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IN THE

SUPREME COURT OF FLORIDA

Case No. SC19-1913
Florida Bar File No. 2018-50,508 (13F)

WENDELL TERRY LOCKE,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

PETITION FOR WRIT OF CERTIORARI

(An Appeal from a Non-Final Order Rendered by a Referee)

Respectfully submitted,

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PRELIMINARY STATEMENT

In this Petition for Writ of Certiorari ("Petition"), Petitioner Wendell Terry Locke, Esq. shall be referred to as "Petitioner" or as "Attorney Locke." Respondent The Florida Bar shall be referred to as "Respondent" or as "Bar." Referee Ernest A. Kollra – the 17th Judicial Circuit Court Judge who rendered the order under review – shall be referred to as "Referee." References to the Appendix containing the order under review and other documents cited herein shall be by the symbol "A." followed by the appropriate page numbers (e.g. A. 53-54).

INTRODUCTION

This Petition seeks review of an order rendered by the Referee on March 24, 2020 (nunc pro tunc to March 13, 2020) in an attorney disciplinary proceeding initiated by the Bar against Attorney Locke. The order on review grants the Bar protection from Attorney Locke's Notice of Taking Video Deposition of The Florida Bar. (A. 53-54).

This Petition involves a matter of grave concern to Attorney Locke's exercise of his constitutional right to defend himself in the pending disciplinary proceedings. Specifically, at issue is Attorney Locke's due process right to conduct a discovery deposition of a party – the Bar – in the pending disciplinary proceedings pursuant to R. Regulating Fla. Bar 3-7.6(f)(2) and Fla. R. Civ. P. 1.310(b)(6). The Referee's order precluding Attorney Locke from taking the noticed deposition irreparably

harmed Attorney Locke's right to defend against the Bar's allegations and or to prove his affirmative defenses thereto. No adequate remedy is available to Attorney Locke after trial on direct appeal. Moreover, the Referee's order constitutes a departure from the essential requirements of the law.

STATEMENT OF THE CASE AND FACTS

The Bar initiated disciplinary proceedings against Attorney Locke on November 12, 2019 by the filing of a formal complaint in this Court concerning his motion/pleading practice as Co-Plaintiff's Counsel in a civil rights case – wrongful death action – litigated in the Orlando Division of the U.S. District Court for the Middle District of Florida. (A. 55-70). Among the claims made against Attorney Locke, a veteran attorney of twenty-three years with no prior disciplinary history, are allegations that he inappropriately commented about and or referenced the phrase "White Privilege" and the history of discriminatory practices against Black Americans in his civil case court filings. (A. 58-59). Attorney Locke filed a responsive pleading dated December 2, 2019 wherein he denied those allegations and alleged affirmative defenses including that he acted in good faith and or that he had an objective reasonable basis for his arguments. (A. 76-78; and, A. 93-95). Thereafter, discovery ensued.

Following the Bar's response to Attorney Locke's request to produce (A. 99-108), Attorney Locke served the Bar with a Notice of Taking Video Deposition of

The Florida Bar dated March 5, 2020 pursuant to R. Regulating Fla. Bar 3-7.6(f)(2) and Fla. R. Civ. P. 1.310(b)(6). (A. 4-20). Said notice identified with reasonable particularity the following matters on which the examination was requested:

> "1) The Florida Bar's receipt, review, investigation and disposition of the Bar Complaint filed by Kelsey Patterson, Esq. against Mr. Walker and Mr. Flood on or about October 18, 2011;
>
> 2) Whether and to what extent The Florida Bar has conducted any studies similar to the study conducted by the California Bar which found racial disparities in lawyer discipline (as published by the ABA)? If so, what were the results of those studies? Furthermore,
>
> 3) Whether and to what extent The Florida Bar has conducted any studies similar to the study conducted and reported by Dr. Arin N. Reeves in her yellow series paper entitled Written in Black & White, Exploring Confirmation Bias in Racialized Perceptions of Writing Skills; and, if so, what were the results of those studies?
>
> 4) Given that Attorney Locke's good faith use of the phrase "white privilege" is at issue in this matter, please explain why mandatory membership in the newly created "The Florida Bar" (Founded 1950) was not required until blacks pushed for a legal education in Florida given the following historical context:

