

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI DADE COUNTY, FLORIDA

CASE NO. 11-27981CA30

2011 MAY 27 AM 12:02
CLERK OF COURT
CIVIL DIVISION

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JOHANNA FADDIS,

v.

THE CITY OF HOMESTEAD, JUDY WALDMAN,
ELVIS MALDONADO, STEPHEN SHELLEY,
JIMMIE L. WILLIAMS, III, WENDY LOBOS,
JOHN BURGESS & PATRICK FRANKLIN, D/B/A,
FRANKLIN INVESTIGATIONS, INC.,

Defendants.

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION
NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.
Judge's Initials JEC

ORIGINAL

JUDGE JORGE E. CUETO

**FINAL JUDGMENT FOR DEFENDANTS
STRIKING THE PLEADINGS OF PLAINTIFF**

THIS CAUSE came before this Court upon the amended motions for sanctions filed by defendants, the City¹ of Homestead, Judy Waldman², Elvis Maldonado³, Stephen Shelley⁴, Jimmie L. Williams, III, Wendy Lobos⁵, and John Burgess⁷ (collectively, "City Defendants"), as well as defendant, Patrick⁶ Franklin, d/b/a Franklin Investigations, Inc. ("Franklin"), and the Court having reviewed the motions, memoranda, response and affidavit, the documents relied upon by the parties, the depositions of the plaintiff, Johanna Faddis ("Faddis"), having heard argument of counsel, and being otherwise fully advised in the premises, the Court makes the following findings of fact and conclusions of law and enters final judgment.

I. FINDINGS OF FACT

1. In 2009 and early 2010, Faddis was Deputy City Manager for the City of Homestead ("City"). The City Manager was Mike Shehadeh ("Shehadeh"). In late 2009, an investigation was commenced against Shehadeh into possible misconduct. Franklin was hired by the City to conduct the investigation.

2. During the course of the investigation, certain text messages sent by Shehadeh to Faddis were uncovered, which related to Shehadeh's feelings towards Faddis.

3. Faddis was interviewed by Franklin during the investigation. Faddis told Franklin that she knew of no improper or inappropriate behavior by Shehadeh towards anyone, including herself. Faddis deposition, June 25, 2012, p. 223.

4. Franklin prepared a report to the City Council and attached text messages to his written report.

5. Shehadeh was terminated but not paid his contractual severance due to the City's conclusion that he was guilty of misconduct, including sending the text messages.

6. Shehadeh sued the City for his severance. During the course of that case, Faddis was subpoenaed as a witness for deposition.

7. On March 24, 2011, Faddis testified in a deposition. At the time of her testimony, she was represented by her own counsel, Kelsay Patterson, who continues to serve as counsel for her in this case. When she was asked about certain text messages, she testified as follows:

...I didn't take any offense to it... I know the intentions behind Mike... there has never been a time when he has harassed me, sexually harassed me. ... I would not take offense to it [text messages] because I know his intentions. He didn't have malintention if he sent something like to me.

(emphasis added) pp. 114-115, lines 22-18, Faddis deposition, March 24, 2011.

8. The Shehadeh case was settled by the City, after the Faddis testimony, for \$250,000.

9. On September 1, 2011, Faddis filed suit against the City Defendants and Franklin relating to the text messages, including claims for invasion of privacy and negligence. The Complaint and First Amended Complaint make no mention whatsoever of Faddis being sexually harassed by Shehadeh. In fact, it alleges that "the City had a duty to Johanna Faddis to secure,

protect and keep confidential all of her private PIN/text messages..." (emphasis added). First Amended Complaint, ¶ 18, p. 6.

10. On September 23, 2011, Mr. Patterson [Faddis' then and present counsel] sent an email to Mr. Shehadeh stating as follows:

I have never said that you sexually harassed her. ... I have always said that you both described your relationship as good friends, very similar to close cousins. To the extent that those PIN messages could be interpreted by outside eyes and third parties in a way different than the way you sent them, I have stated that if they could have possibly crossed the line to the outside gaze of others, Johanna [Faddis] did not receive them nor interpret them in that fashion or regard... Why would I want to say anything negative about you?

(emphasis added) Exh. 17, identified at Faddis Deposition, September 10, 2012.

11. The City Defendants and Franklin filed their answers and affirmative defenses stating, among other defenses, that the text messages, attached to a report on possible misconduct of the city manager, are matters of "public concern," and as a result, no privacy rights exist. The Defendants also alleged that the report and the text messages were "public records."

