IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

WENDELL TERRY LOCKE,

Attorney/Respondent,

Supreme Court Case No(s).
SC19-1913

The Florida Bar File Nos.
No. 2018-50,508 (13F)

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ATTORNEY/RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES AND MOTION FOR MORE DEFINITE STATEMENT

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Attorney/Respondent, Wendell Terry Locke, Esq. ("Attorney Locke"), by and through the undersigned counsel, hereby files this Answer and Affirmative Defenses to The Florida Bar's Complaint, and files this Motion for More Definite Statement:

**ANSWER**

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on October 1, 1997 and is subject to the jurisdiction of the Supreme Court of Florida.

**ANSWER**: Admit.

2. 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.

**ANSWER**: Attorney Locke is without sufficient knowledge to affirmatively admit or deny the allegations in this paragraph and therefore the allegations are denied.

3. On December 19, 2009, Preston Bussey III ("Bussey") passed away in Brevard County, Florida.

**ANSWER**: Admit.

4. On or about May 2011, Bussey's mother, J. Pearl Bussey-Morice, was appointed as Personal Representative of the Estate of Preston Devansa Bussey III.

**ANSWER:** Attorney Locke is without sufficient knowledge to affirmatively admit or deny the allegations in this paragraph and therefore the allegations are denied.

5. On June 10, 2011, J. Pearl Bussey-Morice, as Personal Representative, filed suit on behalf of Bussey's estate in the matter of *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.,* case no. 6:11-cv-970-Orl-41GJK, in the United States District Court Middle District of Florida Orlando Division.

**ANSWER:** Denied as phrased. Admit facts alleged except the case number.

6. In this suit, *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.,* J. Pearl Bussey-Morice ("plaintiff") alleged seven Fourth Amendment excessive-force

claims against the City of Rockledge officers ("officers") involved in the incident which resulted in the untimely death of Bussey.

**ANSWER:** Admit.

7. The plaintiff also made claims of battery and negligent training against the employer of the officers, the City of Rockledge ("city").

**ANSWER:** Admit.

8. The plaintiff retained Kelsay Patterson to represent her in *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.*

**ANSWER:** Admit.

9. In May 2012, respondent filed a notice of appearance and appeared as co-counsel, with Mr. Patterson, on behalf of the plaintiff.

**ANSWER:** Attorney Locke admits that on May 17, 2012 he filed a notice of appearance (ECF No. 252) and appeared as co-counsel, with Mr. Paterson, on behalf of the plaintiff.

10. On January 8, 2015, the district court issued a final judgment in favor of the city and the officers (collectively the "defendants") and against respondent's client, the plaintiff.

**ANSWER:** Admit (ECF No. 504).

11. In February 2015, respondent filed a Notice of Appeal on behalf of his client, J. Pearl Bussey-Morice, in the United States Court of Appeals for the Eleventh Circuit, case no. 18-13627, appealing the final judgment.

**ANSWER:** Denied as phrased. Attorney Locke admits that on February 6, 2015 he filed a Notice of Appeal (ECF No. 548) on behalf of his client, J. Pearl Bussey-Morice, in the Orlando Division of the United States District Court for the Middle District of Florida in Case No. 6:11-cv-970 appealing the final judgment (ECF No. 504) in favor of the Defendants to the United States Court of Appeals for the Eleventh Circuit.

12. All issues before the district court were stayed pending resolution of the appeal of the final judgment.

**ANSWER:** Denied as phrased. Attorney Locke admits that on June 10, 2015 an Order (ECF No. 571) was entered staying the case pending appeal.

13. On August 8, 2016, the Eleventh Circuit Court of Appeals affirmed the district court's entry of summary and final judgment in favor of all defendants. On September 6, 2016, the Eleventh Circuit Court of Appeals issued the mandate.

**ANSWER:** Admit.

14. On May 1, 2017, the district court lifted the stay on its proceeding in case no. 6:11-cv-970-Orl-41GJK and reopened the case to address outstanding motions.

