

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Supreme Court Case
No. SC17-142

Complainant,

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

v.

JENNIFER E. DALEY,

Respondent.

_____ /

THE FLORIDA BAR,

Supreme Court Case
No. SC17-150

Complainant,

The Florida Bar File
No. 2015-51,074 (17H)

v.

WILLIAM ROBERT AMLONG,

Respondent.

_____ /

AMENDED REPORT OF REFEREE

(Amended as to costs only)

I. SUMMARY OF PROCEEDINGS:

On January 31, 2017, The Florida Bar filed its formal Complaint and the Respondents timely served their Answers thereto. The undersigned was appointed to preside as referee in this proceeding, under the Supreme Court's January 31, 2017 Order and the February 13, 2017, Order from the Honorable Jeffrey J. Colbath, Chief Judge of the Fifteenth Judicial Circuit of Florida.

The cases of Daley and Amlong were consolidated for discovery and trial purposes by order dated March 29, 2017. After a motion by Amlong to abate these disciplinary proceedings based upon appellate proceedings in the Eleventh Circuit Court of Appeal that may have affected a resolution in this matter, this Referee recommended abatement of these cases pending the outcome of that appeal by order dated November 20, 2017. On December 5, 2017, the Supreme Court of Florida approved the abatement. On March 9, 2019, the Eleventh Circuit Court of Appeal resolved the appellate proceedings and thereafter this matter was scheduled for trial.

During these proceedings, The Florida Bar has been represented by Frances R. Brown-Lewis, Bar Counsel. Respondent Daley was represented by Juan Carlos Arias, Esquire and Respondent Amlong was represented by Kevin P. Tynan, Esquire, and Karen Coolman Amlong, Attorney at Law.

The final hearing was conducted over eight days (July 15, 2019 through July 19, 2019, August 23, 2019, October 4, 2019 and October 11, 2019). The pleadings, exhibits, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

II. FINDINGS OF FACT:

A. Jurisdictional Statement: Respondents, Jennifer E. Daley and William Robert Amlong, were members of The Florida Bar subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

B. Narrative Summary of Case:

Overview

In reaching a decision in this case, the Referee carefully considered the clear and convincing standard of proof, the testimony from the witnesses presented by The Florida Bar and by the Respondents. The Florida Bar presented the testimony of William Amlong, Jennifer Daley, Deborah Eldredge, and Barry Pollack, Esquire. Respondent Amlong testified on his own behalf and presented testimony by Alison Churly-Davis, Esquire, Louise Fitzgerald, Ph.D., Margaret Kempel, Art Schofield, Esquire, Barbara Goolsby, Esquire, Frank Shooster, Esquire, Glenn Caddy, Ph.D., Timothy Chinaris, Esquire, Walter Aye, Esquire and John Palmatier, Ph.D.¹ Respondent Daley testified on her own behalf and presented testimony from Cynthia Everett, Esquire, and Valerie Kiffin Lewis, Esquire. The parties submitted a Joint Statement of Agreed Facts, which the Referee has adopted and incorporated in Paragraphs 11 through 50 of this Report. Additionally, the parties submitted

¹ Mr. Chinaris, Mr. Aye and Dr. Palmatier were presented as expert witnesses.

significant documentary evidence and a comparison chart cross-referencing the parties' admitted Exhibits is appended to this Report as Exhibit A.²

Background Information³

11. The Respondent, William Amlong (“Amlong”), was and is one of two shareholders of Amlong & Amlong, P.A. d/b/a The Amlong Firm (“The Amlong Firm”), a law firm in Fort Lauderdale, Florida. Amlong was admitted to The Florida Bar on May 20, 1985.

12. Jennifer E. Daley (“Daley”), was and is and a member of The Florida Bar and a senior associate at The Amlong Firm. Daley was admitted to The Florida Bar on September 19, 1990.

13. Amlong had supervisory responsibility and authority over Daley and her work product.

The Representation

14. Deborah Eldredge (“Eldredge”) sought legal advice from The Amlong Firm after EDCare Management, Inc. (“EDCare” or, collectively with EDCare’s co-defendant in the litigation with Eldredge, Hospital Physician Partners, Inc., “defendants”) terminated her employment.

² The Florida Bar’s exhibits are referred to as TFB Ex. #[No.]. Daley’s exhibits are referred to as Daley Ex. #[No.]. Amlong’s exhibits are referred to as Amlong Ex. #[No.].

³ Paragraphs 11 through 51 are the Agreed Facts submitted jointly by The Florida Bar and Respondents.

15. At the initial consultation on May 18, 2012, Eldredge met first with Amlong, but as the consultation continued, they were joined by Daley at the behest of Amlong, due to her experience in wage-and-hour law.

16. In May 2012, Eldredge retained the Amlong law firm and executed an engagement letter providing for the initial terms of the representation. Amlong Ex. #213. In the engagement letter, Amlong advised he intended to pursue several remedies on her behalf, including an age discrimination claim and a wage-and-hour suit. Once the initial \$5,000 retainer was expended, Eldredge and The Amlong Firm would decide whether to proceed on a contingency basis, an hourly basis or not at all. See Id.

17. The Amlong Firm filed a charge of discrimination on behalf of Eldredge with the Equal Employment Opportunity Commission (“EEOC”) on August 23, 2012. Amlong Ex. #124.

18. On November 11, 2012, Eldredge executed a contingency fee retainer agreement with The Amlong Firm. TFB Ex.# 17- Plaintiff’s Ex. G/Amlong Ex. #109.

19. Following the initial consultation, Daley was primarily responsible for the Eldredge cases. Daley and Amlong were listed as attorneys of record for Eldredge and Amlong also was served electronically with copies of all court documents filed via the Electronic Case Filing (“ECF”) system in the Eldredge

litigation. Amlong had only 0.1 hours of time recorded between the conclusion of the initial consult on May 18, 2012 and August 8, 2013. See Amlong Ex. #228(a).

The Course of the Litigation

20. On or about October 5, 2012, the defendants timely removed to the United States District Court for the Southern District of Florida the first lawsuit filed in Broward County Circuit Court by The Amlong Firm on behalf of Eldredge, which alleged unpaid wages under the Fair Labor Standards Act (FLSA) and unpaid wages under section 448.08, Florida Statutes for unpaid, accrued leave time against EDCare and a related company. TFB Ex. #13 at DE 1.⁴ The action proceeded as Eldredge v. EDCare Management, Inc. et al., Case No. 12-CV-61984-RNS. Both Daley and Amlong are listed on the docket sheet as “LEAD ATTORNEY TO BE NOTICED,” with Alison Leigh Churly, listed as an “ATTORNEY TO BE NOTICED.” Id. at p. 1. Initially, defendants were represented by Lori S. Patterson, Esquire and René M. Fix, Esquire of Rogers Towers, P.A. as “LEAD ATTORNEY[S] TO BE NOTICED,” but their representation terminated September 6, 2013. Id. at p. 2.

21. Eldredge’s Statement of Claim filed October 30, 2012 sought \$66,741.14 in unpaid wages if a 2-year period is applied, or \$92,220.81 if a 3-year period is applied for willful failure to pay, plus liquidated (double) damages in lieu

⁴ “DE” followed by a number refers to the ECF docket entry numbers of the items in the second column of the case dockets received in evidence as TFB Exs. #12 and #13.

of interest up to the total amount of unpaid overtime if defendants failed to meet their burden pursuant to §260 of the FLSA. See Amlong Ex. #125.

22. Both parties propounded discovery and took depositions in the FLSA case, and an unsuccessful mediation took place on July 19, 2013. See, generally, TFB Ex. #13.

23. Barry S. Pollack, Esquire (“Pollack”), of the firm Pollack Solomon Duffy LLP (“Pollack Solomon Duffy”), moved unopposed to appear *pro hac vice* on behalf of defendants on April 26, 2013. TFB Ex. #13, at DE 19, which motion was granted on May 8, 2013. Id. at DE 20. Amlong Ex. #228(a), at line 1243. Additional attorneys from Pollack Solomon Duffy and Shutts and Bowen (“Shutts”) also appeared representing defendants. TFB Ex. #13, at pp. 1-3.

24. Both Eldredge and defendants filed summary judgment motions in the wage case on August 19, 2013⁵. TFB Ex. #13, at DE 39, 40, 42-47; TFB Exs. #16N, #16O; Amlong Exs. #126-133. The Court denied both motions, concluding, “Since genuine issues of material facts permeate every issue of this case it is ordered that both the Plaintiff’s Motion for Summary Judgment (ECF No. 47) and the Defendants’ Motion for Summary Judgment (ECF No. 39) are denied” TFB Ex. #16P.

⁵ The Agreed Statement of Facts submitted by the parties indicated the motions for summary judgment were filed in 2015. The Referee corrected the error to the proper year, 2013.

25. The second Eldredge lawsuit, filed June 20, 2013, Eldredge v. EDCare Management, Inc. et al., Case No. 13-CV-61373-RNS, alleged wrongful termination/employment discrimination based on age and gender. TFB Exs. #12, 16V. Daley, Amlong and Churly represented Eldredge; Pollack and other attorneys at Pollack Solomon and Duffy and Shutts attorneys represented defendants. TFB Ex. #12, at pp. 1-2.

26. Defendants moved to dismiss the discrimination complaint on August 23, 2013, TFB Ex. #12, at DE 9 and TFB Ex. #16W, which motion the court granted with leave to amend by order dated February 14, 2014. TFB Ex. #12, at DE 36; TFB Ex. #16X. Eldredge filed an amended complaint on March 4, 2014, TFB Ex. #12, at DE 52; TFB Ex. #16Y, which defendants moved again to dismiss on March 18, 2014. TFB Ex. #12, at DE 56; TFB Ex. #16Z. Eldredge, on June 6, 2014, moved for leave to file a second amended complaint, TFB Ex. #12, at DE 81 and TFB Ex. #16AA, which the Court granted, TFB Exs. #12, at DE 90, and TFB Ex. #16BB; and Eldredge filed her Second Amended Complaint on June 25, 2014. TFB Ex. #12, at DE 96 and TFB Ex. #16CC. Defendants moved to dismiss the Second Amended Complaint, TFB Ex. #12, at DE 103, and TFB Ex. #16DD. After, The Amlong Firm moved to withdraw as attorney for Eldredge, see ¶¶ 28, 40, 41 below, defendants filed their Answer to the Second Amended Complaint, Defenses,

Counterclaim and Jury Trial on Counterclaim. TFB Ex. #12 at DE 127; TFB Ex. #16EE.

