

STATE OF MICHIGAN  
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Tracy E. Green  
Third Circuit Court  
Detroit, Michigan

Formal Complaint No. 103  
Volume 6

P R O C E E D I N G S

held before the Special Master Hon. Betty R. Widgeon (P32596)  
via Zoom, in Michigan, on Friday, September 17, 2021,  
commencing at or about 1:00 p.m.

**APPEARANCES:**

For the MJTC: JUDICIAL TENURE COMMISSION  
3034 West Grand Boulevard, Suite 8-450  
Detroit, Michigan 48202  
313.875.5110  
Disciplinary MR. LYNN HELLAND (P32192)  
counsel: MS. LORA WEINGARDEN (P37970)

For the Respondent: PLUNKETT COONEY  
38505 Woodward Avenue, Suite 100  
Bloomfield Hills, Michigan 48304  
248.594.8217  
BY: MR. MICHAEL ASHCRAFT (P46154)

REPORTER: Elsa J. Jorgensen, CSR-6600  
ALSO PRESENT: Hon. Tracy E. Green;  
and others via livestream

T A B L E O F C O N T E N T S

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WITNESSES: JTC PAGE

HON. TRACY GREEN

Examination by Ms. Weingarden.....1148

EXHIBITS

NUMBER IDENTIFICATION PAGE

(None Offered)

SEPARATE RECORD

Pages 1183-1190

1                   S E P A R A T E   R E C O R D

2                   (At 2:32 p.m., beginning of separate record,  
3                   not livestreamed.)

4                   MR. ASHCRAFT: Are you going to go ahead and  
5                   proceed now? Ms. Jorgensen, you're with us. Well, it  
6                   looks like the judge might be too.

7                   THE MASTER: What was that question?

8                   MR. ASHCRAFT: Judge, my question was I didn't  
9                   realize that you were presiding over the separate record  
10                  in this matter as opposed to it being taken in front of  
11                  Ms. Jorgensen and any objections that need to be made  
12                  are preserved on the record.

13                  THE MASTER: All right. My understanding is  
14                  that I would be a part of the separate record, but let  
15                  me hear the response from both sides. Ms. Weingarden?  
16                  And did I lose Mr. Helland?

17                  MR. HELLAND: No. I'm here. Sorry.

18                  THE MASTER: Thank you. Go ahead and respond,  
19                  and we'll have this decision made.

20                  MS. WEINGARDEN: Yes, Judge, I believe you --  
21                  who do you want to speak?

22                  MR. ASHCRAFT: Sorry. I didn't -- if you  
23                  wanted me to make the objection, Judge, I'm prepared to  
24                  do that. I hadn't made a complete objection to it, if  
25                  that's what you were asking me to do.

1 THE MASTER: You certainly may do that at this  
2 time, and then I'll hear from disciplinary counsel.

3 And, by the way, Ms. Jorgensen, you are  
4 recording this at this point on a separate record;  
5 correct?

6 THE COURT REPORTER: I am, Your Honor. We're  
7 on the separate record right now.

8 THE MASTER: All right. Thank you. Go ahead,  
9 Mr. Ashcraft.

10 MR. ASHCRAFT: Thank you, Judge. The  
11 disciplinary counsel has made a request for a separate  
12 record at this point, and I respectfully submit to you  
13 that you, as the master, should not preside over any  
14 separate record proceeding in the case.

15 Pursuant to MCR 9.231, you were appointed as  
16 master to hear this case, and pursuant to MCR 9.233 you  
17 are presiding over this public hearing, and you are, in  
18 essence, serving as fact-finder after the completion of  
19 proofs and are required by MCR 9.236 to transmit your  
20 findings of fact and conclusions of law with respect to  
21 issues presented by the complaint and the answer.

22 9.236 requires Your Honor to submit a report  
23 of master, including all of that information. As such,  
24 you, respectfully, should not hear any testimony or  
25 review any exhibits that are taken in the separate

1 record because it is not admitted evidence and may never  
2 become admitted evidence. A separate record is never  
3 made before a jury, because a jury is a trier of fact.

4 While Judge Green and I have the utmost  
5 respect for Your Honor, these proceedings have been  
6 lengthy, with more to come, and have become increasingly  
7 complex, as Your Honor noted a couple of days ago. And  
8 there is, respectfully, a potential risk or a potential  
9 danger that the information that is shared in the  
10 separate record could inadvertently impact or otherwise  
11 affect your analysis when you're considering the actual  
12 evidence.

13 Judge Green wants to be careful to eliminate  
14 any risk of error in these proceedings. The separate  
15 record should be made with Ms. Jorgensen transcribing  
16 and in a deposition format. That way, all objections  
17 can be made on the record and preserved for later  
18 rulings in the event the separate record becomes  
19 relevant.

20 The separate record should not be a  
21 continuation of the existing transcript of the  
22 proceedings being held now on September 17. The  
23 separate record transcript should not be provided to  
24 Your Honor and should be maintained separately.

25 Likewise, it should not be livestreamed, and I know that

1 we're not doing that. Thank you.

