IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MARIE LOUISE HENRY,

Respondent.

_____/

Supreme Court Case
No. SC-

The Florida Bar File
Nos. 2012-31,557 (18A),
2013-30,074 (18A)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Marie Louise Henry, 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 April 24, 2009 and is subject to the jurisdiction of the Supreme Court of Florida.

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

3. On May 2, 2013, the Eighteenth 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.

COUNT I

[THE FLORIDA BAR FILE NO. 2013-30,074 (18A)]

4. Respondent's thirteen year old daughter was arrested, on or about October 31, 2009, for the offense of resisting/obstructing a police officer without violence in violation of Florida Statue §843.02. The State filed its Petition for Delinquency on or about January 25, 2010.

5. Initially, respondent solely represented her daughter in the juvenile proceedings. Prior to commencement of the trial and prior to respondent hiring co-counsel, respondent filed several motions for the court's consideration, such as, an Emergency Motion to Dismiss for Failure to State a Charge and Motion for Discharge for Lack of a Speedy Trial.

6. In the Motion for Discharge for Lack of Speedy Trial filed by respondent on or about March 17, 2010, respondent cited both the juvenile and the criminal rules related to speedy trial.

7. Respondent misstated Florida Rule of Criminal Procedure 3.191(p) as follows:

> Florida Rules of Criminal Procedure provides in Rule 3.191(a) "Speedy trial without demand" that "(a): Every person charged with a crime by indictment or information, shall be brought to trial within 175 days for adults and 90 days for a juvenile. If trial is not commenced within this time period, the Defendant shall be entitled to the appropriate remedy as set forth in

subdivision (p) below."

Rule 3.191 (p) provides "A Defendant not brought to trial within the specified time period, on motion of Defendant or the court, shall be forever discharged from the crime.

8. Florida Rule of Criminal Procedure 3.191, in pertinent part, states as follows:

> **(a) Speedy Trial without Demand.** Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (f), every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony. If trial is not commenced within these time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p). . . . .
>
> **(p) Remedy for Failure to Try Defendant within the Specified Time**
>
> (1) No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).
>
> (p)(2) At any time after the expiration of the prescribed time period, the defendant may file a separate pleading entitled "Notice of Expiration of Speedy Trial Time," and serve a copy on the prosecuting authority.
>
> (p)(3) No later than 5 days from the date of the filing of a notice of expiration of speedy trial time, the court shall hold a hearing on the notice, and, unless the court finds that one of the reasons set forth in subdivision (j) exists, shall order the defendant be brought to trial within 10 days. A defendant not brought to trial within a 10-day period through no fault of the defendant, on motion of the defendant or the court, shall be forever discharged from the crime.

9. While respondent cited Florida Rules of Juvenile Procedure 8.090, subdivisions (a) through (d) correctly in the Motion for Discharge for Lack of Speedy Trial, she did not cite to subdivision (m) which is essentially identical to subdivision (p) under the Florida Rules of Criminal Procedure. Subdivision (m) of the Florida Rules of Juvenile Procedure states as follows:

> **(m) Remedy for Failure to Try Respondent Within the Specified Time.**
>
> (1) No remedy shall be granted to any respondent under this rule until the court shall have made the required inquiry under subdivision (d).
>
> (m)(2) The respondent may, at any time after the expiration of the prescribed time period, file a motion for discharge. Upon filing the motion the respondent shall simultaneously file a notice of hearing. The motion for discharge and its notice of hearing shall be serviced upon the prosecuting attorney.
>
> (m)(3) No later than 5 days from the date of the filing of a motion for discharge, the court shall hold a hearing on the motion and, unless the court finds that one of the reasons set forth in subdivision (d) exists, shall order that the respondent be brought to trial within 10 days. If the respondent is not brought to trial within the 10-day period through no fault of the respondent, the respondent shall be forever discharged from the crime.

10. Respondent failed to notify the court that in her motion and during her argument before the court on May 19, 2010 that before her daughter could be forever discharged from the crime, the court was required to conduct a hearing within five days of the respondent filing her motion and that her daughter would be

required to be brought to trial within 10 days unless the court found certain situations existed as listed in subparagraph (d) in the Florida Rules of Juvenile Procedure and/or in subparagraph (j) of the Florida Rules of Criminal Procedure.

11. Respondent knew or should have known she failed to accurately quote the rule in her Motion for Discharge for Lack of Speedy Trial and the effect her misrepresentation could have had on the judicial proceedings.

12. Co-counsel entered a Notice of Appearance on or about April 6, 2010.

13. On or about April 28, 2010, respondent filed a memorandum of law with the court wherein she quoted as favorable case law a section from Terry v. Ohio, 392 U. S. 1 (1968). However, she failed to divulge that the quotation was taken from a concurring opinion in the cited case.

