IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

COLLEEN MARIE DUNNE,

Respondent.

_____/

Supreme Court Case No.

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

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Colleen Marie Dunne, Respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on December 21, 2000 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent resided and practiced law in Monroe County, Florida, at all times material.

3. The Sixteenth Judicial Circuit Grievance Committee "A" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Respondent is an Assistant State Attorney in the Monroe County State Attorney's Office.

5. Respondent was assigned to prosecute the case against Mr. William Thomas Skinner, who was arrested on June 1, 2009 for multiple felony counts, including attempted murder and burglary of a dwelling with a firearm.

6. In January 2010, the defense placed Respondent on notice that it intended to rely upon an insanity defense in the case. Respondent thereafter received two reports from the defendant's two mental health experts.

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

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

9. Three of the calls Respondent listened to were the defendant's conversations with his son on the day of his arrest. These calls were significant in that they refuted many aspects of the defendant's purported insanity defense as documented in the defense experts' reports. The calls demonstrated that the defendant was lucid, organized in his thinking, able to plan, that he remembered

the events in question and that he had not suffered any blackouts. The instant complaint arises from Respondent's misconduct related to these phone calls.

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

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

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

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

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

15. At the deposition of the defendant's second expert on the morning of July 27, 2010, Respondent asked pointed questions which insinuated she had

knowledge of statements made by the defendant to his son. Defense counsel, Ms. Cara Higgins, confronted Respondent and inquired directly:

> Q. Is the State in possession of some statements allegedly made by the defendant that day that the State is referring to?
>
> A. I'm not in possession of any statements Mr. Skinner gave to law enforcement or that I'm referring to. I'm not. I'm not in any possession. I have turned over any and all statements that he has made on that day.
>
> Q. The State is not in possession of any statements allegedly made by the defendant to his son about organizing, et cetera, that is your entire line of questioning about this?
>
> A. I will provide any and all statements that Mr. Skinner made that would be required under the discovery rules.
>
> Q. Demand for discovery has been outstanding.
>
> A. I know, Ms. Higgins.
>
> Q. Is there something that the State is aware of?
>
> A. Ms. Higgins, I'm well aware of my discovery obligations and I will provide any and all statements that I have . . . .

(7/27/10 Transcript at 41).

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

17. The Defense thereafter filed a Motion to Exclude the three jail house phone calls based on Respondent's actions. A hearing on the motion was held on May 10, 2011.

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

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

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

21. This statement was directly refuted by the July 6, 2010 email from Respondent's intern to Respondent, indicating she was almost done downloading the calls to a DVD, and by the subsequent email from her intern on July 16, 2010, forwarding those recorded and downloaded calls to the State's expert.

22. Respondent thereafter explained to the judge that she did not know she was going to use this evidence until after the depositions of the defense experts, stating that it was the defense experts' answers that made her aware of the

relevance or significance. At the same time, Respondent reiterated the false statement that she had not previously downloaded the calls:

> "Doctor Haber did not give specific answers to those questions. Doctor Haber was the first deposition which was taken place July 26th. The next deposition was Doctor Jacobson and in that deposition I still did not - - *I had not downloaded those calls. I had not documented these calls*. But that's when I asked the questions that related to the characters which relate to the defendant's behavior on the day in question."

(Transcript 5/10/11 at 13)(emphasis added).

23. Respondent's purported lack of knowledge of the relevance of the phone calls is refuted by the July 16, 2010 memorandum documenting the calls and their significance, as well as by Respondent's admission that the State's expert directed her to look for exactly these types of phone calls and statements of the defendant which would demonstrate his state of mind close in time to the criminal acts.

24. Following the hearing on the Motion to Exclude, the court held that, although a violation had occurred, the Respondent had turned over the subject phone calls well in advance of trial, and there was, accordingly, time to cure the prejudice resulting from the violation. As a result, the phone calls were not excluded. The matter proceeded to trial, and the defendant was convicted. His subsequent appeal was denied.

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

26. Throughout the pre-trial and trial stages, Respondent continuously denied having "possession" of the three phone calls at any time prior to her depositions of the two defense experts. It was not until the defendant's 2013 public records request revealed the emails between Respondent, her intern, and the State's expert from July 2010, that her misrepresentation was discovered. At that time, it became clear that Respondent in fact had both physical and constructive possession of the three phone calls weeks prior to her deposition of the defense experts.

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

28. Following the April 2015 hearing on defendant's Motion to Disqualify the State Attorney's Office, the court entered an Order denying the requested relief on various grounds, notwithstanding its detailed finding that Respondent violated her ethical obligations in the case. Specifically, the court found that Respondent:

> "clearly had the recorded phone calls in her possession at least one week prior to the defense depositions, if not much earlier, and she intentionally withheld them. . . . At [the May 10, 2011 hearing on the motion to suppress], the prosecutor, Colleen Dunne, violated her ethical obligation to this court when she clearly denied her possession of the three recorded phone calls prior to the deposition of the defense experts. . . . Ms. Dunne's behavior in the instant case fell below the ethical expectations of this court, and that of the people of the State of Florida. The prosecutor has an ongoing obligation to properly disclose information relevant to a case. There is no question that the prosecutor knew the jail calls were damning to the defense of insanity, and that her delay in disclosing the calls was gamesmanship. Gamesmanship has no place in the criminal justice system."

(Aug 12, 2015 Order of the Trial Court).

29. By reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: Rule 4-3.3 (Candor Toward the Tribunal), Rule 4-4.1 (Transactions with Persons Other than Clients; Truthfulness in Statements to Others) and 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice) of the Rules Regulating The Florida Bar.

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

Respectfully submitted,

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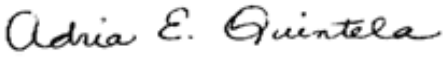

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CERTIFICATE OF SERVICE

I certify that this document has been efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Arthur Ivan Jacobs, Attorney for Respondent, at aijacobs@comcast.net; and that a copy has been furnished by United States Mail via certified mail No. 7017 0190 0000 0892 4415, return receipt requested to Arthur Ivan Jacobs, Attorney for Respondent, whose record bar address is Jacobs Scholz & Associates LLC, 961687 Gateway Blvd., Suite 201I, Fernandina Beach, FL 32034-9159; and via email to Jennifer R. Falcone, Bar Counsel, jfalcone@floridabar.org, on this 9th day of November, 2018.

Adria E. Quintela

Adria E. Quintela, Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Jennifer R Falcone, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445 and jfalcone@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323; aquintel@floridabar.org.

MANDATORY ANSWER NOTICE

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