The Florida State Bar Association was originally a voluntary organization. In 1937 the Florida State Bar Association petitioned for the adoption of rules to regulate procedure and integrate the bar but that question was never reached. See Petition of Florida State Bar Ass'n, 186 So. 280 (Fla. 1938). By the mid 1940s, blacks began pushing to attend white law schools throughout the country and they were either being denied or relegated to substandard newly created law schools at historically black colleges and universities. Thurgood Marshall and others led the legal challenge on this issue in the courts and by November of 1949, the United States Supreme Court accepted certiorari jurisdiction over a test case involving the University of Texas' School of Law. See Sweatt v. Painter, 338 U.S. 865 (1949). After Virgil Hawkins was denied admission to the UF School of Law on the basis of his race – in May of 1949 – and he filed his petition challenging that denial, The Florida Supreme Court issued an opinion making membership mandatory in the Florida State Bar Association. See Petition of Florida State Bar Ass'n, 40 So. 2d 902 (Fla. 1949). Though FAMU was granted permission to enroll and teach its first black law students in the fall of 1949, by April of 1950, the United States Supreme Court found that a state's creation and use of separate law schools for

blacks and whites was unconstitutional. See Sweatt v. Painter, 339 U.S. 629 (1950). In that same month – April 1950 – the Florida State Bar Association officially changed its name to The Florida Bar.

5) Are blacks still underrepresented in the legal profession and or is the following still relatively true:

Statistically, blacks are underrepresented in the legal profession. Nationally, though blacks make up 12.6% of the U.S. population – according to the 2010 Census – they make up only 4.4% of the lawyers nationwide. Moreover, representation by blacks nationwide in the legal profession is lower than in most comparable professions: black accountants and auditors make up 8.5%; black physicians and surgeons make up 7.5%; and in professional and related professions in general, blacks make up 9.8%. Blacks are surpassed by whites, Hispanics, and women in all of these categories. See U.S. Bureau of Labor Statistics, 2016. For fall 2016, white students made up 67.4% of admitted applicants to ABA approved law schools; Hispanics 11.7%; Blacks 10.7%; and Asians 10.2%. Women made up 51%. Florida's demographic makeup – according to the 2010 Census – was 75% white, 22.5% Hispanic, 16% black and 2.4% Asian. In 2016, Florida Bar members were 84% white, 10% Hispanic, 3% black and 1% Asian. See

The Florida Bar Economics and Law Office Management Survey. Finally, as of February 2017, The Florida Bar concluded that of the 980 judges in the state: 10.6% are Hispanic, 6.4% are black, and 0.4% are Asian (Office of the State Court Administrator). In short, Florida's record on the inclusion of blacks in the legal profession is worse than that of the nation as a whole.

6) Does The Florida Bar have a program or would it consider creating a program whereby black attorneys can receive training on how to handle or communicate appropriately with white judges and or white attorneys when they are feeling as if they are being treated unfairly based on race and or not receiving the courtesies and benefits of their white counterparts or other attorneys in general (e.g. being asked if you are a criminal defendant or here because of an open criminal case while dressed in a suit trying to get through court security rushing to a judge's courtroom)?

7) What is the proper way for a black attorney to express concerns and or seek solutions when concerned about perceived unfair treatment based on race during his efforts to litigate a case with his white brethren?"

(A. 4-7). Said notice further identified the exhibits that would be used during the noticed deposition. (A. 9-20).

The Bar filed a motion for protective order on March 9, 2020. (A. 21-28). The Bar argued that it was not a party nor a witness in the disciplinary proceedings and that the topics identified in the notice were not relevant to the pending disciplinary matter. (A. 21-23). The Bar further argued that Attorney Locke was required to first exhaust less intrusive discovery techniques – like interrogatories – and make a showing of necessity before being permitted to depose the Bar: analogizing the Bar's role in disciplinary proceedings to that of a prosecutor in a criminal case or Jimmy Rice Civil Commitment proceeding and citing in support State v. Donaldson, 763 So. 2d 1252 (Fla 3d DCA 2000) ("In the rare case in which the defense believes it has a basis for taking the prosecutor's deposition, the defense must first exhaust less intrusive discovery methods, and then make a showing of necessity and materiality, and that the interests of justice require this extraordinary step."). (A. 23).

