

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JENNIFER E. DALEY,

Respondent.

SUPREME COURT CASE
No. SC17-142

THE FLORIDA BAR FILE
No. 2015-51,073(17H)

ANSWER, AFFIRMATIVE DEFENSES & MOTION TO DISMISS

The Respondent, JENNIFER E. DALEY, by and through his undersigned attorney, files this Answer, Affirmative Defenses and Motion to Dismiss pursuant to the applicable R. Regulating Fla. Bar and Florida Rules of Civil Procedure, and states:

1. The Respondent admits paragraph 1 of the Bar's complaint.
2. The Respondent admits paragraph 2 of the Bar's complaint.
3. The Respondent is without sufficient knowledge as to the allegations contained in paragraph 3 of the Bar's complaint and must therefore deny same. Further, the Respondent would deny that there was sufficient probable cause to file this complaint.

4. The Respondent admits paragraph 4 of the Bar's complaint in part in that Eldredge sought the advice of the law firm known as Amlong & Amlong, P.A. d/b/a The Amlong Firm after her employment with EDCare Management, Inc. was terminated. The Respondent was the principal attorney assigned to Eldredge case. Otherwise denied.

5. The Respondent admits paragraph 5 of the Bar's complaint.

6. The Respondent admits paragraph 6 of the Bar's complaint.

7. Paragraph 7 of the Bar's complaint is admitted in part and denied in part. It is admitted that Eldredge during her employment accumulated certain EDCare records and documents contained in or on "three boxes, two thumb drives and a disc" some of which had been disclosed during discovery and some of which she had not previously provided to the Amlong firm. All remaining allegations of paragraph 7 are denied.

8. Paragraph 8 of the Bar's complaint is admitted in part and denied in part. It is admitted that Magistrate Judge Snow issued a ruling denying the motion without prejudice and ordered Eldredge to conduct a search of documents in her possession. Eldredge retained certain documents and property during and after her employment with EDCare and shared some, but not all, of these materials with the Respondent's law firm despite Judge Snow's order. All remaining allegations of

paragraph 8 are denied.

9. The Respondent admits paragraph 9 of the Bar's complaint.

10. Paragraph 10 of the Bar's complaint is admitted in part and denied in part. It is admitted that Eldredge explained her efforts at locating records that needed to be produced in discovery when she was deposed on January 13, 2014. Her deposition testimony provides the most accurate description of her efforts. All remaining allegations of paragraph 10, including the source and content of the quotation provided by the Bar, are denied.

11. The Respondent admits paragraph 11 and further includes the actual content of Magistrate Judge Valle's June 27, 2014 order:

Plaintiff's counsel is ordered to search Plaintiff's AOL email account using search terms, including: (i) EDCare; (ii) Schillinger; (iii) employ; and (iv) the name of any co-worker from EDCare whose name might produce documents responsive to the November 8th order (ECF No. 92, action No. 12-61984). Plaintiff shall search for emails from January 1, 2011 through November 8, 2013. Plaintiff shall produce to Defendants any document that is in her possession that is the property of the Defendants, *see id.*, and any other document that should have been produced through the normal course of discovery in this discrimination case or in the overtime case but was not previously produced.

The Respondent was assisted by Amlong & Amlong IT employee, Patrick Hackett, in conducting this search and attempted in good faith to fully comply with

discovery requests and orders related thereto.

12. The Respondent admits paragraph 12 of the Bar's complaint.

13. Paragraph 13 of the Bar's complaint is admitted as to the order allowing EdCare to take additional discovery with exception as to Judge Snow's role; she was not the trial judge but the first of three magistrate judges assigned to certain pretrial matters over the course of the litigation. All remaining allegations of paragraph 13 are denied.

14. The Respondent admits paragraph 14 of the Bar's complaint as to the title of EDCare's motion filed on February 14, 2014. All remaining allegations of paragraph 14 are denied.

15. The Respondent admits paragraph 15 of the Bar's complaint is an accurate quotation from a portion of the renewed motion. All remaining allegations of paragraph 15 are denied.

16. As to paragraph 16 of the Bar's complaint, the Respondent admits that the law firm filed a Motion to Withdraw which was granted by the court and that the language in said motion is a more accurate reflection of the grounds asserted for such motion.

17. As to paragraph 17 of the Bar's complaint, the Respondent admits that the trial court allowed EDCare to supplement its Renewed Motion for Sanctions by

including the Amlong Firm and that the quoted passage found in paragraph 17 is also found in said Order dated August 12, 2014. All other allegations are denied.

18. As to paragraph 18 of the Bar's complaint, the Respondent admits that EDCare filed a supplement to their Renewed Motion for Sanctions and made the referenced allegations found in paragraph 18 but the Respondent denies the allegations found in such supplemental motion.

19. As to paragraph 19, Respondent admits that the quote in paragraph 19 of the Bar's Complaint is included in the Renewed Motion for Sanctions. However, the Respondent specifically denies allegations made therein.

20. The Respondent admits paragraph 20 of the Bar's complaint and would add that Eldredge was no longer represented by Respondent or the Amlong firm at the time she settled her claims and was financially incentivized to waive her attorney-client privilege so EDCare could seek compensation against her former lawyers, rather than against the person (Eldredge) who had caused the discovery issues.

