

IN THE SUPREME COURT OF FLORIDA  
(BEFORE A REFEREE)

THE FLORIDA BAR,

Complainant,

Case No. SC12-223

v.

TFB File No. 2011-50,590(17E)

DONNETTE SONYA RUSSELL-LOVE,

Respondent.

\_\_\_\_\_ /

**REPORT OF REFEREE**

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

The Florida Bar filed its complaint in The Florida Bar File No. 2011-50, 590 (17E) with the Supreme Court of Florida on or about February 6, 2012. Thereafter, the undersigned was appointed to preside as referee in this proceeding by order of the Chief Judge of the Fifteenth Judicial Circuit. The Final Hearing was held on June 25, 2012. The Florida Bar presented four witnesses: Respondent, Complainant Adijatu Abiose, Larikah Russell and Officer Craig Gommel. Counsel for the Respondent presented Respondent and three character witnesses. The

pleadings, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings the Respondent was represented by Kevin P. Tynan, Esq. and The Florida Bar was represented by Ghenete Elaine Wright Muir, Esq.

## II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

1. This case arises from Respondent's misrepresentations to the United States Citizenship and Immigration Services when she filed immigration forms on behalf of her former client Larikah Russell.

2. On or about September 3, 2009, Respondent was retained by Larikah Russell, a citizen of the Bahamas, to complete a P-1 visa petition so that she could legally enter the country to participate in the United States Tennis Association (hereinafter "USTA") professional tennis tournaments. The Respondent is of Bahamian descent and identified herself as a distant cousin of Ms. Russell.

3. In the past, Larikah Russell had travelled to the United States to compete in other tennis tournaments but on one occasion a United States Customs and Border Protection officer, located in Freeport, Bahamas refused her entry into the United States because she was using the wrong visa type and she was informed at that time that she needed a P-1 visa.

4. In December 2009, Respondent prepared and submitted a form I-129 [Petition for a Nonimmigrant Worker] to the United States Citizen and Immigration Services (hereinafter "USCIS"). The form I-129 was admitted into evidence as The Florida Bar Exhibit A. The Respondent stated that the package of information, which included documents relating to her client's accomplishments in the field of tennis, comprised approximately 200 pages.

5. After said form I-129 was submitted, USCIS contacted Respondent and advised that said petition was insufficient to secure the requested visa and that in order to secure the requested visa the name of the organization sponsoring the tournament was needed. The Respondent testified that the entire packet was returned by USCIS with the stamp "information verified" but that there were items missing including the designated sponsor information and a signature from the sponsor.

6. The Respondent communicated this fact to her client and the client advised via e-mail that the USTA was sponsoring the tennis tournaments.

This e-mail communication was admitted into evidence as Respondent's Exhibit 4. Therefore, the Respondent contacted the USTA and explained her client's position and expressed that the client needed to secure a P-1 visa. The letter from Respondent to USTA dated February 2, 2010 was admitted into evidence as Respondent's Exhibit 5.

7. The Respondent ultimately secured a letter dated March 24, 2010 from Idelle Pierre-Louis, an employee of the USTA. The USTA letter was admitted into evidence as The Florida Bar Exhibit B. Said letter confirmed that Larikah Russell had requested to participate in certain tournaments but that the USTA letter is "just to inform the consular office that the player has requested to play the event and should not be considered an endorsement."

8. An amended form I-129 was prepared by the Respondent's office on or about March 25, 2010. The Respondent knowingly and deliberately listed the United States Tennis Association as the Petitioner filing on behalf of Larikah Russell. The Respondent also listed her own law office address as the contact address for the USTA. The amended form I-129 was admitted into evidence as The Florida Bar Exhibit D.

9. The Respondent testified that she hand wrote the USTA employee's name, Idelle Pierre-Louis, on the form I-129 in both the space designated for

the Petitioner's name to be printed as well as in the space designated for the Petitioner to provide a signature.

10. Directly above the signature portion of the form I-129 reads in part: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization."

11. The Respondent testified that she was not empowered by the USTA to file any documents on its behalf.

12. In addition to amending the form I-129 Respondent amended the form G-28 [Notice of Entry of Appearance of Attorney or Accredited Representative]. This form G-28 dated March 25, 2010 listed the United States Tennis Association in the space designated for Principal Petitioner, Applicant or Respondent. The amended G-28 was admitted into evidence as The Florida Bar Exhibit C.

13. The Respondent testified that she hand wrote the name of the USTA employee Idelle Pierre-Louis as well as the name of the organization in the portion of the form designated for the signature of Petitioner, Applicant, or Respondent. Respondent admitted that the manner in which she completed

the form G-28 indicated that she was the attorney appearing on behalf of the USTA.

14. Of some significance is that the Respondent did attach the March 24, 2010 letter from the USTA signed by Idelle Pierre-Louis to the amended forms I-129 and G-28 and submitted these documents to the USCIS. The Respondent testified that in addition to the above documents, she again forwarded the approximate 200 page submission of supporting evidence of the client's eligibility to the USCIS office in the United States, along with a letter to the USCIS specifically identifying herself as the attorney representing Larikah Russell. The letter did not reflect that she represented the USTA.

