

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

Supreme Court Case  
No. SC18-1646

vs.

ELIZABETH JAYNE ANDERSON,

The Florida Bar File  
No. 2018-30,452 (19A)(CES),

Respondent.

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**UNOPPOSED MOTION TO SUPPLEMENT THE RECORD**

The Respondent, ELIZABETH JAYNE ANDERSON, by and through undersigned counsel, and pursuant to Rule 3-7.7, Rules Regulating The Florida Bar, and pursuant to Fla.R.App.P. 9.300 and Fla.R. App. P. 9.200(f), respectfully requests that this Honorable Court grant leave to supplement the Record to include a transcript of the Referee's "Pronouncement of the Court," hearing on January 14, 2019, attached as Exhibit A. As grounds therefor, the Respondent states as follows:

1. On February 19, 2019, the Referee in this matter, The Honorable Michael G. Takac, Circuit Court Judge, filed his Report as to Findings of Fact and Recommended Discipline.

2. On March 29, 2019, the Petitioner, The Florida Bar, filed correspondence with this Court advising it intended to seek review of the Referee's Report.

3. On April 17, 2019, the Petitioner filed its Notice of Intent to Seek Review of Referee's Report.

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4. On May 15, 2019, the Petitioner filed its Initial Brief on the Merits, along with a two-volume transcript of the trial (January 10 and 11, 2019), and requested oral argument.

5. On Monday, January 14, 2019, the Referee held a conference call with the parties, which was recorded by a court reporter, wherein the Referee would make a “pronouncement of the court.” The transcript of this pronouncement is not at this time a part of the record on appeal.

6. Since the January 14, 2019, telephonic proceeding was part of the trial of this matter, it should be included in the Record and be available to this Honorable Court. The transcript of the “Pronouncement of the Court” is necessary for this Court to review the stated basis for the Referee’s findings and conclusions after hearing the testimony in the case and viewing the witnesses who testified live. The inclusion of the aforementioned materials is necessary for the Court to properly review Respondent’s case on appeal, and for undersigned counsel to provide Respondent with effective assistance of counsel. Therefore, Respondent petitions this Court to grant leave for Respondent to supplement the Record with a third volume of the proceedings held on January 14, 2019. A copy of said transcript is attached.

7. This motion is made in good faith and not for purposes of delay.

8. Undersigned counsel for the Respondent hereby certifies that he has contacted Carrie Constance Lee, Bar Counsel, and is authorized to represent that she

has no objection to the Record being supplemented with the aforementioned transcript.

WHEREFORE, the Respondent, ELIZABETH JAYNE ANDERSON, respectfully requests this Honorable Court to grant this Unopposed Motion to Supplement the Record.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of May, 2019, a true and correct copy of the foregoing was e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, and that a copy has been furnished electronically to:

1) Referee, The Honorable Michael G. Takac, Lake County Judicial Center, 550 W. Main Street, Suite 11, Tavares, FL 32778, [ssutton@circuit5.org](mailto:ssutton@circuit5.org); 2) Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terr., Sunrise, FL 33323, [aquintel@floridabar.org](mailto:aquintel@floridabar.org); and 2) Carrie C. Lee, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, FL 32801, [clee@floridabar.org](mailto:clee@floridabar.org).

  
s/ Warren W. Lindsey  
WARREN W. LINDSEY, of  
LINDSEY & FERRY, P.A.  
1150 Louisiana Avenue, Suite 2  
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Florida Bar No. 299111

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Supreme Court Case  
No. SC18-1646

Petitioner,

vs.

The Florida Bar File  
No. 2018-30,452(19A)(CES)

ELIZABETH JAYNE ANDERSON,

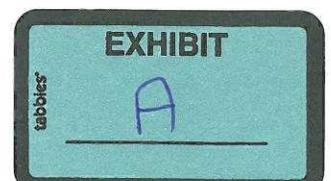
Respondent.

PRONOUNCEMENT OF THE COURT  
(Hearing held telephonically)

The matter contained herein came on for a telephonic hearing before the HONORABLE MICHAEL G. TAKAC, duly appointed Referee, in the offices of The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Orange County, Florida, on Monday, January 14, 2019, at 11:00 a.m.

REPORTER:

RITA M. MOTT, CVR-M



APPEARANCES:

Carrie Constance Lee  
Bar Counsel  
(Appearing telephonically)  
The Florida Bar  
1000 Legion Place, Suite 1625  
Orlando, Florida 32801-1050

Warren William Lindsey  
Respondent's Counsel  
(Appearing telephonically)  
1150 Louisiana Avenue, Suite 2  
Winter Park, Florida 32789-2354

1 FOR YOUR INFORMATION

2 Within this transcript:

3 "---" at the end of a question or answer indicates an  
4 interruption;

5 ". . ." indicates a trail-off by the speaker.

