UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of:	)	
	)	
Wendell Terry Locke,	)	Proceeding No. D2023-16
	)	
Respondent	)	
	)	

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, Wendell Terry Locke ("Respondent") is hereby suspended from the practice of patent, trademark, and other non-patent law before the United States Patent and Trademark Office ("USPTO" or "Office") for one year, for violation of 37 C.F.R. § 11.804(h), having been disciplined by a duly constituted authority of a state.

I. BACKGROUND

1. At all times relevant hereto, Respondent of Plantation, Florida, has been registered to practice in patent matters before the USPTO as an attorney, subject to the USPTO Rules of Professional Conduct. *See* Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. §§ 11.24 and 11.34, at 1-2. Respondent's USPTO registration number is 46,450. *Id.* at 1.

2. On November 12, 2019, the Florida Bar filed a complaint against Respondent. *See* Report of Referee ("Referee Report")[1], *The Florida Bar v. Wendell Terry Locke*, Supreme Court Case No. SC19-1913 (March 21, 2021), at 1. Respondent filed an Answer and pled several affirmative defenses. Referee Report, at 34. Following delays related to the Covid-19 pandemic, a hearing was held in person on December 7-9, 2020. *Id.* at 2. On March 1, 2021, a sanctions hearing was

[1] The Referee Report is attached to the June 7, 2023 OED Director's Response to Respondent's Response to Notice and Order Pursuant to 37 C.F.R. § 11.24.

held remotely. *Id.* During the proceedings, Respondent testified on his own behalf and entered 101 exhibits. *Id.* at 3.

3. On March 17, 2021, the Referee issued a Report, finding that Respondent violated the following Florida Rules of Professional Conduct:

1. Rule 3-4.3 (Misconduct and minor misconduct)
2. Rule 4-1.7 (Conflict of Interest; Current Clients);
3. Rule 4-3.1 (Meritorious Claims and Contentions);
4. Rule 4-3.2 (Expediting Litigation);
5. Rule 4-3.4(c) (Fairness to opposing Party and Counsel);
6. Rule 4-3.S(c) (Impartiality & Decorum of the Tribunal);
7. Rule 4-8.2(a) (Impugning the integrity of judicial official); and
8. Rule 4-8.4(d) (Misconduct).

See Referee Report, at 39. In the Report, the Referee considered Respondent's arguments and affirmative defenses but rejected them. *Id.* at 26-39. The Referee recommended a 90-day suspension with conditions. *Id.* at 44.

4. By Order dated March 1, 2022, in *The Florida Bar v. Wendell Terry Locke*, Case No. SC19-1913 ("Florida Supreme Court Order"), the Supreme Court of Florida approved the Referee's findings of fact and recommendations as to guilt but disproved the Referee's recommended sanction. *See* Florida Supreme Court Order at 1. Instead, the Florida Supreme Court suspended Respondent from the practice of law in that jurisdiction for one year. *Id.*

Facts regarding Respondent's Misconduct[2]

5. On June 10, 2011, the estate of Preston Bussey III filed suit on behalf of the estate in the United States District Court for the Middle District of Florida, in the matter of *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.*, case no. 6:11-cv-970-Orl-41 GJK.[3] Referee Report, at 3-4.

[2] The recitation of facts is taken from the comprehensive opinion of the Referee Report.

[3] This case was originally assigned to Judge Charlene Honeywell. Referee Report, at 23. However, Judge Carlos Mendoza took the bench in the Middle District in 2014 and was assigned cases that had previously been assigned to Judge Honeywell, including case no. 6:11-cv-00970. *Id.*

The estate was represented by Kelsay Patterson. *Id.* at 4. The complaint alleged seven Fourth Amendment excessive-force claims against the City of Rockledge police officers. *Id.* On or about October 26, 2011, a Second Amended Complaint was filed, adding the City of Rockledge as a defendant, raising claims of battery and negligent training against the city. *Id.* The complaint was amended four times. *Id.*

6. On May 17, 2012, four days after the filing of a Fourth Amended Complaint, Respondent entered his appearance in the case as co-counsel and remained counsel for plaintiff until the case's conclusion in 2019. Referee Report, at 5.