2 THE MASTER: Thank you, Mr. Ashcraft.

3 Response?

4 MR. HELLAND: Let me -- if it's all right,  
5 Ms. Weingarden, let me address this.

6 I guess my first point is that Mr. Ashcraft  
7 seems to be conflating what one would do with a jury  
8 with what one would do in a bench trial. Judge, you're  
9 serving essentially as the judge presiding over a bench  
10 trial.

11 Judges who preside over bench trials routinely  
12 make evidentiary rulings and review evidence that they  
13 then decide is not to be admitted, and we don't say,  
14 well, the judge cannot do that because the judge might  
15 be tainted. We presume, and I think with good reason,  
16 that judges are trained to separate admissible evidence  
17 from inadmissible evidence and are not tainted. So I  
18 think Mr. Ashcraft's concern is misplaced.

19 In addition, the rules don't provide for  
20 anyone else to preside over a separate record. They  
21 clearly contemplate that the master will preside over  
22 the separate record just as over the regular proceeding.  
23 That is the way to maintain order in it. So I think the  
24 objection is not well founded, and we oppose it.

25 THE MASTER: All right. Thank you.

1 Mr. Ashcraft, anything further before I make a ruling on  
2 this?

3 MR. ASHCRAFT: Yes, Judge, brief response.  
4 And there are circumstances, in fact, when objections  
5 are made during the course of a bench trial where a  
6 separate record is made where the presiding judge, as  
7 trier of fact, does not, in fact, preside over those  
8 separate record proceedings.

9 And here we're not taking evidence under a  
10 separate record for Your Honor to determine whether or  
11 not it's going to be admitted as evidence, but, to the  
12 contrary, as indicated by Mr. Helland and/or  
13 Ms. Weingarden, it's being done for purposes of  
14 maintaining the information in the event that it later  
15 becomes relevant and somehow admissible. That's not a  
16 request being made of you after this testimony is being  
17 taken.

18 So I'm not aware of any authority upon which a  
19 request such as this is allowed to stand, that being  
20 Your Honor presiding over the separate record  
21 transcript. There is a remedy available here, and that  
22 is we proceed as if we are in a deposition. Objections  
23 can be noted on the record and then, if the separate  
24 record matter becomes relevant and later admissible,  
25 those objections could be ruled upon in short order.

1                   During the course of that Ms. Jorgensen would  
2                   be taking down, as she has throughout the course of this  
3                   formal hearing, all of the information and preserving  
4                   the record as, in fact, a separate record.

5                   THE MASTER: All right. Thank you. I've  
6                   heard from both sides. My decision is to continue to  
7                   preside over this separate record, as I believe it is  
8                   appropriate. I believe that the situation is much  
9                   closer, quite analogous to a bench trial as opposed to a  
10                  deposition.

11                  I certainly note that the reason this is  
12                  called a separate record is so that the master will not  
13                  be looking at that. And, certainly, if there was  
14                  something in any findings of fact that appear to allude  
15                  to a separate record that the master was not supposed to  
16                  take into consideration, I know that that would be  
17                  raised as the record is transferred up to the next  
18                  division.

19                  So I have heard your objection, and, if it is  
20                  an objection, I've heard your comments, but I am ruling  
21                  that I will remain here and presiding over the separate  
22                  record.

23                  As you stated, Mr. Ashcraft, it is not being  
24                  livestreamed. We spoke about this on, I think,  
25                  Wednesday of this week when we met in oral argument --



1 for the oral argument, and I think that's it for now.

2 MR. ASHCRAFT: Thank you, Judge. Understood.  
3 And, again, I made the objection respectfully.

4 THE MASTER: Yes. Yes, you certainly did.

5 MR. ASHCRAFT: Thank you.

6 THE MASTER: All right. So, Ms. Jorgensen,  
7 are we ready to go to the separate record?

8 THE COURT REPORTER: Yes, we are in the  
9 separate record, and I copied and pasted the question  
10 that was in the regular record.

11 THE MASTER: Yes, thank you. Please let us  
12 hear that question.

13 (The question was read back as follows:

14 "QUESTION: In any of those reports you  
15 don't see a statement where you told  
16 Ms. Apple or anyone from CPS that you  
17 put makeup on a handprint on Gary Jr.'s  
18 face; correct?")

19 MR. ASHCRAFT: Same objection.

20 THE MASTER: Thank you. Go ahead and proceed  
21 under the separate record. Ms. Weingarden is  
22 proceeding, and that means, Judge Green, that you are to  
23 answer, please.

24 THE RESPONDENT: I'm sorry. Correct.

25 MS. WEINGARDEN: I don't have any other

1 questions for the separate record.

2 THE MASTER: All right. That's okay. I know  
3 we took some time here making this decision, but that  
4 means that if we have to go into separate record a  
5 second time, then we won't have to have the same  
6 discussion and it might be actually a longer period than  
7 just this. So that is not a problem at all.

8 Mr. Ashcraft, Ms. Weingarden, are you ready to  
9 go, then, back into the other room and back on to the  
10 main record?

11 MS. WEINGARDEN: Yes.

12 MR. ASHCRAFT: Yes.

13 THE MASTER: All right. Thank you. I'll  
14 close the rooms at this point, and we should appear in  
15 the main room.

16 - - -

17 (At 2:43 p.m., end of separate record.)  
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