

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

COLLEEN MARIE DUNNE,
Respondent.

Supreme Court Case
No. SC18-1880

The Florida Bar File
No. 2017-70,102(16A)

UNCONDITIONAL GUILTY PLEA
AND CONSENT JUDGMENT FOR DISCIPLINE

COMES NOW, the undersigned respondent, Colleen Marie Dunne, and files this Unconditional Guilty Plea and Consent Judgment for Discipline pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar, and says:

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter.
3. Respondent is currently the subject of a disciplinary proceeding which has been assigned The Florida Bar File No. 2017-70,102(16A), Supreme Court Case No. SC18-1880, and is presently pending before the Honorable Maria Verde.
4. As to the above referenced file, the respondent admits that the following facts are true and accurate and stipulates as follows:
 - A. Respondent is an Assistant State Attorney in the Monroe County State Attorney's Office.
 - B. Respondent was assigned to prosecute the case against Mr. William Thomas Skinner, who was arrested on June 1, 2009 for multiple felony counts, including attempted murder and burglary of a dwelling with a firearm.
 - C. In January 2010, the defense placed the respondent on notice that it intended to rely upon an insanity defense in the case. Respondent thereafter received two reports from the defendant's two mental health experts.

D. The State hired its own expert witness. The State's expert, Dr. Michael Brannon, advised the respondent to provide numerous items to assist in his evaluation of the defendant, including jail calls and other statements made by the defendant around the time of his arrest which would demonstrate his state of mind at that time.

E. Respondent was also advised by her supervisor that she should listen to the defendant's phone calls on the jail's recorded line. Both the respondent, and an intern acting at the respondent's direction, listened to numerous phone calls of the defendant.

F. Three of the calls the respondent listened to were the defendant's conversations with his son on the day of his arrest. These calls were significant in that they refuted many aspects of the defendant's purported insanity defense as documented in the defense experts' reports. The calls demonstrated that the defendant was lucid, organized in his thinking, able to plan, that he remembered the events in question and that he had not suffered any blackouts.

G. On July 6, 2010, the respondent's intern downloaded these three phone calls to a DVD, and notified the respondent of same via email.

H. On July 16, 2010, the intern emailed the audio recordings of the three phone calls to Dr. Brannon, the State's expert, along with a memorandum detailing the relevance and significance of each of these phone calls to refuting the purported insanity defense. Respondent was copied on this email.

I. On July 22, 2010, the respondent spoke for two hours on the phone with the State's expert, Dr. Brannon. They discussed the three jail house calls during that conversation, and Dr. Brannon indicated he would utilize the calls for purposes of his evaluation of the defendant.

J. On July 26, 2010, the respondent deposed the first defense expert. The following morning, on July 27, 2010, the respondent deposed the second defense expert.

K. Respondent did not identify or produce the three jail house calls to the defense or the defense experts either prior to or during these depositions, despite an outstanding discovery request for statements made by defendant.

L. At the deposition of the defendant's second expert on the morning of July 27, 2010, the respondent asked pointed questions which insinuated she had knowledge of statements made by the defendant to his son. Defense counsel, Ms. Cara Higgins, confronted the respondent and inquired directly whether the respondent was in possession of some statements allegedly made by the defendant that the State was referring to in its deposition questions.

M. Respondent denied being in possession of any additional statements to law enforcement, or that she had been "referring to."

N. Following this deposition, the respondent returned to her office and emailed her supervisors requesting direction. The following morning, she filed supplemental discovery responses and produced the three jail house phone calls in question.

O. Defense counsel thereafter filed a motion to exclude the three jail house phone calls based on respondent's actions. A hearing on the motion was held on May 10, 2011.

P. At the hearing on the Motion to Exclude, the respondent attempted to explain the statements she had made to defense counsel at the deposition.

Q. Respondent told the court that the jail calls were equally available to the defense as to the State. Respondent stated, "At the time of this deposition I was not in possession of those calls. Those calls were at IC Solution." (5/10/11 Transcript at 10).

R. Respondent continued, "At the time that I was deposing these witnesses I was familiar that Mr. Skinner had been making phone calls, but I didn't have them literally downloaded on a disk." (Transcript 5/10/11 at 10).

S. Respondent thereafter explained to the judge that she did not know she was going to use this evidence until after the depositions of the defense experts, stating that it was the defense experts' answers that made her aware of the relevance or significance of the calls. At the same time, the respondent reiterated the false statement that she had not previously downloaded or documented the calls.

T. Following the hearing on the Motion to Exclude, the court held that, although a violation had occurred, the respondent had turned over the subject phone calls well in advance of trial, and there was, accordingly, time to cure the prejudice resulting from the violation. As a result, the phone calls were ruled admissible as evidence at trial. The matter proceeded to trial, and the defendant was convicted. His subsequent appeal was denied.

U. In the interim, in 2013 the defendant's counsel filed numerous public records requests to the Monroe County State Attorney's Office, and litigation thereon ensued. As a result of the court's orders numerous emails between the respondent and her intern, and her supervisors, were discovered.

V. Throughout the pre-trial and trial stages, the respondent denied having physical "possession" of the three phone calls prior to her depositions of the two defense experts, and denied knowledge of the significance of those phone calls to the purported mental health defense. It was not until the defendant's 2013 public records request revealed the emails between the respondent, her intern, and the State's expert from July 2010, that her misrepresentations were discovered. At that time, it became clear that the respondent in fact had both physical and

constructive possession of the three phone calls weeks prior to her deposition of the defense experts, and that she was aware of the significance of those calls.