Attorney Locke filed a response in opposition to the Bar's motion for protective order. (A. 29-43). In summary, Attorney Locke argued the following:

> The Florida Bar asserts as a bare bones conclusion that it has good cause for seeking protection from what it describes as an attempt to annoy or harass it. However, mere "good cause" is not quite the legal standard to be applied when seeking to deny a party the right to a discovery deposition, the burden is much higher – a "strong showing of good cause." The Florida Bar further asserts

that the topics and or questions designated in the notice are not relevant to the allegations of its complaint but that too is not the standard applicable hereto; the standard is relevant or "likely to lead to relevant evidence." Moreover, even if relevance was the standard, The Florida Bar's assertions in that regard are simply not true given that Respondent's good faith use of the phrase "white privilege" is clearly at issue and that The Florida Bar's sworn testimony on the topics and or in response to the questions designated by Respondent's notice will serve as the foundation and or context for establishing the objective reasonable basis for Respondent's use of the phrase.

The Florida Bar contends that other discovery methods are available to the Respondent and that he must avail himself of those techniques first before seeking to depose The Florida Bar but again that simply is not true under Florida law. The other discovery tools available to Respondent are inferior to the taking of oral depositions and this has been acknowledged and explained by the courts. Respondent has a constitutional right to defend himself in these proceedings and as part of that right he is entitled to full discovery as a matter of due process and that specifically includes taking the oral deposition of a party, in this instance The Florida Bar.

Finally, Respondent is clearly not seeking an ethical or advisory opinion on any of the topics and or questions designated in the subject notice

as suggested by The Florida Bar. There is a separate process for such an inquiry totally unrelated to these proceedings. Instead, Respondent seeks "sworn testimony" which is binding on The Florida Bar and may be used at trial and or the subsequent sanction hearing. Furthermore, The Florida Bar is aware that an advisory or ethical opinion is not permitted under the circumstances."

(A. 34-35). A hearing was held on March 13, 2020 before the Referee on the Bar's motion for protective order. (A. 44-52). Ultimately, the Referee granted the Bar's motion for protective order finding generally that The Florida Bar was not a witness, that the examination topics were totally irrelevant and not likely to lead to any discoverable evidence in the case, and that the notice was unduly burdensome and or harassing. (A. 49-50). The Referee signed and served the parties with a written order of the foregoing general findings on March 24, 2020 (nunc pro tunc to March 13, 2020). (A. 53-54).

NATURE OF THE RELIEF SOUGHT

Attorney Locke seeks an order from this Court: quashing the Referee's order granting the Bar protection from his Notice of Taking Video Deposition of The Florida Bar; and, directing the Bar to produce one or more officers, directors, or managing agents, or other persons to testify on its behalf about the matters known or reasonably available to the organization as identified in the subject notice as soon

as practicable but before trial in the pending disciplinary matter. This Court's order should clarify the Bar's role as a party in the pending disciplinary matter and reiterate or emphasize the application of the rules of civil procedure, including the rules of discovery, to the pending disciplinary proceeding.

STATEMENT OF JURISDICTION

The Florida Supreme Court has jurisdiction to consider this Petition for Writ of Certiorari. First, this Court has exclusive jurisdiction to hear matters relating to attorney discipline pursuant to Article V, Section 15 of the Florida Constitution. Fla. Const. Art. V, § 15. Second, this Court may issue all writs necessary to complete the exercise of its jurisdiction pursuant to Article V, Section 3(b)(7) of the Florida Constitution. Fla. Const. Art. V, § 3(b)(7); see also, The Florida Bar v. Rubin, 362 So. 2d 12, 17, n. 1, 2 (Fla. 1978).

Attorney Locke petitions this Court for the issuance of a writ of certiorari quashing the Referee's order granting the Bar's motion for protection from his Notice of Taking Video Deposition of The Florida Bar. The Referee's order effectively denied Attorney Locke his right to full discovery which includes deposing a party, The Florida Bar. Such a denial has been recognized under Florida law as causing irreparable harm with no adequate remedy after trial on direct appeal and found to be a sufficient legal basis to invoke certiorari review. See Bush v. Schiavo, 866 So. 2d 136 (Fla. 2d DCA 2004); Scolaro v. Butler, 135 So. 3d 1111

(Fla. 2d DCA 2013); Beekie v. Morgan, 751 So. 2d 694 (Fla. 5th DCA 2000); see also Giacalone v. Helen Ellis Mem'l Found., Inc., 8 So. 3d 1232, 1234-35 (Fla. 2d DCA 2009) ("[W]hen the requested discovery is relevant or is [**5] reasonably calculated to lead to the discovery of admissible evidence and the order denying that discovery effectively eviscerates a party's claim, defense, or counterclaim, relief by writ of certiorari is appropriate. The harm in such cases is not remediable on appeal because there is no practical way to determine after judgment how the requested discovery would have affected the outcome of the proceedings").