**ANSWER:** Admit.

15. On September 27, 2017, the district court held a hearing to allow the parties to supplement the written motions still pending before the court with oral argument.

**ANSWER:** Admit.

16. On January 12, 2018, the Honorable Carlos E. Mendoza, United States District Judge, issued a forty-two-page order sanctioning respondent and finding that, among other things, respondent engaged in vexatious conduct throughout the litigation.

**ANSWER:** Denied as phrased. Attorney Locke admits that on January 12, 2018, an Order (ECF No. 612) was entered by the Honorable Carlos E. Mendoza, United States District Judge for the Middle District of Florida, sanctioning him but that said Order speaks for itself; and, to the extent any of the allegations in this paragraph conflict with the language of that Order, they are denied.

17. Respondent's vexatious conduct included, but was not limited to, his repeated disparaging comments about the court, opposing counsel, and opposing parties.

**ANSWER:** Denied as phrased. Attorney Locke admits that the Order (ECF No. 612) speaks for itself and that to the extent any of the allegations in this paragraph conflict with the language of that Order, they are denied.

18. Respondent referred to the defendant officers as "Brutality Defendants" in numerous filings and described them collectively as "killers," "murderers," and "torturers."

**ANSWER:** Denied as phrased. Attorney Locke admits that he referred to the officers as "Brutality Officers" and that he argued that they tortured, killed and or murdered the decedent in the case in one or more of his filings as argument to the court in support of the pending excessive force claims.

19. During his representation of J. Pearl Bussey-Morice, respondent accused the district court and the appellate court of acting based on an unfounded alleged racial bias.

**ANSWER:** Denied.

20. Respondent alleged that United States District Court Judges and the Magistrate Judge displayed bias against J. Pearl Bussey-Morice, respondent and respondent's co-counsel because of their race.

**ANSWER:** Denied.

21. Respondent, in his court filings, consistently made inappropriate comments about race and repeatedly asserted "[t]he decedent, Preston Bussey, III, was Black. Plaintiff's attorneys are Black. Defendants' attorneys are ***not*** Black; they are Caucasian. Defendants… (the 'Brutality Officers') are ***not*** Black; they are Caucasian."

**ANSWER:** Denied as phrased.

22. For example, in one of respondent's filings, he stated "[d]efendants' counsel submitted affidavits of Defendants, Robert Owens and Timothy Hewatt, under the guise that if these Caucasian law enforcement officers make statements adverse to Blacks, then the allegations will be deemed true for no other reason than because they are Caucasian and Mr. Patterson is Black – '*White Privilege*.'"

**ANSWER:** Denied as phrased. Attorney Locke admits that he included the above quoted language in [ECF No. 406] footnote 2 of Plaintiff's Response Opposing Motion in Limine of Defendant, City of Rockledge, Regarding Race-Baiting Tactics by Counsel.

23. In the same filing, respondent stated "[p]laintiff has called out what Ray Charles and Stevie Wonder could see – a pattern and practice of discriminatory conduct of the defendants and defendants' counsel *in this case*, consistent with the history of discriminatory customs and rituals used against Black Americans and other minority groups…. Black Americans, including Mr. Patterson and the undersigned, fear unsubstantiated, distorted, wild and malicious characterizations against them."

**ANSWER:** Admit (ECF No. 406).

24. As another example, in a response to a motion by opposing counsel, respondent stated that opposing counsel's argument was "…synonymous to

claiming that one is not a racist because he/she does not use the "N" word, even though he/she actively participates in unconventional gatherings wearing white sheets over their heads and burning crosses."

**ANSWER:** Denied as phrased. Attorney Locke admits that the quoted language was included in a filing but denies the alleged improper inference/meaning attributed to it as it is taken out of context.

25. Furthermore, respondent alleged that the Eleventh Circuit Court of Appeals is also biased and their rulings against J. Pearl Bussey-Morice are "not necessarily a surprise."

