STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

IN RE HON. TRACY E. GREEN

3rd Circuit Court
Wayne County, MI

FC 103

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DISCIPLINARY COUNSEL'S ANSWER TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT

Disciplinary counsel address respondent's specific objections to the Master's report, then address respondent's due process and procedural fairness arguments.[1]

One of respondent's recurring objections is that the Master did not support her findings with citations to the record. Disciplinary counsel agree that the Master's report would be more helpful to the Commission if it included those citations. It is because those citations were missing that disciplinary counsel's initial brief made it a point to supply the citations for the parts of the record that supported the Master's findings. While disciplinary counsel agree with respondent's observation about the Master's report, disciplinary counsel do not agree that the absence of citations to the record diminishes the reliability of the Master's findings. As disciplinary counsel note in our initial brief, the record supports all of those findings, and a comparison of the record and the Master's findings demonstrates that despite the absence of citations, she reviewed the record with care.

Respondent's requested remedy for this and other perceived deficiencies in the Master's report is to hold a new hearing. Respondent misunderstands the Master's role. The Master is to gather evidence for the Commission, and provide a report that usefully summarizes that evidence. The Commission reviews the evidence *de novo*. MCR 9.244(B)(1). To the extent the Master's report is not as useful as it might be, that merely increases the Commission's burden to review the evidence. It does not call into question any part of the hearing.

[1] This is opposite the organization of respondent's objections.

Respondent's Objection No. 1: The Master Recast Counts I & II of the Amended Complaint

Respondent objects that while the amended complaint does not allege that respondent concealed "corporal punishment," or made false statements about her knowledge of "corporal punishment," these things were the focal point of the Master's report. (Brief, pp 31-37) Respondent's concern is misplaced. The Master used the phrase "corporal punishment" as shorthand for slapping, belting, spanking, and other physical punishment, all of which *were* identified in the complaint. What matters is that the Master found that the evidence established many of the specific allegations of the complaint. None of those findings were confused by the Master's use of the phrase "corporal punishment," and the Master's use of this shorthand did not alter the charging language of the complaint.

Respondent makes a similarly baseless challenge to the Master's use of the word "abuse" in her report. Respondent argues that the Master "jettison[ed] the phrase 'Child Abuse' as is used in Counts I and II of the Amended Complaint and, instead, generally refers to "abuse" throughout the balance of her report." (Brief, p 33) She contends that "the claims against Judge Green are premised upon the crime of 'child abuse' which is a phrase of art in Michigan jurisprudence and not the ambiguous concept of abuse.'" (*Id*.)

The Master's report gives no indication that by referring to "abuse" with a single word, she was referring to anything other than the child abuse that was the entire subject of the CPS investigation and the Juvenile Court hearing, and nearly all of the hearing before the Master. It is not as though there were multiple types of abuse at issue in this case, and that the Master's choice of words could somehow be confusing.

Further, respondent appears to be mistaken that "child abuse" is a "term of art" that is only defined by the statute in the Michigan laws that prohibit the crime of child abuse. Respondent does not cite any statute or statutes that she believes contain this definition. What the criminal law actually prohibits is "physical harm to a child," defined as "any injury to a child's physical condition." MCL 750.136b(1)(e) The Master's use of "abuse" to encompass "physical harm" is certainly reasonable, and the Master's findings are completely consistent with this definition.

Respondent also appears to be making a different argument: that the Master cannot find that the boys were victims of child abuse unless she finds that there was child abuse.[2] But no misconduct allegation in the complaint rested on whether or not the boys were victims of child abuse. The evidence showed that they were, but the charges in the complaint did not require such a finding. For purposes of the judicial disciplinary proceeding, the Master did not have to decide whether respondent's son violated the criminal statute prohibiting child abuse.

Respondent argues even if she had known about her son's use of corporal punishment, there was nothing she could lawfully or ethically have done to address it. (Brief, p 32) Respondent is wrong,[3] but more importantly, her objection is irrelevant. The complaint did not charge her with failing to do something about the abuse. It charged her with *concealing* evidence of abuse. That is a very different thing, and the Master found that she did so.

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[2] The Master considered it beyond the scope of her mandate to determine whether there was child abuse. (Report, p 8)

[3] Respondent claims that addressing the corporal punishment with Judge Cox would have been an improper ex parte communication. She surely knows better. She could easily have informed Judge Cox in a way that alerted the parties and thereby avoided any ex parte issue. Respondent could also have called Child Protective Services. As a child welfare attorney who represented abused and neglected children in Juvenile Court, she was very familiar with that agency and its obligation to investigate reports of suspected abuse or neglect.

Next, respondent argues that the Master's report includes three irrelevant facts:

1) That the boys were victims of corporal punishment. This was hardly an irrelevant fact. It goes to respondent's knowledge and intent when she concealed evidence of abuse. It is highly relevant to her false testimony in Juvenile Court. It is highly relevant to whether her answers to the Commission's questions were honest or dishonest.

2) That respondent assisted her son's attorney in preparing his defense before respondent became a judge.[4] Respondent says, "[t]here seems to be no other reason for mentioning [her son's attorney] except to imply that Judge Green did something wrong by discussing a child protection case that involved her son and grandchildren."

There are two problems with respondent's claim. The first is her characterization that all she did was "discuss" the case with the attorney. What she actually did is choose the attorney, who (unlike respondent) had no experience in this area, and then direct the entire defense effort. (Proposed Findings, pp 43-44) It is rather breathtaking to dismiss this as just "discussing." Second, respondent's intense involvement in her son's defense against charges that he abused respondent's grandsons was very relevant to whether respondent was so aligned with her son that she repeatedly acted against the best interests of her grandsons, as by concealing evidence that he abused his grandsons. The depth of respondent's commitment to her son demonstrated the extent to which she was willing to go to protect him, which is an issue that is in the background of this entire case.

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[4] There is no evidence as to the timeline of when respondent began assisting Ms. Richard, who was her son's attorney, and when she stopped doing so. There is no evidence that she did not assist once she became a judge in January, 2019. The juvenile court trial was held in March, 2019.

3) That respondent's son was convicted of two counts of second-degree child abuse.[5] (Brief, pp 32-33) Once again, respondent is wrong about the relevance of this evidence. From the Master's report it does not appear that this observation was central to any of her findings, but it was relevant in any event in light of respondent's claim that she did not believe that the evidence of corporal punishment she saw constituted abuse.