6 \* \* \* \* \*

7 PROCEEDINGS

8 January 14, 2019

11:00 a.m.

9 WHEREUPON:

10 THE COURT: Can everybody hear me?

11 MS. LEE: Yes, Your Honor.

12 MR. LINDSEY: Yes, Your Honor.

13 THE COURT: All right. I'm down in a courtroom.  
14 I'm surrounded by all the motion evidence. Thank you  
15 for your efforts in presenting something to me that  
16 I -- I think I was able to understand, hopefully.

17 I would have -- my -- my goal would have been to  
18 write a draft that I could read to you. That got a  
19 little bit sidetracked. But -- but I have pretty much  
20 an outline with the -- with the guts of what I would  
21 tell you, what you're waiting for. So I thought I'd  
22 give you that, so that, you know, we're not just  
23 waiting for suspense like I'm shooting a movie here.  
24 At least, you know, my understanding is I should review  
25 with you what the recommended sanctions were because we

1 had already gone over the -- or what the sanction is  
2 since we'd gone over the facts.

3 But before I do that, is there anything anybody  
4 needed to bring up anything to me about?

5 MS. LEE: Your Honor, the Bar has nothing  
6 further. I just want everyone to be aware we do have a  
7 court reporter present in the office with me now.

8 THE COURT: Yeah. I was going to say we should  
9 put all the appearances on.

10 This is Judge Takac in Tavares, in the  
11 courtroom. I think I'm the one by phone. Who's there  
12 for the Bar?

13 MS. LEE: This is Carrie Lee on behalf of the  
14 Bar.

15 THE COURT: Okay. Is that it?

16 MS. LEE: Yes.

17 MR. LINDSEY: Yes, Your Honor. Warren Lindsey on  
18 behalf of Ms. Anderson. Ms. Anderson is present by  
19 phone, in my office, in my conference room. Two of us.

20 THE COURT: Okay.

21 All right. So for purposes of the court  
22 reporter -- and then we can talk about how to -- the  
23 best way to write it up if I have to do it, if you'll  
24 be offering drafts to help me with the editing,  
25 whatever the Bar deems is appropriate.

1           Having reviewed the sanction with the party,  
2 taking the time to look at the additional cases so  
3 everybody knows where I'm coming from, the referee is  
4 aware that trust violations are serious, and it's --  
5 it's noted in the cases where it says disbarment is the  
6 presumptive sanction.

7           I've looked at it and probably most used as a  
8 balance both the *Alters* decision cited by both parties  
9 -- I think there's a Florida -- 43 FLW S582 cite to  
10 this 2018 case, then as well as the *Bar vs. Johnson*  
11 case, at 38 FLW S626, a 2014 case.

12           I'm aware of the purpose, being the duties  
13 violated, which is the trust account, which, you know,  
14 in this instance before me just appeared to be gross  
15 negligence. The mental state of the respondent just  
16 seemed to be ignorance of the rules.

17           And not wanting to penalize her for there not  
18 being any additional septisis (phonetic) in her mental  
19 state ---

20           The potential actual injury is cash. It's --  
21 it's serious in that you're keeping clients from their  
22 money.

23           --- I went through the aggravators and  
24 mitigators, and the aggra- -- aggravating factor would  
25 be the multiple offenses, at least multiple incidences

1 of -- of where trust accountings were put into a  
2 different place.

3 In mitigation, of course, is the absence of a  
4 prior disciplinary proceedings; it was -- seems to this  
5 referee to be full cooperation with the Bar once  
6 notified and it started; not necessarily inexperience  
7 in the practice of law, but relative inexperience in  
8 managing and keeping a trust account; the character  
9 representation of the respondent; as well as remorse.

10 I am also inclined to say that I find in  
11 mitigation an absence of any dishonest or selfish  
12 motive. But I wrestle with that because I realize  
13 somebody who would look at this might disagree with  
14 that, saying that, "Well, you know what? Money that  
15 could have been in a trust account or should have been  
16 in a trust account was used to pay a bill or commingle  
17 or certainly money was available."

18 So I just want to make the comment that my  
19 recommendation would be the same even without that  
20 mitigation factor. So I put it in a column -- I -- I  
21 don't put great weight on it. It's not what the Court  
22 only sat on.