**ANSWER**: Denied as phrased. Attorney Locke admits that he included the quoted language, "not necessarily a surprise", in a filing but he denies the alleged improper meaning/inference attributed to it.

26. Respondent's allegations against the United States District Court Judges, the Magistrate Judge, opposing counsel, and the opposing parties caused delays in the litigation, multiplied the proceedings and disrupted the tribunal.

**ANSWER:** Denied.

27. Respondent further failed to facilitate the timely submission of the parties' Joint Pretrial Statement in violation of the district court's Case Management Scheduling Order ("CMSO").

**ANSWER:** Denied.

28. The CMSO required the parties to meet in person on or before September 28, 2012 to exchange witness lists, exhibit lists, and to prepare the Joint Final Pretrial Statement, which was due by October 12, 2012.

**ANSWER:** Denied as phrased. Attorney Locke admits that deadlines were originally set but that they were extended.

29. Respondent met with opposing counsel on September 28, 2012, however, he failed to provide a witness list, a complete exhibit list, and other documentation as necessary for the Joint Pretrial Statement.

**ANSWER:** Denied as phrased. Attorney Locke admits that he met with opposing counsel as required but denies that he failed to meet his obligations given how the duties were allocated between he and his Co-Counsel, Kelsay Patterson.

30. Due to respondent's failure to provide the information for the Joint Pretrial Statement prior to the due date, the defendants unilaterally filed a Pretrial Statement on the due date.

**ANSWER:** Attorney Locke is without sufficient knowledge to affirmatively admit or deny the allegations in this paragraph and therefore the allegations are denied.

31. On the same day, respondent unilaterally filed an Emergency Motion for an Extension of Time ("Emergency Motion"), requesting additional time to prepare the Joint Pretrial Statement.

**ANSWER:** Denied as phrased. Attorney Locke admits that he filed an Emergency Motion for an Extension of Time to File a Joint Pretrial Statement (ECF No. 334) on October 10, 2012.

32. The district court held a hearing on the Emergency Motion and granted the motion in part, ordering the parties to meet for a second pretrial meeting on or before October 22, 2012, and to file an Amended Joint Pretrial Statement by October 24, 2012.

**ANSWER:** Denied as phrased. Attorney Locke admits that his Emergency Motion for an Extension of Time to File a Joint Pretrial Statement (ECF No. 334) was granted on October 17, 2012 (ECF No. 358) and that the new deadline set was October 24, 2012.

33. On October 22, 2012, the parties' counsel met for the second ordered meeting, however, respondent again failed to provide defense counsel with all the information necessary for the Joint Pretrial Statement.

**ANSWER:** Denied as phrased. Attorney Locke admits that he met with opposing counsel as required but denies that he failed to meet his obligations

given how the duties were allocated between he and his Co-Counsel, Kelsay Patterson.

34. Due to respondent's failure to provide the required information in a timely manner, the parties were unable to reach an agreement on the Amended Joint Pretrial Statement by the due date, October 24, 2012.

**ANSWER:** Denied.

35. On the due date, respondent's co-counsel filed a Second Emergency Motion for Extension of Time to File Joint Pretrial Statement ("Second Emergency Motion").

**ANSWER:** Denied as phrased. Attorney Locke admits that Co-Counsel Kelsay Patterson filed an Emergency Motion for Extension of Time to File Joint-Pretrial Statement (ECF No. 381) on October 24, 2012.

36. The court granted the second extension of time and on November 5, 2012, the Joint Pretrial Statement was finally filed with the court.

**ANSWER:** Denied as phrased. Attorney Locke admits that ECF No. 381 was granted and that the Joint Pretrial Statement was filed consistent therewith.