21. The Respondent admits paragraph 21 of the Bar's complaint and must add that the Amlong firm fully complied with said subpoena.

22. The Respondent admits paragraph 22 of the Bar's complaint.

23. As to paragraph 23 of the Bar's complaint the Respondent admits that

Eldredge testified at the referenced hearing and made certain statements and the transcript of such hearing would be the best evidence of said testimony. However, the Respondent does not believe that all of Eldredge's testimony was true, correct or complete.

24. As to paragraph 24 of the Bar's complaint the Respondent would admit that Eldredge testified at the referenced hearing and made certain statements and the transcript of such hearing would be the best evidence of said testimony. However, the Respondent does not believe that all of Eldredge's testimony was true, correct or complete.

25. Paragraph 25 of the Bar's complaint is admitted except as to the factual veracity of Eldredge's testimony which is hereby denied.

26. The Respondent admits paragraph 26 of the Bar's complaint to the extent that EDCare's counsel asserted a claim for attorneys' fees but the Respondent would add that these are only claims and that the magistrate judge has not issued any ruling on how much of the claimed fees were reasonably incurred. Additionally, some or all of the attorneys' fees incurred may have been covered by insurance.

27. The Respondent admits paragraph 27 of the Bar's complaint but would add that she respectfully disagrees with the trial court's findings and intends to file

an appeal of same at the appropriate time.

28. Paragraph 28 of the Bar's complaint is admitted in part and denied in part. It is admitted that the trial court's Order made specific findings and that they are recited by the Bar in subparagraphs (a) through (n) of paragraph 28. Each such allegation of wrongdoing is denied and the Respondent would add that the evidence does not support these findings against her.

29. The Respondent admits paragraph 29 of the Bar's complaint and would add that she respectfully disagrees with this ruling and intends to appeal same at the appropriate time.

30. The Respondent denies paragraph 30 of the Bar's complaint and specifically asserts that her personal conduct relative to the representation of Eldredge did not violate the Rules Regulating The Florida Bar.

AFFIRMATIVE DEFENSES

31. As a first affirmative defense, Respondent affirms that at all times she acted with the good faith belief that her actions were ethical and proper in the matter referenced in the Bar's complaint.

32. As a second affirmative defense the Respondent asserts that the rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.1] is contradicted by the fact that one of the filed civil actions, FLSA action, was upheld by the court at

Summary Judgment mooted any frivolous or bad faith allegations and that the client and defendant ultimately settled the claims.

33. As a third affirmative defense the Respondent asserts that the rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.1] is contradicted by the fact that the other filed civil action, the discrimination case, was never dismissed by the court and that the client and defendant ultimately settled the claims.

34. As a fourth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.3(a)(1)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

35. As a fifth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.4(a)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

36. As a sixth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.4(c)] is an intent

rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

37. As a seventh affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.4(d)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

38. As an eighth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-4.1(a)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

39. As a ninth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-4.1(b)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

40. As a tenth affirmative defense the Respondent asserts that rule

violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.2] is improperly plead as it does not specify what conduct was inconsistent with the interest of the client. Respondent did not intentionally engage in any conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

41. As an eleventh affirmative defense the Respondent asserts that the Orders and Reports referenced by the Bar in its complaint cannot be accepted as conclusive proof of the matters referenced therein and that the Bar must prove each and every allegation by clear and convincing evidence. See for example *The Florida Bar v. Calvo*, 630 So. 2d 548 (Fla. 1993); *The Florida Bar v. Vining*, 707 So. 2d 670 (Fla. 1998).

MOTION TO DISMISS

The Respondent, JENNIFER E. DALEY, files this motion to dismiss or in the alternative moves for a more definite statement and as grounds therefore asserts:

42. The Florida Bar alleges a violation of R. Regulating Fla. Bar 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.].

43. There are no allegations in the Bar's complaint that set forth any specific "false statement of material fact or law" allegedly made by this

Respondent and therefore the Bar has set forth no allegations to support such charge against this Respondent.

44. It is well settled that fraud and misrepresentation must be plead with particularity. See for example, *Thompson v. Bank of New York*, 862 So. 2d 768 (Fla. 4th DCA 2003); Fla. R. Civ. Pro. 1.120(b).

WHEREFORE, the Respondent, JENNIFER E. DALEY, respectfully requests that the Bar's complaint be dismissed, that she be found not guilty of the rule violations pled in the Bar's complaint and that she be awarded her costs in defending this proceeding.

Respectfully submitted,

By: s/ Juan Carlos Arias
JUAN CARLOS ARIAS, ESQ.
Florida Bar No.: 0076414
CARLOS A. VELASQUEZ, ESQ.
Florida Bar No.: 755982

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was furnished by Electronic Service via the Florida Courts E-Filing Portal, this 7th day of March, 2017, to [Adria A. Quintela, Staff Counsel, aquintel@flabar.org](mailto:aquintel@flabar.org); and [Frances R. Brown-Lewis, Bar Counsel, fbrownle@flabar.org](mailto:fbrownle@flabar.org), The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, FL 3323 (954/835-0233).

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By: *s/ Juan Carlos Arias* _____

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