IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant, v. COLLEEN MARIE DUNNE, Respondent.	Supreme Court Case No. SC18-1880 The Florida Bar File No. 2017-70,102(16A)

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REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, review of an Unconditional Guilty Plea and Consent Judgment for Discipline was undertaken. All of the pleadings are forwarded with this report and the foregoing constitutes the record in this case.

The following attorneys acted as counsel for the parties:

On behalf of the Florida Bar: Jennifer R. Falcone, Bar counsel
444 Brickell Avenue, Suite M-100
Miami, Florida 33131

On behalf the Respondent: Arthur Ivan Jacobs, Esq.
Douglas Arthur Wyler, Esq.
Jacobs Scholz & Associates LLC
961687 Gateway Blvd., Suite 201I
Fernandina Beach, FL 32034-9159

Respondent submitted an Unconditional Guilty Plea and Consent Judgment for Discipline (hereinafter "Consent Judgment") which has been approved and signed by the respondent's counsel and Bar counsel, and provides that the respondent receive a one year suspension and pay the Bar's disciplinary costs in this proceeding.

II. FINDINGS OF FACT

In her consent judgment, the respondent admits certain factual matter which I hereby accept and adopt as the findings of fact in this cause, to wit:

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

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

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

D. The State hired its own expert witness. The State's expert, Dr. Michael Brannon, advised the respondent to provide numerous items to assist in his evaluation of the defendant, including jail calls and other statements made by

the defendant around the time of his arrest which would demonstrate his state of mind at that time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. Respondent thereafter explained to the judge that she did not know she was going to use this evidence until after the depositions of the defense

experts, stating that it was the defense experts' answers that made her aware of the relevance or significance of the calls. At the same time, the respondent reiterated the false statement that she had not previously downloaded or documented the calls.

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

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

V. Throughout the pre-trial and trial stages, the respondent denied having physical "possession" of the three phone calls prior to her depositions of the two defense experts, and denied knowledge of the significance of those phone calls to the purported mental health defense. It was not until the defendant's 2013 public records request revealed the emails between the respondent, her intern, and

the State's expert from July 2010, that her misrepresentations were discovered. At that time, it became clear that the respondent in fact had both physical and constructive possession of the three phone calls weeks prior to her deposition of the defense experts, and that she was aware of the significance of those calls.

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

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

III. MITIGATION

Significant mitigation is present in this matter. Respondent has no prior disciplinary history. The underlying court held that no prejudice remained from the initial discovery violation, because the respondent immediately delivered the relevant phone calls to defense counsel following the subject depositions, well in advance of the scheduled trial date. Through this consent judgment, the respondent

has taken responsibility for her actions and demonstrated remorse for her misconduct. Further, the respondent understands that, as a result of her execution of the instant consent judgment, her position as an Assistant State Attorney will be in jeopardy.

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

IV. RECOMMENDATIONS AS TO GUILT

I recommend that the respondent be found guilty of violating the following Rules Regulating The Florida Bar:

Rules 4-3.3 (Candor Toward the Tribunal), 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.

V. <u>CASE LAW</u>

The agreed disciplinary measures to be imposed upon the respondent are consistent with this Court's prior jurisprudence. In a matter exhibiting significantly more severe misconduct, this Court held that a one year suspension was the appropriate sanction for an Assistant State Attorney who allowed a witness/confidential informant to testify to a false name during trial testimony. *The Florida Bar v. Cox*, 794 So.2d 1278 (Fla. 2001). Although the prosecutor in *Cox* had more altruistic motivations and believed she was protecting her confidential informant, her actions resulted in the criminal indictment being dismissed with prejudice. As stated, *supra*, no such prejudice to the criminal action resulted from the instant disciplinary case against Respondent Dunne. The Court also imposed similar discipline in more recent cases involving civil matters. For instance, in *The Florida Bar v. Bischoff*, 212 So. 3d 312 (Fla. 2017), the Court imposed a one year suspension on an attorney who filed a false notice indicating he had served discovery responses, when in fact he had not done so, coupled with other violations. Additionally, in the matter of *The Florida Bar v. Dupee*, 160 So. 3d 838 (Fla. 2015), the Court imposed a one year suspension on an attorney who

knowingly filed his client's inaccurate financial statement, deliberately withheld financial documents during discovery, and knowingly allowed the client to present false testimony during a deposition without taking any remedial action, and failing to notify opposing counsel that she had possession of a coin collection that was disputed. Accordingly, the one year suspension agreed to in the instant disciplinary action is consistent with this Court's prior jurisprudence.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Having reviewed the record of these proceedings, I find that respondent's plea and recommendation of The Florida Bar as to terms of discipline are both fair to the respondent and in the best interest of the public. Accordingly, I recommend that respondent be found guilty of misconduct justifying disciplinary measures and that respondent receive the following discipline:

A. One year suspension.

B. Payment of the Bar's costs in the disciplinary proceeding.

Respondent will eliminate all indicia of respondent's 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 no longer hold herself out as a licensed attorney, until such time as she is reinstated by the Florida Supreme Court.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 48

Date admitted to the Bar: December 21, 2000

Prior Discipline: None

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

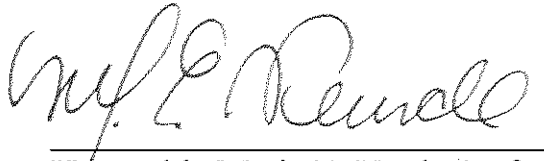
I have reviewed the Florida Bar's Motion to Assess Costs and find the following costs were reasonably incurred by the Florida Bar.

Administrative fee..................................$1,250.00

TOTAL $1,250.00

It is recommended that such costs be charged to the respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, the respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 10 day of December, 2019.



Honorable Maria E. Verde, Referee
Circuit Court Judge
Lawson E. Thomas Courthouse
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Miami, Florida 33128

Original To:

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