12. Faddis filed no avoidance to these defenses. Her pleadings contain no reference to her being sexually harassed.

13. On June 4, 2012, the City Defendants filed a motion for summary judgment again alleging that no privacy rights exist since the text messages and the report containing the text messages were a matter of public concern and public record.

14. The first day of Faddis' deposition in the case at bar took place on June 25, 2012. At that time, Faddis, for the first time, testified that she was, in fact, sexually harassed by Mr. Shehadeh [pp. 5-6, 247]. When confronted with her prior testimony denying sexual harassment, she testified as follows:

A: I answered the questions the way that I answered them because I wasn't going to allow myself to be used as a pawn. I wasn't here to discount his breach of contract case.

p. 232, lines 6-9.

A. I provided a watered down version of the truth. I did not tell you everything that had passed through my mind based upon the things that I have said already four or five times.

p. 241, lines 20-23.

Q: Were you lying when you testified under oath that Mike Shehadeh never sexually harassed you; yes or no?

A: This is between me and my psychologist.

p. 253, lines 13-16.

15. This new claim of sexual harassment by Faddis on June 25, 2012 was only raised after the Defendants filed their summary judgment on June 4, 2012. Faddis changed her prior testimony to now claim that she was a victim of sexual harassment who chose not to file a complaint pursuant to an exemption under Public Records law, Chapter 119 and, instead, requested the records of the complaint to remain confidential. Faddis Deposition, June 25, 2012, pp. 5-6. The use of the exemption is not set forth in the Complaint, First Amended Complaint, or in any response or avoidance to Defendants' affirmative defenses.

16. On September 10, 2012, Faddis' deposition was completed. At that time she testified as follows:

Q: So you admit you lied at the March 11, 2011 deposition – or March 24, correct?

A: That is not what I am saying. I am saying I had to provide a watered-down statement.

p. 387, lines 2-8.

* * *

A: What I am saying is that what I provided, the statement that I needed to make at the time, because I knew that the only reason I was being hauled in there was to be used as a pawn.

p. 388, lines 19-23.

17. Subsequently, the Defendants filed the instant Motions for Sanctions.

18. In response to the Defendants' amended motion for sanctions, Faddis filed an affidavit in which she stated that the reason she originally testified to no harassment was because she received "threats [from Shehadeh] that lasted right up until a day before my deposition" and that she was afraid of "harsh consequences in a retaliatory, socio-political way" affecting her future. Affidavit of Faddis dated September 25, 2012, p. 2. Despite being asked repeatedly for the reasons for her change in testimony during her June 25 and September 10, 2012 depositions, and her having sworn to tell the truth, Faddis made no mention of any such threats from Shehadeh. Thus, her affidavit is reflective of additional changed testimony.

19. Patterson has served as counsel for Faddis since the time of her first deposition in March 2011 through the present. Patterson allowed Faddis to testify as she did notwithstanding his statement to Shehadeh that Patterson knew she was never sexually harassed.

II. CONCLUSIONS OF LAW

1. "On the spectrum of sanctionable conduct, perjury is perhaps the most egregious. Indeed, few crimes... strike more viciously against the integrity of our system of justice than the crime of perjury." *See Empire World Towers, LLC v. CDR Créances, S.A.S.*, 89 So.3d 1034, 1038 (Fla. 3d DCA 2012).

2. In this case, Faddis' clear change in testimony could not be reasonably explained, even by her. Plain and simple, Faddis lied under oath multiple times. It is also clear that her testimony changed in order to suit her strategic needs in this litigation.

3. A court is warranted in striking the pleadings of a party who engages in perjury when that perjury permeates the proceeding and concerns a person's claim. *Babe Elias Builders Inc. v. Pernick*, 765 So. 2d 119, 120-121 (Fla. 3d DCA 2000). In this case, Faddis' perjury, with regard to whether or not she was sexually harassed, permeates this proceeding and is directly related to one, if not, the principle claim being made by Faddis.

4. Under the unique, undisputed and egregious facts of this case, the Court finds that the most severe sanctions are warranted. The Court is well aware that justice is ordinarily served by letting a jury decide issues of a case. However, where a party ignores her sacred oath to tell the truth and changes her testimony to suit her changing legal position, and moreover, acknowledges in deposition a willingness to do so, she forfeits her right to use these proceedings to seek relief from the Court. Such conduct and unabashed attitude strike at the very core of judicial proceedings and undermine the Court's and jury's long-established truth-seeking function.