23 And similarly, there was not full restitution and  
24 correction made, but I wanted to give the respondent  
25 mitigation under 9.32(d), like in dog. There was at

1 least the begin- -- the commencement of that  
2 corrective-type action in an effort to rectify the  
3 mistake.

4 But when you find out, well, the CPA relied on --  
5 to your detriment, it didn't do the trick that someone  
6 else was brought in, and then certainly accountings  
7 were made, rendered, and turned over to the Bar to try  
8 to find out where the -- where the weakness is.

9 So in looking at that and considering the cases,  
10 and keeping in mind that the purpose is what the  
11 punishment is ---

12 I'm aware that the Bar sought disbarment. And so  
13 I considered that, knowing that essentially that's a  
14 five-year penalty, and then after which, you know,  
15 you're free to reapply and go through the steps again.

16 --- in this case, I don't know that taking  
17 another bar exam is going to be any benefit to any of  
18 the clients or the respondent because it wasn't the  
19 nuts and bolts of the law; it was -- this is the nuts  
20 and bolts of the trust account. And so in that, I -- I  
21 found suspension to be the appropriate sanction, not --  
22 not the two years sought.

23 I think in light of the cases that I had to read  
24 is that the three-year suspension would be appropriate,  
25 during which I think the proper remedy would be that

1 the full and accurate accounting be completed that was  
2 started. I know there may have been some limits on how  
3 far the respondent wanted to go so as not to, you know,  
4 run afoul of the suspension.

5 So I -- I would say three years make the full,  
6 accurate accounting to be completed and -- as started.  
7 Perhaps the restitution, if not made, at least a plan  
8 could be organized.

9 Upon a return to practice, I think a five-year  
10 probationary period would be appropriate so that the  
11 respondent has the trust reviewed. And to that case,  
12 the Martinez stipulation was a little bit helpful  
13 because it does outline things that the referee had  
14 started.

15 In other words, there'd be a CPA acceptable to  
16 the Bar running monthly audits to make sure the trust  
17 accounting is fine, that the respondent's submitting  
18 quarterly reports and bearing, you know, the cost of  
19 those, and, of course, subject to random audit by the  
20 Bar.

21 I think the ethics trust class, to the extent the  
22 Bar offers it, in whatever version, that would be  
23 appropriate to take at the end of the suspension  
24 period.

25 And I think that this case is distinguishable

1 from those cases that went to disbarment because there  
2 always seemed to be something more in a disbarment,  
3 either -- either false documents or contempt of court  
4 trying to get around a suspension, and that's where I  
5 find there to be a complete absence of on the part of  
6 respondent. I think it was just an abject failure to  
7 appreciate the trust account rules.

8 I think the suspension both serves the public and  
9 the profession. And as a deterrent to that -- in fact,  
10 I think the suspension in the terms that I discussed  
11 are probably more of a deterrent than just outright  
12 disbarment.

13 And I think that -- I struggle with the sense to  
14 make -- make this clear, but I don't find this to be a  
15 case of somebody caught doing something wrong, simply  
16 want to say, "Okay, sorry," and want to move on.

17 I -- I think this was -- this was different.  
18 This was a course of conduct where if somebody had just  
19 been shown or demonstrated to be wrong what they did  
20 not know or appreciate, and at that time, then made  
21 some affirmative efforts, a commitment to realizing  
22 that error and then trying to reeducate themselves to  
23 correct that.

24 It's -- it's hard to -- that distinction may not  
25 make sense, and I'm working on a better phrase, but I

1 don't think the -- the mere "I'm sorry" of somebody  
2 with their hands caught in a cookie jar -- I don't  
3 think the respondent ever realized there was a jar  
4 there, that her hand was in it. And I guess that's the  
5 simplest explanation I can make on why that would be my  
6 recommendation.

7 All of that said, I think I at least get through  
8 my outline of what I, you know, wish I'd written up in  
9 paragraph form to read to you. I'm open to any  
10 comments or suggestions or errors of what I say or  
11 whatever we can to get the report out that the -- that  
12 we've been tasked to do.

13 MS. LEE: Your Honor, the Bar normally provides a  
14 proposed Report of Referee that you can then modify to  
15 your desire, if that is okay with you.

16 THE COURT: That -- that -- that'd be great. I  
17 mean, it's always easier to start with an edit ---

18 MS. LEE: Correct.

19 THE COURT: --- than start fresh.

20 MR. LINDSEY: And I -- Ms. Lee and I have done  
21 together -- I mean, she would show it to me and I would  
22 provide my comments.

