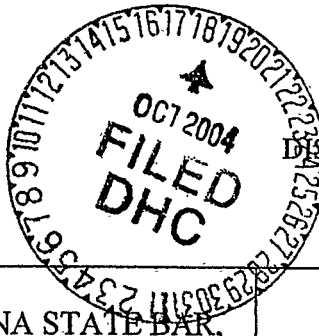


22580

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 6

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROGER W. RIZK, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER
OF DISCIPLINE

This matter came before a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair, M. Ann Reed, and Marguerite P. Watts. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Alan M. Schneider represented the Defendant. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Further, by entering into this consent order of discipline, Defendant freely and voluntarily consents to the order of discipline, waives a formal hearing in this case, and waives all right to appeal this order or challenge in any way the sufficiency of the findings, the conclusions, or the discipline imposed. Based upon the consent of the parties, the hearing committee hereby enters the following

FINDINGS OF FACT

1. The Plaintiff, the North Carolina 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 and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Roger W. Rizk ("Defendant"), was admitted to the North Carolina State Bar in 1995 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct. Defendant was admitted to the Florida Bar in 1970 and represented Florida clients through approximately 1998.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Defendant was properly served with process and a hearing in this matter was set with due notice to all parties.

5. During all or part of the relevant periods referred to herein, Defendant operated his law practice as a professional association, holding the law practice out as "Roger W. Rizk, P.A." Defendant was the principal responsible for filing all returns and paying all taxes on behalf of the association.

6. Defendant's law practice, operated as a professional association, employed personnel other than himself from 1995 through April 2002.

7. Defendant unlawfully and willfully failed to timely file the state withholding tax returns on behalf of Roger W. Rizk, P.A. for the third and fourth quarters of 2002 and for all quarters of 2003.

8. Defendant unlawfully and willfully failed to timely pay the state income tax withheld from his professional association's employees' wages as required by N.C. Gen. Stat. §§ 105-163.2 and 105-163.6, from 1995 through 2002.

9. Defendant unlawfully and willfully failed to timely file the federal withholding tax returns on behalf of Roger W. Rizk, P.A. for the third and fourth quarters of 2002 and for all quarters of 2003.

10. Defendant unlawfully and willfully failed to timely pay the federal income tax withheld from his professional association's employees' wages as required by 26 U.S.C. §§ 3402 and 6151 from 1995 through 2002.

11. Defendant unlawfully and willfully failed to timely pay state individual income taxes for some or all of the tax years from 1996 through 2002 as required by N.C. Gen. Stat. §§ 105-152 and 105-157.

12. Defendant owed the North Carolina Department of Revenue approximately \$13,000.00 in past due withholding taxes and owed the Internal Revenue Service approximately \$87,000 in past due withholding taxes.

13. Defendant owed the North Carolina Department of Revenue approximately \$2,000.00 in past due individual income taxes.

14. Defendant failed to pay his federal individual income taxes during this same time period and owed the Internal Revenue Service \$83,000.00 for unpaid personal income taxes through the year 2002.

15. Willful failure to file a state tax return or pay state income tax withholdings when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236 (9).

16. Willful failure to file a federal tax return or pay federal income tax withholdings when due is a misdemeanor under 26 U.S.C. § 7203.

17. Willful failure to file or pay a state income tax when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236 (9).

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Roger W. Rizk, and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (3) as follows:

(a) By unlawfully and willfully failing to timely file and/or pay state income tax withholdings when those taxes were due, Rizk committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4 (b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (c).

(b) By unlawfully and willfully failing to timely pay state individual income taxes when those taxes were due, Rizk committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4 (b).

(c) By unlawfully and willfully failing to timely file and/or pay federal income tax withholdings when those taxes were due, Rizk committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4 (b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (c).

Based upon the consent of the parties, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendants' misconduct is aggravated by the following factors:

a. Prior discipline, to wit:

1. Reprimand, North Carolina State Bar, 2001 (reciprocal with Florida)
2. Reprimand for client neglect, Florida, 2001

3. Suspension for 10 days, North Carolina State Bar, 2000 (reciprocal with Florida)
 4. Suspension for 10 days for client neglect, Florida, 2000
 5. Censure for client neglect and filing a frivolous lawsuit, North Carolina State Bar, 1999
 6. Reprimand and probation, Florida, 1999 (reciprocal with North Carolina)
 7. Suspension stayed for 4 years for commingling funds, North Carolina State Bar, 1998
 8. Reprimand for filing a frivolous lawsuit, North Carolina State Bar, 1997;
- b. Pattern of misconduct;
 - c. Multiple offenses;
 - d. Dishonest or selfish motive; and
 - e. Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. Personal or emotional problems;
 - b. Timely good faith efforts to make restitution;
 - c. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings; and
 - d. Remorse.
 3. The aggravating factors outweigh the mitigating factors.
 4. The Defendant has significantly participated in voluntary bar, civic, church and community organizations for many years, including during the time period at issue in this case.
 5. Although Defendant does not state that depression caused him to engage in the misconduct stated above, Defendant feels depression he suffered during this time period significantly impaired his ability to appropriately prioritize and honor his responsibilities in this area. Defendant has had a mental health evaluation performed by a psychologist, who diagnosed depression. Defendant also consulted with Don Carroll of the North Carolina State Bar Lawyer Assistance Program. Defendant has entered into a LAP contract and is following Mr. Carroll's recommendations. Defendant is currently being treated by a therapist.