Although respondent now claims this evidence is irrelevant, she did not object to its admission at the hearing, and even now does not claim that it was inadmissible. Moreover, she does not explain how she is unfairly prejudiced by this evidence, or by the Master including it in her report.

Respondent also complains that the Master did not cite rules, statutes, or case law when she made the findings of fact on page 7 of her report. (Brief, p 34) The largest hole in respondent's argument is that the Master was making findings of *fact*, and analyzing the *evidence*.[6] Citations to authority do not enhance findings of that nature – those findings depend solely on judgments about credibility and the weight to accord to the evidence.

In particular, respondent finds it significant that with respect to Count I, the Master did not make a single finding that child abuse existed or that respondent covered up abuse. Inasmuch as the complaint did not charge respondent with concealing abuse, respondent is arguing an issue that does not exist. Rather, the complaint charged respondent with concealing *evidence* of abuse.

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[5] Disciplinary counsel erroneously wrote in its Brief in Support of and in Opposition to the Master's Findings of Fact and Conclusions of Law that Davis-Headd was convicted of child abuse *third* degree. He was actually convicted of child abuse *second* degree.

[6] Another hole in respondent's argument is that there is nothing in the court rules requiring a Master to cite to case law or a statute when writing a report, MCR 9.236, and respondent has provided no authority requiring a Master to do so.

By the same token, respondent is wrong to criticize the Master for citing no authority for her conclusion that a finding of child abuse was a "threshold issue." The Master was simply using the power of logic – since respondent was charged with concealing evidence of abuse, the question before the Master concerned *evidence* of abuse. There is no rational reason the Master had to find that actual abuse existed before she could find that respondent concealed *evidence* of abuse. As the Master succinctly stated, "evidence of abuse is not the same as incontrovertible proof of abuse." (Report, p 8; Brief, p 35) That is, respondent could (and did) conceal evidence of abuse, whether or not that evidence sufficed to prove beyond a reasonable doubt ("incontrovertible proof") that there was abuse. There is no authority for such a common sense analysis, and respondent's focus on the absence of authority appears to be an effort to shift the focus away from what the evidence showed.

Next, respondent argues "there is no legal finding or adjudication cited in the record that, prior to June 24, 2018, [the boys] were victims of physical child abuse," and "[the boys] did not testify to specific factual details establishing . . . that they were victims of child abuse before June 24, 2018." (Brief, p 36) Respondent is again substituting a false question for the real question. It does not matter whether there was a "legal finding or adjudication" of abuse. To the extent abuse matters, the issue is whether there was significant *evidence* of abuse. And respondent is simply wrong when she claims that the boys did not testify to specific abuse. The marks on Max's face that respondent tried multiple times to conceal; the evidence of beltings; and the boys' fear of their father's punishment; all were evidence of abuse that the Master found were known to respondent. (Proposed Findings, pp 6-7) The evidence also showed that respondent was aware of marks on Russell's body, and additional marks on Max's body, though the Master did not address this evidence. (Proposed Findings, pp 6-7; Disciplinary Counsel's

Brief in Support of and in Opposition to Master's Findings of Fact and Conclusions of Law, p 7) The evidence showed abuse, whether or not there was the happenstance of any adjudication of abuse.

As it turns out, of course, there *was* also an adjudication of abuse. Respondent's son was convicted of abusing the boys between December, 2017 and June 24, 2018. In another part of her brief, respondent argues that this finding had no place in the Master's report, but that is puzzling, because this finding provides the very adjudication of abuse that respondent claims is missing.

Respondent finds it significant that the Master acknowledged that a slap and handprint have never been determined by a court to have constituted "abuse," and that expert witness Nancy Diehl testified that she was unaware of any basis in fact or law that a slap leaving a handprint constituted abuse. (Brief, pp 37-38) Respondent does not cite to the record in support of her recapitulation of Ms, Diehl's testimony, perhaps because she has mischaracterized what Ms. Diehl said by taking her testimony out of context. Ms. Diehl testified she has never seen a case in which a single slap was found to be child abuse because she has never seen a case that was *charged* based on one slap. (Diehl, 10-13-21, p 1680/10-19) For the reasons at page 21 of disciplinary counsel's proposed findings, the mere fact that no one has chosen to prosecute a case in which a slap to the face was found to be abuse does not mean the slap is not abuse. It is equally true that there is no case finding that a single slap is *not* abuse – the slate is clean with respect to case law. But that is irrelevant, because a statute makes it a crime to cause any physical harm to a child, and even the single slap that respondent acknowledges caused physical harm to Max.

Respondent argues that she "was not involved in any pending case at any time related to the allegations," so it would have been impossible for her to prejudice the proper administration of justice. (Brief, p 38) Her argument is incorrect. There is no requirement in the rules that there be a pending case or that respondent must be a party to a pending case. MCR 9.104(1), MRPC 8.4(c) However, respondent *was* called as a witness for her son in the Juvenile Court trial, and her false testimony there was prejudicial to the proper administration of justice, as was her concealing evidence of abuse in the first place.

Respondent's OBJECTION NO. 2: *A Concise Answer to a Specific Question without Elaboration Beyond the Scope of the Question Does Not Render the Answer Untruthful or Deceitful*

Respondent insists that her answer to Question 14 in Exhibit 3 was truthful and that her answer to Question 38 in Exhibit 3 is consistent with her answer in Question 14. Question 14 asked multiple variations on whether respondent was aware that her son used corporal punishment on his children before June 24, 2018. She answered she was aware Max had been slapped in the face and saw a handprint, and that her grandsons told her "in the past" that they had been spanked by their father. In her testimony before the Master, she explained that "in the past" meant prior to when Judge Cox imposed a "no corporal punishment" order in 2015. The Master disagreed, and found that respondent was aware of the corporal punishment *after* Judge Cox entered that order. (Report p 20)

Question 38 asked whether respondent not inquiring into the details of abuse about which her grandchildren informed her, and not protecting her grandchildren from future abuse, was irresponsible or improper conduct that violated the canons. She answered:

> I was never, under any circumstances or in any respect, aware of, or told by anyone, the details of alleged abuse of my grandsons at the hands of their father. Specifically, I was never advised about alleged abuse by my grandsons.
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> * * * * * * * * *
>
> As related to being spanked, I have no recall or any specific occasion that this was mentioned by my grandsons. I was not, however, aware of any specific situation or complaint from my grandchildren concerning being spanked for misbehavior. Further, I never saw any signs that my grandchildren had been spanked by their father.

In other words, respondent's Answer 14 acknowledged knowledge of abuse and spankings, while her Answer 38 disavowed any such knowledge.

