

SUPREME COURT OF FLORIDA

The Florida Bar v. Rodriguez

959 So. 2d 150 (Fla. 2007) · No. SC03-909 · Decided May 3, 2007

SUMMARY

The Supreme Court of Florida reviewed disciplinary proceedings involving Francisco Ramon Rodriguez's participation in a secret engagement agreement with DuPont while representing Benlate clients. The court upheld most of the referee's misconduct findings, rejected Rodriguez's res judicata defense except as to one fee-related violation, and imposed a two-year suspension. The court also ordered disgorgement of Rodriguez's portion of the prohibited fee, including applicable taxes and interest, to the Clients' Security Fund.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Florida                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Per Curiam; Lewis, C.J.; Wells, J.; Anstead, J.; Pariente, J.; Quince, J.; Cantero, J.; Bell, J.                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | May 3, 2007                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | SC03-909                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Rodriguez petitioned for review of a referee's report in a Florida Bar disciplinary proceeding. The Bar cross-petitioned regarding the recommended discipline and the recommendation that Rodriguez not forfeit the prohibited fee.                                                                                                                                                             |
| STANDARD OF REVIEW    | The Court's scope of review of a referee's recommended discipline is broader than its review of the referee's factual findings because the Court has ultimate responsibility for imposing the appropriate sanction. The Court generally will not second-guess a recommended discipline that has a reasonable basis in existing caselaw and the Florida Standards for Imposing Lawyer Sanctions. |
| PRECEDENTIAL VALUE    | Published Florida Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                          |
| PARTIES               | Francisco Ramon Rodriguez v. The Florida Bar                                                                                                                                                                                                                                                                                                                                                    |

TOPICS

remedies

restitution

appellate procedure

standard of review

## PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

## QUESTIONS PRESENTED

1. Whether the 1998 consent judgment barred the later disciplinary proceeding under res judicata.
2. Whether the referee's recommended public reprimand and four-year probationary period were an appropriate discipline for Rodriguez's misconduct.
3. Whether Rodriguez should be required to forfeit or disgorge his portion of the prohibited fee to The Florida Bar Clients' Security Fund.
4. Whether the Court should disapprove the referee's finding that Rodriguez violated rule 4-1.8(a) based on the firm's retention of interest earned on clients' escrow funds.

## HOLDINGS

1. The 1998 consent judgment did not bar the later disciplinary proceeding because the prior proceeding concerned the firm's dealings with the Benlate clients and the aggregate settlement, while the present proceeding concerned the firm's secret engagement agreement and relationship with DuPont.
2. The referee's finding that Rodriguez violated rule 4-1.8(a) by retaining interest earned on the clients' escrow funds was barred by res judicata and must be disapproved.
3. A two-year suspension, rather than a public reprimand and probation, was the appropriate sanction for Rodriguez's knowing conflict of interest, failure to disclose the conflict, restriction on his right to practice, and related misconduct.
4. Rodriguez violated Rule Regulating the Florida Bar 4-5.6(b) by participating in an agreement making a restriction on his right to practice part of the settlement of a controversy between private parties.
5. Rodriguez must disgorge his portion of the prohibited fee to The Florida Bar Clients' Security Fund, including taxes paid on the fee and interest calculated from August 12, 1996.

## KEY QUOTATIONS

*“Thus, the current case is not barred by res judicata as it is based on a different cause of action, i.e., Rodriguez's relationship with DuPont.” (at 159)*

*“A two-year suspension, rather than a public reprimand, is the appropriate sanction under these circumstances.” (at 160)*

*“Instead, we require Rodriguez to disgorge the prohibited fee into the Clients' Security Fund.” (at 162)*

## FACTUAL BACKGROUND

Rodriguez and his law firm represented twenty clients asserting damage claims against DuPont arising from the Benlate fungicide. While the representation was ongoing, the firm entered into a secret agreement with DuPont

under which DuPont paid the firm \$6,445,000 in exchange for restrictions on the firm's future practice against DuPont and possible future work for DuPont. Rodriguez agreed with the agreement's terms, negotiated for the payment, failed to disclose the agreement to most clients and the Bar, and received a portion of the prohibited fee.

## PROCEDURAL HISTORY

A referee recommended that Rodriguez receive a public reprimand and serve four years of probation, and recommended denying the Bar's request for forfeiture of prohibited fees. The Supreme Court of Florida disapproved those recommendations in part, imposed a two-year suspension, ordered disgorgement of Rodriguez's portion of the prohibited fee with taxes and interest, and remanded solely for determination of the precise disgorgement amount.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The referee must determine the precise total amount of Rodriguez's disgorgement, including the prohibited fee, taxes paid on that fee, and interest on the full amount beginning August 12, 1996. The referee was directed to consider *The Florida Bar v. St. Louis* in making that determination.

## CASES CITED

- *The Florida Bar v. Ferraro*, 839 So. 2d 700 (Fla. 2003) (table citation)
- *The Florida Bar v. Friedman*, 940 So. 2d 428 (Fla. 2006) (table citation)
- *The Florida Bar v. St. Louis*, No. SC04-49, \_\_\_ So. 2d \_\_\_, 2007 WL 1285836 (Fla. May 3, 2007)
- *McGregor v. Provident Trust Co. of Philadelphia*, 119 Fla. 718, 162 So. 323, 328 (1935)
- *Palm AFC Holdings, Inc. v. Palm Beach County*, 807 So. 2d 703, 704 (Fla. 4th DCA 2002)
- *Hay v. Salisbury*, 92 Fla. 446, 109 So. 617, 621 (1926)
- *Gray v. Gray*, 91 Fla. 103, 107 So. 261, 262 (1926)
- *Cromwell v. County of Sac*, 94 U.S. 351, 353, 24 L. Ed. 195 (1876)
- *The Florida Bar v. Gentry*, 447 So. 2d 1342 (Fla. 1984)
- *The Florida Bar v. Spears*, 786 So. 2d 516, 520 (Fla. 2001)
- *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989)
- *The Florida Bar v. Temmer*, 753 So. 2d 555, 558 (Fla. 1999)
- *The Florida Bar v. Dunagan*, 731 So. 2d 1237 (Fla. 1999)
- *In re Brandt*, 331 Or. 113, 10 P.3d 906 (2000)
- *In re Hager*, 812 A.2d 904 (D.C. 2002)
- *In re Hager*, 878 A.2d 1246 (D.C. 2005)
- *The Florida Bar re Rules Regulating Fla. Bar*, 494 So. 2d 977, 1069 (Fla. 1986)

- The Florida Bar Petition to Amend the Rules Regulating the Fla. Bar—Advertising Issues, 571 So. 2d 451, 472 (Fla. 1990)
- The Florida Bar v. Kelner, 670 So. 2d 62, 63 (Fla. 1996)
- The Florida Bar v. Rendina, 583 So. 2d 314, 316 (Fla. 1991)
- The Florida Bar v. Rambo, 530 So. 2d 926 (Fla. 1988)
- The Florida Bar v. Snow, 436 So. 2d 48, 49 (Fla. 1983)
- The Florida Bar v. Riccardi, 264 So. 2d 5 (Fla. 1972)

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