STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

Hon. Bruce Morrow
3rd Circuit Court
Wayne County, MI

Docket No. 161839
Formal Complaint No. 102

Respondent Hon. Bruce Morrow's Response to Disciplinary Counsel's Proposed Findings of Fact and Conclusions of Law

Introduction

1. Respondent Hon. Bruce Morrow used sex in a few analogies, just as other lawyers, judges, and legal scholars have done. (*Respondent's Proposed Findings of Fact and Conclusions of Law,* ¶123). He also used the word "fucked" during an in-chambers discussion to describe sex —and one of his listeners was the prosecutor who had just used that word twice in open court and allowed a witness to take the stand with that word on her shirt. (Exhibit 5, June 12, 2019 transcript from *Matthews* trial, p. 57). And he asked two prosecutors about their height and weight, just as he raised a male attorney's height when talking to a jury about bias. (Fishman testimony, Vol. III, pp. 796-98). Those actions were not judicial misconduct. And that is why Disciplinary Counsel tries to twist the facts to turn Judge Morrow into a sexual predator.

2. That effort began with Anna Bickerstaff's lie. Chief James Bivens testified that Ms. Bickerstaff told him that Judge Morrow was trying to hit on her.

(Bivens testimony, Vol. V, p. 1174-75). Under oath, Ms. Bickerstaff tried to deny ever making that statement. (Bickerstaff testimony, Vol. II, p. 422). She also admitted that Judge Morrow did *not* hit on her. (*Id.,* p. 594-95). With this testimony, there can be no dispute that Ms. Bickerstaff made this statement and that it was indeed a lie. Disciplinary Counsel never address that lie, hoping the Master might overlook it. But that lie and its racist connotations must be addressed. History proves that sweeping bigotry under the rug only leads to more bigotry—such as the kind of privilege Ms. Bickerstaff thought she enjoyed when she violated the Master's sequestration order in this case. (Muscat testimony, Vol. II, p. 1235).

3. The Michigan Supreme Court stated the governing law in *Matter of Hocking,* 451 Mich 1; 546 NW2d 234 (1996), a case Disciplinary Counsel fail to address. Under *Hocking,* offensive or "distasteful" words are not judicial misconduct. Once one strips away Ms. Bickerstaff's lie and the racist stereotypes it perpetuated, all that is left of Disciplinary Counsel's allegations are arguably offensive or distasteful words. The Master should apply *Hocking* and hold that there is no judicial misconduct.

Responses to Disciplinary Counsel's Claims

4. The Master ordered that the 2004 and 2005 letters to Judge Morrow would be "allow[ed] into evidence" for one reason only: "for the limited purpose of demonstrating guidance regarding inappropriate sexual language that Respondent had previous received." (*The Master's Decision Regarding Disciplinary Counsel's Proposed Exhibits 10 and 11*). Instead of following the Master's order, Disciplinary

Counsel argue that the letters establish that Judge Morrow "intentionally ignored the prior instruction, and intentionally chose the words and analogies he used with the women." (Disciplinary Counsel's Proposed FFCL, p.15). Disciplinary Counsel's attempt to use these exhibits to establish Judge Morrow's supposed intent is inconsistent with the Master's order, and it is improper.

5. Disciplinary Counsel fill their proposed findings of fact with inflammatory language and false statements. These are some of the most jarring examples of their missing facts, misstated testimony, and misapplied law:

a. They accuse Judge Morrow of "unnecessarily inject[ing] *graphic* sex between males into a case that had nothing to do with sex." (Disciplinary Counsel's Proposed FFCL, p.14) (emphasis added). There was no "graphic sex." Judge Morrow was asking counsel about the reasonable expectation of privacy, and the difference between subjective and objective expectations. (Exhibit 16, *Adrian White* transcript). Contrary to Disciplinary Counsel's brief, Judge Morrow only asked whether he would have an expectation of privacy if he were "having sex with another man in that stall, and we're not talking." (*Id.,* p. 27). That is not "graphic" sex by any measure. Even first-year law students must have the maturity to address constitutional questions about privacy—an area that often involves sex. See, e.g., *Lawrence v Texas,* 539 US 558 (2003) (addressing adult males engaged in consensual sex). Disciplinary Counsel have taken a mild, inoffensive question—the kind of hypothetical that any mature lawyer should be able to handle—and twisted it into something entirely

different.