7. Prior to Respondent's appearance, the district court entered a Case Management Scheduling Order ("CMSO"), imposing requirements on all parties and counsel. Referee Report, at 5. The CMSO stated, "[c]ounsel and all parties (both represented and pro se) shall comply with this order, with the Federal Rules of Civil Procedure, with the Local Rules of the United States District Court for the Middle District of Florida, and with the Administrative Procedures for Case Management/Electronic Case Filing." *See id.* (internal citation omitted). Further, in a subsection of the order specifically addressing the coordination of the joint pretrial statement, it is ordered, "[a]ll parties are responsible for filing a Joint Final Pretrial Statement in full compliance with this order. Plaintiff's counsel (or plaintiff if all parties are proceeding pro se) shall have the primary responsibility to coordinate compliance with the sections of this order that require a meeting of lead trial counsel and unrepresented parties in person and the filing of a Joint Final Pretrial Statement and related material. See Local Rule 3.10 (relating to failure to prosecute)." *Id.* The CMSO also directed counsel for the parties to, among other things, meet in person by September 28, 2012 and bring with them marked original trial exhibits, prepare and exchange final exhibit lists and witness lists, and prepare the Joint Final Pretrial Statement, which was due by October 10, 2012. *Id.* at 5-6.

8. The joint pretrial statement meeting was scheduled between all attorneys and took place at the office of defense counsel on September 28, 2012. Referee Report, at 6. Respondent believed that Mr. Patterson would be taking the lead for the joint pretrial statement meeting and would be bringing the required documents and exhibits and, as a result, played little role in the meeting. *Id.* at 6-7. Mr. Patterson arrived approximately one hour late and failed to bring with him all his exhibits, as well as other items that met the requirements of the federal court. *Id.* This was confirmed by, among other things, a transcript of the meeting that was prepared by a court reporter who was present at the meeting. *Id.*

9. Although the attorneys attempted to discuss the issues for the joint pretrial statement, it was unable to be completed on September 28, 2012 due to plaintiff's counsel failure to effectively participate. Referee Report, at 7.

10. On the date the joint pretrial statement was due to be filed, October 10, 2012, neither Respondent nor Mr. Patterson provided the necessary and court-ordered information to defense counsel for completion of the joint pretrial statement. Referee Report, at 7. As a result, in order to comply with the court-ordered deadline defense counsel unilaterally filed a pretrial statement on the due date. *Id.* At 10:10 p.m. on that same day, Respondent filed an Emergency Motion for an Extension of Time requesting additional time to prepare the Joint Pretrial Statement. *Id.* However, Respondent did not confer with opposing counsel prior to filing the motion as required by United States District Court Middle District of Florida Local rule 3.01(g).[4] *Id.* at 8-9. Instead, Respondent sent an email to opposing counsel at 9:21 p.m., on the evening of the due date, and less than one hour later, at 10:10 p.m., he filed the emergency motion. *Id. at 9*. Further, there is no evidence that he followed up in the morning. *See id.* Both counsel for the police officers and

[4] The Rule states that "[b]efore filing any motion in a civil case . . . the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion. . . ."

counsel for the city filed responses in opposition of the emergency motion, with both indicating that respondent had not conferred in good faith prior to filing the motion. *Id.* at 9-10.

11. On October 17, 2012, Respondent filed a Notice of Local Rule 3.01(g) Conference Regarding Plaintiff's Emergency Motion for Extension of Time to File Joint Pretrial Stipulation. Referee Report, at 10. In the notice Respondent admits he did not confirm with defense counsel until October 16, 2012, six days after filing the emergency motion. *Id.*

12. The district court held a hearing on Respondent's Emergency Motion, and at the hearing, the district court judge chastised plaintiff's counsel for their failure to meet the court-ordered requirements and issued sanctions against them. Referee Report, at 11. However, the district court granted the motion, in part, ordering the parties to meet for a second pretrial meeting on or before October 22, 2012, and to file a joint pretrial statement by October 24, 2012. *Id.*

13. On October 24, 2012, the parties were again unable to complete a joint pretrial statement for filing with the court. Referee Report, at 11. On the due date, Mr. Patterson filed a Second Emergency Motion for Extension of Time to File Joint Pretrial Statement. *Id.* The court granted the second extension of time and on November 5, 2012, the Joint Pretrial Statement was finally filed with the court. *Id.* The final Joint Pretrial Statement was filed four weeks late. *Id.*

14. On January 7, 2013, the district court entered summary judgment in favor of the city. Referee Report, at 12. On February 8, 2013, the district court entered summary judgment in favor of five of the officers and denied summary judgment as to two of the officers. *Id.* The two officers who were denied summary judgment took an interlocutory appeal, and on October 1, 2014, the 11th Circuit Court of Appeals reversed the district court as to those two officers. *Id.*

