STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the
Judiciary Law in Relation to :

FRANK M. MORA :

a Judge of the Poughkeepsie City Court, :
Dutchess County.
- X

Commission Offices
61 Broadway, Suite 1200
New York, New York 10006

October 15, 2025
10:31 a.m.

B e f o r e:

PETER BIENSTOCK, Esq.
Referee

P r e s e n t:

For the Commission
MELISSA DIPALO, Esq.
Principal Attorney

ALAN W. FRIEDBERG, Esq.
Special Counsel

DENISE BUCKLEY, Esq.
Senior Litigation Counsel

MARK LEVINE, Esq.
Deputy Administrator

For the Respondent
STEPHEN R. COFFEY, Esq.
Attorney for the Respondent
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A l s o P r e s e n t
HON. FRANK M. MORA
Respondent

ANDY FENWICK
Investigator II

MIGUEL MAISONET
Senior Clerk and FTR Operator

MR. MAISONET: On the record.

MR. BIENSTOCK: First of all, I'd like to apologize for being a little late. It won't happen again. It's embarrassing for a septarian [sic] resident of this city who's lived in this city his whole life to complain about the traffic. But I won't complain about the traffic.

I understand from an email I got at 1:22 in the morning that there are some issues about scheduling witnesses. I propose to deal with those at the break when we don't keep witnesses waiting. Is that satisfactory?

MR. LEVINE: Yes.

MR. BIENSTOCK: Okay. Sir?

MR. COFFEY: Yes. I'm Mr. Coffey. And it's acceptable to us.

MR. BIENSTOCK: Okay. I understand from doing this before that the Commission has the burden of proof and therefore will be first. If there are opening statements, I would like to limit them to five or ten minutes.

Do you have an opening statement?

MR. LEVINE: I'm sorry. Mark Levine on behalf of the Commission. Judge -- Mr. Bienstock, there's actually a -- some mandatory remarks that you have to make that are next to you that are necessary --

MR. BIENSTOCK: "Statement by the Referee."

MR. LEVINE: Correct.

MR. BIENSTOCK: Is this the last script I get?

MR. LEVINE: I think so, yes.

MR. BIENSTOCK: This is a hearing in the matter of Frank M. Mora, a Judge of Poughkeepsie City Court, pursuant to Section 44 Subdivision 4 of the Judiciary Law. My name is Peter Bienstock, and I've been appointed by the Commission on Judicial Conduct as Referee to hear and report -- and report proposed findings of fact and conclusion of law.

I will now take the appearances of Counsel. Appearances.

MR. LEVINE: Mark Levine, Deputy Administrator on behalf of the Commission Counsel.

MS. DIPALO: Melissa DiPalo, Principal Attorney for the Commission.

MR. FRIEDBERG: Alan Friedberg, Special Counsel for the Commission.

MS. BUCKLEY: Denise Buckley, Senior Litigation Counsel --

MR. BIENSTOCK: Could you please speak up?

MS. BUCKLEY: Denise Buckley -- oh, sorry. Denise Buckley, Senior Litigation Counsel for the Commission.

MR. BIENSTOCK: Thank you.

MS. DIPALO: I'm sorry. Also present is Andy Fenwick, who is an Investigator with the Commission.

MR. COFFEY: Appearing only for the Defendant or for the --

MR. BIENSTOCK: Give me a moment. Sorry.

MR. COFFEY: -- Respondent -- I'm sorry. I've got to make sure where I am. Stephen R. Coffey, O'Connell (unintelligible).

MR. LEVINE: Please let the record reflect that Judge Mora is also present.

JUDGE MORA: Yes. Good morning.

MR. BIENSTOCK: The Court Reporter who will transcribe the proceedings is present. In addition, these proceedings are also being digitally recorded by Mike Maisonet. Both the Court Reporter and the person operating the digital recorder will go on the record and off the record at my direction. The recording will be transcribed.

In order to facilitate a clear and accurate record, please speak slowly, clearly, and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from creating excessive background noise as it becomes amplified on the recording.

No one may make photographic images or

electronic recordings of any portion of this proceeding, such as tape recordings, video recordings, or digital audio or visual recordings. Please turn off cellphones, which I just did for myself, and other electronic equipment now.

Investigator Andy Fenwick will keep a running list of exhibits, which will be provided to the Transcriber for inclusion in the appendix to the transcript. Commission Counsel will use numbers. Respondent's exhibits will be marked with letters. It is my function to indicate clearly for the record whether or not each exhibit has been received into evidence. The Investigator will mark the stickers on the exhibits with a notation indicating the exhibit was received.

At the conclusion of the hearing, original exhibits will be forwarded to the Clerk of the Commission. The Stenographer will provide a transcript to Commission staff only. In addition, as a backup, the audio recording will be available to the Commission's administrative staff. When the transcripts are prepared, they will be distributed with copies of the admitted exhibits to Counsel for Respondent, Commission Counsel, and me.

At the end of the hearing, we will discuss a schedule for submitting briefs and proposed findings of fact and conclusions of law.

The rules of evidence applicable to a non-jury

trial will apply. I will administer an oath to each witness. I talked about preliminary matters. We'll do them at the breaks.

Does either side wish to make an opening statement?

MS. DIPALO: Mr. Bienstock, before we begin, Judge Mora advised us that he needs to have his phone on his person for emergency matters.

JUDGE MORA: Yeah. My parents are elderly, and I take care of them, and they communicate with me --

MR. BIENSTOCK: Not a problem.

JUDGE MORA: Thank you so much. So if I look at it, that's the only reason I'm looking, to see if they've --

MR. BIENSTOCK: Not a problem.

JUDGE MORA: -- contacted me. Thank you.

MS. DIPALO: We just wanted to make you aware. Before I open, I have some housekeeping matters I'd like to address.

MR. BIENSTOCK: Can they be put off to the break or not?

MS. DIPALO: Well, I'd like to get to them before my witnesses testify.

MR. BIENSTOCK: Okay.

MS. DIPALO: Okay. Would you like me to

stand at the podium?

MR. BIENSTOCK: Yes.

MS. DIPALO: Okay.

MR. BIENSTOCK: And speak loudly.

MS. DIPALO: Yes.

MR. BIENSTOCK: You have a Hearing Officer who has a little trouble hearing.

MS. DIPALO: So as an initial matter, you have a bench book in front of you, also Judge Mora and Mr. Coffey. In it are stipulated exhibits. So at this point, I'd like to offer Commission Exhibit 1 into evidence, which is a stipulation between Commission Counsel and Judge Mora's attorney dated --

MR. COFFEY: Agreed.

MS. DIPALO: -- October 10, 2025.

MR. BIENSTOCK: Received.

(Commission Exhibit 1 was admitted into evidence)

MS. DIPALO: Within that stipulation, the parties have agreed and stipulated to the admissibility and authenticity of Commission Exhibits 2 through 28 and Respondent's Exhibits A through G. But we reserve the right to contest the relevance and the weight to be given to those exhibits. At this point, I would like to offer Commission Exhibits 2 through 28 into evidence.

MR. BIENSTOCK: Received with reservation

on relevance.

(Commission Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 were admitted into evidence)

(Respondent's Exhibits A, B, C, D, E, F, G were admitted into evidence)

MS. DIPALO: And finally, I would like to offer into evidence a full copy of the formal written complaint dated January 14, 2025, as Referee's Exhibit A, and a full copy of Respondent's verified answer, dated April 11, 2025, as Referee's Exhibit B. I spoke to Mr. Coffey, and he has consented to that.

MR. BIENSTOCK: Is that correct, Mr. Coffey?

MR. COFFEY: That is correct.

MR. BIENSTOCK: Received.

(Referee's Exhibits A, B were admitted into evidence)

MR. BIENSTOCK: Are they in this book?

MS. DIPALO: Yes, they are in --

MR. BIENSTOCK: Okay.

MS. DIPALO: -- that book, and they are marked.

MR. BIENSTOCK: All right.

MR. COFFEY: Excuse me.

MR. BIENSTOCK: E?

MR. COFFEY: We've stipulated the answer --

the complaint and answer are being --

JUDGE MORA: Are the exhibits. She already said the (unintelligible).

MR. COFFEY: Okay, that -- okay. All right, okay. All right. That (unintelligible).

MR. BIENSTOCK: Exhibit B and what was the --

MS. DIPALO: Exhibit A is a copy of the -- a full copy of the formal written complaint --

MR. BIENSTOCK: Right.

MS. DIPALO: -- against Judge Mora. And Exhibit B is a full copy of Respondent's verified answer to the --

MR. BIENSTOCK: Okay. So those are both Respondent's exhibits, technically.

MS. DIPALO: Well, they're technically Referee's --

MR. BIENSTOCK: I see.

MS. DIPALO: -- exhibits because they're --

MR. BIENSTOCK: That's fine.

MS. DIPALO: -- we're just making them part of the record.

MR. BIENSTOCK: I got it.

MS. DIPALO: Okay. That's all I have for housekeeping.

MR. BIENSTOCK: Good.

MS. DIPALO: If you'd like me to open?

Good morning, Mr. Bienstock, Mr. Coffey, Judge Mora. This is not a case about Judge Mora's inability to wear a face mask. It is not a case about governmental mask mandates. This is a case about a Judge who, during the -- in the midst of the COVID pandemic, entered a waiting room full of patients at a private medical practice wearing a face shield, which was against the practice's policy. The Office Manager, Stacey Koch, told Judge Mora to put on a mask or leave the office. Judge Mora refused to leave, despite repeated requests by Ms. Koch, which resulted in her calling the police. He was defiant and disruptive and made a series of antagonistic remarks to Ms. Koch.

This is also a case about Judge Mora's decision to retaliate against Ms. Koch by filing a defamation suit against her, not the advice of his attorney, who told him that he had a viable claim for defamation. Ms. Koch filed a confidential complaint against Judge Mora with the Commission. And rather than allowing the Commission to evaluate and determine the veracity of Ms. Koch's allegations, Judge Mora publicly sued Ms. Koch for defamation, seeking almost half a million dollars in damages. Judge Mora then redacted information from and

withheld emails requested by the Commission that pertained to that lawsuit.

As to the first charge, the evidence will show that in December of 2021, Judge Mora entered the waiting room at Seeta Eye Center in Poughkeepsie wearing a face shield. Seeta had policies in place that required staff, patients, and visitors to wear face masks due to the COVID pandemic. You will hear testimony that Judge Mora was asked multiple times to put on a face mask. You will hear testimony that Stacey Koch told Judge Mora that if he would not put on a face mask, he would have to leave. Ms. Koch warned that she would call the police if Judge Mora didn't leave. And instead of leaving, Judge Mora challenged Ms. Koch to go ahead and call the police, and told her that Dutchess County wasn't enforcing the mask mandate.

You will hear audio of Stacey Koch's calls to 911 and with the Town of Poughkeepsie Police. The audio will show that Ms. Koch reported a man who was refusing to leave and would not wear a mask. She told the police that it was a private medical practice, that she had a room full of patients, and that the Judge was causing a ruckus in her waiting room. You will hear on the audio that Ms. Koch was calm and composed until Judge Mora began antagonizing her. She told him not to talk. He said, "I'll

talk." She said, "If you've been -- if you have lived through what I've lived through, you wouldn't be doing this." And he made a comment about her going to restaurants where everyone was breathing in each other's air. Ms. Koch told Judge Mora, "No, I don't go to restaurants." And she said that she lived with someone who had [redacted] three times and she didn't want his germs.

The rules governing judicial conduct apply to a Judge's conduct both on and off the bench. The Court of Appeals has said that a Judge remains cloaked figuratively in his judicial robes wherever he or she goes. Judge Mora's conduct in defying Ms. Koch's repeated request to leave the practice and his taunting remarks to Ms. Koch, who was only doing her job in trying to enforce her office's policies, violated his obligations as a Judge to promote public confidence in the judiciary and to act with dignity.

As to charge two, the evidence will show that Ms. Koch was shocked to learn that Judge Mora was a Judge. She felt that she needed to report his unprofessional behavior and filed a complaint with the Commission on Judicial Conduct one day after the incident, on December 29, 2021. The Commission notified Judge Mora of Ms. Koch's complaint and gave him an opportunity to be heard, which he did by submitting a response through Counsel.

The Commission's proceedings would've

afforded Judge Mora complete due process. But rather than waiting for the Commission proceedings to play out, Judge Mora publicly sued Ms. Koch, claiming that she had publicly defamed him in her confidential complaint to the Commission.

The evidence will show Judge Mora's retaliatory motives in filing the lawsuit against Ms. Koch. Judge Mora sought $425,000 in compensatory and punitive damages from Ms. Koch even though he was aware that she worked as an Office Manager at Seeta Eye Center for more than 20 years. Judge Mora knew at the time he filed the lawsuit that Ms. Koch's complaint was confidential by law and that it had not been made public. Yet in his pleadings, he claimed that Koch publicly harmed his reputation in her confidential complaint. In fact, it was Judge Mora who made Koch's private statements about him public when he publicly filed his defamation lawsuit and attached a copy of Ms. Koch's complaint to the lawsuit.

Even after he filed his lawsuit, Judge Mora continued his attempts to intimidate Ms. Koch. You will hear Stacey Koch tell you that on the day she was served with the lawsuit, Judge Mora called Seeta Eye Center to make an appointment for a routine eye exam for his son. About a week later, he came into Seeta for the appointment wearing only his face shield.

You will hear from Janna Whearty, the Executive Director of the Dutchess County Bar Association, that Judge Mora called her and demanded to know who gave "that woman" the Commission's contact information. The Dutchess County Supreme Court dismissed Judge Mora's defamation lawsuit, finding in essence that it was a SLAPP suit, a "strategic lawsuit against public participation." The Judge stated that "Lawsuits like Judge Mora's could deter others from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility."

Judge Mora cannot insulate himself from his misconduct by claiming that he relied on the advice of his attorney that he met the elements of defamation to bring a lawsuit or that he relied on the Advisory Committee on Judicial Ethics advice that a Judge, like any other individual, is permitted to bring a lawsuit. Judge Mora should have known better. He himself has admitted that the lawsuit should not have been brought in the first place.

Judges are held to higher standards of conduct than you, me, or the general public. A Judge seeking retribution through a defamation lawsuit for a confidential complaint filed in the appropriate forum is the height of retaliation. Judge -- the Judge's conduct fell far short of the

high standards required of Judges and detracted from the dignity of judicial office. Thank you.

MR. BIENSTOCK: Mr. Coffey.

MR. COFFEY: Yes, thank you. Judge, Ms. DiPalo indicated that we agreed that the Respondent's Exhibits A through G would be admitted, correct? And then she talked about A and B. But I just want to clarify A through G.

MR. BIENSTOCK: I didn't hear that.

MR. COFFEY: But we've --

MR. BIENSTOCK: Is that true --

MR. COFFEY: -- agreed that A through G --

MR. BIENSTOCK: -- Ms. DiPalo, A through G?

MR. COFFEY: Yes.

MS. DIPALO: A through G.

MR. BIENSTOCK: Okay.

MR. COFFEY: Okay. Judge, I -- or should I call you Judge or --

MR. BIENSTOCK: Don't call me late to dinner.

MR. COFFEY: Okay. In any event --

MR. BIENSTOCK: As you wish. I've been in your position --

MR. COFFEY: Right.

MR. BIENSTOCK: -- and I've found it

difficult --

MR. COFFEY: Right.

MR. BIENSTOCK: -- not to automatically --

MR. COFFEY: Yes.

MR. BIENSTOCK: -- say Judge and Your Honor and things like that.

MR. COFFEY: I've got to convert --

MR. BIENSTOCK: Whatever you say is --

MR. COFFEY: -- defendant to Respondent. I don't know how much of this you have read of the proceeding, so I -- there's a certain part of me saying, you know, what do you know, what don't you know. You've read some of the pleadings in this case, correct? Would I be correct?

MR. BIENSTOCK: You can assume I've read --

MR. COFFEY: Okay.

MR. BIENSTOCK: -- everything that's relevant.

MR. COFFEY: Okay. Now, in 1968, we did not recognize China, the United States. So Gene McCarthy, running for the Senate -- running for the presidency, said "You know what, let's talk about a hypothetical country that is out there that we should be doing trading with. And let's call that hypothetical country China." So the hypothetical person here is a fellow by the

name of Michael Sussman, who you've not heard directly today. Michael Sussman is the key to this case. And the reason why Michael Sussman is a key to this case is because Michael Sussman gave an opinion to Juge Mora about whether he could bring this lawsuit.

Now, every lawsuit by its very nature is retaliatory. If I'm in a car accident and I sue somebody, I'm retaliating against somebody for injuring me. But legally, if we go back to the initial part, which Ms. DiPalo correctly summarized from their perspective what they believe the proof will be, there was an eye examination, as you know. That's why I said I wanted to know if you were familiar with that. So I'm not going to go through all that.

And we know that when Judge Mora came with his son that day to have him examined, there became some kind of a discussion and even argument between him and Ms. Koch about whether he was required to wear a mask or whether the shield was appropriate. And Ms. Koch has said that he raised his voice, he was intemperate, he was -- is disrespectful to her, and she did nothing to cause that kind of behavior. Well, there'll be some testimony that that is not quite accurate. In fact, it is inaccurate. But at the -- at the minimum, you'll hear Judge Mora, because he's going testify, that he came in -- and I'm not going to go through all of his testimony -- with his son and the discussion.

"You have to leave." "Why do I have to leave? You need to see my son." "I can get a medical report." And then that whole discussion, which you're going to hear at length. And in fact, I think the witnesses today on behalf of the Commission will testify to the conduct and the -- and the -- and -- and the --

MR. BIENSTOCK: I'm sorry, the conduct?

MR. COFFEY: The conduct between the parties.

MR. BIENSTOCK: Okay.

MR. COFFEY: And they won't agree, by the way. They're not going to necessarily agree as to what Ms. Koch's conduct was here, okay? But in any event, there certainly was an argument. I don't think there's going to be any dispute about that. Judge Mora says that he never invoked, by the way, "I'm a Judge", and they're not claiming that, "and therefore you're going to do what I'm demanding." He came in as a parent. He had a son. He wanted his son seen. And a year before that -- well, almost a year before that, maybe ten months, he had brought his older son in and they had an examination at that point. And that will become relevant.

So then after that, Ms. Koch, the very next day, files a complaint with the Commission, apparently, claiming that Judge Mora had acted inappropriately. Now,

what you haven't heard -- in fact, this is pretty interesting. The Commission never knew this. We found out -- we subpoenaed the records from Seeta. And we found -- we subpoenaed the records from Seeta. We found out that the day after that, within two days of this encounter, Ms. Koch wrote a long and lengthy letter to the Mayor of Poughkeepsie publicly criticizing Judge Mora for his conduct there.

And it was a tough letter. This wasn't a letter saying, "Gee, would you -- with all due respect." This was a letter -- she wanted him removed. She wanted him censored. She wanted him disciplined. She said she published this letter to the Mayor of Poughkeepsie. And the Commission -- I'm not blaming them. I'm not -- it's not a personal issue. They never knew about this letter because this week, apparently, had a discussion -- we said "We've got the Seeta records, and guess what we found?" So in any event, subsequently she filed a formal complaint with the Commission in April of '22. The dates may be off a little bit. But anyway, she filed a formal complaint.

Subsequently -- and you'll hear this witness, Mr. Brown. He had a discussion with Judge Mora. And he told Judge Mora that he was present that day when he came into the office and that Ms. Koch's behavior was, well, unacceptable. He also told him with regard to the

publication -- because you've heard this today and they have taken this position all along, the Commission, that there's no publication.

Judge, if I tell you that Ms. DiPalo's a communist, I've published that. I don't have to call a press conference. That's publishing it. You could be damaged by that. If I tell you that X is a child molester, that's publishing it. That's telling you that this person has committed a crime, and that's defamation per se. There's no question about that.

Brown tells Judge Mora that Koch comes to him and tells him that she's filed a complaint with the Commission. She tells the substance of it and says to Brown the words or in substance -- I'm not exactly sure exactly the words -- that she wants -- she thinks he should be removed, or at least he should be disciplined. She doesn't tell Brown not to tell anyone. She doesn't tell Brown not to repeat that. She just tells him that. And Brown tells Judge Mora, "She's told me. She's told others. She's let this way out." And of course, let's not forget what she did with the Mayor of Poughkeepsie about a year and a half before that.

So Judge Mora gets this information. And he had no inclination to do anything. The Commission -- he was going to fight it. And all along this time, Judge, there's

a whole issue, which you're going to have to address, on Judge Mora's firm and religious beliefs, unyielding. And he get -- he gets removed where he -- he's told he can't sit because he won't get the vaccine. And he has a -- he brings an action against the state because he thinks that he's been religiously discriminated against. And so he's going through that. And they bring an action through miss -- through that to force the state through damages because of his -- what's happened to him. Now, these are kind of running parallel, but it's a little complicated.

But nonetheless, in '22, about a year later, when Brown comes to him and tells him this, in the fall, Judge Mora says, "I -- do I have a lawsuit here? I mean, I've been defamed." And not because of the Commission complaint, but because of what she is telling others about what happened. It is our position, and we will assert this with you and we will prove this to you, she loses her privilege when she goes out.

So for example, let's assume for the moment that she had a right to bring the complaint and she had a right not to have this disclosed. As soon as she goes out on the courthouse steps, or goes on any steps, as Donald Trump found out much to his dismay when he said something in court because he's protected, but as soon as he walks out in public and says, "This person is a liar," they lose that

privilege. She's chosen to just waive that and go out publicly, which is precisely what happened here.

She tells Brown this is what happened. Judge Mora goes to Sussman, who's by the way an acknowledged expert in civil rights law and libel. And he says to him, "Do you think I can bring an action against Ms. Koch for defamation?" Or even for restricting business. So Sussman says, "Let me -- let me look at this" -- and I'll be -- I'll wrap this up rapidly. He says, "Let me look at this." He says, "Listen, I'll tell you what. Interference with business, no. But you have a right -- you have a right, and I'm telling you as an attorney that you have a right, to bring that lawsuit. Not just a general right, in other words, all citizens. But in this case, on these facts, telling what I heard about Brown, you have a right to bring a lawsuit." So he relies upon his attorney. The attorney says later, and there's a decision later, maybe Sussman's wrong. But that's the advice that he gave Mora, and he's an expert.

The Commission, really their real argument is as a lawyer, he should know everything. You do family law, I think, so you should know criminal law. You should know a state law. You should practice everything because you're a lawyer. He's not a First Amendment lawyer. He wanted to know what my rights were. And before the year was out, because he had a one year statute, Sussman says, "Listen,

you've got a year to bring it." And this discussion occurs in November or December. "You've got to bring this matter within a year." So he does. Later, there's a motion made to dismiss because it's a snap [sic] lawsuit -- a SLAPP. And he -- and that's the decision, which is not binding on you at all. Judge Rosa issues the decision.

This case comes down very easily. You're going to have a question -- a question of fact. And let me mention this if I can. I'm sure you've been in court proceedings; think you have. You have a question of fact as to what occurred Seeta that day, a clear question of fact. What was discussed? What wasn't? What were the tone of voices? What was said? There will be no issue of fact, none, as to what advice Sussman gave him.

This is not a case where Sussman says you cannot bring the case and he said "I'm bringing it anyway." This is not a case where he knew what his rights were. It's a case where he went to him or anybody could've come to you and said, "What do you think I can do?" And if you're wrong or if I'm wrong, he's relied upon me. But they're -- what they've done is they've said, "Well" -- and by the way, you might as well bring Sussman up on ethics charges because if he's wrong, then Sussman should be, and I'm not saying he should be, censured. What I'm saying is he went to a lawyer, he got his advice, he followed his advice. It's

that simple. There'll be no issue of fact about that.

Their argument is -- oh, I don't know what their argument is. Apparently today is that he should have known better. And you're going to make that decision. He should have known better? Why? He's not vested with that knowledge of what goes on with SAP [sic] or these kinds of things. Had Sussman told him "You can't go forward. She's protected", then he -- and then he would have gone at his own peril.

But I'm going to repeat again, when she went to Brown and told Brown what happened, she waived all privilege at that point. She doesn't have absolute privilege to do anything she wants whenever she wants. We acknowledge she's got privilege before the Commission. Once she steps outside that boundary, she's fair game and she invites any kind of lawsuit to address that situation. Otherwise, then a complainant could go and -- think of this. You could make the most outrageous allegations before the Commission. The Commission could determine that there's no basis for it. And then she could go out or he could go out and make these outrageous allegations publicly and say, "You can't do anything to me because I went to the Commission." It's not a shield.

That's our -- that's what we have, Judge.

MR. BIENSTOCK: Let me ask one question. I

have a thousand. So I'm only going to limit it to one. Is reliance on Counsel's advice a defense, in your view, to defamation?

MR. COFFEY: Absolutely. It is --

MR. BIENSTOCK: That is a question of law. You'll agree with that?

MR. COFFEY: I do agree with that.

MR. BIENSTOCK: Okay.

MR. COFFEY: And I think it's a -- it's a defense in a criminal matter, in a state matter, or anything else.

MR. BIENSTOCK: Okay.

MR. COFFEY: Otherwise, my question is this. Why go to Counsel? Why have Lawyers?

MR. BIENSTOCK: I'll resist that.

MR. COFFEY: Okay. Thank you.

MR. BIENSTOCK: Thank you.

Ms. DiPalo?

MS. DIPALO: At this time, we'd like to call Jessica Feather as a witness.

MR. BIENSTOCK: Excuse me, Counsel. While we're waiting, I must stop at four o'clock today. That's not true on any of the other days. It's just true today. I propose since I was late and have to leave a bit early that we take as quick a lunch, if any, as possible. Is that okay?

MR. COFFEY: Yeah, Judge. I think -- my guess is -- I think we have three witnesses today.

MS. DIPALO: Yes, we have three witnesses today.

MR. COFFEY: And by four o'clock, we may be done in any event.

MR. BIENSTOCK: I see.

MR. COFFEY: So that's my guess.

MR. FENWICK: Witness entered.

MS. BUCKLEY: (Unintelligible).

MS. FEATHER: Thank you. Okay, great. Thanks.

MR. BIENSTOCK: Remain standing for one minute. Raise your right hand. Do you affirm or swear to tell the truth, the whole truth, and nothing but the truth?

MS. FEATHER: I do.

J E S S I C A F E A T H E R

having been duly sworn, was examined and testified as follows:

MR. BIENSTOCK: Be seated.

THE WITNESS: Thank you.

MR. BIENSTOCK: And speak with a louder voice --

THE WITNESS: Okay.

MR. BIENSTOCK: -- for me.

THE WITNESS: Sure.

DIRECT EXAMINATION

BY MS. DIPALO:

Q. Good morning, Ms. Feather.

A. Good morning.

Q. How are you today?

A. I'm good. How are you?

Q. Good, thank you.

A. Good.

Q. Ms. Feather, what county do you reside in?

A. Dutchess.

Q. Okay. And are you currently employed?

A. Yes.

Q. Where are you employed?

A. DBS Remodel.

Q. And how long have you been employed at DBS Remodel?

A. I've been there about four months now.

Q. And what do you do at DBS Remodel?

A. I help with the office work, an Office Assistant or Administrative Specialist.

Q. And where did you work previously?

A. Seeta Eye.

Q. And what type of business is Seeta Eye?

A. Ophthalmology practice.

Q. And how long did you work at Seeta Eye?
A. About six years.
Q. When did you begin working at Seeta Eye?
A. 2019.
Q. And what was your position at Seeta?
A. I was the Front End Supervisor.
Q. What were your responsibilities as a Front End Supervisor?
A. I handled all of the front desk issues. I was the liaison between management and the front end.
Q. And did you supervise anybody in your capacity as Front End Supervisor?
A. Yes.
Q. Who did you supervise?
A. Rachel Bullock, Kristine Monteverdi, Wanda Inouhe, and -- there -- there was so many people I trained there between the time I left and -- there's probably a couple others I don't recall.
Q. And what were their positions?
A. They were Receptionists.
Q. And did you have a supervisor or supervisors?
A. Yes.
Q. Who were your supervisors?
A. Danielle Foster, Stacey Koch, and Doreen Mikael (phonetic).
Q. Now, in December 2021, what, if any, safety protocols did Seeta have in place due to the COVID pandemic?
A. Yes. So we were required to wear masks in the building, and we had

somebody at the front entrance taking temperatures and asking a series of questions before being admitted.

Q. Were there any other safety protocols that you could recall?

A. Yeah. We had plastic barriers in between us and the patients at reception. And we had notices on the door up by the front before you come in about the mask policy.

Q. And do you know who established those safety protocols?

A. Management.

Q. And how did you learn of those safety protocols?

A. They told us in company memos, and we had a meeting about it.

Q. And you mentioned notices. What did the notices say?

A. It just stated that you had to have a mask on before entering the practice.

Q. And what were your responsibilities as the Front End Supervisor in regard to these protocols?

A. First line of defense in enforcing the policies that we had at that time.

Q. What do you mean by first line of defense?

A. So if somebody came up to us and there was an issue, obviously we weren't the ones to handle it. We would get a Manager down to address the issue.

Q. And what type of issues did you encounter with these safety protocols?

A. At one point, people wearing gloves into the building, we would just have them sweat -- switch them out. And there was an issue with that with one lady. She wanted to wear her own gloves, but we provided our own. We didn't know what was coming in or what the case was at that point. And also if somebody came in not wearing a mask, that, you know, was a

problem as well.