W. As a result of that public records disclosure, the defense filed several post-conviction motions, including a motion for a new trial and a motion to disqualify the state attorney's office from participating in any further proceedings.

X. Following the April 2015 hearing on defendant's Motion to Disqualify the State Attorney's Office, the court entered an Order denying the requested relief on various grounds. Notwithstanding same, the court made detailed findings that the respondent violated her ethical obligations in the case, and engaged in gamesmanship in the underlying proceedings. (Aug 12, 2015 Order of the Trial Court).

Y. By reason of the foregoing, the respondent has violated the following Rules Regulating The Florida Bar: Rule 4-3.3 (Candor Toward the Tribunal), Rule 4-4.1 (Transactions with Persons Other than Clients; Truthfulness in Statements to Others) and 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.

5. Significant mitigation is present in this matter. Respondent has no prior disciplinary history. The underlying court held that no prejudice remained from the initial discovery violation, because the respondent immediately delivered the relevant phone calls to defense counsel following the subject depositions, well in advance of the scheduled trial date. Through this consent judgment, the respondent has taken responsibility for her actions and demonstrated remorse for her misconduct. Further, the respondent understands that, as a result of her execution of the instant consent judgment, her position as an Assistant State Attorney will be in jeopardy.

6. Additionally, the respondent presented numerous statements from the judiciary, the legal and law enforcement communities, and her church, testifying to her good character and reputation in the community. Moreover, the respondent is actively engaged in service to her community, including the Key West Police Department's outreach to children in the community through its Athletic League Program, and her participation in benefits to raise funds for injured and disabled police officers. She is an active member of her church, serving as a Eucharistic Minister and assisting in fund raisers for various charitable endeavors.

7. The agreed disciplinary measures to be imposed upon the respondent are consistent with this Court's prior jurisprudence,¹ and include:

¹ In a matter exhibiting significantly more severe misconduct, this Court held that a one year suspension was the appropriate sanction for an Assistant State Attorney

- A. One year suspension.
 - B. Payment of the Bar's costs in the disciplinary proceeding.
8. Respondent acknowledges that, unless waived or modified by the Court on motion of Respondent, the court order will contain a provision that prohibits Respondent from accepting new business from the date of the order or opinion and shall provide that the suspension is effective 30 days from the date of the order or opinion so that respondent may close out the practice of law and protect the interest of existing clients.
9. Respondent agrees that this Unconditional Guilty Plea and Consent Judgment for Discipline and every factual admission contained herein, and specifically the admissions set forth in paragraph four (4) shall have full force and effect regardless of any subsequent recommendation or action taken with respect to the terms of discipline offered by respondent pursuant to this Consent Judgment for Discipline.
10. Respondent agrees that in the event that the terms of discipline offered herein are not approved by the Board of Governors of The Florida Bar (or their designee), the Referee, or the Supreme Court, this matter will proceed solely on the question of discipline.
11. Respondent agrees to eliminate all indicia of respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards

who allowed a witness/confidential informant to testify to a false name during trial testimony. *The Florida Bar v. Cox*, 794 So.2d 1278 (Fla. 2001). Although the prosecutor in *Cox* had more altruistic motivations and believed she was protecting her confidential informant, her actions resulted in the criminal indictment being dismissed with prejudice. As stated, *supra*, no such prejudice to the criminal action resulted from the instant disciplinary case against Respondent Dunne. The Court also imposed similar discipline in more recent cases involving civil matters. For instance, in *The Florida Bar v. Bischoff*, 212 So. 3d 312 (Fla. 2017), the Court imposed a one year suspension on an attorney who filed a false notice indicating he had served discovery responses, when in fact he had not done so, coupled with other violations. Additionally, in the matter of *The Florida Bar v. Dupee*, 160 So. 3d 838 (Fla. 2015), the Court imposed a one year suspension on an attorney who knowingly filed his client's inaccurate financial statement, deliberately withheld financial documents during discovery, and knowingly allowed the client to present false testimony during a deposition without taking any remedial action, and failing to notify opposing counsel that she had possession of a coin collection that was disputed. Accordingly, the one year suspension agreed to in the instant disciplinary action is consistent with this Court's prior jurisprudence.

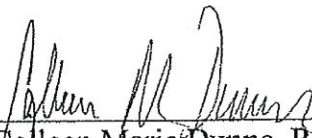
office signs or any other indicia of respondent's status as an attorney, whatsoever. respondent will no longer hold herself out as a licensed attorney.

12. If this plea is approved, then the respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$1,250.00. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

13. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

14. This Unconditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

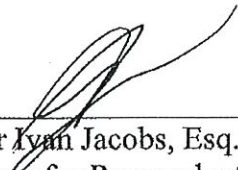
Dated this 2nd day of December, 2019.



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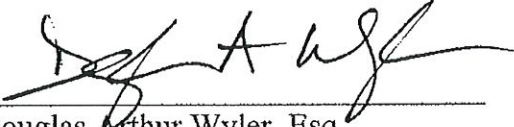
Approved by:

Dated this 2nd day of December, 2019.



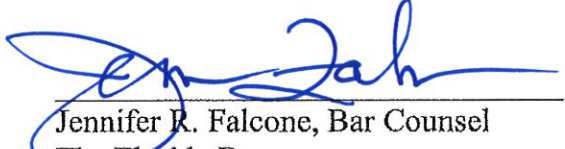
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Dated this 2nd day of December, 2019.



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Dated this 3rd day of December, 2019.



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