Respondent also insists that her testimony in Juvenile Court was truthful. She argues that she was questioned about whether she used makeup to cover "bruises," and because she did not see any "bruises," her answer that she did not cover "bruises" with makeup was truthful. (Brief, pp 41-42) The Master quite properly found to the contrary. As noted on page 12 of this brief, what respondent saw fits the dictionary definitions of a bruise. There was substantial other reason, as well, to doubt that respondent believed what she testified to. (Proposed Findings, pp 24-27, 42-44) The evidence is clear that respondent's denial that she covered bruises with makeup was false and she knew it to be false when she said it.

Respondent claims that she was equally truthful with Mr. Elrick when she told him that it was "utterly preposterous" to suggest that she had ever concealed a "bruise" with makeup (without acknowledging that she had concealed a "handprint" with makeup). (Exh. 7; Brief, p 42) The Master did not address the truthfulness of respondent's statement to Mr. Elrick and it is

not charged as a false statement in the complaint, but the same evidence that showed that respondent lied in Juvenile Court shows equally that she lied to Mr. Elrick.[7]

Respondent's intent to deceive is revealed by the emphasis she gave her statement to Mr. Elrick. If she was truly distinguishing carefully between "bruises" and other marks in her own mind, as she claims, it is not likely that she would have so aggressively stated that it was "utterly preposterous" to suggest that she concealed a bruise, while not bothering to distinguish the difference between a bruise and the very similar thing she thought she had really concealed. If she were not trying to mislead Mr. Elrick, she would have appreciated the nuance that many people might think a "handprint" *could* be a bruise, and she would have acknowledged that distinction with her choice of words. It is telling that her actual choice of words negated any such nuance.

Respondent calls the following two statements by the Master "inconsistent": a) the Master's statement that did not fault a witness for failing to volunteer information that was specifically requested; and b) the Master's finding that

> Respondent's testimony, admissions, and other statements of her knowledge and actions related to abuse in this case, when taken together paint a portrait of a legal professional using a sophisticated mastery of language to mislead or misinform CPS, the Juvenile Court, and the Commission about her knowledge of Davis-Headd's treatment of Max and Russell while still attempting to preserve plausible deniability concerning false statements. (Report p 23, Brief, p 43)

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[7] Respondent claims that she successfully impeached Mr. Elrick with respect to his memory of what she had said to him. (Brief, p 42) One can, of course, review the hearing transcript at pp 200-204 to determine whether counsel was able to impeach Mr. Elrick, but the whole effort was irrelevant. Mr. Elrick's recollection did not matter. Respondent's exact words were recorded in Exhibit 7, and respondent did not successfully impeach her own words.

Respondent seems not to understand the Master's crystal clear language on pages 22 and 23 of her Report, where she explained why she found that respondent intentionally misled CPS, the Juvenile Court and the Commission. On those pages, the Master discounted respondent's claim that she had "simply forgotten" she put makeup on Max, and her claim that the questioning in Juvenile Court did not spark her memory about putting makeup on Max. The Master found it significant that though respondent claims now that her memory failed her, she never told the Juvenile Court that she did not remember. Further, the Master noted that respondent called her own grandson a "liar" for saying respondent had concealed his "bruises" with makeup, without even considering the (obvious) possibility that Max may have thought his marks were "bruises" while respondent considered them mere "marks."

After reviewing this history, the Master concluded that respondent's attempt to characterize a handprint she concealed as a mere "mark" rather than a "bruise" was respondent's attempt to explain her prior false statement. The Master's findings were supported by the evidence. Those findings show how the Master could, as a general principle, not fault witnesses for being careful with their language, yet conclude that respondent used *her* language skills to mislead rather than to be careful.

Respondent faults the Master for consulting three different dictionaries for the definition of the word "bruise," and argues that the Master simply should have accepted Max's description of the handprint on his face as "pinkish." (Brief, pp 43-44) By making this argument, respondent is claiming the Master should have ignored all evidence that the handprint was more serious than the fleeting "pinkish" mark respondent intimates it was. As noted in disciplinary counsel's proposed findings, the mark was severe enough that it stayed on Max's face long enough for Max to be driven from his home to respondent's home, at which time it was still severe enough

that respondent felt compelled to conceal it with her makeup. Even then, it was severe enough that when respondent tried to conceal it with makeup, she was not successful in doing so. (Proposed Findings, pp 42-43) That is more than a fleeting "pinkish" mark.

Further, contrary to the inference in respondent's brief, Max never conclusively testified that the handprint was "pink." His testimony was, "I guess it was like pinkish. I don't know." (Max, 7-21-21, p 652/24-25) Not satisfied with that noncommittal answer, at the next hearing date respondent's counsel tried to get Max to say the handprint was pink by suggesting as much in a leading question. Max never answered the question. (Max, 8-23-21, p 1046/19-24) Respondent is wrong when she argues that the Master should have ignored everything but Max's statement that the mark was "pinkish," because his testimony is hardly definitive. For the reasons we have explained, the Master correctly found that the mark was a "bruise."

As disciplinary counsel detail at pp 18-26 of our objections to the Master's report, the record supports those false statement findings the Master did make, and also shows that respondent made the other false statements that were charged, with the exception of the false statement charged in paragraph 21 of the complaint.

Respondent's OBJECTION NO. 3: The Master Failed *to Consider All of the Evidence and Weigh Credibility in Light of All of the Evidence*

Respondent notes the absence of citations to the record in the Master's report, and on that basis alone, questions whether the Master fulfilled her duty to review all the evidence and consider all the testimony. (Brief, p 49) She complains that the Master's report only addressed Max's, Russell's, and respondent's testimony, and not that of the other witnesses.

Respondent is correct that the Master did not explicitly address the testimony of respondent's character witnesses or her family members or the boys' teachers. Although the

Master did not mention respondent's witnesses, there is no reason to suspect that she failed to consider their testimony. For the most part, their testimony was:

- irrelevant (e.g., the boys' teachers did not see signs of abuse, but the teachers never saw the boys undressed, and stopped seeing the boys prior to the period of abuse that was alleged in respondent's son's criminal case);
- of minimal evidentiary value (e.g. respondent's character testimony); or
- of suspect motivation (e.g. respondent's husband's and daughter's testimony).

The Master's report was 27 pages long, thorough, and well-reasoned. Respondent has no legitimate reason to allege that the Master negligently or recklessly ignored the evidence favorable to respondent. It is much more likely that the Master considered that evidence and simply found it not persuasive.

