

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

WENDELL TERRY LOCKE,

Respondent.

Supreme Court Case
No. SC-

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

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Wendell Terry Locke, Respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

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

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.

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.

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.

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

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

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

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.

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

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.

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.

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.

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.

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

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

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.

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.

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."

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.*’”

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.”

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.”

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.”

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.

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").

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.

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.

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.

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.

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.

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.

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.

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").

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

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

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.

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.

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.

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.

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).

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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

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."

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."

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."

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.”

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.

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.

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.

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

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

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

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.

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.

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.

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."

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.

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.

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).

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



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint has been electronically filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, through the e-Portal system; and that true and correct copies have been furnished by regular U.S. Mail and by Certified U.S. Mail No. 7017 1070 0000 4774 4139, Return Receipt Requested, to Wendell Terry Locke, c/o Calrie M. Marsh, Counsel for Respondent, at her official bar address of 701 Brickell Avenue, Suite 1550, Miami, Florida 33131-2824 and by electronic mail to her designated email addresses of c.marsh@calriemarsh.com; and by electronic mail to Lindsey Margaret Guinand, Bar Counsel, to her designated email addresses of lguinand@floridabar.org (primary), pmcbride@floridabar.org (secondary), and tampaoffice@floridabar.org (tertiary); and by electronic mail to Paige Adonna Greenlee, Designated Reviewer, to her official bar email address of paige@greenleelawtampa.com, all on this 12th day of November, 2019.



Patricia Ann Toro Savitz
Staff Counsel

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

PLEASE TAKE NOTICE that the trial counsel in this matter is Lindsey Margaret Guinand, Bar Counsel, whose address and telephone number are The Florida Bar, Tampa Branch Office, 2002 North Lois Avenue, Suite 300, Tampa, Florida 33607, (813) 875-9821, and whose primary email is lguinand@floridabar.org, secondary email pmcbride@floridabar.org and tertiary email tampaoffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.