37. Respondent's, and his co-counsel's, conduct unnecessarily prolonged the submission of the Joint Pretrial Statement.

**ANSWER:** Denied as phrased: Respondent's conduct was not problematic.

38. Respondent, and his co-counsel, failed to comply with United States District Court Middle District of Florida, Local Rule 301(g) when filing the first Emergency Motion and the Second Emergency Motion.

**ANSWER:** Denied as phrased. Attorney Locke admits that both separate emergency motions [ECF Nos. 334 and 381] were filed and granted.

39. Based on respondent's failure to facilitate the timely filing of a Joint Pretrial Statement, the district court sanctioned plaintiff's counsel by awarding attorney's fees and costs incurred in attending the second attorney meeting and preparing the Amended Joint Pretrial Statement to defense counsel.

**ANSWER:** Denied as phrased. Attorney Locke admits that the sanction was against Plaintiff, "the client", not Plaintiff's counsel.

40. Respondent later argued, in a hearing on September 27, 2018, and again in Plaintiff's Motion for Reconsideration, filed on February 9, 2018, that the sanctions ordered against plaintiff's counsel for failing to comply with the CMSO should be imposed against the plaintiff, his client, not respondent and his co-counsel.

**ANSWER:** Denied as phrased. Attorney Locke admits that he consistently argued the "law of the case" doctrine based on his understanding that the original sanctions were ordered against Plaintiff, "the client", not Plaintiff's counsel and then he later withdrew the argument.

41. In asking the court to impose sanctions against plaintiff, respondent argued in favor of his own interests and to the detriment of his client.

**ANSWER:** Denied.

42. On January 25, 2015, respondent filed an Amended Motion to Vacate Judgment ("Amended Motion"), requesting the January 8, 2015 Final Judgment be vacated pursuant to Federal Rule of Civil Procedure 60(b)(2).

**ANSWER:** Admit (ECF No. 524).

43. Respondent, in his Amended Motion, argued that plaintiff had discovered new evidence, all five elements of Rule 60(b)(2) of the Federal Rules of Civil Procedure had been met, and thus, the Final Judgment entered against plaintiff should be vacated.

**ANSWER:** Attorney Locke admits that the motion (ECF No. 524) speaks for itself.

44. Respondent failed to meet all five elements of Rule 60(b)(2) and in its Order denying the Amended Motion, the district court judge found the Amended Motion to be legally frivolous.

**ANSWER:** Denied as phrased. Attorney Locke admits that on May 13, 2015, United States District Judge Mendoza entered an Order (ECF No. 567) denying the Amended Motion to Vacate (ECF No. 524) and that the Order speaks for itself.

45. In its January 12, 2018 Order, the district court ordered sanctions against respondent for filing the frivolous Amended Motion.

**ANSWER:** Denied as phrased. Attorney Locke admits that on January 12, 2018, United States District Judge Mendoza entered an Order (ECF No. 612) sanctioning him and that the Order speaks for itself.

46. After District Judge Mendoza issued the January 12, 2018 Order, respondent alleged Judge Mendoza did not have "jurisdiction" over the case and thus had no authority to issue the Order.

**ANSWER:** Denied as phrased. Attorney Locke admits that on August 27, 2018 and September 20, 2018 he filed a Notice of Appeal (ECF No. 645) and Amended Notice of Appeal (ECF No. 647) respectively, appealing United States District Judge Mendoza's Orders (ECF Nos. 612 and 644) to the United States Court of Appeals for the Eleventh Circuit. Attorney Locke further admits that he raised the issue of jurisdiction as one of his points on appeal because as a matter of law the issue of jurisdiction may be raised at any time.

47. District Judge Mendoza was the presiding District Judge over case no. 6:11-cv-970-Orl-41GJK for approximately three years at the time the January 12, 2018 Order was issued.

**ANSWER:** Denied as phrased. Attorney Locke admits that District Judge Mendoza began presiding over the case on January 21, 2015 (ECF No. 516)

until June 10, 2015 when the case was stayed pending the appeal (ECF No. 571). Attorney Locke further admits that District Judge Mendoza resumed presiding over the case on May 1, 2017 when he entered an Order (ECF No. 590) lifting the stay.