14. Respondent's daughter's juvenile case was heard by the Judge over three separate dates beginning on April 19, 2010 and finishing on April 23, 2010.

15. Respondent provided the majority of her daughter's representation during the delinquency proceeding because co-counsel left at approximately noon on the first day of trial due to a family emergency. He did not appear during the other two days of trial or at the sentencing.

16. On or about April 29, 2010, the court found respondent's daughter guilty of the offense as charged and on May 21, 2010, the court sentenced the child to a withhold of adjudication and probation for a period of one year.

17. The conviction and sentence were appealed. The appellate court upheld the conviction and sentence on or about May 20, 2011, but did remand the case back to the trial court to address an error in the sentencing documents.

18. In the interim, on or about March 1, 2011, respondent advised the child's probation officer that she had not seen her daughter since February 27, 2011 and that she believed her daughter had run away.

19. Because the child's absence was a violation of probation, the probation officer drafted an affidavit and pick-up order and presented it to the same Judge who had presided over respondent's daughter's delinquency matter. The basis of the pick-up order was that the child had absconded from supervision and that respondent had not seen her child since February 27, 2011.

20. The pick-up order was signed and respondent's daughter was arrested on or about March 4, 2011 and taken to a detention facility in Ocala, Marion County, Florida.

21. On or about March 5, 2011, respondent appeared in Marion County as counsel for her daughter. The Marion County judge ruled that the child would stay in secure detention until she was transported to Lake County for further review.

22. On March 7, 2011, at the secure detention review hearing, respondent appeared with newly hired counsel for her daughter; however, the daughter's probation officer was not available to testify.

23. During the proceeding, respondent falsely testified under oath that she did not advise the probation officer that her daughter had absconded or that she did not know of her daughter's whereabouts between February 27, 2011 and March 1, 2011.

24. Thereafter, on or about April 12, 2011 respondent filed an Emergency Petition for Writ of Habeas Corpus asserting that her daughter had been unlawfully arrested and detained in violation of her fundamental due process rights.

25. In the petition she misrepresented that she had advised her daughter's probation officer that her daughter and she had an argument, the child had called a friend to pick her up, and that the child had returned home later that day.

26. Respondent also stated that her daughter had been "overzealously and selectively prosecuted" and had "experienced a pattern of disparate treatment by the trial Court, Prosecutor, and the Department of Juvenile Justice," and that the assistant state attorney cited case law to "illegally detain" respondent's daughter.

27. Shortly thereafter, on or about June 7, 2011, respondent contacted law enforcement and filed a missing/runaway juvenile report. She stated that her daughter was missing and she did not know her whereabouts.

28. Based upon the foregoing the Judge issued a pick-up order and the child was arrested several days later in a different county.

29. Respondent filed a Petition for Writ of Habeas Corpus on or about June 16, 2011 with the Supreme Court of Florida. In this petition, respondent stated that "[t]he lower Court has demonstrated a proclivity to arrest and incarcerate the defendant at will even if such action is illegal."

30. She further stated that "[a] petition for writ of habeas was filed with the Fifth District Court of Appeal pertaining to the first illegal detention but the Fifth DCA did not review the supporting brief and memorandum of law but instead simply issued an order of dismissal without comment."

31. She asserted that her daughter had been "overzealously, and selectively prosecuted beginning at the very tender age of thirteen, [had] experienced a pattern of disparate treatment by the trial Court, Prosecutor, and Department of Juvenile Justice, specifically because of her race (Black)," and that her daughter had been given a greater sentence after the matter had been remanded by the Fifth District Court of Appeal due to "vindictiveness against [respondent's daughter] for filing an appeal."

32. On or about June 24, 2011, a hearing was conducted before the trial judge. At that time, respondent stated that the assistant state attorney's prosecution of her daughter was racially motivated and that a letter produced to respondent by the prosecutor during discovery from the president of the Mount Dora Historical

Society to the Chief Judge of the Mount Dora Police Department served no purpose other than to show the racial bias of the prosecutor.

33. She also accused the prosecutor, without providing any proof, of influencing the assistant state attorney handling a different delinquency matter regarding her daughter in a different county to seek a harsher than normal sanction against her daughter.

34. By reason of the foregoing, the respondent has violated the following Rules Regulating The Florida Bar:

A. 4-3.1 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. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

B. 4-3.3(a) A lawyer shall not knowingly: (1) 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; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; (3) fail to disclose to the tribunal legal authority in the controlling

jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

C. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

D. 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, 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

[THE FLORIDA BAR FILE NO. 2012-31,557 (18A)]

35. On or about August 4, 2009, respondent filed a civil action, case number 2009-CA-4537, in Lake County Circuit Court against her mortgage lender alleging predatory lending practices in connection with the origination of her home mortgages in 2005. Respondent represented herself at all times material.