The Master was right to so conclude. For the reasons stated at pp 46-47 of disciplinary counsel's proposed findings of fact, the witnesses respondent called did not raise a serious question whether respondent committed the misconduct with which she was charged in the complaint.

Respondent claims that Ms. Diehl's testimony should have "helped" the Master determine "that the boys' statements and testimonies were not reliable due, in large part, to the many deviations from proper implementation of the [forensic interview] protocol [for interviewing child witnesses]." (Brief p 48). She does not explain what part of Ms. Diehl's testimony she is referring to, and does not cite any. She is wrong about Ms. Diehl's testimony.

Ms. Diehl testified about the forensic protocol in general; she was actually explicit that she did not testify about the specifics of this case. (Diehl, 10-13-21, p 1689/2-4) Only disciplinary co-counsel testified about the forensic interview protocol as it applied to this case. (Weingarden,

11-19-21, p 2091/10-2093/13, 2095/4-2096/1, 2098/20-2099/24, 2107/18-2018/13) Co-counsel's testimony showed that she was well-trained in the use of the protocol. She trained police officers, CPS workers, and prosecutors in the use of the protocol, and she was a contractual employee at KidsTalk who met one-on-one with forensic interviewers to help them improve their skills. She has conducted hundreds, if not a thousand interviews of children. Co-counsel explained how she complied with the protocol's requirements in this case, and explained how she did the hypothesis testing required by the protocol. (Proposed Findings, pp 39-41) Ms. Diehl's testimony was too non-specific to call the boys' testimony into question, while co-counsel's testimony confirmed why the answers the boys had given were from their own memories, rather than planted, and *were* therefore reliable.

WHAT RESPONDENT DID NOT OBJECT TO

It is worthwhile to consider the findings the Master made to which respondent did *not* object:

- Respondent did not object to the Master's twelve findings that she was not credible.
- Respondent did not object to the Master's ten findings on page 7 of her report that set forth her awareness of the acts that constituted her son's abuse of her grandsons.
- Respondent did not object to the Master's finding that she has a pattern of "asserting nonbelief in things that she is told about Davis-Headd's behavior and Respondent's careful use of language showing an attempt to avoid admitting any knowledge that would lead to liability." (Report, pp 8-9)
- Respondent did not object to the Master's finding that she took "advantage of Max's obvious desire to maintain a relationship with her and use it to influence him with her theory of the case." (Report, p 16)

- Respondent did not object to the Master's finding in Count III that respondent falsely claimed that she had disclosed to Ms. Apple at CPS that she applied makeup to conceal a handprint on Max's cheek. (Report, p 25)
- Finally, respondent did not object to the Master's findings that her claimed lack of memory as to three significant facts further undermined her credibility. (Report, p 26)

DUE PROCESS & FUNDAMENTAL PROCEDURAL FAIRNESS

Respondent makes several arguments that have nothing to do with the misconduct with which she is charged, and have little or nothing to do with the evidence that shows she committed that misconduct. None of her arguments have merit.

For example, respondent notes that the burden of proof in judicial discipline cases is supposed to be on disciplinary counsel. But, she argues, because this case turned on the credibility of her and her grandsons, "a burden of self-defense was foisted upon her."[8] (Brief, p 2) This statement is so cleverly wrong it might qualify as sophistry. The burden of proof clearly and obviously always remained on disciplinary counsel. The fact that disciplinary counsel were able to meet its burden with the boys' testimony does not mean any burden of self-defense was "foisted" upon respondent, any more than in any criminal case – where the prosecution's burden is the much higher proof beyond a reasonable doubt – in which a defendant has to choose whether or not to offer evidence to oppose the prosecution's evidence.

[8] Respondent is correct that the testimony of respondent and her grandsons was central to Counts I & II. However, the credibility of respondent's grandsons had nothing to do with Count III. Even with respect to Counts I & II, though, there was substantial corroboration for the boys' testimony.

Respondent also argues that the structure of the Commission is unconstitutional. (Brief, pp 3-7) Her argument has been made to the Supreme Court several times since the Commission came into being in 1969. The Court has rejected it every time, making clear that the investigatory and adjudicative jurisdiction of the Commission in no way violates a respondent's due process rights. *See, e.g., In re Mikesell*, 396 Mich 517, 531 (1976); *In re Chrzanowski*, 465 Mich 468, 486 (2001); *Matter of Del Rio*, 400 Mich 665, 690 (1977); and *In re Morrow*, No. 161839, 2022 WL 128125 at *5–6 (Mich, January 13, 2022).

Respondent argues that *Williams v Pennsylvania*, 136 S Ct 1899 (2016), demonstrates that the Commission procedure is unconstitutional. The Michigan Supreme Court rejected that argument in *In re Morrow*. The Court ruled that *Williams* did not overrule [*Withrow v Larkin*, 421 US 35, 58 (1975)], "and *Withrow* still strongly supports the constitutionality of our judicial discipline scheme." (2022 WL 128125 at * 7)

Respondent argues that *Withrow* left open the possibility that there could be "special facts and circumstances present . . . that the risk of unfairness is intolerably high in a particular matter." (Brief, pp 5-6) Respondent argues that disciplinary co-counsel Weingarden's role of investigator and prosecutor is one of those "special facts and circumstances" that renders the risk of unfairness in this case intolerably high. She does not explain what those "special facts and circumstances" are, other than to assert that co-counsel:

> as investigator, was free to ignore and, in at least one instance conceal, any evidence favorable to Judge Green.[9] In essence, Ms. Weingarden was able to 'cherry-pick' the evidence she deemed favorable to her theory of the case that she knew she would, ultimately, also prosecute." (Brief, p 6)

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[9]. Disciplinary Counsel responds to respondent's allegation that Ms. Weingarden concealed evidence on pages 16-17.

Respondent makes a disturbing allegation that disciplinary co-counsel committed misconduct by "cherry-picking" evidence, but she does not even purport to identify any evidence to support such a troubling charge. Nor can she. The record does not support her, of course, because she never raised this issue before the Master. If the Commission were to reopen the record to explore respondent's accusation, the evidence would show that no evidence was "cherry-picked."

