

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JENNIFER E. DALEY,

Respondent.

Supreme Court Case  
No. SC-

The Florida Bar File  
No. 2015-51,073(17H)

---

**COMPLAINT**

The Florida Bar, Complainant, files this Complaint against Jennifer E. Daley, 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 19, 1990 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent resided and practiced law in Broward County, Florida, at all times material.
3. The Seventeenth Judicial Circuit Grievance Committee “H” found probable cause to file this Complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this Complaint has been approved by the presiding member of that committee.

4. Respondent, who was employed as an attorney at Amlong & Amlong, P.A., (hereinafter referred to as the “Amlong firm”) represented Deborah Eldredge (hereinafter referred to as “Eldredge”). Eldredge had sought advice from Respondent after her employment with EDCare Management, Inc., (hereinafter referred to as “EDCare”) was terminated. Respondent was the principal attorney for Eldredge and handled the two lawsuits Eldredge brought against EDCare and its parent company Hospital Physicians Partners, Inc. (hereinafter referred to as “Hospital”).

5. The first lawsuit Respondent filed, *Eldredge v. EDCare Management, Inc. et al.*, Case No. 12-CV-61984-RNS, alleged unpaid wages under the Fair Labor Standards Act (hereinafter referred to as “FLSA”) and the second lawsuit filed, *Eldredge v. EDCare Management, Inc. et al.*, Case No. 13-CV-61373-RNS, alleged wrongful termination/employment discrimination.

6. During the course of the litigation, it was discovered that prior to being terminated from employment, Eldredge had retained a company laptop and confidential documents from EDCare and concealed them during the discovery process.

7. Specifically, Eldredge had taken from EDCare three boxes, two thumb drives, and a disc full of confidential business records including client lists, financial statements, employment agreements, and emails from various mailboxes.

8. On or about August 8, 2013, defendants filed a Motion for Sanctions against Eldredge and her counsel. On November 7, 2013, Judge Snow, the trial judge in the litigation, issued a ruling on Defendants' Motion for Sanctions ordering Eldredge to conduct a diligent search and turn over all of EDCare's documents in Eldredge's possession.

9. On or about November 20, 2013, the two lawsuits referred to in paragraph 5 were consolidated into *Eldredge v. EDCare Management, Inc., et al.*, Consolidated Case No. 13-61373-CIV-SCOLA (hereinafter referred to as the "litigation"). The trial judge stated: "Consolidation will allow Defendants to take the necessary discovery in light of the last-minute production of documents that were taken from the Defendants by the Plaintiff during her employment. Consolidation will also allow sufficient time for the Defendants to renew their request for sanctions regarding the previously-withheld materials."

10. During Eldredge's deposition on November 21, 2013, it was discovered that despite Judge Snow's order requiring Eldredge to "conduct a diligent search of her emails," Eldredge had performed only a cursory review of her America Online email account.

11. Thereafter, the trial court ordered the Amlong firm to search Eldredge's email account using specific terms and imposed a deadline of July 3, 2014 to disclose the search performed and a deadline of July 14, 2014 for the

additional production. The date range of the search was January 1, 2011 to November 8, 2013.

12. In addition, the trial court ruled that attorney-client communications did not need to be produced or placed in a privilege log but a log needed to be produced for other withheld documents.

13. Based on the foregoing, the trial court, in an Order dated November 21, 2013, allowed EDCare to file a Renewed Motion for Sanctions against Eldredge.

14. On February 14, 2014, triggered by the amount of production turned over by Eldredge, EDCare filed a motion titled *Defendants' Renewed Motion for a Sanctions Hearing, Based on Plaintiff's Massive Theft Of Confidential Information From Defendants, Her Plan To Blackmail Their Executives, And Her Concealment Of These Materials During Discovery* (hereinafter referred to as "Defendants' Renewed Motion for Sanctions").

15. In Defendants' Renewed Motion for Sanctions, referring to the documents that had been concealed during discovery, EDCare stated in part:

Her counsel suggested there were a handful. Then her counsel suggested there was a box. Then they produced three boxes, two thumb drives, and a disc of stolen materials with no legitimate explanation at the time and no legitimate explanation at Plaintiff's subsequent deposition.... Yet neither Plaintiff nor her counsel has performed such a search to this day. Neither of them has supplemented their production since her deposition based on such a search.

16. Thereafter, Respondent filed a Motion to Withdraw and asked that such be granted on an expedited basis stating the Amlong firm was unable to agree with Eldredge on how best to proceed on significant aspects of the litigation. The court granted the Motion to Withdraw.