b. Disciplinary Counsel take the same approach when describing Judge Morrow's conversation with Ms. Bickerstaff. They write that he "inject[ed] *explicit* sex into his conversation with this young woman." (Disciplinary Counsel's Proposed FFCL, p. 6) (emphasis added). That is false. There was no evidence that Judge Morrow described "explicit sex." He mentioned sex. That's it. He used the word "climax" to mean the climax of a *relationship*, not the climax of sexual intercourse. (See Judge Morrow's Proposed Findings of Fact and Conclusions of Law, ¶115(e)). Disciplinary Counsel have taken a reference to sex and twisted it into something entirely different.

c. Disciplinary Counsel write that Lieutenant Griffin "describe[d] a sex act as leading to a 'crescendo.'" (Disciplinary Counsel's Proposed FFCL, p. 3). That was not Lieutenant Griffin's testimony. He actually said, "I remember him [Judge Morrow] saying something with regard to a man and a woman, you know, getting together and then I remember hearing the word 'crescendo.'" The use of the word *crescendo*—a musical term—establishes that the conversation was not the sexually charged conversation that Disciplinary Counsel attempt to conjure from the evidence. (Griffin testimony, Vol. III, p. 751). Disciplinary Counsel have taken Lieutenant Griffin's testimony and twisted it into something entirely different.

d. Writing about Judge Morrow's physical proximity to Ms.

Bickerstaff during their conversation on June 11, 2019, Disciplinary Counsel described them as "intimately … seated." (Disciplinary Counsel's Proposed FFCL, p. 5). Judge Morrow was sitting in the seat that Ashley Ciaffone had just vacated. (*Answer,* ¶7, Ciaffone testimony, Vol. I, p. 38). Yet Disciplinary Counsel attribute nothing inappropriate to Ms. Ciaffone—nor to Officer Griffin, who sat just as close to Ms. Bickerstaff throughout the trial. Moreover, the only objective observer of this exchange—Joe Kurily—testified that Judge Morrow and Ms. Bickerstaff were seated at an appropriate distance from each other. (Kurily testimony, Vol. III, p. 724). Once again, Disciplinary Counsel have taken the facts and twisted them into something entirely different.

e. Disciplinary Counsel's brief repeats the "overtly eyed" canard from their complaint. (Disciplinary Counsel's Proposed FFCL, p. 12). The evidence did not support Disciplinary Counsel's suggestion that Judge Morrow was leering at the prosecutors. Ms. Bickerstaff testified that Judge Morrow looked at her *once* and then looked at Ms. Ciaffone *once*—in the context of assessing their height. (Bickerstaff testimony, Vol. II, p. 408). And what made that single glance so offensive? Rank speculation shaped by racial stereotypes. (Closing argument, Vol. V, p. 1263) ("A woman knows when she's been overtly eyed")). Disciplinary Counsel have taken the facts and twisted them into something entirely different.

f. When Disciplinary Counsel recount Judge Morrow's inquiries to Ms. Bickerstaff and Ms. Ciaffone about their height and weight, they omit a

critical detail—one that dramatically undercuts their false claims. They never mention that, after Judge Morrow misjudged Ms. Ciaffone's height, Ms. Bickerstaff said, "Judge, I'm five-three for context." (Ciaffone testimony, Vol. I, p. 70; Bickerstaff testimony, Vol. II, p. 407). Omitting this statement—one to which both Ms. Ciaffone and Ms. Bickerstaff testified—fundamentally misrepresents Judge Morrow's exchange with the prosecutors. Ms. Bickerstaff's comment shows that she took nothing sexual from Judge Morrow's question; she saw it exactly as it was—an innocuous question about height. By omitting this critical detail, Disciplinary Counsel have taken the facts and twisted them into something entirely different.