27. Meanwhile, on November 20, 2013, the FLSA lawsuit and the discrimination lawsuit were consolidated into Eldredge v. EDCare Management, Inc., et al., Consolidated Case No. 13-61373-CIV-SCOLA. See TFB Ex. #13 at DE 105, 106, TFB Ex. #16T, TFB Ex. #12 at DE 135. By this time the motion to dismiss the original discrimination complaint had been briefed and was pending. Id. at p. 4. A new scheduling order for the consolidated cases had been entered. Id. at DE 13. Between November 22, 2013 and July 22, 2014 when The Amlong Firm and its attorneys filed their Expedited Motion to Withdraw as Attorneys for Plaintiff, TFB Ex. #12, at DE 113, there were 98 entries on the docket. Id. at pp. 4-12.

28. Daley, on July 22, 2014, moved on an expedited basis for The Amlong Firm and its attorneys to withdraw from representation of Eldredge. TFB Ex. #16NN. After briefing (TFB Ex. #16OO and 16PP) and a hearing, the motion to withdraw was granted in the Order on August 12, 2014 Status Conference. TFB Ex. #12, at DE 134 and TFB Ex. #18. When The Amlong Firm, Amlong and Daley withdrew, both the FLSA lawsuit and the discrimination lawsuit still were pending. See generally TFB Ex. #12, and ¶¶ 40, 41 below.

Employer Property

29. Eldredge frequently worked from home during her employment by EDCare and also brought boxes of files home when she moved to a smaller office, intending to go through them and decide what to keep and what to throw away. As a result, when she was terminated, she had in her possession a large collection of documents belonging to EDCare. She also had the use of a company laptop, which was in her home at the time of her termination.

30. Later events revealed Eldredge had at her home, at least three boxes of records, two thumb drives, and a disc—“Jeffrey’s My Documents” file— containing electronically saved business records including client lists, financial statements, employment agreements, and emails from various mailboxes.

31. EDCare, on May 8, 2012 (ten days before Eldredge first met with Amlong and Daley), sent Eldredge a letter requesting return of the company issued laptop and cell phone and “[c]ompany files—all hanging file folders in your drawers were empty.” TFB Ex. #2.

32. EDCare’s counsel, on October 25, 2012, sent a “Civil Theft Demand” letter to Eldredge in care of Daley and therein stated Eldredge “wrongfully and deliberately misappropriated from EDCare following the termination” of her employment “property including a laptop computer and company files” by removing them “from EDCare’s premises on or about March 19, 2012.” TFB Ex. #8. The letter demanded damages of \$900 under section §772.11, Florida Statutes, absent which

EDCare threatened to sue Eldredge for treble damages, attorneys' fees and costs. *Id.* Daley emailed the demand letter to Eldredge on October 29, 2012. TFB Ex. #9. Daley, on November 15, 2012, inquired of EDCare's counsel what "company files" meant and stated therein she had instructed Eldredge to return the laptop and "the original documents" to the EDCare offices, which Eldredge did on November 19, 2012. TFB Ex. #11 and TFB Ex. #17H (DE. #8).⁶

The First Sanctions Motion

33. On August 8, 2013, Defendants' Motion for Sanctions, Request for Hearing, and Memorandum of Law in Support, was filed in the FLSA case, seeking sanctions against Eldredge "and her counsel" under the court's inherent powers. TFB Ex. #16H. Eldredge responded, TFB Ex. #16I, and defendants replied. TFB Ex. #16J.

34. After a hearing on November 5, 2013, Amlong Ex. #136, Magistrate Judge Lurana Snow entered the order on November 7, 2013 denying defendants' sanctions motion without prejudice but ordering Eldredge to conduct a diligent search and turn over all EDCare's documents in her possession, to attest

⁶ TFB's Ex. #17, a transcript of the March 2, 2015 sanctions proceedings, *see* ¶ 44, *post*, includes "Plaintiff's Exhibits to Transcript 1," hearing exhibit numbers 2 through 15, as TFB Ex. #17A-17N, and "Defendant's Exhibits" numbers 1 through 13, also identified as TFB Ex. ##17A-17M. To avoid confusion, further reference to these hearing exhibits will include a parenthetical reference to the hearing exhibit number, e.g., "PEX #2" for The Amlong Firm's hearing exhibit number 2 or DEX #9 for EDCare's hearing exhibit number 9.

affirmatively in a declaration that she had turned over all property in her possession, to provide certain numbered documents defendants claimed they had not received and to provide a privilege log, if not already served, of any documents withheld as privileged. TFB Ex. #16K, at ¶1. The Order stated Eldredge had permission to keep copies of the documents produced. Id.

35. Although earlier in the representation Eldredge had delivered documents to The Amlong Firm that she believed related to her claims, TFB Ex. #4, #5, #10, #17K (PEX #12), #17L (PEX #13), #17C (DEX #3), #17D (DEX #4), during her search, Eldredge found other documents and materials that came into her possession during her employment by EDCare which also had been stored in her home. All of these documents were produced by the deadline set by the court, TFB Ex. #16L, and Daley timely filed notices regarding service of the disputed privilege log and the numbered documents in issue. Amlong Ex. ##137 and 138.

The AOL Account

36. Following delivery of the documents ordered by Magistrate Judge Snow, during a deposition of Eldredge, it was discovered that despite Judge Snow's order requiring Eldredge to "conduct a diligent search for any other documents in her possession which are the property of the Defendants and turn them over to Defendants' counsel," Eldredge had performed only a cursory review of her AOL

email account. TFB Ex. #16II, at pp. 2-4.⁷ Defendants sought the emails via a subpoena duces tecum to AOL for records of Eldredge's account, but Daley objected—unsuccessfully. *Id.* at pp. 5-6 and TFB Ex #16GG.

37. The court ordered The Amlong Firm to search Eldredge's AOL account using specific terms and imposed a deadline of July 3, 2014 to disclose the searches performed and a deadline of July 14, 2014 for the additional production. TFB Ex. #16II, at 7.

38. Counsel for Eldredge filed a Notice of Compliance regarding the searches conducted on July 3, 2014, TFB Ex. #12, at DE 101, and produced the search results—2,300 pages of documents—on July 14, 2014. TFB Ex. #16MM, at p. 2.

The Second Sanctions Motion

39. On February 14, 2014, defendants filed a second sanctions motion. Defendants' Renewed Motion for A Sanctions Hearing, Based on Plaintiffs Massive Theft of Confidential Information from Defendants, Her Plan to Blackmail Their Executive and Her Concealment of these Materials During Discovery, sought sanctions "against Plaintiff" under the court's inherent powers, Federal Rule of Civil Procedure 37 and the November 21, 2013 order consolidating FLSA case with the discrimination case. TFB Ex. #16A and TFB Ex. #12, at DE 35; Amlong Ex.

⁷ Magistrate Judge Alicia O. Valle adjudicated the AOL proceedings.

#234.1.g, at pp. 1, 2. Eldredge responded (TFB Ex. #16LL, TFB Ex. #12, at DE 53, Amlong Ex. #234.1.H), and defendants replied. TFB Ex. #12, at DE 55.

**The Amlong Firm, Amlong And Daley Move To
Withdraw as Counsel for Eldredge**

40. Daley, on the morning of July 22, 2014, received an email from Eldredge disclosing that her adult son had been deleting sections from certain cover letters that were produced in discovery. In the email, Eldredge also admitted she had “exaggerated” and “pumped [herself] up in the cover letters” TFB Ex. #17N (PEX #15) Amlong Ex. # 123. The Amlong Firm and its counsel moved to withdraw as counsel for Eldredge later that same day. TFB Ex. #16NN. Defendants filed a response to the motion, TFB Ex. #16OO, to which counsel replied in support of the motion. TFB Ex. #16PP.

41. The magistrate judge then assigned to the case, Hon. Alicia Otazo-Reyes, granted the motion of The Amlong Firm and its attorneys to withdraw as Eldredge’s counsel in the Order on August 12, 2014 Status Conference (TFB Ex. #19), and also allowed defendants to supplement their motion for sanctions to include The Amlong Firm. TFB Ex. #12, at DE 134; TFB Ex. #18, at pp. 19, 20. Defendants filed Defendants’ Supplement To Renewed Motion For Sanctions To Include Former Counsel Of Record For Plaintiff As Additional Subjects Of The Motion on August 26, 2014. TFB Ex. #12, at DE 138; TFB Ex. # 16B.

Eldredge Settles with Defendants

42. Eldredge carried on the litigation pro se for a brief time after the lawyers from The Amlong Firm withdrew, TFB Ex.# 12, at DE 139-DE 168, but settled with defendants in December 2014, with entry of a Consent Order and Judgment. TFB Ex. #16VV, Amlong Ex. #234.2.j, TFB Ex. #12, at DE 120. Under her agreement with EDCare, both of Eldredge's lawsuits were dismissed with prejudice and Eldredge was released from all liability on the sanctions motions filed in the matters. Id.

Supplement to Renewed Motion for Sanctions

43. On August 26, 2014, Defendants' Supplement To Renewed Motion For Sanctions To Include Former Counsel Of Record For Plaintiff As Additional Subjects Of The Motion ("Renewed Sanctions Motion") was filed and therein defendants sought sanctions against The Amlong Firm and "its responsible attorneys of record" under 28 USC § 1927 and the court's inherent powers, alleging that The Amlong Firm and its attorneys "acted in bad faith to pursue frivolous claims and covered up evidence in a manner that multiplied the proceedings." TFB Ex. #16B, at p. 1.

44. An evidentiary hearing took place on March 2, 2015 on the Renewed Sanctions Motion before Magistrate Judge Otazo-Reyes. The hearing transcript,

including the exhibits introduced by both parties,⁸ was received in evidence in these proceedings. TFB Ex. #17, Amlong Ex. #199. Under a stipulation between the parties in the underlying litigation, it was agreed that The Amlong Firm, not the individual attorneys, would be liable for any monetary sanctions. TFB Ex. #17, at pp. 9-11.

45. Jeffrey Schillinger, CEO of EDCare, Amlong, Daley and Eldredge testified at this hearing. TFB Ex. #17.

46. On March 31, 2015, the trial court issued an order granting the Defendant's Renewed Motion for Sanctions and sanctioned The Amlong Firm under 28 USC § 1927 and the court's inherent powers. TFB Ex. #15.

47. After a non-evidentiary hearing before Judge Scola, on July 24, 2015, TFB Ex. #23, Amlong Ex. # 202, Judge Scola affirmed the sanctions order with minor changes. TFB Ex. #24.

48. The amount of the sanctions—\$422,433.30—was determined by Magistrate Judge Otazo-Reyes in her Order Awarding Fees and Costs dated March 24, 2017, TFB Ex. #25, which order was affirmed by Judge Scola on October 14, 2017. TFB Ex. #27.

⁸ The Amlong Firm's Ex. #1, the May 18, 2012 engagement letter between the firm and Eldredge was not attached to the transcript but was received and is in evidence in these Bar proceedings as Amlong Ex. #213.