23 And Judge, one thing. I didn't -- and you may  
24 have said it, but at the hearing, you -- you found  
25 genuine remorse. I didn't hear you say it. But is

1 that ---

2 THE COURT: I thought I did. And I know I have  
3 it written -- written down. I did -- I did put that as  
4 a mitigating factor, I thought, before I put the two  
5 that I realized, you know, I was a little bit  
6 equivocal.

7 If -- if you want them reviewed, I mean, there's  
8 an absence of prior discipline; there's -- there was  
9 the full cooperation with the Bar; inexperience in  
10 trust accounting matters, not necessarily the practice  
11 of law. In fact, I think everybody -- that -- that was  
12 helpful to the referee that people were satisfied with  
13 the nuts and bolts of the legal work.

14 The character, reputation was also a mitigator,  
15 and -- and remorse. And then I had went back to say  
16 that I didn't find dishonest or selfish motive.

17 Realize that perhaps somebody would take a  
18 different interpretation of that since -- since money  
19 had been spent, but that's where I said that that  
20 wouldn't change if -- if I was instructed I had to  
21 eliminate that mitigation factor, it wouldn't change my  
22 recommendation.

23 And then I dropped down to the other one, 9.3(d),  
24 where I said, you know, there hadn't been immediate  
25 full restitution made but certainly steps taken in that

1 direction and correction. I made the particular  
2 distinction on how much can you do in all respects.

3 That was -- so that's how I adjusted mitigation  
4 thinking.

5 MR. LINDSEY: Judge -- and I don't know if this  
6 is -- this may not be. But on Friday, 'cause it was  
7 late, I -- I on my -- I'm just -- this is just a  
8 technical thing. It has nothing to do with your  
9 ruling. I just want to make sure I -- I did it right  
10 with Ms. Lee.

11 I handed her the -- the sentencing memo, but I  
12 had not served it yet, and I was in the courtroom. I  
13 don't -- Ms. Lee, do I have to serve it any more than I  
14 did in there, or do I have to do something different?

15 THE COURT: You're talking about respondent's  
16 memorandum ---

17 MR. LINDSEY: Yes.

18 THE COURT: --- regarding appropriate sanctions  
19 imposed.

20 MR. LINDSEY: I handed it to you, but I didn't --  
21 I think it also says in there -- 'cause I'd anticipated  
22 that it was going to go out at some point to the Bar in  
23 Tallahassee. Do I have to do anything more on that,  
24 Ms. Lee, or is -- is it adequate that I just handed it  
25 to you and to the judge?

1 MS. LEE: No. The ---

2 THE COURT: The certificate of service that the  
3 Court has is blank, so it ---

4 MR. LINDSEY: Right.

5 THE COURT: I guess, Ms. Lee, the question is,  
6 are you acknowledging that you were hand-delivered it  
7 at the -- on Friday?

8 MS. LEE: Yes, Your Honor. And that'll be --  
9 that'll be part of the record that will be included on  
10 the index.

11 MR. LINDSEY: But, what I'm saying -- just to --  
12 you know, I always try to do everything right. The --  
13 it says in there that I -- we used a template where it  
14 went to the Bar in Tallahassee, and I didn't send it to  
15 the Bar in Tallahassee. I didn't know if I needed to  
16 still do that. I never -- you know, or if just the way  
17 we did it was enough.

18 MS. LEE: That's fine. It's not a problem.

19 MR. LINDSEY: I just want to make sure.

20 MS. LEE: Yes.

21 MR. LINDSEY: That's all I have, Your Honor.

22 MS. LEE: The only other thing, just to let  
23 your -- you and your judicial assistant know, we're  
24 going to be getting those documents finalized to send  
25 on that interim Report of Referee so the Court can ---

1 THE COURT: Oh. I had that down as the first  
2 thing to -- to bring up.

3 MS. LEE: Yes.

4 THE COURT: The -- you -- you may not be talking  
5 about the same thing. We were going to get the notice  
6 that we were going to send up the motion.

7 MS. LEE: Yes.

8 THE COURT: Is that coming over? Is that going  
9 to be emailed today?

10 MS. LEE: Yes. I'm going to get that to you the  
11 first thing. So what we're going to do is do what's  
12 -- it's -- I'm just going to do it. It's called an  
13 Interim Certification of Record and Index. So the in-  
14 -- you'll sign that, and then you'll mail the original  
15 Report of Referee that you've already signed, along  
16 with that certification and the copy of that motion, up  
17 to the court. So just ---

18 THE COURT: Okay.

19 MS. LEE: --- those three items will have to be  
20 mailed up.

21 THE COURT: Okay. As long as -- all right. From  
22 the time I -- between now and I talk to my JA, she may  
23 call again to make sure that ---

24 MS. LEE: No. That's fine.

25 THE COURT: --- that she's sending everything

1 right.

