that the respondent be:

- A. Suspended from the practice of law for a period of 1 year and until rehabilitation is shown;
- B. Required to continue his Florida Lawyers Assistance Inc. contract for the remainder of his contract;
- C. Required to pay restitution to the firm of *Forizs & Dogali, P.L.*, 4301 Anchor Plaza Parkway, Suite 300, Tampa, Florida 33634-7521 in the amount of \$500.00, that he pay restitution to *Gary Duke*, 902 W. Yale Street, Orlando, Florida 32804 in the amount of \$500.00, and that he pay restitution to *Rodney*

Congreaves, 655 McKinley Court, Kissimmee, Florida 34758-3235 in the amount of \$1,500.00; and

D. Required to pay the bar's costs in this proceeding.

This recommendation is based upon the facts of the case, the respondent's admissions, the aggravating and mitigating factors involved, the Standards for Imposing Lawyer Sanctions, and the case law. This recommendation is also based upon the fact the respondent has been diagnosed with numerous emotional, mental and physical problems or impairments as was evidenced by the exhibits provided by the respondent during the sanction hearing. Likewise, the respondent's testimony as it relates to his current physical and mental health status was considered. Finally, this referee believes it is important to recognize the fact the respondent came to the evidentiary hearing and admitted to the conduct and rule violations alleged by the bar rather than requiring the bar to prove its case against the respondent.

This referee reviewed the factors to be considered as outlined in The Standards for Imposing Lawyer Sanctions as well as the purposes of discipline as found by the Court in The Florida Bar v. Spear, 887 So.2d 1242, 1246 (Fla. 2004).

This referee considered the respondent's testimony as it related to his mental and physical health status during the time period involved in the bar's complaint and his additional explanations as to why and how the conduct involved in the bar's complaint occurred. Likewise, the respondent's testimony as it related to his involvement with Florida Lawyers Assistance Inc., and the strides he has made over the past year to deal with his emotional, mental and physical problems and/or impairments was considered. The contract the respondent entered into in mid-2006 for a period of three years with Florida Lawyers Assistance Inc., the affidavits provided by Dr. Scott M. Weinstein of Florida Lawyers Assistance Inc., the listing of respondent's recent successful cases and other current important cases, and letters from the respondent's pastor, two attorneys and one client were also considered. Finally, the bar's arguments regarding appropriate discipline were carefully considered.

Based upon the foregoing considerations, this referee has found the following mitigating factors are present in this case: 9.32(a) absence of prior disciplinary record; (c) personal or emotional problems; (h) physical or mental disability or impairment; and (l) remorse. The following aggravating factors are present in this case: 9.22(b) dishonest or selfish motive; (c) pattern of misconduct; (d) multiple offenses; (i) substantial experience in the practice of law; and (j) indifference to making restitution. And, the following Standards are applicable in

this case: 4.4 (lack of diligence); 4.5 (lack of competence); 4.6 (lack of candor); and 6.2 (abuse of the legal process).

Finally, this referee reviewed the numerous cases presented by the bar and finds that The Florida Bar v. Broome, 932 So.2d 1036 (Fla. 2006) is the most applicable. In Broome, the respondent was found to have committed 33 violations of 20 rules. The conduct engaged in by the respondent spanned approximately seven years and the referee in that case found the respondent had been diagnosed with clinical depression. While the Court found the sanction in Broome could have been disbarment, the Court found that due to the respondent's substantial mitigation, a one year suspension was more appropriate and served the purposes of lawyer discipline. Like the respondent in Broome, the respondent in the instant case has been diagnosed with numerous emotional, mental, and physical problems and/or impairments. He freely and voluntarily admitted to engaging in misconduct that spanned approximately six to seven years which accounted for 20 violations of 8 bar rules. And finally, he has actively engaged in a treatment plan for approximately one year.

Thus, this referee finds that the substantial mitigation involved in the instant case as well as the facts and findings in Broome supports the instant recommendation of a one year suspension with the additional requirements that the respondent continue treatment pursuant to the Florida Lawyers Assistance Inc. contract, pay restitution, and pay the bar's costs.

VI. Personal History and Past Disciplinary Record: After the finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(m)(1)(D), this referee considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 48

Date admitted to bar: August 29, 1984

Prior disciplinary convictions and disciplinary measures imposed therein: None

VII. Statement of Costs and Manner in Which Costs Should be Taxed: this referee finds the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs

- | | |
|-----------------------------|----------|
| 1. Transcript Costs | \$ -0- |
| 2. Bar Counsel Travel Costs | \$ 20.85 |

B. Referee Level Costs	
1. Transcript Costs	\$ 566.00
2. Bar Counsel Travel Costs	\$ 418.25
C. Administrative Costs	\$ 1,250.00
D. Miscellaneous Costs	
1. Investigator Expenses	\$ 642.00
2. Witness Fees	\$ 134.61
3. Copy Costs	\$ 80.39
4. Costs for Retrieval of Riles	\$ <u>50.00</u>
TOTAL ITEMIZED COSTS:	\$ 3,162.10

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the 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. It is further recommended that respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 for failure to timely pay the costs assessed in this proceeding.

Dated this _____ day of _____, 2007.

JAMES ALAN YANCEY
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

JoAnn Marie Stalcup, Bar Counsel, The Florida Bar, 1200 Edgewater Drive,
Orlando, Florida, 32804-6314

Christopher Rumsey Qualmann, 2700 Westhall Lane, Suite 215, Maitland, Florida
32751-7475

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson
Street, Tallahassee, Florida 32399-2300



THE FLORIDA BAR

1200 EDGEWATER DRIVE
ORLANDO, FL 32804-6314

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

LAWYER REGULATION DEPARTMENT 407/425-5424
UPL DEPARTMENT 407/425-0473
WWW.FLABAR.ORG

The Honorable «RefConcatName»
«RefAddr1»
«RefAddr2»
«RefCity», «RefState» «RespZip»

RE: The Florida Bar v. «RConcatName»
Case No. «SCtCaseNo»
[TFB Case No. «BarFileNo»]

Dear Judge «RefLN»:

Please find enclosed a proposed Report of Referee in the above named case, as requested.

Please note that your entire file must be forwarded to the Supreme Court of Florida along with your signed order. The Supreme Court of Florida also requires your final Report of Referee to be e-filed with them at e-file@flcourts.org with the case number shown on the subject line.

Copies of the Report of Referee only for respondent and myself, as well as our headquarters office, are also enclosed with self-addressed stamped envelopes.

Please do not hesitate to contact me should you have any questions or comments.

Sincerely yours,

«TFBAttyConcat»
Bar Counsel

«TFBAttySec»

Enclosures

cc: «RConcatName» - w/enclosures

The Honorable «RefConcatName»

«RefAddr1»

«RefAddr2»

«RefCity», «RefState»

«TFBAttyConcat»
The Florida Bar
1200 Edgewater Drive
Orlando, FL 32804

«RConcatName»

«RespAddr1»

«RespAddr2»

«RespCity», «RespState»