49. Amlong and Daley appealed the sanction order to the Eleventh Circuit Court of Appeals. TFB Ex. #28. Oral Argument on the appeal was held on February 12, 2019. Amlong Ex. #229. The sanctions orders and award were affirmed per curiam in an unpublished opinion issued March 19, 2019. TFB Ex. #30. The mandate issued May 18, 2019. TFB Ex. #32.

50. After a motion for rehearing was denied, on May 10, 2019, The Amlong Firm paid the sanctions award in full. Amlong did not ask Daley to participate in the payment of the sanctions.

III. RESOLUTION OF CONTESTED FACTS

A. The Burden of Proof.

The Florida Bar carries a heavy burden in this prosecution, as it should when it seeks to discipline a lawyer for alleged acts of unethical conduct. Here, the Florida Bar must be able to prove by clear and convincing evidence that the Respondent engaged in improper activity in the manner alleged. The Florida Supreme Court found this burden:

... requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit, and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994) (inquiry re judge) (quoting

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). (emphasis added).

B. Reliance on Court Orders.

Before addressing the merits, it is important to discuss the impact of the sanctions order on the resolution of this case. While “a referee is not bound by the technical rules of evidence and is authorized to consider any relevant evidence, including the ‘trial transcript or judgment from the civil proceeding[,]’” *Florida Bar v. Vining*, 707 So. 2d 670, 673 (Fla. 1998), the weight to be afforded the evidence depends upon whether it is substantiated or corroborated by other evidence.

In *Vining*, the Supreme Court considered a referee’s reliance on a circuit court judgment, which the referee had received in evidence and about the effect of which the parties argued. The Court noted that the referee did more than merely adopt the findings of fact of the circuit court judge. The Report of Referee included citations to the record and evidence in the disciplinary case (other than just the judgment) to support each factual finding and ultimate findings of guilt.

My view of the foregoing is that the orders at issue are relevant and admissible and maybe used to support any findings made by this referee but they are not binding in these disciplinary proceedings. I have thoroughly reviewed over 4000 pages of the evidence including the report and recommendation of the magistrate judge, TFB Ex. #15; the order of the district judge affirming the sanctions order, TFB Ex. #25; the orders awarding and affirming the fees and costs order, TFB Exs. #25, #27; and

the opinion of the Eleventh Circuit affirming the orders of the district court. TFB Ex. #30. I also have had the benefit of the transcript of the evidentiary hearing before the magistrate judge, TFB Ex. #17, and the exhibits introduced at the evidentiary hearing by The Amlong Firm, TFB Exs. ## 17A-N (PEX ##2-15) and Amlong Ex. #213 (PEX #1), and the defendants in the underlying action. TFB Ex. ##17A-M (DEX ## 1-13); the transcript of the non-evidentiary hearing before the district judge on the exceptions to the sanctions order, TFB Ex. #23; and the transcript of oral argument in the appeal to the Eleventh Circuit. Amlong Ex. #229.

The Florida Bar introduced into evidence virtually all the documents referred to as probative of misconduct in prior proceeding, which I have carefully reviewed. Amlong introduced other documents, such as the summary judgment moving papers and order in the FLSA case, Amlong Ex. ##126-133⁹ and #135; the transcript of the hearing before Magistrate Judge Snow on November 5, 2013, Amlong Ex. #136; a transcript of a discovery hearing involving The Amlong Firm's objections to a subpoena duces tecum before the magistrate who entered the sanctions order, Amlong Ex. #243; billing records of the *Eldredge* litigation, Amlong Ex. ##228(a) and (b); an amicus brief filed in the appeal by the National Employment Lawyers Association ("NELA"), Amlong Ex. #234.2.1; a timeline of the *Eldredge* litigation,

⁹ TFB also introduced these documents at TFB Ex. #160.

Amlong Ex. #231 and of Amlong's involvement in those lawsuits, Amlong Ex. #232, all of which I also carefully have reviewed.

Thus, the record before me is much more extensive than that before the magistrate who entered the sanctions order and includes hours of testimony by Daley and Amlong, the testimony from experts and from Daley and Amlong's character witnesses, and from Deborah Eldredge and Barry Pollack, Esquire, an attorney for the defendants in the FLSA and age discrimination cases all of whom's qualifications, demeanor and credibility I have had the opportunity to observe and assess first hand.¹⁰ Therefore, I have determined to make my own independent analysis on whether the facts presented to me equate to the rule violations pleaded by the Bar. Accordingly, I have made the following findings based on the testimony and evidence presented.

C. Testimony and Findings of Fact for Jennifer Daley

Background and Experience

51. Respondent, Jennifer Daley is a 54-year-old attorney admitted to The Florida Bar during September 1990. She is not Board Certified. She gained her initial exposure to employment law litigation while she worked for five years as an

¹⁰ Pollack, Amlong's character witness, Barbara Goolsby, and ethics expert, Timothy Chinaris appeared telephonically. Although this Referee could not observe them visually as they testified, I nonetheless was able to make credibility determinations based on the clarity of the testimony and whether the witness was forthcoming or evasive.

appellate judicial clerk for the late Hon. E. Earle Zehmer at the First District Court of Appeal. After clerking, Daley went into private practice in 1995 with a small law firm in Miami practicing general civil litigation, insurance defense and employment law. While there, she also handled court- appointed criminal appeals in state court, and in federal court.

52. Daley joined The Amlong Firm in 1998 as an associate and has been a senior associate for over 10 years. During her career, Daley has been active in mentoring as well as various bar associations and activities.

Daley’s Role at The Amlong Firm and in the *Eldredge* Litigation

53. When Daley started at The Amlong Firm, she was nearly a ten-year lawyer. Over time, she supervised associates. She also developed form letters used by the firm to communicate with and inform clients and participated in training. It is clear that Amlong trusted Daley to work independently up to the point of trial especially on wage and hour cases.

54. Deborah Eldredge’s initial consultation with The Amlong Firm occurred on May 18, 2012 with Amlong and lasted approximately 3.6 hours. Amlong Ex. #228(a) p. 42. Daley attended a part of the consultation. Eldredge estimated that Amlong conducted about 90% of the consultation before Daley joined them to discuss Eldredge’s job duties, which she described as secretarial support-type duties, and determine if she would qualify as a non-exempt employee. Amlong

testified that, during the initial consultation, Eldredge discussed with Amlong details relating to the potential whistleblower claim that she told the intake paralegal.

55. Eldredge retained the Amlong law firm and executed an engagement letter providing for the initial terms of the representation. Amlong Ex. #213. In the engagement letter, Amlong advised he intended to pursue several remedies on her behalf, including an age discrimination claim and a wage-and-hour suit. The engagement letter does not include pursuing a whistleblower suit. *Id.*

56. Following the initial consultation, Daley was primarily responsible for the Eldredge cases, and was assisted by associate Alison Churly-Davis, who participated in written discovery and attended depositions. Daley and Amlong were listed as attorneys of record for Eldredge and were both served electronically with copies of all court documents filed via the ECF system in the Eldredge litigation. TFB Ex. #13 (Docket Sheet).

57. On July 17, 2012, Eldridge sent a communication to Amlong and Daley where she discussed various documents related to EDCare which she had delivered to The Amlong Firm including a disc labeled “Jeffrey’s My Documents. TFB Ex. 3 and TFB Ex. 17 DEx. C. Eldridge advised she had not given them everything in her possession and stated that she also had audio tapes she had made of the monthly operational meetings. After delivering the large volume of documents to the Amlong Firm, Eldredge picked them back up to scan them herself to save money. In

August 2012, Eldredge delivered two compact discs and a flash drive of EDCare's documents to the Amlong firm. The Amlong firm later requested she return the hard copies of the documents which Eldredge testified she did. TFB Ex. 4 and 5. Daley testified she did a cursory review of these electronically stored documents scanned to the K drive of the Amlong Firm to determine the ones relevant to the wage case. The Amlong firm's October 8, 2012 billing statement reflects an August 8, 2012 entry of document processing: upload/copy client documents from DVD and thumb drive into system; and September 13, 2012 entry: review documents regarding records that need to be submitted to EEOC re:HPP's relationship with EDCare and employment of Ms. Eldredge and continued review of documents. The latter entry was by Daley. TFB Ex. 17 – DEx E. Amlong and Daley's time records substantiate the October 8, 2012 billing statement. Amlong's Ex 228A - time records.

58. EDCare's counsel, on October 25, 2012, sent a "Civil Theft Demand" letter to Eldredge in care of Daley, which referred to a May 8, 2012 letter (TFB Ex. #2) sent to Eldredge before she consulted with Amlong, requesting her company laptop, cell phone, and company files. TFB Ex. #8. The "Civil Theft Demand" letter stated Eldredge "wrongfully and deliberately misappropriated from EDCare following the termination" of her employment "property including a laptop computer and company files" by removing them "from EDCare's premises on or about March 19, 2012." TFB Ex. #8. Eldredge indicated that she had been escorted

off the premises when she was terminated and was not allowed to take any records with her, except for personal items. Eldredge also testified under oath she frequently worked from home during her 9 years of employment by EDCare and brought boxes of files home when she moved to a smaller office, intending to go through them and decide what to keep and what to throw away. Jeffrey Schillinger testified at the March 2, 2015 hearing that the EDCare employee handbook discusses confidential information and provides that the removal of any confidential information from the company would have to be returned immediately upon employees' termination, without distinguishing between originals and copies. Mr. Schillinger stated that the information was confidential whether in its original form or a copy. TFB Ex. #17, Amlong Ex. # 199, p. 17

59. Daley testified at the final hearing that she read and interpreted the "Civil Theft Demand" letter within the context of the May 8, 2012 letter to Eldredge, and referred to in the "Civil Theft Demand" letter as only hanging files from Eldredge's desk. The Referee does not find this testimony reasonable or credible.

60. Daley mailed demand letter to Eldredge on October 29, 2012 and told Eldredge that, "If you have a company-owned laptop, you need to return it." Although Daley mentioned "company files" in her letter, she gave Eldredge no direction regarding what Eldredge should do with such files, what would constitute company files, nor, did she express the importance of returning "all" company

documents. TFB Ex. #9. This Referee finds that by this date Daley had spent almost three hours reviewing EDCare documents that Eldredge had provided to the Amlong Firm but took no action to specifically instruct Eldredge regarding return of the documents. Daley testified that these documents were irrelevant to the FLSA Case and the Discrimination Case yet her actions in not immediately advising Eldredge to return the documents contradict that position. Why keep documents, without advising EDCare, that would have no evidentiary value for the litigation? One purpose would be to utilize the confidential information in the documents and computer files to facilitate other discovery that would be helpful to the pending claims.

