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Law of the Case in Coordinate Courts: be sure that the doctrine applies

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Attorneys who understand the law of the case doctrine among courts of the same level can take advantage of every valid opportunity to argue the client's position. An understanding of the basic principles of the doctrine and its inappropriate uses assists in warding off an inappropriate law of the case challenge.

When a party raises an issue decided in a previous ruling, either by the same judge or a judge of the same level, where there has been no intervening ruling by a higher court, the prior ruling sets the law of the case. Once established, the law of the case should not be disturbed unless cogent and compelling reasons justify rehearing. *United States v. Quintieri*, No. 01-1013, 2002 WL 31255606, at *3 (Oct. 9, 2002 2d Cir.). This is more flexible than another branch of the law of the case doctrine, known as the mandate rule, that is established when a higher court decision precludes reconsideration by a lower court. *Id.*

Among coordinate courts, the doctrine is not binding. It is merely a presumption against consideration of rulings decided previously, a principle of judicial self-consistency, of guidance rather than a mandatory and binding rule. "The law of the case doctrine is, at best, a discretionary doctrine, which does not constitute a limitation on the court's power but merely expresses the general practice of refusing to reopen what has been decided." *United States v. Williams*, 205 F.3d 23, 34 (2d Cir.), *cert. denied*, 531 U.S. 885, 121 S. Ct. 203, 148 L.Ed.2d 142 (2000) (internal quotations omitted). Its purpose is to "maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Devilla v. Schriber*, 245 F.3d 192, 197 (2d Cir. 2001). The doctrine is based on judicial efficiency, comity among judges, and the need to discourage forum shopping.

Any law of the case inquiry begins by asking whether the issue in question was actually decided in the prior ruling. Courts apply the doctrine only where a prior decision either expressly resolved an issue or necessarily resolved an issue by implication. *Aromony v. United Way of Am.*, 254 F.3d 403, 410 (2d Cir. 2001). A prior ruling will not set the law of the case on issues that do not come within its scope. For example, merely reciting the lower court's findings in one appeal does not set the law of the case for a subsequent appeal. *Id.* at

411. The same is true where the appellate court recites the history of the case in one appeal but never makes a finding regarding the history. *Hale v. Gibson*, 227 F.3d 1298, 1329 n.13 (10th Cir. 2000).

Similarly, denial of summary judgment on a conspiracy claim may decide the sufficiency of the conspiracy claim without deciding the sufficiency of the particular theory underlying the conspiracy claim. *Cefalu v. Village of Elk Grove*, 211 F.3d 416, 423 (7th Cir. 2000) (motion for judgment as a matter of law based on sufficiency of theory underlying conspiracy claim valid where summary judgment was denied because the "evidence sufficed to establish the general elements of conspiracy.").

The inquiry into a law of the case challenge, however, should not end simply because the issue being addressed was decided by a former proceeding. Even where the pertinent issue is the same as that of the previous ruling, the doctrine may not apply. A simple illustration can be seen with a subsequent motion for summary judgment. An amplified record may permit grant of summary judgment where summary judgment was initially denied. *Fisher v. Trainor*, 242 F.3d 24, 29 n.5 (1st Cir. 2001).

A more complex case arises where a jury decision serves as the basis for the law of the case. A jury decision does not establish the law of the case unless the interpretation and quality of the decision are clear. If interpretation of the verdict could differ or there can be no clear conclusion from the verdict, the doctrine should not be used. A recent example can be seen in *Devilla*, 245 F.3d 192. D'Villa¹ brought several claims against the superintendent, commissioner, and several corrections officers employed at the prison where she was incarcerated. D'Villa alleged that Correction Officer Lynch disclosed her HIV and AIDS status and the fact that she was a transsexual to other inmates. *Id.* The claims included a § 1983 claim alleging violations of her constitutional right to privacy, due process and equal protection claims under the Fifth and Fourteenth Amendments, cruel and unusual punishment under the Eighth Amendment, and various state law claims. *Id.* at 194.

The district court dismissed D'Villa's claims against all of the defendants except Lynch and Superintendent Schriber. *Id.* at 195. The district court also dismissed several of D'Villa's claims against Lynch and Schriber including the Eighth Amendment claim

¹ The plaintiff's name is misspelled in the caption of the appellate decision. The proper spelling, D'Villa, is used in the text of the decision.

holding that the defendants were qualifiedly immune from suit. *Id.* at 195-96. The only issues ultimately submitted to the jury were whether Lynch violated D’Villa’s constitutional and state rights to privacy and whether Schriber violated D’Villa’s constitutional privacy rights by failing to properly train Lynch. *Id.* The jury returned a verdict in favor of Lynch but against Schriber. *Id.*

Schriber filed a motion to set aside the verdict based on qualified immunity and arguing the verdict was against the weight of the evidence and inconsistent with the Lynch verdict. *Id.* The district court agreed that the Schriber verdict was fatally inconsistent with the Lynch verdict and set aside the Schriber verdict. *Id.*

On appeal, the court overruled the district court’s earlier ruling as to the Eighth Amendment claim and remanded for further proceedings on the merits. *Id.* at 195. On remand, the district court granted summary judgment in favor of the defendants once again. *Id.* This ruling was based, in part on the earlier jury verdicts because the Lynch verdict showed that the jury either did not believe Lynch made the alleged disclosure or the alleged disclosure could not harm the plaintiff because it was commonly known that she was both HIV-positive and a transsexual. *Id.* at 196.

Based on the Lynch verdict, the district court dismissed the Eighth Amendment claim because injury to the plaintiff is an essential element for the claim. *Id.* In addition, D’Villa did not present any different evidence as to the Eighth Amendment claim and submitting the claim to a second jury would “undermine the integrity of the judicial process if a second jury’s findings were inconsistent with the first.” *Id.*

The Second Circuit Court of Appeals disagreed, ruling that the district court’s reliance on the jury verdicts as the law of the case was improper. *Id.* at 197-98. A jury verdict cannot be used as the law of the case unless its interpretation and quality are clear. *Id.* at 197. Several conclusions could all be equally supported by the Lynch and Schriber verdicts. It could be argued that they are inconsistent because the Lynch verdict necessarily determined that Lynch either did not disclose the information about D’Villa or that the information was already common. *Id.* at 198. Conversely, the Schriber verdict necessarily determines that Lynch violated D’Villa’s rights because Schriber could not be found liable for improperly training Lynch if Lynch did not violate the plaintiff’s rights. *Id.*

Alternatively, the two verdicts can be seen as consistent because the instructions required a finding of intentional injury by the defendants rather than mere negligence. *Id.* It is possible; therefore, that the jury found that Schriber had the necessary intent while Lynch

did not. *Id.* Given the numerous conclusions that could be drawn from the Schriber and Lynch verdicts, under an abuse of discretion standard, the district court erred in relying on the Lynch verdict as establishing the law of the case. *Id.*

Lastly, and perhaps most importantly in any law of the case inquiry, the decision to apply or not apply the law of the case doctrine among courts of the same level “is discretionary and does not limit a court’s power to reconsider its own decisions prior to final judgment.” *Aramony*, 254 F.3d at 410. If a valid reason to reconsider the ruling can be shown, the court has the authority to revisit the issue. The interest of justice may outweigh the principles of judicial efficiency, comity, and the desire to discourage forum shopping underlying the rule of self-disciplined consistency.