36. Thereafter, on or about July 29, 2011, the Judge who had presided over respondent's daughter's Lake County, Florida juvenile case referenced in Count I above was transferred to the civil division and was assigned to respondent's pending civil case.

37. On or about October 12, 2012, respondent and counsel for one of the defendants in respondent's civil case filed a joint stipulation of voluntary dismissal with prejudice. At that time, a proposed order also was filed.

38. On or about October 18, 2011, the Judge entered his first written order in respondent's civil case approving the parties' stipulation. A copy of the order was served on respondent at her address of record with the clerk's office.

39. Approximately four months later, on or about February 27, 2012, respondent received an electronic message from opposing counsel seeking to set a hearing before the Judge.

40. Pursuant to that communication, on or about March 8, 2012 respondent filed a motion to disqualify the Judge in her civil case in which she implied this correspondence was the first time she learned of the Judge's involvement in the case.

41. Respondent indicated that "[b]ased upon her interaction with [the Judge], and his perceived bias against [respondent] [respondent] was understandably shocked, dismayed and upset when [respondent] received an email on February 27, 2012 attempting to set a motion hearing in this civil matter."

42. Respondent, however, failed to comply with Florida Rule of Judicial Administration 2.330(3) and failed to serve the motion on the Judge.

43. Thereafter, respondent filed a second motion to recuse on May 22, 2012 that was nearly identical to her first motion.

44. In her second motion to disqualify, respondent asserted that "[o]n May 9, 2012, [respondent] received an email from [opposing counsel], Attorney for the defendant Bank of America, seeking to set a hearing before [the Judge] in this cause."

45. Respondent made a misrepresentation by failing to inform the Judge that she had received prior electronic correspondence from opposing counsel on or about February 27, 2012 seeking to set a hearing before the Judge and by failing to inform the Judge she had filed a previous motion to disqualify on or about March 8, 2012 that still was pending.

46. Moreover, regardless of whether respondent learned of the Judge's assignment to her case on February 27, 2012 or May 9, 2012, neither of her motions to disqualify was timely filed.

47. In both motions, respondent asserted the reason she feared she would not receive a fair trial were due to the Judge's handling of her daughter's juvenile case in 2010.

48. Therefore, respondent's grounds for seeking the Judge's disqualification existed at the time the Judge was assigned to her civil case in July 2011 and at the time he entered his first written order on in October 2011.

49. Respondent knew, or reasonably should have known, of the Judge's assignment to her civil case, or at the latest, at the time he entered his first written order in the matter on October 18, 2011.

50. Furthermore, the language used by respondent in the motions to disqualify constituted a personal attack disparaging the Judge's impartiality, professional ethics and integrity.

51. For example, in the motion to disqualify dated March 8, 2012, respondent stated that the following:

> [The Judge] was the trial Judge in the criminal Juvenile proceeding involving [respondent's] thirteen year old daughter in which the child was illegally convicted, illegally sentenced, treated in an egregious and patently unfair manner. When [respondent] in this case, raised the issue of prosecutorial misconduct and racial bias with this Court, instead of the Court ensuring due process and fundamental fairness, [the Judge] threatened this [respondent], a duly licensed attorney and member of the Florida Bar, with criminal contempt. [The Judge] repeatedly sought to embarrass her and thwart her attempt to seek justice for her child. By threatening [respondent] with criminal contempt for appropriately raising issues of prosecutorial misconduct to the Court, demonstrates that [the Judge] sided with the Prosecutor in this case and acted against the interest of [respondent] and her minor child.

52. Respondent further stated that "[t]he prejudice of the trial court was so patently unfair, overt and in violation of the law of the United States of America and Florida that it rises to a level of abuse."

53. She continued, stating that she found it "deeply troubling that the Court departed from the essential requirements of Justice purely based on perceived racial animus, profiling and political motives in prosecuting [respondent's daughter's] case."

54. Respondent further stated that "[a]s a result of the unprecedented conduct of the Prosecutor and the Court towards this innocent child in violation of

her first, fourth, fifth and fourteenth Amendment rights, coupled with threats of criminal contempt against[respondent] in [respondent's daughter's case]; it clearly demonstrates bias and ill will against [respondent] and her child."

