

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC07-1494

v.

TFB File No. 2006-00,283(1A)

RHONDA S. CLYATT

Respondent.

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**REPORT OF THE REFEREE**

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

The Florida Bar filed its Complaint on August 7, 2007. The Referee held a final hearing on February 2, 2009, and February 5, 2009. All of the pleadings, exhibits and affidavits submitted to the Referee, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. A. **JURISDICTIONAL STATEMENT.** Respondent is, and at all times material to this complaint was, a member of The Florida Bar, admitted on September 16, 1982, and subject to the jurisdiction of the Supreme Court of Florida and the Rules

Regulating the Florida Bar.

B. NARRATIVE SUMMARY OF THE CASE

1. Respondent, Rhonda S. Clyatt, represented Yolanda Karleen Allen (“Ms. Allen”) in a divorce action.

2. At some point in time, Ms. Allen’s husband provided her with a fax machine so the parties could communicate without personal contact.

3. Ms. Allen learned that the documents previously transmitted over the machine could be viewed on a fax cartridge. She believed that the financial documents could be reproduced, and provide evidence of her husband’s lack of honesty in his financial disclosures.

4. Ms. Allen tried to reproduce the documents but was unable to do so.

5. She contacted Respondent who suggested that Lavelle Pitts, a private investigator, might be able to handle the matter.

6. Respondent spoke to Mr. Pitts who agreed to try to get the contents of the fax cartridge transcribed. Ms. Allen left the fax cartridge with Margaret Atkinson, Respondent’s legal assistant, and Mr. Pitts picked it up from Ms. Atkinson at Respondent’s office in August 2004.

7. Approximately five months later, in January 2005, Mr. Pitts returned the fax cartridge, a transcript, and a floppy disk to Ms. Atkinson at Respondent’s office.

Ms. Atkinson called Ms. Allen who came to Respondent's office that same day and picked up the items.

8. Respondent did not know that Mr. Pitts had picked up the fax cartridge, and then delivered the cartridge, transcript and floppy disc to Ms. Allen through Ms Atkinson in Respondent's office.

9. Ms. Allen took the items from Respondent's office to Joe Tierney's office where she left them.

10. Approximately four months later, on April 21, 2005, Ms. Allen gave a deposition in her divorce case. When she was asked where the fax cartridge and transcript were, she erroneously answered that they were in a file in Respondent's office.

11. After the deposition, due to Ms. Allen's testimony, Respondent conducted a thorough search of her office, and no file was found containing the items.

12. Within a few days, Ms. Allen notified Respondent that she had learned the fax cartridge and other items were at Joe Tierney's office where she had left them.

13. On April 27, 2005, in response to a request for the fax cartridge and related items from Mr. Allen's attorney, Respondent wrote a letter to him explaining that Ms. Allen had left the items with a third party. The letter further stated that the fax cartridge was not in her possession, "nor has it been in my possession." This statement was true

to the extent that Respondent believed they were not in her personal possession. Unknown to Respondent at the time she wrote the letter, however, the items had been in her office for the purpose of pick-up and drop-off. Therefore, the phrasing of Respondent's letter could have been interpreted as an untrue statement.

14. Respondent's statement in her April 27, 2005, letter to opposing counsel was not a knowingly false statement because it was based on Respondent's best information at the time it was made. Furthermore, she corrected the misstatement as soon as she learned the true facts.

15. When Respondent learned that the items had been dropped off and picked up at her office, she wrote another letter to opposing counsel on May 2, 2005, informing him of that fact.

### III. RECOMMENDATION OF THE REFEREE

The Complaint alleged three rule violations of the Rules Regulating The Florida Bar, namely, 4-4.3(Candor Toward Tribunal); 4-3.4(Fairness to Opposing Party and Counsel); and 4-4.1(Truthfulness in Statements to Others). At the beginning of the final hearing, The Florida Bar withdrew its allegation of a violation of Rule 4-3.4. The Referee granted Respondent's Motion for Directed Verdict on Rule 4-4.3. The sole issue of the remaining violation of Rule 4-4.1 was submitted to the Referee for ruling. On Rule 4-4.1, I find that The Florida Bar has not shown by clear and convincing

evidence that Respondent violated this ethical rule. Therefore, I recommend that Respondent be found not guilty of violating Rule 4-4.1 and this cause be dismissed. Each party shall bear its own costs. By agreement of the parties, The Florida Bar shall reimburse Respondent \$1,200 for the expenses of the deposition of Respondent's expert witness.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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JUDGE JOHN P. KUDER  
REFEREE  
Escambia County Courthouse  
190 Governmental Center  
Pensacola, Florida 32501

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee in Case No. SC07-1494, TFB File No. 2006-00,283(1A) has been mailed to THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; OLIVIA PAIVA KLEIN, Bar Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, and to Respondent's counsel, JAMES P. JUDKINS, at his record Bar address of Judkins, Simpson & High, P.O. Box 10368, Tallahassee, Florida, 32302, on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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JUDGE JOHN P. KUDER  
REFEREE