The Court of Appeals returned jurisdiction to the district court, and on January 8, 2015, the district court issued a final judgment in favor of all the defendants. *Id.*

15. On January 21, 2015, Respondent filed a Motion to Vacate Judgment, followed by an Amended Motion to Vacate Judgment ("Amended Motion") on January 25, 2015. Referee Report, at 12. The Amended Motion argued that plaintiff had discovered new evidence, pursuant to Rule 60(b)(2) of the Federal Rules of Civil Procedure, and thus, the Final Judgment entered against plaintiff should be vacated. *Id.* Defense counsel filed responses in opposition of the Amended Motion, arguing the amended motion did not meet the criteria of Rule 60(b)(2). *Id.*[5]

16. On May 13, 2015, the district court issued an order denying the Amended Motion to Vacate Judgment, finding Respondent failed to meet all five elements of Rule 60(b)(2) and finding the Amended Motion to be legally frivolous. Referee Report, at 15.

17. Respondent filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit, case no. 18-13627, appealing the final judgment. Referee Report, at 15. In June 2015, all issues before the district court were stayed pending resolution of the appeal of the final judgment. *Id.*

18. 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. Referee Report, at 15. On September 6, 2016, the Eleventh Circuit Court of Appeals issued the mandate. *Id.* On May 1,

[5] The five criteria for filing a motion to vacate judgment under Rule 60(b)(2) are as follows: (1) the evidence must be newly discovered since the final judgment or order; (2) due diligence on the part of the movant to discover the new evidence must be shown; (3) the evidence must not be merely cumulative or impeaching; (4) the evidence must be material; and (5) the evidence must be such that a new trial (or reconsideration of the final judgment or order) would probably produce a new result.

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. *Id.*

19. On September 6, 2017, Judge Carlos Mendoza issued an Order setting a hearing on seven motions and ordered Respondent and his co-counsel to appear for the hearing. Referee Report, at 16. All counsel were afforded the opportunity to supplement the record with written motions and responses and on September 27, 2017, the district court held a hearing on the motions and all counsel were afforded the opportunity to make argument. *Id.*

20. On January 12, 2018, Judge Mendoza issued a forty-two (42) page order from the September 27, 2017 hearing, finding, among other things, that Respondent had engaged in unprofessional conduct throughout the litigation. Referee Report, at 16. The unprofessional conduct included statements made in filings about opposing counsel, the opposing parties, and the judiciary. *Id.* Some of the statements made by Respondent in court filings about opposing counsel and parties are set forth at pages 16-18 of the Referee Report and include referring to the defendant officers as "Caucasian" and "killers", "murderers", and "torturers", and referring to the defendants as the "Brutality Officers" in filings, rather, than referring to them by name. In some of those same filings, respondent referred to opposing counsel as "Brutality Officers' Counsel." *See id.* at 16-18.

21. Previously, on October 17, 2012, at a telephonic motions hearing, United States District Judge Charlene Honeywell instructed counsel to refer to people by their names. Referee Report, at 19. Despite those instructions, Respondent continued to file motions and responses with the district court repeatedly referring to the defendants as Brutality Officers and opposing counsel as Brutality Officers' Counsel. *See id.* In fact, some of the filings by respondent, wherein

respondent referenced Brutality Officers, were filed within thirty days of Judge Honeywell's October 17, 2012 instruction against the same. *Id.*[6]

22. Communications outside court filings, including an email exchange between counsel which reflected that Respondent also used derogatory terms towards defense counsel. *See* Referee Report, at 20. Within that email chain, which was between all counsel in the litigation, respondent referred to defense counsel, Joshua Walker, as "Massa Walker". *Id.* at 20-21.

23. In addition to Respondent's statements about opposing counsel and parties, he made the disparaging statements in filings with the court about the judiciary, including statements alleging he was being personally attacked, and statements about unfair treatment, intimidation, and reprisal. *See* Referee Report, at 21-22.