g. Disciplinary Counsel state that the governing standard here is an objective one—that the Master should review Judge Morrow's conduct "in an objective light." (Disciplinary Counsel's Proposed FFCL, p. ii, quoting *In re Tschirhart,* 422 Mich 1207, 1209-10; 371 NW2d 850 (1985)). Yet Disciplinary Counsel load their brief with subjectivity, all designed to heighten the pathos and make Judge Morrow appear monstrous. They suggest that the Master should consider the prosecutor's age, gender, and experience. (Disciplinary Counsel's Proposed FFCL, p. 1). They cite Ms. Bickerstaff's "nightmares" and her feeling that she needed to avoid Judge Morrow. (*Id.*, p. 5).[1] They play up Ms. Ciaffone's tears. (*Id.,* p. 10). None of those facts are relevant according to

[1] Given the indisputable evidence that Ms. Bickerstaff lied about Judge Morrow "hitting on" her, Ms. Bickerstaff's nightmares and attempts to avoid Judge Morrow certainly had everything to do with guilt and nothing to do with fear.

the governing legal standard. Disciplinary Counsel have taken the objective analysis required under caselaw and turned it into something entirely different.

h. Finally, Disciplinary Counsel omit the most glaring fact of all: Ms. Bickerstaff lied when she told Chief Bivens that Judge Morrow was hitting on her. (Bivens testimony Vol. V, p. 1174; Bickerstaff testimony, Vol. II, p. 422). This lie and its racist underpinnings have terrible echoes throughout American history. Yet Disciplinary Counsel ignore the stain of this racist lie and its historical context. In that way, they have taken the facts of this case and turned them into something entirely different.

6. The "something entirely different" that Disciplinary Counsel conjure out of missing facts, misstated testimony, and misapplied law is always the same. It is always an attempt to cast Judge Morrow as a sexual predator—even though Ms. Bickerstaff, the architect of the lie that animates Disciplinary Counsel's arguments, admitted that Judge Morrow never "hit on" her. (Bickerstaff testimony, Vol. II, p. 422; 594-95). Disciplinary Counsel have bought into a racist lie and have distorted the record to justify it—and then, compounding the injury, they ask the Master to weigh the facts as if this racist lie never poisoned this proceeding. But it did.

7. The problem is not just that Disciplinary Counsel are perpetuating Ms. Bickerstaff's racist lie. It's that this lie distorts Disciplinary Counsel's entire case, like a fisheye lens on a camera. For example, by furthering Ms. Bickerstaff's racist lie, Disciplinary Counsel have bought into more forms of bigotry. They argue that

Judge Morrow's hypothetical involving two men having sex was an "inject[ion] of graphic sex" into the discussion. (Exhibit 16, *Adrian White* transcript, p. 27). Characterizing the mere mention of two men having sex as "graphic" is deeply homophobic. (Is Justice Kennedy's opinion in *Lawrence* "graphic" because it mentions two men having sex?) Similarly, Disciplinary Counsel note that Judge Morrow asked one "female APA" who was "wearing a hijab" about the color of her armpit hair. (Disciplinary Counsel's Proposed FFCL, p.14). Their implication is that "religious modesty," as they put it, makes the attorney more fragile—that one should apply different standards to people, depending on the degree to which they manifest "religious modesty." A religious attorney can handle frank discussions as well as an areligious attorney. And women do not need extra protection, as Disciplinary Counsel argue in relation to Bickerstaff, Ms. Ciaffone, and the Muslim prosecutor. The notion that certain female attorneys are more fragile or more likely to take offense is the product of misogyny. Disciplinary Counsel's insistence that certain attorneys need protecting because of their gender or their religion demonstrates how profoundly Ms. Bickerstaff's lie and its underlying bias have poisoned these proceedings.

8. In addition to distorting the factual record, Disciplinary Counsel paint an inaccurate picture of the relevant law. They rely on two cases in which a judge was *actually* hitting on an attorney: *Matter of Del Rio,* 400 Mich 665; 256 NW2d 727 (1977), and *In re Ford,* 674 N.W.2d 147 (2004). Nothing remotely similar happened here. The record established beyond dispute that Ms. Bickerstaff lied when she said that Judge Morrow was "hitting on" her. By relying on *Del Rio* and *Ford,* Disciplinary

Counsel are perpetuating Ms. Bickerstaff's falsehood and its racist connotations.