48. In those three years, respondent did not question Judge Mendoza's assignment to the case, nor had respondent sought Judge Mendoza's recusal from the case.

**ANSWER:** Denied as phrased. Attorney Locke admits that he never sought Judge Mendoza's recusal and or disqualification from the case. Attorney Locke further admits that on August 27, 2018 and September 20, 2018 he filed a Notice of Appeal (ECF No. 645) and Amended Notice of Appeal (ECF No. 647) respectively, appealing United States District Judge Mendoza's Orders (ECF Nos. 612 and 644) to the United States Court of Appeals for Eleventh Circuit. Attorney Locke further admits that he raised the issue of jurisdiction as one of his points on appeal because as a matter of law the issue of jurisdiction may be raised at any time.

49. It was not until Judge Mendoza issued the January 12, 2018 Order, sanctioning respondent, that respondent alleged an improper assignment of Judge Mendoza to the case.

**ANSWER:** Denied as phrased. Attorney Locke admits that on August 27, 2018 and September 20, 2018 he filed a Notice of Appeal (ECF No. 645) and

Amended Notice of Appeal (ECF No. 647) respectively, appealing United States District Judge Mendoza's Orders (ECF Nos. 612 and 644) to the United States Court of Appeals for the Eleventh Circuit. Attorney Locke further admits that he raised the issue of jurisdiction as one of his points on appeal because as a matter of law the issue of jurisdiction may be raised at any time.

50. In his efforts to establish Judge Mendoza had no authority to issue the January 12, 2018 Order, respondent filed numerous pleadings and initiated numerous lawsuits alleging same.

**ANSWER:** Denied as phrased. Attorney Locke admits that on August 27, 2018 and September 20, 2018 he filed a Notice of Appeal (ECF No. 645) and Amended Notice of Appeal (ECF No. 647) respectively, appealing United States District Judge Mendoza's Orders (ECF Nos. 612 and 644) to the United States Court of Appeals for the Eleventh Circuit. Attorney Locke further admits that he raised the issue of jurisdiction as one of his points on appeal because as a matter of law the issue of jurisdiction may be raised at any time.

51. Respondent argued Judge Mendoza had no jurisdiction to impose sanctions against respondent in the States Court of Appeals for the Eleventh Circuit, case no. 18-13627.

**ANSWER:** Denied as phrased. Attorney Locke admits that on August 27, 2018 and September 20, 2018 he filed a Notice of Appeal (ECF No. 645) and

Amended Notice of Appeal (ECF No. 647) respectively, appealing United States District Judge Mendoza's Orders (ECF Nos. 612 and 644) to the United States Court of Appeals for the Eleventh Circuit. Attorney Locke further admits that he raised the issue of jurisdiction as one of his points on appeal because as a matter of law the issue of jurisdiction may be raised at any time.

52. On August 28, 2018 respondent filed a Notice of Appeal of the district court's January 12, 2018 Order for sanctions and August 27, 2018 Order denying respondent's Motion for Reconsideration, in the United States Court of Appeals for the Eleventh Circuit, case no. 18-13627.

**ANSWER:** Denied as phrased. Attorney Locke admits that on August 27, 2018 and September 20, 2018 he filed a Notice of Appeal (ECF No. 645) and Amended Notice of Appeal (ECF No. 647) respectively, appealing United States District Judge Mendoza's Orders (ECF Nos. 612 and 644) to the United States Court of Appeals for the Eleventh Circuit.

53. On September 12, 2018, respondent filed Appellant's Amended Motion to Stay Proceeding in District Court Pending Appeal ("Amended Motion to Stay") alleging that, among other things, United States District Court Judge Mendoza did not have jurisdiction to issue the January 12, 2018, and August 27, 2018 orders.