24. Judge Mendoza issued a January 12, 2018 order sanctioning Respondent and his co-counsel, after which Respondent alleged Judge Mendoza displayed bias against Respondent and challenged his authority to issue the order. Referee Report, at 24. Respondent filed an appeal of the January 12, 2018 order. *Id.* Respondent also filed a complaint against Elizabeth Warren as Clerk of Court 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. *See id.* at 24-25. In that 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. *Id.* at 24. Respondent filed a Petition for Writ of Mandamus in which he sought copies of emails between the clerk of Court, the Chief Judge, and Judge

[6] In response to Respondent's and Mr. Patterson's conduct, defense counsel filed numerous motions in limine with the district court, seeking orders prohibiting respondent and his co-counsel from using defamatory and derogatory terms in the litigation. Respondent and his co-counsel objected to all of these motions. The motions in limine were not ruled upon by the district court because summary judgment was entered in favor of the defendants prior to a hearing on the motions. *Id.* at 20.

Mendoza. *See id.* The appeal was denied, sanctions were upheld, and respondent's Petition for Mandamus was denied. *See id.*

25. Also, around the same time as his civil suit against the Clerk, 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. Referee Report, at 25. Respondent raised the same allegations he made in the 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. *Id.* The judicial complaint was denied and Respondent filed a request for review by the 11th Circuit Judicial Council, which was also denied. *Id.* at 25-26. There was no finding of judicial misconduct. *Id.* at 26.

26. Finally, on November 25, 2019, after initiation of the Florida Bar proceeding, Respondent filed a Petition for Writ of Certiorari with the Supreme Court of United States, alleging the Clerk of Court made knowing and intentional mischaracterizations and that Judge Mendoza assisted in same. Referee Report, at 26.

<u>USPTO Reciprocal Discipline Proceeding</u>

27. On March 24, 2023, a "Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Notice and Order") was sent by certified mail (receipt no. 70220410000250014004) notifying Respondent that the Director of the Office of Enrollment and Discipline ("OED Director") had filed a "Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24" ("Complaint") requesting that the Director of the United States Patent and Trademark Office impose reciprocal discipline upon Respondent identical to the discipline imposed by the March 1, 2022 Order of the Supreme Court of Florida in *The Florida Bar v. Wendell Terry Locke*, Case No. SC19-1913, suspending Respondent from the practice of law in that jurisdiction for one year. The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response opposing the

imposition of reciprocal discipline identical to that imposed by the Supreme Court of Florida in *The Florida Bar v. Wendell Terry Locke*, Case No. SC19-1913 based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

28. On April 20, 2023 Respondent filed an "Respondent's Response to Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Response to Notice and Order"). Therein, Respondent claimed that he was denied due process and/or equal protection in connection with the disciplinary proceedings. Response to Notice and Order, at 3. Respondent also requested that should discipline be imposed, it should run *nunc pro tunc* and any published notice should be consistent with the notice published in the Florida Bar News. *See id.* at 7-8.

29. A Briefing Order was issued and directed the OED Director to respond to Respondent's Response to Notice and Order within 45 days and permitting Respondent to Reply to the OED Director's briefing no later than 14 days from the OED Director's filing.

30. On June 7, 2023 the USPTO Director responded ("OED Response") to Respondent's Response to Notice and Order. The OED Director argued therein that Respondent was afforded due process and that the imposition of reciprocal discipline was appropriate.

31. Respondent filed a Reply ("Reply") on June 22, 2023.

II. LEGAL STANDARD

Reciprocal disciplinary proceedings are not in any sense *de novo* proceedings. *See In re Barach*, 540 F.3d 82, 84 (1st Cir. 2008); *In re Surrick*, 338 F.3d 224, 232 (3d Cir. 2003). Rather, pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO has codified standards for imposing reciprocal discipline based on a state's disciplinary adjudication. Pursuant to *Selling*, state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper, unless an independent review of the record reveals: (1) a want of due process; (2) an infirmity of proof of the misconduct; or (3)

that grave injustice would result from the imposition of reciprocal discipline. *Id.* at 51. Federal courts have generally "concluded that in reciprocal discipline cases, it is the respondent attorney's burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline." *In re Kramer,* 282 F.3d 721, 724 (9th Cir. 2002); *In re Friedman*, 51 F.3d 20, 22 (2d Cir. 1995). "This standard is narrow, for '[a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge's] or the [state] courts' proceedings.'" *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (second and third alterations in original) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)).

The USPTO's regulation governing reciprocal discipline, 37 C.F.R. § 11.24(d)(1), mirrors the *Selling* standard:

> [T]he USPTO Director shall consider the record and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner demonstrates by clear and convincing evidence, and the USPTO Director finds there is a genuine issue of material fact that:
>
> (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;
> (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
> (iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or
> (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

Id.

To prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that there is a genuine issue of material fact as to one of these criteria by clear and convincing evidence. *See id.* As discussed below, however, Respondent has not shown by clear and

convincing evidence that there is a genuine issue of material fact with regard to any of the factors set forth in 37 C.F.R. § 11.24(d)(1). Consequently, a reciprocal one-year suspension is appropriate.

III. ANALYSIS

In his Response to Notice and Order, Respondent argues that he was deprived of due process during the Florida disciplinary proceedings. Response to Notice and Order, at 3. In making this argument, Respondent raised challenges to several evidentiary and procedural decisions and aspects of those proceedings, and claimed that one of the Judges in the underlying matter involving the police officers improperly sanctioned him and pressured the Florida Bar to investigate him. *See id.* at 4, 5; Reply at 2, 3-6. The OED Director disputes that Respondent was deprived of due process under the applicable standard. Having considered all of the pleadings, as well as the record of evidence produced by the parties, it is determined that a one-year suspension from the practice of patent, trademark, and other non-patent law before the USPTO is appropriate. As explained below, Respondent has wholly failed to carry his specific burdens under 37 C.F.R. § 11.24 and reciprocal discipline is appropriate.

A. Respondent Did Not Suffer a Deprivation of Due Process.

Respondent asserts that the imposition of reciprocal discipline would constitute a deprivation of due process. His arguments include challenges to evidentiary rulings and legal conclusions made during the Florida disciplinary proceedings such as that he was prohibited from filing counterclaims, complaints about the inability to compel certain witnesses to testify, and challenging the impartiality of Judge Mendoza. *See* Response to Notice and Order at 4, 5; Reply at 2, 3-6. However, these challenges are little more than attempts to relitigate the state disciplinary matter. It is not necessary to address each, specific allegation that Respondent has

made here since the documents Respondent has proffered and is relying on, are insufficient to establish a deprivation of due process under 37 C.F.R. § 11.24(d)(1).

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *In re Karten*, 293 F. App'x 734, 736 (11th Cir. 2008) (quoting *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976)). In disciplinary proceedings, an attorney is entitled to due process, such as reasonable notice of the charges before the proceedings commence. *See In re Ruffalo*, 390 U.S. 544, 551 (1968); *In re Cook*, 551 F.3d 542, 549 (6th Cir. 2009) (procedural due process includes fair notice of the charge). Due process requirements are satisfied where a respondent "attended and participated actively in the various hearings, and was afforded an opportunity to present evidence, to testify, to cross-examine witnesses, and to present argument." *In re Squire*, 617 F.3d 461, 467 (6th Cir. 2010) (quoting *Ginger v. Cir. Ct. for Wayne Cnty.,* 372 F.2d 620, 621 (6th Cir. 1967))*; see In re Zdravkovich, supra* (stating that attorney could not satisfy a claim of due process deprivation where he was given notice of the charges against him, was represented by counsel, and had hearing at which counsel had the opportunity to call and cross-examine witnesses, make arguments, and submit evidence). Due process requirements are also met where a respondent is given "an opportunity to respond to the allegations set forth in the complaint, testify at length in [his] own defense, present other witnesses and evidence to support [his] version of events . . ., [and is] able to make objections to the hearing panel's findings and recommendations." *In re Squire*, 617 F.3d at 467 (ellipsis and third alteration in original) (quoting *In re Cook,* 551 F.3d at 550). These standards and considerations, as set forth here, have been repeatedly applied by the USPTO Director in determining whether or not a practitioner has suffered a deprivation of due process under 37 C.F.R. § 11.24(d)(1)(i). *See, e.g., In re Khaliq*, Proceeding No. D2020-28 (USPTO, Mar. 31, 2021); *In re Faro*, Proceeding No. D2019-09 (USPTO, Feb. 21, 2020); *In re Baker*, Proceeding

No. D2019-08 (USPTO, Aug. 8, 2019); *In re Chaganti*, Proceeding No. 2015-10 (USPTO, Aug. 4, 2015).