9. The other two cases cited in Disciplinary Counsel's brief are no more relevant than *Del Rio* and *Ford*. Disciplinary Counsel write that, in *In re Trudel,* 465 Mich 1314; 638 NW2d 405 (2002), "the Court ruled that a judge committed misconduct when he altered a subordinate's screensaver message to say something sexual." (Disciplinary Counsel's Proposed FFCL, p. 3). That makes it sound like a judge commits misconduct whenever they say "something sexual." But here's what actually happened in *Trudel*: the judge altered a subordinate's screensaver from "Ginger Rogers did everything Fred Astaire did, but backwards and in high heels" to "Ginger Rogers did everything Friend Astaire did, but on her back and in high heels." *Trudel,* 465 Mich at 406. That is a deeply misogynistic message, one that turns Ms. Rogers from an entertainer into a sexual object. Worse, it suggests that Ms. Rogers was an entertainer *because* she was a sexual object. It has nothing in common with Judge Morrow's attempt to educate with analogies that mentioned sex.

10. Then Disciplinary Counsel cite *In re Servaas,* 484 Mich 634; 774 NW2d 46 (2009), in which "a judge committed misconduct when he drew two lewd pictures on notes attached to two court files, and commented on the small chest size of a female employee." (Disciplinary Counsel's Proposed FFCL, p. 16). Breasts are secondary sex characteristics; height and weight are not. The facts of this case are nothing like *Servaas*. Despite Disciplinary Counsel's false argument, Judge Morrow never said anything "graphic" or "explicit." He did mention the manner in which the *Matthews* defendant had sex with the victim—but only because that issue was relevant to the

case. (*Respondent's Proposed Findings of Fact and Conclusions of Law,* ¶78). It was no more improper than Justice Kennedy's reference to "anal sex" in *Lawrence,* 539 US at 562.

11. Remarkably, Disciplinary Counsel fail to address the one case that is directly on point: *Matter of Hocking,* 451 Mich 1; 546 NW2d 234 (1996). That omission is all the more remarkable because Judge Morrow's counsel referenced that opinion in his closing argument. (Closing argument, Vol. V, p. 1274). Disciplinary Counsel fail to address *Hocking* for the same reason they fail to acknowledge Ms. Bickerstaff's racist lie: it fundamentally undercuts their position in this case. In *Hocking,* the Michigan Supreme Court declared that the respondent's "tasteless" comments—statements that were "undoubtedly offensive to the sensibilities of many citizens"—were not judicial misconduct. *Id.* at 14. The Court stressed that "every graceless, distasteful, or bungled attempt to communicate the reason for a judge's decision cannot serve as a basis for judicial discipline." *Id.* at 12. These holdings undermine Disciplinary Counsel's attempt to turn Judge Morrow's supposedly "distasteful" words into judicial discipline.

12. With Ms. Bickerstaff's lie and racial stereotypes removed, the record establishes only that Judge Morrow used words that some find offensive:

a. Judge Morrow used analogies involving sex. They were no more offensive that the Noel Coward "making love" quote about footnotes or the foreplay analogy that appears in judicial opinions. *Smith v. J.I. Case Corp.,* 163 F.R.D. 229, 232 (E.D. Pa. 1995) ("Procedural foreplay has become a cottage

industry."). His statements were not graphic. And there is no evidence that Judge Morrow had any intent except a didactic one.

b. Judge Morrow used the word "fucked" twice during an in-chambers conversation. It was no more offensive than when Ms. Ciaffone used that word twice during her closing argument in *Matthews.* (Exhibit 5, June 12, 2019 transcript from *Matthews* trial, p. 57). In any event, the Michigan Supreme Court held that using "distasteful" words is not judicial misconduct. *Hocking,* 451 Mich at 12.

c. Judge Morrow mentioned "doggy style" sex. That's because it was relevant to the legal issues he was discussing with Ms. Ciaffone—the definition of "normal sex" and its implications for DNA testimony in the *Matthews* case. (*Respondent's Proposed Findings of Fact and Conclusions of Law,* ¶78). It was not judicial misconduct. *Hocking,* 451 Mich at 12.