61. On November 15, 2012, Daley sent a letter, which was copied to Amlong, to EDCare's counsel, Lori Patterson, requesting clarification as to "what "company files" meant." Daley and Eldredge testified that Daley instructed Eldredge to return the laptop and the *original* documents to the former employer by November 24, 2012. (*emphasis added*) TFB Ex. #11 and TFB Ex. #17H, Defense Ex. #8. Daley chose to use the phrase original documents knowing that Eldredge had accumulated a massive number of company documents, audio tapes of meeting, and computer files during her employment. It is this Referee's conclusion that the wording in the Daley's November 15, 2012 letter was deliberately designed to conceal the fact that

Eldredge and The Amlong Firm had in their possession voluminous documents originating from EDCare.

62. On the advice of Daley, Eldredge returned to EDCare the company laptop¹¹, an adapter, and one black binder - monthly operating review October 2011. At the March 2, 2015 hearing before Magistrate Judge Otazo Reyes, Eldredge testified that Daley “told me to return the laptop. She asked me if I had any originals of theirs, and I said I have an original binder from an operational meeting. It was one black binder. She told me “that’s what I should return to them.” TFB Ex.#17, p. 159.

63. Daley’s legal assistant sent Lori Patterson a letter dated November 19, 2012 which indicated that Eldredge had returned the “laptop and the original documents.” TFB Ex# 11. Amlong and Daley were copied on the November 19, 2012 letter. It is clear to this Referee that the representations in the aforementioned letters made it appear that Eldredge had returned all company documents in her possession. This was a misrepresentation by Daley which Amlong made no attempts to correct. Amlong and Daley both knew that the documents provided by Eldredge were in the possession of the Amlong Firm based upon an August 23, 2012 letter written by Daley’s assistant advising Eldredge that the two compact discs and flash

¹¹ The company laptop returned by Eldredge was wiped clean of all data and files before being received by EDCare.

drive she provided had been copied for the file and were being returned to her. TFB Ex. #5. Amlong and Daley were both copied on the letter.

64. During Eldredge's deposition in the FLSA Case taken May 30, 2013, Eldredge was questioned regarding how she came into possession of company documents. Eldredge denied knowledge regarding how she came into possession of said documents. TFB Ex# 16 O - Attachment 2, page 182 and Amlong #126.

65. Respondents contend that the issues in the litigation which ultimately resulted in sanctions and complaints filed by the Florida Bar arose based upon the entry into the case for EDCare by Massachusetts attorney, Barry Pollack. The testimony and evidence contradict this assertion that permeated the hearings. On July 2, 2013, attorney for EDCare, Lori Patterson, sent Daley a letter (TFB Ex 16 H- Attachment I) to address what she considered to be the ongoing discovery issues as well as Eldredge's "continued wrongful possession of proprietary and confidential documents belonging to EDCare." She requested clarification regarding the gaps in documents in the Bates stamped documents that were produced (TFB Ex 16H- Attachments E, F and G).

66. Attorney Patterson also requested Daley "reconfirm that there were no *additional* outstanding and unreturned Company documents." Attorney Patterson pointed out in the letter that Daley represented to her that Eldredge had returned company documents in her possession and that it came to Patterson's attention that

such was untrue, as Eldredge had produced multiple documents during the course of discovery confirming she continued to wrongfully maintain company property. She requested explanation as to why Eldredge “took, unlawfully retained, and then falsely represented that she had returned all such documents.” Patterson demanded the return of any company files or documents in the plaintiff’s possession. There is no evidence that Daley responded in any way to the letter. The Referee finds that Daley made false statements to Patterson, failed to disclose material facts, and obstructed Patterson’s access to evidence.

The First Sanctions Motion

67. It was also Lori Patterson who filed the first sanction motion to address the “Civil Theft Demand” letter on August 8, 2013. TFB Ex. #16H. Daley contends that she and Lori Patterson had reached an agreement about how documents would be produced in the pending FLSA case and the yet-to-be filed discrimination case and that the discovery was proceeding unremarkably until Mr. Pollack entered the case. The July 2, 2013 letter and the first motion for sanctions filed by Ms. Patterson conclusively contradict Daley’s testimony.

68. In Defendants’ Motion for Sanctions, the Defendants sought sanctions against Eldredge and her attorneys, including dismissal of all the Plaintiff’s claims with prejudice under the court’s inherent powers. EDCare’s counsel, Lori Patterson, alleged that 1) Plaintiff had stolen highly confidential corporate records from the

CEO that included private compensation data of executives and employees; and 2) Plaintiff and her counsel had concealed the scope of the misconduct in discovery by withholding the stolen records from their production of documents.

69. The Defendants sought an evidentiary hearing through which the court could determine the appropriate sanctions. In Defendants' Motion for Sanctions, the Defendants also maintained "Plaintiff and her counsel continue to unlawfully retain confidential documents, they refuse to return these materials and disclose what others they have". The motion also asserted that a portion of the documents uncovered thus far served no legitimate purpose to the litigation but rather posed a substantial invasion of privacy and that they had been used as a weapon of harassment. As an example, Defendants stated the Amlong Firm questioned EDCare employees Dr. David Schillinger and Susan Greco during their depositions using improperly retained documents while refusing to discuss circumstances surrounding acquisition of said documents and falsely stating the documents had been produced to Defendants in discovery. (TFB Ex# 16 H, page 7, TFB Ex. # 16H- attachment J, page 27). The EDCare organizational charts utilized by Daley during Susan Greco's deposition Bates stamped Eldredge 311, 317 and 343 were within the range of documents that were labeled for production, but which had been withheld by Daley even after Patterson requested the missing numbered documents.

70. Further, in Defendants' Motion for Sanctions, Attorney Patterson alleged that Daley intentionally withheld documents that Defendants had requested in discovery and which were responsive to Plaintiff's own Rule 26 Disclosures and that when questioned about the apparent gap in the documents labeled versus those produced by Plaintiff, Daley assured Defendants that all intended documents had in fact been produced. This Referee finds that Daley unbelievable that Daley thought she was not obligated to produce the documents of EDCare in response to the Civil Theft Demand letter but also in response to the formal discovery. In addition, even if one believes that Daley had some agreement with Patterson to produce only the documents relevant to the FLSA Case, Daley had secured such agreement with misleading assertions regarding the existence of the voluminous EDCare materials in the custody of Eldredge and the Amlong Firm that had not been returned upon receipt of the Civil Theft Demand letter.

71. On September 5, 2013, Daley filed Plaintiff's Response to Defendants' Motion for Sanctions and Request for Hearing. TFB Ex.# 16I and Amlong Ex.# 134. Daley makes no mention in her response, that since July of 2012, she knew the Amlong Firm had uploaded numerous EDCare's documents into the firm's computer drive. Amlong was on the service list for the response. It is this Referee's position that Daley filed a detailed response with significant omissions for the purpose of misleading the court to believe there were no discovery lapses on behalf of the

Plaintiff. Daley, moreover, continued to withhold the documents in the gaps of the Bates stamped discovery and the confidential EDCare material requested in the Civil Demand letter.

72. Magistrate Judge Lurana Snow held a hearing on November 5, 2013 on the first motion for sanctions filed by Lori Patterson. In the order dated November 7, 2013 (TFB Ex. #16K and Amlong 114), Magistrate Judge Snow denied defendants' sanctions motion without prejudice based upon its "concern that documents that had been Bates stamped by counsel for the Plaintiff in preparation for production in discovery had been withheld, counsel for Plaintiff had indicated a willingness to turn over documents withheld from production for which privilege had not been asserted."

73. She ordered Eldredge to conduct a diligent search and turn over all EDCare's documents in her possession, to attest affirmatively in a declaration that she had turned over all property in her possession, to provide certain numbered documents defendants claimed they had not received and to provide a privilege log, if not already served, of any documents withheld as privileged. The order did not distinguish between originals and copies and provided defendants did not object to Eldredge keeping copies of the documents produced. *Id.* at p. 7. Amlong and Daley received the order as counsel of record for Plaintiff.

74. Daley provided Eldredge with a copy of Magistrate Judge Snow's order and instructed Eldredge to turn over everything. Before that production, Eldredge informed The Amlong Firm that she would search her email account and would include in her production everything she found. Amlong Ex.# 120. Daley did not take any affirmative action to assist Eldredge in complying with the court order.

75. During her search, Eldredge found other documents and materials that came into her possession during her employment by EDCare, which also had been stored in her home, and as a result provided additional documents just before the production deadline.

76. In response to the court's November 7, 2013 order, Daley filed Plaintiff's Notice of Production of Documents. Amlong Ex.# 138. On November 22, 2013, Daley filed Plaintiff's Supplemental Notice of Production of Documents and the Unsworn Declaration of Deborah Eldredge Made Under Penalty of Perjury Pursuant to 28 U.S.C. §1746 re: the Order dated November 8, 2013 wherein Eldredge stated that "Pursuant to the Order dated November 7, 2013, with the records returned previously and those being produced with this declaration, [she had] turned over all company property in her possession". Amlong Ex.# 139.

77. The Amlong Firm's production of documents in response to the Magistrate Judge Snow's order included three boxes of documents and electronic storage devices including a compact disc and flash drives. Many of the documents

had been in the continuous possession of The Amlong Firm and copied into the firm's "K" drive since August 2012.

78. Defendant deposed Eldredge again on January 13, 2014. During the deposition, it was discovered that despite the November 7, 2013 Order entered by Judge Snow (TFB Ex 16 K, Amlong Ex 114) requiring Eldredge to conduct a "diligent search" of her email, Eldredge admitted that she had only searched for a few terms on her AOL account in the to: and from: fields. TFB Ex.# 16 A, January 13, 2014 depo, p. 49 – 50.

79. Based upon the failure of Plaintiff to comply with the November 7, 2013 Order requiring a diligent search, Defendants sought Eldredge's emails via a subpoena duces tecum to AOL and a Renewed Motion for A Sanctions Hearing, Based on Plaintiff's Massive Theft of Confidential Information from Defendant's Her Plan to Blackmail Their Executives, and Her Concealment of These Materials During Discovery (the "second sanctions motion") on February 14, 2014. TFB Ex.# 16A.

80. Defendants stated in the renewed motion that within the materials provided by Eldredge there were highly confidential financial information; a copy of the CEO's laptop, diaries and notes; employment agreements with various other people; emails from various email boxes within the company; business plans; client lists and other protected sensitive information. Defendants contend that

Eldredge had no legitimate purpose to possess, take, keep or conceal these documents during discovery. The renewed motion also addressed the emails that Eldredge was ordered to produce and advised that neither Amlong and Daley performed a search and/or supplemented their production since Eldredge's deposition. TFB Ex.# 16A. In fact, Amlong and Daley took no initiative to comply with the November 2013 order until after Judge Valle ordered Plaintiff's counsel to search Eldredge's email using specific search terms and disclose the search performed and the discovery related to the search on June 19, 2014. TFB Ex. # 16II.