Accordingly, this Court hereby enters this Final Judgment Striking the Pleadings of Faddis, who shall take nothing from this action. Final Judgment is entered for the Defendants, who shall go hence without day. The Court reserves jurisdiction for the award of costs and other sanctions

including attorneys' fees against Faddis and Patterson as the Court may do using its inherent authority.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 11/14/12.



JORGE E. CUETO
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.
Judge's Initials JEC

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Cueto's staff.

Copies furnished to:
Joseph H. Serota, Esq. (jserota@wsh-law.com)
Matthew H. Mandel, Esq. (mmandel@wsh-law.com)
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Kelsay D. Patterson, Esq. (Kelsaypatterson@verizon.net)

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT, IN AND FOR MIAMI DADE COUNTY,
FLORIDA

CASE NO. 11-27981CA 30

FILED FOR RECORD
2013 JUN - 5 AM 8:14
CLERK - CIRCUIT COURT, FLA.
DADE COUNTY 1110
CIVIL 1110

JOHANNA FADDIS,

v.

THE CITY OF HOMESTEAD, JUDY
WALDMAN, ELVIS MALDONADO,
STEPHEN SHELLEY, JIMMIE L.
WILLIAMS, III, WENDY LOBOS,
JON BURGESS & PATRICK FRANKLIN,
D/B/A, FRANKLIN INVESTIGATIONS, INC.,

Defendants.

**ORDER GRANTING ATTORNEYS FEES AND SANCTIONS
AGAINST JOHANNA FADDIS AND KELSAY PATTERSON, ESQ.**

THIS CAUSE came before this Court on February 28, 2013 upon separate motions for attorneys' fees filed by defendants, the City of Homestead, Mayor Steven Bateman, Vice Mayor Jon Burgess, Councilwoman Judy Waldman, Councilman Elvis Maldonado, Councilman Stephen Shelley, Councilman Jimmie L. Williams, III, and former-Councilwoman Wendy Lobos ("City Defendants"), and by Patrick Franklin d/b/a Franklin Investigations, Inc. ("Franklin"), and the Court having reviewed the motions, the Final Judgment for Defendants Striking the Pleadings of Plaintiff entered by this Court on November 14, 2012 ("Final Judgment"), and after hearing argument of counsel and being otherwise fully advised in the premises, the Court makes the following findings of fact and conclusions of law.

BACKGROUND

At the City's request, Franklin conducted an investigation into alleged misconduct by the former City Manager, Mike Shehadeh ("Shehadeh"). Certain text messages between Shehadeh and plaintiff, Johanna Faddis ("Faddis," then the City's Deputy City Manager) were attached to a report

~~EXHIBIT A~~ J.C.

prepared for the City Council by Franklin. Faddis sued the Defendants in this case alleging that the City's release of these text messages breached her right of privacy. Faddis also brought other causes of action based upon these facts.

FINDINGS OF FACT

1. As set forth in the Final Judgment, which is incorporated herein, Faddis provided contradictory sworn testimony in separate depositions that could not be reasonably explained, even by her. It is also clear from the undisputed facts of the case that Faddis changed her testimony in order to suit her strategic needs in this litigation.

2. When Faddis first testified on March 24, 2011 (during the course of lawsuit brought by Shehadeh against the City for payment of his severance), and stated that "there has *never been a time that [Shehadeh] has harassed me, sexually harassed me....*," she was represented by her own counsel, Kelsay Patterson. (Faddis Depo., March 24, 2011, p. 115) (emphasis added). At that same deposition, she stated that as to the text messages from Shehadeh, "I didn't taken any offense to it." (*Id.* at p. 114).

3. Faddis had also earlier told Franklin, during the City's investigation into Shehadeh's alleged misconduct while he was City Manager, that she knew of no improper or inappropriate behavior by Shehadeh towards anyone, including herself. (Faddis depo, June 25, 2012, p. 223). Franklin's investigative report was then presented to the City Council at the conclusion of the investigation. As noted in the Final Judgment, as a result of Faddis' testimony, the City settled the lawsuit with Shehadeh for \$250,000.