Here, Respondent does not claim that he failed to receive notice of the disciplinary charges against him, or that he was prevented from actively participating in the underlying disciplinary case. Reply, at 1 ("Respondent never stated, suggested or implied that he was denied notice and an opportunity to respond to the charges lodged against him by The Florida Bar in the disciplinary proceeding.") Nor could he make such a claim since the record unequivocally establishes that Respondent received notice of the charges and substantially and vigorously participated in the Florida disciplinary matter, including that he answered the disciplinary complaint, filed motions, entered 101 exhibits into the hearing record, testified at the hearing, and pled 11 affirmative defenses. *See* Report of Referee, at 1-3, 11. Consequently, since "[d]ue process requirements are satisfied where a respondent attended and participated actively in the various hearings, and was afforded an opportunity to present evidence, to testify, to cross-examine witnesses, and to present argument", *In re Rheinstein*, Proceeding No. D2021-06, at 15 (USPTO, July 22, 2022) (internal quotations marks omitted), Respondent has not suffered a deprivation of due process.

Not being able to show that he was deprived notice of, and ability to participate in, his Florida disciplinary case, Respondent relies on a variety of arguments challenging evidentiary and substantive legal rulings of the various Florida tribunals in an to attempt to argue that he was deprived of due process. For example, he argues that he was prohibited from filing counterclaims, complain about the inability to compel certain witnesses to testify, and challenges the impartiality of Judge Mendoza. *See* Response to Notice and Order at 4, 5; Reply at 2, 3-6. However, although these issues are couched under "due process," they are no more than mere disagreement with the Florida state tribunals' findings and conclusions. Such disagreement is not

a basis for finding a deprivation of due process. *See In re Rheinstein*, Proceeding No. D2021-06, at 13 ("Reciprocal disciplinary proceedings are not in any sense *de novo* proceedings."); *In re Khaliq*, Proceeding No. D2020-28, at 13. Tribunals have broad discretion to admit or refuse evidence into the record. *Id.* (citing *In re Harper*, 725 F.3d 1253, 1258 (10th Cir. 2013) (citing, in turn, *United States v. Scheffer*, 523 U.S. 303, 328 (1998)); *In re Williams*, 398 F.3d 116, 118 (1st Cir. 2005) (A "state court's substantive findings are entitled to a high degree of respect when this court is asked to impose reciprocal discipline.")) "A proceeding designed to weigh the advisability of reciprocal discipline is not a vehicle for retrying the original disciplinary proceeding." *Id.* at 13-14 (quoting *In re Barach*, 540 F.3d at 87). "Nor is it a vehicle either for the correction of garden-variety errors or for revisiting of judgment calls." *Id.* at 14 (internal quotation marks omitted) (rejecting practitioner's due process claims where "unremarkable" claims of evidentiary errors, procedural errors, and other errors were raised). Consequently, reciprocal discipline is appropriate here.

B. Respondent Has Not Satisfied the Standards for Discipline to be Imposed *Nunc Pro Tunc.*

Respondent claims that any suspension period imposed by the USPTO "should be contemporaneous with the suspension period in Florida, specifically March 31, 2022, to March 30, 2023." *See* Response to Notice and Order at 7; Reply, at 6-8. However, the USPTO's rules permit concurrent reciprocal discipline only in very prescribed circumstances and, as noted below, Respondent's arguments do not sufficiently satisfy those requirements.

Upon request by a practitioner, "reciprocal discipline may be imposed *nunc pro tunc* only if the practitioner promptly notified the OED Director of his or her [disbarment] in another jurisdiction, and establishes by clear and convincing evidence that the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58." 37 C.F.R. § 11.24(f). The provisions of 37 C.F.R. § 11.58 concern duties of disciplined

practitioners and include, but are not limited to, requirements such as filing notices of withdrawal in each patent and trademark application pending before the USPTO, and providing notices of the discipline to all State and Federal jurisdictions and to all clients. *See* 37 C.F.R. § 11.58(c)(1)-(3). Respondent carries the burden of proof to establish § 11.58 compliance by clear and convincing evidence. *See* 37 C.F.R. § 11.24(f). The USPTO Director regularly enforces the express terms of § 11.24(f) before applying reciprocal discipline *nunc pro tunc*. *See In re Levine*, Proceeding No. 2015-21 (USPTO, Aug. 1, 2016); *see also In re Plache*, Proceeding No. D2014-20, at 6 (USPTO, Sept. 24, 2014) (The USPTO Director refused to reciprocally apply a New York three-year suspension *nunc pro tunc* where the practitioner did not notify the OED Director of the suspension. The Final Order states that: "...voluntary cessation of practice before the USPTO alone has no legal effect on the imposition of reciprocal discipline.").