81. EDCare filed its Supplement To Renewed Motion For Sanctions To Include Former Counsel Of Record For Plaintiff As Additional Subjects Of The Motion ("third sanctions motion") on August 26, 2014, which included the allegation that The Amlong Firm and its attorneys "acted in bad faith to pursue frivolous claims and covered up evidence in a manner that multiplied the proceedings." TFB Ex. #16B. Respondents argue that Mr. Pollack single handedly fabricated and created the allegations of bad faith by his arguments and pleading to the Federal Courts. It is this Referee's position that Daley should have advised her client to provide these documents in response to the Civil Theft Demand letter and that Daley knew Eldredge had withheld company documents as early as October 25, 2012 when the Civil Theft Demand was received. TFB Ex # 8. Although I do not

find that Pollack manufactured the allegation, Pollack did blow the issues out of proportion and inject speculative accusations that are not supported by evidence such as claims of blackmail.

82. Amlong testified that although he received copies of all pleadings, he receives too many emails and would usually only review the titles or skim pleadings he received. Amlong as lead attorney should have instructed Daley to provide all documents upon being copied and reviewing the letter dated November 19, 2012 where it was noted that only a wiped, clean laptop and an original binder was returned. TFB Ex. # 11.

83. This Referee took judicial notice of 28 U.S.C. §1927 which provides: “[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required to by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” This Referee also took judicial notice of the various court documents set forth in the Bar’s Motion to Take Judicial Notice. Respondents focused on whether the lawsuit was *frivolous ab initio* and spent significant time addressing that issue and that Magistrate Judge Otazo Reyes was incorrect in her findings to the contrary. This Referee is focused instead on 28 U.S.C. §1927 agrees with the findings of the Federal courts that Daley’s acted in bad faith in violation of this section. The Referee

believes that the law required Judge Otazo-Reyes to find the evidence support bad faith by a clear and convincing standard. *Huthnance v. D.C.*, 793 F. Supp.2d.177 (D.D.C. 2011)

D. William R. Amlong Testimony and Findings of Fact

84. Respondent, William R. Amlong, is a 73 year-old attorney who, along with his wife, Karen Coolman Amlong, are the shareholders of The Amlong Firm. In addition to being a member of The Florida Bar, Amlong is admitted to practice in all three federal district courts in Florida, the federal Fifth and Eleventh Circuit Courts of Appeal and the United States Supreme Court; he has appeared *pro hac vice* in several other state and federal courts.

85. Amlong has been AV rated by Martindale-Hubbell since 1992. Amlong Ex. #205. He, along with Karen Coolman Amlong and their firm, were listed each year from 2002 through 2009 as top lawyers in the employment law field in the South Florida Legal Guide. Amlong Ex. #207. He has been selected as a SuperLawyer in Employment Litigation every year from 2008 through 2019. Amlong Ex. #206. He has been recognized in Labor and Employment Law by U.S. News and World Report as a Best Lawyers every year since 2012. Amlong Ex. #208. Chambers & Partners recognized Amlong in “Chambers USA America’s Leading Business Lawyers 2003-2004” as “[a]n extremely effective litigator.” Amlong Ex. #227.

86. Prior to the sanctions order, Amlong both lectured extensively and published in legal journals. He has lectured at a number of NELA conventions and at Rutgers University. He has lectured and participated in demonstrations at the American Bar Association (“ABA”) labor and employment functions, and has lectured for the labor and employment section of the American Association for Justice. Several of Amlong’s publications were received in evidence: “Faragher v. City of Boca Raton: A Seven-Year Retrospective,” published in *The Florida Bar Journal* in January 2006, Amlong Ex. #212; “Representing the age discrimination plaintiff,” published in *Trial—Journal of the American Association for Justice* in August 2008, Amlong Ex. #209; a chapter, “Closing Argument and Jury Instructions: Plaintiff’s Perspective” for a book published by the ABA’s labor and employment section on litigating the workplace harassment case, Amlong Ex. #210; and a chapter, “Glass Ceiling: ‘Sexual’ Harassment is a Method of Keeping the Lid Glued Down,” in a book, *Sexual Harassment in the Public Workplace* published by the Section of State and Local Government of the ABA.

87. Amlong¹² was certified by The Florida Bar Board of Legal Specialization & Education in Civil Trial Law and Labor & Employment Law. both certifications were summarily suspended by the Florida Bar.

¹² Amlong was previously board certified in Business Litigation which he allowed to lapse.

Background

88. Amlong worked as a reporter for the Miami Herald for 19 years before attending law school. Amlong became active in the employment law sector since becoming an attorney. He joined the NELA, a group of 3,000 to 4,000 lawyers who practice primarily plaintiff's side employment law in 1987 and began attending national conventions, where CLE is presented and more seasoned lawyers mentor and guide younger ones. In the early 90s, Amlong was elected president of the newly formed Florida Chapter of NELA. In 1996, he was elected to the national Board of NELA, where he served four three-year terms.

89. While The Amlong Firm has employed over 100 associates during its existence, it now employs only three attorneys, the Amlongs and Daley, and contracts with four others on an *of counsel* basis. Three of these attorneys are former associates and one a long-time legal services lawyer. All four are Florida lawyers and work remotely. Three live in other cities and states. Daley has been with the firm since 1998.

90. When potential clients contact The Amlong Firm, they go to an intake paralegal trained to do an initial interview to elicit information necessary to make an initial determination whether to bring the potential client in to see one of the Amlongs or Daley. The paralegal writes an intake note and one of the Amlongs or Daley decides whether to bring the person in. Pregnancy and FLSA cases generally

are referred to Daley; all others will go to Amlong or his wife. Most, but not all, clients pay a non-refundable \$5,000 engagement fee. The cases the firm handles are almost all fee-shifting cases.

91. Once a client has retained the firm, if it is a discrimination case, one of the Amlongs or Daley will prepare and file a charge of discrimination with the EEOC or Florida Commission on Human Relations (“FCHR”), where it generally remains for six months, to allow investigation or to meet legal requirements under the Florida Civil Rights Act (“FCRA”). At the end of that time, either one of the Amlongs or Daley will prepare the complaint and a discovery package if the case is filed in state court. If the case is one that does not have to go through the EEOC or FCHR, one of those three attorneys generally will prepare the complaint and, for state court cases, the discovery package. For FLSA cases, Amlong wants to get the complaint filed as soon as possible because the FLSA statute of limitations runs backwards so each day you wait, you are missing a payday.

92. Once the complaint is filed and the initial discovery package is prepared, Amlong hands off responding to discovery and “minor stuff” to the associates and other *of counsel* attorneys who are responsible for managing the discovery and discovery responses, the day-to-day progress of the case and client contact. Amlong regularly defends the plaintiff’s deposition and takes key depositions unless Daley is assigned to the case, in which case she may do them.

Amlong is usually involved in dispositive summary judgment motions on his cases and tries most cases with his wife.

93. Amlong now has lawyer meetings once a week, but during the time of the *Eldredge* litigation, the firm held lawyer meetings at least monthly. Additionally, Amlong testified his door was always open to listen to an issue and tell a young associate what to do. Additionally, Amlong took associates to state and, less frequently, national NELA meetings for CLE.

94. Either Amlong's name, his wife's or both are at the top of the signature block of every pleading and paper that goes out so if it is a paper of any import, Amlong, Ms. Cooling Amlong, or Daley will see it before it goes out. Only Amlong, Ms. Cooling Amlong and Daley file motions for summary judgment and any associate would at least talk to Amlong before filing a motion to compel on one of his cases so he would know what they were doing.

The *Eldredge* Litigation

95. Before Deborah Eldredge first came to The Amlong Firm, Amlong was aware of the information Eldredge had told the intake paralegal—including that she was fired shortly after telling one of the owners of Hospital Physician Partners (“HPP”), which became a defendant in the *Eldredge* litigation, that \$500,000 had been deposited through another entity to a company, Oceanus, owned by brothers David Schillinger and Jeffrey Schillinger, who were taking suspicious overnight

trips to Honduras with an individual who was under investigation by several U.S. agencies here and in Canada, and thought Eldredge “might have stumbled on to some money laundering,” which could be a viable basis for a claim for violation of Florida’s whistleblower statute, section 448.101, *et seq.*, Florida Statutes, and told the paralegal to bring her in. Amlong Ex. #230.¹³

96. Eldredge brought her adult son to the initial consultation. Amlong advised her that the son’s presence might compromise attorney-client confidentiality, but the decision for him to stay was hers. Amlong Ex. #230, at p. 1. The consultation lasted 3.6 hours. Amlong Ex. #228(a) at p. 42.¹⁴ After the initial consult with Amlong, Eldredge worked primarily with Daley on the case,

97. When the civil theft demand letter came in, Amlong testified was not aware of what EDCare wanted back other than a computer, but he told Daley to tell Eldredge “to take the stuff back.” It is uncontroverted that Daley, not Amlong, talked to Eldredge about what to return.

98. Prior to the filing of the first sanctions motion on August 8, 2013, *see* TFB Ex. #16H, Amlong billed 3.6 hours for the consultation and.1 hour on May 2,

¹³ Amlong Ex. #230 is a composite of the intake notes and notes made by Amlong and Daley during their initial meeting with Eldredge on May 18, 2012. Amlong’s notes are at pdf pages 1-7, Daley’s at 8-16 and the intake memo at 17-20.

¹⁴ References to Amlong Ex. #228(a) refers to the pdf page number, not the number at the bottom of the page.

2013 to “Receive and review correspondence from client re: PHV motion by out-of-state lawyer, Barry Horowitz (sic).”¹⁵ Amlong Ex. #228(a) at p. 42. His next billing entry is for 0.9 hours on August 8, 2013 to review the motion for sanctions and confer about it with Daley. *Id.* Subsequently, he spent only another 17.9 hours prior to the firm being allowed to withdraw on August 12, 2014, for a total of 18.8 hours post-sanctions motion time. TFB Ex. #19, Amlong Ex. #228(a) at 1, 42-44, Amlong Ex. #232.

99. Prior to the filing of the first sanctions motion, Amlong had not been actively engaged in discovery in any way even though he was listed as lead counsel and copied on all pleadings and letters. Amlong testified that he receives voluminous amounts of email and everything that is filed in federal court comes into a special queue in his email inbox. He stated he does not open every email, as part of his supervision of associate lawyers, but if a case is problematic he at least will open the email cover sheet to see what has been filed. In *Eldredge*, when the first sanctions motion came in he spent almost an hour reviewing the motion for sanctions and discussing it with Daley, who said it was really an untimely motion to compel disguised as a sanctions motion, and offered her help, which Daley declined. Amlong did not take any further action to ensure the misstatements regarding the EDCare documents were addressed. The Referee finds that Amlong was negligent

¹⁵ This refers to Barry Pollack.

in failing to cure the discovery and return of confidential information issues raised in the motion for sanctions filed by EDCare attorney Lori Patterson and reviewed by Amlong on August 8, 2013.