In fact, respondent does not and cannot explain how co-counsel's role in the investigation of this case was different from any other disciplinary counsel's investigative role in prior cases. Co-counsel's role is not a "special fact or circumstance," and it certainly did not create an "intolerably high" risk of unfairness. Perhaps to try to fill that hole, respondent argues that co-counsel's "personal involvement as an investigator in [the] critical decision . . . whether to seek the Commission's permission for filing a complaint" created an impermissible risk of actual bias. (Brief, p 6) Not only does respondent fail to offer a scintilla of evidence of bias, her argument shows how completely she misunderstands the Commission's process. Staff do not "seek the Commission's permission" to file a complaint against a judge. Staff present evidence to the Commission, and the Commission makes its decision whether to file a complaint in a meeting that purposely excludes staff.

Respondent also argues, "The merging of the executive director and general counsel roles also left Judge Green little recourse before a neutral decisionmaker regarding any complaints concerning the fairness of the investigation." (Brief, p 6) Apparently, respondent is arguing that she could not approach the executive director with any concerns about the fairness of the investigation because he is also the Commission's general counsel. She does not explain what complaints she had about the investigative process, whether she tried to discuss those complaints

with the executive director, or why, if she was dissatisfied with the executive director's handling of her unspecified complaints, she could not have raised them directly with the Commission.

Respondent's Claim That Co-counsel Failed to Disclose and to Recuse Due to Conflict of Interest

In another effort to demonstrate that the these proceedings were somehow unfair, respondent alleges that when disciplinary co-counsel worked for the Wayne County Prosecutor's Office, she prosecuted a case involving respondent's juvenile relative who was erroneously charged criminally as an adult. (Brief, p 7) Assuming this were true, it has no conceivable relevance to respondent's case, and certainly does not demonstrate any unfairness in these proceedings. The essence of respondent's argument is that when a prosecutor dismisses a case against a defendant, that prosecutor must not be involved in any future case involving any of that defendant's relatives. There is obviously no such principle.

In fact, co-counsel was not the assistant prosecutor assigned to the case against respondent's relative. Co-counsel was supervisor of the unit to which the case was assigned, and her only contact with the case was to dismiss it in the adult criminal court when it was discovered that the defendant had been a juvenile when he committed the crimes charged.

Respondent argues that Ms. Bressler, the boys' mother, publicly accused co-counsel (when she was a Wayne County APA) of dismissing the case against respondent's relative because of respondent's influence. (Brief, pp 7-8) From that premise, she argues that co-counsel was motivated in this case to avoid having Ms. Bressler accuse her of making *another* decision favorable to respondent's family, causing her to pursue the charges against respondent in these

proceedings despite the weight of the evidence.[10] Respondent contends that co-counsel should have recused herself from this investigation or disclosed her alleged conflict of interest to respondent, the executive director, and the Commission.

Respondent's argument is interesting because of its strong similarity to other baseless arguments she has made in these proceedings. That is, respondent's central defense in this case is to try to discredit her grandsons by blaming Ms. Bressler for coaching them to lie about her. As the Master found, there is no evidence to support that contention. Now, respondent blames Ms. Bressler for influencing co-counsel to pursue the charges in this case. In addition, a theme of respondent's defense has been to accuse various people of being biased against her, despite the absence of any supporting evidence. For example, she has accused Ms. Apple of CPS and reporter M.L. Elrick, of being biased against her. Now – again with no supporting evidence – she accuses co-counsel of being biased against her.

Although respondent's argument is interesting for those reasons, it is flawed in multiple ways. First, co-counsel did disclose her relationship to respondent's relative's case to the executive director *and* to respondent's counsel, when counsel reminded her of it. Second, respondent made no record to substantiate her concern when she was before the Master. In fact, co-counsel testified at the hearing about a different issue, so was easily available for questioning about Ms. Bressler's influence on her, if respondent so desired. Respondent did not do so. There is also no record to show why a former Assistant Prosecuting Attorney, such as co-counsel was

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[10] Respondent's claim must be that the evidence was insufficient to bring misconduct charges against her, and it is only co-counsel's fear of Ms. Bressler's wrath that caused the Commission to bring these "baseless" charges. It would seem to be a fairly strong rebuttal to respondent's claim that the Master found the evidence sufficient to establish that respondent committed the misconduct charged in Counts I & II. Since the evidence was that strong, staff would have been negligent *not* to have presented this case for the Commission to consider whether to file a complaint.

for 33 years, who had to make innumerable controversial decisions in the course of that career, would care about criticism by Ms. Bressler or anyone else. (Weingarden, 11-29-21, pp 2084/23-2085/1)

Again, respondent completely misapprehends co-counsel's role in bringing charges. While her role was important, it was to gather evidence. Only the Commission decides whether to bring charges. Co-counsel is not a part of that decision. Respondent has not, and cannot, identify any unfair prejudice resulting from co-counsel's participation in this case.

Next, respondent alleges that co-counsel did not interview witnesses who were friendly to respondent prior to the filing of the complaint.[11] (Brief, pp 8-9) Perhaps the oddest thing about this claim is that respondent herself states exactly the opposite in the very next section of her brief, at the bottom of page 9: "Judge Green specifically requested that Disciplinary Counsel interview a number of witnesses. Lora Weingarden conducted those interviews." Respondent does not explain how co-counsel both failed to interview any witnesses who were not adversarial to her, while also interviewing the "number of witnesses" respondent asked her to interview.

Setting aside the internal inconsistency of respondent's argument, this is another complaint for which respondent made no record below. That means there is no evidence to support her argument. If the Commission held a hearing, the evidence would demonstrate that respondent is wrong. Co-counsel interviewed every witness respondent identified.

This argument is still flawed even if its premise was true. Respondent was free to call any witness she wanted at the hearing. That was the case whether or not co-counsel interviewed the

[11] Respondent refers to these as "non-adversarial" witnesses.

witness. Respondent has not explained how she would have been unfairly prejudiced if co-counsel had *not* interviewed her witnesses.

Respondent also alleges that co-counsel had a personal stake in the outcome of this case and that she created an ethical violation. (Brief p 9) This argument is even weaker than her other attacks on co-counsel, in that she does not bother to explain the "personal stake" co-counsel had or the "ethical violation" she "created." Once again, respondent did not attempt to make a record of this issue before the Master. Nor does she claim that she filed a complaint with the Attorney Grievance Commission, as she would be obligated to do if co-counsel had violated her professional obligations in a serious way.