Q. And were you working at Seeta on December 28, 2021?

A. Yes.

Q. And were the safety protocols you just described in place at Seeta on that date?

A. Yes.

Q. And where were you working at Seeta on December 28, 2021?

A. I was at check-in 1. There were two spots to check in. I was on the left. Kristine was to my right.

Q. And that's Kristine Monteverdi?

A. Yes.

Q. And where is the check-in desk located in the office?

A. You come in the front sliding door, and it's directly ahead.

Q. And are there chairs in that area?

A. Yes.

Q. And what are those chairs for?

A. For the patients.

Q. And were there patients in the waiting area on December 28, 2021?

A. Yes.

Q. And you testified that you were working with Kristine Monteverdi at the front desk. Where was she seated?

A. She was seated to my right.

Q. And how far away from Kristine Monteverdi were you sitting?

A. It's probably about five or six feet.

Q. Now, did anything happen with regard to the safety protocols on

December 28, 2021?

A. Yes.

Q. Can you tell us what happened?

A. We had a patient come in, Frank Mora. And he was wearing a shield, not a mask, which was not our policy.

Q. And what did the face shield look like?

A. It was just clear plastic. It was worn around the top and then came down in front of his face.

Q. And what parts of his face did it cover?

A. I mean, it came down at kind of an angle. It didn't really stop anything from coming out if he were to cough or anything like that.

Q. And at that point, was staff required to wear masks in the office?

A. Yes, anybody in the building.

Q. And who, if anyone, was Frank Mora with?

A. His son.

Q. And you identified the man as Frank Mora. Did you recognize him on December 28, 2021?

A. I didn't know who he was until he came in.

Q. And how did you come to learn his name?

A. I guess through the system. He was checking in. He would have had to identify himself.

Q. And can you tell us what happened when Judge Mora checked in at the front reception desk?

A. Yes. Kristine had asked him to put on a mask. We provided them for the clients if they didn't have any. And he said he had a medical condition

where he could not wear a mask. He was asked for proof of the medical condition. He did not have that with him. So we got a Manager.

Q. And who got the Manager?

A. Kristine was talking to Frank Mora, so I called Stacey down.

Q. And who is Stacey?

A. Stacey was one of the Managers.

Q. And what's her last name?

A. Koch.

Q. And why did you call Stacey Koch down to the waiting room?

A. She was one of the three people we would call to help in a circumstance like that.

Q. And why did you feel that you needed to call Stacey Koch to the waiting room?

A. Because she's a Manager and she's more equipped to deal with it, and more willing to deal with it than I am.

Q. And when you called Stacey Koch, what did you say to her?

A. Just that there was somebody that didn't want to wear a mask and we needed her to come down and assist.

Q. And did Stacey Koch come to the waiting area?

A. Yes.

Q. And where did Stacey Koch go when she entered the waiting area?

A. Directly to Frank Mora.

Q. And where were Judge Mora and Stacey Koch standing in the waiting area?

A. So when you come in, there's kind of a walkway down that isn't carpeted.

They were in that area between check-in and the front door.

Q. And that area is in the waiting area?

A. Yes.

Q. And how far away were they from the patients in the waiting area?

A. Kind of in the midst of them. I mean, we had everything spaced out six feet. So all the chairs were spaced. But we didn't space them out from people walking down the corridor there, so.

Q. And what, if anything, did you hear Stacey Koch say to Judge Mora?

A. I don't recall exactly what they discussed. They weren't right near me, so I'm not sure.

Q. Can you tell us if -- what, if anything, you heard?

A. I just know she was asking him to put a mask on or provide proof of a medical condition.

Q. And what, if anything, did you hear the Judge say in response?

A. That he didn't want to wear a mask --

Q. And --

A. -- that he was unable to because of his condition.

Q. And what, if anything, happened next?

A. He refused to put a mask on. He didn't have the proof of his medical condition with him. So Stacey had asked him to step outside with her. He refused to do that as well. And that continued on for a little bit until she had asked me to call the police.

Q. And what did Stacey say to you, if you can recall, when she asked you to call the police?

A. I don't recall exact words. I just know she had indicated that I should get

them on the line because we couldn't come to a resolution.

Q. And did you call the police?

A. I did.

Q. And what did you say to the police when you called?

A. I just explained the situation, that we had somebody that was refusing to vibe [sic] -- abide by our rules in the practice and that they needed to send an officer.

Q. And what, if anything, did you hear Judge Mora say when Stacey Koch told you to call the police?

A. Just that they wouldn't come.

Q. And what did Judge Mora do once you called the police?

A. Nothing. He didn't -- he refused to leave.

Q. And do you recall whether Stacey Koch called the police on December 28, 2021?

A. Not specifically. I know they were called twice. I don't remember who called the second time.

Q. And did Judge Mora leave Seeta?

A. Eventually.

Q. And what were the circumstances under which he left Seeta?

A. I think just that there was no resolution and nothing was going to -- he wasn't going to be seen that -- his son wasn't going to be seen that day if he couldn't wear a mask, so he realized he had to leave.

Q. And was anybody else present who was a member of Seeta staff in the waiting area that day?

A. Yeah. I know Mike Brown came out at one point when he heard the

commotion.

Q. And who is Mike Brown?

A. He was one of our Technicians at the time.

Q. And from the time that Judge Mora first entered the waiting room to the time he left the office, how much time would you say had passed?

A. I don't recall.

Q. And can you describe the Judge's tone during his exchange with Stacey Koch?

A. At first it was, you know, resolute but not defiant. They both escalated after a certain point. I think they were very frustrated that neither one of them was, you know, budging, so.

Q. And can you describe the Judge's volume during the exchange with Stacey Koch?

A. Initially it was fine. It was hushed tones. It wasn't anything loud. It got a little bit louder towards the end of the conversation. Not screaming, but not, you know, normal conversation.

Q. And what was Stacey Koch's tone like during her exchange with Judge Mora?

A. Calm at first. Then like I said, it escalated between both of them towards the end.

Q. And when you say escalated, what do you mean?

A. Just that they got, I think, more frustrated with one another that they couldn't see each other's sides of it or weren't understanding each other's sides of it. So they got a little bit more energetic, we'll say, towards the end.

Q. And how far apart were Judge Mora and Stacey Koch standing during their exchange?

A. I mean, Stacey was pretty strict with the six feet. So I'm guessing she was roughly that from him. But honestly, I don't recall the exact distance.

Q. And can you describe Stacey Koch's demeanor during her exchange with Judge Mora?

A. She was just trying to come to a conclusion. If we had had notice of the medical condition prior or a letter, we would have brought them in the side entrance, which that didn't happen because we didn't know. So I think she was just trying to see how we could help and then was -- when it was clear that this was not going to resolve itself, she got frustrated and asked him to leave.

Q. And how did Judge Mora's behavior on that day make you feel?

A. Uncomfortable.

Q. And why --

A. I think more so because his son was there and it was just -- it seemed inappropriate to act that way in front of anybody, let alone your child, I guess.

Q. And when you say uncomfortable, what made you feel uncomfortable?

A. The blatant defiance of the practices that everybody else there has to abide by. Why do you think you're different?

Q. And what, if any, interaction have you had with Judge Mora since the incident on December 28, 2021?

A. I spoke with him on the phone and I scheduled his appointment for him, and we went through what we would need to do so. We explained how I

would bring him in the side door so he wouldn't have to wear a mask once we had that letter. And we just brought him straight into a room.

Q. And how would you describe that interaction with the Judge?

A. Great. He was pleasant, very nice, very kind.

MS. DIPALO: I have no further questions. Thank you.

THE WITNESS: Um-hum.

MR. BIENSTOCK: Mr. Coffey?

CROSS-EXAMINATION

BY MR. COFFEY:

Q. Ms. Feather, good morning.

A. Good morning.

Q. My name is Steve Coffey, and I represent Judge Mora. Okay?

A. Um-hum.

Q. Now, let me ask you if I can, you have testified previously in this matter, correct?

A. Yes.

Q. Okay. And when you testified, were -- did you come down here to the offices here in New York City to testify?

A. No. It was a virtual testimony.

Q. Okay. Were you with anyone when you gave your testimony?

A. I was by myself. I was on a Zoom call (unintelligible).

Q. Okay. And Ms. DiPalo was one of the people talking to you?

A. Yes.

Q. Okay. And after that -- well, let me ask. Before you testified, did you

speak with her or members of the Commission?
A. Just to schedule the meeting.
Q. Well, they must have asked you what you recollected. Didn't they do that?
A. I don't recall. It was a long time ago.
Q. Okay. Okay. And then afterwards, they contacted you, what, to testify here today?
A. Um-hum.
Q. Is that correct? You have to answer verbally.
A. Yes. Yes, sorry. Yes.
Q. Okay. And when did they do that? Do you recall?
A. I don't. I got an email from Ms. DiPalo asking my availability for a phone call so she could explain everything.
Q. All right. And did you speak with her on the phone?
A. I did, to schedule my -- my briefing with her.
Q. All right. Well, I assume you went through your testimony from previously, correct?
A. Um-hum.
Q. Is that correct?
A. I did, yeah.
Q. Okay. And did you tell her that any part of the transcript that you had given was incorrect?
A. No. I wouldn't have -- I don't recall everything that happened four years ago, so.
Q. Well, did you read your testimony?

A. I did.
Q. Okay. So -- so there's nothing in there that you found to be incorrect; would that be a fair statement?
A. There's nothing in there that I would know was incorrect because it was four years ago and I don't recall, like, every detail of that day.
Q. In any event, you didn't make any changes, then; is that correct?
A. No, I did not.
Q. Okay. Now, how long did you continue to work at Seeta?
A. Up until about four months ago.
Q. All right. And Stacey, she's -- is she still working there?
A. As far as I know.
Q. Well, you were there. Was she there when you were there? When you were at Seeta, was she still at Seeta?
A. Yep.
Q. So you said as far as you know.
A. Well, it was four months. I don't know if she's still there. I don't --
Q. No, no. I'm sorry. I don't mean from that four-month period. From the time you -- before you left, she was --
A. Yes.
Q. -- still working -- okay.
A. Correct.
Q. Did you discuss this matter with her?
A. Not beyond the initial, like, four years ago.
Q. Well, all right. I know we're at four years ago, but four years ago you have a memory, correct? You --

A. Roughly.
Q. -- do remember things four years ago, correct?
A. I do. What's the question?
Q. The question is what you discussed with her four years ago.
A. We discussed the situation that happened.
Q. Tell me what the discussion was.
A. Everything that's in my testimony, like, what happened that day, what -- the interaction between her and Judge Mora and Kristine and myself.
Q. All right. Did she tell you that she had brought a complaint against the Judge?
A. After a little bit, yes. I didn't know immediately, no.
Q. Okay. Well, when is after?
A. Again, I don't recall exactly when. I did find out eventually, yes.
Q. Ms. Feather, I'm not asking you about the specific date. But surely you can tell us within a year of the -- of this incident, did you become aware at that time that she had filed a complaint?
A. I just said yes. She told me at some point, yes.
Q. But you don't recall whether it was a year, six months --
A. No.
Q. -- two years, two and a half years?
A. I do not.
Q. Okay. And she told you she brought a complaint against Judge Mora, correct?
A. Yes.
Q. Did she tell you that Judge Mora had ended up suing her?

A. I found that out too, yes.
Q. And how did you find that out?
A. She told me, and then I looked it up online.
Q. And why did you look it up online?
A. To see what it was, what was going on.
Q. Okay.
A. I wasn't really too involved beyond, you know --
Q. Well, you were involved enough that she spoke to you.
A. Um-hum.
Q. At least to that extent, correct?
A. Yes.
Q. Okay.
A. Um-hum.
Q. So she told you she brought a complaint against Judge Mora, and she told you the basis what -- that -- what happened that day in the office?
A. Um-hum, yeah.
Q. Is that correct?
A. She told me what it was entailing, yes.
Q. Okay. Did she tell you not to tell anyone else?
A. No.
Q. Okay. So it wasn't a confidential conversation between you and --
A. No.
Q. -- her, correct?
A. Mm-mm.
Q. And have you spoken to Mr. Mike Brown? Do you know who Mike

Brown is?

A. I do.

Q. Okay. And he worked at Seeta?

A. Um-hum, yes.

Q. Okay. And did you -- have you ever discussed that incident with him?

A. I don't recall if I talked to him around the time that it happened. I don't discuss -- I don't have a relationship with him beyond work when he was there, so.

Q. Okay. So let me go back to your conversations, if I can, with Ms. Koch.

A. Sure.

Q. So she told you she brought the complaint. Did she tell you that she had -- did she tell you whether she had testified or not before the Commission?

A. I don't recall.

Q. All right. Did she tell you in words or in substance -- this isn't the exact words -- that she expected him to be removed from office?

A. I don't recall that. I don't recall.

Q. Okay. When she told you that she'd brought the complaint, was anyone with the -- with the two of you?

A. I don't recall.

Q. So there might have been someone, correct?

A. Maybe.

Q. So the conversation that you had with her about the complaint, who brought that up, her or you? I assume she did.

A. I mean, it would've had to have been her. I wouldn't have known it was

going on.
Q. Right. So she disclosed to you, in words against substance, "I've got a complaint against Judge Mora for what happened that day," correct?
A. Um-hum.
Q. Is that correct?
A. Yes.
Q. Okay. And there may have been other people as part of that conversation, correct?
A. Yeah, it's possible.
Q. You don't remember?
A. I don't recall, no.
Q. And you don't recall where that conversation took place?
A. No.
Q. Okay. Did she tell you what -- okay, I'll withdraw that. Did she have any other conversations again with you after that day about this complaint?
A. I don't recall.
Q. You don't recall, okay. Did she show you the complaint?
A. Yes, I think so.
Q. Okay.
A. I think so.
Q. So (unintelligible) --
A. There was an article of some sort that I had been showed, yes.
Q. Okay. Let me do this so I can break this down --
A. Okay.
Q. -- because an article is one thing, a complaint is another. So did she show

you a copy of the complaint that she made with the Commission?

A. Oh, that I don't recall. I do recall seeing an article online.

Q. Online, okay.

A. Um-hum. Like, a -- I don't even know what website it was.

Q. Okay. And what did that article say?

A. Just the circumstances that were happening, that the two of them were in litigation with one another.

Q. Okay.

MR. BIENSTOCK: Could you keep your voice up, please?

THE WITNESS: Yes.

MR. BIENSTOCK: Please (unintelligible).

THE WITNESS: Yes, sure.

BY MR. COFFEY:

Q. Did you discuss the article with her? In other words, Stacey G. -- I'll withdraw that. Had you read the article before you spoke with her or was that afterwards? Do you recall?

A. I don't recall.

Q. All right. Do you recall whether you discussed the article with her?

A. I would assume we did. I really -- it was just so long ago, I'm not sure --

Q. Okay.

A. -- the timeline of anything.

Q. All right. Now, let's talk about that day, the day that Judge Mora came into the office with his son.

A. Um-hum.

Q. Had you ever seen him in the office previous to this day?
A. Not that I recall. It's possible he was there. He was a patient. But I don't recall seeing him.
Q. All right. And there became a dispute between him and Ms. Koch about whether he has to wear -- had to wear a mask, correct?
A. Yes.
Q. And Ms. Koch was very firm, as I understand this, that you had to be within -- more than six feet away in that office, correct?
A. Yes.
Q. She was very firm about that, correct?
A. I don't recall.
Q. Well, you were there.
A. We had rules in --
Q. Was she firm or --
A. -- place.
Q. Okay. Did she enforce those rules?
A. Yes.
Q. So she made it clear that she did not want people standing within six feet; would that be a fair statement?
A. Yes.
Q. And it is your belief based upon your -- the years that you were there and that day that the two of them would have been at least six feet apart because Ms. Koch did not want to get within six feet. Would that be a fair statement?
A. I don't recall if they were or not. It would --

Q. Well, I thought -- I thought you told us in opening -- I thought you told us -- Ms. DiPalo --
A. I said five or six feet.
Q. Okay. Well, take five or six feet. That's your belief.
A. But I don't recall exact distances. I don't have a tape measure.
Q. Well, I'm not asking if you have a tape measure, as you know very well.
A. Okay.
Q. So let me ask you this. Were they within six inches of each other?
A. Doubtful.
Q. Two feet?
A. I don't know.
Q. So they might've been two feet?
A. I don't recall.
Q. Okay.
A. I can't help you with that one. I'm sorry.
Q. Well, the reason why you can is because you know that there was a rule of six feet and you know that Ms. Koch told you that she was less than six feet. Did she tell you that?
A. I don't recall that at all.
Q. And in fact, he was not loud to her, was he?
A. I -- they were matching each other's tone.
Q. My question is --
A. I never -- I never said they were yelling. I said that they were matching each other's energies.
Q. Didn't you testify that he was not loud to her? Didn't you -- I can read

your transcript if you want. Didn't you testify previously --

A. You can do whatever you want.

Q. I'm sorry. What was that?

A. I said you can do whatever you want. If you need to refresh my memory, go ahead.

Q. Ms. Feathers (sic), I'm not trying to give you a hard time. I'm asking you if you told -- testified --

A. Um-hum.

Q. -- because you said you read your testimony --

A. Um-hum.

Q. -- that he was not loud to her? Did you testify to that?

A. Yes. I said --

Q. Okay.

A. -- that they were matching each other's tones.

Q. Okay. And did you say that he was not -- that he -- his conversation to her was firm? Did you use that word?

A. Yes. He was firm with what his beliefs were. She was firm with what our policies were.

Q. Okay. And he didn't yell at her, correct?

A. No.

Q. I mean, you agree with me?

A. I don't disagree or agree with you. I'm answering your question, though.

Q. Okay. Well, let me read your testimony --

A. Okay.

Q. -- for you, okay?

A. Sounds good.
Q. I'm sorry. What?
A. Sounds good.
Q. Is there a reason why you're giving me sarcastic answers like this?
A. I'm --

MS. DIPALO: Mr. Bienstock, I'm going to object to Mr. Coffey arguing with my witness.

MR. BIENSTOCK: I would -- I would just caution the witness to wait until Mr. Coffey is finished with the question --

THE WITNESS: Okay.

MR. BIENSTOCK: -- and try to answer the question.

THE WITNESS: Okay.

BY MR. COFFEY:
Q. All right. I'm going to -- this is page 16 in your transcript.

MS. DIPALO: Does she have a copy of the transcript?

THE WITNESS: No.

MR. COFFEY: I don't know if she doesn't. I'm going to read it to her and ask her if she recalls being asked this answer and giving this question.

MS. DIPALO: But she needs a copy of the transcript to read -- to look at the line to read along.

MR. COFFEY: Fine. I'll read this, then.

MR. BIENSTOCK: Is it in --

MS. DIPALO: Well, we have a copy, Mr. Coffey.

MR. COFFEY: No, that's okay. I'll --

MS. DIPALO: I'll provide it to her.

MR. COFFEY: That's fine. I'll do it myself.

MR. BIENSTOCK: Is it in this book?

MS. DIPALO: Yes. But we actually have a copy if she -- for her to --

MR. BIENSTOCK: Well, let me -- which tab it is?

MS. DIPALO: It's not in this book, no.

MR. BIENSTOCK: Okay.

MS. DIPALO: Would you like a copy, Mr. Bienstock?

MR. BIENSTOCK: No, I can listen.

MS. DIPALO: May I give Ms. Koch a copy of her testimony to look at?

MR. COFFEY: I'm going to -- I'll hand it to her. I'm going to --

MR. BIENSTOCK: That's fine.

MR. COFFEY: -- hand it to her.

BY MR. COFFEY:

Q. Okay. Now, I'm going to show you, Ms. Feathers --

A. Okay.

Q. -- this is page 13. All right?
A. Um-hum.
Q. Of the transcript.
A. Thank you.
Q. (Unintelligible). That has been represented to us that that is your sworn testimony before the Commission --
A. Um-hum.
Q. -- all right? We've been told that.
A. Yes.
Q. Okay?

MS. BUCKLEY: I'm going --

MR. BIENSTOCK: Is that agreed, Ms. DiPalo?

MS. BUCKLEY: Yeah. We would ask that Counsel speak into the microphone just to --

MR. COFFEY: I'm sorry.

MS. BUCKLEY: -- make sure that --

MR. COFFEY: I apologize.

MS. BUCKLEY: I'm not sure that that actually got into the record what --

MR. COFFEY: I'm sorry.

MS. BUCKLEY: -- page the exhibit is.

BY MR. COFFEY:

Q. In any event, so you know what I'm talking about, this --

MS. BUCKLEY: I'm sorry, Counsel. Do you mind just stating for the record it's page 13, because I --

MR. COFFEY: Page 13. I have to get the line. But it's page 13. Let me say it's page 13. Okay. Thank you. All right. So --

MR. BIENSTOCK: Is there a date on that, Mr. Coffey?

MR. COFFEY: Yes. January 9, 2023.

BY MR. COFFEY:

Q. Does that sound familiar to you, that your testimony -- you may not remember.

A. I don't recall --

Q. Okay. All right.

A. -- the exact time.

Q. Okay. Now, read page 13 --

A. Um-hum.

Q. -- line 20. Do you see that right there?

A. I do.

Q. Okay. Do you recall being asked this question and giving this answer?

A. Not specifically, but it's on here.

MR. BIENSTOCK: You have to let Mr. Coffey quote what he's --

MR. COFFEY: Yeah.

MR. BIENSTOCK: -- asking for.

MR. COFFEY: It's the only way I think I can do this.

//

BY MR. COFFEY:

Q. But anyway, you don't remember specifically your testimony before the Commission?

A. I remember reading it. But it was four years -- like I said, my memory of four years ago is sporadic. I don't --

Q. Well, you -- you think your memory in 2023 would've been better than today?

A. Possibly.

Q. So the question is -- on page 13.

A. Um-hum.

Q. The question, "That's okay. And can you recall what the Judge's tone was like when he was talking to Ms. Monteverdi?" The answer, "He never -- he wasn't mean or nasty. He was kind of defiant, but not loud, just firm." Do you recall (unintelligible) -- asked --

A. I do. But you asked me about his tone with Stacey, not --

MR. BIENSTOCK: No, no. No. "I do" is the answer to the question.

MR. COFFEY: All right. Can I have that back?

BY MR. COFFEY:

Q. All right. Now, that's the conversation with Ms. Monteverdi --

A. Yes.

Q. -- correct? Okay.

A. Yes.

Q. Now, what my question to you is this. Here we go. Thank you. His tone to Ms. Koch, did that change at all from his demeanor or tone to Ms.

Monteverdi? Do you understand my question?
A. I do. I think that him and Stacey had a little bit of a different dialogue than he was having with Kristine --
Q. Okay.
A. -- or Ms. Monteverdi.
Q. All right. So -- all right. Now, I -- would it be correct that his tone with Stacey was firm? Would you agree with that?
A. I would say they were both firm, yes, toward the end. They didn't start that way.
Q. All right. But anyway, the word "firm" you would accept?
A. Um-hum, yes.
Q. So there came a point in time, I believe, when you called the police?
A. Yes.
Q. All right. Did you speak to anyone at the police department?
A. Yeah, whoever answered, I did. Yes.
Q. All right. And that conversation, do you know if that was recorded?
A. I don't.
Q. Okay. After that conversation was -- you hung up the phone. And did mister -- did Judge Mora leave at that point?
A. No.
Q. All right. So he stayed?
A. He did.
Q. And there was a question about -- I think you said that Ms. Koch said to him the police may be coming, the police are coming, or something?
A. I think she notified him that we were calling the police, yes.

Q. Okay. And he said what? Now, this is four years ago. Do you remember what he said to her?
A. I remember what my testimony was that I read.
Q. Oh, that part you do remember? You didn't --
A. I just read it, so.
Q. -- remember that.
MS. DIPALO: Objection.
BY MR. COFFEY:
Q. Well, do you remember what he said to her?
A. That they wouldn't be coming.
MR. BIENSTOCK: Overruled. You can answer.
THE WITNESS: Okay.
BY MR. COFFEY:
Q. They wouldn't be coming?
A. Yes.
Q. And that's all he said, correct?
A. As far as I recall. I don't --
Q. Okay. What did Ms. Koch say when he said that to her?
A. I don't recall.
Q. All right. He didn't yell at her when he said that, correct?
A. No.
Q. Okay. In any event, this conversation or however you characterize it between the two of them went on for some period of time. And finally, what? Judge Mora left?

A. Yes.
Q. With his son? Did his son stay or leave?
A. No, his son left with him.
Q. All right. Did his son come back that day? Were you there when he came back?
A. I don't recall that, no.
Q. All right. And after he left, did you have a conversation with Ms. Koch about what had just occurred?
A. I --

MS. DIPALO: Objection. This has been asked and answered.

MR. COFFEY: Not that day I didn't ask.

MR. BIENSTOCK: Overruled.

BY MR. COFFEY:
Q. On that particular day after he left.
A. I don't recall.
Q. All right. What was her demeanor -- what did she look like when you left, Ms. Koch? Do you remember?
A. Stressed out.
Q. What does that mean?
A. Flustered a little bit.
Q. Okay. And that's your --
A. It's not something we really dealt with often, so.
Q. I understand. But in any event, that -- that's your recollection, correct?
A. Yes.

Q. Okay. Okay. One minute, if I might. Oh, the -- subsequently, did Judge Mora come back to the office with one of his sons? Do you recall?
A. I don't recall if it was with one of his sons. I recall I scheduled an appointment for him.
Q. All right. And scheduled it on the phone or did he --
A. Over the phone, um-hum.
Q. All right.
A. Yes. He called.
Q. And he showed up?
A. He did.
Q. Were you -- were you there when he showed up?
A. Um-hum. I'm the one that brought him into the room.
Q. Okay. You brought him into the side room?
A. Yes, through the side door directly into an exam room.
Q. All right. Was he wearing a mask at that point?
A. No. We had his letter, so we took him directly into a room. He didn't have to wait in the waiting room.
Q. Okay. Now, with regard to the masks, this -- we know that the -- the incident occurred in -- at the end of December 2021. Does that -- does that timeframe fit with your recollection? You don't --
A. I don't recall.
Q. Okay. Do you know if the doctors at that time were wearing masks?
A. I wasn't really in the exam room. I don't know.
Q. Okay.
A. They should be, I suppose. I don't --

Q. Your guess would be --
A. -- recall.
Q. -- your guess?
A. I would think so.
Q. Okay. One minute (unintelligible).
A. Okay.

MR. COFFEY: Just one minute, Judge.
MR. BIENSTOCK: Ms. DiPalo, redirect?
MR. COFFEY: No, I'll be -- I --
MR. BIENSTOCK: I'm sorry.
MR. COFFEY: I'm sorry. All right.

BY MR. COFFEY:

Q. Now, you testified you brought him in through the side door. This is Judge Mora, correct?
A. Yes.
Q. Okay. Do you know if that's the same side door that he and his son went in from the parking lot on 12/21 -- 12/28, rather? 12/28's the day of the -- what we're talking about.
A. No, they were -- they came in the front entrance that day.
Q. Okay. And how about when they left? Do you know what door they left out?
A. Front entrance.
Q. Okay. So your belief is that they came in through the front door, and then when Judge Mora left with his son, they went out the front door?
A. I believe so.

Q. All right. And I'm not challenging that. Is that a guess or you have a firm recollection of that?
A. Nobody really uses the side door unless it's authorized, so I would assume it's the front door.
Q. Okay.
A. There's not really another convenient exit.
Q. Okay. Okay. And I think -- I think that's it. Okay. All right. Ms. Feather -- and I've got to keep coming back to this microphone, sorry. On the side door when he came in, did you go out and get him? By get him, did you go out and greet him in the -- in the parking lot and bring him in when Judge Mora came back or did he come meet you at the door?
A. I -- I don't recall. But typically when I meet somebody at the side door, I just hold the door open and they come down the pathway.
Q. All right. So would I be correct that your belief is that you would have had a conversation with him, he would have -- you knew he was going to show up at a certain time, two o'clock --
A. Yes.
Q. -- three o'clock, whatever --
A. Um-hum.
Q. -- you would have been waiting at the side door, and he would walk in and -- met you at the side door --
A. Yes.
Q. -- correct? All right. You don't believe that you would have walked out into the parking lot and he walked behind you in?
A. It's not typical, but it could have happened. If somebody had asked me to

meet them out there to accommodate, I would have done it.

Q. You just don't recall?

A. I don't recall, yes.

MR. COFFEY: Okay. All right. Okay. All right. That's all. All right.

MS. DIPALO: I have no redirect.

THE WITNESS: I'm done?

MR. BIENSTOCK: Thank you very much.

THE WITNESS: Okay. Thank you.

MR. BIENSTOCK: Next witness.

MS. DIPALO: Our next witness is going to be Kristine Monteverdi. Andy's going to have to go get her.

MR. BIENSTOCK: Counsel, while we're waiting, I want to make it clear that in my day job, I'm more of a Trial Lawyer than I am a Judge. And it's my experience essentially not to interfere with the questioner or the witness unless there's an objection from the other side. I know there are tactical reasons, for example, for not objecting, for example, to hearsay. And I'm just telling you unless I hear from the other side, I'm pretty much going to let you folks go. Okay? I just -- I just want to say that.

MR. COFFEY: I appreciate that. Let me ask you this question, because Hearing Officers deal with it differently as opposed to Trial Judges. And that is whether you would believe that you have the right to interpose and

ask questions of your own.

MR. BIENSTOCK: I understand that.

MR. COFFEY: Is that your understanding, that you have the -- that you can do that?