55. Respondent also asserted that:

> The record of [respondent's daughter's] case will establish the issue of prosecutorial misconduct, racial animus and racial profiling were raised and that this Court and [the Judge] angrily admonished [respondent] for raising legitimate concerns of bias to the Court's attention. In fact, [respondent] was threatened with criminal contempt. Despite the child's palpable and real fears which can only be construed as bullying, [respondent] was repeatedly admonished and embarrassed in proceedings before this Court. The record of proceedings will reflect misinterpreting and refusing to follow case law, an illegal arrest, conviction, illegal and enhanced sentencing, illegal detention in violation of state and federal law, illegal denial of Compact Services, illegal secured detention of the child in a secured detention facility, home confinement on two separate occasions without due process. Shockingly, this child's grandfather passed away on her birthday and she was not able to travel to another state to attend his funeral. Surely no civilized society could ever view this as a fair outcome involving a thirteen year old child whose only alleged crime was not telling an officer her name. As a six year honorably discharged Veteran of the United States Army, these actions in violation of the United States Constitution, were unusual, repugnant, and devastating to [respondent] and her child."

56. In her motion to recuse dated March 8, 2012, respondent stated that she was 'forced to defend her minor child against criminal charges. . . ." In her

motion to recuse dated May 22, 2012, respondent stated that she was "forced to represent her minor child against a criminal charge. . . ."

57. In fact, although respondent provided the majority of the legal representation to her daughter during the juvenile proceeding, she hired co-counsel. However, due to a family emergency, co-counsel was unable to participate after the first day of the trial. Respondent did not seek a continuance of the trial based upon co-counsel's unavailability.

58. Moreover, respondent hired counsel to represent her daughter in the appeal filed after respondent's daughter was found guilty at the conclusion of the juvenile proceeding. Respondent also hired counsel to represent her daughter in the subsequent violation of probation matter.

59. As further examples of statements made by respondent that constituted personal attacks on the Judge, she stated the following in the motion to disqualify filed on or about May 22, 2012: "The unprecedented conduct of this Court towards [respondent's] child and violations of her fundamental right under the First, Fourth, Fifth and Fourteenth Amendments, coupled with threats of criminal contempt against [respondent] clearly demonstrate bias and ill will against [respondent].

60. Respondent stated that she "[had] been forced to sit on her hands paralyzed with fear to act in the prosecution of [respondent's] case based on judicial bias, and intimidation."

61. Respondent also stated that an "objective, disinterested, law observer fully informed of the facts underlying the grounds on which this recusal is sought would entertain a significant doubt about the [Judge's] impartiality towards [respondent] and for this reason this motion meets the legal and procedural sufficiency requiring recusal. In fact, the opinions of neutral third parties having examined [respondent's daughter's] case are that her case is tinged with prosecutorial and judicial vindictiveness."

62. Respondent provided no citation to the record for her daughter's juvenile proceedings to support her statements regarding the Judge's impartiality, professional ethics, and integrity.

63. On June 19, 2012, the court entered its order finding respondent's March 8, 2012 motion to be legally insufficient because she failed to comply with Florida Rule of Judicial Administration 2.330(c)(4) by failing to immediately serve a copy of the motion on the subject judge. Instead, respondent had merely filed her motion with the clerk's office.

64. The court further found both of respondent's motions to disqualify to be "sham pleadings of scurrilous content" and ordered them to be stricken from the file.

65. The Judge then voluntarily recused himself based on the fact that he felt compelled to make further comment on respondent's motions beyond their mere denial and because he believed respondent's conduct needed to be referred to the bar.

66. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

A. 4-3.3(a) A lawyer shall not knowingly: (1) 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; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial

measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

B. 4-3.5(c) A lawyer shall not engage in conduct intended to disrupt a tribunal.

C. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

D. 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, 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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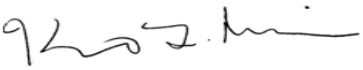

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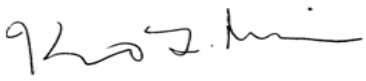
CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable Thomas D. Hall, Clerk of the Supreme Court of Florida, using the E-Filing Portal and that a copy has been furnished by United States Mail via certified mail No. 7011 0110 0002 4643 6411, return receipt requested to Respondent's Counsel, Barry William Rigby, at Law Offices of Barry Rigby, P. A., 924 North Magnolia Avenue, Suite 312, Orlando, Florida 32803-3850 and via electronic mail to barryrigbylaw@gmail.com; with a copy by electronic mail to JoAnn Marie Stalcup, Bar Counsel, jstalcup@flabar.org, orlandooffice@flabar.org, on this 26th day of June, 2013.



KENNETH LAWRENCE MARVIN
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is JoAnn Marie Stalcup, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, (407) 425-5424 and jstalcup@flabar.org, orlandooffice@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, kmarvin@flabar.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.