E. Respondents' Expert and Character Witnesses

100. The Referee heard from the following expert and character witnesses on behalf of Amlong:

101. **Louise Fitzgerald, Ph.D.**, a forensic psychologist with 25 years at the University of Illinois focused on the psychology of women, sexual violence and sexual harassment. Curriculum Vitae, Amlong Ex. #242.

102. She has collaborated four or five times of the past 15-20 years as an expert witness on sexual harassment. She described Amlong in those situations as “the consummate professional” and now has developed a personal relationship with Amlong and his wife/law partner, Karen Coolman Amlong.

103. **Margaret Kempel**, who retired recently after 22 years as the executive director of the Port Everglades Association. She first met Amlong when he was a political reporter for The Herald and she was executive director of the 30-member Dade County delegation, a position she held from 1977 until she opened up a South Florida satellite office for former Gov. Bob Graham for his two terms that began in 1980. As a reporter during the late 1970s and early 1980s, she recalled, Amlong “had

a reputation as an aggressive and good reporter, certainly always seeking to right wrongs.”

104. **Frank Shooster**, a lawyer since 1982, practiced employment law from 1993 until about 2014. While in active practice, Shooster was Board Certified in Civil Trial Law, enjoyed a “10” score on the lawyer rating-and-review site AVVO, was a Super Lawyer for seven years in a row, was AV rated by Martindale Hubble and was also a president and legislative vice president of the Florida NELA affiliate. Shooster met Amlong at the Broward County Courthouse 1986. He opined that he would not like to be on the opposite side of Amlong in an employment case. He recalls Amlong as a frequent lecturer at Florida NELA conferences. His opinion is that Mr. Amlong has an excellent reputation for honesty and integrity and one of the most successful litigators in the state. Shooster said he maintains that opinion even after reviewing the transcripts of the hearing before Judge Scola and the Court of Appeals’ opinion affirming it.

105. **Arthur Scofield**, a 25-year lawyer, who specializes in plaintiff’s side employment law and a former president of the Florida affiliate of NELA, as well as being co-chair of NELA’s ethics and sanctions committee, which filed an amicus brief in support of Amlong, Daley and The Amlong Firm concerning the sanctions order. Amlong Ex. #234.2.1. Scofield has a “10” score with AVVO and multiple

years as a “Super Lawyer.” He has known Amlong for 25 and has been on opposing sides in a federal trial.

106. Schofeld assessed Amlong has different reputations depending on whether asking plaintiff’s employment lawyers or defense lawyers Plaintiff’s lawyers would consider him the go-to, all knowing lawyer and the defense bar would consider him a pain in the butt to litigate against since he can be overly difficult to work with. Schofield testified that he has never questioned Amlong’s character and never received a misrepresentation from him, which is not true with all opposing counsel. His opinion has not changed upon his review of the *Eldredge* litigation. He disagrees with the judge’s conclusions and, in his opinion, there is no ethics concerns or violations based upon his assessment of the record and speaking to Amlong.

107. **John J. Palmatier Ph.D.**, is a former Michigan State Police polygrapher who earned a doctorate in research psychology from Michigan State University and does credibility assessments using a polygraph device. He has testified in three prior Bar trials. After discussing the issues for about 30 minutes¹⁶, Palmatier performed a polygraph examination on Amlong, a report of which along with Palmatier’s curriculum vitae, was introduced as Amlong Ex. #204. During the pre-polygraph discussion, Amlong admitted that the Daley was wrong in telling

¹⁶ The pre-polygraph discussion was recorded and introduced into evidence as Amlong Ex.#204a.

Eldredge to give EDCare only originals and keep copies. She should have advised Eldredge to give EDCare whatever she had. He also stated that Daley is rigid and he had previously had to correct her when she was restricting discovery. The three relevant questions that Amlong was asked (and his responses) were:

1. Did you do anything outside the legitimate prosecution of Debbie Eldredge's lawsuits to obtain money from her former employer? Answer — No.

2. During your testimony before Magistrate Otazo-Reyes, did you purposefully give any false testimony? Answer — No.

3. Did you believe, before you withdrew, that based on your education and experience, Ms. Eldredge's case against her former employer had merit? Answer — Yes.

Amlong Ex. #204. The data on Amlong's respiration, skin conductance response and cardiovascular activity was then analyzed on a medically certified device that uses a scientifically validated algorithm to determine the likelihood of the test subject's veracity or deception, based on which Dr. Palmatier testified the statistical probability that Amlong was being truthful would be, approximately, 99.5 percent. The Referee does not give significant weight to Dr. Palmatier's testimony based on the belief that the questions asked during the examination are not particularly helpful to answer the key issues pending in this proceeding with the exception of question #3 which the Referee is finding in favor of Amlong based upon the evidence or lack thereof.

108. **Walter Aye** has been a lawyer and an arbitrator for 35-40 years in the areas of international business and labor and employment law. He was one of the founders of the Florida NELA affiliate and was the chair of The Florida Bar's Trial Skills Program for labor and employment.

109. To prepare to offer an opinion on the viability and merits of the wage-and-hour case and the age-and-gender discrimination case arising out of Eldredge's termination, Aye testified he reviewed complaints in the two cases, several court orders, the transcripts from those hearings and some pleadings which arose during those cases. He also spoke to Amlong on two or three brief phone calls.

110. Aye opined as to whether the wage-and-hour case was frivolous ab initio, referring to the standard set out in Sullivan v. School Bd. of Pinellas County, 773 F.2d 1182 (11th Cir. 1985), that "it couldn't have been... when there had been a motion for summary judgment and it had been denied, thus saying this case has enough to go forward" and, as to the age-and-gender discrimination case, was frivolous ab initio, Aye testified the complaint set forth a prima facie case with facts supporting it.

111. **Barbara Goolsby**, a 39-year lawyer, who worked for Legal Services in Miami from 1982-2003, on a Navajo reservation in New Mexico for two years, and, from 2006 through 2012, as litigation director of Florida Rural Legal Services ("FRLS") in Fort Myers, where she supervised 20 lawyers in five offices. She went

to work for the Dellutri Law Group in Fort Myers doing mortgage-foreclosure defense in 2013- 2016, following which she became and remains of counsel to The Amlong Firm. Her relationship with Amlong dates back to 1968, when she was a reporter for the now-defunct *Miami News* and he was a reporter for *The Miami Herald*.

112. Goolsby testified that Amlong had co-counseled cases with her for over 30 years” on a *pro bono* basis. She has a high opinion of his character, skill, and morals.

113. **Timothy Chinaris**, Esquire, has worked as a faculty member and dean at various law schools since 1997, currently teaches advanced ethics along with other topics at Belmont University College of Law. He worked for The Florida Bar beginning in 1986 as an assistant ethics counsel and from 1989 to 1997 as ethics director. He has previously testified as an expert witness for both the The Florida Bar and respondents concerning advertising, conflict of interest, legal malpractice, and breach of duty cases including to render an opinion as to whether a lawyer violated a Bar rule.

114. In preparation for his testimony on behalf of Amlong, Chinaris spent over 15 hours reviewed, among other things, The Florida Bar’s complaint, initial motion for sanctions in the Eldredge case, Amlong’s answer and defenses, various

motions, orders and transcripts in the underlying cases and the billing records in the underlying case.

115. His experience working for The Florida Bar and as a law professor qualified him to offer opinion testimony in the three areas in which he was asked to testify: **First**, a lawyer's ability to rely on what his client tells him; **Second**, the filing of allegedly frivolous claims, and, **Third**, a law firm partner's responsibility to supervise an associate—each of which issues he had dealt with both while working at The Florida Bar and subsequently for private clients. *Id.* at 99:22-100:15.

116. Chinaris testified an attorney acts reasonably to rely on a client's representations and there is no duty to investigate unless a reasonable lawyer would have suspicions. An example he gave is where "a client is not providing everything that they're supposed to provide, [an attorney] would want to inquire further and take reasonable steps to make sure they comply with their obligations." He stated that based upon what he reviewed, there were no warning signs that the Eldredge was not being truthful and forthcoming in discovery until she revealed that her son had altered documents being produced to defendants, at which point The Amlong Firm immediately and appropriately sought to withdraw. It is interesting that Professor Chanaris was not asked to render any opinions related to the Civil Theft Demand letter and any actions, non-actions or representations taken by Amlong or Daley in response.

117. Chinaris opined as to the frivolity allegation, the claims that The Amlong Firm filed on behalf of Eldredge were “pretty far removed from what had been found in Florida Bar disciplinary cases to have violated Rule 4-3.1.” He testified that frivolous claims have included: filing based on false statements, re-litigating a claim previously found to be frivolous, trying to enforce deed restrictions that have been held by a prior court to be invalid to the specific restrictions, filing where it’s known there is no jurisdiction, or filing proceedings without authority from the client. He is not aware of a Bar case where a lawyer was held to have violated the rule and the claim had survived summary judgment.

118. As to the supervision issue, Chinaris testified that a partner’s duty to supervise associates under Rule 4-5.1 is based on the lawyers own conduct and not vicarious liability or a civil liability situation based on *respondeat superior*. The supervising attorney should take reasonable steps to make sure the inexperienced lawyer acts ethically. He indicated that with a small firm of experienced attorneys an informal supervision and periodic review to ensure conflicts are checked, dates are calendared and trust accounts are monitored will suffice.

119. On cross examination, he testified that he was aware Daley had been sanctioned in 2013 but doesn’t remember the specifics. He also stated that after sanctions, a supervising attorney should be more vigilant. He agreed with counsel

for the Bar that the Referee could, but was not required to, impose sanctions solely on court orders.

120. **Cynthia Everett**,¹⁷ a Board Certified labor and employment attorney, certified mediator and former member of The Florida Bar's Board of Governors and grievance committee, testified on behalf of Daley. She has known Daley for over 20 years starting when they both worked as associates at Williams & Associates. Everett testified that Daley is highly respected in the legal community and described Daley's character impeccable and unimpeachable. Everett is a friend to Daley and trusts Daley's opinions, uses her as a reference, and still, on occasion, seeks advice from Daley, asks Daley to review her writing samples and provide opinions and criticisms of them. She refers cases to Daley and The Amlong Firm that she is unable to handle or do not fit her caseload. Even though she has not been actively involved in the employment law area in recent years, Everett's indicated other employment lawyers, in previous years, had the highest praise for Daley.

121. Everett is aware of the allegations made against Daley and Amlong upon reviewing the Bar's complaints and the sanctions order and her opinion of either attorney remains unchanged.

122. **Alison Churly-Davis** was with The Amlong Firm from law school for 5 years until 2017 when she left to accept a job as the general counsel for the

¹⁷ Cynthia Everett's Curriculum Vitae was admitted as Daley Ex. #3.

Broward County Clerk of Court. She testified that the doors of partners and attorneys at the Amlong Firm were always open for questions and advice.