MR. BIENSTOCK: Yes.

MR. COFFEY: Okay. All right.

MR. BIENSTOCK: I'm a little light on that too.

MR. COFFEY: Okay. All right. Okay. All right.

MR. BIENSTOCK: You folks can try your case.

MR. COFFEY: Thanks.

MR. BIENSTOCK: Ms. DiPalo, is the defamation complaint in -- in this book?

MS. DIPALO: Yes, it is.

MR. BIENSTOCK: Could you give me the number?

MS. DIPALO: It is Exhibit 7.

MR. BIENSTOCK: 7?

MS. DIPALO: 7.

MR. BIENSTOCK: All right.

MS. DIPALO: All of the pleadings are in the book and have --

MR. BIENSTOCK: I see it.

MS. DIPALO: -- been admitted into --

MR. BIENSTOCK: Thank you.

MS. DIPALO: -- evidence. I'd just like to note for the record that Mr. Levine is leaving the hearing room.

MR. FENWICK: Witness entering.

MS. DIPALO: Mr. Bienstock, I believe you have to administer the oath.

MR. BIENSTOCK: Oh, I'm sorry.

Raise your right hand. Do you affirm or swear that your testimony will be the truth, the whole truth, and nothing but the truth?

MS. MONTEVERDI: I do.

MR. BIENSTOCK: Be seated.

K R I S T I N E M O N T E V E R D I

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DIPALO:

Q. Good morning, Ms. Monteverdi.

A. Good morning.

Q. Can you speak up into the microphone? You can move it closer if you need to.

A. Yes.

Q. Thank you. Ms. Monteverdi, are you here today pursuant to a subpoena requiring your appearance?

A. Yes, I am.
Q. And what --
MR. BIENSTOCK: Could you both speak up, please?
MS. DIPALO: Yes.
BY MS. DIPALO:
Q. What county do you reside in?
A. Ulster County.
Q. And are you currently employed?
A. Yes, I am.
Q. And where did you work in December of 2021?
A. Seeta Eye Center.
Q. And what was your position at Seeta?
A. I was a Receptionist.
Q. And how long did you work at Seeta Eye Center?
A. I was there just about three years.
Q. When did you begin working at Seeta Eye Center?
A. December of 2020.
Q. And when did you leave Seeta Eye Center?
A. September 2023.
Q. And when you worked at Seeta as a Receptionist, did you have a supervisor or supervisors?
A. Yes, ma'am.
Q. Who were your supervisors?
A. Stacey Koch, Danielle Foster, and a new one was hired on, Daren

(phonetic) something.
Q. And what were your responsibilities as a receptionist at Seeta?
A. I checked patients in and out, made appointments, took payments and such.
Q. Ms. Monteverdi, there's fresh water there --
A. Thank you.
Q. -- if you would like. Now, in December of 2021, what, if any, safety protocols did Seeta have in place due to the COVID pandemic?
A. There was a monitor that was at the entrance of the building that asked a series of questions related to COVID symptoms and took the patients' temperatures as they entered the building.
Q. And did Seeta have any other protocols in place?
A. And they also had to wear a mask upon entering the building.
Q. And were there any notices around Seeta regarding the safety --
A. Yeah. There was a sign on the doors that opened up in -- as you entered in the building and also up near check-in where you would check in.
Q. And do you recall what that sign said?
A. Something along the lines of "Masks must be worn inside the office" or something like that.
Q. And you said that masks were required. Who was required to wear masks at Seeta?
A. The staff and the patients.
Q. And what were your responsibilities as a receptionist with regard to these safety protocols?
A. To make sure they were followed.

Q. Now, in December of 2021, were face shields permitted in lieu of face masks?
A. No. It was only face masks.
Q. And were you working at Seeta on December 28, 2021?
A. Yes, ma'am.
Q. And were the safety protocols that you described in place on that date?
A. Yes, they were. The only thing that was different was that there wasn't a monitor at the door. The patients were able to come up to the reception and have their temperature taken.
Q. And were there any safety protocols apart from the temperature being taken at the front desk?
A. We had plexiglass separating us from the patients --
Q. And --
A. -- and the patients from us.
Q. And were you working as a receptionist on December 28, 2021?
A. Yes.
Q. Where were you --

MR. BIENSTOCK: Ms. DiPalo, can I ask you, are the signs part of the record?

MS. DIPALO: No.

MR. BIENSTOCK: Okay.

MS. DIPALO: Not part of the stipulated evidence.

MR. BIENSTOCK: Is it in -- marked exhibit?

MS. DIPALO: No.

MR. BIENSTOCK: Okay.

BY MS. DIPALO:

Q. Where were you seated in Seeta while you were working as a Receptionist?

A. At -- at the front right.

Q. Were you working with anybody that day?

A. Yes. I was with the other Receptionists.

Q. And who were the other Receptionists?

A. Jessica was to my left, and we had two at the checkout. They were Rachel and Wanda. And behind me was Jackie Dreese.

Q. And you testified that Jessica Feather was seated to your right. How far away from you was she seated?

A. She was pretty close. I mean, not that close. But at least six feet apart.

Q. And in the waiting area, how many chairs were there for patients?

A. There were about maybe 15, 16 chairs. It was half of what it used to be in the waiting room.

Q. And were there patients in the waiting room on December 28 --

A. Yes.

Q. -- 2021? Do you know approximately how many patients were in the waiting room?

A. I would say probably 15 or so.

Q. And what, if anything, happened with regard to the safety protocols on December 28, 2021?

A. What would happen as far as --

Q. Was -- did anything happen in terms of the safety protocols being

violated on December 28, 2021?

A. Yes. I had a patient enter the building without wearing a face -- a face mask that we required.

Q. And what was the patient wearing on his face?

A. A clear face shield.

Q. And what did the face shield look like?

A. It was -- it covered the forehead to the chin, and it -- and it was clear, and it -- everything else on the side was open.

Q. And did you recognize the patient who walked in wearing the face shield?

A. I did.

Q. And how did you recognize the patient?

A. Because he had given a hard time the last time he was in wearing a face mask.

Q. And do you know the patient's name today?

A. Mr. Mora.

Q. And you testified that the patient had given you a hard time on a previous occasion. Do you recall when that was?

A. It was when I first started in 2020. I was the monitor at the door.

Q. And --

A. Very new, trying to do my job.

Q. And can you tell us what happened at that prior encounter?

A. He entered, again, with the face shield.

Q. And what did you do at that point?

A. I just let him know, "Sir, you need -- we have protocol that we have to

follow. You need to have a face mask to be inside the building."

Q. And how did Judge Mora respond?

A. He refused.

Q. And what did -- what did you do at that point?

A. I am -- I didn't -- I was new. I didn't want to upset anyone. I asked him to wait outside, and I got my Manager, Danielle Foster, to come out and handle the situation.

Q. And what, if anything, did Danielle Foster do at that time?

A. She also said that he needed to have a face mask to be into the -- enter the building for the safety of all of us.

Q. And do you know how the situation was resolved?

A. He -- give me a second. He told Ms. Foster that he had a -- a medical exemption from wearing a mask.

Q. And was he permitted to enter Seeta on that day?

A. He was with his child that day, and his child needed to be seen. So what happened was Mr. Mora waited outside and the son came -- was able to come in. The son had a mask on.

Q. And how did you feel about your exchange with Judge Mora on that prior occasion in December 2020?

A. I was -- I was uncomfortable. I was new. I'm trying to do my job, and this simple thing wasn't followed by Mr. Mora.

Q. Now, I'd like to turn your attention back to December 28, 2021. What did Judge Mora say to you when he approached reception wearing the face shield?

A. He was checking in, and I had to again remind him that he needed to have

a mask. And he said he's medically exempt.

Q. And -- go ahead.

A. And I asked him to -- I asked him again to put it on, and he refused. So I asked him to wait outside while I got my Manager because I had -- I had patients, and my job was to keep the patients and myself safe from COVID. It was -- it was a real thing at that time.

Q. And did Judge --

A. And he refused.

Q. He refused to put on --

A. He refused to go outside.

Q. Thank you. And how would you describe the Judge's tone during your encounter on December 28?

A. He was very matter of fact.

Q. Did he raise his voice?

A. Not to me.

Q. And did you get a Manager?

A. Jessica did. Jessica went and got Stacey because he wasn't listening to my words.

Q. And that's Jessica Feather?

A. Jessica Feather.

Q. And did there come a time when Stacey Koch came into the waiting room?

A. Yes, she did.

Q. And what, if anything, did Stacey do when she got to the waiting room?

A. She also asked -- requested that he put a face mask on. And he said he

was medically exempt. Stacey asked for proof, and he couldn't supply that.

Q. And how would you describe the Judge's tone during his exchange with Stacey Koch?

A. He was getting annoyed.

Q. And what was Stacey Koch's tone like?

A. Stacey always remained calm in those situations, and I'm glad that Jessica had chosen to get Stacey for this situation.

MR. COFFEY: Object as irrelevant.

MR. BIENSTOCK: Sustained.

BY MS. DIPALO:

Q. And can you describe Judge Mora's volume during this exchange with Stacey Koch?

A. It started out low, and then it -- his volume started to rise. Not yelling, but it was rising in the waiting room.

Q. And can you describe Stacey Koch's volume during this exchange?

A. The only time her voice would get a little bit louder was when she was trying to talk over him.

Q. And how far -- how far apart were Judge Mora and Stacey Koch standing?

A. I would say about two to three feet apart.

Q. And how far apart -- let me withdraw that. What was the distance between where you were sitting and where Judge Mora and Stacey Koch were standing?

A. Probably from me to the door away.

Q. Between ten and 12 feet?
A. Yeah, because I was still -- I was back in the reception area.
Q. And how did you feel about the distance between Judge Mora and Stacey Koch?
A. Well, as they got closer, I went around the side and stood in the doorway because it was starting to make me uncomfortable. And when it really made me feel uncomfortable, I went and got one of the male Technicians that worked at Seeta Eye Center.
Q. And what made you uncomfortable about the situation?
A. It was the voices were -- his voice was raising, and he's a man and she's a woman, and it just -- it wasn't appropriate.
Q. And who is the male Technician that you went to get?
A. Michael Brown.
Q. And why did you decide to go get Michael Brown?
A. Because he was a male.
Q. And what did you say to Michael Brown?
A. He was with a patient, and I told him there was a situation in the waiting room. I feel like it's escalating. There's a man out there that refuses to wear a mask, and he's outside -- out there with Stacey.
Q. And just to clarify, were any of the other staff members who were in the waiting room during the exchange before -- between Judge Mora and Ms. Koch males?
A. No. No, we're all -- we were all females.
Q. And where did you bring Michael Brown?
A. To where -- to the waiting area where Stacey and Mr. Mora were.

Q. And what did you observe Michael Brown do when he came to the waiting area?
A. Trying to calm everybody down and see what's going on.
Q. And where was he standing?
A. He was in between them.
Q. And what, if anything, did you observe happen between Judge Mora and Stacey Koch when you returned to the waiting room?
A. Stacey had asked him to wait out -- to go outside; otherwise, she was going to call the police.
Q. And did Judge Mora go outside?
A. No.
Q. And what, if anything, did Judge Mora say in response to Ms. Koch saying she was going to call the police?
A. He had said, "Go ahead. They're not going to do anything anyway."
Q. And did you hear Michael Brown -- let me withdraw that. What, if anything, did you hear Michael Brown say while he was standing with Judge Mora and Ms. Koch?
A. He was trying to get him to go outside.
Q. Who's the he?
A. Mike Brown --
Q. What --
A. -- trying to get Mr. Mora to go outside.
Q. And did somebody call the police?
A. Yes. Jessica called the police.
Q. At any point, did you hear Ms. Koch speaking to the police?

A. I don't recall. I don't remember.
Q. And did Judge Mora leave Seeta that day?
A. Eventually, yes, he did.
Q. And can you tell us how he came to leave Seeta?
A. He left on his -- he left on his own --
Q. And --
A. -- with Mr. Brown. Mr. Brown escorted him out.
Q. And I may have neglected to ask you this. Was Judge Mora with anybody on December 28, 2021?
A. No. He was alone.
Q. And did the police ever come to Seeta on December 28, 2021?
A. No.
Q. And from the time Judge Mora first entered the waiting room to the time he left the office, how much time had passed?
A. Can you repeat that for me?
Q. From the time Judge Mora first walked into Seeta and checked in at reception to the time Mike Brown escorted him out of the office, how much time had passed?
A. Maybe 20 minutes or so.
Q. And did there come a time that you learned Judge Mora was a Judge?
A. Yes, afterwards.
Q. And when did you learn that he was a Judge?
A. Stacey had told me he was a Judge.
Q. And do you recall when Stacey told you he was a Judge?
A. It was way -- it was after the incident.

Q. So after December 28 --
A. Yes.
Q. -- 2021?
A. Yeah.
Q. And what were the circumstances under which she told you he was a Judge?
A. I honestly -- I don't remember. It came up in, like, conversation.
Q. And how did your exchange with -- let me withdraw that. How did you feel about the exchange between Judge Mora and Stacey Koch?
A. I felt it was completely inappropriate.
Q. And why did you feel like it was inappropriate?
A. Because everyone had to follow the same protocol. We weren't singling anyone out. Everyone had to wear a mask.

MS. DIPALO: I have no further questions. Thank you.

CROSS-EXAMINATION

BY MR. COFFEY:

Q. Ms. Monteverdi, good morning. My name is --

MR. BIENSTOCK: Wait until you're to the mic.

MR. COFFEY: I'm sorry.

BY MR. COFFEY:

Q. Ms. Monteverdi, good morning. My name is Steve Coffey.
A. Good morning, Mr. Coffey.
Q. How you doing?

A. Good. How are you?
Q. Okay. I'm sure you don't want to be here.
A. Not at all.
Q. Okay. Now, aside from your opinion on things, whether it was right or wrong, whatever, let me ask a few things if I can. You were working on -- we know the -- that the date is December 28, 2021.
A. Correct.
Q. If you don't remember the exact date --
A. Okay.
Q. -- that's the date we're talking about.
A. Yeah.
Q. You indicated -- well, yeah. You indicated that you had began work in -- at Seeta in 2020?
A. Correct.
Q. Are you certain that Judge Mora came in 2020 to Seeta? I think you said when you first started working, he came to Seeta; is that right, in 2020?
A. Correct. I started working in 2020.
Q. When in 2020?
A. December.
Q. Okay. And was it 2000 -- was it December that he came in 2020?
A. Well, without the schedule in front of me, I don't know the exact date he came in.
Q. All right. What I'm trying to determine here is -- do you know if it was December, January, February that actually flowed into 2021?
A. It could have been early 2021.

Q. Okay. And at the time he came in, whatever date it was, he was with -- by himself or with his son?
A. He was with his son.
Q. And how old was his son at that time?
A. Maybe ten or so.
Q. Okay. If I were to tell you that he was 16 at the time, would that surprise you?
A. He looked young. But I think I was more focused on the fact that he wasn't wearing a mask, so I --
Q. Who wasn't? He or his son?
A. Mr. Mora.
Q. Okay. Was his son wearing his -- a mask?
A. Yes, he was.
Q. Okay. And at that time, there was a dispute about wearing a mask; is that correct?
A. Um-hum, correct.
Q. Is that right? Okay. Did you tell your supervisors about that?
A. Yes.
Q. And who was that you talked to?
A. Danielle Foster.
Q. Okay. And what did Danielle Foster say to you, if anything?
A. She didn't say anything to me.
Q. Okay. Do you know if she -- if they logged that in the file that there was this indication there was --
A. I would -- I would imagine so, but I don't --

Q. You don't know?
A. I have no way of knowing that.
Q. All right. In any event, whatever happened that day appeared to have resolved pretty quickly, and then that was the end of that as far as you know, correct?
A. Well, he waited outside, and his son was taken in by himself.
Q. Waited outside. What, in the parking lot?
A. Um-hum.
Q. Is that correct?
A. He waited -- yeah, Mr. Mora waited in the parking lot.
Q. And did -- because you asked him to or he did it on his own, if you remember?
A. Because he wouldn't comply with wearing a mask.
Q. Well, I understand that. But when he went outside, was he told to go outside or did he go out on his own?
A. He was -- Danielle Foster told him to wait outside.
Q. And you remember that?
A. Yes.
Q. And he went outside?
A. Yes.
Q. Okay. Now, let's go now to December 28 of 2021, roughly about a year later --
A. Yes.
Q. -- some -- in that period of time. He came in that day with his son. His son -- did his son have a mask on?

A. He wasn't with his son that day.
Q. He was not with his son that day? Okay. So he came in on his own that day. And I want to ask your recollection. You've given testimony in this matter before, correct?
A. Correct.
Q. Okay. And Ms. DiPalo, do you know her?
A. I do.
Q. First name?
A. Melissa.
Q. Ah, okay. Does she know you by your first name? Okay. In any event, you -- she spoke to you once, said -- I won't use your first name. But whatever it is, "We'd like to call you possibly as a witness. Would you be available?" that kind of thing; would that be a fair statement?
A. Yeah, correct.
Q. I mean, before you testified under oath in this matter, correct?
A. Correct.
Q. Okay. Have you had a chance to read your transcript?
A. Correct, yes.
Q. All right. Did you make any corrections?
A. No.
Q. Okay. Did you meet with Ms. DiPalo or someone in the office prior to your testimony here today?
A. Yes, yeah.
Q. Okay. Where did -- where did you meet?
A. Over the phone -- over the computer, Zoom.

Q. Zoom, okay. And was that in the last couple weeks?
A. Yes.
Q. All right. And they prepared you for the -- I'm not suggesting they told you to lie. So I want to be clear about that.
A. No, I get it. (Unintelligible).
Q. But they prepared you for your testimony?
A. Yes.
Q. Did they tell you you were going to be cross-examined?
A. I knew that --
Q. All right.
A. -- before they even told me.
Q. Did they -- I won't to ask the next question. But in any event, so you knew coming in that you'd give testimony and you knew that your testimony that you'd previously given would be relevant, correct?
A. Correct.
Q. Okay. Have you ever given a signed statement in this matter? In other words, aside from your testimony did you ever swear out a statement or not?
A. I don't remember.
Q. I don't think we have one, so okay.
A. I don't remember.
Q. Now, after this -- let's call it an incident that occurred that day, did you discuss this matter or the incident with Stacey Koch?
A. Yes.
Q. Okay. Where --

A. Because she was very upset.
Q. Okay. And you discussed it with her that day, correct? Or maybe not. Did you discuss --
A. I -- I don't remember if it was that exact day.
Q. All right. Later on --

MR. BIENSTOCK: Mr. Coffey, can -- Mr. Coffey, can we be clear about which incident you're talking about now?

MR. COFFEY: Yeah, okay.

BY MR. COFFEY:
Q. I'm talking about July -- I'm talking about December 28.
A. Correct.
Q. That's the -- when I call it "the incident" that is the incident that I'm referring to.
A. Correct.
Q. Okay? All right. After that incident, did she tell you that she -- I'll withdraw it. She told you, didn't she, that she filed a complaint against Judge Mora?
A. Yes. That I knew.
Q. You knew. She told you that?
A. Yes.
Q. Okay. And she showed you a copy of the complaint too, right?
A. I don't remember.
Q. Okay. But she told you that -- the sum and substance of what she said, correct?

A. Yes.
Q. She said "What happened that day, I filed a complaint with the Commission," right?
A. Yes.
Q. She never told you not to tell anybody else, correct?
A. Nope.
Q. In fact, as far as you knew, she was okay to tell you and you could tell anybody at all about what she said, right?
A. Yeah.
Q. It certainly wasn't in your mind confidential, was it?
A. Well, I mean, I wouldn't, like, plaster it on Facebook or anything. It was --
Q. Well, I understand that.
A. -- you know.
Q. But it wasn't confidential. She didn't say whatever your first name is -- again, I apologize --
A. Kristine.
Q. Kristine. "Kristine, you've got to keep this between us." She just said, "Here -- here's what I did. I told -- I went to the Commission; I gave a complaint," right?
A. Yes, she did. Yeah.
Q. Okay. And you told other people about that, I assume, that Stacey's filed a complaint against her.
A. I told someone?
Q. Well, did you ever tell anyone about this complaint?

A. No.
Q. No, okay.
A. I didn't care enough about it, honestly.
Q. Okay. That's okay. I'm just trying to determine what you had done. When she told you that she filed a complaint and told you what the substance of it was, did she tell you whether she had testified before the Commission?
A. No.
Q. No? Okay.
A. I don't remember. But no. I don't think so.
Q. That's okay. I'm just using your recollection here, okay? Did she ever tell you that she had been sued?
A. Yeah. It was in the paper.
Q. Okay.
A. Or it was on the news or something.
Q. Okay.
A. I saw it.
Q. Okay. I understand you may have seen it. But she didn't tell you she had ever been sued?
A. I don't remember ever hearing it from her mouth, no.
Q. Okay. All right. Now, when she told you that she had filed a complaint and told you what it was, do you recall where you were when you had this conversation?
A. I really don't.
Q. All right. And was there anyone else with you when you had this

conversation?
A. I don't even remember having the conversation. I don't know.
Q. Well, you remember having the conversation. But you just don't remember --
A. I don't remember where or who was with me. I --
Q. All right.
A. -- have no idea.
Q. All right. Now, Mr. Brown -- have you discussed this incident with Mr. Brown?
A. Possibly.
Q. You don't remember?
A. I don't -- yeah, I don't know.
Q. Are you aware of what Mr. Brown claims that he recollected that day? Has anyone told you what Mr. Brown may have said?
A. No.
Q. All right. Has anyone told you what Ms. Feathers (sic) claims she saw or heard?
A. No.
Q. Okay. And do you still work at Seeta?
A. No, I do not.
Q. Okay. How long since you've worked at Seeta?
A. I left there 2023.
Q. Okay. Is there any -- it was just to -- just to get a better job?
A. Yes.
Q. Okay. Have you talked to Ms. Koch since that time?

A. No.
Q. All right. Now, you were a loyal employee of Seeta, I assume, correct?
A. I hope they thought of me as that.
Q. Okay. And I'm sure they did. And when you left, there were no hard feelings as far as you knew, correct?
A. As far as I know.
Q. All right. So let's go to the day in question. Mr. Mora comes in. He talks to you at that time. He has a mask on. And you tell him he can't come in with a mask, correct?
MS. DIPALO: Objection.
A. He didn't have a mask on.
MR. BIENSTOCK: Sustained.
A. He had a shield.
BY MR. COFFEY:
Q. I'm sorry. I apologize. I conflated those. I apologize. He had a shield on, and you told him, "You can't come in with a shield", correct?
A. No. I told him that he needs to have -- he needed to have a face mask on.
Q. All right. Well, okay. And he declined to do that --
A. Correct.
Q. -- correct? Now, did you discuss with him what happened the previous time when he had come in with his son?
A. No.
Q. Okay. You didn't say, "We've been through this before, Mr. Mora. You know our rules"? Did you say anything like that?
A. I don't -- I don't remember.

Q. All right. Fair enough. In any event, he didn't raise his voice with you as I understand it.
A. No.
Q. But you -- but he didn't accede to your demand or whatever you told him.
A. The protocol for the office.
Q. The protocol. And then you called Stacey to --
A. Jessica went and got Stacey.
Q. Stacey, okay. And then she came down, correct?
A. Correct.
Q. Now, there was a rule in place, as I understand it, at Seeta that people were trying to be six feet apart, correct?
A. Correct.
Q. He never -- Mr. Mora never threatened Stacey, correct?
A. No.
Q. He never -- he never physically went after her, correct?
A. No.
Q. So if they were less than six feet, she could easily have moved beyond six feet to talk to him, correct?
A. Where she was standing by the window -- she was standing by the window.
Q. Yeah.
A. And he progressively got closer to her.
Q. But she could have moved, right?
A. Then there wasn't much -- there wasn't much room behind her left.
Q. She could have -- she could have walked past him and said, "Listen, I'm

not going to stand next to you less than six feet." She had the option to do that, correct?

A. Or he could have stayed back.

Q. I'm not asking about him. I understand that. He could have. But I'm asking about her. She had the option of moving beyond six feet, correct?

A. Correct.

Q. All right. And he did as well?

A. Correct.

Q. In any event. And their voices started rising, I guess; is that right?

A. Yes.

Q. He wasn't yelling, though, was he?

A. No. His voice was raised.

Q. Okay. Right. He was firm. Would you accept --

A. Yes.

Q. -- that statement? It was a firm --

A. Yeah.

Q. And so they're going back and forth. Mask, shield, so forth. And did you hear him ever say to her -- did you hear her say to him, "You need a medical" --

A. Yes.

Q. Okay. Did you hear him say he would get one?

A. No. He just said he didn't have one with him.

Q. All right. Did he ever -- did you him ever say to her, "If you need one, I can get one"?

A. I don't remember.

Q. Fair enough. In any event, do you know why he was there that day?
A. I believe he was getting an eye exam.
Q. Okay. Fair enough. And you're watching this going on. And then the police were called, correct?
A. Correct.
Q. And he said something along the lines of "They're not going to come," right?
A. "They're not going to come. They're not going to do anything."
Q. All right. He didn't threaten her with that, did he? He just made a statement.
A. It depends on how you took it.
Q. Well, the fact -- the fact of the matter is the cops didn't come, did they?
A. No, but now I know why.
Q. Why is that?
A. Because he's a Judge.
Q. Oh, really?
A. Is that why he -- yeah.
Q. Well, where did you come up with that opinion?
A. Myself.
Q. Okay. The fact is the police did not come, correct?
A. Correct.
Q. All right. And even if he said what you said he said, that was the conversation between the two of them about whether he had to leave or not, correct?
A. Um-hum, correct.

Q. Correct? Okay. Did he come back later that day?
A. I don't know. I might've been gone. I don't know.
Q. What were your hours then?
A. Sometimes I had to leave early to get my children from school.
Q. Okay. But ordinarily, what would your hours have been?
A. Till about 4:00, 4:30.
Q. Okay. But if you had to get your children, you'd leave earlier?
A. Correct.
Q. Okay. Now, Judge Mora -- we understand that you described the conversation between them. He wasn't mean or nasty, correct? He was -- he was --
A. He was cocky.
Q. He was cocky. Okay. But he wasn't mean or nasty, correct?
A. He could've been nicer. But he wasn't --
Q. Fair enough.
A. -- very kind.
Q. Okay. He didn't threaten her, correct?
A. No, he did not --
Q. Okay.
A. -- threaten.
Q. And he never threatened you?
A. No.
Q. Okay. Now, those words that you -- that you say you heard, do you know whether Judge Mora may have said "They're not going to enforce it"? In other words, the rule. Do you know if he said that?

A. Enforce what, sir?
Q. Enforce the rule about the shield and the -- and the mask.
A. That who wasn't?
Q. Do you know if Judge Mora may have said to Ms. Koch when she was calling the police and said, "Go ahead. They're not going to enforce it"? Do you know if he said that?
A. I don't remember him saying that.
Q. All right. So you just don't recall; is that a fair statement?
A. Yeah.
Q. All right. Fair enough.
A. Correct.
Q. Did you see Judge Mora leave?
A. Yes.
Q. All right. And did you --
A. Well, I saw him walk out the doors.
Q. Front door or side door?
A. Front.
Q. Okay. Was he escorted out?
A. Yes.
Q. By Mr. Brown?
A. Correct.
Q. Okay. Now, Mr. Brown was called to try and calm things down, correct?
A. Yes.
Q. Okay. And I think you said trying and calm both people down, him and Koch, correct?

A. Well, yeah, because Stacey was nervous. I could tell she was getting nervous and holding her ground.

Q. Okay. All right. But anyway, that's why Mr. Brown came in, to try and --

A. Yeah.

Q. -- defuse the situation and try and put an end to it.

A. Yes.

Q. Would that be a fair statement?

A. Yes.

MR. COFFEY: All right. Let me have one minute, if I may. Thank you. That's all I have.

MR. BIENSTOCK: Ms. DiPalo?

MS. DIPALO: I have no redirect, Mr. Bienstock.

MR. BIENSTOCK: Ms. Monteverdi, I have one question. When did you learn for the first time that Mr. Mora was a Judge?

THE WITNESS: It was after the incident, maybe the next day. I don't really -- I don't recall the exact time or day.

MR. BIENSTOCK: Okay. You may step down.

MR. COFFEY: Wait. Let me do this if I can.

MR. BIENSTOCK: Sure.

//

BY MR. COFFEY:

Q. How did you learn that he was a Judge?

A. Stacey had told me.

Q. Stacey told you.

A. Yes.

Q. She -- and she may have told you that day?

A. I don't think it was that day. It might have been the day after.

Q. All right. You don't recall, and I understand that. But you --

A. Yeah, I don't.

Q. You don't recall if it was that day, the next day, or some other day, correct?

A. It was -- it was close to the day of the incident.

Q. All right. Fair enough. Okay. He never asserted in your presence the fact that he was a Judge, correct?

A. No. I had no idea he was a Judge.

MR. COFFEY: Okay. All right. Thank you. All right. Thank you.

MR. BIENSTOCK: You may step down. Thank you very much.

MS. DIPALO: Thank you, Ms. Monteverdi. Mr. Bienstock, would you like us to call our next witness or do you want to break for lunch?

MR. FRIEDBERG: Or for --

MS. DIPALO: Or have --

MR. FRIEDBERG: -- five minutes?

MS. DIPALO: Yeah, five -- do you want to take a five-minute break?

