

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ALAN HOWARD RAMER,

Respondent.

Supreme Court Case
No. SC-

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

FORMAL COMPLAINT FOR RECIPROCAL DISCIPLINE

The Florida Bar, complainant, files this Complaint against Alan Howard Ramer, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on September 29, 1988, and is subject to the jurisdiction of the Supreme Court of Florida.
2. In addition to membership in The Florida Bar, respondent is a member of the United States District Court for the Southern District of Florida, albeit currently suspended from practice before that Court.
3. 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 (the “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. *Copies of Judge Moore's May 24, 2019 Order and the Report and Recommendation of the Ad Hoc Committee are attached hereto as Composite Exhibit "A."*

4. The suspension was based on the following conduct:

A. 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.

B. 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.

C. 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. *A copy of Judge Cecilia M. Altonga's Order is attached as Exhibit "B."*

D. Upon referral, the committee conducted an investigation into respondent's conduct in the *Coach* proceedings, as well as past cases handled by the respondent for the Southern District of Florida.

E. 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.

F. 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.

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

H. 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 sanction of \$500.00 for plaintiffs' attorney fees on or before March 21, 2016.

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

J. 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.

K. Neither Respondent nor the defendants complied by the deadline.

L. 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.

M. 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. *A copy of the Mediation Report is attached as Exhibit "C."*

N. 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.

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

P. 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.

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

R. 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.

S. 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.

T. 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.

U. 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.

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

W. 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.

X. While the court in *Mystique* did not find enough evidence to blame respondent 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.

Y. On or about March 13, 2018, respondent testified before the Committee to address their concerns regarding the foregoing incidences. In response to his clients' noncompliance with the discovery requests, respondent informed the committee that he did not appreciate the significance of responding to the plaintiffs' discovery requests because he knew that his clients would not comply.

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

AA. 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.

BB. 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 Southern District of Federal Court; (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.

CC. 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.

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

EE. 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.

FF. 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.

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

HH. 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.

II. At the time of this filing, respondent has not been reinstated by the United States Southern District Court of Florida.

5. By operation of Rule 3-4.6, Rules Regulating The Florida Bar, the order dated May 23, 2019, by the Honorable K. Michael Moore adopting the Report and Recommendation entered on April 12, 2018, by the Ad Hoc committee on Attorney Admissions, Peer Review, and Attorney Grievance shall be considered as conclusive proof of such misconduct in this disciplinary proceeding.

6. By reason of the foregoing, respondent has violated 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.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Louis Thaler, Attorney for respondent, at louisthaler16@gmail.com; and that a copy has been furnished by United States Mail, via certified mail no. 7017 1450 0001 4287 3743, return receipt requested to Louis Thaler, Attorney for respondent, whose record bar address is 3850 Bird Road, Suite 903, Coral Gables, FL 33146-1507; and via email to Tonya L. Avery, Bar Counsel, tavery@floridabar.org, on this 16th day of July, 2020.



Patricia Ann Toro Savitz
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Tonya L. Avery, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131, (305) 377-4445 and tavery@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.