**ANSWER:** Denied as phrased. On September 12, 2018, Attorney Locke filed Appellant's Amended Motion to Stay Proceeding in District Court

Pending Appeal in the United States Court of Appeals for the Eleventh Circuit, Case No. 1813627-H. Attorney Locke further admits that he referenced the lack of jurisdiction in said motion as an issue on appeal in seeking a stay of enforcement of the monetary sanction.

54. Furthermore, respondent alleges in his Amended Motion to Stay that District Judge Mendoza displayed bias against plaintiff's counsel.

**ANSWER:** Denied as phrased. Attorney Locke admits that the term "bias" was used once in the motion but not in the racial context.

55. On October 17, 2018, the court of appeals denied respondent's Amended Motion to Stay and directed the clerk "to treat any motion for reconsideration of this order as a non-emergency matter."

**ANSWER:** Admit.

56. On December 10, 2018, respondent filed Appellant's Corrected Initial Brief alleging District Judge Mendoza did not have jurisdiction to issue sanctions orders and his assignment to district court case no. 6:11-cv-00970 was a "questionable reassignment."

**ANSWER:** Denied as phrased. Attorney Locke admits that he filed Appellant's Corrected Initial Brief on December 10, 2018 and it speaks for itself.

57. On August 26, 2019, the United States Court of Appeals for the Eleventh Circuit issued a per curiam opinion affirming "the district court's various sanctions against [plaintiff's] counsel, Kelsay Patterson and Wendell Locke."

**ANSWER:** Denied as phrased. Attorney Locke admits that on August 26, 2019, the United States Court of Appeals for the Eleventh Circuit issued a per curiam non-published opinion affirming District Judge Mendoza's sanction order against him.

58. In its opinion, the court of appeals stated, "[w]e reject Bussey Morice's arguments that the district judge who sanctioned her counsel was without 'jurisdiction' to impose such sanctions or that he should have recused himself."

**ANSWER:** Denied as phrased. Attorney Locke admits that the court of appeals' non-published opinion contained the following quoted language: "[w]e reject Bussey Morice's arguments that the district judge who sanctioned her counsel was without 'jurisdiction' to impose such sanctions or that he should have recused himself."

59. In a second case in front of the United States Court of Appeals of the Eleventh Circuit, case no. 19-0949-D, respondent argued Judge Mendoza had no jurisdiction to impose sanctions against respondent in case no. 6:11-cv-00970.

**ANSWER:** Denied as phrased because that was not the gravamen of the argument.

60. On March 14, 2019, respondent filed a Petition for Writ of Mandamus in the United States Court of Appeals for the Eleventh Circuit, case no. 19-10949.

**ANSWER:** Admit.

61. In his Petition for Writ for Mandamus, respondent sought a writ directing Elizabeth Warren, the Clerk of Courts for the United States District Court for the Middle District of Florida ("Clerk of Courts"), to produce correspondence and emails between the district judges, the Clerk, and the Chief Judge regarding Judge Mendoza's assignment to case no. 6:11-cv-00970.

**ANSWER:** Denied as phrased. Attorney Locke admits that he sought a writ directing Elizabeth Warren, the Clerk of Courts for the United States District Court for the Middle District of Florida ("Clerk of Courts"), to produce correspondence and emails between the district judges, the Clerk, and the Chief Judge regarding Judge Mendoza's assignment to case no. 6:11-cv-00970 in response to his prior letter requesting those documents based on his federal common law right of access to judicial records to which the clerk had not denied.

62. The court of appeals issued an Order Denying Writ on March 25, 2019.

**ANSWER:** Admit.

63. Respondent filed a Petition for Rehearing En Banc on April 15, 2019.

**ANSWER:** Admit.

64. The court of appeals issued an Order Denying Petition for Rehearing En Banc on May 6, 2019.

**ANSWER:** Admit.

65. In a third case, on April 25, 2019, respondent filed a complaint against Elizabeth Warren as Clerk of Courts for the United States District for the Middle District of Florida, in the United States District Court Southern District of Florida, case no. 19-cv-61056.

