

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CURTIS LEE ALLEN,

Respondent.

Supreme Court Case No.
SC-

The Florida Bar File Nos.
2018-10,591 (13C)
2019-10,191 (13C)

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against Curtis Lee Allen, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on September 22, 1994, and is subject to the jurisdiction of the Supreme Court of Florida.

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

3. The Thirteenth Judicial Circuit Grievance Committee "C" 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.

RECEIVED, 10/07/2020 08:31:05 AM, Clerk, Supreme Court

COUNT I: TFB FILE NO. 2018-10,591 (13C)

4. Paragraphs 1 through 3 are realleged and incorporated herein by reference.

5. Respondent represented the defendant Avatar Property and Casualty Insurance Company (hereinafter referred to as Avatar) in defense of an insurance claim believed to be fraudulent, in the Pinellas County, Case No. 2017-001818-CI.

6. On September 26, 2017, respondent conducted a videotaped deposition of the plaintiff, Abel Alamo, in case no. 2017-001818-CI.

7. At the inception of the deposition, respondent made a point to advise Mr. Alamo that if he made a misstatement under oath, it is a third-degree felony, and during questioning of the witness references perjury and insurance fraud being a third-degree felony on multiple occasions. (A copy of pages 13, 54, 56, and 64 of the deposition transcript are attached as Exhibit A).

8. When respondent's questioning led to a series of contrary statements being provided by Mr. Alamo, respondent on more than one occasion during the deposition informed him that he knew the presiding judge, and respondent insinuated that the judge would throw Mr. Alamo in jail for lying to the respondent. (A copy of pages 73 -76 of the deposition transcript are attached as Exhibit B).

9. Respondent's threats to present criminal charges were solely to obtain an advantage in the pending civil matter.

10. Respondent's tone of questioning during the deposition was aggressive and intimidating toward the witness.

11. Respondent's technique of questioning the witness served no substantial purpose other than to intimidate, embarrass and humiliate the witness.

12. After a substantial amount of time being deposed by respondent, the witness made the decision to dismiss the complaint without prejudice against Avatar and end the deposition.

13. During the course of Mr. Alamo's deposition respondent also made several unprofessional comments to Mr. Alamo's counsel, Clifford K. Wells and Jason A. Herman.

14. Early on in the deposition, respondent engaged in the following unprofessional and hostile verbal exchange with opposing counsel Wells:

MR. WELLS: Objection, asked and answered.

MR. ALLEN: Form is sufficient, Counselor. You can answer, sir. The way this works in a deposition, he makes may make certain objections. The only time he'll tell you don't answer that. Okay. That's not his instruction. He's just preserving. He thinks that I'm asking the same question twice.

MR. WELLS: More than that. We're at three or four right now.

MR. ALLEN: Now, that's a speaking objection. That's improper. And I will not tolerate that.

MR. WELL: You were —

MR. ALLEN: So please stop.

MR. WELLS: — explaining him as well. So I can —

MR. ALLEN: Sir, it's not your deposition. You don't say a word, please. You say form or instruct not to answer. That's how this works.

MR. WELLS: I'll speak —

MR. ALLEN: Okay.

MR. WELLS: — when I need to..

MR. ALLEN: And I'll call the judge and I'll have your rear end sanctioned for this. We do not do speaking objections. Understand?

MR. WELLS: I agree we should

MR. ALLEN: Thank you.

MR. WELLS: -- call the judge whenever we need to.

MR. ALLEN: You're so forewarned. Judge — the judge is going to be on the line and we're going to have this conversation. I don't put up with speaking objections.

MR. WELLS: I welcome that.

MR. ALLEN: All right. You do that. Maybe we can go in person. We can fill out a code or something.

MR. ALLEN: Q. So, Mr. Alamo -

MR. WELLS: That was unnecessary. You were just talking about speaking objections and making comments like that. That was unnecessary.

MR. ALLEN: You're interrupting my deposition. And it's irritating, Sir.

(A copy of pages 42 – 44 of the deposition transcript are attached as Exhibit

C)

15. At another point in the deposition, respondent engaged in the following unprofessional verbal exchange with opposing counsel Herman:

MR. HERMAN: Objection, instruct him not to answer. Same grounds as before.

MR. ALLEN: Now, sir, we're talking about something in the last nine years that can basically establish whether or not he had financial means to even support himself. And you're instructing him not to answer.

MR. HERMAN: Yes.

MR. ALLEN: — on privacy ?

MR. HERMAN: Yes.

MR. ALLEN: Do you have any good faith basis to believe there's a confidentiality agreement of any type, or are you just saying we're not going to tell you?

MR. HERMAN: We're not going to tell you.

MR. ALLEN: By the way, did you enjoy writing the response to the motion to dismiss? I hope you did.

(A copy of page 63 -64 of the deposition transcript are attached as Exhibit D).

16. Respondent's comments to opposing counsel were disparaging.
17. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 3-4.3** (Misconduct and minor misconduct); **Rule 4-3.4(g)** (Fairness to opposing party and counsel – present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter); **Rule 4-4.4(a)** (Respect for rights of third parties – a lawyer may not use means that have no substantial purpose other than to embarrass, delay or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person); and **Rule 4-8.4(d)**

(Misconduct - a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic).