Respondent's Claim that Disciplinary Counsel Failed to Disclose Exculpatory Evidence

After alleging incorrectly that co-counsel did not interview her "non-adversarial" witnesses, respondent alleges that co-counsel did interview Linda Perkins at her request. (Brief p 9) She claims Ms. Perkins advised co-counsel that Max showed her a photo provided to him by his mother, Ms. Bressler, between December 26, 2017 and June 24, 2018. She alleges that this photo proves Max was not truthful at the hearing when he testified about the limited contact he had with his mother during that period. She further alleges that co-counsel violated *Brady v Maryland,* 373 US 83, 87 (1963), by not providing that photo to respondent.[12]

Inasmuch as it was respondent who asked co-counsel to interview Ms. Perkins, respondent presumably knew what Ms. Perkins had to say that was relevant to respondent's case. In light of that, it is interesting that respondent did not have Ms. Perkins testify about this alleged

[12] *Brady v. Maryland* is a criminal case that has no application to disciplinary proceedings. MCR 9.232(A)(1)(b) imposes on disciplinary counsel the duty to give all exculpatory material to a respondent.

photo at the hearing. Nor did she cross-examine Max about the photo allegedly sent to him by his mother.[13]

Respondent asserts that "upon information and belief," once Ms. Perkins informed co-counsel of the photo, co-counsel asked Ms. Perkins who else knew about the photo's existence. (Brief, p 10) Oddly, for a claim that smacks so strongly of concealing evidence, respondent does not reveal any of her "information" nor any basis for her alleged "belief." Once again – despite the explosive nature of her claim - she did not question co-counsel about the interview or the alleged photo during the hearing before the Master. There is, once again, no record to support respondent's claim. If a hearing were held on this issue, it would demonstrate that Ms. Perkins never mentioned such a photo to co-counsel.

Respondent's Claim that Disciplinary Counsel Made Unlawful/Unsanctioned Use of the Wayne County Child Advocacy Center

Respondent notes that co-counsel used the Wayne County Child Advocacy Center ("KidsTalk") to conduct her forensic interviews of Max and Russell. She complains that this gave co-counsel an unfair advantage, because the boys had been there before and "may have" established a good rapport with their previous forensic interviewer. She asserts that, "The boys would have been more likely to believe that they should testify consistently with their previous testimonies given there." (Brief, p 14)

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[13] Assuming the photo exists, nothing respondent says about it in her brief is inconsistent with Max's testimony. Respondent alleges that Ms. Bressler electronically provided it to Max between December 26 of 2017 and June 24 of 2018. Max testified that he saw his mother on December 26 of 2017, which is within this timeframe. Further, since it was allegedly provided electronically, it was presumably an attachment to an email. Nothing in Max's testimony precluded the idea that one of the very few emails they received from their mother included a picture as an attachment.

Unlike respondent's other complaints about co-counsel, there is at least evidence to support her premise for this complaint. Co-counsel did use the KidsTalk facility to interview the boys. Beyond that, though, respondent's argument is entirely speculative and completely implausible. There is no evidence that the boys had a rapport with their previous interviewer. There is no evidence that they transferred any rapport to co-counsel. There is no evidence that the mere similarity of physical location of the interview would have any impact on the substance of the boys' answers. And critically, respondent fails to grapple with the fact that the subject matter about which co-counsel interviewed the boys – respondent's knowledge that her grandsons were victims of abuse and her concealing evidence of that abuse – was a very different topic than those the previous interviewer had discussed with the boys. The transcripts of those earlier interviews show that they were focused on the physical abuse they suffered at the hands of their father and the sexual abuse of Max by respondent's juvenile relative. (Exhs. 25, 26, 31, 32)

Respondent complains that MCL 722.628(6) restricts the use of the KidsTalk facility to certain agencies, and that the Commission is not one of the authorized agencies. (Brief p. 14) Even a casual glance at the statute shows that it contains no such restriction. Assuming there were such a restriction, respondent has not and cannot show how she was prejudiced by co-counsel's use of the facility. Had respondent developed a record on this issue before the Master, she would have learned that there were good and practical reasons to use the facility – most notably, that it is comfortable, child-appropriate, and already set up to record interviews. Co-

counsel's choice of location to interview the boys was benign, and there is no basis for respondent's effort to make it appear sinister.[14]

Respondent also argues that co-counsel's use of KidsTalk to interview the boys violated MCL 600.2163a. (Brief, pp 16-17) She does not say how it did so. Again, even a cursory review of the statute shows that nothing in it restricted co-counsel's use of the facility.

Respondent contends that co-counsel violated the privacy protections in MCL 600.2163a by releasing copies of the interview to an unidentified person or persons. (Brief, p 17) This is another argument with multiple flaws. The first is that the statute applies only to interviews conducted for specified proceedings. MCL 600.2163a(2). The Commission proceedings are not included, so by its terms, the statute does not apply. The second flaw is that respondent made no record of this issue. The third flaw is that, assuming the statute did apply and respondent did make a record, respondent has not identified any unfair prejudice to her that resulted from releasing the interviews. If co-counsel violated the statute, she might be subject to the sanctions in the statute, but respondent would not be entitled to any relief in these proceedings.[15] MCR 9.211(D) provides that a Commission proceeding "may not be held invalid by reason of a nonprejudicial irregularity or for an error not resulting in a miscarriage of justice."

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[14] The record shows how innocuous was the arrangement. Disciplinary counsel simply called the director of KidsTalk, with whom she had a preexisting relationship, and asked for permission to use the facility to forensically interview Max and Russell and use the facility's recording equipment. (Weingarden, 11-19-21, pp 2088/18-19, 2102/8-21, 2103/3-9) The director gave permission and the interviews were conducted in accordance with the Michigan Forensic Interview Protocol. (Id. at p 2019/5-7)

[15] Respondent actually has it backwards. MCR 9.232 required disciplinary counsel to provide respondent with copies of the interview DVDs. Had we not done so, we would have violated the discovery rules.

Respondent's Claim that Disciplinary Counsel Did an Unlawful Warrantless Search of Respondent's Phone Records

Respondent makes yet another unfounded complaint about the investigation, and another complaint for which she developed no record before the Master. She first asserts, mistakenly and with no citation to authority, that "state actors must obtain a warrant to obtain phone records." (Brief, p 18) Her complaint is that disciplinary counsel obtained her telephone records without a warrant. (*Id*.)

Not only did respondent choose not to make a record of this supposed violation, there is nothing whatsoever in the record about respondent's telephone records. There is thus no evidence of any kind to support her claim, and she has not preserved this issue.

If the Commission were to hold a hearing on this question, it would demonstrate that respondent's concern is completely misplaced. Disciplinary counsel have subpoena power under MCR 9.234(A), and used that power to obtain a limited number of respondent's cell phone records while investigating whether respondent had tampered with Max at a time that she knew he was a witness in this proceeding.