**ANSWER:** Denied as phrased. Attorney Locke admits that he has filed one case against Elizabeth Warren [as Clerk of Courts for the United States District Court for the Middle District of Florida] and that's in the United States District Court for the Southern District of Florida, case no. 19-cv-61056.

66. In his complaint, respondent alleges the Clerk's Office and District Judge Mendoza made "knowing and intentional" mischaracterizations of documents in a concerted effort to ignore or deny respondent's request for records.

**ANSWER:** Denied.

67. On October 1, 2019, the United States District Court Southern District of Florida issued an Order dismissing respondent's complaint against the Clerk of Courts.

**ANSWER:** Admit.

68. In its dismissal order, the Southern District Court stated that respondent had no right to the demanded records, including private correspondence between two district court judges. The court also found that "…none of these records were in any way 'integral' (or, for that matter, related) to the Court's resolution of *Bussey's* merits."

**ANSWER:** Denied as phrased. Attorney Locke admits that the Southern District Court's dismissal order includes the quoted language "…none of these records were in any way 'integral' (or, for that matter, related) to the Court's resolution of *Bussey's* merits" but denies the legal significance of that dicta where as a matter of law courts are cautioned not to comment on or reach the merits of a case when they have determined that the court lacks jurisdiction over the case.

69. In a fourth matter, on April 15, 2019, respondent filed a Complaint of Judicial Misconduct or Disability ("Judicial Complaint") with the Judicial Council of the Eleventh Circuit, against District Judge Mendoza and former Chief Judge Anne C. Conway.

**ANSWER:** Denied as phrased. Attorney Locke admits that he filed a "confidential" Complaint of Judicial Misconduct with the Judicial Council of the Eleventh Circuit, against District Judge Mendoza and former Chief Judge Anne C. Conway.

70. Respondent's allegations in the judicial complaint outline the same allegations made by respondent in United States Court of Appeals for the Eleventh Circuit and United States District Court Southern District of Florida, which had been rejected by both courts.

**ANSWER:** Denied.

71. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: : **Rule 3-4.3** (Misconduct and minor misconduct); **Rule 4-1.7** (Conflict of Interest); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.2** (Expediting Litigation); **Rule 4-3.4** (Fairness to opposing party and counsel); **Rule 4-3.5** (Impartiality and Decorum of the Tribunal); **Rule 4-8.2(a)** (Impugning the qualifications and integrity of judicial and legal officials); and **Rule 4-8.4** (Misconduct)**.**

**ANSWER:** Denied.

## AFFIRMATIVE DEFENSES[1]

As his First Affirmative Defense, Attorney Locke asserts that at all times material hereto he acted in "good faith" with the belief that his actions throughout the litigation of each of the cases referenced in this responsive pleading were ethical and proper.

[1] Attorney Locke reserves the right to amend this Answer as discovery dictates to either assert additional defenses or withdraw any defenses stated herein.

As his Second Affirmative Defense, Attorney Locke asserts that in regard to any or each of the eight (8) alleged rule violations cited by The Florida Bar in the Complaint, The Florida Bar must prove, by clear and convincing evidence, that Attorney Locke intentionally and or knowingly engaged in the conduct that allegedly violated the rule, and thus The Florida Bar will be unable to meet this high burden.

As his Third Affirmative Defense, Attorney Locke asserts that in regard to any Orders or findings by a court that are referenced in the Complaint, they cannot be accepted as conclusive proof of the matters referenced therein, to the extent Attorney Locke was denied Due Process in those proceedings which resulted in those Orders and or findings. Thus, The Florida Bar must prove each and every allegation it intends to rely on to support the purported rule violations by clear and convincing evidence.