COUNT II: TFB FILE NO. 2018-10,191 (13C)

18. Paragraphs 1 through 3 are realleged and incorporated herein by reference.

19. Respondent represented the defendant Avatar Property and Casualty Insurance Company (hereinafter referred to as Avatar) in defense of an insurance claim in Pasco County Case No. 2016-CA-2348.

20. Plaintiff's counsel discovered that his client had inadvertently copied respondent on an email directed to counsel which was intended to be privileged and confidential.

21. Plaintiff's counsel made two requests to respondent to delete the email and any copies and to confirm that such action was taken and received no response from respondent.

22. Plaintiff's counsel filed a motion regarding the email and set the matter for a hearing.

23. There was no response from respondent prior to the hearing confirming that the email had been deleted.

24. At the hearing, respondent did not appear and had another attorney appear on his behalf who advised the court that the email had been deleted by the function of the server, but substitute counsel could provide no explanation as to why this could not have been conveyed to plaintiff's counsel prior to the hearing.

25. The court entered an order dated January 4, 2018, sanctioning respondent and his client by requiring reimbursement of \$494.94 for attorney fees incurred by plaintiff's counsel for having to bring the matter before the court. (A copy of the trial court's order is attached as Exhibit E)

26. Respondent failure to promptly communicate with plaintiff's counsel concerning the inadvertent confidential email delivered violated Rule 4-4.4(b).

27. On May 24, 2018, the trial court entered an Order Governing Case Management and Conduct of Counsel. (A copy of the trial court's order is attached as Exhibit F)

28. The trial court found it necessary to issue orders to prohibit further unprofessional conduct between counsel and provide directives over court filings

and setting monthly case management conferences to avoid any further delays in the progression of the case due to the conduct of both counsel.

29. The trial court made the following finding regarding the conduct of both counsel which led to the trial court's issuance of the order:

To say that this litigation has been hotly contested is an understatement. Unfortunately, the aggressive advocacy of the attorneys of record has not been rooted in the zealous representation of their respective clients, but rather flows from a clear disdain counsel have for each other. The multiple volumes of the court file are full of accusations that opposing counsel is being dishonest, has a reputation for litigating in bad faith, or has a history of being admonished by other courts. During hearings, the animosity is palpable. On multiple occasions, the Court has had to intervene to prevent an attorney from saying something that was disparaging to opposing counsel and unnecessary to the issue being addressed. The manner in which counsel for both the Plaintiff and Defendant have conducted themselves in this case fails to uphold the ideals of the profession, and has been quite simply, childish. It has resulted in an unreasonable delays of this case, and has interfered with the fair administration of justice.

30. Within the trial court's order, it stated it had to intervene and set case management directives for both counsels engaging in unprofessional behavior.

31. Subsequently, the trial court issued a Final Judgment as to Attorney Fees and Costs awarded to respondent's client wherein the trial court outlined respondent's unprofessional conduct in further detail. (A copy of the Final Judgment as to Attorney Fees and Costs is attached as Exhibit G)

32. For example, respondent filed a Memorandum of Law and a Supplemental Memorandum of Law in Support of a Motion to Dismiss in or

around September and October 2017 wherein a predominant part of the memorandums was spent personally attacking opposing counsel.

33. The trial court found that there were numerous pleadings filed wherein respondent spent time personally attacking opposing counsel.

34. The trial court also reviewed hours of video depositions and hundreds of pages of transcripts and made the following finding:

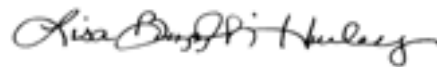
The conflict between respondent and opposing counsel was an ever present cloud that erupted with nearly every objection, and these clashes unnecessarily prolonged the depositions without any consideration of the inconvenience to the witnesses, court reporters or videographers; they were simply collateral damage in the attorneys' game of one-upmanship.

35. The trial court further found that during an evidentiary hearing held on October 21, 2019, the attorneys hurled accusations of misconduct at each other causing the trial court to resort to a discipline strategy typically reserved to parents separating bickering siblings and prohibited counsel from speaking to each other.

36. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 4-4.4(b)** (Respect for rights of third parties- A lawyer who received a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent must promptly notify sender); and **Rule 4-8.4(d)** (Misconduct - a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the

administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic).

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



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CERTIFICATE OF SERVICE

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided to Brett Joseph Preston, Counsel for Respondent, via email at brett.preston@hwlaw.com and via United States Mail via certified mail No. 7017 3380 0000 1082 7300, return receipt requested, to 101 E. Kennedy Blvd., Ste. 3700, Tampa, FL 33602-5195; and to Lisa Buzzetti Hurley, Bar Counsel, via email at lhurley@floridabar.org; on this 7th day of October, 2020.



Patricia Ann Toro Savitz
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF EMAIL
ADDRESSES**

PLEASE TAKE NOTICE that the trial counsel in this matter is Lisa Buzzetti Hurley, Bar Counsel, whose address, telephone number and primary and secondary email addresses are The Florida Bar, Tampa Branch Office, 2002 N. Lois Ave., Suite 300, Tampa, Florida 33607-2386, (813) 875-9821, Primary Email: lhurley@floridabar.org, Secondary email: rrivera@floridabar.org and tampaoffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.