4. Shortly after the current lawsuit was filed, Mr. Patterson sent an email to Shehadeh stating that Mr. Patterson had "never said that you [Shehadeh] sexually harassed her." He then confirmed that Faddis and Shehadeh had always described their relationship as "good friends" or

"very similar to close cousins." He further stated that "Johanna did not receive them [text messages] nor interpret them in that [negative] fashion or regard." (Exh. 17, Faddis depo, September 10, 2012).

5. Prior to her deposition in the this case on June 25, 2012, Faddis, still represented by Mr. Patterson, had made no mention of sexual harassment in any pleadings or in avoidance of defenses raised by the City Defendants or Franklin, even though the City Defendants' defense based on public records law was clearly disclosed. (Final Judgment, p. 3).

6. On June 4, 2012, the City Defendants filed a motion for summary judgment alleging that Faddis enjoyed no privacy right with respect to the text messages since the text messages and investigative report in which they were included related to a matter of public concern and constituted public records.

7. Three weeks later, Faddis, for the first time, testified that she *was* in fact *sexually harassed* by Shehadeh. When confronted with her prior testimony denying sexual harassment, Faddis stated that she previously "provided a water down version of the truth." (Final Judgment, pp. 3-4). Faddis was given repeated opportunities during the deposition to explain the change in testimony, but evaded responding, at one point indicating it was a matter between her and her psychologist. (Final Judgment, p. 4).

8. During the June 25, 2012 deposition, Faddis was given repeated opportunities to explain why she was changing her sworn testimony. Her answers were evasive, except insofar as they established an *unequivocal* willingness to misrepresent the truth under oath when it suited her needs.

9. In response to Defendants' amended motion for sanctions, Faddis filed an affidavit in which she stated that the reason she originally testified that she had not been harassed was because she received "threats [from Shehadeh] that lasted right up to a day before my deposition" and that

she was afraid of "harsh consequences in a retaliatory, socio political way." This affidavit, filed shortly before the hearing on the Defendants' motions for sanctions, was the very first time that Faddis claimed that the reason for her prior testimony was threats from Shehadeh. She never proffered that explanation during her June 25, 2012, deposition when she was repeatedly asked to explain the discrepancies. Thus, her affidavit is, itself, reflective of an additional change to her testimony to suit her litigation posture in this case. (Final Judgment, p. 5).

10. Mr. Patterson has served as counsel for Faddis since at least the time of her first deposition in March 2011 through the present. Mr. Patterson allowed Faddis to testify as she did in the June 25, 2012 deposition, notwithstanding his statements to Shehadeh that Mr. Patterson knew Faddis never felt sexually harassed. (Final Judgment, p. 5). For example:

Q: (By Ms. Friedman): Did you tell the truth when you said he never sexually harassed you on March 24, 2011?

A: It was sexual harassment.

Q: So you didn't tell the truth under oath in your deposition, correct? Correct?

A: It was sexual harassment.

Q: And you did not tell the truth, correct?

Mr. Patterson: You got your answer. You just think that you can hit a home run, and you'd like to sit here until you get it, but you have your answer. Do you know what the difference is in what her testimony is in the deposition, and what she's answer today? You have the home run.

Ms. Friedman: Stop coaching.

Mr. Patterson: You got your answer. You can spend another 35 minutes. That doesn't mean her answer is going to change, but you can try. I'm not standing your way. It is going on for a long time, though.

Ms. Friedman: Are you done?

Q: (By Ms. Friedman): If Mike Shehadeh's conduct was sexual harassment, you did not tell the truth under oath in your deposition on March 24th, 2011, correct?

A: It was sexual harassment. I did not want to discuss it. I did not want to file anything against it.

Q: And does that justify lying under oath?

Mr. Patterson: Lying? Here we go. Argumentative.

Q: Does it justify –

Mr. Patterson: Inflammatory.

Q: – lying under oath? Does it?

Mr. Patterson: Inflammatory.

Q: Does it?

A: Ma'am, I answered the way that I answered those questions.

Q: And now I'm asking you if it's because you did not want to pursue a claim against him then, does that justify lying when you say he never sexually harassed you?

Mr. Patterson: Again, objection. The question is inflammatory.

A: I didn't want to pursue a claim against him then or now.

Q: Does it – why is it so difficult for you to just answer a question that you are obligated to answer? The question is very straightforward. You did not want to pursue a claim. I want to know if that justified stating under oath that Mr. Shehadeh never sexually harassed you.

Mr. Patterson: Objection. Asked and answered. You can answer it again.