ARGUMENTS AND CITATIONS TO AUTHORITIES

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 one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Federal Constitution. See Chambers v. Baltimore & O.R. Co., 207 U.S. 142, 148 (1907). In that regard, Attorney Locke is entitled to due process in disciplinary proceedings, see Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985), and that means notice, an opportunity to be heard and an opportunity to defend himself. See The Florida Bar v. Tipler, 8 So. 3d 1109, 1118

(Fla. 2009); see also The Florida Bar v. Committe, 916 So.2d 741, 745 (Fla. 2005).

One of the main allegations against Attorney Locke concerns his purported inappropriate use of the phrase "white privilege" and references to the "history of discriminatory customs and rituals used against Black Americans and other minority groups…" in certain court motions/pleadings he filed as Co-Plaintiff's Counsel in a federal civil rights – wrongful death – case. (A. 58-59). In an effort to exercise his constitutional right to defend, Attorney Locke has filed a responsive pleading and alleged, among other things, a denial of the aforementioned allegations and affirmative defenses that: he acted in "good faith" at all times material hereto; and, he had an objectively reasonable basis for all of the statements made in his filings that are the subject of the Bar's scrutiny. (A. 76-78; and, A. 93-95).

A. The Referee departed from the essential requirements of law causing Attorney Locke irreparable harm to which there is no adequate remedy after trial on direct appeal by rendering an order granting the Bar protection from his Notice of Taking Video Deposition to The Florida Bar where: the Bar is a party to the disciplinary proceedings pending against him; as a party, the Bar's discovery deposition is permitted pursuant to R. Regulating Fla. Bar 3-7.6(f)(2) and Fla. R. Civ. P. 1.310(a) and(b)(6); and, the subject notice setting the Bar's discovery deposition was in compliance with Fla. R. Civ. P. 1.310(b)(4)(a) and (b)(6) and served accordingly.

The Florida Rules of Civil Procedure apply to these disciplinary proceedings. See R. Regulating Fla. Bar 3-7.6(f)(1). As such, The Bar and Attorney Locke are the pertinent parties in this quasi-judicial matter. See R. Regulating Fla. Bar 3-7.6(e) and (f)(1); and, Fla. R. Civ. P. 1.210(a). Furthermore, "[d]iscovery shall be available

to the parties in accordance with the Florida Rules of Civil Procedure." See R. Regulating Fla. Bar 3-7.6(f)(2). As part of discovery, the Florida Rules of Civil Procedure permit Attorney Locke to notice the Bar for a video deposition. See Fla. R. Civ. P. 1.310(a) ("After commencement of the action any party may take the testimony of any person, including a party, by deposition upon oral examination."); see also Fla. R. Civ. P. 1.310(b)(4)(a) and (b)(6). In so doing, Attorney Locke's notice must "designate with reasonable particularity the matters on which examination is requested." Fla. R. Civ. P. 1.310(b)(6). In the case *sub judice*, Attorney Locke's notice designated with particularity the matters for examination. (A. 4-7). Furthermore, said notice identified the exhibits which were to be the subject of examination. (A. 9-20). In that regard, Attorney Locke's notice was undoubtedly in compliance with Fla. R. Civ. P. 1.310(b)(6).

In response to Attorney Locke's notice, the Bar was required to "designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify." Fla. R. Civ. P. 1.310(b)(6). "The persons so designated must testify about matters known or reasonably available to the organization." Id. Attorney Locke's notice informs the Bar of that requirement. Moreover, as a matter of law, the aforementioned procedure utilized by Attorney Locke has been approved

as explained by the 4th DCA. See Carriage Hills Condo., Inc. v. Jbh Roofing & Constructors, Inc., 109 So. 3d 329, 334-36 (Fla. 4th DCA 2013).