MR. BIENSTOCK: No, no. Can't you keep going?

MR. FRIEDBERG: I can. We're ready to go.

MR. BIENSTOCK: No.

MR. COFFEY: We can take a five minute break.

MR. BIENSTOCK: Will this witness be longer?

MS. DIPALO: No.

MR. COFFEY: No. In fact, I have a motion on this witness.

MR. BIENSTOCK: Yeah. I need five minutes for biology.

MS. DIPALO: Okay. Yeah, same.

MR. FRIEDBERG: Just say off the record and he'll take you off the record.

MR. BIENSTOCK: Off the record.

MR. MAISONET: Off the record.

(Recess from 12:16 p.m. until 12:35 p.m.)

MR. MAISONET: We're on the record.

MR. BIENSTOCK: Mr. Coffey?

MR. COFFEY: Yes, Judge. We have three witnesses that we are going to call. One, of course, is the

Judge. And two -- the two others are Michael Sussman, whom I referred to in my opening, whom was consulted by Judge Mora as his attorney; and the third person is the Michael Brown, whom you've heard testimony today was an employee of Seeta at the time. Now, both those individuals have indicated to us that they would have difficulty --

MR. BIENSTOCK: Let's take Michael Brown first because he's the easiest.

MR. COFFEY: All right. Michael Brown has [redacted]. And we would like to be able to depose him or have him testify

JUDGE MORA: And speak to us.

MR. COFFEY: -- virtually because he's told us that medically -- he lives in Poughkeepsie -- that it would be difficult for him to come in and appear personally.

MR. BIENSTOCK: Let's take them one at a time. What's the objection to Michael Brown?

MS. DIPALO: I think Mr. Levine is going to --

MR. BIENSTOCK: Sure.

MS. DIPALO: -- make --

MR. LEVINE: Thank you.

MS. DIPALO: -- the objections.

MR. LEVINE: So first of all, under 553 of the Commission's policy manual, good cause has to be shown

in order for a witness to testify virtually when there's an in-person hearing, as well as the Court of Appeals has said that exceptional circumstances have to be in place in order for that to be permitted.

So there are a couple of things with respect to Mr. Brown. Number one, they knew about it for a long time and didn't tell us. Number two, the other provision of 553 in the policy manual is ensuring confidentiality, okay, because since everything here is strictly confidential, where will he be? Okay. So he has to be in a place where he can have no other person there, that he's -- it's quiet, it maintains confidentiality. In addition, we have lots of documents to show him, okay, which is why this is an in-person hearing. All right.

And so it's really -- so that's -- the -- the confidentiality is a concern. But also the -- you know, I understand they're saying now he has a physical disability. Why didn't they tell this earlier so we could have made an accommodation? It puts us in a bad spot here. A, I'd like to see an offer of proof as to whether he can't come here. And secondly, it -- this is an in-person proceeding where we want to confront him with documents, and it makes it difficult to do it when we do it virtually.

MR. BIENSTOCK: Are you going to finish your case today?

MS. DIPALO: No.

MR. LEVINE: No. So he can come tomorrow, Friday.

MR. BIENSTOCK: So there's a third witness now --

MS. DIPALO: Yes.

MR. BIENSTOCK: -- and then there's another witness?

MS. DIPALO: There's another witness on Thursday morning. I had left --

MR. FRIEDBERG: Tomorrow she (unintelligible).

MS. DIPALO: The witness was available tomorrow, and I was under --

MR. FRIEDBERG: Tomorrow's Thursday.

MS. DIPALO: Yes. There's another witness tomorrow. And I was under the impression that we were going to be dealing with some issues regarding the admissibility of certain exhibits in the morning. So I scheduled her for tomorrow, and she will be my last witness.

MR. COFFEY: Having said that, Judge, we have talked -- I have talked -- my associate has talked to Mr. Brown. I -- after this, if Mr. Brown is able to appear, I would like to have him appear.

MR. BIENSTOCK: I'm sorry. I missed that.

MR. COFFEY: I would like to have Mr. Brown appear personally. That would be my preference. At the end of the lunch break, let me do this. Let me call and see if he can make himself available. If he does -- or if he will, then that makes this moot because I can bring him in, although I may have to bring him in tomorrow. I don't know what his schedule would be.

MR. BIENSTOCK: Now, on Sussman, we're talking about an actual engagement tomorrow. What does Friday look like?

MR. COFFEY: Yeah. Friday, again, I'm going to have to talk to my associate. We've agreed that we can do him virtually. He says that he's got a couple of arguments before these --

MR. BIENSTOCK: I read -- I read the two o'clock in the morning letter.

MR. COFFEY: All right. Now, he has told us previously -- this is before I came in this morning -- that he would be available tomorrow from 11:00 to, say, 2:30 or 3:00, maybe 3:30 or something. So I'm assuming that would still be acceptable.

MR. BIENSTOCK: It's not -- it's not what your partner wrote in the letter to me --

MR. COFFEY: That's why I've got to talk to

Lawson, my associate, and find out -- he was talking to Sussman today to find out what his availability is.

MR. BIENSTOCK: Can we -- can we nail that down, please?

MR. COFFEY: Yeah, we will. As soon as I -- the lunch break, I will call him and I will --

MR. BIENSTOCK: Okay.

MR. COFFEY: -- get that nailed down. Yes.

MR. BIENSTOCK: All right.

MR. LEVINE: Okay. So we can defer that question until after Mr. Coffey has a chance to speak to the -- his associate.

MR. BIENSTOCK: My inclination on the witness with the disability is to allow it and to make sure there's nobody else in the room with him. I don't know how well your room --

MR. LEVINE: No, the equipment works very well. And it --

MR. BIENSTOCK: And you can put exhibits on the screen?

MR. LEVINE: We can. But he -- but the -- our expectation and their experience is that the person would generally need to be on a computer or a laptop to be able to see them. It becomes problematic if you're using a smartphone because everything would look small.

MR. BIENSTOCK: Right.

MR. LEVINE: And so I anticipate that both sides would be wanting to show documents to him, and I think that could make this proceeding difficult if he can't see them.

MR. COFFEY: I'm going to try and get him in here. And I'll address that at the -- at the break.

MR. BIENSTOCK: Okay. So we'll try to get both of them in here?

MR. COFFEY: Well, Sussman is not going to be -- Sussman will not come in personally. He says he can do it virtually. But I cannot get Sussman to come in to testify personally. He simply -- he can't do it.

MR. BIENSTOCK: He's been subpoenaed, right?

MR. COFFEY: Yeah. But I don't know if I -- I don't know if I subpoenaed Sussman or not.

MR. FRIEDBERG: We didn't.

MR. COFFEY: Okay.

MR. FRIEDBERG: They did.

MR. COFFEY: But having said that, Judge, we've agreed that we can do him virtually.

MS. DIPALO: We didn't, sir.

MR. BIENSTOCK: Do you have an objection to Sussman virtually?

MS. DIPALO: We don't have an objection to Michael Sussman testifying virtually. I will say that we do want Michael Brown in person. It was an 11th hour request. The subpoena for Michael Brown was submitted to you on September 24. So they had to have known at that time that he suffered a disability that made him unavailable to come down here --

MR. BIENSTOCK: Yeah.

MS. DIPALO: -- and they could have accommodated it in some way.

MR. COFFEY: Judge, again --

MS. DIPALO: And we would like to have him personally.

MR. COFFEY: -- I'm going to try and get him here personally. I can't do any more than that. If he says "I'm coming in" --

MR. BIENSTOCK: And Sussman is okay on a Zoom?

MR. COFFEY: Right.

MR. LEVINE: Yeah. We -- as an officer of the Court, we trust that he'd be in -- he'd put himself in a place and in a position to --

MR. BIENSTOCK: Good.

MR. LEVINE: -- maintain confidentiality.

MR. BIENSTOCK: Sussman's resolved.

MR. COFFEY: Right.

MR. BIENSTOCK: The only issue is --

MR. LEVINE: But what I would request --

MR. BIENSTOCK: -- the time.

MR. LEVINE: Right. One more -- I would request that if Mr. Coffey could give us just his email address, the best place to send a Zoom link --

MR. COFFEY: Yes.

MR. LEVINE: -- to him.

MR. COFFEY: Of course.

MR. LEVINE: Okay.

MR. BIENSTOCK: Can we nail down a time for Sussman?

MR. COFFEY: Judge, I can't do it until the break.

MR. BIENSTOCK: Okay.

MR. COFFEY: I've got -- I've got to call Lawson, who's been calling him.

MR. BIENSTOCK: Okay.

MR. COFFEY: So believe me, if I could do that, I would absolutely.

MR. BIENSTOCK: So what we're going to do here is we're going to take the third witness. We'll have a short break for lunch. And then we'll come back just to do the housekeeping.

MR. COFFEY: Now, before --

MR. BIENSTOCK: Is that agreeable to everyone?

MR. COFFEY: No. I have a motion on the third witness.

MR. BIENSTOCK: You have a motion on the third witness. Well, that will -- no time like the present, I guess.

MR. COFFEY: Good. Judge, this is -- the third witness is a Ms. Whearty, whom you're aware of. And I presume that she would testify in accordance with Paragraph 29 of the formal complaint. And --

MR. BIENSTOCK: Right.

MR. COFFEY: -- Paragraph 49 -- 29 of the formal complaint, this is the only indication that she appears.

"In or around early 2023, Respondent telephoned Janna Whearty, Executive Director of the Dutchess County Bar Association, and asked in an angry and aggressive tone whether she was aware of the lawsuit, and if she had provided Ms. Koch, whom he called in words or in substance 'that woman', with the Commission's contact information."

Our position is this. That is not exactly what happened. But assuming for the sake of argument only,

only, that that is in fact what she would testify to, it's irrelevant because he called her up, according to what this says, had a conversation with her, was angry, and said "Are you the one who gave the name?" Who cares? This isn't -- are we now going to -- are we now going to discipline Judges for getting angry at somebody? This -- and there's no more of this. The claim is not that she tried -- I understand her testimony. But in this four corners, they never claim that he told her, you know, to try to get back to her to try and change her testimony, that she was going to be retaliated against for doing that. So how it's relevant, Judge, if we're -- Judge, if we're now going to discipline all Judges who get angry, then where does it stop? I'm assuming for the moment that that is exactly what happened. Just assuming now. I'm not agreeing --

MR. BIENSTOCK: (Unintelligible).

MR. COFFEY: -- with it.

MR. BIENSTOCK: Ms. DiPalo?

MS. DIPALO: Ms. Buckley is going to address this.

MR. BIENSTOCK: Ms. Buckley?

MS. BUCKLEY: Yes, Your Honor. Essentially what Counsel's trying to do is he's moving to dismiss the allegation in Paragraph 29 of the formal written complaint. Paragraph 29 in the formal written complaint says that,

"In or around early 2023, Respondent telephoned Janna Whearty, the Executive Director of the Dutchess County Bar Association, and asked in an aggressive -- an angry and aggressive tone whether she was aware of the lawsuit, and if she had provided Ms. Koch, whom he called in words or substance 'that woman', with the contact -- Commission's contact information."

That's an allegation in the formal written complaint, which was served on the Respondent Judge, Your Honor, quite some time ago. I have the date of it right here, actually, if you just bear with me. The -- the formal written complaint is dated January 14, 2025. Now, under the Commission's operating rules, which are codified at 20 -- 22 NYCRR 7000.6(f)(4), the Judge had 30 days from the date of service of that formal written complaint to move to dismiss that particular allegation. So 30 days from January 14. Here we are. It is well past the 30 days. And now he's essentially seeking to dismiss that allegation. Counsel -- Counsel had -- the motion actually has to be made to the Commission as well. It's not a motion that you can determine as a referee.

Now, Counsel just said on his feet that the allegation in paragraph 23 is not exactly what happened. All right. So we need to know -- we need to be able to hear testimony from both sides to that telephone call, Judge

Mora and Ms. Whearty, and you as the finder of fact can make a determination as to what you deem happened. The standards --

MR. BIENSTOCK: I do -- I do if it's relevant to the charge.

MS. BUCKLEY: If it --

MR. BIENSTOCK: How is it relevant to the charge?

MS. BUCKLEY: Okay. So the standard is -- and it was set forth in the case of Matter of Morgenthau, which is a 2010 case from the First Department, 73 AD3d 415. The standard is whether she can provide testimony that's directly relevant and material to a contested allegation in this matter. This is a contested allegation. The allegation about what occurred during that phone call -- and the reason why it was included in the formal written complaint was to show the Judge's intent at that time. He was -- it's our contention that his intent was to retaliate against Ms. Koch. He was trying to piece together and find out who gave Ms. Koch the details to contact the Commission. No Judge should be entitled to do that. Nobody should deny a person a right to find out about who the Commission is and what the Commission does and the fact that they can bring a complaint to the Commission. It's central. And if he wanted to dismiss it, he should have

moved to dismiss it to the Commission 30 days after the formal written complaint was -- was served.

MR. COFFEY: If I might? I don't necessarily agree with that. But let's assume that's true also. They are bound by this paragraph. She comes in and testify just what is in that paragraph, none of this business about whether she thought, whether she was afraid, or whether she thought it was retaliatory. Fine. I think it's irrelevant. She comes in. She says, "I got a call. He was angry. He asked me in words or in substance 'that woman'." That's it.

MR. BIENSTOCK: I have a -- I have a lot of doubt as to the relevance of this allegation. But I will hear her and rule on the relevance of each question.

MS. BUCKLEY: Thank you, Your Honor.

MR. COFFEY: And again, I'm going to repeat -- and I will --

MR. BIENSTOCK: You have a standing objection.

MR. COFFEY: Yeah, that's fine. All right.

MS. DIPALO: So at this time, the Commission would like to call Janna Whearty.

MR. FENWICK: Witness entering.

MR. BIENSTOCK: Raise your right hand, please. Do you swear or affirm under the penalties of perjury that the testimony you're about to give is the truth,

the whole truth, and nothing but the truth?

MS. WHEARTY: Yes.

J A N N A W H E A R T Y

having been duly sworn, was examined and testified as follows:

MR. BIENSTOCK: Be seated. And speak in a loud voice in response to questions.

DIRECT EXAMINATION

BY MS. DIPALO:

Q. Good morning, Ms. Whearty.

A. Hi.

Q. How are you today?

A. Good. How are you?

Q. Ms. Whearty, are you here -- appearing here today pursuant to a subpoena?

A. Yes.

Q. And what county do you reside in?

A. Dutchess.

Q. Are you currently employed?

A. Yes.

Q. Where are you employed?

A. The Dutchess County Bar Association.

Q. What is your title?

A. Executive Director.

Q. And how long have you worked at the Dutchess County Bar Association?
A. 21 years.
Q. And how long have you been the Executive Director?
A. All that time.
Q. How many employees does the Dutchess County Bar Association have?
A. Just me.
Q. And briefly, what are your responsibilities as the Executive Director?
A. I do everything. I plan the events. I write the newsletter, answer phone calls, pay the bills, take out the trash -- all of it.
Q. And does the Dutchess County Bar Association receive complaints made by members of the public?
A. Yes.
Q. And who are those complaints against?
A. Sometimes attorneys, sometimes judges.
Q. And who handles the complaints against attorneys and judges?
A. The Grievance Committee or the Commission on Judicial Conduct.
Q. My question wasn't clear.
A. Sorry.
Q. I'm sorry. At the Dutchess County Bar Association, who handles the complaints that are --
A. Oh, okay.
Q. -- received?
A. So when they come in, I refer calls to either of those two places.
Q. And so do you know Judge Mora?
A. Yes.

Q. When did you first meet Judge Mora?
A. I actually think I may have known him prior to my coming to the Bar Association. I worked for a local chamber of commerce previously.
Q. And when do you think you met him? What year?
A. Gosh. At least 2004, at the very end of 2004 when I started at the Bar.
Q. And what involvement did Judge Mora have with the Dutchess County Bar Association?
A. He's a past president. He's presented at CLEs, judged mock trial, come to events.
Q. Has he held any other positions with the Dutchess County Bar Association?
A. So in our Bar, you start as Assistant Treasurer and work your way up to President and then serve as Immediate Past President. So he would have held all of those positions.
Q. So he's been the Treasurer --
A. Yeah.
Q. -- the Secretary?
A. Secretary. Assistant Treasurer, Treasurer, Secretary, Vice President, President Elect, President, and Immediate Past President.
Q. And what year was Judge Mora the President of the --
A. I think it was --
Q. -- Dutchess County Bar Association?
A. I think it was 2015.
Q. And how often -- let me withdraw that. And these positions are members of your -- of the Dutchess County Bar Association's executive board?

A. Yes.
Q. How often did you interact with Judge Mora during his time on the executive board?
A. Pretty frequently. There's only seven members and me, so we talk a lot.
Q. How would you describe your relationship during this time?
A. Good.
Q. And what involvement, if any, did Judge Mora have with his -- with the Dutchess County Bar Association after his -- after he was the Immediate Past President?
A. So he continued to come to events, judge mock trial for us, present at CLEs.
Q. Now, I'd like to draw your attention to December of 2021. Do you recall -- specifically, I'd like to draw your attention to the week after Christmas of December 2021.
A. Okay.
Q. Do you recall where you were?
A. I was on vacation that week.
Q. And can you tell us what happened?
A. So I started -- I get an email any time I get a phone message at the office. And I started getting a number of messages from a woman who identified herself as an employee of an eye doctor's office.

MR. COFFEY: Objection, it's -- object to this as irrelevant.

MR. BIENSTOCK: Sustained.

MS. DIPALO: May I make a counterargument?

This is the basis for how Stacey Koch got the Commission's information. Now, it's not alleged in the complaint -- the formal -- the formal written complaint. But in evidence --

MR. BIENSTOCK: But you just made -- your colleague just made an argument that this is relevant because the rules allow you to defend against each contested allegation, not the whole -- the relevance of the complaint, not the charge. Each contested allegation. Is that right?

MS. DIPALO: That the operating procedures allow somebody to object to each specification in the formal --

MR. BIENSTOCK: No.

MS. DIPALO: -- written complaint?

MR. BIENSTOCK: Your -- your duty is to bring forth evidence on disputed allegations. And this is a disputed allegation --

MS. DIPALO: I don't --

MR. BIENSTOCK: -- paragraph 29, right?

MS. DIPALO: If I may, to be fair, I don't think it's a disputed allegation because the -- Mr. Coffey has consented to Stacey Koch's complaint coming into evidence. It is in evidence. We haven't heard -- I would offer this testimony subject to connection with Stacey Koch's testimony tomorrow.

MR. BIENSTOCK: I'll give you a little leeway, but not much.

You can answer that question.

A. All right. Can you repeat that? I'm sorry.

BY MS. DIPALO:

Q. I said -- it was "Can you tell us what happened?" We can do a readback if that is helpful.

MR. BIENSTOCK: Okay.

THE COURT REPORTER: Okay. So it was, "Do you recall where you were?" "I was on vacation." And "Can you tell us what happened?"

A. Okay. So I received a few emails that I had voicemails from a woman who identified herself as an employee of an eye doctor's office, and she was asking me that I call her back. It was an urgent matter.

BY MS. DIPALO:

Q. And what was the name of the caller?

A. Now I know her name was Stacey Koch.

Q. And did you call Ms. Koch back?

A. I did.

Q. And what did you do when you called Ms. Koch back?

A. I asked her how I could help her. And she explained to me that there had been an incident in their office and she was looking for the contact information for the Commission.

Q. And what did you do at that point?

A. I gave her the information.

Q. And have you provided the Commission's contact information to a member of the public in the past?

A. Yes, many times.

Q. And did you know Ms. Koch at the time you provided her with the Commission's contact --

A. No.

Q. -- information? And did you speak to Ms. Koch again after this conversation?

A. No.

Q. Did you ever speak to Judge Mora about Stacey Koch?

MR. COFFEY: Objection. This is irrelevant.

MR. BIENSTOCK: Sustained.

MS. DIPALO: This is the heart of the complaint. This is paragraph 23 of the formal written complaint that alleges --

MR. COFFEY: I think it's 29, I think.

MS. DIPALO: 29, thank you. That Respondent telephoned Janna -- Paragraph 29 reads --

MR. BIENSTOCK: You don't have to read it.

MS. DIPALO: Okay.

MR. BIENSTOCK: I'll get it. Can you ask the question again, Ms. DiPalo?

BY MS. DIPALO:

Q. The question was, in substance, have you ever spoke -- have you ever spoken with Judge Mora about Stacey Koch. Or did you ever speak to

Judge Mora about Stacey Koch.

MR. BIENSTOCK: You can answer that.

A. He did call me and ask me about my conversation with her.

BY MS. DIPALO:

Q. And can you tell us when this conversation occurred?

A. It was probably the end of 2022 or maybe '23. I don't remember the exact date.

Q. And can you describe the conversation for us?

MR. COFFEY: Object to this.

MR. BIENSTOCK: Overruled.

A. He called the office and I think made a little small talk and then said, you know, "Are you aware of this situation that's happening and did you give this woman the contact information to the Commission?"

BY MS. DIPALO:

Q. And what did you tell Judge Mora?

A. I -- I told him that I couldn't tell him that.

Q. And how would you describe the Judge's tone toward you during this conversation?

A. At the end, angry.

Q. And what number did Judge Mora call you on?

A. I don't recall if it was my cellphone or the office line.

Q. And have you -- let me withdraw that. And how did the conversation end?

A. I said I -- I couldn't have the conversation with him, and that, you know, he knew that from having been on the board that these things are

confidential. And I ended the call.

MS. DIPALO: I have no further questions, Mr. Bienstock.

MR. COFFEY: I move to strike. This is totally irrelevant to this proceeding.

MR. BIENSTOCK: Any cross?

CROSS-EXAMINATION

BY MR. COFFEY:

Q. So you said at the end, he seemed angry; is that correct?

A. Yes.

Q. That was it, right?

MR. LEVINE: (Unintelligible).

MR. COFFEY: I'm sorry. Sorry.

BY MR. COFFEY:

Q. So at the end of the -- how long did the conversation go?

A. Maybe five minutes.

Q. Maybe five minutes. If I were to tell you about a minute and a half, would that refresh your recollection?

A. I don't recall.

Q. Okay. Anyway, he asked the question, got an answer, seemed angry. Why he was angry you don't know, but that was it, right?

A. Yes.

Q. Hung up --

A. Yep.

Q. -- that's it?

A. Um-hum.

MR. COFFEY: That's it. I have nothing.

MR. BIENSTOCK: Anything further?

MS. DIPALO: No redirect.

MR. BIENSTOCK: You may step down. Thank you very much.

THE WITNESS: Thank you.

MS. DIPALO: Thank you, Ms. Whearty.

MR. BIENSTOCK: Okay. So can we come back at 1:30?

MR. COFFEY: Sure. Whatever you want, yeah.

MR. BIENSTOCK: Is 1:30 okay?

MR. COFFEY: I've got to find out -- I've got to call Lawson.

MS. DIPALO: Yes, 1:30 is fine.

MR. BIENSTOCK: Okay.

MS. DIPALO: That's fine with us.

MR. LEVINE: Is that enough time for you?

MR. COFFEY: Yeah, and I've got to make sure he's not at lunch because he's at -- we're not going to call him right now. I don't care. We can say 1:30 and we'll be able to see what I can -- I'm going to call him right now.

MS. DIPALO: So are we off --

MR. BIENSTOCK: Adjourn till 1:30.

MR. COFFEY: All right. Thank you.

MS. DIPALO: Off --

MR. BIENSTOCK: Off the record.

MS. DIPALO: -- off the record?

MR. COFFEY: All right. Thank you.

MR. FRIEDBERG: You have to say off the record.

MR. BIENSTOCK: Off the record.

MR. MAISONET: We're off the record.

(Recess from 1:03 p.m. until 1:46 p.m.)

MR. MAISONET: On the record.

MR. COFFEY: Okay, Judge. We talked to Michael Sussman. He can be here at 11:00 -- well, he can be on Zoom at 11:30 tomorrow till 3:00. 11:30, 3:00. Mr. Brown can be here tomorrow afternoon, and I will have him here maybe 1:00 to 2:00 or something like that. I'm going to try and anticipate him a little early. So he'll be able to testify tomorrow. Now, Ms. Koch would testify in the morning. And if she's not done, maybe we just interrupt her, and then she can come in after Mr. Brown, if that's okay. And then I intend to call Judge Mora Friday morning.

MS. DIPALO: We don't have any objection to that. Is Mr. Brown coming in person?

MR. COFFEY: Yes, he's coming in person.

MS. DIPALO: Yes. Then we will ask -- if Ms. Koch is not done with her testimony, then we'll take him -- we'll take him.

MR. COFFEY: Yeah. And then we can --

MS. DIPALO: We can pause it.

MR. COFFEY: -- do Ms. Koch. But he's coming in person. So that --

MS. DIPALO: So we'll -- we will start Ms. Koch at 10:00 and see how --

MR. COFFEY: Or earlier if you want.

MS. DIPALO: -- far --

MR. COFFEY: I don't care, Judge. I'm from out of town, so I can do 8:00, I can do 10:00.

MR. FRIEDBERG: But you're going to finish Ms. Koch tomorrow, though?

MR. COFFEY: We absolutely are going to finish her. It'd be easier if we start earlier. And you don't speak --

MS. DIPALO: I do have to see if she's -- she's travelling from a distance. So I have to see --

MR. COFFEY: We will finish her.

MS. DIPALO: -- if she could do that.

MR. COFFEY: That's not going to be a problem.

MR. BIENSTOCK: Okay. So Ms. Koch at

10:00?

MS. DIPALO: Yes.

MR. BIENSTOCK: Mr. Sussman?

MR. COFFEY: 11:30.

MR. BIENSTOCK: 11:30.

MR. COFFEY: Now, maybe half an hour for lunch. But that's four hours. He'll be done -- I can't imagine he's going to be four hours. So if he's done by 2:00, 2:30, then I'll put Brown right on. Then he finishes, then Ms. Koch, and we can complete her.

MS. DIPALO: Yes. And if we can, maybe if possible -- I don't know if everybody -- if we can take a short lunch break and see if maybe we can get Stacey Koch till 12:00, because she is travelling. I don't want to keep in New York City here --

MR. COFFEY: That's fine.

MS. DIPALO: -- all day.

MR. COFFEY: We can -- we can do that. I'm okay with that. I'm just thinking Sussman's available at 11:30.

MR. BIENSTOCK: Is there any New York City witness? No.

MS. DIPALO: No. Everybody --

MR. COFFEY: No. Why would that be easy?

MR. BIENSTOCK: Right.

MR. COFFEY: So if she goes to 12:00, then we take a break and he starts at 12:30, he's got to be done by 3:00. So --

MR. BIENSTOCK: Yeah.

MR. COFFEY: -- and then you've got Brown.

MR. BIENSTOCK: Is 12:30 to 3:00 reasonable for Sussman?

MS. DIPALO: In my opinion, yes. It would be Mr. Coffey's direct.

MR. COFFEY: I think so. But I'll work it out tomorrow. We can -- I'll work it out. I'm not (unintelligible) be a problem.

MR. BIENSTOCK: Good.

MS. DIPALO: And I just --

MR. COFFEY: Mr. Levine won't be here, so that'll make it a lot easier.

MS. DIPALO: I just have one matter to put on the record. Mr. Coffey, your associate, Mike Lawson, sent us an email asking for a virtual link for Sussman to testify. The way it works is that our IT Director, Rich Keating, will send a -- a link directly to his email.

MR. BIENSTOCK: To mister --

MR. COFFEY: Sussman's email?

MS. DIPALO: To Mr. Sussman's emails.

MR. COFFEY: You don't have the email?

MS. DIPALO: I do have the email. I'll confirm it with you.

MR. COFFEY: That's fine.

MR. BIENSTOCK: But that's academic now, right?

JUDGE MORA: Yeah.

MR. BIENSTOCK: Because Mr. Sussman is coming live?

JUDGE MORA: No.

MS. DIPALO: No.

MR. BIENSTOCK: No.

MS. DIPALO: Mr. Sussman is --

MR. BIENSTOCK: Mr. Sussman is -- oh, I see.

MS. DIPALO: Mr. Brown's coming.

MR. COFFEY: The less I get involved, the better off I'll be --

MR. BIENSTOCK: I see.

MS. DIPALO: Yes. And I'll respond to Mr. Lawson and just let him know.

MR. BIENSTOCK: Mr. Sussman is coming virtually?

MS. DIPALO: Yes.

MR. COFFEY: Right.

MR. BIENSTOCK: Okay.

JUDGE MORA: Ms. DiPalo, do you need his

email?

MS. DIPALO: I believe I have it, but I will confirm with --

JUDGE MORA: You have it.

MS. DIPALO: -- both of you when we --

MR. COFFEY: All right, okay.

MS. DIPALO: -- go off the record that I have the right one.

MR. COFFEY: All right.

MR. BIENSTOCK: That answers my question about whether you have a New York witness because if we get jammed up tomorrow, effectively Mr. Sussman can be a New York witness by coming back on the -- on the Zoom on Friday.

MR. COFFEY: I wouldn't bet on that. I've got to get him done.

MR. BIENSTOCK: Okay.

MR. COFFEY: Just like they want to get Ms. Koch done, I got to get Sussman done.

MR. BIENSTOCK: Okay.

MR. LEVINE: And he'll be on that screen over there. So it'll be a very large screen --

MS. DIPALO: Yes.

MR. LEVINE: -- so we can see.