15. On April 8, 2010, pursuant to a Notice of Action from USCIS, the petition was approved and Larikah Russell was given her requested visa. The Notice of Action documents were admitted into evidence as The Florida Bar Exhibits F and G.

16. The Notice of Action listed the Petitioner as the United States Tennis Association and Larikah Russell as the Beneficiary and approved the P-1 visa for travel dates from April 8, 2010 to May 2, 2010.

17. Larikah Russell testified that when she received the P-1 visa she was concerned about the brief time period granted for her to travel on the visa.

United States Customs and Border Protection Officer Gommel (hereinafter “Gommel”) was contacted to help determine why the dates of permissible travel were so limited.

18. Gommel asked Larikah Russell for a copy of the immigration forms that were filed with the USCIS in order to get the P-1 visa.

19. Larikah Russell contacted the Respondent’s office and requested that her application be faxed to Officer Gommel. The Respondent testified that she was advised by her office that the forms were being faxed to the U.S. Embassy and addressed the information requested to the U.S. Embassy. The letter from Respondent to Officer Gommel dated April 19, 2010 was admitted into evidence as Respondent’s Exhibit 6.

20. Gommel testified that he noticed that the signature of USTA employee Idelle Pierre-Louis on the letter dated March 24, 2010 did not match the signature (as noted above, the Respondent actually printed Ms. Pierre-Louis’ name twice on the form as distinguished from an effort to “sign” Ms. Pierre-Louis’ name) on the forms I-129 and G-28.

21. Gommel then conducted an investigation which included contacting the USTA to determine if the Respondent represented the USTA.

22. During the investigation, the USTA forwarded a letter dated May 13, 2010 to USCIS which letter confirmed, among other things, that the USTA

did not employ Respondent on their behalf or authorize the Respondent to take any action on their behalf or on behalf of any of their employees. The USTA letter dated May 13, 2010 was admitted into evidence as The Florida Bar Exhibit E.

23. Once it was confirmed that the Respondent did not have authority to file documents on behalf of the USTA, Gommel reported the filing of the fraudulent immigration documents to Adijatu Abiose (hereinafter “Abiose”) the USCIS Field Office Director of the Embassy of the United States of America in Kingston, Jamaica.

24. Abiose testified that upon receiving the details of Gommel’s investigation Larikah Russell was charged with violation of the Immigration and Nationality Act section 212(a)(6)(c)- fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit.

25. Abiose testified that the Respondent was not charged with violating any laws but was reported to The Florida Bar as the The Florida Bar is the proper forum to address Respondent’s misconduct.

26. Abiose testified that Larikah Russell had a permanent bar to admissibility to the United States. Abiose explained that Larikah Russell may seek a waiver to allow her to enter the United States but that seeking the waiver is a burdensome and expensive process.

27. Larikah Russell testified that she has been able to enter the United States since the permanent bar to admissibility, but that she has to undergo an interview process each time she enters the United States.

28. Larikah Russell further testified that she received a tennis scholarship for college in the United States and had a tennis career that included participating in tennis tournament in the United States.

29. The Respondent indicated that she did not become aware that Larikah Russell's visa had been cancelled until she received the bar complaint in October 2010 and at that point she was advised by her counsel not to contact Larikah Russell in light of the active bar complaint.

30. The Respondent also testified that she had tremendous remorse particularly for the impact her misconduct had on Larikah Russell.

31. Respondent testified that although she had practiced immigration law for 2 years this was her first time applying for a P-1 visa. Thus, she was unsure of how to proceed.

32. However, Respondent testified that she did not contact the USCIS for guidance nor did she seek help from any of her colleagues nor the Florida Bar program Seek Counsel of Professional Experience (SCOPE) that provides experienced attorneys to assist other attorney who are unfamiliar with an area of law practice.

### III. RECOMMENDATIONS AS TO GUILT

After a careful review of all of the evidence presented both testimonially and from the documents admitted into evidence, the court concludes that a violation of the Florida Bar Rules has in fact been committed.

I find that absent this isolated incident the Respondent is someone of high integrity who typically acts with the best interests of her clients in mind. However, in her attempt to do what she thought was best for the client by trying to expedite the process she acted in a knowing fashion and did violate the Rules of the Florida Bar.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 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.]

A. I find that Respondent violated 4-8.4 (c) with the following conduct:

(i) Misrepresenting that she was the attorney for the USTA.

- (ii) Misrepresenting that the USTA was petitioning for the P-1 visa on behalf of Larikah Russell.
- (iii) Printing the name of the USTA employee on both the forms I-129 and G-28.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined by:

- A. Suspension for a period of 10 days.
- B. Payment of The Florida Bar's costs in this matter.

