

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DEREK VASHON JAMES,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2019-30,075(9B)

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against Derek Vashon James, 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 12, 2000 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Orange County, Florida, at all times material.
3. The Ninth Judicial Circuit Grievance Committee B 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, 01/28/2020 03:21:30 PM, Clerk, Supreme Court

4. On July 31, 2018, Ms. Gray (the adjuster), who worked for or with the employer/carrier, was deposed via telephone in a contested worker's compensation matter. Ms. Gray, Ms. Villaverde (claimant's counsel), and respondent (employer/carrier's counsel) attended the deposition via telephone from their respective offices at three different locations. There was no video link.

5. While the deposition was in progress and Ms. Gray was being questioned by Ms. Villaverde, respondent surreptitiously sent text messages to the adjuster regarding her testimony. Respondent's texts included coaching and specific directions on how to respond to Ms. Villaverde's questions.

6. During the deposition, on the record, Ms. Villaverde said she could hear typing sounds and she asked respondent and the witness if they were engaging in texting during the deposition. Respondent denied this and stated he was only receiving a text from his daughter. Ms. Villaverde asked respondent to stop texting and put his phone away; respondent agreed.

7. After Ms. Villaverde resumed questioning Ms. Gray after a break, respondent inadvertently sent a series of text messages, intended for Ms. Gray, to Ms. Villaverde.

8. Thereafter, claimant filed a motion for production and in-camera inspection of all the texts sent during the deposition.

9. On August 24, 2018, an order was entered granting the motion for in-camera inspection and compelling both attorneys to produce the texts sent and received during Ms. Gray's deposition from 9:15 a.m. (the start of the deposition) to 12:00 p.m. (the conclusion of the deposition).

10. Respondent provided two (2) pages of text messages to the court.

11. In an order filed on September 28, 2018, after a hearing, the court found that text messages sent by respondent to Ms. Gray while the deposition was in progress were not protected by attorney-client privilege because they dealt with "testimonial matters and some of them constitute witness coaching."

12. On October 5, 2018, the court entered an order clarifying that respondent was required to produce all text messages sent or received during the deposition; respondent had not produced any texts involving his daughter even though he had stated during the deposition the typing sounds Ms. Villaverde had heard involved text messages from his daughter.

13. Despite being ordered to do so by the court, respondent has never produced any texts other than the two pages of texts provided to the court even though respondent informed Ms. Villaverde, at the deposition, that the typing sounds she heard involved a text received from his daughter.

14. The court, after considering the transcript and audio of the deposition and viewing the time stamps on the produced text messages, found that the text

messages between 10:12 a.m. and 10:25 a.m. and between 11:53 a.m. and 11:56 a.m. on July 31, 2018, occurred during the deposition and not during a break in the questioning.

15. During the questioning at the deposition by respondent, who asked questions of Ms. Gray first, the following text messages were sent/received by Ms. Gray and respondent:

10:12 a.m. (respondent): Your doing great she is just trying to rattle You with objections

10:12 a.m. (Ms. Gray): (emoji of face with tongue stuck out)

10:12 a.m. (respondent): So awkward asking you the questions first

10:13 a.m. (Ms. Gray): I know

16. After Ms. Villaverde began questioning Ms. Gray, the following text messages were sent/received between respondent and Ms. Gray:

10:19 a.m. (respondent): You don't

10:20 a.m. (respondent): As to settlement checks expiration

10:20 a.m. (respondent): You remember the deposition but not discussing checks

10:20 a.m. (respondent): yes

10:21 a.m. (respondent): Just review notes from 02/20/2018 forward

10:23 a.m. (respondent): Be careful just say

10:23 a.m. (respondent): You may not see today

10:25 a.m. (respondent): Take a break in 15 minutes?

10:25 a.m. (Ms. Gray): Up to you

17. There was a break in the deposition from approximately 11:39 a.m. to 11:50 a.m.; Ms. Villaverde resumed questioning Ms. Gray when the deposition continued at 11:51 a.m.

18. While Ms. Villaverde was questioning Ms. Gray, respondent sent the following text messages, intended for Ms. Gray, to Ms. Villaverde:

11:53 a.m. (respondent): Just say it anyway

11:53 a.m. (respondent): Just say 03/28

11:54 a.m. (respondent): In addition to the 03/28/2018 email containing the signed release I show . . .

11:55 a.m. (respondent): Don't give an absolute answer

11:55 a.m. (respondent): All I can see at this time but I cannot rule out existence

11:55 a.m. (respondent): It's a trap

11:56 a.m. (respondent): Then say that is my best answer at this time

19. Ms. Villaverde noticed she was receiving the text messages from respondent and stopped the deposition.

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

A. 3-4.3 Misconduct. The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

B. 4-3.4 Fairness to Opposing Party and Counsel. A lawyer must not: (a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer

knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act; (b) fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for professional services of an expert witness; and reasonable compensation to a witness for time spent preparing for, attending, or testifying at proceedings; (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; (d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party; (e) in trial, state a personal opinion about the credibility of a witness unless the statement is authorized by current rule or case law, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the culpability of a civil litigant, or the guilt or innocence of an accused; (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless the person is a relative or an employee or other agent of a client, and it is reasonable to believe that the person's interests will not be adversely affected by

refraining from giving such information; (g) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter; or (h) present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.

C. 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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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 via email to Barry William Rigby, Counsel for Respondent, at barryrigbylaw@gmail.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 8925, return receipt requested, to Barry William Rigby, Counsel for Respondent, whose record bar address is 2462 East Michigan Street, Suite 208, Orlando, Florida 32806, and via email to Daniel James Quinn, Bar Counsel, 1000 Legion Place, Suite 1625, Orlando, Florida 32801, at dquinn@floridabar.org and orlandooffice@floridabar.org, on this 28th day of January, 2020.



Patricia Ann Toro Savitz
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Daniel James Quinn, Bar Counsel, whose address, telephone number, and primary email address are The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801, (407) 425-5424, dquinn@floridabar.org and orlandooffice@floridabar.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, 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.