MS. DIPALO: And I just want to say, I don't

want Ms. Koch coming back on Friday. She took the day off work to be here. She's travelling two hours down here and two hours back. So I would like to get Ms. Koch done if we can.

MR. COFFEY: We will. I can guarantee you --

MS. DIPALO: Tomorrow.

MR. COFFEY: I mean, if we work a little later than 4:30 or (unintelligible) --

MR. BIENSTOCK: No, no. That's fine. Tomorrow --

MR. COFFEY: But I'm good. I'm telling you, Judge, I'm --

MR. BIENSTOCK: Tomorrow, the --

MR. COFFEY: -- (unintelligible).

MR. BIENSTOCK: -- sky is the limit.

MR. COFFEY: All right. Good. All right.

MR. BIENSTOCK: Okay. Do you have anything?

MR. LEVINE: Yeah. I'd like to make an application to address, with your permission, Mr. Bienstock -- we had a couple of issues, as you recall, with respect to certain documents that the Commission had asked for an offer of proof on. We received a letter from Counsel regarding those offers of proof on October 3, 2025. And in particular, what they wanted to address was some

voluminous documents that Counsel wanted to put into evidence. And I just want to give a bit of background to explain.

As you know, this case involves a formal written complaint with three charges, right? The first charge in -- deals with Seeta Eye Care, the second with the defamation suit, and the third with an allegation with respect to whether emails were fully provided. Okay. Nothing in that formal written complaint has to do with the court system or -- what I'm about to mention to you is there is a separate investigation that the Commission held in abeyance involving Judge Mora not following the vaccination requirements of OCA.

That complaint came to the Commission. No formal written complaint has been authorized. And in fact, the Commission is holding that complaint in abeyance. Okay? The complaint was referred to the Commission from the Office of Court Administration. The Commission, who is the constitutional -- has a constitutional obligation to investigate complaints, when they're authorized, did just that. They wrote lots of letters to Respondent and his attorney asking lots of different questions, okay? Nothing before you, all right, has to do with that vaccination allegation.

But yet, the Respondent wants to introduce

voluminous letters from the Commission to him, both including his responses and our requests, apparently based on his letter, to show that the Commission is retaliating against him or engaging in some sort of retribution. But I submit to you -- and I'm happy to show you what the complaint is and that it's held in abeyance. But the Commission specifically said -- and as you know, you were -- you received the -- from the Clerk of the Commission the formal written complaint and the answer under 44.4 of the Judiciary, which says you can hold a hearing with a formal written complaint, and that's why we're here. Anything to do with a matter that's been held in abeyance -- that's not before you at all. The court system isn't before you. Vaccination isn't before you. There's not one word of vaccination in that complaint. In fact, we just spoke about the necessity of having things within the four corners.

But yet, they want to introduce all of these documents that deal with the Commission's inquiry letters, why did you not comply with this obligation, his -- the Judge's response that he certain religious reasons for not doing it. We, as investigators, explored our proof, did what we did. The Commission did not investigate -- authorize the formal written complaint. The matter is currently -- Judge Mora's involved in litigation against the Office of

Court Administration, and his lawsuit is pending before the Second Circuit -- United States Court -- Second Circuit Court of Appeals.

So based on all that, the Commission held that in abeyance. His Counsel -- Judge Mora's Counsel, Mr. LaVeglia, had asked the Commission to hold all of this in abeyance pending the result of the federal suit, and the Commission said no.

So what he's trying to do, I think -- and I'm not trying to cast aspersions -- but introduce that stuff to try to get around what the Commission said he could not do. And I submit to you -- meaning that we're not holding a hearing about whether the Judge violated OCA's vaccination rules. It's not before us. Why he wants to introduce all of that information into evidence -- I see no lawful basis to do that at this proceeding.

And I'm making an application to preclude Respondent from introducing any information, any of the letters, the responses, anything to do that which is not within the four corners of this complaint. It has nothing to do with the court system at all whatsoever. And so for that reason, I'm asking you -- and I can -- I'm happy to show you the Administrator's complaint against him. I'm happy to show you the documents that he wants to put in, which are piled up high, but has nothing to do with this case, and

I'm asking that they be precluded because they're wholly irrelevant.

MR. BIENSTOCK: Mr. Coffey?

MR. COFFEY: Yes, thank you. So we're particularly interested in the emails for the information about holding this complaint in abeyance. I've been advised by Judge Mora that initially, through Counsel, they inquired of the Commission whether they would hold everything in abeyance. This is on the religious vaccination issue. And I believe he was told -- they were told no, they would not do it. They changed their mind later at a subsequent time. And we would like to introduce that to show a bias that they didn't want to hold it in abeyance, and now in light of everything that's happened, they're willing to hold it in abeyance because the Second Circuit's going to have to rule on this. The District Court denied his claim.

MR. BIENSTOCK: Right.

MR. COFFEY: So there's an appeal now -- direct appeal to the Second Circuit. And that's been on, what, a year now, maybe, or more? Over a year. So we're still waiting for the decision on that. So that's the basis upon which we want to do that.

It is his position, and he's made it plain, that he believes that this -- and this is -- I want to be clear that I'm arguing on behalf of the Judge -- that the Judge has said

that he believed that this prosecution with Mr. Levine accurately stated is motivated in part because he took on the OCA with regard to the vaccination and that the real basis of this is the state is upset because he has fought them on that on a religious basis. And that is -- that has always been his position.

MR. BIENSTOCK: And you're going to call the Judge as a witness before you attempt to introduce these documents?

MR. COFFEY: No. We would -- no, I would not do that. We would try and get these documents in evidence. And then he would testify.

MR. BIENSTOCK: What would be the foundation for getting them into evidence?

MR. COFFEY: Well, we've -- we've submitted those to the Commission. So the foundation is those are emails that he can verify and he can (unintelligible) --

MR. BIENSTOCK: Well, you have to call him before you put them in.

MR. COFFEY: Well, I guess -- I guess in that sense you're right. I mean, you're right. I mean, rather than putting them -- so that's a horse before the -- a cart before the horse, I guess. But anyway, so having said that, he would be able to justify that.

Now, I'm not -- I can tell you that it is not our

purpose to go through a whole -- the whole hearing based upon religious issue, okay. It is an issue. We intend to address it. But we understand the purpose of which we're here, primarily -- well, I know that's Seeta, but the three issues in the complaint. So we do not make -- intend to make this an argument that you should go off with running on this whole religious issue. We don't retreat it -- from it. We don't -- he doesn't deny that -- or doesn't apologize for it. But that -- that's the basis of it, to give some context for this.

MR. BIENSTOCK: So what would be wrong with us waiting until his testimony?

MR. COFFEY: That's fine. Right? Yeah.

MR. BIENSTOCK: And we --

MR. COFFEY: We'll wait.

MR. BIENSTOCK: -- seeing then if he has relevant testimony with respect or could lay a foundation of relevance with respect --

MR. COFFEY: Correct.

MR. BIENSTOCK: -- to the voluminous emails.

MR. LEVINE: Also, just to be clear, okay. So Mr. Coffey, so are you withdrawing your application to put into evidence all of the letters from the Commission that you would ask to put in as well as the responses from Judge

Mora? You just focused on the email correspondence. Are you --

MR. COFFEY: Yeah.

MR. LEVINE: So I just want to be clear about that.

MR. BIENSTOCK: I don't think it matters, and I'm not sure that Mr. Coffey need answer that at this point.

MR. LEVINE: Well, I --

MR. BIENSTOCK: He's going to propound a witness.

MR. LEVINE: But Mr. Bienstock, I have to say that the -- he can have a witness come in, okay, and Judge Mora can testify what he wants to testify about. Okay. But what I'm submitting to you is, first of all, his -- the basis of his application that there's some sort of conspiracy between the Office of Court Administration and the Commission, the Commission's a separate, independent, constitutional body. We're not part of OCA, okay? So he has to lay an evidentiary foundation. And what I'm saying to you is he submitted to you, okay, a list of documents he wanted in. You asked for oral argument today, and that's what we're doing. And I'm submitting to you there isn't a connection here between the Commission asking to explore and investigate a complaint --

MR. BIENSTOCK: I understand --

MR. LEVINE: -- right --

MR. BIENSTOCK: -- your point.

MR. LEVINE: So his point is -- which is factually incorrect, by the way -- that everything -- first, the Commission asked to hold -- he said we were holding it in abeyance, right. And then he asked -- well, meaning holding the complaint with respect to the vaccination in abeyance. Then he asked to hold this whole proceeding in abeyance pending the result of the Second Circuit. And the --

MR. BIENSTOCK: Well, that's not --

MR. LEVINE: -- Commission said no as well.

MR. BIENSTOCK: That's not an issue I have anymore, right?

MR. LEVINE: Well, but that's what he wants to put in. That is an issue.

MR. BIENSTOCK: He wants to --

MR. LEVINE: So I'm --

MR. BIENSTOCK: -- hold this proceeding in abeyance?

MR. LEVINE: No. But he wants to introduce that to show that the Commission --

MR. BIENSTOCK: (Unintelligible) --

MR. LEVINE: -- has negative motivation --

MR. BIENSTOCK: I understand.

MR. LEVINE: -- somehow. I will also add that in his -- in that same letter that he wants to introduce to try to show that the Commission is somehow retaliating against him and it's in his motion letter that the Commission also dismissed other complaints that were filed against him having to do with failure, allegedly, to follow the mask mandate. So if we're so biased against him, why would dismiss all these other things, okay? All of that is in the correspondence he wants to introduce. I'm submitting to you it's a red herring that will muddy up the record. It has nothing to do with this case.

MR. BIENSTOCK: I understand that. My point is that each document theoretically needs a foundation, right? And there's a foundation of relevance that has to be met. And the relevance can only be proven, if you will, through the testimony of a witness. So in this case, it seems to me, that that witness is Judge Mora. Judge Mora is going to take the stand soon. And he can establish whether or not there's relevance to proving bias, whether or not there is good faith reason for asking those questions.

MR. LEVINE: Bias by whom? The Commission?

MR. BIENSTOCK: Yes.

MR. LEVINE: So the Commission's on trial? Is that what it is?

MR. BIENSTOCK: No. He's arguing that your complaint against him here is colored by the Commission's bias. And it's the complaint here that is my only concern.

MR. LEVINE: Okay. Well, we will renew our application at the time then that he testifies.

MR. BIENSTOCK: That's fine.

MR. COFFEY: And we don't deny his right to do that. We're not -- we understand --

MR. BIENSTOCK: He may testify --

MR. COFFEY: Right.

MR. BIENSTOCK: -- and question by question --

MR. COFFEY: All right.

MR. BIENSTOCK: -- there will be a ruling if there is an objection.

MR. COFFEY: Right.

MR. BIENSTOCK: There will be a ruling on the relevance of that, question by question. And if there's a basis for admitting a particular email or thousand emails, we'll argue it at that point.

MR. COFFEY: Okay. All right.

MR. BIENSTOCK: Is he allowed, in your view, to defend himself in this proceeding by suggesting or proving that the Commission is biased?

MR. LEVINE: I -- what I'm saying is he can --

he can assert any defense that he can support. What I'm saying to you is that this changed the tenor of that by -- I'm suggesting to you that by putting in documents with an unrelated investigation, that clouds the waters here, okay. It's a tough line to hoe. So yes, he can -- can he try to show bias? Sure. I submit to you there's no evidence to support that, and we'll make that argument as it comes up.

MR. BIENSTOCK: That's all I'm saying.

MR. LEVINE: Okay. And that's all I'm saying too.

MR. BIENSTOCK: That's all I'm saying.

MR. LEVINE: All right.

MR. BIENSTOCK: Okay?

MR. LEVINE: Yep.

MR. BIENSTOCK: Anything else?

MR. COFFEY: No.

MR. LEVINE: Well, there's a -- there's a few other documents. I guess we can deal with that at the time. There -- there's another document that he wants to introduce into evidence concerning a court system email from 2024 -- hold on. Why don't I have (unintelligible)? I have it right here. Can I (unintelligible)? I'm sorry, Mr. Bienstock.

So as you know, nothing -- and maybe there'll be an offer of proof. But there is -- in their discovery request to introduce evidence, Respondent presented a

March 6, 2024 memo from Chief Administrative Judge Zayas regarding certain policies and issues with respect to disabilities that would be handled by the court system. Okay. And he seeks to introduce that into evidence, which is indicated through his discovery.

As you can see within the complaint, there's nothing to do with the court system in that complaint. So I'd be curious to know what possible admissibility a 2024 memorandum, which I have a copy of, I'm happy to show you, has any relationship to these matters which took place years before and not through the court system.

MR. BIENSTOCK: Is this a document that I could take judicial notice of?

MR. LEVINE: You mean you could let it in under judicial notice?

MR. BIENSTOCK: Yes.

MR. LEVINE: Well, you can, except I'm submitting to you that you should not --

MR. BIENSTOCK: Okay.

MR. LEVINE: -- without an offer of proof --

MR. BIENSTOCK: Okay.

MR. LEVINE: -- because we're not in the court system. We -- you can see that we're in a private business. And we're -- right. So you could take judicial notice of whatever you decide to do. I submit to you it isn't relevant

and there hasn't been a sufficient burden made to introduce it.

MR. BIENSTOCK: Okay. If you would give me a copy, I'll look at it overnight and I'll be in a better position to rule when the time for ruling comes.

MR. LEVINE: So I'd like to mark this for identification only as Referee Exhibit C.

(Referee's Exhibit C was marked for identification)

MR. LEVINE: A copy to Counsel.

MR. BIENSTOCK: There is a C. Did you say C?

MR. LEVINE: C.

MR. BIENSTOCK: Referee's C?

MR. LEVINE: Referee's C.

MR. COFFEY: Referee's C; am I right?

MR. LEVINE: Right.

MR. COFFEY: Yeah, I've got it.

MR. LEVINE: It's a March 6, 2024 memorandum from the Unified Court System --

MR. BIENSTOCK: I'm sorry.

MR. LEVINE: -- (unintelligible) Administrative Judge Zayas.

MR. BIENSTOCK: What's the -- what's the letter assigned to it?

MR. LEVINE: C as in --

MS. DIPALO: Cat.

MR. LEVINE: -- coyote.

MR. BIENSTOCK: As in Commission?

MR. LEVINE: No, it will be -- as in Commission, right.

MR. BIENSTOCK: There is a C.

MR. LEVINE: There is --

MR. FRIEDBERG: No, it's Referee's C.

MR. LEVINE: Referee's C.

MR. BIENSTOCK: Well, excuse me.

MR. LEVINE: That's all we have at the moment.

MR. BIENSTOCK: I'll rule on this at the appropriate time.

MR. LEVINE: Okay.

MR. COFFEY: All right. Thank you. So we're meeting at ten o'clock tomorrow; is that it?

MR. FRIEDBERG: Do you have anything else today?

MR. LEVINE: Yes.

MR. BIENSTOCK: Would 9:30 make it easier to finish?

MR. COFFEY: Yeah, I think it's -- if she can't -- no, if she can't, we understand. But I can be here by 9:30. If she's here on time -- or not time, but it --

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MR. BIENSTOCK: It's up to you.

MS. DIPALO: Well, it's my witness. I would have to check with her. We're accommodating Mr. Sussman and Mr. Brown's schedules. I would like to check with her --

MR. BIENSTOCK: That's okay.

MS. DIPALO: -- if she was scheduled.

MR. BIENSTOCK: Let's not --

MR. COFFEY: Yeah, I --

MR. BIENSTOCK: Let's not fight off --

MR. COFFEY: (Unintelligible) --

MS. DIPALO: Yeah.

MR. COFFEY: 9:30, 10:00 --

MR. BIENSTOCK: -- over the weekend too.

MR. COFFEY: -- makes no difference to me.

MR. LEVINE: So ten o'clock?

MR. BIENSTOCK: We'll see you at ten o'clock.

MR. LEVINE: Thank you.

MR. COFFEY: All right. thank you.

MS. DIPALO: Thank you.

MR. FRIEDBERG: Thank you.

MR. MAISONET: We're off the record.

MR. BIENSTOCK: Off the record.

(Proceedings concluded at 2:08 p.m.)

INDEX OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
For the Commission:				
Jessica Feather	28	38		
Kristine Monteverdi	62	74		
Janna Whearty	106	114		

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EXHIBITS

COMMISSION

	Description	Ident.	In Evid.
1	Stipulation dated October 10, 2025		8
2	Audio Recording of 911 call on December 28, 2021 (0:00:00 to 00:01:17) with Cover Page		9
2-A	Certified Transcript of Audio Recording of 911 call on December 28, 2021 (0:00:00 to 00:01:17)		9
3	Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:02:45), with Cover Page		9
3-A	Certified Transcript of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:02:45)		9
4	Audio Recording of 911 call on December 28, 2021 (0:00:0 to 0:01:13), with Cover Page		9
4-A	Certified Transcript of Audio Recording of 911 call on December 28, 2021 (0:00:0 to 0:01:13)		

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5	Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:01:05), with Cover Page	9
5-A	Certified Transcript of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:01:05)	9
6	Complaint filed by Stacey Koch with Commission, dated December 29, 2021	9
7	Summons and Complain in *Frank Mora v Stacey Koch* (Index No. 2022-54141) ("*Mora v Koch*")	9
8	Affidavit of Service in *Mora v Koch*	9
9	Notice of Motion and Memorandum of Law in Support of Koch's Motion to Dismiss Complaint in *Mora v Koch*	9
10	Notice of Motion, Affirmation in Support of Motion to Intervene and Dismiss, and Memorandum by Counsel to the Commission in *Mora v Koch*	9
11	Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss in *Mora v Koch*	9
12	Reply Memorandum of Law in Support of Koch's Motion to Dismiss Complaint in *Mora v Koch*	9
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14	Transcript of Oral Argument in *Mora v Koch*	9
15	Decision and Order in *Mora v Koch* dated April 4, 2023	9
16	Settlement Agreement in *Mora v Koch*	9
17	Apology Letter from Hon. Frank Mora to Stacey Koch dated May 4, 2023	9
18	Letter from Commission to Respondent dated April 8, 2024, with attachment	9
19	Letter from Commission to Respondent dated May 21, 2024, with attachments	9
20	Emails from Respondent to Michael H. Sussman, Esq. dated November 23, 2022, at 4:02 pm and 8:09 pm	9
21	Emails from Respondent to Michael H. Sussman, Esq. dated February 2, 2023, at 7:41 pm	9
22	Emails from Respondent to Michael H. Sussman, Esq. dated February 7, 2023, at 8:55 am, and attachment	9
23	Emails from Respondent to Michael H. Sussman, Esq. dated February 8, 2023, at 8:49 AM and 9:34 AM	9
24	Emails from Respondent to Michael H. Sussman, Esq. dated February 8, 2023, at 9:51 AM	9

25	Emails from Respondent to Michael H. Sussman, Esq. dated February 13, 2023, at 10:10 am	9
26	Emails from Respondent to Michael H. Sussman, Esq. dated March 6, 2023, at 3:15 PM	9
27	Emails from Respondent to Michael H. Sussman, Esq. dated April 3, 2023 at 10:44 AM	9
28	Emails from Respondent to Michael H. Sussman, Esq. dated May 12, 2023, at 7:14 PM	9

EXHIBITS

RESPONDENT

	Description	Ident.	In Evid.
A	10 NYCRR 2.60		9
B	Gov. Hochul mask mandate announcement dated December 10, 2021		9
C	NYS Dept of Health Interim Guidance dated April 17, 2020		9
D	Picture of face shield provided to Counsel on March 12, 2024		9
E	Email from Respondent to Stacey Koch from March 7, 2022		9
F	Michael Brown letter dated June 13, 2022		9
G	Advisory Committee on Judicial Ethics Opinion 12-96 from June 14, 2012		9

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EXHIBITS

REFEREE

	Description	Ident.	In Evid.
A	Formal Written Complaint dated January 14, 2025		9
B	Respondent's Verified Answer dated April 11, 2025		9
C	(FOR ID ONLY) Memorandum of Hon. Joseph Zayas dated March 6, 2024	135	

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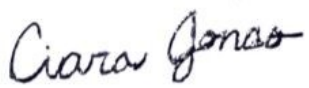
CERTIFICATION

I, Ciara Jonas, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: October 24, 2025



Ciara Jonas

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to :

FRANK M. MORA :

a Judge of the Poughkeepsie City Court, :
Dutchess County.

- X

Commission Offices
61 Broadway, Suite 1200
New York, New York 10006

October 16, 2025
10:31 a.m.

B e f o r e:

PETER BIENSTOCK, Esq.
Referee

P r e s e n t:

For the Commission
MELISSA DIPALO, Esq.
Principal Attorney

ALAN W. FRIEDBERG, Esq.
Special Counsel

DENISE BUCKLEY, Esq.
Senior Litigation Counsel

ADAM KAHAN, Esq.
Staff Attorney

For the Respondent
STEPHEN R. COFFEY, Esq.
Attorney for the Respondent
O'Connell & Aronowitz PC
54 State Street
Albany, NY 12207-2540

A l s o P r e s e n t
HON. FRANK M. MORA
Respondent

ANDY FENWICK
Investigator II

MIGUEL MAISONET
Senior Clerk and FTR Operator

SIERRA SELF
Court Reporter

MR. BIENSTOCK: Appearances.

MS. DIPALO: Melissa DiPalo, principal attorney for the Commission.

MR. FRIEDBERG: Alan Friedberg, special counsel for the Commission.

MS. BUCKLEY: Denise Buckley, senior litigation counsel for the Commission.

MR. KAHAN: Adam Kahan, staff attorney at the Commission.

MR. FENWICK: Andy Fenwick, investigator for the Commission.

MR. BIENSTOCK: Mr. Coffey.

MR. COFFEY: Steve Coffey, attorney for Judge Mora.

MR. BIENSTOCK: And Judge Mora's to your right.

MR. COFFEY: Correct.

JUDGE MORA: Good morning.

MR. BIENSTOCK: Well, are we ready?

MS. DIPALO: Yes.

MR. BIENSTOCK: You ready to call your witness?

MS. DIPALO: Yes.

MR. BIENSTOCK: Mr. Coffey, are you ready for the witness?

MR. COFFEY: Oh, yeah. Sure.

MS. DIPALO: Okay. Commission Counsel calls Stacey Koch.

UNIDENTIFIED SPEAKER: Is that from yesterday?

MR. MAISONET: No.

UNIDENTIFIED SPEAKER: Oh, no. Thanks. It's fine.

MR. COFFEY: No.

UNIDENTIFIED SPEAKER: That's fine.

MR. COFFEY: You put ice in it?

UNIDENTIFIED SPEAKER: Thank you.

MR. MAISONET: Yeah.

MR. COFFEY: Wow.

MR. MAISONET: I like to put ice. Nice and cold.

MR. COFFEY: Do we all get ice? Or just the witness?

MR. MAISONET: Everybody.

MR. COFFEY: All right.

MR. FENWICK: Witness entered.

MR. BIENSTOCK: Stay standing. Raise your right hand. Do you swear to tell the truth?

MS. KOCH: I do.

MR. BIENSTOCK: Be seated and speak into

the microphone in response to the Commission in a loud voice.

THE WITNESS: Okay.

STACEY KOCH,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY
MS. DIPALO:

Q. Ms. Koch, there's fresh water in front of you.
A. Great. Thank you.
Q. Good morning.
A. Good morning.
Q. Ms. Koch, are you appearing here today pursuant to a subpoena?
A. Yes.
Q. Okay. And how old are you?
A. 68.
Q. And what town do you reside in?
A. Plattekill, I think. It's a vague area. It's Clintondale, Highland, Plattekill. I pay taxes to Highland.
Q. And what county is your town in?
A. Ulster.
Q. And how long have you lived there?
A. Since 1980.
Q. And who do you live with?
A. My husband, Fred Koch.
Q. What is your occupation?

A. I am a manager at Seeta Eye Centers. I'm a New York State licensed ophthalmic dispenser.
Q. And is Seeta Eye Center a private medical practice?
A. Seeta Eye is a private medical ophthalmology practice.
Q. And what type of services does Seeta offer its patients?
A. We offer surgery -- surgical care, disease, glaucoma management, macular degeneration, routine eye care, everything about eyes from a medical perspective. We don't do glasses. We do surgery and disease.
Q. And where is Seeta located?
A. 27 Davis Avenue in Poughkeepsie.
Q. And it is -- is it in the city of Poughkeepsie?
A. I don't really know if it's the city or the town. I -- I don't know, because I live in Ulster County.
Q. And how long have you worked at Seeta?
A. Since January 2000.
Q. And what is your current position at Seeta?
A. My title is Refractive Manager. I do all the surgical counseling for cataract patients, Lasik patients. I also do customer service if you want to call them that, patients, you know, problem solving, making sure the days are flowing okay. Staff management, stuff like that.
Q. And how long have you been the retractive --
A. Refractive.
Q. -- Refractive Manager. Thank you.
A. We -- I was the General Manager for about 20 years. And I think three years ago, we added an administrator. Our practice had grown quite a bit.

We'd added some doctors, and it really just became too much for one person. So we added another layer, and I shrunk out of HR, basically.

Q. Now in December of 2021, were there other managers in the Seeta practice?

A. We had a Business Manager, which we still have.

Q. Who was that?

A. Her name is Donna Guerrero (phonetic). And I had a right-hand Clinic Manager, Danielle Foster (phonetic). Trying to think of anybody else who's really officially a manager. Stacey. I think that was it in management at that time.

Q. And how many patients does Seeta Eye Center see on a typical day?

A. 120, 125. We could have a quiet day of 40 because there's only one doctor, but most doctors see 50 to 60 patients a day. Our retina specialists can see 90 patients in a day.

Q. Now I'm going to turn your attention to December of 2021. What safety protocols, if any, did Seeta have in place due to the COVID pandemic?

A. Many. We took it very seriously. Our population is largely the elderly. You know, 50 percent of our patients are old. So we really -- we're very careful right from the get-go, from the beginning of the shutdown. We had a door monitor for a very long time. We took temperatures at the door. We wore masks. We wouldn't allow patients to walk even through the door with, you know, a lot of people at that time like to wear gloves, for some reason. They didn't understand how dirty those are. We would make them discard their gloves at the door. We would give them a fresh pair if they wanted them. You know, however they chose to do it.

We did screening questions. We sent out in confirmation texts that you had to wear a mask when you attended our office. I can't remember December 2021 if we're allowing somebody to bring someone with them or not.

But we had a lot of special things that we did for patients. We started doing telemedicine at that time. Which is really bizarre in ophthalmology, because you really can't do a whole lot except for talk to the patient. But we invented that.

We had videos on our website trying to show all the different things we were doing, which included we purchased certain machines to clean the air. We had special cleanings. We wiped our chairs constantly. We bought out dental supply places for the COVID -- I forget what they were called -- some kind of special wipes that kill all the germs. And we wiped every single thing after every patient, every single time. So we were pretty neurotic about the whole thing.

Q. Did you have social distancing in place?

A. We had stickers on the floor. We had social distancing, not only amongst the staff, but for our patients as well. We had just finished building that building at the end of 2019. We had set up, you know, we just doubled the space of our practice. I bought all these new chairs, you know, expanded everything, and we took it all away and put -- it's a two-story building at this time. We put most of the chairs upstairs. We had all our chairs in social distance spacing. You know, we -- we just kind of wrapped our heads around doing everything we could.

Q. And you testified that masks were required in December --

A. Absolutely.
Q. -- of 2020?
A. Oh, yes. Of course.
Q. And who was required to wear the face mask?
A. Everyone. Every single person.
Q. Staff?

MR. BIENSTOCK: Can I ask the -- can I ask, was that a mandate by your company or a mandate by the State?

THE WITNESS: We were following all the CDC guidelines. We would check them pretty much daily. I had somebody who was, in fact, Danielle. She was the COVID officer. She would check the websites constantly for any changes or updates.

We actually hired an attorney to make sure all of that paperwork, you know, we had a special waiver that patients had to sign at entrance because we can't really be -- you've chosen to come in today. You can't be responsible -- we can't be responsible for you choosing to come in. God forbid you should get sick, not that you could trace it back to us.

You know, there was no rule book for this, so we just constantly did everything we could think of. But our goal was to follow the State mandate. We didn't make our own decisions. We used our creativity to figure out

how to best meet the CDC guidelines. You know, for example, our office was not constructed to have barriers for reception. We didn't --

MR. COFFEY: Objection. It's a nonresponsive.

THE WITNESS: Pardon me?

MS. DIPALO: You don't have to answer.

THE WITNESS: Oh.

MS. DIPALO: Mr. Bienstock needs to rule.

MR. BIENSTOCK: Objection sustained. I have your answer.

THE WITNESS: Okay.

MR. BIENSTOCK: One other question. I didn't hear what your license is in.

THE WITNESS: A New York State licensed ophthalmic dispenser, an optician, make glasses, verify glasses, prescription analysis, everything about vision. I'm not -- of the three O's: one's the ophthalmologist, one's the optometrist. I'm the optician.

MR. BIENSTOCK: So your license is in something that Seeta doesn't do, right?

THE WITNESS: We don't make glasses. Correct.

MR. BIENSTOCK: Okay.

THE WITNESS: But I'm licensed to give guidance for vision correction solutions.

MR. BIENSTOCK: Thank you.

THE WITNESS: And that is in my --

MR. BIENSTOCK: Next question.

THE WITNESS: -- area of expertise.