123. Ms. Churly-Davis recalled the associates receiving instruction at the periodic meetings with lawyers and staff members that The Amlong Firm's policy on discovery was that "you turn it over, unless you have a specific privilege, objection, you turn it over and then you deal with it on the back end. Whatever the issue is, we're going—you deal with it on the back end." Ms. Churly-Davis indicated that for all aspects of litigation including settlement, strategy, or problems Daley would talk to one of the partners but for fundamental things such as motions to compel, Daley would proceed without input from the partners. She further testified she observed Amlong to be knowledgeable and a "zealous" and "aggressive" advocate. She never observed Amlong to ask her or any client to do anything unethical. She found Daley to be meticulous and detail oriented and would stay working until 2 am. She was assigned to assist Daley with the Eldredge case. She remembers the client Ms. Eldredge as needy by contacting the firm frequently and the documents for the file as voluminous on the law firm's computer server.

124. **Glenn Ross Caddy, Ph.D.**, is a clinical, health and forensic psychologist,¹⁸ met Amlong in the mid-1980s. He worked on Karen Coolman Amlong's family law cases and Amlong's civil rights cases. Along the way,

¹⁸ Caddy's curriculum vitae is in evidence as Amlong Ex. #244.

Caddy and Amlong became close friends and live within 1000 feet of each other. They frequently dining, traveling and spending holidays together. Amlong has never over the years requested Caddy to change or even shade his opinion in any case in which Amlong has retained Caddy as an expert, or to withhold any documents from discovery. Concerning the allegations made against Amlong in this matter, and in the underlying federal case, Caddy opined that Amlong was more upset at having been accused of doing something unethical than he was about paying the \$422,226 sanction imposed by the federal court.

125. **Valerie Kiffin Lewis**¹⁹, a certified mediator, employment law attorney, and member of the mediator's qualifications and disciplinary review board, testified on behalf of Daley. She has known Daley and Amlong for over 20 years and first met them though Florida NELA. Kiffin Lewis considered Daley to be a friend and one of the few people on her list of highly respected colleagues whom she would call when issues arise in the practice area. Daley has a high level of integrity and is very bright, especially in the area of employment discrimination. Kiffin Lewis has mediated cases in which Daley represented a party, and has been able to see her deal with difficult situations. In her opinion, Daley made decisions that might not be the best, but always followed the law.

¹⁹ Valerie Kiffin Lewis' curriculum vitae was admitted as Daley Ex. # 3.

126. Kiffin Lewis testified that both Daley and Amlong had very good reputations in the legal community. Having known Daley and Amlong for over 20 years and read the complaint and parts of the appeal, she did not believe that the allegations in the Bar complaint and the appellate pleadings described the Daley or Amlong that she knows.

F. Findings of the Referee Regarding Daley's and Amlong's Conduct

127. From the time of the filing of the first motion for sanctions to the oral argument hearing before the Court of Appeals, EDCare injected into the litigation several allegations of unethical—and even criminal—wrongdoing but on the fully developed record before this Referee, after careful review of all the evidence, no clear and convincing documentary or testimonial evidence supports blackmail being perpetrated or engaged by Daley or Amlong.

128. I find based upon the testimony of the Respondents and expert witnesses that the FLSA case and the discrimination case had merit at the time they were filed but that the actions of Daley's actions throughout the litigation multiplied the proceedings unreasonably and vexatiously as found in the Federal court orders pursuant to 28 U.S.C. §1927.

129. I further find, based on all the evidence before me, that Daley and The Amlong Firm's failed to act reasonably in responding and advising Eldredge how to respond to the Civil Theft Demand Letter. Daley also failed to take reasonable

appropriate steps in ensuring Eldredge complied with the November 7, 2013 order related to production of all documents in her possession including the emails. Daley By filing the unsworn declaration of Eldredge (TFB Ex.# 16L, p. 2, Amlong Ex. #139) without ensuring Eldredge had completed the search as ordered, Daley knowingly failed to follow the order of Judge Otazo-Reyes.

130. I find, based on all the evidence before me, that Daley knew that Eldredge had possession of voluminous documents and electronic storage devices containing confidential information belonging to EDCare, knew the Amlong Firm had taken possession of a portion of the documents, and improperly chose to advise Eldredge to only return, as “original”, a laptop and a binder. Daley also failed to advise and mislead opposing counsel and the court that the Amlong Firm and Eldredge had possession of numerous documents that were not provided in response to the Civil Theft Demand letter and/or discovery. I find that Amlong also had personal knowledge of the items possessed by the Amlong Firm and Eldredge and received copies as lead attorney on correspondence and pleadings such that he was negligent in not ensuring Daley was complying with production of the materials and clearly and honestly advising the parties and the court of the facts.

131. I reject Pollack’s inference that any extortion or blackmail occurred at any time during the pendency of the case and find, no competent evidence that Daley or Amlong did make any extortionate demand during mediation. I do not find the

emails by Eldredge describing her beliefs about the litigation to be relevant or attributable to Amlong or Daley to support the allegations of extortion or the direction of the litigation.

IV. RESOLUTION OF ALLEGED RULE VIOLATIONS AS TO DALEY AND AMLONG

The Florida Bar has filed a one count complaint against both Respondents arising from the Respondent Amlong's law firm's representation of Deborah Eldredge in two interrelated employment law matters. The Bar has alleged that Amlong, along with his associate, Daley engaged in ethical misconduct relative to their representation of Eldredge. Each rule violation allegation will be discussed below.

A. AS TO R. REGULATING FLA. BAR 4-3.1

This Rule requires that 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.

In its complaint, the Bar has asserted that the Respondents filed two frivolous lawsuits. This Referee heard testimony that Amlong primarily conducted the lengthy initial interview of Eldredge, determined which claims should be filed but then Daley was the primary attorney in both cases. While several matters were discussed during the initial interview and shortly thereafter, only two lawsuits were filed. The

first sounded in a FLSA violation and the second in age discrimination. The first complaint survived summary judgment and the second case was still in the pleading stages when the law firm withdrew from the litigation with both such causes of action still viable at the time of withdrawal. Daley prepared and signed most of the court papers in both cases. However, based on the testimony of Art Schofeld, Walter Aye and Timothy Chinaris, as well as of Amlong and Daley, I find that neither claim was frivolous.

Daley and Amlong as seasoned employment lawyers explained the two causes of action and why he and Daley believed they were both viable. Respondents pointed out the FLSA case had survived the summary judgment process, demonstrating its merit, and Amlong testifies both were viable at the time The Amlong Firm withdrew. The Bar did not present contrary evidence, and therefore I find Daley and Amlong not guilty of any violation of R. Regulating Fla. Bar 4-3.1.

B. AS TO R. REGULATING FLA. BAR 4-3.2

The Referee finds the facts and evidence supports a violation of R. Regulating Fla. Bar 4-3.2 which requires a lawyer to “make reasonable efforts to expedite litigation”. I find the Bar did not prove this allegation in regards Daley or Amlong and find them not guilty.

C. AS TO R. REGULATING FLA. BAR 4-3.3(a)(1)

This rule states that 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.” This is an intent rule²⁰ wherein the Bar must prove that a lawyer knowingly and intentionally made a false statement to a tribunal. The Bar specified in their memorandum in opposition to Amlong’s Motion for Directed Verdict that this violation was related to Amlong and Daley’s statements in their testimony before the court that were evasive and found to be not credible and non-responsive.

After reviewing the transcripts and listening to Ms. Daley testify extensively during this hearing, I also determine that numerous statements made by Daley in the March 5, 2015 (Transcript, TFB Ex. # 17, p.) hearing related to the return of EDCare documents, laptop, and materials including the compact disc of Mr. Schillinger’s hard drive were false statements and a violation of this rule. In regards to Amlong, I have not received clear and convincing evidence to prove and false statements and find him not guilty of Rule 4-3.3(a)(1).

²⁰ See for example *The Florida Bar v. Head*, 84 So.3d 292 (Fla. 2012) wherein the lawyer engaged in serious misrepresentations to a tribunal.

D. AS TO R. REGULATING FLA. BAR 4-3.4(a),(c), and (d)

The Bar has asserted a violation of subsections (a), (c) and (d) of R. Regulating Fla. Bar 4-3.4, which reads as follows:

Fairness to Opposing Party and Counsel

A lawyer must not:

- (a) 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;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.

Daley asserted she had an agreement with Lori Patterson in regards to the discovery materials and, as such, there was no violation. The Referee finds that if such agreement existed, it was based upon Patterson's belief that Eldredge and Daley were candid in their responses to the Civil Theft Demand letter and all EDCare materials had been returned. Patterson's letter of July 2, 2013 (TFB Ex.# 16 H-Attachment I) and Defendant's Motion for Sanctions dated August 8, 2013 (TFB Ex. # 16H) are evidence to support this conclusion. Additionally, Daley repeatedly used documents that had been purposefully withheld from discovery during depositions so Respondent's cannot now argue the documents were irrelevant to the litigation.

Eldredge was the a cause of some materials being provided late, however, Daley failed to frankly disclose in pleadings and communications with opposing counsel that the Amlong Firm has possession of many documents since August 2012 and Eldredge had more materials in her home that had not been provided to EDCare.

In other disciplinary matters relative to discovery, the Court has always noted that lawyer's personal role in the discovery failure, especially as it related to a concealment issue. See for example, *The Florida Bar v. Miller*, 863 So. 2d 231 (Fla. 2003) (concealing a right to sue letter); *The Florida Bar v. Forrester*, 818 So. 2d 477 (Fla. 2002) (hiding a document at a deposition). Also, of interest herein, is *The Florida Bar v. Burkich-Burell*, 659 So. 2d 1082 (Fla. 1995), wherein the lawyer engaged in knowingly fraudulent discovery practices.

I find that Daley is guilty of R. Regulating Fla. Bar 4-3.4(a), and (d). I rule that Amlong is guilty as well since he was copied on all pleadings and, by his own admission, reviewed the motion for sanctions filed by Patterson on August 8, 2013. He should have but did not cure Daley's obstruction and failure to comply with the discovery request of Patterson. The Referee finds the Bar did not sufficiently prove any violation of R. Regulating Fla. Bar 4-3.4(c) and I find Amlong and Daley not guilty.

E. AS TO R. REGULATING FLA. BAR 4-4.1(a) and (b)

This rule reads:

Truthfulness in statements to others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) 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.

I did not hear any evidence to show Amlong engaged in any false statements to a third party and find him not guilty. In Daley's communications with Lori Patterson and Barry Pollack, counsel for EDCare, she repeatedly misrepresented by omission and deceptive language that Eldredge and the Amlong Firm had complied with discovery and the Civil Theft Demand letter. I do not, however, find sufficient evidence that the statements were false and therefore find Daley not guilty of R. Regulating Fla. Bar 4-4.1(a). I do not find that R. Regulating Fla. Bar 4-4.1(b) is supported by the evidence in this proceeding and find both Daley and Amlong not guilty.