1. Attorney Locke has a due process right to take the discovery deposition of The Florida Bar that cannot be denied without a "strong showing of good cause."

The Florida Supreme Court has cited with approval, the following language from the 4th DCA case of Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So.2d 607, 610 (Fla. 4th DCA 1975):

> “"This court has in the past stated that the trial court has the authority to regulate as well as to prevent the taking of depositions, but when this authority is exercised it should be only upon a showing of good cause. The only Florida reference we find to the trial court's discretion in preventing the taking of depositions which were noticed while a motion to dismiss was pending is in Hollywood, Inc. v. Broward County (Fla.1956), 90 So.2d 47 which we deem inconclusive. Since our Rules of Civil Procedure are patterned very closely after the Federal rules, and it has been the practice of the Florida courts closely to examine and analyze the Federal decisions and commentaries under the Federal rules in interpreting ours we turn, in the absence of a Federal decision on point, to Moore's Federal Practice, 2nd Edition, pgs. 493-495 and cite the test therein:

> "'In view of the general philosophy of full discovery of relevant facts and the broad statement of scope in Rule 26, and in view of the power of the court under Rule 26(c) and 30(d) to control the details of time, place, scope and financing [**21] for the protection of the deponents and parties, it is fairly rare that it will be ordered that a deposition not be taken at all. All motions under these subparagraphs of the rule must be supported by "good cause" and a strong showing is required before a party will be denied entirely the right to take a deposition.'" (footnotes omitted)."

See Deltona Corp. v. Bailey, 336 So. 2d 1163, 1170 (Fla. 1976). The 2nd DCA has quoted the Deltona opinion with approval reiterating:

> "a strong showing is required before a party will be denied entirely the right to take a deposition." Deltona Corp. v. Bailey, 336 So. 2d 1163, 1169-70 (Fla. 1976) (approving the construction of rule 1.280(c) contained in Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So. 2d 607, 611 (Fla. 4th DCA 1975), which quoted from Moore's Federal Practice, pp. 493-95 (2d ed.))."

See Bush v. Schiavo, 866 So. 2d 136, 138 (Fla. 2d DCA 2004); see also Scolaro v. Butler, 135 So. 3d 1111, 1113 (Fla. 2d DCA 2013) ("'A strong showing [of good cause] is required before a party will be denied entirely the right to take a deposition') (citing Bush v. Schiavo, 866 So. 2d 136, 138 (Fla. 2d DCA 2004) (quoting Deltona

Corp. v. Bailey, 336 So. 2d 1163, 1169-70 (Fla. 1976))). Accordingly, a strong showing of good cause is required before Attorney Locke can be denied his due process right to depose the Bar.

2. As a matter of law, other forms of discovery are inferior to the discovery deposition technique; in that regard, Attorney Locke's right to full discovery should not be relegated to those inferior or lesser discovery techniques. He should be permitted to take the discovery deposition of the Bar given that it's a party to the pending disciplinary proceedings.

The 5th DCA has explained, what should be obvious, about the significance of being able to take discovery depositions instead of being relegated to the other lesser forms of discovery:

> "Oral depositions are live -- questioning and receiving responses from a witness. They permit a wider expanse of questions and cross-examination on a broad range of issues, and provide a good test for witnesses and potential theories that might [**8] be used at trial. They are used by attorneys to assess the character and personality of a witness, to learn what his or her answers will be at trial, and to explore areas of previously unknown relevant inquiry which are follow-ups from the witness' answers. They also enable an attorney to estimate how the jury will perceive the witness, how prepared a witness is to explain matters, and the extent of his knowledge. None of the above is available with other discovery methods, which are limited. Answers to written interrogatories generally are written by the other party's attorney and may be

so artfully framed as to avoid or evade the issue. Trawick, Florida Practice and Procedure §§ 16-9."

See Beekie v. Morgan, 751 So. 2d 694, 697 (Fla. 5th DCA 2000). Attorney Locke's right to full discovery does not relegate him to using the lesser forms of discovery that are available under the applicable rules. In that regard, the Bar's reliance upon State v. Donaldson, 763 So. 2d 1252 (Fla 3d DCA 2000) is misplaced.