6. Defendant feels he could not afford to pay the withheld taxes to the appropriate state and federal authorities because of his financial problems, which ultimately resulted in personal bankruptcy, foreclosure of his home, and changes to his office location to cheaper alternatives.

7. From the income taken in by his law practice, Defendant paid the business rent, utilities, and employee salaries minus withholdings. The remainder was his personal income.

8. From his personal income, Defendant paid alimony, mortgage or rent, utilities, food expenses, car expenses, and entertainment expenses.

9. In conjunction with failing to pay the withheld income taxes to the North Carolina Department of Revenue and the Internal Revenue Service, Defendant failed to pay withholdings for Medicaid and Social Security for his employees. Defendant has significant experience with disability and social security claims, and was aware during the time frame at issue that to qualify for social security disability benefits a claimant must have had quarterly contributions paid into the system for a specified time frame.

10. Defendant was aware during the time period at issue in this case that failure to pay the withheld income taxes to the appropriate authorities might result in the credit an employee would take for the amount of withheld taxes not being allowed. Defendant was further aware that failure to pay Medicaid and Social Security withholdings created a risk that his employees' ability to qualify for certain benefits might be compromised.

11. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would be inconsistent with orders of discipline entered by this body in similar cases and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

12. Discipline of a level no less than suspension is also necessary in light of the fact that Defendant engaged in this misconduct despite, and contemporaneously with, being disciplined by North Carolina and Florida for other disciplinary violations.

Based upon the foregoing factors and the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the Defendant, Roger W. Rizk, is hereby suspended for five years, beginning 30 days from the date of service of this order upon the Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Within 15 days of the effective date of this order Defendant shall provide the State Bar with an address at which clients seeking return of files can obtain such files and shall promptly return all files to his clients upon request.

5. After serving two years of the active suspension of his license, Defendant may apply for reinstatement upon filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him;
- c. That not less than 60 days before seeking reinstatement Defendant was evaluated by the Lawyers Assistance Program or by a mental health professional approved by the State Bar at his own expense, and that he complied and continues to comply with any and all treatment recommendations of the LAP program or the psychiatrist and that he is not under any disability at that time. The medical evaluation and treatment shall be obtained at Defendant's expense;
- d. That within ten days of obtaining the evaluation described above, Defendant signed the appropriate releases and medical authorizations and provided the releases to the North Carolina State Bar Office of Counsel, authorizing counsel to speak with his mental health professional or the LAP personnel and obtain copies of his medical records from the mental health professional and/or other records from LAP. Defendant shall not revoke these releases;
- e. That Defendant complied and continues to comply with any and all requests by the North Carolina State Bar Office of Counsel for any reports, medical records, LAP evaluations or mental health evaluations at his expense;

- f. That Defendant complied with and continues to comply with the terms of all agreements with the Internal Revenue Service and the North Carolina Department of Revenue in existence during the stay;
- g. That Defendant provided the State Bar with documentation from the Internal Revenue Service (IRS) showing compliance with the terms of any agreements with the IRS, documenting compliance from the date of the entry of this order through sixty (60) days prior to application for any stay of remaining suspension or for reinstatement and filed with the State Bar with any application for stay or reinstatement;
- h. That Defendant filed and paid all taxes in a timely manner during the period of suspension (whether active or stayed);
- i. That Defendant provided the State Bar with copies of all tax returns filed during the suspension (whether active or stayed) and proof of payment of taxes due during the suspension (whether active or stayed), filed with the State Bar contemporaneously with filing with the Internal Revenue Service or the North Carolina Department of Revenue;
- j. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address;
- k. That he has responded to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- l. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state; and
- m. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension.

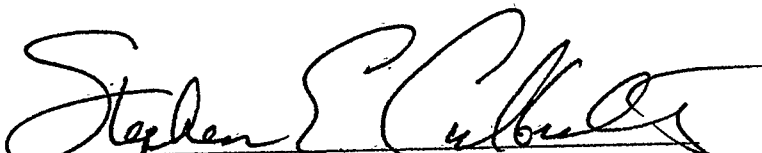
6. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with the conditions set out in paragraph 5.

7. If an order staying any period of this suspension is entered and the Defendant fails to comply with any one or more of the conditions referenced in Paragraphs 5 and 6, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

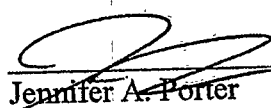
8. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraph 5 above before seeking reinstatement of his license to practice law.


9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

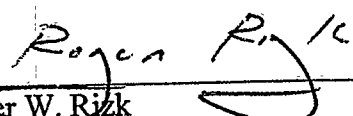
Signed by the Chair with the consent of the other hearing committee members,
this the 15 day of October, 2004.


Stephen E. Culbreth
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:


Jennifer A. Porter
Deputy Counsel
Attorney for Plaintiff


Alan M. Schneider
Attorney for Defendant


Roger W. Rizk
Defendant