The exact nature of respondent's complaint about the phone records is unclear. She acknowledges that disciplinary counsel used a subpoena to get the records, but appears to assert that disciplinary counsel should have used a search warrant instead. She then complains that the "search" for the phone records, in the absence of a warrant, was unconstitutional. (Brief, p 18) She provides no authority for her position that a subpoena is not an appropriate way to obtain cell phone records, and there is no authority for it.

In lieu of relevant authority, she cites several case for the proposition that a cell *phone* may only be searched with a warrant. (Brief at pp 18-23) Disciplinary counsel take no issue with

the cases she cites, but they are irrelevant here. Disciplinary counsel did not search respondent's phone, and never even had custody of it. Rather, disciplinary counsel obtained business records concerning respondent's cell phone usage from the service provider that was the custodian of those records. The cases on which respondent relies have nothing to do with obtaining records of that nature from the service provider.

Respondent further argues that disciplinary counsel claimed that her phone records were obtained in a separate investigation and not for use in *this* case. (Brief, pp 18-19) Again, the authorities on which she relies are authorities that concern the use of information obtained from a cell phone via a search warrant. This case involves neither. Further, respondent does not explain how or when disciplinary counsel made this alleged claim that records were not for use in this case. Disciplinary counsel deny that we did so, at least in any context similar to that respondent is arguing.

Disciplinary counsel suspect that the following is what respondent has in mind: In a Motion for No Contact Order filed just before the hearing began, on May 24, 2021, disciplinary counsel informed the Master that respondent was having inappropriate contact with Max. Disciplinary counsel explained their concern that respondent was tampering with Max and aiding her son in violating the conditions of his bond. Although this was potentially new misconduct, these concerns certainly related as well to the disciplinary proceedings in which respondent was already charged. The fact that the records were potentially relevant to new misconduct does not suggest that they were irrelevant to, or unavailable to prove, the pending misconduct.

Even assuming disciplinary counsel erred in obtaining or using respondent's telephone records, the remedy would be suppression of the records. But the records were not admitted into

evidence and the contents were not used to amend the complaint, so there is nothing to suppress and respondent was not prejudiced by disciplinary counsel's actions.

Respondent also complains that disciplinary counsel violated its subpoena power provided for in MCR 9.221(C), because, she says, the rule allows the subpoenaing of an individual but does not allow the subpoenaing of records. (Brief, p 19) Her argument is curious, inasmuch as the rule states in part: "The commission may issue subpoenas for the attendance of witnesses to . . . *produce documents* . . . ." (emphasis added) The rule could not be much plainer. Respondent certainly does not mean to suggest that the Commission's subpoena power only works so long as the custodian of records appears in person to provide the documents. Yet that appears to be exactly what she is arguing. This argument should not be taken seriously. Disciplinary counsel did not violate its subpoena power.

Next, respondent argues that the subpoena sent to the telephone company had respondent's name on it, in violation of MCR 9.221(C), which reads, "**Before the filing of a complaint,** the entitlement appearing on the subpoena shall not disclose the name of a respondent under investigation." (Brief, pp 19-20) (emphasis added) This is yet another argument that rests on a complete misunderstanding of the law and facts. The complaint was filed in November, 2020 and disciplinary counsel subpoenaed the records in June 2021, well *after* the complaint was filed. Therefore, by its terms, MCR 9.221(C) was not violated. Further, the subpoena was authorized by MCR 9.234(A), which includes no requirement that a respondent's name be omitted.

Respondent counters that disciplinary counsel was conducting additional investigation concerning a possible amendment to the charges. (Brief, pp 19-20) While true, that does not change the fact that the additional investigation took place *after* the complaint was issued, and the information sought was also potentially relevant to the pending charges.

Once again, respondent does not, and cannot, identify any unfair prejudice to her that resulted from disciplinary counsel's supposed violation. There was none.

Respondent's Claim that She Was Denied an In-Person Public Hearing Where Credibility of Witnesses Was the Main Issue in the Proceeding

Respondent objects to the Master's decision to conduct the proceedings virtually rather than in person. (Brief pp 24-31) For the reasons stated below, the Master had the discretion to choose whether the hearing would be by remote video, and it was a proper exercise of that discretion to opt for a virtual hearing on the facts of this case. The Michigan Supreme Court has authorized, and has even encouraged, courts to conduct virtual proceedings whenever possible, in order best to ensure the safety of all participants during the pandemic.[16] Respondent's hearing took place while the pandemic was in full swing.

The Master's decision adhered to the Supreme Court's guidance in conducting the hearing remotely. The Court's Administrative Order No. 2020-6 required trial courts to make good faith efforts to hold all proceedings remotely in light of the precautions instituted during the early phases of the COVID-19 pandemic, consistent with a party's constitutional rights. That order remained in effect through the first several days of the hearing. It was rescinded on July 26, 2021, at which time the Court amended MCR 6.006 with respect to the use of

[16] https://courts.michigan.gov/NewsEvents/Documents/ReturntoFullCapacityGuide.

videoconferencing technology. MCR 6.006 says ". . . trial courts are required to use remote participation technology to the greatest extent possible." The remote hearing complied with the administrative order and court rule.

A judicial disciplinary hearing is civil in nature, and therefore, respondent had no constitutional right to an in-person hearing, in contrast to, say, a criminal defendant whose trial must observe the Confrontation Clause of the Sixth Amendment. *See, Sligh v People,* 48 Mich 54, 57 (1882); *Cf. People v Anderson*, No. 354860, 2022 WL 981299, at *4 (Mich Ct App, March 31, 2022); *In re Morrow*, No. 161839, 2022 WL 128125, at *7 (Mich, January 13, 2022) (there was no violation when a Master held a judicial disciplinary hearing remotely during the pandemic).

Respondent argues that whether the hearing is virtual or in-person has a significant impact on assessing witness credibility. (Brief at pp 24-25) She offers no evidence to support her belief. To the contrary, the video of the hearing demonstrates that though it was virtual, it afforded ample ability for respondent's counsel aggressively to confront the children who testified against respondent, and for the Master to assess the witnesses' demeanor. The Master's conduct during the hearing and her well thought-out assessment of respondent's, Max's, and Russell's credibility also show that proceeding virtually did not impair her ability to assess witness credibility or negatively affect her ability to understand the witnesses.