In State v. Donaldson, the parties were involved in a Jimmy Rice civil commitment proceeding initiated by the State of Florida. The defendant sought to depose the prosecutor – who wasn't a party to the proceedings – pursuant to a subpoena for deposition instead of the State. The court concluded that the defendant could not depose the non-party prosecutor without first exhausting lest intrusive methods and making the necessary showing of necessity. See State v. Donaldson, 763 So. 2d 1252 (Fla 3d DCA 2000) ("In the rare case in which the defense believes it has a basis for taking the prosecutor's deposition, the defense must first exhaust less intrusive discovery methods, and then make a showing of necessity and materiality, and that the interests of justice require this extraordinary step."). This case is factually distinguishable from the case *sub judice*.

In particular, Attorney Locke did not seek to depose Bar Counsel in the pending disciplinary proceedings; he sought to depose the Bar itself. The Bar is a party to the pending disciplinary action because the applicable rules authorize the

Bar to initiate the disciplinary proceedings by the filing of a complaint and identify the Bar as a party for purposes of the proceeding and discovery. See R. Regulating Fla. Bar 3-7.6(e) and (f)(1); and, Fla. R. Civ. P. 1.210(a). Further, when the Bar was served with Attorney Locke's request for production pursuant to Fla. R. Civ. P. 1.350(a) and (b), the Bar filed a response instead of objecting on grounds that it wasn't a party. (A. 99-108). The rule regarding a party's right to serve a request for production limits that discovery tool's use to service on parties, not non-parties. See Fla. R. Civ. P. 1.350(a) ("Any party may request any other party…."). Since the Bar responded to Attorney Locke's request for production without claiming it wasn't a party, it should not now be permitted to use that argument to avoid Attorney Locke's Notice of Taking Video Deposition to The Florida Bar. The Referee's finding that the Bar was not a witness in the case is premature and immaterial to whether Attorney Locke is permitted to take the Bar's discovery deposition. The applicable rules and case law bear that out.

3. Where the Bar's Complaint takes issue with Attorney Locke's use of the phrase "white privilege" and his references to the history of discriminatory customs and rituals against Black Americans in this country and where Attorney Locke denies inappropriately doing so but contends as an affirmative defense that he did so in good faith and or based on an objective reasonable basis, oral examination of the Bar on the topics set forth in Attorney Locke's Notice of Taking Video Deposition of The Florida Bar is justified. The concept of relevance is broader in the discovery context than in the trial context and includes information likely to lead to relevant evidence.

It is axiomatic that the fundamental tenet of civil discovery is “to ascertain the strengths and weaknesses of an adversary's pleaded claims or defenses.” See e.g. Brooks v. Owens, 97 So. 2d 693, 698 (Fla. 1957) (recognizing that "the ultimate goal [of discovery] is to ascertain facts which may be used for proof or defense of an action . . . and that the purpose of discovery rules was to take the surprise out of trials so that all relevant facts pertaining to the action may be ascertained in advance of trial."); Jones v. Seaboard Coast Line R.R. Co., 297 So. 2d 861, 863 (Fla. 2d DCA1974) ("[T]he primary purpose of pretrial discovery is twofold: (1) to 'discover' evidence relevant and pertinent to the triable issues pending before the court, and (2) if in written form to serve, of itself, as evidence at trial if otherwise admissible. . . . [S]uch discovery rules are to be liberally construed to accomplish their purpose. (footnote omitted)).” See ~~Shindorf~~ v. Bell, 207 So. 3d 371, 373 (Fla. 2d DCA 2016). The Respondent’s purpose and intent for serving the subject notice is consistent with the aforementioned principles. A suggestion otherwise is untenable.

The Florida Supreme Court has reiterated the standard for permitting discovery where the rules of civil procedure apply:

> “Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence. *Brooks*, 97 So. 2d at 699; *see also Amente v. Newman*, 653 So. 2d 1030 (Fla. 1995) (concept of relevancy [**17] is broader in discovery context than in

trial context, and party may be permitted to discover relevant evidence that would be inadmissible at trial if it may lead to discovery of relevant evidence); *Krypton*, 629 So. 2d at 854 ("It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings."); Fla. R. Civ. P. 1.280(b)(1) (discovery must be relevant to the subject matter of the pending action)."