BY MS. DIPALO:

Q. And will you testify that everyone was allowed -- required to wear masks, correct?

A. Yes. Yes.

Q. Was staff required to wear masks?

A. Yes.

Q. Were patients required to wear masks?

A. Yes.

Q. And were visitors required to wear masks?

A. Yes.

Q. And do you know who established the safety protocols at Seeta?

A. The CDC. We just carried them out.

Q. And do you know how Seeta itself established the safety protocols?

A. As I said, we hired an attorney to help us, and we checked the CDC websites every day for updates.

Q. And how did you notify patients that masks were required in your office?

A. When they got the confirmation appointment, it said it right on the confirmation that you're required to wear a mask. And we also had signage on the door. And then ultimately, we had a person at the door that wouldn't let you in if you wouldn't wear one. I don't remember in December 2021, if we had a door monitor or not.

Q. And what did the signage say?
A. Masks are required.
Q. And --
A. There's a picture. I -- I made the sign myself. It -- I just came across it the other day. I just took it off the internet. It was a, you know, they're very common at that time. You could just Google it. It was a picture, a little caricature of a human face with a mask across it. And I typed in it, you know, masks are required prior to entry.
Q. And where in Seeta was this sign hanging?
A. On the front door.
Q. And were face shields permitted in lieu of masks under Seeta's safety protocols?
A. I had never seen a face shield except for that one time. I wasn't familiar with them, and they are not masks, so no.
Q. And who is responsible for enforcing your office's safety protocols?
A. I mean, whoever the manager on duty, you know, first line would be the people at the front desk. And most patients are very compliant and just kind of do what you're supposed to. But if a patient doesn't do what we ask, whatever that is, then of course, the manager is called.
Q. And that would be you or Danielle Foster?
A. In that -- in that -- in that time period. Yes.
Q. And were there any occasions where a patient was unable to wear a face mask for a medical reason?
A. You know, not that I particularly recall. I know we have a few patients that doctors literally saw in the parking lot. You know, we certainly

would try our best to make exceptions on how to care for people with advanced warning and advanced notice. So you know, particularly I really can't say. I can definitely remember a few patients of mine who refused to wear masks, but it was amicable. And so we wrote their name and number down that we would call them when the policy changed. Like, if you feel that strongly that you can't wear a mask. In fact, I remember I had one patient. He had just returned from --

MR. COFFEY: Objection. Irrelevant.

THE WITNESS: -- returned from Florida --

MR. BIENSTOCK: Objection sustained. Next question.

BY MS. DIPALO:

Q. Did you go to work at Seeta on December 28, 2021?

A. Wait, December 28, 2020. Yeah. Yes.

Q. And do you recall how many -- approximately how many patients you saw -- Seeta saw on December 28, 2021?

A. I wish I could tell you I knew, but I have no idea. I didn't ever once think to look at that.

Q. Would you say it would be around 100 patients?

A. It could be anywhere from 80 to 110. It -- I think it was pretty normal by then in terms of who was coming in day in and day out.

Q. And did Seeta have safety protocols for COVID --

A. Yes.

Q. -- in place on December 28th?

A. Absolutely.

Q. Okay. And they are the safety protocols you described earlier?
A. Have to wear a mask. Can't come in wearing gloves, can't come in off of an airplane. There were -- I can -- I don't remember now, but there were about five questions. Do you have a cough? You know, we went through all those little things that I think we all remember having lived it.
Q. And do you recall who you were working with on December 28, 2021?
A. Some of the people. I can say Kristine Delorenzo, Jessica Feather, was probably my primary receptionists. A good part of my tech staff has changed tremendously since then. We've had, like, a big turnover, but I know that Karen Lynch, Michael Brown -- those are two people I specifically remember talking to. And none of those people even work here in my practice anymore.
Q. And Kristine Delorenzo, what was her position at --
A. Reception.
Q. -- Seeta. And do you know whether her name has changed?
A. She was divorced when she -- or getting divorced when she first came to the practice. So she had Monteverdi and Delorenzo. I'm not sure which was the order.
Q. And what was Karen Lynch's position?
A. She's a technician -- certified ophthalmic assistant.
Q. And what was Michael Brown's position?
A. Also a technician. I can't remember if he was certified or not.
Q. And did there come a time when you were called to the waiting room of Seeta on December 28, 2021?
A. Yes.

Q. And who called you?
A. I think it was Kristine.
Q. What did she say?
A. She said she had a patient who wasn't wearing a mask -- wouldn't wear a mask. So called me down to confront that.
Q. Where were you when you received the call?
A. I think I was in my office, which is upstairs. I'm pretty sure.
Q. And what did you do after receiving the call to come to the waiting room?
A. Came down, just like I do for a bunch of different patient problems that can occur during the day. And I mean, it started off, I recall, amendably [sic], not curt or hard or anything. Because remember how many times I probably had to have that conversation? Like, "I know you don't want to wear a mask, but you have to wear a mask. No, I'm wearing a headdress". So it just --

MR. BIENSTOCK: Ms. Koch, can you --

THE WITNESS: -- got crazy.

MR. BIENSTOCK: -- can you limit yourself to answer the question?

THE WITNESS: I'll try.

MR. BIENSTOCK: Thank you.

THE WITNESS: It's hard. I'll do my best.

BY MS. DIPALO:

Q. And when you arrived in the waiting room, what did you see?
A. I don't have a strong visual memory. I really don't.

Q. How many patients were in the waiting room?
A. I do remember that. The waiting room was pretty full. It was pretty full. How many -- 20, maybe 25, 22. But it was a robust amount of people. It wasn't quiet by any means.
Q. And --
A. And now that we're saying it, I do remember, you know, Judge Mora did have that plastic headset on.
Q. What do you mean by headset?
A. It's like a headband with a plastic shield of some sort on the front.
Q. And was Judge Mora with anybody?
A. He was with his child.
Q. And how old was his child?
A. I'm taking a guess of 12, but I could be completely wrong.
Q. And were there any staff present in the waiting room when you came?
A. I think at that moment it was probably just receptionists, but I wouldn't promise I'm right --
Q. And you said the man wearing the plastic face shield was Judge Mora. Did you recognize him at the time?
A. I don't think so.
Q. And did you know his name when you arrived in the waiting room?
A. By the time I was speaking with him, I did know who he -- who he was, because he was a longtime patient in the practice. And I'd frankly, I was very surprised that he wouldn't comply and --

MR. COFFEY: Objection. That is not responsive.

MR. BIENSTOCK: Could you at -- you could stop after the first sentence of your answer.

THE WITNESS: Okay.

BY MS. DIPALO:

Q. Okay. And what did the face shield that Judge Mora was wearing look like?

A. Like I said, my perception it's a headband with, like, a -- half a cone, kind of in front of you. So it kind of sprays open towards the bottom.

Q. And what parts of his face did it cover?

A. I mean, it covers the front of your face.

Q. Does it cover the sides?

A. I don't know.

MS. DIPALO: Mr. Bienstock, may I show the witness what's been marked in evidence as Respondent's Exhibit D?

MR. BIENSTOCK: Yes.

MS. DIPALO: Mr. Fenwick, will you please show Ms. Koch?

MR. BIENSTOCK: Do you have an extra copy of this?

MS. DIPALO: Yes. It's not in the bench book.

THE WITNESS: It looks like safety glasses with a shield on the front of it.

MR. BIENSTOCK: Do you have this?

MS. DIPALO: Yeah. I know. I don't believe

it's in the bench book, unfortunately. I just realized that this morning. If you'd like us to take a moment, we can make copies.

MR. BIENSTOCK: I'm asking if he has a copy, and he said yeah. Well, he indicated in the affirmative.

MS. DIPALO: Thank you.

BY MS. DIPALO:

Q. Ms. Koch, do you recognize the man in the photo?

A. Yes.

Q. And who do you recognize him to be?

A. I think that's Frank Mora.

Q. And can you describe what Judge Mora is wearing on his face in this picture?

A. He's wearing a plastic face shield.

Q. And is that a fair and accurate representation of the face shield that Judge Mora was wearing on December 28, 2021?

A. I think so.

MS. DIPALO: Mr. Fenwick, will you please take the exhibit from the witness? Thank you.

BY MS. DIPALO:

Q. Do you know why Judge Mora's son was in for an appointment on December 28, 2021?

A. I believe he was in for a routine eye exam. I suspect he was a [redacted]. And in his age group, [redacted] does increase exponentially.

MR. BIENSTOCK: Everything's stricken after

the first sentence of her answer.

BY MS. DIPALO:

Q. Was Judge Mora's son's appointment for an emergency?

A. No.

Q. No. And when you arrived at work on December 28, did you know that Judge Mora's son had an appointment scheduled?

A. No.

Q. And did you know that Judge Mora planned to accompany his son to that appointment?

A. No.

Q. And did you know that Judge Mora required an accommodation because he was medically unable to wear a face mask?

A. No.

Q. And what, if anything, would you have done had you known in advance that Judge Mora required an accommodation?

MR. BIENSTOCK: Excuse me one second.

When, if at all, did you know that this person was a Judge?

THE WITNESS: After the whole incident occurred.

MR. BIENSTOCK: How much after?

THE WITNESS: Ten minutes, five minutes.

MR. BIENSTOCK: And how did you find that out?

THE WITNESS: My employee stated it. She

said --

MR. BIENSTOCK: Which employee?

THE WITNESS: Karen -- Karen Lynch, I think. I'm --

MR. BIENSTOCK: Yeah.

THE WITNESS: -- 95-percent sure it was Karen.

MR. BIENSTOCK: What did she say?

THE WITNESS: "Did you know he was a Judge?"

MR. BIENSTOCK: And what was the stage of the incident at that moment? Was he gone?

THE WITNESS: Yes.

MR. BIENSTOCK: You can proceed.

BY MS. DIPALO:

Q. Did you approach Judge Mora and his son?

A. Yes.

Q. And were you wearing a mask?

A. Yes.

Q. And where was Judge Mora standing in the waiting room?

A. I think he was, I'm going to say, maybe ten feet from the reception desk at that point. Somewhere kind of in the first third. If the front desk is here, and here's the whole big waiting room. He's probably around right in the front of where the chairs begin.

Q. And what was the distance between Judge Mora and the other patients in

the waiting room?

A. Probably not six feet.

Q. And what did you say to Judge Mora when you approached?

A. I can't tell you my exact verbiage, but I'm sure I requested that he wear a mask, and he didn't want to.

Q. What did Judge Mora say in response when you asked him to wear a mask?

A. I can't give you exact verbiage at all, but I can say it escalated. I'm not sure how it escalated, but he refused to wear a mask. I gave the option of wearing a mask or leaving, which is what I normally would do, and he wouldn't pick either option. And so it got kind of out of hand.

Q. Now at any point, did Judge Mora say that he had a medical condition that rendered him unable to wear a face mask?

A. I don't think at that point. I think that might have come out later, not in the beginning.

Q. And at any point during your conversation with Judge Mora, did he identify the medical condition that made him unable to wear a face mask?

A. No.

Q. And at any point during your exchange with Judge Mora, did you ask him what the medical condition was that made him unable to wear a face mask?

A. I suspect I did, but I can't remember phrasing that sentence.

Q. And --

A. Oh, can I change my answer? Because as I remember, I asked for what the condition was because there are patients who had medical things, and

they would have some kind of documentation, which he said he would provide. And I don't -- I can't tell you where that happened in the time line.

Q. And when you asked Judge Mora to put on a face mask, and you told him that if he didn't put on a face mask, he'd have to leave, what did Judge Mora do?

A. He refused. He became very agitated. He was ranting that I go to restaurants. That I just couldn't understand. He started to make it personal.

Q. What did you say to Judge Mora when he refused to leave?

A. I said, "if you don't leave, I am going to call the police." And he's --

Q. How did Judge Mora respond?

A. He said, "they won't come over a mask issue."

Q. And how many times, if any, did Judge Mora say the police aren't going to come?

A. Multiple times.

Q. And can you describe the Judge's tone during this interaction?

A. It was berating.

Q. And what was the Judge's volume like during this interaction?

A. It kept getting louder, and there were a lot of patients in the room. It was getting agitated and tense for me.

Q. And what was your tone like during the interaction?

A. I imagine my voice was getting higher and higher because I was pretty uptight at this point. It was, I mean, a patient who's been coming for over 20 years --

MR. COFFEY: Object to the history.

MR. BIENSTOCK: Sustained.

May I ask one question? In terms of the procedure of the office on or about this date, if someone said they couldn't wear a mask for medical reasons, was it the practice of the office to note that in their file?

THE WITNESS: You know, I really didn't have anybody else who challenged us to this degree.

MR. COFFEY: Objection. Nonresponsive.

THE WITNESS: So I don't have that answer.

MR. BIENSTOCK: Had Judge Mora --

THE WITNESS: If something was prearranged, it would go in their chart, of course.

MR. BIENSTOCK: Had Judge Mora been to your office previously?

THE WITNESS: He's a two-decade patient, so of course.

MR. BIENSTOCK: And had he been to your office during the pandemic previously?

THE WITNESS: I'd have to look. I don't know.

MR. BIENSTOCK: And if he had, and he said I can't wear, on that occasion -- on the prior occasion, if he said I can't wear a mask for medical reasons, would that as a matter of procedure, be recorded in his file?

THE WITNESS: I would say it should be, but

we're not perfect, so it may not be.

MR. BIENSTOCK: Fine. Thank you.

Proceed.

BY MS. DIPALO:

Q. And when you told Judge Mora that you were going to call the police if he didn't leave in substance, did Judge Mora leave the office?

A. No.

Q. And how close -- what was the distance between you and Judge Mora during this exchange?

A. As it went on, he was closer and closer. I was asking him to step away from me.

Q. And do you recall what distance you started at during the exchange?

A. I would start at six feet because we didn't go close to people in that time. But as it escalated, he became closer to me.

Q. And you said you were going to call the police. What did you do at that point?

A. I called the police.

Q. Okay. And do you know if anybody else called the police?

A. I don't think so. I, you know, I may have had the receptionist dial it because at that time, we had the plastic shields. There was like a bank thing where you could slip underneath. So maybe I had her dial --

MR. BIENSTOCK: Objection sustained.

You could -- next question.

BY MS. DIPALO:

Q. And do you know which receptionist called --

A. I'm not --
Q. -- 9-1-1?
A. -- sure. Whoever was closest.
Q. And when you got on the phone with 9-1-1, what did you say?
A. I explained the situation. I had a patient who wouldn't wear a mask. Which it was confirmed, they certainly wouldn't come for a mask issue. But when I ended up stating I had a patient who wouldn't leave the practice that we're asking to leave -- oh, I was being taunted while I was on the phone, I forgot.
Q. We will talk about that.
A. But I did then tell the police that I had an agitated patient who wouldn't leave, and they said they were on their way. They would come and take care of that.

MS. DIPALO: With the Referee's permission, I would like to go off the record and play an audio recording of Ms. Koch's first phone call to 911 on December 28, 2021.

MR. BIENSTOCK: Is this a stipulated exhibit?

MS. DIPALO: It's marked as a Commission Exhibit 2 in evidence, and there is a certified transcript of the audio recording, which is Commission Exhibit 2-A. The audio will run for one minute and seventeen seconds, and we need to go off the record while it's played.

MR. FRIEDBERG: So you will not -- the court reporter will not be transcribing this.

MR. BIENSTOCK: Any objection?

MR. COFFEY: No. Not an objection.

MR. MAISONET: Off the record.

(Recess from 10:40 a.m. until 10:42 a.m.)

MR. MAISONET: On the record.

BY MS. DIPALO:

Q. Ms. Koch, have you listened to that recording that we just heard before today?

A. Yes.

Q. And do you recognize the voice on the recording?

A. It's me.

Q. Okay. And during the call, we heard you say, "I'm a private medical practice, and I have a gentleman who is refusing to leave and will not wear a mask, and I have an office full of people. He's wearing a clear plastic face shield that does not cover his mouth."

A. Correct.

Q. You said, "I'm a private medical practice." Why did you say that?

A. Because that's what we are. We're a private medical practice. We have a responsibility to our patients, staff to carry out whatever our owners deem we should be doing.

Q. And you also said I had an -- "I have an office full of people." Why did you say that?

A. Because they're all being exposed, and it's on us.

Q. And did the 911 operator transfer your call?

A. Yes.

Q. Okay. And do you know where your call was transferred to?

A. Not exactly.

Q. And do you recall your conversation with the officer who received the transfer call?

A. Just as I stated before, that I was having a problem with someone who wouldn't follow what we were asking and wouldn't leave.

MS. DIPALO: Mr. Bienstock, at this point, I'd like to go off the record and play an audio recording of Ms. Koch's call with the town of Poughkeepsie police.

MR. BIENSTOCK: Any objections?

MR. COFFEY: No.

MS. DIPALO: It's marked as Commission 3 in evidence. It runs for two minutes and 45 seconds, and the transcript of -- the certified transcript of the audio recording is Commission Exhibit 3-A.

MR. BIENSTOCK: Off the record, please.

MR. MAISONET: Off the record.

(Recess from 10:44 a.m. until 10:47 a.m.)

MR. MAISONET: On the record.

MR. BIENSTOCK: At the moment of this call, did you know that the person you were talking to in the office was a Judge?

THE WITNESS: No.

MR. BIENSTOCK: Okay.

//

BY MS. DIPALO:

Q. Ms. Koch, have you listened to this audio recording before today?
A. Yes.
Q. And was it your voice on the recording we just heard?
A. Yes.
Q. And during the call, you can be heard asking, "What is your name, sir?"
A. Yes.
Q. Who were you speaking to?
A. I believe it had to be Frank Mora, because he does look different than I had remembered him.
Q. And why did you ask his name?
A. Because I had to tell the police what was going on for them to come.
Q. And during the call, you can be heard stating, "And I'm very surprised because I believe he is a longtime patient, but he says he has a medical explanation, but he has no documentation."
A. Correct.
Q. Can you explain what you meant by, "I'm very surprised."
A. At the risk of being too lengthy, I do all patient counseling in my office. So I get to know my patients fairly well when I take them on, particularly, elective surgery journeys. And so I have a sense of camaraderie -- of taking them through very scary eye surgery -- and have a feeling of rapport, even though it's professional, it's not social. But an intimacy, a professional intimacy, I don't know if that's exactly the right word. And again, that's what this whole thing is about for me. This person who is attacking.

MR. COFFEY: And now I object to this.

MR. BIENSTOCK: Next question.

THE WITNESS: Okay.

BY MS. DIPALO:

Q. When you said I believe -- let me withdraw that.
How long have you known Judge Mora?

A. It's not a knowing, though. But I believe I took him through, you know, health stuff 20 years prior. I'll take a guess on the time.

Q. And at the time of the incident on December 28, 2021, what did you think Judge Mora did for a living?

A. I thought he was an attorney.

Q. And what led you to believe he was an attorney?

A. Because I took him through his own eye care. And I do question patients at length about their lifestyle, job, what they do, to help them make a good decision about their vision.

Q. And do you recall when you asked Judge Mora about his profession?

A. When I helped him with his own eyes around 20 years prior is my guess, 18 years prior, whatever the time line was.

Q. And when was the last time you saw Judge Mora in person before December 28, 2021? At Seeta.

A. I believe he's passed through the office numerous times, but I don't have a particular time line recollection for you.

Q. And when you said he has -- on the audio recording, when you said, "He has a medical explanation, but he has no documentation." Can you explain what you meant by that?

A. If he had a real explanation or purpose, I mean, again, if I received a -- I'm not answering your question accurately. I'm a pretty compassionate person. If I received a phone call ahead of time, especially from a prior patient, "I have a medical problem, Stacey, I need to bring my kid in. How can we do this? I can't wear a mask." I am positive I would have come up with a solution. Which we did come up with a solution, by the way. But this way this whole thing unfolded --

Q. Now you said, "He has a medical explanation, but no documentation" --

A. Or explanation.

Q. Focusing on the documentation, did anybody ever ask the Judge for medical documentation?

A. I did that day.

Q. And did Judge Mora provide medical documentation at the time of the incident?

A. No.

Q. And what, if anything, did you know about Judge Mora's inability to medically tolerate a mask prior to the incident on December 28, 2021?

A. Unknown to me.

Q. Did you come to learn -- let me withdraw that. Were you working at Seeta on January 29, 2021?

A. Yes.

Q. And how do you know your whereabouts on that date?

A. Well, we work in electronic medical records and everything is audited, time stamped. Every time you access a record, it shows that you were in that record. So because of all of this, I certainly look back. I think it was

the other group, where, I don't know what the proper terminology, asked to provide documentation of anything about the January date. That's the beginning of --

Q. January 29, 2021.

A. 2021. And I found myself to be in a Lasik consult on that day.

Q. And were you aware that Judge Mora visited Seeta on January 29, 2021 at the time of the incident on December 28th?

A. I don't know if I knew about that date at that time.

Q. To your knowledge, what involvement, if any, did you have with -- let me withdraw that. Were you working -- sorry. Did you come to learn that Judge Mora had visited Seeta on January 29, 2021?

A. Yes.

Q. And how did you learn that?

A. I mean, a couple different ways. I don't know when it was, but somewhere in there, maybe when this all happened December 28th, I -- almost a year later my right hand, Danielle, had had some interaction with the Judge in January of 2021. I don't know when I found out about that. I wish I could tell you, because I never knew it would become so important. But she said -- she said that there was a problem with him, that he wouldn't wear a mask at that time. She said, and this is just what she told me, I have no documentation of this, that she told him that masks were required in this office, she did quickly get him in and out. And she told me that she warned him he needed to wear a mask coming back in the future.

Q. And did you have this conversation with Danielle Foster on December

28, 2021, before the incident?

A. No.

Q. And what involvement, if any, did you have with Judge Mora's visit to Seeta on January 29, 2021?

A. Only all this problem stuff. Nothing to do with coming in for a visit. I mean, I wouldn't routinely have anything to do with somebody just coming in. It's just because it all exploded that I got involved.

Q. Did you have any interaction with Judge Mora on January 29, 2021?

A. Oh, January 29th.

Q. Yes.

A. I thought you meant December. No. No. I was in my consultation room when he was in the office.

Q. Now going back to the audio that we just played, we heard you say, "I mean, I'm happy to provide a paper mask for you." Then, "You can't be in our practice. We're a private practice. No, you can't." Who were you speaking to?

A. To Frank Mora.

Q. And do you recall what prompted you to say, "Then you can't be in our practice. We're a private medical practice. No, you can't."

A. Because he refused to wear the mask, he outright refused. That was the whole thing. He wouldn't leave nor wear the mask. Either one would be an acceptable choice.

Q. Did the Judge say anything to you that prompted you to say, "We're a private medical practice; you have to wear a mask"?

A. I wish I could tell you I know exactly what I said, but I have no idea.

Q. And at another point during the audio, we heard you say, "I wish you wouldn't speak if you're not going to wear a mask. Okay? Don't talk." Who are you speaking to?

A. I was speaking to Frank Mora.

Q. And why did you say that?

A. Because he wasn't wearing a mask. And now we're flipping -- I'm not the manager, I'm just a person. And I don't know. To me, he's a person not wearing a mask; we're supposed to be wearing masks. There's nothing else for me to say about it.

Q. And what, if anything, did Judge Mora say in response?

A. "You go to restaurants," that's what he said. I don't go to restaurants. I still hardly go to restaurants.

Q. So during the call, we also heard you say, "I understand, ma'am. I'm doing the best I can to protect you." Who were you speaking to at that point?

A. A patient in the waiting room. Because patients don't want to be around people not wearing masks. They're relying on us to --

MR. COFFEY: Objection.

MR. BIENSTOCK: Sustained.

BY MS. DIPALO:

Q. And did the patient say anything that prompted you to say, "I understand, ma'am. I'm doing the best" --

MR. COFFEY: Objection. Irrelevant.

MR. BIENSTOCK: I'm sorry?

MR. COFFEY: Objection. Irrelevant.

MR. BIENSTOCK: It's also hearsay.

THE WITNESS: I don't remember anyway.

MR. BIENSTOCK: Strike the answer.

BY MS. DIPALO:

Q. We also heard you say, "Thank you, Mike. I appreciate your presence." Who were you speaking to?

A. My technician, Michael Brown.

Q. And is Michael Brown still employed at Seeta?

A. No.

Q. How long did he work at Seeta?

A. I think about a year.

Q. And when did he leave Seeta?

A. I don't know. Sorry.

Q. Why did he leave Seeta?

A. I think he left to get a job with greater pay and better hours, or -- actually, it was better insurance. I think that was the big thing.

Q. And can you describe your relationship with Michael Brown during his employment at Seeta?

A. He was a very good technician. He worked in my Lasik program. You know, he listened, he carried out tasks well. He was a good tech. He was a good employee.

Q. Do you have a relationship with Michael Brown now?

A. No.

Q. Have you been in contact with Michael Brown since he left Seeta?

A. I only had one interaction with Michael since he left Seeta. He --

Q. When was that interaction?

A. I don't know when it was. And I don't know if it was a text or a phone call, but he had told me that -- oh, I think it might have been a text. I'm not sure how he contacted me. But he wanted to alert me that somehow Judge Mora had gotten his personal cell phone and had requested some kind of letter from him, and he wanted me to be aware of it. What he did or didn't do, I don't know.

Q. And have you had any social contact with Michael Brown since he left Seeta?

A. He's on my Facebook feed of friends. Typically, if I have a friend from work, I don't cut them off. I leave them in there for whatever reason.

Q. And have you had any exchanges with Michael Brown on social media since he left Seeta?

Q. Nothing more than liking his posts.

A. And has Michael Brown had any exchanges with you on Facebook after you left?

A. I thought he wrote some post about me at my 25-year work anniversary, and I thought he wrote a whole big thing about me I remember reading, but I have not been able to refind it.

Q. Now going back to the incident on December 28, 2021, when did Michael Brown arrive in the waiting area of Seeta?

A. Because I was in this intense interaction, I can't tell the exact moment. But I believe what happened is things were getting quite heated --

MR. COFFEY: Objection.

THE WITNESS: -- and one of my receptionists

called him. So somewhere during that. Is that a better answer?

BY MS. DIPALO:

Q. Where was Michael Brown standing in relation to you and Judge Mora during the interaction?

A. Right next to me.

Q. And what was the distance between you and Michael Brown while you were talking to Judge Mora?

A. Close. A couple feet, I'd say.

Q. And I'm just going to turn back to the audio recording again. During the call, we heard you say, "If you just lived through what I have lived through, you would know what you're doing. No, don't speak because we don't want your air." Who were you speaking to?

A. I was speaking to Frank Mora.

Q. And why did you say that?

A. Managing an ophthalmology practice during a pandemic was so difficult.

Q. And what did you mean when -- let me withdraw that. You can be heard saying on the call, "I do not. I do not. I do not go to a restaurant. I live with someone who has had [redacted] three times. And I really don't want your germs on me." Who were you speaking to when you said that?

A. I was speaking to Judge Mora.

Q. And why did you say -- what caused you to say, "I do not go to a restaurant. I live with someone who has had [redacted] three times, and I don't want your germs on me."

MR. COFFEY: Objection. Irrelevant.

MR. BIENSTOCK: You can answer that.

THE WITNESS: He was taunting me and making it personal. Which I don't understand why --

MR. COFFEY: I object to that.

MR. BIENSTOCK: Strike the last sentence.

BY MS. DIPALO:

Q. Now, you mentioned, "I live with someone who has had" -- you mentioned that you had lived with someone who had [redacted] three times. Who were you referring to?

A. My husband.

Q. And why did you bring up the fact that he had had [redacted] three times?

A. During the pandemic, my impression was a person who was over 60 and had [redacted] and was an [redacted], was highly [redacted] in this time and carried a greater risk of this COVID virus being very, very dangerous health-wise. So I had to be especially vigilant, especially dealing with the public. I had to be as careful as you could try to be.

Q. And were you concerned about your husband's -- about your husband during the exchange with Judge Mora?

A. Very much so.

Q. And what was your reaction to the Judge bringing up whether you went to restaurants?

A. I thought it was weird and wrong.

Q. And can you describe the Judge's behavior while you were on the phone with the police?

A. As I stated, he was taunting, he was condescending, and kind of nasty.

Q. And when you hung up the phone with the police, what did you believe was happening?

A. I thought the police would come, but when I turned around --

MR. BIENSTOCK: (Unintelligible). Next question.

BY MS. DIPALO:

Q. And did the police arrive after this call?

A. No, because I told them not to come. Because when I turned around, Judge Mora had left.

Q. Okay.

A. When I said the police were coming, he left.

MS. DIPALO: Mr. Bienstock, if we could go off the record, I'd like to play an audio recording of Ms. Koch's second call to 911 on December 28, 2021. It's marked as Commission Exhibit 4. It's in evidence. It runs for one minute and thirteen seconds, and the certified transcript of the audio is Exhibit 4-A.

MR. BIENSTOCK: Any objection?

MR. COFFEY: On the transcript, we're going to have to have some discussion. There was an errata sheet, but we'll deal with that later.

MR. BIENSTOCK: Okay.

MR. COFFEY: But the recording, I don't object to.

MS. DIPALO: Mr. Coffey, the errata sheet is attached as part of the transcript.

MR. COFFEY: No, I understand, but -- okay. But I'm not addressing that now. Okay. All right. I'm sorry.

MR. BIENSTOCK: Off the record.

MR. MAISONET: Off the record.

(Recess from 11:04 a.m. until 11:06 a.m.)

MR. MAISONET: On the record.