A: I've answered it, ma'am, the way I can answer it.

Q: You haven't answered the question.

A: The way that I can answer it.

11. Mr. Patterson's e-mail to Shehadeh confirmed that he knew Faddis had always described her relationship with Shehadeh as that of "good friends" and not a situation of sexual harassment. Mr. Patterson even asked Shehadeh why he [Mr. Patterson] would ever say anything "negative" about Shehadeh. (Exh. 17, Faddis Depo., September 10, 1012).

12. The Court finds evidence of vexatious conduct and bad faith on the part of both Faddis and Mr. Patterson.

CONCLUSIONS OF LAW

1. The Court may award attorneys' fees against a party under the inequitable conduct doctrine where one party has exhibited "egregious conduct or acted in bad faith." *Bitterman v. Bitterman*, 714 So. 2d 356, 365 (Fla. 1998). The Florida Supreme Court and other courts in this country have found that such bad faith forming the basis of an award of attorneys' fees may be found either in the actions that led up to the lawsuit or in the conduct of the litigation. *Id.*

2. A trial court may also exercise its inherent authority to assess attorneys' fees against an attorney where there is an express finding of bad faith and factual findings describing the acts of bad faith resulting in the unnecessary incurrence of attorneys' fees. *Moakley v. Smallwood*, 826 So. 2d 221, 227 (Fla. 2002).

3. Faddis' change in testimony on June 25, 2012 caused the Defendants to unnecessarily incur attorneys' fees in order to respond to a new theory and approach to the case. But for her change of testimony, the Defendants would not have had to incur these fees.

4. Mr. Patterson was present when his client testified in 2011 that she had not been sexually harassed and further confirmed to Shehadeh – without obligation to do so – that he knew his client did not feel sexually harassed. Although Mr. Patterson now claims that at the time he had evidence to the contrary (but was precluded from disclosing as much to Shehadeh), he nonetheless *affirmatively represented* to Shehadeh that his client had not been sexually harassed. The record confirms that Faddis never mentioned sexual harassment in this litigation prior to Faddis' June 25, 2012 testimony.

5. In fact, Faddis and Mr. Patterson made no reference to her being sexually harassed in the litigation in any way until after the motion for summary judgment was filed. If, in fact, Mr.

Patterson now claims that he knew his client had been sexually harassed, he pursued litigation for more than 10 months without making any mention of it.

6. Mr. Patterson sat at Faddis' side throughout the deposition and took no action to prevent or correct his client's conduct. Mr. Patterson's demeanor and conduct during the deposition, including but not limited to his repeated speaking objections, evinced a clear intent to interfere with opposing counsel's efforts to ascertain the truth behind Faddis' testimony.

7. Faddis and her counsel chose to avail themselves of an exception to the Public Records Act that would have prevented the City's disclosure of alleged sexual harassment if Faddis had made a complaint prior to the investigation. § 119.071(g)1.a, Fla. Stat. No mention of this exemption can be found anywhere in the pleadings prior to her June 25, 2012 deposition. This new strategy, however, was incompatible with Faddis' prior sworn testimony and Mr. Patterson's representations to Shehadeh. The undisputed facts confirm that the decision of Faddis and Mr. Patterson to claim sexual harassment after 10 months of litigation was one purely of convenience.

8. Under these unique, though undisputed and egregious circumstances, the Court finds that attorneys' fees are warranted as sanctions against both Faddis and Mr. Patterson. In reaching this conclusion, the Court is cognizant of the "appropriate balance [that] must be struck between condemning as unprofessional or unethical litigation tactics undertaken solely for bad faith purposes" and "ensuring that attorneys will not be deferred from pursuing lawful claims, issues, or defenses on behalf of their clients." *Moakley*, 826 So. 2d at 226. See also *Shniderman v. Fitness Innovations & Technologies, Inc.*, 994 So. 2d 508, 515 (Fla. 4th DCA 2008) (upholding award of sanctions under *Moakley* standard where trial court's order made specific findings of bad faith and misconduct showing attorney permitted litigation to proceed knowing certain facts to be otherwise than as asserted in the litigation).

9. Accordingly, the Court hereby finds that the Defendants are entitled to an award of attorneys' fees incurred subsequent to June 25, 2012 (the first day of Faddis' deposition) up to and including the entry of the Final Judgment by this Court on November 14, 2012, to be assessed against Faddis and Mr. Patterson equally. The amount of reasonable attorneys' fees to be awarded to the Defendants shall be determined at an evidentiary hearing to be set before the Court.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 31ST day of May, 2013.