See Bd. of Trs. of the Internal Improvement Trust Fund v. Am. Educ. Enters., LLC, 99 So. 3d 450, 457 (Fla. 2012). The relevance standard argued by the Bar does not take this broader concept of relevance into consideration. Indeed, neither the Bar nor the Referee articulated with particularity how or why the topics identified by Attorney Locke's Notice of Taking Video Deposition to The Florida Bar fall short of said standard in light of the specific allegations in the pleadings discussed herein. On the other hand, Attorney Locke has specifically identified the portion of the pleadings that justify the sought after discovery. (A. 76-78; and, A. 93-95). This is undisputed.

B. The Referee departed from the essential requirements of law causing irreparable harm to Attorney Locke to which there is no adequate remedy after trial on direct appeal where His Honor failed to specifically consider each of the topics identified for oral examination in Attorney Locke's Notice of Taking Video Deposition to The Florida Bar and make such order only as is necessary to protect the Bar from harassment, oppression, undue burden, or expense, where strong good cause is shown to make such an order.

In Deltona Corp. v. Bailey, this Court explained the thoughtful analysis that the Referee should have conducted when evaluating a party's motion for protective order under Fla. R. Civ. P. 1.280(c). See Deltona Corp. v. Bailey, 336 So. 2d 1163, 1169-70 (Fla.1976). Specifically, when considering interrogatories propounded by one party to another, this Court concluded that the trial court should "consider individually each of the interrogatories propounded to the appellees and make such order only as is necessary to protect the appellees from oppression, undue burden, or expense, where good cause is shown." Deltona Corp. v. Bailey, 336 So. 2d 1163, 1170 (Fla. 1976); see also Boren v. Rogers, 243 So. 3d 448, 451 (Fla. 5th DCA 2018) ("the trial court is directed to reconsider and specifically address whether good cause exists as to Rogers' objections to the production of the remaining categories of documents requested, including his claim of privilege regarding the documents allegedly containing Mullins' private financial information.").

In the case *sub judice*, the Referee failed to make specific findings concerning each of the areas identified for oral examination in Attorney Locke's Notice of Taking Video Deposition to The Florida Bar and make such order only as is necessary to protect the Bar from harassment, oppression, undue burden, or expense, where strong good cause is shown to do so. (A. 44-54). This failure alone supports issuance of a writ of certiorari quashing the Referee's order and directing the Referee

to make the necessary specific findings as to each area identified for oral examination in the subject notice.

CONCLUSION

Based on the foregoing, Attorney Locke prays this Court issue a writ of certiorari: quashing the Referee's order granting the Bar protection from the Notice of Taking Video Deposition of The Florida Bar; directing the Bar to produce one or more officers, directors, or managing agents, or other persons to testify on its behalf about the matters known or reasonably available to the organization as identified in the Notice of Taking Video Deposition to The Florida Bar as soon as practicable but before trial in the pending disciplinary matter; and or, directing the Referee to make specific findings of fact concerning each of the areas of examination identified in the Notice of Taking Video Deposition of The Florida Bar and make such order only as is necessary to protect the Bar from harassment, oppression, undue burden, or expense, where strong good cause is shown to make such order as to each.

CERTIFICATE OF SERVICE

I hereby certify that this, Petition for Writ of Certiorari, has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-filing portal and that copies have been provided via email using the E-filing portal on this 13th day of April, 2020 to the following: Patricia Toro Savitz, Esq., Staff Counsel, The Florida Bar, Florida Bar No. 559547, psavitz@floridabar.org; Lindsey

Margaret Guinand, Esq., Bar Counsel, The Florida Bar, Florida Bar No. 100030, lguinand@floridabar.org, pmcbride@floridabar.org, tampaoffice@floridabar.org; Calrie M. Marsh, Esq., Co-Counsel for Petitioner, Florida Bar No. 123390, c.marsh@calriemarsh.com; Referee, Judge Ernest A. Kollra, c/o JA Teresa Sugar "T", tsugar@17th.flcourts.org.

CERTIFICATE OF COMPLIANCE

I, the undersigned counsel, do hereby certify that this Petition is submitted in 14 point proportionately spaced Times New Roman font and within the page requirements set by the applicable Florida Rules of Appellate Procedure. I, the undersigned counsel, do hereby further certify that the electronically filed version of this Petition has been scanned and found to be free of viruses.

Respectfully submitted,

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