Although Respondent claims that any discipline imposed by the USPTO should be imposed *nunc pro tunc*, he has plainly failed to allege compliance or prove that he satisfied any of the conditions stated in USPTO's reciprocal discipline rule. Simply not practicing in Florida or before the USPTO, as he claims, without satisfying the other requirements of 11.24(f), is an insufficient basis for permitting *nunc pro tunc* treatment. *See In re Plache*, at 6. As a result, reciprocal discipline may not be imposed *nunc pro tunc* here.

Finally, it is noted that Respondent has cited no reason or authority for his request that any disciplinary notice issued by the USPTO be "materially consistent with that published by The Florida Bar in the Florida Bar News, dated April 1, 2022." *See* Response to Notice and Order at 8; *See also* Reply at 8. The OED Director is charged with informing the public of matters where public discipline has been imposed, such as here, and retains discretion to determine content of any notice of discipline. *See* 37 C.F.R. § 11.59(a).

ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is suspended from the practice of patent, trademark, and other non-patent law before the USPTO for one year, effective the date of this Final Order.

2. The OED Director publish a notice in the *Official Gazette* materially consistent with the following:

Notice of Suspension

> This notice concerns Wendell Terry Locke of Plantation, Florida, who is a registered patent attorney (Registration Number 46,450). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Locke be suspended from practice before the USPTO in patent, trademark, and other non-patent matters for one year for violating 37 C.F.R. § 11.804(h), predicated upon being suspended from the practice of law by a duly constituted authority of a State.
>
> The Supreme Court of Florida accepted the referee's report finding that Mr. Locke violated Rules 3-4.3 (misconduct and minor misconduct); 4-1.7 (conflict of interest, current clients); 4-3.1 (meritorious claims and contentions); 4-3.2 (expediting litigation); 4-3.4(c) (fairness to opposing party and counsel); 4-3.5(c) (impartiality and decorum of the tribunal); 4-8.2(a) (impugning the integrity of a judicial official); and 4-8.4(d) (misconduct) of the Rules Regulating the Florida Bar in the course of his representation of the plaintiff in civil litigation in the United States District Court for the Middle District of Florida. The Supreme Court of Florida agreed that Mr. Locke made defamatory and derogatory statements regarding opposing parties in disregard of the instructions of the court, used disparaging language regarding opposing counsel, and made statements impugning the integrity of the presiding judges with a reckless disregard for the truth or falsity of the statements. The Court also agreed with the referee's finding that Mr. Locke advanced an argument in litigation which was favorable to his own interests and adverse to his client's interests. Finally, the Court agreed that Mr. Locke failed to expedite the litigation by missing multiple court-imposed deadlines.
>
> This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline's FOIA Reading Room, located at: https://foiadocuments.uspto.gov/oed/;

3. The OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public

discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

4. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58;

5. The USPTO dissociate Respondent's name from any Customer Numbers and USPTO verified Electronic System account(s), if any; and

6. Respondent shall not apply for a USPTO Customer Number, shall not obtain a USPTO Customer Number, nor shall he have his name added to a USPTO Customer Number, unless and until he is reinstated to practice before the USPTO.

Pursuant to 37 C.F.R. § 11.57(a), review of the final decision by the USPTO Director may be had by a Petition filed with the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 "within thirty (30) days after the date of the order recording the Director's action." *See* E.D. Va. Local Civil Rule 83.5.

It is so ordered.

Users, Berdan, David
Digitally signed by Users, Berdan, David
Date: 2023.08.24 17:10:05 -04'00'

Date

David Berdan
General Counsel
Office of the General Counsel
United States Patent and Trademark Office

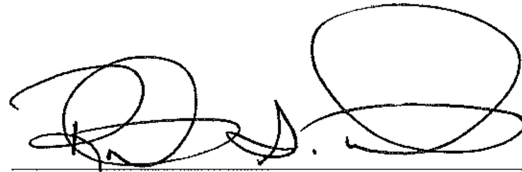
on delegated authority by

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Order Pursuant to § 37 C.F.R. 11.24 was mailed by first-class certified mail, return receipt requested, on this day to the Respondent at the most recent address provided to the OED Director pursuant to 37 C.F.R. § 11.11(a):

Mr. Wendell Terry Locke
Locke Law, P.A.
8201 Peters Road
Suite 1000
Plantation, FL 33324



8/25/2023
Date

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450