JORGE E. CUETO
Circuit Court Judge

JORGE E. CUETO
CIRCUIT COURT JUDGE

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Kelsay D. Patterson, Esq. (kplaw@bellsouth.net)

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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND FOR
MIAMI DADE COUNTY, FLORIDA

CASE NO.: 11-27981CA 30

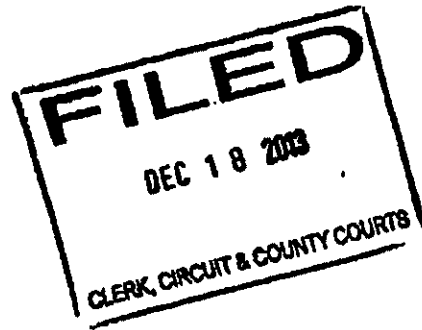
JOHANNA FADDIS,

Plaintiff,

v.

THE CITY OF HOMESTEAD, JUDY WALDMAN,
ELVIS MALDONADO, STEPHEN SHELLEY,
JIMMIE L. WILLIAMS, III, WENDY LOBOS,
JON BURGESS & PATRICK FRANKLIN, D/B/A,
FRANKLIN INVESTIGATIONS, INC.,

Defendants.



FINAL JUDGMENT

This Action came before the Court on December 6, 2013 for an evidentiary hearing regarding the City Defendants' and Franklin's Motion for Attorneys' Fees, which was filed on December 14, 2012, as to which entitlement was granted on May 31, 2013.¹ The Court, having heard argument of counsel, having reviewed the evidence, and being otherwise fully apprised in the premises, it is hereby:

ORDERED AND ADJUDGED:

1. The Court has determined to be reasonable the 529.6 hours of attorney time incurred by defendants, The City of Homestead, Jon Burgess, Judy Waldman, Elvis Maldonado, Stephen Shelley, Jimmie L. Williams, III, Wendy Lobos and Steve Bateman (collectively, the "City Defendants"), to defend against and respond to the misconduct of plaintiff, Johanna Faddis ("Faddis"), and her counsel, Kelsay D. Patterson. The Court further finds that the discounted flat

¹ The Court incorporates in this final judgment its findings and conclusions of law as set forth in its order determining entitlement dated May 31, 2013.

hourly rates of \$189 and \$192 charged by the City Defendants' counsel are reasonable and appropriate rates based on the experience of the lawyers and the nature of the matter involved. Neither Faddis nor Patterson objected to the reasonableness of the hours spent by the City Defendants' counsel or their hourly rates.

2. Accordingly, the City Defendants, collectively, shall recover from Faddis, whose address is 18550 SW 296 Street, Homestead, FL 33030-2431, and from Patterson, whose address is 8875 Hidden River Parkway, Suite 300, Tampa, Florida 33637, the sum of Ninety-Eight Thousand Three Hundred Sixty-Seven Dollars and 67 Cents (\$98,367.67), together with prejudgment interest running from November 14, 2012 in the amount of Five Thousand Two Hundred Eight Dollars and 52 Cents (\$5,208.52).

3. The City Defendants, collectively, shall also recover from Faddis and Patterson expert witness fees in the total amount of Five Thousand Dollars and 00 Cents (\$5,000.00). Accordingly, the City Defendants shall recover from Faddis and Patterson, assessed equally between them, the final judgment amount of **One Hundred Eight Thousand Five Hundred Seventy-Six Dollars and 19 Cents (\$108,576.19)**. This sum shall bear interest at the statutory rate, for which let execution issue forthwith.

4. The Court has further determined to be reasonable the 334.3 hours of attorney time incurred by defendant, Patrick Franklin, d/b/a, Franklin Investigations, Inc. ("Franklin"), to defend against and respond to the misconduct of Faddis and Patterson. The Court further finds that the hourly rates charged by Franklin's counsel (before September 1, 2012: \$200 for partners, \$160 for associates, and \$80 for paralegals; after September 1, 2012: \$215 for partners, \$170 for associates, and \$85 for paralegals)are reasonable and appropriate rates based on the experience

of the lawyers and the nature of the matter involved. Neither Faddis nor Patterson objected to the reasonableness of the hours spent by the City Defendants' counsel or their hourly rates.