As his Fourth Affirmative Defense, Attorney Locke asserts that there are no violations of **Rule 4-3.1** (Meritorious Claims and Contentions), **Rule 4-3.2** (Expediting Litigation); **Rule 4-3.4** (Fairness to opposing party and counsel), **Rule 4-3.5** (Impartiality and Decorum of the Tribunal), **Rule 4-8.2(a)** (Impugning the qualifications and integrity of judicial and legal officials), and **Rule 4-8.4** (Misconduct)**,** because his actions were based upon law and fact and were not frivolous, and his actions cannot be deemed frivolous even if the facts were not first

fully substantiated or if he believes that the client's position ultimately will not prevail. See the Comment to Rule 4-3.1.

As his Fifth Affirmative Defense, Attorney Locke asserts that he has exercised his state and federal constitutional right of access to the courts and his right to sue and defend in good faith and that his motion/pleading practice at all times material hereto precludes a finding of any alleged rule violations.

As his Sixth Affirmative Defense, Attorney Locke asserts that his constitutional right to free speech precludes a finding of any alleged rule violations where there is an objective and or rational/reasonable basis for each of the arguments raised by his motion/pleading practice identified by the Complaint.

As his Seventh Affirmative Defense, Attorney Locke asserts that there is no violation of Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) because Attorney Locke's actions were taken in good faith. See Comment to Rule 4-8.4.

As his Eighth Affirmative Defense, Attorney Locke asserts that there is no violation of Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice) because Attorney Locke's alleged conduct was not discriminatory conduct committed while performing his duties in connection with the practice of law (i.e. discriminatory

conduct directed towards litigants, jurors, witnesses, court personnel, or other lawyers, whether based on race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, physical characteristic, or any other basis). See Comment to Rule 4-8.4.

**MOTION FOR MORE DEFINITE STATEMENT**

Attorney Locke hereby moves for a more definite statement, and states that Paragraph 71 of the Complaint (which is cited verbatim below and which is the last paragraph of the Complaint) sweepingly alleges that Attorney Locke violated eight (8) separate bar rules "by reason of" all of the preceding 70 Paragraphs in the Complaint:

> "By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: : **Rule 3-4.3** (Misconduct and minor misconduct); **Rule 4-1.7** (Conflict of Interest); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.2** (Expediting Litigation); **Rule 4-3.4** (Fairness to opposing party and counsel); **Rule 4-3.5** (Impartiality and Decorum of the Tribunal); **Rule 4-8.2(a)** (Impugning the qualifications and integrity of judicial and legal officials); and **Rule 4-8.4** (Misconduct)**."**

It is undisputed that each of the aforementioned 8 rules require separate and distinct factors that The Florida Bar must prove (by clear and convincing evidence), and despite the distinctions between the rules, The Florida Bar's Complaint fails to factually allege how each of the 8 rules have allegedly been violated. Further, some of the rules have multiple subsections that may be violated and the Bar has failed to specifically identify which rule subsections are implicated by which factual

allegations (see, e.g. Civil or Criminal proceedings where the Complaint or Indictment would identify each violation in separate counts). As such, Attorney Locke respectfully requests that the Court Order The Florida Bar to specify which of the 70 Paragraphs in the Complaint are specifically being alleged in support of each of the 8 alleged rule violations and to identify each of the rule subsections implicated thereby.

WHEREFORE, Attorney Locke respectfully demands discovery and a full and fair hearing on all issues so trial before a Referee; and, further requests that he be found not guilty of the rule violations pled in The Florida Bar's Complaint, and that he be awarded his costs in defending this proceeding.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **2nd** day of **December, 2019** a true and correct copy of the foregoing, **ATTORNEY/RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES AND MOTION FOR MORE DEFINITE STATEMENT**, was electronically filed thru the e-portal with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida and served upon the following counsel of record for THE FLORIDA BAR and Co-Counsel for Respondent via the e-portal and electronic mail:

Patricia Ann Toro Savitz, Staff Counsel
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Respectfully submitted,

**Co-Counsel for Respondent**

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