F. AS TO R. REGULATING FLA. BAR 4-5.1(a),(b),(c)(Amlong only)

The Bar alleged that the Amlong violated the subsections of R. Regulating Fla. Bar 4-5.1 which reads:

***RESPONSIBILITIES OF PARTNERS, MANAGERS,
AND SUPERVISORY LAWYERS***

(a) Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers

possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.

(b) Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Subsection (a) of the Rule requires a partner, such as Amlong, to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.” There must be law firm policy or procedures in effect to supervise ethical compliance by associates, such as Daley. The Bar presented no evidence in its submission to the Court that addressed how Amlong failed to meet this standard, and the evidence was to the contrary. The Respondent, and Daley, discussed how the associates in the law firm were supervised and how the partners in the firm actively oversaw their work, where appropriate. Additionally, the testimony in both the federal and this

proceeding was that Daley was a well experienced attorney and that due to her long-term employment at the firm and her experience level she was trusted to personally handle certain types of cases, such as Eldredge's matter because she was more than competent to do so. I find Amlong not guilty of R. R. Regulating Fla. Bar 4-5.1(a)

Subsection (b) of the Rule takes a slightly different approach to supervision than subsection (a). Subsection (b) requires a "supervising" lawyer to "make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." As previously found, Amlong demonstrated his active involvement in the case by reviewing the sanctions order filed in August 2013. I find he was negligent in not ensuring Daley complied with the issues raised in the motion.

Lastly, subsection (c) of the Rule has a predicate that a "lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct" if certain elements are met in the two subsections of this part of the Rule. I find no evidence that Amlong ordered that Daley engage in misconduct. See *The Florida Bar v. Hollander*, 607 So. 2d 412 (Fla. 1992), wherein the lawyer directed an associate to take an unethical action and was found to have violated the supervision rule. He did not "ratify" any misconduct but I do find he did not "at a time when its consequences can be avoided or mitigated...fail[] to take reasonable remedial action."

I therefore find Amlong guilty of R. Regulating Fla. Bar 4-5.1(b) and (c) and

not guilty of R. Regulating Fla. Bar 4-5.1(a)

G. AS TO R. REGULATING FLA. BAR 4-4.3

The Bar asserted several “catch all” rules. The first such rule is R. Regulating Fla. Bar 3-4.3 which reads:

Misconduct and Minor Misconduct

The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive, nor is the failure to specify any particular act of misconduct to be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

This rule is included in the procedural rules that govern these proceedings, but the Supreme Court has used this rule to form a substantive violation when one of the Rules of Professional Conduct, found in Chapter 4 of the R. Regulating Fla. Bar do not address the conduct at issue in a case. This rule states that a lawyer “may” be disciplined if that lawyer engages in conduct “contrary to honesty and justice.” Respectfully, based on the evidence in this proceeding, no clear and convincing evidence supports a finding that Amlong has engaged in any conduct contrary to

honesty or justice. I find that the statements by Daley detailed in paragraph E. above support a finding of guilt for R. Regulating Fla. Bar 4-4.3

H. AS TO R. REGULATING FLA. BAR 4-8.4(a) and (d)

The next alleged rule violation reference by the Bar is R. Regulating Fla. Bar 4-8.4(a) which reads: “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.” This appears to be a catch-all provision that the Bar has failed to show contains facts or circumstances any different from those mentioned with respect to the alleged violations of specific Bar rules. Accordingly, I find Amlong and Daley not guilty of any violation of R. Regulating Fla. Bar 4-8.4(a).

Last, the Bar asserts a violation of R. Regulating Fla. Bar 4-8.4(d), another general catch all rule and it reads that a lawyer shall not:

(d) 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;

This rule covers a broad range of topics that can be summed up as “conduct prejudicial to the administration of justice.” *The Florida Bar v. Frederick*, 756 So. 2d 79 (Fla. 2000). I find the bar did not prove by clear and convincing evidence that

Amlong engaged in misleading or dishonest conduct and he is not guilty of violating R. Regulating Fla. Bar 4-8.4(d). I do find that the actions of Daley throughout the course of the litigation in the cases to be a violation of R. Regulating Fla. Bar 4-8.4(d) and find her guilty.

V. RECOMMENDATION AS TO VIOLATIONS OF THE RULES REGULATING THE FLORIDA BAR:

Consistent with my findings above, I recommend as follows:

A. As to William Amlong, I recommend Respondent be found not guilty of the rules cited by The Florida Bar in its Complaint in paragraph 35, R. Regulating Fla. Bar 3-4.3, 4-3.1, 4-3.2, 4-3.3(a)(1), 4-4.1(a), 4-4.1(b), 4-5.1(a), 4-8.4(a) and 4-8.4(d). I recommend he be found guilty of violating R.Regulating Fla. Bar 4-3.4(a), 4-3.4(d), 4-5.1(b), and 4-5.1(c).

B. As to Jennifer Daley, I recommend Respondent be found not guilty of the rules cited by The Florida Bar in its Complaint in paragraph 30, R. Regulating Fla. Bar 4-3.1, 4-3.2, 4-3.3(a)(1), 4-3.4(a), 4-3.4(c), 4-3.4(d), 4-4.1(a), 4-4.1(b), 4-8.4(a) and 4-8.4(d). I recommend she be found guilty of violating R. Regulating Fla. Bar 3-4.3, 4-3.4(a), 4-3.4(d), and 8.4(d).

VI. PERSONAL HISTORY:

I considered the following personal history of the Respondents, to wit:

As to William Amlong

Date admitted to The Florida Bar: 1985

Age: 73

Prior Disciplinary Record: None.

As to Jennifer Daley

Date admitted to The Florida Bar: 1990

Age: 54

Prior Disciplinary Record: None.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I considered the following Standards prior to recommending discipline:

6.0 Violations of Duties Owed to the Legal System

6.1 False Statements, Fraud, and Misrepresentation

6.12 Suspension is appropriate when a lawyer knows that false statements or

documents are being submitted to the court or that material information is

improperly being withheld and takes no remedial action.

6.13 Public reprimand is appropriate when a lawyer is negligent in determining whether statements or documents are false or in taking remedial action when material information is being withheld.

6.14 Admonishment is appropriate when a lawyer is negligent in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity and causes little or no actual or potential injury to a party or causes little or no adverse or potential adverse effect on the legal proceeding. Public reprimand is very similar actually to the admonishment, the only difference being the injury that it would cause.

6.2 Abuse of the Legal Process

6.22 Suspension is appropriate when a lawyer knowingly violates a court order or rule and cause injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

6.3 Public reprimand is appropriate when a lawyer negligently fails to comply with a court order or rule and cause injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

6.24 Admonishment is appropriate when a lawyer negligently fails to comply with a court order or rule and cause little or no injury to a client or a party or causes little or no actual or potential interference with a legal proceeding.

7.0 Other Duties Owed as a Professional

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.4 Admonishment is appropriate when a lawyer is negligent in determining whether a lawyer's conduct violates a duty owed as a professional and causes little or no actual or potential injury to a client, the public, or the legal system.

In arriving at the aforementioned sanction, pertinent case law has been examined as well as the following aggravating and mitigating factors.

Aggravating Factors:

9.22(b) dishonest or selfish motive; Daley's actions support an unknown dishonest or selfish motive for the original misconduct. The Referee finds no dishonest or selfish motive on behalf of Amlong

9.22(c) a pattern of misconduct; Daley's original misconduct with the documents and materials not returned in response to the Civil Theft Demand letter then became exacerbated by her conduct as the cases progressed. I find no pattern of misconduct by Amlong

9.22(d) multiple offenses; This factor exists for both respondents and

9.22(i) substantial experience in the practice of law. It is hard to imagine two more experienced practitioners to come before a tribunal.

Mitigating Factors:

9.32(a) absence of a prior disciplinary record; The parties stipulate that neither party has a prior disciplinary record.

9.32(g) good character or reputation;

This Referee heard hours of testimony from credible witness with impressive credentials. The Referee find Amlong and Daley to have excellent character and reputation based upon the testimony of the witnesses and evidence presented during the proceedings.

9.32(k) imposition of other penalties or sanctions:

The Amlong Firm paid \$422,433.30 as sanctions in the Federal case once the orders were affirmed. Amlong testified that Daley was lost income due to a laid off for a period of time based this action. Amlong had his Board Certifications suspended for over 2 years during the pendency of this proceeding.

I recommend Respondent **Daley** be found guilty of misconduct justifying disciplinary measures and that she be disciplined by a suspension of 91 days. Respondent shall be required to petition for reinstatement pursuant to Rule 3-7.10 of the Rules Regulating The Florida Bar. In order to avoid the appearance of being a

lawyer in good standing, Respondent must eliminate all indicia of her status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever. Respondent will not hold herself out as a licensed attorney. I also recommend she be required to pay the Bar's costs.

I recommend respondent **Amlong** be found guilty of misconduct justifying disciplinary measures and that he be disciplined by an admonishment. I also recommend he be required to pay the Bar's costs.

VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

R. Regulating Fla. Bar 3-7.6 (q)(3) is the applicable rule for the award of cost to The Florida Bar in this proceeding and that rule provides as follows:

(3) Assessment of Bar Costs. When the bar is successful, in whole or in part, the referee may assess the bar's costs against the respondent unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated.

I find the following costs were reasonably incurred by The Florida Bar for Jennifer Daley:

Investigative Expenses	\$563.17
Bar Counsel Travel Expenses	\$309.21
Court Reporters' Costs	\$2,484.25
Witness Costs	\$107.57
Administrative Fee	\$1,250.00

TOTAL \$4,714.20

I find the following costs were reasonably incurred by The Florida Bar for

William Amlong:

Investigative Expenses	\$563.17
Bar Counsel Travel Expenses	\$309.21
Court Reporters' Costs	\$2,484.25
Witness Costs	\$107.57
Administrative Fee	\$1,250.00

TOTAL \$4,714.20

It is recommended that such costs be charged to respondents and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

DONE AND ORDERED at Palm Beach County, Florida, this 7th day of November, 2019.

/s/ Sherri Lyn Collins
Hon. Sherri Lyn Collins, Referee
West County Courthouse
2950 State Road 15
Belle Glade, FL 33430

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via email on this 7th day of November 2019 to:

Francis Brown-Lewis, Bar Counsel, The Florida Bar, at fbrownle@flabar.org; and smiles@flabar.org;

Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org;

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firm.com;

Kevin P. Tynan, Co-Counsel for Amlong, at ktynan@rtlawoffice.com and
mcrowley@rtlawoffice.com.

/s/ Sherri Lyn Collins
Hon. Sherri Collins, Referee