BY MS. DIPALO:

Q. Ms. Koch, have you listened to this audio recording before today?

A. Yes.

Q. And was it your voice on the audio recording we just heard?

A. Yes.

Q. Now during the call, you can be heard saying, "This is 27 Davis Avenue. I'm having a big problem with a patient who refuses to leave and is making a big ruckus in my waiting room. He's walking out now." Can you tell us what you meant by "a big ruckus"?

A. Well, we just went over it all. Criticizing; speaking of my personal behavior, what I may or may not do; not following office protocol, the CDC guidelines of the pandemic -- you know, mine is an office of 80-year-old people.

MR. COFFEY: I object to this.

MS. DIPALO: And you heard --

MR. COFFEY: I object to this. Object to her

talking about 80-year-old -- we've heard this.

MR. BIENSTOCK: All right.

MR. COFFEY: By the way, I also object as repetitious.

MR. BIENSTOCK: The answer is stricken.

MS. DIPALO: The entire answer?

MR. BIENSTOCK: Yes. You can ask the question in a different way. Whatever --

THE WITNESS: I'll try. Forgive me, I'm sorry.

MR. BIENSTOCK: -- medical answer if you can.

BY MS. DIPALO:

Q. What did you mean when you said you were having a big problem with a patient in the waiting room?

A. When we have a patient conflict, we try to be discreet and quiet about it. That was not what was happening. It was loud. It was interfering with others. It's a ruckus. It's an interruption of everybody else's personal space.

Q. And you heard the audio recording. Did the 911 operator transfer your call to the local police?

A. I believe so.

MS. DIPALO: Mr. Bienstock, with your permission, I'd like to go off the record and play an audio recording of Ms. Koch's 911 call on December 28, 2021 -- oh, sorry. Her second call to the town of Poughkeepsie

Police on December 28, 2021. It is marked as Commission Exhibit 5 in evidence. It runs for one minute and five seconds, and the transcript of the audio recording is exhibit -- Commission Exhibit 5-A.

MR. BIENSTOCK: Isn't this the third one?

MS. DIPALO: This is the fourth one.

MR. FRIEDBERG: Fourth.

MR. BIENSTOCK: The third one on this day.

MS. DIPALO: There were --

MR. BIENSTOCK: To 911.

MS. DIPALO: There were two 911 calls on that day, and each time the 911 operator transferred the call to the local police.

MR. BIENSTOCK: Three, four and five.

MS. DIPALO: Yes. Two, three, four, and five.

MR. BIENSTOCK: Right. There were four calls.

MS. DIPALO: Yes.

MR. BIENSTOCK: Okay.

MR. FRIEDBERG: Well, actually, there were two calls, but each call is two parts.

MR. BIENSTOCK: Off the record.

MR. MAISONET: Off the record.

(Recess from 11:09 a.m. until 11:10 a.m.)

MR. MAISONET: On the record.

BY MS. DIPALO:

Q. Ms. Koch, have you heard this audio recording before today?
A. Yes.
Q. And is that your voice on the audio recording?
A. Yes, it is.
Q. Why did you say, "I don't know if he's trying to come back in again"?
A. I was scared.
Q. And what did you mean when you said, "I know everything about him"?
A. Well, we have the patient files, so it has their demographics, their date of birth, phone number, possibly email, a picture of them.
Q. And what, if anything, did Judge Mora say to you as he was leaving?
A. I don't recall anything.
Q. And did the police ever come to Seeta on December 28, 2021?
A. I don't think so.
Q. Did you observe Judge Mora and his son exit Seeta?
A. I think so, but I don't have a solid -- you know. I can't swear to it.
Q. And do you know which door they would have exited?
A. The front door.
Q. And from the time that you entered the waiting room after receiving a call from the receptionist to the time Judge Mora left the office, how much time had passed?
A. I'm going to guess a half an hour, 40 minutes.
Q. And what, if anything, happened after Judge left -- Judge Mora left Seeta on December 28th.
A. Well, I'm still in the waiting room. At this point it's towards the end of

the day. At this point, because it did get so heated, there are a few more staff members in the waiting room. And one of my technicians, Karen Lynch -- I think it was Karen, I'm 99 percent sure -- said, "And did you know he's a Judge?" And I have to say, I was -- I didn't know. So Karen told me that, and we just kind of talked about, you know, person behaving badly.

Q. And was Judge Mora's son seen by a doctor on December 28, 2021?

A. I think -- you know, it's so many years ago now. I know I gave him my card. I know we spoke. I got him back in the office with his kid through the back door. Michael Brown and my optometrist agreed to -- because it's a child. We still want to help the child.

MR. COFFEY: I object to this. It's not a question of who the child is --

MR. BIENSTOCK: Sustained.

MR. COFFEY: -- it's whether she saw him again.

MR. BIENSTOCK: Next question.

THE WITNESS: It figures into the answer, though.

BY MS. DIPALO:

Q. Why did you arrange for Judge Mora's son to be seen that day?

A. Because the child has nothing to do with the bad behavior of the adult.

Q. And at any time after Judge Mora left Seeta that day, did you receive any type of medical documentation?

A. I received a paper from a chiropractor, not medical documentation.

Q. And how did you receive that paper?

MR. COFFEY: I'm going to object to this characterization unless she qualifies herself. But maybe she is a doctor, but if she does, she ought to qualify herself as such.

THE WITNESS: Well, I need --

MR. BIENSTOCK: I'll let it stand for what it's worth.

MR. COFFEY: All right.

THE WITNESS: I receive medical documentation every day. It wasn't medical documentation.

MS. DIPALO: Ms. Koch, I'll ask you the questions.

MR. BIENSTOCK: This is no -- there's no question --

THE WITNESS: Okay.

MR. BIENSTOCK: -- Ms. Koch.

THE WITNESS: I'm sorry. I'm sorry.

BY MS. DIPALO:

Q. Now how did you receive this letter?

A. I think it came as an email or a fax.

Q. And --

A. I think it was an email.

Q. What was the substance of the email?

A. Just stating that he had a medical problem that prevented him from

wearing a mask. Very vague.

MR. BIENSTOCK: Strike the last sentence.

BY MS. DIPALO:

Q. And it was a letter, not an email, correct?

A. Right.

Q. Who wrote the letter?

A. A chiropractor. I don't recall his name.

Q. And what struck you about the chiropractor's letter that was submitted on Judge Mora's behalf?

MR. BIENSTOCK: Is the chiropractors letter in the record?

MS. DIPALO: I believe it is attached to the formal written complaint, which is Referee's Exhibit A. I think I can find that.

MR. BIENSTOCK: Is that stipulated as part of the record?

MS. DIPALO: Yes.

MR. FRIEDBERG: It's the Referee's exhibit.

MS. DIPALO: Mr. Bienstock, it's not part of the Commission's formal written complaint, but the substance of the letter is paragraph 16 of the formal written complaint on page five.

MR. BIENSTOCK: So the letter is not in the record; is that right?

MR. COFFEY: Correct. Commission is

correct. Paragraph 16 summarizes on some of it --

MS. DIPALO: Yes.

MR. COFFEY: -- states it that way.

MR. BIENSTOCK: Is it in your exhibit, Mr. Coffey?

MR. COFFEY: No. No, it's not, Judge. It's -- but 16 does accurately reflect what was in that note. So we're not challenging paragraph 16.

MR. BIENSTOCK: Give me one minute, please.

You can proceed, ma'am.

BY MS. DIPALO:

Q. And what struck you about the chiropractor's letter, Ms. Koch?

A. There was no diagnosis.

Q. And as an office manager at an eye center for more than 20 years, have you seen letters submitted by doctors on behalf of patients?

A. Many times.

Q. And have you seen letters submitted by doctors requesting accommodations for patients?

A. Yes.

Q. Did the chiropractor's letter that Judge Mora submitted look like the other letters you have received from doctors?

MR. COFFEY: Objection to relevance.

MR. BIENSTOCK: Sustained. Next question.

//

BY MS. DIPALO:

Q. What was different about the chiropractor's letter that you received?

MR. COFFEY: Objection to the relevance of this. The letter is the letter --

MR. BIENSTOCK: Same, so sustained.

BY MS. DIPALO:

Q. What did you do after you received the chiropractor's letter, Ms. Koch?

A. I called looking for diagnosis.

Q. And why did you call?

A. Because it's standard.

Q. It's your standard practice? And what --

A. It was like a missing piece of information. If I received a prescription that didn't have an axis, I'm going to call. It seemed like a missing piece of information.

Q. And what, if anything, did you say to the chiropractor?

MR. COFFEY: I'm only going to object to this.

MR. BIENSTOCK: I'm sorry?

MR. COFFEY: I'm going to object to this reason: it's hearsay. But to the extent that a conversation was had, then I don't object to it.

MS. DIPALO: Well, she can say her side of the conversation, correct? That's not hearsay.

MR. COFFEY: Okay. But anyways, she can say -- yes. She can testify to her side of the conversation. Correct. That's correct.

MR. BIENSTOCK: Objection sustained. Ask your next question, please.

MS. DIPALO: So am I permitted to ask what she said to the chiropractor, Mr. Bienstock?

MR. BIENSTOCK: Yes.

BY MS. DIPALO:

Q. What did you say to the chiropractor?

A. I simply asked for a diagnosis. He would not give me one.

Q. And --

MR. BIENSTOCK: I'm sorry. What was the second --

THE WITNESS: He wouldn't give me a diagnosis.

MR. BIENSTOCK: Strike that.

MS. DIPALO: The last part of the answer?

MR. BIENSTOCK: Yes.

BY MS. DIPALO:

Q. Did you receive a diagnosis from the chiropractor?

A. No.

Q. And what did you do next?

A. I mean, I don't remember because that day was quite intense, but by the next -- was it that day or the next day? I believe I called my brother -- my -- that's what I think I did next.

Q. And did you speak to any Seeta employees about the incident after it happened?

A. I mean, of course. General talk in the office of this extreme attitude on behalf of somebody passing through our office.
Q. And did you ask employees to give statements about the incident?
A. Yes. I did ask Michael Brown to write his perception of what happened. I think my receptionists probably put a note somewhere. I really have never come up with anything. But just like anytime anything happens in our office, we document everything. If a lady falls in the waiting room, we document it, ask somebody to explain what they saw or what happened. Because we're a medical practice and we get questioned. We have to follow up. So anything that's out of the ordinary, we try to document.
Q. And was Michael Brown's statement a part of your regular standard business practice at Seeta?
A. Yes.
Q. And what discussions, if any, did you have with Michael Brown before he gave his statement?
A. Just to write what he perceived happened?
Q. And do you recall where you were when Michael Brown wrote his statement?
A. No.
Q. Do you -- do you know where Michael Brown was when he wrote his statement?
A. I assume somewhere in the office.
Q. Were you with Michael Brown when he wrote his statement?
A. No.

Q. And did you have any input into Michael Brown's statement?

A. No.

Q. Do you recall when Michael Brown gave this handwritten statement -- or sorry. Withdrawn. Do you recall when Michael Brown gave the statement?

A. Either that day or the next day.

MS. DIPALO: Mr. Bienstock, may I show the witness what will be marked as Commission Exhibit 29 for identification?

(Commission Exhibit 29 was marked for identification)

MR. BIENSTOCK: Yes.

MS. DIPALO: It is in the binder as Commission Exhibit 29.

Mr. Fenwick --

MR. COFFEY: It's not stipulated, Your Honor.

MS. DIPALO: -- would you please.

No, it is not.

Will you please show the witness Commission Exhibit 29?

MR. BIENSTOCK: Oh, I don't want them until it's in.

Mr. Coffey, do you have a copy?

MR. COFFEY: Yes, I do.

MR. BIENSTOCK: Proceed.

//

BY MS. DIPALO:

Q. Ms. Koch, are you done reviewing this statement?

A. Yes.

Q. Do you recognize this document?

A. Yes.

Q. What is it?

A. It's what -- what Michael Brown wrote after the incident.

Q. And do you recognize the handwriting in the right hand corner that reads, "employee who observed the incident"?

A. Yep. That's me.

Q. Okay. Whose handwriting is it?

A. Mine.

Q. Okay. And when did you add this handwriting?

A. Probably as soon as he gave it to me just as, you know, what is this.

Q. And apart from this handwriting, is this statement a fair and accurate representation of the statement that Michael Brown gave you on December 28th, 2021?

A. Yes.

MS. DIPALO: Mr. Bienstock, I'd like to move Commission Exhibit 29 into evidence.

MR. COFFEY: No objection.

MR. BIENSTOCK: Received. May -- give it to me.

MS. DIPALO: It's in the binder, Mr. Bienstock.

MR. BIENSTOCK: I have it.

BY MS. DIPALO:

Q. Ms. Koch, when did you first learn that Judge Mora was a Judge?

A. Right after --

MR. COFFEY: Already answered this question.

THE WITNESS: Right after this incident.

MR. BIENSTOCK: Asked and answered. Move on.

MS. DIPALO: Mr. Bienstock asked the question. Okay.

MR. COFFEY: She gave an answer.

MS. DIPALO: All right.

BY MS. DIPALO:

Q. Ms. Koch, how did you feel about your interaction with Judge Mora on December 28th, 2021?

A. Terrible.

Q. And what were your next steps?

A. As I said, I think what I did is I must have called my brother. My brother is an attorney, and finding out that --

MR. COFFEY: Objection to any conversations with her brother.

MR. BIENSTOCK: Sustained.

BY MS. DIPALO:

Q. What did you decide to do after the incident?

A. I decided to file a complaint.

Q. And how did you learn where to file a complaint?

A. I believe my brother gave me some guidance on what to Google, and that's what I did. And I just found a form and filled it out.
Q. And --
A. Oh, maybe I called and he may have -- I apologize, but he probably advised me how to start. I don't remember the particulars -- call the Bar, the local Bar. I think that might have been what I did next.
Q. And do you recall who you spoke to at the Bar Association?
A. No.
Q. Do you recall what you said when you called the Bar association?
A. I wish I could tell you, but I don't know.
Q. And were you given information from the Bar Association?
A. They must have told me what to do, but I -- I --
Q. What did they tell you to do --
A. Somehow --
Q. -- if you can recall?
A. -- I don't remember how. I have no idea how I got there to the form, how to file this official complaint, but I was like, "oh, there it is. This is what I need to do." And I just started typing.
Q. And did you report the incident with Judge Mora to anybody else besides the Commission?
A. I mailed a copy of it to the Poughkeepsie Mayor.
Q. And why did you mail it to the Poughkeepsie Mayor?
A. I was aghast. I was very upset.
Q. And when did you mail it to the --
A. Somewhere --

Q. -- Poughkeepsie Mayor?
A. -- whether it was that next day or two days later, all in that time period because I was very, very disappointed and upset.
Q. And when did you file your complaint with the Commission?
A. Right away. Like, the next day.
Q. And how did you file your complaint with the Commission?
A. I think it sent through email. I think the form had a way it just sent when you finished it.
Q. And prior to filing your complaint with the Commission, had you ever filed a complaint against the Judge --
A. Never.
Q. -- with the Commission?
A. Nobody ever.
Q. And at the time you filed your complaint, did you know that it was confidential by law?
A. I didn't really know too much about anything, no.
Q. Did you look around the Commission's website?
A. No.

MS. DIPALO: With the Referee's permission, I would like to show the witness what's been marked. Commission Exhibit -- Exhibit 7, and it's in evidence. My apologies. It's Commission Exhibit 6. Mr. Fenwick is showing the witness the document, Commission Exhibit 7.

MR. BIENSTOCK: Six.

MS. DIPALO: Six. Thank you. Mr. Bienstock,

may I proceed?

MR. BIENSTOCK: You can proceed. This is in evidence?

MS. DIPALO: Yes, it is.

MR. COFFEY: Mr. Bienstock, let me raise a question if I can. We have Mr. Sussman -- I've got to get on the phone with him -- available around this time to be called as a witness. So I don't know how much longer we would be doing Ms. Koch, or if there's a good time to take a break.

MS. DIPALO: I'd like to finish my direct. Maybe we could take a break.

MR. COFFEY: Okay.

MS. DIPALO: I don't anticipate having much more than --

MR. COFFEY: That's fine.

MS. DIPALO: -- a half an hour at most.

MR. COFFEY: Okay.

MS. DIPALO: Mr. Sussman was available, right, from 11:30 to --

MR. COFFEY: That's my understanding. Correct. Okay.

MR. BIENSTOCK: Okay.

MR. COFFEY: All right.

MS. DIPALO: Thank you.

MR. BIENSTOCK: Anything counsel can work out is okay with me.

BY MS. DIPALO:

Q. Ms. Koch, do you recognize Commission Exhibit 6?

A. Yes.

Q. And what is it?

A. It's the complaint that I wrote the day after this all happened.

Q. Now, on page three, line one, you state, Frank Mora exhibited unprofessional behavior in our medical practice on 12/28/21.

A. Yes.

Q. What did you mean by unprofessional behavior?

A. I mean, it's my opinion, but I think during a pandemic, a Judge should bow to the CDC guidelines and mandates that I had to enforce since March of 2020, and I don't think a Judge should be making my job harder in the public arena of a private practice. I was aghast.

Q. Now, on page three, line three, you state Mr. Mora created a huge scene in our waiting room and refused to wear a mask.

A. Yes.

Q. What did you mean when you said huge scene?

MR. COFFEY: Judge, I object as she testified at length about this and what her state of mind was in --

MS. DIPALO: And may I respond, Mr. Bienstock?

MR. BIENSTOCK: You may.

MS. DIPALO: The -- the allegations in the

defamation suit that Judge Mora filed against Ms. Koch pertain to this complaint and specifically these statements in the complaint, so I argue that it is relevant to hear what she --

MR. BIENSTOCK: It's relevant to the defamation suit, that's for sure.

MS. DIPALO: Yes.

MR. BIENSTOCK: I -- I didn't know we were trying the defamation suit.

MS. DIPALO: Well, we're not trying the defamation suit, but we're saying that he relied -- Judge Mora relied on the advice of his counsel. He provided his counsel with this complaint, and purportedly they went through and picked out the defamatory statements.

MR. BIENSTOCK: So?

MS. DIPALO: So it's relevant to the issue of whether she had any kind of motive in filing the complaint against the Judge. The allegation in the defamation suit --

MR. BIENSTOCK: Yeah, but we're not trying the defamation suit.

MS. DIPALO: I understand that.

MR. BIENSTOCK: What is its relevance? The words are here.

MS. DIPALO: Yes.

MR. BIENSTOCK: It's in evidence. She

doesn't have to testify that she said each sentence --

MS. DIPALO: Well --

MR. BIENSTOCK: -- and her motives --

MS. DIPALO: -- what about her state of mind at the time she filed the defamation suit?

MR. BIENSTOCK: Relevant to the defamation suit.

MS. DIPALO: And Judge Mora is charged with retaliating against Ms. Koch for filing a complaint with the Commission.

MR. BIENSTOCK: I understand that. So --

MS. DIPALO: So her state of mind --

MR. BIENSTOCK: -- you haven't explained to me why it's relevant to this proceeding.

MS. DIPALO: Why Ms. Koch's complaint -- because her credibility is being challenged. It's alleged that she -- you will hear testimony that she knew Judge Mora. She had basically planned this entire complaint and the incident at Seeta. So I think what she perceived on the date of the date she filed her complaint with the Commission and what she meant by each statement in the complaint is relevant.

MR. BIENSTOCK: I don't agree.

MS. DIPALO: Okay.

MR. BIENSTOCK: Move on.

MS. DIPALO: Yeah. I mean, the basis of the defamation suit is that she made false statements in her complaint.

MR. BIENSTOCK: I agree it's relevant to the defamation suit.

MS. DIPALO: But doesn't it go to whether the defamation suit was retaliatory or frivolous?

MR. BIENSTOCK: I haven't heard anything about that yet, and --

MS. DIPALO: We're about to get to it because we haven't had any witnesses testify concerning -- we haven't heard from Mr. Sussman. We haven't heard from Judge Mora yet.

MR. BIENSTOCK: That's right. That's right.

MS. DIPALO: But Ms. Koch's complaint --

MR. BIENSTOCK: And the relevance of going through each sentence and asking her what her state of mind was when she wrote that sentence is not, at this moment, relevant to this action.

MS. DIPALO: Understood. Thank you.

BY MS. DIPALO:

Q. Ms. Koch, why did you file a complaint against Judge Mora with the Commission?

A. Because he was a Judge.

Q. And what did you hope to achieve by filing the complaint?

A. I'm a person who believes a Judge answers to a higher standard.

MR. COFFEY: Strike that. She's not asked what she believed. What was her purpose?

MR. BIENSTOCK: Not responsive.

MS. DIPALO: Okay.

MR. BIENSTOCK: You can ask the question again --

MS. DIPALO: Yes, I can ask --

MR. BIENSTOCK: -- and if you get a responsive answer --

MS. DIPALO: Yeah, understood.

MR. BIENSTOCK: -- it will stand.

BY MS. DIPALO:

Q. What did you hope to achieve by filing the complaint with the Commission?

A. Calling it to our community's attention that a Judge was not behaving professionally publicly.

Q. And did you have anything to gain by filing the complaint with the Commission?

A. Only to lose.

Q. And were you asked by the Commission to give testimony about the incident with Judge Mora on December 28th, 2021?

A. Yes.

Q. And did you give testimony before the Commission over Zoom?

A. Yes.

Q. Who, if anyone, did you discuss your testimony before the Commission with?

A. With you.

Q. Did you -- apart from me or Commission staff, did you discuss your testimony with anybody else?

A. I mean, my husband.

Q. Did you did you discuss your testimony before the Commission with any staff members at Seeta?

A. Just in an everyday way -- you know, the horror of it all.

Q. Did you discuss your testimony with Michael Brown?

A. I think he was already gone by then.

MR. COFFEY: The question is did she discuss it with him. The answer is yes, no, or I don't know.

BY MS. DIPALO:

Q. Did you discuss your testimony --

MR. BIENSTOCK: I'll take it for what it's worth.

THE WITNESS: I'll say no because he wasn't around me.

MR. BIENSTOCK: You don't have to respond to the objection.

THE WITNESS: Thank you.

MR. BIENSTOCK: I respond to the objection.

THE WITNESS: Okay.

MR. BIENSTOCK: You respond to Ms.

DiPalo.

THE WITNESS: Not my land. I'm trying. I really am trying.

MR. BIENSTOCK: Next question.

MS. DIPALO: Thank you.

BY MS. DIPALO:

Q. What if -- what, if any, contact did you have with Judge Mora in the months after you filed your complaint with the Commission?

A. I know, talking to my boss -- practice -- you know, managing owner of my practice about all this -- I'm sure I talked to Dr. Modi about this, although I don't have any details. But we both kind of thought it would be best to discharge him from our practice. That's the one thing I remember. We just like, why come to our practice?

Q. So--

A. It's -- it's getting ugly.

Q. And what did you do after these conversations? .

A. What did I do? I probably documented it somewhere. No, we had a phone call. I believe I called Judge Mora. I think I called. I -- I don't know now. It's too many -- it's just too much stuff. But there was some sort of interaction where I asked him, could I just give him a list of other ophthalmologists, you know, just go somewhere else. It would just be better because he'd continue to want to come to our practice and bring his children, which I understand, but you know, it's not great for us, me. But then he said he was going to sue me for defamation if I did that -- or discrimination. That's what it was. He was going to sue us for

discrimination if we prevented him from coming.

MR. BIENSTOCK: Next question.

BY MS. DIPALO:

Q. And how would you describe the tenor of your conversation with Judge Mora?

A. Volatile. Threatening and volatile.

Q. And did Judge Mora file a discrimination lawsuit against Seeta --

A. No --

Q. -- to your knowledge?

A. He did against me.

Q. Discrimination. Did he file a --

A. No.

Q. -- discrimination lawsuit against Seeta?

A. I don't think -- I don't -- no, I don't think so.

Q. Now, how did you first learn that Judge Mora had filed a defamation lawsuit against you?

A. Danielle. I think I was in LASIK that day is how I remember it. I don't know if that's right, but that's what I remember. And she said somebody was dropping off a summons or something, which, again, we're medical practice. It does happen. And I was kind of casual about it, like, "Okay, whatever, I'm in the middle of a surgery day, you know, throw it on my desk. I'll look at it tomorrow or something." She's like, "No, this is serious. You need to look at it." And I think, like, either later in the day or the next morning, I don't know which, I actually am looking at this and reading it and rereading it and I'm like, "oh my goodness" --

MR. BIENSTOCK: The answer is it was dropped off on your desk. Next question.

THE WITNESS: Okay. Sorry.

BY MS. DIPALO:

Q. What did you understand the Judge was suing you for?

A. I didn't really understand what he was suing me for frankly.

Q. Ms. Koch, what legal training, if any, do you have?

A. None.

Q. And what was your reaction to -- to the lawsuit -- to being sued?

A. Right. That's the main thing I picked up on that I was being sued for a half million dollars. That's what I got out of the document, and I really couldn't understand. And it wasn't the practice; it was me personally.

Q. What was your reaction -- let me withdraw that.

Ms. Koch, is $425,000 a lot of money for you?

A. Yes.

MR. COFFEY: It's irrelevant, Judge, whether she's wealthy or indigent.

MR. BIENSTOCK: Sustained.

MS. DIPALO: Mr. Bienstock, may I be heard? I would argue this goes towards the motive in filing the lawsuit. If a person who works as an office --

MR. BIENSTOCK: She can answer that question narrowly.

MS. DIPALO: Okay.

MR. BIENSTOCK: Yes or no.

BY MS. DIPALO:

Q. Is $425,000 a lot of money for you?

A. Yes.

Q. Ms. Koch, are you a two-income household?

A. No.

Q. What, if anything, happened in the days after you were served with Judge Mora's lawsuit?

A. I'm -- I'm not sure what you mean.

Q. Okay. Did you have any contact -- let me withdraw that.
Did Judge Mora -- did you learn that Judge Mora had called Seeta to make an appointment after the lawsuit was filed?

A. In our electronic medical records, anything with his last name, a message pops up saying to get me -- or then it was Danielle so that we could be -- I could be on guard to either stay in my office or not be present or just try not to be around since we were continuing to see him and his family.

Q. When was this electronic message system put into place?

A. Well, it's just part and parcel. Our electronic medical record started in 2012.

Q. I apologize. The specific note in the electronic message system advising you that Judge Mora had made an appointment, when was that put in place?

A. Right when all these -- right when this whole thing happened at the end of December in 2021.

Q. And so how did you learn that Judge Mora had called to make an appointment?

A. Whoever took the appointment would immediately tell me.
Q. And do you recall when you learned that Judge Mora had called to make an appointment?
A. I wouldn't know on any particular day or detail about that.
Q. Was it after you had been served with a lawsuit?
A. Yes.
Q. And how did you feel when the Judge -- when you learned that the Judge had called for an appointment after filing a lawsuit against you?
A. Bad.
Q. And did there come a time when you learned that Judge Mora came to Seeta for an eye appointment after having filed a lawsuit against you?
A. Again, just continued not understanding why you'd want to keep coming to our practice.

MR. BIENSTOCK: No, yes, or you don't know?

THE WITNESS: I don't think either one apply, so I'll say I don't know.

BY MS. DIPALO:

Q. Did Judge Mora come to Seeta for an appointment after he filed the lawsuit against you?
A. With his children.
Q. And were you in the office on the day he came to the -- Seeta for an appointment?
A. I can't say for sure.
Q. And how did you feel about the Judge returning to Seeta for an

appointment with his children?

MR. COFFEY: Objection to relevance because he's not charged with this, and it's not part of the claim.

MR. BIENSTOCK: I'll take it for what it's worth.

THE WITNESS: Bad.

BY MS. DIPALO:

Q. Ms. Koch, what, if any, involvement did you have in defending the defamation lawsuit that Judge Mora brought against you?

A. I'm sorry?

Q. Did you have any involvement in defending the defamation lawsuit that Judge Mora brought against you?

A. Yes. It was a whole big thing. I -- I mean, I had to go to some kind of court. I mean, I'm being sued personally for half a million dollars. Somehow it was released publicly. I still don't even understand what happened at all -- got all over the internet. I -- I still to this day -- I have no idea how any of that happened. It's nothing to do with me or anything I do.

Q. Did you --

MR. BIENSTOCK: The answer is yes.

BY MS. DIPALO:

Q. Did you meet with attorneys?

A. Yes. When this whole thing -- the suit happened -- when the Judge decided to sue me personally, I contacted you. I unfortunately reached out to my brother because I don't know what to do.

Q. Why did you contact your brother?

A. Because I'm being sued. I didn't know what to do.

Q. What does your brother do for a living?

A. My brother's an attorney. He told me and you -- I think I reached out to you as well -- both telling me first to go through my office to see if our office insurance had -- could -- I don't know what the word is.

MR. COFFEY: I don't know how this is relevant.

MR. BIENSTOCK: It's also hearsay.

MR. COFFEY: Well, true, but I --

MR. BIENSTOCK: I just mean I don't know why it's relevant either.

BY MS. DIPALO:

Q. Ms. Kotch, how did the Judge rule on Judge Mora's defamation suit?

MR. COFFEY: I'm going to object. This has no precedential value for you. Whatever another Judge did in another proceeding --

MS. DIPALO: Mr. Coffey, it's in the -- it's in charge of the complaint --

MR. BIENSTOCK: You can put in the decision.

MS. DIPALO: The decision is --

MR. BIENSTOCK: I know.

MS. DIPALO: Yeah.

MR. BIENSTOCK: And then -- and then you'll

have a total answer to -- to your question that you just asked.