2 MS. LEE: Not a problem. That's why I'm here.

3 THE COURT: We appreciate your patience with us.

4 MS. LEE: No. That's fine. That's not a  
5 problem. It is confusing, so . . .

6 And then we're going to have to do that all again  
7 for this final Report of Referee.

8 THE COURT: Right.

9 MS. LEE: We also need to have -- as soon as -- I  
10 think, if the Court is okay with this, we're -- I'm  
11 going to get with Mr. Lindsey and figure out the frozen  
12 funds issue, 'cause we've been tasked with that, and  
13 hopefully we can get that to you. That can be a  
14 separate Report of Referee just as to the frozen funds.  
15 So we'll try and get all that taken care of for you.

16 THE COURT: When you say you were tasked with  
17 that, is that by my order, or were you already given  
18 that task as well anyway?

19 MS. LEE: I'm not given. You're tasked with that  
20 by the supreme court. In the ---

21 THE COURT: I was tasked.

22 MS. LEE: Yes. In the order that was sent to  
23 you, it says that you're also to determine the -- where  
24 the frozen funds need to go.

25 THE COURT: Right. And that's -- well, and --

1 and I didn't know we had done that yet, and that's why  
2 I said that ---

3 MS. LEE: Yes.

4 THE COURT: --- that we should have this whole  
5 account.

6 MS. LEE: Yes. So we're going to do that and  
7 make recommendations to you. So then we'll also do a  
8 proposed order as to that purpose as well.

9 THE COURT: Yeah. That's . . .

10 MR. LINDSEY: Your Honor, we'll cooperate with  
11 Ms. Lee on that.

12 THE COURT: Yeah. That's going to mean  
13 everything,

14 MS. LEE: Yes.

15 THE COURT: 'Cause I think we all have a ballpark  
16 what we think it is. But, you know, if it turned out  
17 to be a trillion dollars, that would be a different  
18 number ---

19 MS. LEE: Well ---

20 THE COURT: --- purposely, 'cause I think that's  
21 a ridiculous example. We know it can't ---

22 MS. LEE: Yes.

23 THE COURT: --- get there.

24 MS. LEE: Well, we don't have to figure that out,  
25 Your Honor. We only have to figure out what remaining

1 funds are in the accounts and where they need to go.  
2 So say now Ms. Anderson only has \$5,000 in the account.  
3 Even though there may be short, we don't have to figure  
4 out what's short. We just have to figure out where  
5 that \$5,000 needs to go if it's a specific client.

6 THE COURT: How do you figure that out without  
7 knowing what's supposed to be in the account?

8 MS. LEE: Well, she -- hopefully, Ms. Anderson  
9 knows based upon the ledgers that have been re-created.

10 MR. LINDSEY: And I think that one is with  
11 Jessica Hew too, isn't it?

12 MS. LEE: Yes. Well, there's a number of  
13 accounts, so we have to figure out where all the funds  
14 need to go. And if it's Ms. Hew's funds, we can just  
15 give them to Ms. Hew and she can figure out where they  
16 need to go, which would be much easier than us trying  
17 to figure all that out.

18 But we'll -- we'll -- my auditor will look at all  
19 that stuff and then make a recommendation, and then we  
20 can go from there. So we may need to have a follow-up  
21 phone hearing just to address that issue as well, Your  
22 Honor.

23 THE COURT: All right.

24 Thank you all. Good luck to everybody.

25 MR. LINDSEY: Thank you very much, Your Honor.

1 Thank you for your consideration.

2 THE COURT: Good-bye. Take care.

3 MS. LEE: Thank you, Your Honor, and have a good  
4 day.

5 THE COURT: Take care. Thanks.

6 (Whereupon, on Monday, January 14, 2019, at 11:20  
7 a.m., the foregoing proceeding was concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

ss:

COUNTY OF ORANGE)

I, RITA M. MOTT, Certified Verbatim Reporter and Notary Public for the State of Florida at Large, do hereby declare that I was authorized to and did report via Stenomask the foregoing proceeding, and that the transcript is a true and complete record of that proceeding.

Witness my hand and official seal this 22nd day of January, 2019.

A handwritten signature in cursive script, appearing to read "Rita Mott", is written over a horizontal line.

Cert. No. NVRA ID #926  
Notary Public - State of Florida  
Notary Commission No. FF 185883  
Commission Expiration: 3/10/19