5. As such, Franklin shall recover from Faddis and Patterson, the sum of Fifty-Four Thousand Six Hundred Ninety Dollars and 00 Cents (\$54,690.00), together with prejudgment interest running from November 14, 2012 in the amount of Two Thousand Eight Hundred Ninety-Five Dollars and 87 Cents (\$2,895.87). Accordingly, Franklin shall recover from Faddis and Patterson, assessed equally between them, the final judgment amount of **Fifty-Seven Thousand Five Hundred Eighty-Five dollars and 87 cents (\$57,585.87)**. This sum shall bear interest at the statutory rate, for which let execution issue forthwith.

6. Jurisdiction of this case is retained to enforce this order and to grant such further relief as may be permitted by law.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 12/18/13.



JORGE E. CUETO
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.
Judge's Initials JEC

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:

Kelsay D. Patterson, Esq. (kelsaypatterson@verizon.net; kplaw@bellsouth.net)

Dale Friedman, Esq. (dfriedman@conroysimberg.com)

Joseph H. Serota, Esq. (jserota@wsh-law.com)

Matthew H. Mandel (mmandel@wsh-law.com)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KELSAY DAYON PATTERSON,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2015-10,669 (13F)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Kelsay Dayon Patterson, 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 October 1, 1997, and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Hillsborough County, Florida, at all times material.
3. The Thirteenth Judicial Circuit Grievance Committee "F" 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.

4. In October 2010, Johanna Faddis retained Respondent to represent her in pursuing a claim against The City of Homestead and its individual city council members for invasion of privacy for obtaining and disclosing her personal text messages during an official investigation of the City Manager.

5. On September 1, 2011, Respondent, on behalf of Faddis, filed a civil complaint against The City of Homestead, its individual city council members, and a private investigation firm (“defendants”), in the matter *Faddis v. The City of Homestead, et al.*, Case No. 2011-27981-CA-30, in the Eleventh Judicial Circuit Court, in and for Miami-Dade County, Florida.

6. The complaint alleged that The City of Homestead disclosed certain personal text messages between Faddis and the City Manager resulting in a breach of Faddis’ right to privacy.

7. On June 4, 2012, defendants filed a motion for summary judgment against Faddis alleging that the text messages between Faddis and the City Manager were considered public records and of public concern.

8. On or about July 26, 2012, the defendants filed a motion for sanctions alleging Faddis and Respondent had perpetrated fraud upon the court based on Faddis’ inconsistent deposition testimony in separate legal proceedings.

9. On November 14, 2012, the Honorable Jorge E. Cueto entered a final judgment for the defendants and struck Faddis' pleadings based on her perjurious statements and fraud upon the court.

10. On December 10, 2012, attorney Arnold R. Ginsberg, on behalf of Faddis, filed a Notice of Appeal in the Third District Court of Appeal, Case No. 3D12-3248, appealing the circuit court's November 14, 2012, Final Judgment for Defendants Striking the Pleadings of Plaintiff.

11. On December 14, 2012, the defendants filed separate motions for attorneys' fees against Respondent and Faddis in the circuit court case.

12. On May 31, 2013, Judge Cueto entered an Order Granting Attorneys' Fees and Sanctions against Faddis and Respondent, finding evidence that both Faddis and Respondent acted in bad faith and engaged in vexatious conduct.

13. On June 17, 2013, Respondent filed Faddis' second Notice of Appeal in the Third District Court of Appeal, Case No. 3D13-1642, appealing the May 31, 2013, Order Granting Attorneys' Fees and Sanctions against Faddis and Respondent.

14. On August 14, 2013, the district court dismissed Faddis' appeal because the May 31, 2013, Order Granting Attorneys' Fees and Sanctions against Faddis and Respondent was a non-final and non-appealable order.

15. On September 4, 2013, the district court issued a written opinion in Case No. 3D12-3248, affirming the circuit court's November 14, 2012, Final Judgment for Defendants Striking the Pleadings of Faddis, as a sanction for committing fraud upon the court and perjury. The district court stated that Faddis' perjury "was undertaken with the intent to deceive the court, constituted a deliberate scheme to subvert the judicial process, and amounted to fraud upon the court."