d. Judge Morrow chuckled at the defendant's exaggerations during the *Matthews* trial and made a reference to "what he was working with." Some might find that distasteful. But a distasteful comment is not judicial misconduct. *Hocking,* 451 Mich at 12.

e. Judge Morrow did ask Ms. Ciaffone and Ms. Bickerstaff about their height and weight. Disciplinary Counsel try to turn this exchange into something sexual by omitting Ms. Bickerstaff's comment about using her height for "context." (Bickerstaff testimony, Vol. II, p. 408). The full record—viewed without the distortion of Ms. Bickerstaff's racist lie about Judge

Morrow "hitting on" her—shows that there was no judicial misconduct.

13. There is no evidence at all that Judge Morrow treated anyone differently because of their gender. Although Disciplinary Counsel avoid this undisputed fact, William Noakes was part of the audience in Judge Morrow's chambers when Judge Morrow said supposedly offensive things about the defendant and about voir dire. The accusation of gender discrimination is another distortion of the record. Moreover, the suggestion that certain topics are off-limits in front of women—the idea that female attorneys are more fragile—is a step backwards, not forwards. It only cements prejudice.

14. Finally, Disciplinary Counsel ask the Master to infer something improper about Judge Morrow's motives because he referenced sex in conversations with the prosecutors "even though the national climate has very publicly become *much* less tolerant of such conduct by men in power since 2005." (Disciplinary Counsel's Proposed FFCL, p. 15) (emphasis in original). That argument is an attempt to subtly (or not-so-subtly) link Judge Morrow to sexual predators like Harvey Weinstein. It is unfortunate that Disciplinary Counsel fail to address the "national climate" over the past year concerning racism. Again and again, America bore awful witness to the violence that results when those wielding the machinery of state fail to address their racist presumptions and unconscious biases. Millions of Americans took to the streets in 2020 to demand change, to force an acknowledgment of the extent to which systemic and overt racism persist in America. The shocking deaths of George Floyd and Breonna Taylor and Ahmaud Arbery and far too many more

proved that America has yet to address racism with open and honest eyes. By failing to acknowledge Ms. Bickerstaff's lie and its consequences, Disciplinary Counsel would postpone that honest reckoning even further.

15. Ms. Bickerstaff's conduct in this case shows the consequences of failing to address prejudice and privilege. Before Ms. Bickerstaff testified, the Master told her that she was prohibited from discussing her testimony with any other witness. (Vol. II, p. 373). The Master explained that this obligation applied until the proceedings were over. (Vol. II, p. 372). The Master also warned that failing to observe the order "is grounds to exclude a witness or exclude testimony given by that witness prior to the discovery of the failure or the violation." (Vol. II, p. 373). Mr. Muscat—who has been listed as a witness since October 2020—testified that Anna Bickerstaff spoke to him about her testimony while these proceedings were ongoing. (Muscat testimony, Vol. V, p. 1235-36). The evidence proves, therefore, that Ms. Bickerstaff knowingly violated the Master's order. Yet Disciplinary Counsel fail to devote a single word to Ms. Bickerstaff's breach of the sequestration order. Ms. Bickerstaff's belief in her impunity—and Disciplinary Counsel's failure to acknowledge her serious breach—highlight how important it is to address racial bias openly and forcefully.

16. Exorcise Ms. Bickerstaff's lie, the racist stereotypes that shaped it, and its pernicious effect on this case, and what's left are some allegedly distasteful words. Justice Morrow did not "hit on" the prosecutors. He was not "overtly eyeing" them. He did not derive a "feeling of pleasure or power or control" when speaking to the prosecutors. His actions are nothing like the respondents in *Del Rio, Trudel, Ford,* or

Servaas. The truth is that Judge Morrow used words that some find distasteful. That is all. And that is not judicial misconduct. *Hocking,* 451 Mich at 12.

Conclusion

17. For these reasons—as well as those stated in Judge Morrow's proposed findings of fact and conclusions of law—the Master should hold that Disciplinary Counsel failed to establish judicial misconduct.

Respectfully Submitted.

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