IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	Supreme Court Case No. SC19-1913
Complainant,	The Florida Bar File No. 2018-50,518 (13F)
v.	The Florida Bar Initial File No. 2018-50,508 (17A)
WENDELL TERRY LOCKE,	
Respondent. _____/	

RESPONDENT'S MOTION FOR REHEARING AND CLARIFICATION

Pursuant to FLA. R. APP. P. 9.330, Respondent, WENDELL LOCKE (the "Respondent"), through counsel, moves for rehearing and reconsideration of the Court's March 1, 2022, Order, and states:

1. On March 1, 2022, the Court adopted the referee's findings of guilt. The Court did not provide any analysis or rationale for adopting the referee's findings of guilt, and did not address the fundamental error and constitutional violation arguments raised by the Respondent in his Response/Cross Initial Brief, dated September 3, 2021, and his Cross-Reply Brief, dated November 19, 2021.

2. The Court rejected the referee's proposed sanction of a 90-day suspension, and instead increased said sanction to one year based "record support" for the aggravating factor of dishonest or selfish motive and substantial experience in the practice of law.[1]
3. The Respondent moves for rehearing and clarification concerning two issues: (i) the enhancement of the sanction from 90 days to one year, and (ii) the award of costs in favor of The Florida Bar. The Respondent contends that the Court could not have considered the record evidence and testimony to conclude that there was record support for the aggravating factor of a selfish motive. The Respondent further contends that the Court could not have reviewed the transcript from the March 1, 2021, sanction hearing to award costs in favor of The Florida Bar, even though the Court adopted the referee's findings of guilt.
4. As to selfish motive, the Court did not give any indication of what it relied on in the record to employ the enhancement aggravating factor of dishonest or selfish motive. In its briefs to this Court and in argument before the referee, The Florida Bar's only argument concerning a

[1] The Florida Bar never stated, suggested or implied that Locke displayed a dishonest motive.

purported selfish motive by the Respondent was that the he pointed out that Judge Mendoza had disregarded binding law of the United States Court of Appeals for the Eleventh Circuit via raising the law-of-the-case doctrine, even though the underlying issue – a monetary sanction – **had already been paid by the Respondent before the argument had been raised**.[2] The Respondent contends that with the monetary sanction having been paid by the Respondent before the law-of-the-case doctrine was raised, there was no personal, professional or legal benefit to be gained by the Respondent. Further, within two business days of raising the law-of-the-case doctrine, the Respondent abandoned the argument by filing a Notice of Withdrawal of Argument, even though said argument was legally sound and supported by the record, because the Respondent had already paid

[2] The law of the case doctrine in the Eleventh Circuit provides that "an issue decided at one stage of a case is binding at later stages of the same case, including where a party had the opportunity to appeal a district court's ruling on appeal on an issue but did not do so. . . . Once such a decision becomes final, the law-of-the-case doctrine is operative." *See United States v. Rozier*, 685 Fed. Appx 847, 850-51 (11th Cir. 2017); *see also United States v. Hubbard*, 384 Fed. Appx. 931, 932 (11th Cir. 2010)("A legal decision made at one stage of the litigation, unchallenged in a subsequent appeal when the opportunity existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time.").

the sanction.[3] Additionally, Respondent's Trial Exhibit 51 – the Respondent's October 23, 2012, letter to his client – showed the Respondent's understanding of the monetary sanctions and his intent concerning payment; (i) the client should not have been sanctioned, (ii) that her attorneys would pay the monetary sanction if it actually had to be paid, and (iii) that as a personal representative, she could not legally be compelled to pay another party's attorney's fees and costs.[4] Lastly, the Respondent, having had experience practicing in the area of probate law, knew that the client, in her capacity as personal representative and in her individual capacity, could not have been legally compelled to pay another party's attorney's fees and costs, even if they were awarded by the court.[5]

5. If this Court concluded that the Respondent had a selfish motive because of the extent the Respondent went to *attempt* to obtain information pertaining to what we now know was an improper

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[3] *See* Respondent's Trial Exhibit 84.

[4] The Respondent's client executed a limited waiver of the attorney-client privilege permitting the Respondent to divulge communications pertaining to the sanctions ordered and to disclose the October 23, 2012, correspondence from the Respondent to the client.

[5] *See Johnson v. Schneegold*, 419 So. 2d 684, 685 (Fla. 2d DCA 1982); *see also Thompson v. Hodson*, 825 So. 2d 941, 951 (Fla. 1st DCA 2002)("[T]he personal representative has no authority to satisfy the judgment for fees and costs from the money he holds for the survivors.").

reassignment, which impacted jurisdiction, the record reflected that the Respondent went to that extend because he did not predict being able to actually depose Judge Mendoza. Further, the Respondent contends that the Court using the Respondent's efforts to ascertain information regarding the reassignment as a basis to enhance the sanction translates to a violation of the Respondent's right to seek redress and to sue in the courts.[6]

6. As to the issue of the Court awarding costs to The Florida Bar, the Respondent acknowledges the case law concerning awarding The Florida Bar costs when it prevails against attorneys concerning rule violations. However, in all of those cases, the necessity of original transcripts, overtime compensation for a court reporter and the authentication of all taxable costs had not been raised.
7. Rule 3-7.6(q) allows for the recovery of *copies* of transcripts, which are significantly less expensive than original transcripts. As stated in the sanction hearing, it was the referee who claimed to have needed the original transcripts to prepare a report and recommendation for a final

[6] *See Chambers v. Baltimore & O. R. Co.*, 207 U.S. 142, 148 (1907)("The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is the highest and most essential privileges of citizenship . . . .").

hearing he presided, and not The Florida Bar. Further, Rule 3-7.6(q) provides for "court reporters' fees" as a recoverable cost, but not overtime compensation for a court reporter. Lastly, Locke raised that The Florida Bar failed to authenticate its costs. Rule 3-7.6(q)(3) expressly provides that "the referee may assess the bar's costs against the respondent ***unless it is shown that the costs of the bar were unnecessary, excessive or improperly authenticated***." The Respondent showed that all of the costs of The Florida Bar were not authenticated. The Florida Bar does not dispute this fact, and even proposes authenticating its costs later that day:[7]

> MS. GUINAND: Your Honor, I think if you see on the invoices -- I think those are fine for authentication. You can see that they are invoices, who they are from, who they are addressed to. And it sounds like the objection is to the weight that you're going to give to that.
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> It's not required that every single thing be authenticated via an affidavit. If Your Honor is inclined to do that, then we could probably get that today and readdress it today. It does not need to mean that the Bar's motion for costs should be denied.

[7] *See* March 15, 2021, hearing transcript, page 18, lines 4-15.

8. The Florida Bar failed to authenticate any of its costs. There is neither a rule nor case law that supports awarding The Florida Bar costs if said costs are not authenticated. If there is a new rule or standard for awarding The Florida Bar costs that were not authenticated when challenged by a respondent, then the Respondent requests clarification.

WHEREFORE, the Respondent requests that this Court reconsider its March 1, 2022, Order, reduce the length of the suspension to the amount of time recommended by the referee, vacate the costs awarded to The Florida Bar, and grant such other relief it deems just and proper.

Dated: March 16, 2022.

Respectfully submitted,

/s/ Wendell Locke

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on March 16, 2022, a true and correct copy of the foregoing was served via e-Mail to all persons identified on the Service List below.

/s/ Wendell Locke

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