In arriving at the foregoing disciplinary recommendation, consideration was given to various factors which are set forth below:

Both Florida Standards for Imposing Lawyer Sanctions (Florida Standards) and pertinent case law have been examined. The Florida Standards suggest that the following general factors should be considered in imposing sanctions:

- (a) duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) The existence of aggravating or mitigating factors. While the case law may support a lengthier suspension, I find that the

complete lack of aggravating factors, coupled with extensive mitigating factors, warrants the discipline imposed here.

I find that Respondent violated the following duties (with resultant sanctions) which are set forth in the Florida Standards:

**6.12** Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

I find that while the language contained in 6.12 deals with the court, that it can be equated with the government particularly when lawyers who practice in the immigration field are involved. In immigration law, the government forms are a necessity and the representations made on those forms are critical.

Intent is defined as the conscious objective or purpose to accomplish a particular result. I find that the Respondent acted knowingly and deliberately in order to expedite the immigration filing for her client. I find that intent was proven by clear and convincing evidence.

In *The Florida Bar v. Fredericks*, 731 So.2d 1249 (Fla. 1999) complainant retained the Respondent for a wrongful termination suit. The Respondent never filed the suit but led the complainant to believe that the lawsuit had been filed and a default judgment had been granted in a state action and a settlement had been agreed upon in a federal action. The referee recommended that the Respondent be

found guilty of Rule 4-8.4(c). Upon appeal the Respondent argued that the referee failed to find the required element of intent. The Supreme Court upheld the referee's ruling and found that the element of intent is satisfied once it can be shown that the conduct was deliberate and knowing.

In *The Florida Bar v. Riggs*, 944 So.2d 167 (Fla. 2006) the Respondent received funds from a mortgage company to satisfy a \$118,000 mortgage during a real estate closing. Respondent did not satisfy the mortgage and later claimed that a dishonest employee had stolen the funds. The Respondent argued that his failure to supervise his employee was unintentional. The court found Respondent guilty of violating Rule 4-8.4(c) finding that Respondent's failure to supervise constitutes intent because he knowingly assigned the duty to the employee.

Similarly in this case the Respondent knowingly and deliberately completed the immigration forms misrepresenting that she was the attorney for the USTA and that the USTA was the petitioner. It is noted that she did attach the USTA letter, however, and her cover letter did state that she represented her client, Larikah Russell.

The court further finds that the Respondent was overwhelmed in her personal life with her ailing parents, marital discord and (which necessarily also involved her young child) and difficulties involving other family members.

However, I do not believe that the stress created by her personal hardships were sufficient to justify her misconduct.

I find that although Larikah Russell has been injured by the immigration charge that has prevented her from traveling freely to the United States that with proper representation her immigration issues can be resolved and that she has travelled to the United States, albeit with some difficulty, following this incident.

## V. CASE LAW

The Florida Bar provided the following cases:

*The Florida Bar v. Baker*, 810 So. 2d 876 (Fla. 2002). In this matter Respondent was suspended for 91 days after forging his wife's signature in order to sell jointly owned real estate. Further, Respondent had his secretary notarize the forged signature.

*The Florida Bar v. Corbin*, 701 So.2d 334 (Fla. 1997). In this case the Respondent was suspended for 90 days after misrepresenting material facts to the court and submitting a false affidavit. Additionally, Respondent misled the Bar in his initial response to the Bar.

*The Florida Bar v. Rood*, 569 So.2d 750 (Fla. 1990). In Rood the Respondent was suspended for a year for concealing a doctor's memorandum in a medical malpractice case and for providing false information in his interrogatories.

I have considered these cases provided by the Bar and find that the testimony and evidence in the instant matter warrant the suspension ordered herein. Any suspension in this court's view is a serious sanction. This suspension is based on the totality of the circumstances which this court has carefully considered and set forth above.

VI. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 42

Date admitted to the Bar: September 13, 2000

B. Aggravating Factors: None

Prior Discipline: None

C. Mitigating Factors:

9.32(a) absence of a prior disciplinary record;

9.32(f) inexperience in the practice of law;

9.32(g) character or reputation;

9.32(l) remorse

VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

A.	Grievance Committee Costs:	
	1. Court Reporting Costs	\$ 581.00
	2. Bar Counsel Travel Costs	\$ 16.10
B.	Referee Level Costs:	
	1. Court Reporting Costs	\$ 552.00
	2. Bar Counsel Travel Costs	\$ 83.89
	3. Phone Calling Cards	\$ 20.00
C.	Administrative Costs:	\$ 1,250.00
D.	Miscellaneous Costs:	
	1. Investigators Expenses	\$ 352.92
	<b>TOTAL ITEMIZED COSTS:</b>	<b><u>\$ 2,855.91</u></b>

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Donald W. Hafele, Referee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to Respondent's Counsel, Kevin P. Tynan, at Richardson & Tynan P.L.C., 8142 N. University Drive, Tamarac, FL 33321-1708; Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; Ghenete Elaine Wright Muir, Bar Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Donald W. Hafele, Referee