16. On September 20, 2013, Respondent sent a letter to The Honorable Jose E. Martinez, Judge of the United States District Court for the Southern District of Florida, in which Respondent complained about the outcome of Faddis' case, alleged that influential members of the community manipulated the outcome of the case, and implied that another district court judge was biased in favor of opposing counsel. Respondent sent copies of the letter to judges in the Eleventh Judicial Circuit and Third District Court of Appeal.

17. On October 21, 2013, the district court issued its mandate in Case No. 3D12-3248, and reiterated the appellate court's September 4, 2013, written opinion.

18. On December 18, 2013, Judge Cueto entered a Final Judgment on the defendants' motion for attorneys' fees. The Final Judgment imposed a total of \$166,162.06 in favor of the defendants and against Faddis and Respondent.

19. On January 15, 2014, Respondent filed a Notice of Appeal of the December 18, 2013, Final Judgment on behalf of Faddis, in the Third District Court of Appeal, Case No. 3D14-121, in which Respondent argued against the imposition of attorneys' fees against himself, but not against Faddis.

20. On July 7, 2014, Respondent filed his Reply Brief in Case No. 3D14-121.

21. In the brief, Respondent stated "Law is whatever the judge or judges that day say it is."

22. Respondent further insinuated that he was standing up to "those who are in power" and compared his posture in the case to "Fidel Castro's suffocating grip of Cuba, the Holocaust, Jim Crow Laws, and Hillary Clinton."

23. On September 17, 2014, the district court entered its Per Curiam Affirmed Opinion in Case No. 3D14-121.

24. On September 18, 2014, the district court dismissed Respondent's appeal in Case No. 3D14-121, for lack of jurisdiction based on Respondent's failure to properly state the name of the appealing party in his appeal.

25. On September 18, 2014, the district court also ordered Faddis and Respondent to show cause as to why they should not be sanctioned pursuant to Fla. Stat. § 57.105 in Case No. 3D14-121.

26. On October 13, 2014, Respondent filed Appellant's Response to Court's Show Cause Order in Case No. 3D14-121.

27. In the response, Respondent argued against the imposition of attorneys' fees on his own behalf, but failed to make any argument on behalf of Faddis.

28. In the response, Respondent stated "We cannot all be judges, politicians, wealthy business men, or local big named law firms with tremendous influence who can often supersede all laws on the books."

29. On February 11, 2015, the Third District Court of Appeal issued its opinion on the Order to Show Cause in Case No. 3D14-121, finding Respondent's allegation that the trial court awarded sanctions against Faddis without express findings of bad faith lacked any basis in reality.

30. The district court further found that Respondent failed to name himself as an appellant in the appeal and this alone was fatal to his challenge of the sanctions. Further, Respondent's appeal of the sanction order on behalf of Faddis was insufficient to constitute an appeal for himself.

31. The district court ordered Respondent alone to pay appellate attorneys' fees to the defendants, and remanded the matter back to the trial court to determine the appropriate amount.

32. Wherefore, by reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: 3-4.3 (Misconduct and Minor Misconduct); 4-1.7 (Conflict of Interest); 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); and 4-8.4(d) (Engage in conduct in connections with the practice of law that is prejudicial to the administration of justice).

WHEREFORE, The Florida Bar prays Respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Jodi A. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint has been electronically filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal; and that true and correct copies have been furnished via certified U.S. mail, return receipt no. 7016 0750 0000 3623 6525, to Kelsay Dayon Patterson, Respondent, to his record Bar address of Law Office of Kelsay Patterson, P.O. Box 273826, Tampa, Florida 33688-3826, and via electronic mail to his record Bar email address of kplaw@bellsouth.net; via electronic mail to Jodi Anderson Thompson, Bar Counsel, The Florida Bar, to her record Bar email address of jthomps@floridabar.org, and secondary email addresses of ahendricks@floridabar.org and tampaoffice@floridabar.org; and by electronic mail to Michael S. Hooker, Designated Reviewer, to his record Bar email address of michael.hooker@phelps.com, all on this 4th day of August, 2016.

Adria E. Quintela

Adria E. Quintela
Staff Counsel

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

PLEASE TAKE NOTICE that the trial counsel in this matter is Jodi Anderson Thompson, Bar Counsel, whose address, telephone number, and primary and secondary email address are The Florida Bar, Tampa Branch Office, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496, (813) 875-9821, jthompso@floridabar.org (primary), ahendricks@floridabar.org (secondary), and tampaoffice@floridabar.org (secondary). Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, aquintel@floridabar.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.