Respondent cites three cases that, she claims, show that the hearing should have been in person. (Brief, p 27-29) None were concerned with proceedings during a pandemic, and none suggest that a proceeding should be overturned if the witnesses testify remotely rather than in person. *In re Fosamax Prods Liab Litig*, 2009 WL 539858 at *2 (SDNY Mar 4, 2009), and *Birkland v Courtyards Guest House*, 2011 WL 4738649 at *2 (ED La Oct, 7, 2011), merely

asked a court *prospectively* to rule on where a deposition should be taken, years before there was a pandemic. The fact that these courts opted for in-person rather than remote testimony, all other things being equal, says nothing about whether respondent's hearing was fundamentally unfair by using remote testimony at a time when all other things were *not* equal. Respondent's third case in support of her claim is *Kean v Board of Trustees of the Three Rivers Reg Library Sys*, 321 FRD 448, 453 (SD Ga 2017). The issue in *Kean* was that the plaintiff, who lived out-of-state, gave short notice that she could not attend the deposition in another state. *Kean* ruled she should have attended the planned deposition. It, too, has nothing to do with whether *this* proceeding was fundamentally unfair.

Had the Master been concerned about the efficacy of proceeding virtually, she could have changed course at any time. She did not do so.[17] Clearly, she believed she was able to assess credibility and understand the witnesses. She was clearly within her authority to hold the hearing remotely; especially when concerns about the health consequences of having an in-person hearing were so strong.

Respondent cites statistics on the number of people vaccinated, the efficacy of the vaccinations, and proposed options for holding an in-person hearing. Respondent did not present any of this material for the Master's consideration. Further, she fails to recognize that while adults were able to get vaccinated if they chose, many adults chose *not* to be vaccinated. Respondent made no record of who and who was not vaccinated among the witnesses in this

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[17] In October 2021, after Max and Russell had concluded their testimony, the Supreme Court stayed a remote attorney discipline proceeding, *Catherine A. Jacobs v Attorney Disciplinary Board*, SC 163050, October 22, 2021 while it considered the question of remote discipline proceedings in *In re Morrow*, Docket No. 161839. After the Court issued that stay, respondent renewed her motion for an in-person hearing. Disciplinary counsel did not object. In these changed circumstances the Master granted respondent's motion and held the last two days of hearing testimony in-person, on October 29 and November 19, 2021. With the consent of both parties, closing arguments were conducted remotely.

case. In addition, one of the two key witnesses in the case was 11 years old when he testified, and children under age 12 were not able to get vaccinated until November 2, 2021.[18]

The Master followed the same procedure in holding the hearing remotely in this case as she did in *In re Morrow*. The Supreme Court decided *Morrow* on January 13, 2022, after the parties in this case had completed 12 days of the hearing. Respondent cites Justice Viviano's concurring opinion in *Morrow* that he "would have held that the Master violated MCR 9.231(B) by not conducting respondent's hearing in person at a physical location."

Respondent invokes this concurrence to argue that MCR 9.231(B) required that her hearing be at a physical place. Unlike the respondent in *Morrow*, though, respondent never made this argument to the Master. She therefore cannot rely on it now to undo what the Master has done. Further, six out of the seven justices who presided over *Morrow* held that a remote hearing *was* appropriate, because of the pandemic. *In re Morrow*, 2022 WL 128125 at *7, 9-10 fn 3.

These justices have the better of the argument. MCR 9.231(B) states that "[t]he master shall set a time and a place for the hearing …." Justice Viviano concluded that this language means that the hearing must be at a *physical* "place." There are at least three problems with the position that a hearing must be at a physical "place." One is the obvious – nothing in the rule requires that the hearing be held in person, as opposed to virtually. The rule is silent about that distinction because it became effective well before there was any need to hold judicial disciplinary hearings virtually. The rule's silence about the meaning of "place" in circumstances

[18] https://www.cdc.gov/media/releases/2021/s1102-PediatricCOVID-19Vaccine.html

the rule could not have contemplated does not support respondent's belief that "place" must be both singular and physical.

Also problematic is that the rule was clearly not aimed at defining the "place" where a hearing is held. It merely empowers the Master to designate that time and place, without restriction. It is irrelevant to that grant of power whether the "place" is physical or virtual, and hence it is not reasonable to interpret the rule as restricting the Master's choice of place as respondent suggests. The most supportive thing for respondent that can be said about this rule is that it is ambiguous with respect to the meaning of "place." It is especially unreasonable to interpret an ambiguous rule in a way that is directly contrary to the guidance the Supreme Court was then giving the courts in the state.

In any event, even Justice Viviano concluded that the respondent in *Morrow* did not demonstrate that he suffered a miscarriage of justice by having a remote hearing. As Justice Viviano wrote in *Morrow*, in words that are equally applicable here: "He was not deprived of the ability to put on a defense, and he was able to—and in fact did—examine and cross examine witnesses." Similarly, respondent was clearly able to present a defense and to examine, and very thoroughly cross-examine, witnesses.

There is yet another reason not to overturn the Master's efforts in this case. In October of 2021 the Supreme Court stayed an attorney discipline proceeding while it resolved the question in *Morrow* whether the proceeding should be remote or in-person. *Jacobs v Attorney Disciplinary Board*, SC 163050, October 22, 2021. That stay caused disciplinary counsel in this case to file a Motion for Clarification in the Supreme Court, asking it whether further remote proceedings should be stayed in this matter as well, pending the decision in *Morrow*. The Supreme Court denied the motion, SC 162260, October 28, 2021, and thereby declined the opportunity to insist

on in-person proceedings in this case. It would be particularly inappropriate to now conclude that this hearing should have been in-person, after the Court passed on the chance to require same.

Finally, respondent claims she was unfairly prejudiced by the "voluminous number of documents that were introduced during the hearing." (Brief at p 29) She does not explain how the volume of documents could possibly have prejudiced her. Respondent did not object to the admission of any documents, and in fact, sought the admission of many. (Exhs. 9A, 11A, 11B, 11C, 24, 25, 26, 28, 29, 30, 31, 32, 34, 35, 38, 39, 40, 43, and 51) A review of the video record of respondent's counsel's actions during the hearing reveals that he used screen sharing very effectively to communicate those portions of documents that he wished to communicate.

SANCTIONS

Respondent's objections did not address possible sanctions. Disciplinary counsel adhere to the position we took in our objections that respondent should be removed from the bench.

CONCLUSION

Disciplinary counsel ask that the Commission reject every one of respondent's challenges to the Master's findings of fact and conclusions of law. We urge the Commission to recommend that the Supreme Court remove respondent from the bench.

Respectfully submitted,

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/s/ Lora Weingarden
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Dated: April 29, 2022