17. In an August 12, 2014 order, the trial court allowed EDCare to supplement Defendants' Renewed Motion for Sanctions to include Respondent's firm and stated:

To address Defendants' concerns that counsel's withdrawal could provide a means for counsel to avoid compliance with prior Court orders without repercussions, the undersigned grants Defendants leave to supplement their Renewed Motion for Sanctions within two weeks from August 12, 2014 for the purpose of explicitly including Amlong & Amlong, P.A. as an additional subject of the motion.

18. On August 26, 2014, EDCare filed its supplemental sanctions motion titled *Supplement to Renewed Motion For Sanctions To Include Former Counsel Of Record For Plaintiff As Additional Subjects Of The Motion* (hereinafter referred to as "Supplement to Renewed Motion for Sanctions") and therein alleged that the Amlong firm had acted in bad faith in pursuing frivolous claims and in covering up evidence. EDCare sought an order requiring the Amlong firm pay reasonable attorney's fees and costs in the litigation.

19. In its Supplement to Renewed Motion for Sanctions, EDCare pointed out that the Amlong firm did not deny "extensive perjury, obstruction of discovery,

and misappropriation of company property by Eldredge” and that the key issue was whether the Amlong firm knew about Eldredge’s “perjury and obstruction, or at least recklessly enabled them.”

20. In December 2014, Eldredge and the defendants in the litigation settled all claims “without limiting Defendants’ rights against” the Amlong firm and its attorneys. In addition, Eldredge waived the attorney-client privilege.

21. Thereafter in the litigation, a *Subpoena Duces Tecum* was issued requiring the Amlong firm to produce certain documents. The Amlong firm was to produce the documents by February 23, 2015.

22. On March 2, 2015, the trial court held an evidentiary hearing on the Supplement to Renewed Motion for Sanctions.

23. At the March 2, 2015 hearing, Eldredge testified that Respondent told her to return the laptop and any original documents but did not instruct her regarding the computer disc or copies of other documents in her possession.

24. Eldredge further testified at the March 2, 2015 hearing that on July 17, 2012, she had delivered a computer disk labeled “Jeffery’s My Documents” containing files from J. Schillinger’s computer and a large bin and a box full of documents to the Amlong firm.

25. At the March 2, 2015 hearing, Eldredge testified that she took the documents indicated in paragraph 24 back from the Amlong firm and had them

scanned and saved on a flash drive. She testified that she provided the flash drive to the Amlong firm and that on August 16, 2012, at the request of the Amlong firm, she returned the bin and the box full of documents to the Amlong firm.

26. During the sanction proceeding, EDCare indicated litigation expenses of approximately \$525,000.00 and \$530,000.00 in connection with the two cases.

27. On March 31, 2015, the trial court issued an order granting the Supplement to Renewed Motion For Sanctions (hereinafter referred to as the “Order”) and sanctioned the Amlong firm pursuant to Title 28, United States Code, Section 1927.

28. The instant grievance was brought about by the Order wherein the Court found:

- a. Eldredge sought Respondent and William Robert Amlong’s legal services regarding wrongful termination and illegal activities of EDCare, and they transformed it into a FLSA case and Discrimination case without informing Eldredge they had no intention of filing a *qui tam action* (whistleblower type of case).
- b. Respondent and Amlong held back and did not produce the bulk of the documents requested in discovery until compelled to do so by court orders. Despite having the bulk of the requested documents since July 17, 2012, obtaining them again on a flash drive

shortly thereafter, and retaking possession of the large bin and box full of documents on August 16, 2012, Respondent failed to deliver these documents in *Plaintiff's Response to Defendant's First Request for Production* served on February 13, 2013. In the Plaintiff's Response To Defendant's First Request for Production, Respondent stated that Plaintiff would "produce any letters, memos, notes, policy statements, disciplinary forms, personnel documents, and/or handbooks that she obtained, created or acquired during the three-year period covered by this action related to her claim for overtime pay and the defenses asserted in this action."

- c. The FLSA case was frivolous *ab initio* and Respondent and Amlong knowingly and recklessly pursued the FLSA case because it could bring about a large payout.
- d. The Discrimination case was frivolous *ab initio* which was recklessly and knowingly pursued by Respondent and Amlong.
- e. There was no basis for the Amlong firm to characterize EDCare's reduction in force as a "so-called reduction in force" in the Complaint or in the argument in opposition to the Motion to Dismiss, and state there was "not really a reduction-in-force," when the firm

knew a Separation Agreement in which Eldredge sought legal advice was in connection to the reduction in force.

f. Respondent, whose conduct was supported by Amlong, obstructed EDCare's set-off defense and theft/misappropriation counterclaim. When Respondent received the civil theft demand letter from EDCare's Counsel on July 2, 2013, Respondent knew Eldredge had provided the Amlong firm property in the form of, at least, a box of documents, a thumb drive, and a CD, but Respondent only instructed Eldredge to return a lap top and an "original" three-inch black binder from an operational meeting.

g. Despite EDCare's employee handbook making no distinction between originals and copies when requiring employees to return the company's property upon termination, Respondent failed to respond to Eldredge's email requesting clarification about the documents Eldredge needed to turn over.

h. Respondent's representation that Eldredge was returning "original" documents in response to the demand for the return of EDCare's property was sheer and unadulterated obfuscation on her part.

- i. Respondent, whose conduct was supported by Amlong, obstructed the discovery process and the litigation of the original Motion for Sanctions. Respondent failed to disclose that the Amlong firm was sitting on EDCare's property whose return had been demanded and which had not been produced in discovery for either case.
- j. In moving to compel access to materials that had been turned over to EDCare for purposes of making copies of said documents, Respondent made it seem as though only Eldredge had retained the documents and had not provided them to the Amlong firm.
- k. Respondent, whose conduct was supported by Amlong, obstructed EDCare's effort to gain full compliance of the trial court's order when they pursued the AOL subpoena. Respondent only instructed Eldredge to search for all the records in her possession and Respondent provided no guidance to Eldredge on what to search for.
- l. Respondent, whose conduct was supported by Amlong, obstructed the litigation of Defendants' Renewed Motion for Sanctions directed at the Amlong firm by filing a Motion for Protective Order in response to EDCare's *Subpoena Duces Tecum* and failing to comply with the subpoena by providing the documents

requested after the February 23, 2015 deadline. Some documents were produced on February 27, 2015.

m. Respondent and Amlong were less than candid in their testimony before the court and the Respondent required admonishment due to her evasiveness and non-responsiveness.

n. The Respondent and Amlong engaged in knowing and reckless conduct throughout the litigation, which infected the entire Eldredge litigation. To make matters worse, rather than acknowledge the impropriety of such conduct and rectify it, they used smoke and mirrors each time they were called to account, even to the point of failing to render credible testimony at the final evidentiary hearing to which they were entitled.

29. The Amlong firm was sanctioned and ordered to pay reasonable fees and costs incurred by Defendants in the litigation.

30. Wherefore, by reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct

be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-3.1 [A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-3.3(a)(1) [A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.]; 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 the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.]; 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.]; 4-3.4(d) [A lawyer must not in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.]; 4-4.1(a) [In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.]; 4-4.1(b) [In the course of representing a client a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 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, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

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



Frances R. Brown-Lewis, Bar Counsel  
The Florida Bar  
Fort Lauderdale Branch Office  
Lake Shore Plaza II  
1300 Concord Terrace, Suite 130  
Sunrise, Florida 33323  
(954) 835-0233  
Florida Bar No. 503452  
[fbrownle@flabar.org](mailto:fbrownle@flabar.org)



ADRIA E. QUINTELA  
Staff Counsel  
The Florida Bar  
Lakeshore Plaza II, Suite 130  
1300 Concord Terrace  
Sunrise, Florida 33323  
(954) 835-0233  
Florida Bar No. 897000  
[aquintel@flabar.org](mailto:aquintel@flabar.org)

## CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida with a copy provided via email to Respondent's Counsel, Benedict P. Kuehne, at [ben.kuehne@kuehnelaw.com](mailto:ben.kuehne@kuehnelaw.com) using the E-filing Portal and that a copy has been furnished by United States Mail via certified mail No. 7016 0750 0000 3623 7010, return receipt requested to Respondent's Counsel, Benedict P. Kuehne, whose record bar address is 100 SE 2<sup>nd</sup> Street, Suite 3550, Miami, FL 33131-2112 and via email to Frances R. Brown-Lewis, Bar Counsel, [fbrownle@flabar.org](mailto:fbrownle@flabar.org), on this 27th day of January, 2017.

*Adria E. Quintela*

ADRIA E. QUINTELA  
Staff Counsel

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

PLEASE TAKE NOTICE that the trial counsel in this matter is Frances R. Brown-Lewis, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, (954) 835-0233 and [fbrownle@flabar.org](mailto:fbrownle@flabar.org). Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, Adria Quintela, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, [aquintel@flabar.org](mailto:aquintel@flabar.org).

**MANDATORY ANSWER NOTICE**

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,  
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.