MS. DIPALO: It's really just for context -- this question. It's not to elicit what she thought of --

MR. BIENSTOCK: I have the context.

MS. DIPALO: -- the Judge's decision. Okay.

MR. COFFEY: Let me just let me ask this. We have agreed that that's an exhibit that can be admitted, but we always have -- reserve the right to come before the hearing officer as to its relevance or importance.

MR. BIENSTOCK: I sustained your objection.

MR. COFFEY: Okay. Oh, okay.

BY MS. DIPALO:

Q. Ms. Koch, did you enter into a settlement agreement with Judge Mora as to attorney's fees and costs?

A. Did I?

Q. Yes.

A. I think that was the outcome of that. I mean, the defamation case, whatever it was, I think he had to pay the attorney.

MS. DIPALO: May I show the witness Commission Exhibit 16, which is in evidence?

MR. COFFEY: Judge, I'm not denying the accuracy of what's in these papers, but I -- you're taking the position.

MR. BIENSTOCK: She can show the witness

an exhibit that's in evidence.

MR. FRIEDBERG: Say the exhibit number again.

MS. DIPALO: Oh, yes. Commission Exhibit 16. Mr. Fenwick is going to hand the witness Commission Exhibit 16.

BY MS. DIPALO:

Q. Ms. Koch, do you recognize this document?

A. Yes, I did receive it.

Q. What is it?

A. It's the final end of that suit.

Q. And is that your signature on the bottom of the last page?

A. Yep.

Q. And do you recall reading and signing this document?

A. Yes.

Q. Ms. Koch, can you turn to page two? I believe it's paragraph 3B

A. Oh, the apology.

Q. Did you ask for the provision in the settlement agreement asking the Judge to apologize?

A. Yes.

Q. And as part of the settlement, did you receive an apology letter from Judge Mora?

A. Yes.

Q. And do you recall what the Judge's apology letter said?

A. I looked at it not that long ago, but --

MR. BIENSTOCK: Is it an exhibit?

MS. DIPALO: Yes, it is. I'm going to show it to her.

THE WITNESS: That would be great. I don't really --

MR. BIENSTOCK: What's the relevance of whether she recalls it or not?

MS. DIPALO: Mr. Bienstock, may I show the witness Commission Exhibit 17, which is in evidence?

MR. BIENSTOCK: Yes, sure.

MS. DIPALO: Thank you. And Mr. Fenwick is showing the witness Commission Exhibit --

MR. COFFEY: What exhibit number is this?

MR. BIENSTOCK: 17.

MS. DIPALO: 17.

MR. COFFEY: Okay. Thank you.

MR. FRIEDBERG: It's the apology letter.

MS. DIPALO: May I proceed, Mr. Bienstock?

MR. BIENSTOCK: Sure.

MS. DIPALO: Thank you.

BY MS. DIPALO:

Q. Ms. Koch, can you turn to paragraph two of this letter?

A. Yes.

Q. And in it, Judge Mora states, I'm going to share some very personal things with you. Perhaps if you had known at the time, our exchange

would have turned out differently. I do not wear a mask because I suffer from severe --

MR. COFFEY: Judge, this is in evidence. There's no need to read it.

MS. DIPALO: I'd like to ask her a question about this.

MR. BIENSTOCK: Well, ask your question.

MS. DIPALO: Okay.

MR. COFFEY: Okay. I'm sorry.

MS. DIPALO: I was just trying to make a record, Mr. Bienstock.

MR. BIENSTOCK: You have made a record. We have this.

MS. DIPALO: Yes, but I was just trying to get it.

MR. BIENSTOCK: Now there's two records.

BY MS. DIPALO:

Q. What, if anything -- Ms. Koch, what, if anything, did you know about Judge Mora's medical condition at the time of the incident on December 28th, 2021?

A. I didn't know anything.

Q. And at any time on December 28th, 2021, did Judge Mora tell you that he suffered from severe or acute anxiety --

A. No.

Q. -- which manifests as object phobia?

A. No.

Q. At any time on December 28th, 2021, did Judge Mora tell you that his anxiety made him unable to tolerate a mask?

A. He did not.

Q. When was the first time you learned that Judge Mora was unable to wear a mask due to anxiety?

A. I guess on May 4th, 2023, the date of this letter.

Q. And I have one question just going back to December 28th, 2021. To your knowledge, did Judge Mora notify Seeta in advance of December 28th, 2021, that he planned on appearing with his son at his appointment that day?

A. No.

MS. DIPALO: I have no further questions.

MR. BIENSTOCK: Is it agreed that we are going to take Mr. Sussman out of turn now?

MR. COFFEY: Yeah. I need to call him, get him prepared.

MS. DIPALO: Would it be possible to ask two additional questions just to reopen?

MR. BIENSTOCK: Yes.

MS. DIPALO: Thank you.

<u>BY MS. DIPALO:</u>

Q. Ms. Koch, can you describe what Danielle Foster looked like in January 2021?

A. She's a little bit taller than me. She's 5'4. She has, like, black hair -- you

know, dyed black. She's pretty.

Q. How tall is she?

A. About 5'4. She's a tiny bit taller than me. Medium build.

Q. What's her skin color?

A. She's very fair. We always tease her. She's very white.

Q. And how long is her hair?

A. Her hair is long.

Q. Is it about the length of your hair? Longer?

A. A little longer, and her hair is, like, silky straight.

MS. DIPALO: I have no further questions at this point. Thank you. Thank you, Ms. Koch.

MR. BIENSTOCK: So we're going to attempt to reach your witness -- out of turn.

MS. DIPALO: Can we bring Ms. Koch out of the waiting room -- out of the hearing room at this point?

MR. BIENSTOCK: Yes.

MS. DIPALO: Thank you.

MR. FRIEDBERG: We're going to have to have our IT person involved.

MR. COFFEY: 12:15, you want to start with Mr. Sussman? Is that okay?

MR. BIENSTOCK: Or earlier if we can do it.

MS. DIPALO: Yeah.

MR. COFFEY: Or whatever time it will take you to set up. I just -- it's 20 minutes, so I don't --

MS. DIPALO: Well, I'd like to get Ms. Koch back on immediately after.

MR. BIENSTOCK: Mr. Coffey, let's do it as quickly as we can.

MR. COFFEY: No, I -- Judge, I can do it right now, but -- and I'll call Sussman. I can do it in, like, 11:56 if we have to. But I'm just thinking that we need time to go to the men's room or whatever, but if you want to do it, I'll go right now.

MR. BIENSTOCK: Do you want to -- a short adjournment?

MR. COFFEY: Yeah, that's what I'm asking because we've got to set up anyway.

MR. BIENSTOCK: I would never deprive anyone of that.

MR. COFFEY: Well, yeah. Thank you, Judge.

MR. MAISONET: Off the record?

MR. BIENSTOCK: I'm sorry. Off the record.

On the record. Before we get to this witness, I want to make sure on the record that we agree that there is no attorney-client privilege between the Judge and Mr. Sussman and that it has effectively been waived for the purpose of this proceeding.

MR. COFFEY: It is waived for the purpose of this proceeding; however, on the religious claim that that

appears in the 2nd Circuit, we are not waiving the privilege on that. I don't know how important that will be. In other words, there's --

MR. BIENSTOCK: I'm not talking about any other proceeding.

MR. COFFEY: Correct. Correct.

MR. BIENSTOCK: It's waived for this proceeding.

MR. COFFEY: Yes. Yes.

MR. BIENSTOCK: Entirely.

MR. COFFEY: Yes.

MR. BIENSTOCK: Okay.

MR. FRIEDBERG: Mr. Coffey, could you lean back? Because he's getting his ears blown out?

MR. BIENSTOCK: I'm sorry. I missed that.

MR. FRIEDBERG: If somebody speaks too close to the microphone, it becomes very hard for him.

MR. BIENSTOCK: Not too close, not too far.

MR. FRIEDBERG: Yes, absolutely.

MR. BIENSTOCK: The Goldilocks principle.

MR. FRIEDBERG: Well, just that it will explode in his ears. Mic is being -- hurts his ears.

MR. COFFEY: All right. I can make sure that Mr. Sussman can hear me. Mr. Sussman, can you hear me?

MR. BIENSTOCK: Raise your right hand,

please.

MR BIENSTOCK: Do you swear or affirm that the testimony you're about to give is the truth the whole truth and nothing but the truth?

MR. SUSSMAN: Yes sir.

MICHAEL SUSSMAN,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY

MR. COFFEY:

Q. All right. Mr. Sussman, would you be kind enough to give us your name and your occupation, please?

A. Michael Sussman, attorney.

Q. And would you tell us a little bit about your background? You graduated from what law school?

A. So I graduated in 1978 with honors from Harvard Law School.

Q. Okay. And upon your completion at Harvard Law School, did you commence practicing?

A. I started working in the United States Department of Justice Civil Rights Division on October 10, 1978.

Q. Okay. And how long did you work there?

A. I worked there until I joined the NAACP national office, which I did in late May of 1981.

Q. Okay. I'm not going to go -- well, let me do this. After that, what did

you do?

A. I stayed at the national office of the NAACP as Assistant General Counsel from May of 1981 technically through January 1 of 1986, when I started Sussman & Sussman with my father, who had gone to law school, Brooklyn Law School, in the 1950s, never practiced law, and joined me in starting that firm in Yonkers effective January 1, 1986.

MR. FRIEDBERG: And I don't want to interrupt, but can we just make certain that he's in a room where no one else is there for confidentiality?

THE WITNESS: No one else is here, sir, and I'm not looking at any papers.

MR. FRIEDBERG: Well, we're just asking if anyone else in the room for confidentiality.

THE WITNESS: No one is in the room, sir.

MR. FRIEDBERG: Thank you.

MR. BIENSTOCK: Okay. Proceed.

MR. COFFEY: All right. Thank you.

BY MR. COFFEY:

Q. Now, Mr. Sussman have you been in private practice since the mid-1980s?

A. Yes, I've been in private practice since January 1, 1986.

Q. Okay. Roughly 40 years. In that 40-year period, do you -- have you become a specialist in any areas of law?

A. Well, I don't know if New York recognizes, quote unquote, specialists, but I've been a civil rights lawyer primarily in that time period bringing

over 800 lawsuits in the federal district court in the Southern District of New York attempting to enforce the nation's Civil Rights Laws. And I've also worked in other areas of the law, rather extensively, including Criminal Law; Environmental Law; Intellectual Property Law, featuring defamation. Some other areas of the law that are tangential, perhaps to the traditional definition of civil rights that is law relating to religious liberty, First Amendment issues, in other words, Constitutional law.

Q. Okay. Now let's talk about defamation for a minute because you understand that this is the purpose of why you're testifying.

A. Yes, sir.

Q. How many defamation cases would you estimate that you have handled over the years?

A. Probably in the order of magnitude of 30 to 40.

Q. Okay. And you have drafted complaints and tried cases and done pleadings and so forth; is that correct?

A. Yes, sir.

Q. So you've done the gamut, not just appearing on behalf of a client, but you -- from the ground up you have done defamation work. Is that a fair statement?

A. Yes, sir.

Q. Have you done appellate work on defamation cases?

A. Yes, sir.

Q. Okay. And have you continued to do that work up to the present time?

A. Yes, sir.

Q. Okay. And I know this is self-serving in one sense, but at least as far as

you are concerned, are you recognized as a leading expert in Defamation Law?

A. No.

Q. Okay.

A. I don't -- I mean, I don't -- I don't know that. I mean, recognized by whom? I would say, if you ask that question about Civil Rights Law generally in New York, that the answer would probably be yes. But Defamation Law, I don't know if I'd be viewed that way by anyone, honestly. I have brought cases. I feel like I know the area of the law, but I would -- I would not want to so classify myself.

Q. Okay. Fair enough. Now let's talk about the situation with regard to defamation -- well, no, let me do this if I can. You know Judge Mora, correct?

A. Yes, sir.

Q. And how do you know Judge Mora?

A. In 2019, with Robert F. Kennedy, I brought a case prompted by New York State's sudden withdrawal of religious exemptions from school children in the state. When I say sudden, I mean that there were no hearings, and the bill was passed in early to mid-June of 2019, rather peremptorily. So many people around the state were concerned about this.

Mr. Kennedy, who I knew, called me, and eventually he and I brought a case to challenge the revocation, if you will -- the legislative revocation of the religious exemption for school children. Frank Mora was a then-City Judge in the City of Poughkeepsie, and he was one of those who

came forward to join that lawsuit. And obviously, since he was a jurist, from my point of view, his participation was a little bit different from everyone else's. Although it was motivated by the same things as everyone else's as far as I understood it, and I came to know him in that context.

When you say know him, I believe we had several phone calls in that period of time as we were planning that lawsuit and moving forward. So that's how I first came to know him, or of him.

Q. Okay. And after that, did you have any contact with him? Not in a social basis of having a cup of coffee, but anything more?

A. My memory is that Mr. Mora -- Judge Mora did contact me to make inquiries about both the case, which proceeded in Supreme Court, State of New York, County of Albany, and then the appeals which proceeded up through the third department into the New York State Court of Appeals, which did not hear the case. And I believe that in the course of that, he and I had some conversations relevant to the case. That is, he was interested in the process of the case and the progress of the case. I don't remember anything more than that.

Q. Okay. Now, did you represent him in a federal lawsuit?

A. I am still representing him in a federal lawsuit, yes, sir.

Q. All right. And to the point that we can be as succinct as possible, tell us about that if you would.

A. Thank you for the guidance. I will be as succinct as possible and pardon if I'm not. Basis of that lawsuit is that despite his sincerely held religious beliefs -- he's a firm and practicing Catholic -- when he sought a religious

exemption such that he would not have to be vaccinated, the Office of Court Administration denied that. And the claim is they treated him in an oppressive way thereafter to say it succinctly. That's what the claim is about, and that various of his rights were allegedly violated by dint of the denial and the subsequent treatment.

Q. Okay. And the lawsuit was brought, and what is the status of -- what was the status of that lawsuit?

A. The lawsuit was brought to the United States District Court for the Southern District of New York. It was assigned to White Plains, the Honorable Vincent Briccetti. We sought a preliminary injunction -- I'm sorry. Did someone say anything?

Q. No, no.

A. Okay. We sought a preliminary injunction against Mr. -- against the OCA because the claim was made that Mr. Mora was being denied access to his courtroom and that, in essence, many people who did not have vaccinations were being allowed and enabled to use the courthouse --

MS. DIPALO: Objection.

THE WITNESS: -- and that there was a double --

MR. COFFEY: Hold on. There's an objection. There's an objection.

MS. DIPALO: Mr. Bienstock.

MR. BIENSTOCK: Overruled.

BY MR. COFFEY:

Q. Okay. Go ahead.

A. Okay. The State delayed response to the PI, the preliminary injunction application, and eventually the day or day before it was due in court, capitulated, and allowed Mora into his courthouse -- courtroom and courthouse.

And the matter then on went on. The State moved to dismiss. Judge Briccetti granted the motion to dismiss; we filed an appeal. The appeal was argued in the Court of Appeals for the 2nd Circuit on or about September 5 of 2024, and the matter is subjudice to this day. We've had no decision for however long it's been, almost 13, 14 months.

Q. Okay. Now, Mr. Sussman, in your experience, as a general matter, do clients rely upon your judgment?

A. Absolutely.

Q. And what is the essence of the lawyer-client relationship insofar as you're concerned?

A. Well, I can't say that it's the exact same for every client, and I'm not going to pretend it is. But in general, clients come to me with a fact pattern, and my job is to, first of all, get as much information as I can about the underlying facts and then to make a determination as to whether those facts give rise to any cause of action. I mostly represent plaintiffs. I have represented defendants, but I'm talking about now in terms of the plaintiff's work. So what I have to do is, is assess, as I said, what happened to the best of my ability and then make a judgment as to whether what happened constitutes a cognizable cause of action or more than one causes of action. And then obviously advise the client as to my legal conclusions and discuss with the client whether he or she or they

want to go forward, if so, what the terms and conditions would be, and on and on.

But clearly, the way I've understood it over all these years, whether I'm representing lawyers -- and I've represented lawyers. I've represented lawyers in serious criminal cases, Judges, and I've represented other Judges or anyone else. That's the job, and I can't arrogate that or delegate that to anyone. And I have not attempted to do that here or otherwise.

Q. So then you would expect that the person who comes to you, be it a Judge, a lawyer, whomever, would seek your advice and to a certain extent would rely upon your advice, correct?

A. I would expect they would tell me the truth about what happened first of all. You know, getting my advice or relying on my advice is one thing. But it's sand that's made of sand if the underlying statements that that person makes are obviously fallacious or erroneous, intentionally or not. So the first obligation is honestly on the client. But yes, once the client has given me a candid assessment of what happened, then yes, that person should be able to rely on my advice, and I don't doubt that.

Q. Okay. And as an attorney at times we make mistakes as attorneys, correct?

A. Courts often think we make mistakes.

Q. Okay.

A. Absolutely. Whether that -- whether, you know, and sometimes courts can overrule having thought we made a mistake. There's all sorts of things that happen, but yes.

Q. All right.

A. We make mistakes.
Q. Now let's go to 2024 -- or 2022. I apologize. And you're aware of the fact that the Commission has brought a formal complaint against Judge Mora, claiming that he has retaliated inappropriately against Stacey Koch for bringing a complaint before the Commission. You're aware of that, correct?
A. You started in 2022. I was I was not aware of that in 2022.
Q. No, I understand that. But today you're aware of the fact that that is the basis --
A. Yeah, I'm aware. I'm aware that that has happened since 2022. I certainly, in 2022, I knew of no such complaint by the Commission that he, Mora, retaliated against Koch.
Q. Okay. So I conflated those, and I apologize. What I'm getting at, though, is that in 2022, Judge Mora came to see you regarding his concern that he had been slandered or libeled; is that correct?
A. Well, he didn't come to see me, but yes, he communicated to me.
Q. Okay.
A. I want to be very precise because I don't want anyone to be misled. He communicated to me that a concern that had been triggered or retriggered in about September of 2022. Although that's not my memory of when we first discussed this, that Ms. Koch had made defamatory statements about him. That is correct.
Q. And did he advise you at that time -- well, say, September -- in the next two months or so, did he discuss with you an individual within, a Michael Brown, who had advised him that Ms. Koch had made defamatory

statements to Mr. Brown? Do you recall that?

A. What I recall -- the answer to your question is I recall Mr. Brown -- I recall Mr. Brown being a witness, as I understood it from Mr. Mora. And I believe from a document that I saw to an incident in which Ms. Koch misbehaved seriously toward Mr. Judge Mora. I remember that. I also remember that Mr. Brown, as I understood it, conveyed that Ms. Koch had made the same quality of statement --

MS. DIPALO: Objection, hearsay.

THE WITNESS: -- to the Commission. That's what I understand.

MS. DIPALO: It was an objection on hearsay grounds.

MR. BIENSTOCK: I missed the hearsay. Why don't you --

MS. DIPALO: He was relaying a conversation that he had with what Judge Mora told him.

MR. BIENSTOCK: Overruled.

THE WITNESS: Well, that's what I relied on, just so we're clear --

MR. BIENSTOCK: Overruled.

THE WITNESS: I mean, I don't know what -- I'm not arguing.

MR. BIENSTOCK: Next question.

THE WITNESS: I'm not sure what you're saying.

BY MR. COFFEY:

Q. All right. So in any event, you had that discussion with Judge Mora.

A. Yeah.

Q. And did Judge Mora discuss with you the possibility of bringing a defamation lawsuit against Ms. Koch?

A. Yes.

Q. And what advice did you impart? Well, first of all, did you ask him to give you the facts of what he claimed was defamatory statements?

A. Yes.

Q. Okay. And when he said that to you, did you give an opinion at that time as to whether he had avowed cause of action for that or any other interference, tortious interference, with business or anything else? Did you give an opinion at that point?

A. Yes.

Q. Okay.

A. Well, at that point, not when he first asked. But I certainly gave an opinion after I looked at the matter. My memory is when he first asked, and perhaps when he second asked, I told him I had to finish the first case, the OCA complaint, which was the priority as far as I knew. And so I didn't initially give him an opinion, but it certainly came a time before the statute of limitations ran that I gave him an opinion, yes.

Q. And what was your opinion?

A. No on tortious interference. Yes on defamation.

Q. Okay. And why was that?

A. Elements of tortious interference weren't met. Elements of defamation,

from what I was told, were.

Q. Assuming that what he was telling you was accurate and true, correct?

A. Right. And yes, that's correct.

Q. Now --

A. But I had no reason to doubt Frank Mora was telling me the truth about what had happened, especially in light of what Mr. Brown had related. But I had no doubt as to Mora's veracity to begin with.

MS. DIPALO: Objection.

THE WITNESS: Yes, but obviously I have to appreciate what he had to say.

MS. DIPALO: Objection, Mr. Bienstock.

MR. BIENSTOCK: I'll let it stand for what it's worth.

BY MR. COFFEY:

Q. Now, Mr. Sussman, after you had this discussion with Mr. -- I'll withdraw that. Would it be a fair statement that Judge Mora was relying upon your professional skill and expertise?

A. The only thing I can say is I assume so. He was -- he -- let me answer it this way --

MS. DIPALO: Objection, Mr. Bienstock.

THE WITNESS: -- privileges weighed.

MR. BIENSTOCK: Sustained. Don't answer it.

THE WITNESS: He did not have --

MR. COFFEY: Mr. Sussman, hold on a second. There was an objection.

MR. BIENSTOCK: Next question.

THE WITNESS: I can't hear the objections. That's why I'm not stopping.

MR. COFFEY: I'm sorry.

BY MR. COFFEY:

Q. Well, when he came to you, he asked for your legal advice; is that correct?

A. Yes, it is.

Q. And the legal advice that you imparted to him -- I'll withdraw that. In the past, particularly in regard to the federal lawsuit, he had relied upon your advice, correct?

MS. DIPALO: Objection.

MR. BIENSTOCK: Sustained.

MR. COFFEY: Judge, this is the whole part of the case. It's his reliance.

MS. DIPALO: It's a separate --

MR. BIENSTOCK: I understand that, but you're asking him --

MR. COFFEY: Right.

MR. BIENSTOCK: -- whether he relied on it.

BY MR. COFFEY:

Q. Well, let me ask you this. During the time that you represent him in the federal -- you represented him over a period of time in the federal case, correct?

A. Yes, sir.

Q. Okay. And I'm not going to -- we're not going to waive any privileges here with regard to that. But I do want to ask you this: I assume you had discussions during that period of time between you and him with regard to the federal case, correct?

A. Yes, sir.

Q. And did you impart advice to him during that period of time?

MR. BIENSTOCK: I thought we weren't -- okay.

MR. COFFEY: No, no. I'm not going into the --

MR. BIENSTOCK: Next question. You can answer, Mr. Sussman.

BY MR. COFFEY:

Q. Did you impart advice to him?

A. Yes, Your Honor.

Q. Yeah, you can answer.

A. The answer to the question is yes, Your Honor, I did.

Q. Okay. Now, when you spoke with Mr. Mora, at the time, did he ask you whether or not he could bring a lawsuit, a defamation lawsuit?

A. Yes, sir.

Q. And was it your understanding that he was asking you in your professional capacity as an attorney?

A. Yes, sir.

Q. And was it your understanding that when you gave advice that he could, that you were giving advice based upon almost 40 years of experience in

this field of law?
A. Yes, sir.
Q. Did you ever tell him that he could not bring the lawsuit?
A. No, sir.
Q. Okay. Now, the lawsuit -- the statute of limitations for libel or slander in this state is how long?
A. One year, sir.
Q. And if a person --
A. From it's the first retort.
Q. -- reads one year from the date of utterance?
A. Date of publication. Yes, sir.
Q. Okay. Now, let me ask you, if a person tells an individual, say, a libelous comment, is that publication? Do you understand my question? If I were to say to someone --
A. Yes, sir. Yes, sir.
Q. Hypothetically --
A. I understood the question. It's yes, it is.
Q. Okay. So you don't need to call a press conference or tell 100 people to have publication, correct?
A. Correct.
Q. So that if a person makes a defamatory statement to another individual that is not protected, then that would be actionable; is that correct?
A. Again, there are times it's not. But you know, putting aside those nuances, the answer is if someone utters a defamatory statement to a third-party and if no privilege applies, then it is actionable. Yes.

Q. Now let's talk about privilege. For example, if I'm in a courtroom and I make a statement about someone, am I privileged to make that statement in a courtroom?

A. Generally yes, sir.

Q. If I walk out of the courthouse and on the steps and make the same statement, do I lose my privilege at that point?

A. Well, do you --

MS. DIPALO: Objection, Mr. Bienstock.

MR. BIENSTOCK: I'm sorry?

MS. DIPALO: This is all hypothetical.

THE WITNESS: You don't -- you don't have any --

MR. COFFEY: Mr. Sussman, hold on, hold on.

THE WITNESS: Wait, wait. Sorry.

MR. COFFEY: Hold on.

MS. DIPALO: Objection, Mr. Bienstock. This is all hypothetical. It doesn't pertain to the formal written complaint or the charges therein.

MR. BIENSTOCK: Overruled. You can answer.

BY MR. COFFEY:

Q. So let me ask you this hypothetical.

MR. BIENSTOCK: Wait, wait, wait.

MR. COFFEY: I'm sorry.

MR. BIENSTOCK: There's a pending question.

MR. COFFEY: I apologize, I'm sorry.

BY MR. COFFEY:

Q. Go ahead, Mr. Sussman.

A. If you walk out of the courtroom and you are the lawyer -- I don't know if you're the lawyer, the witness -- the question isn't clear to me. But if you're -- if you're a lawyer or a party, you walk out of the courtroom and you say -- and you make a defamatory comment. I'm not going to give a hypothetical. You make a plainly defamatory comment about a third-party, the fact that you said the same thing in the courtroom does not insulate you from a claim, if that's your question.

Q. All right. That is my question. So let me ask you something, because ultimately, the lawsuit was brought on behalf of Judge Mora against Ms. Koch within the one year statute of limitations; is that correct?

A. Yes, sir.

Q. And did you advise him in the statute of limitations, or did he seem to know what it was?

A. I think we both knew what it was.

Q. Okay. In any event, the lawsuit was brought and then there was a defense. They defended on that claim, correct? In claiming that there was a privilege. Her remarks to the Commission were privileged, correct?

A. Well, it's a little more complicated than that, but because --

Q. All right. Can you explain it?

A. -- they defend it. Just so I explain it, because it's not so clear. I didn't sue the Commission or the Office of Court Administration or anyone else

other than Ms. Koch. So when you say they defended, there was an essentially an intervention in the case, and the intervening party took the position that there was a privilege which protected complaints made to it. So that's what procedurally happened, okay?

Q. That is the anti-SLAPP statute, correct? Or the SLAPP statute?

A. Well, no, no. That's a different issue.

Q. Right.

A. Just to be clear, the intervening party took the position that Ms. Koch's statement to it, the Commission, was absolutely privileged and that's what the Judge ultimately found. Okay? So that's how that went. The Judge also found that the initiation of the lawsuit transgressed the anti-SLAPP provision of law, which had been recently amended.

Q. Okay. Now, with regard to that, let me ask you something.

A. Sure.

Q. Did you agree with her decision?

A. No, I did not agree with her decision.

MS. DIPALO: Objection. Objection, Mr. Bienstock. Objection.

MR. BIENSTOCK: Sustained.

BY MR. COFFEY:

Q. Well, did you appeal her decision?

A. I did not appeal her decision.

Q. And why not?

MS. DIPALO: Objection.

MR. BIENSTOCK: Well, you can answer that.

THE WITNESS: Judge Mora was the client. I was not the client. And Judge Mora indicated to me a desire to settle the matter, not appeal. And that was his decision.

MR. COFFEY: I would respectfully submit that he should be allowed to testify as to whether he thought that was a viable claim. He's the attorney. He brought the complaint, and if he disagreed, he should explain why he thought he had a viable claim.

MR. BIENSTOCK: I don't think you can explore the operation of this witness's mind.

MR. COFFEY: Well, except for one thing: That the Commission has taken the position that he had no right to rely upon Sussman.

MS. DIPALO: That is not --

MR. BIENSTOCK: I don't think that answers the question. Ask your questions --

BY MR. COFFEY:

Q. Let me ask you another way. Would you have brought this lawsuit in 2022 if you thought that suit was frivolous?

A. Of course not.

Q. Would you --

A. A lawyer can't do that. As you know, everyone in the room knows.

Q. Would you have brought that lawsuit in 2022 if you thought there was a privilege?

A. Of course not.
Q. Okay. Now, let me ask it another way. Let's assume, just for the moment, that there was a privilege. Okay. Are you with me?
A. Yes, sir.
Q. So assume there was a privilege, but if Ms. Koch took those remarks and the complaint that she made to the Commission and publicized them to Mr. Brown or anybody else. Does she lose her privilege at that point?

MS. DIPALO: Objection.

MR. BIENSTOCK: You can answer that. Overruled.

THE WITNESS: In my opinion, the answer is yes. But just to be fair, that doesn't mean she loses the privilege with regard to what -- to her report to the Commission.

BY MR. COFFEY:
Q. Correct.
A. In other words, if she made the statement to the Commission and there is a privilege, you wouldn't be able to sue an alter libel for her statement to the Commission. If she made the same statement to Johnnie Green (phonetic). You could then -- you could certainly sue and say she defamed Mr. Mora to Johnnie Green.
Q. Now, in the course of a lawsuit, you have discovery, correct?
A. No. We didn't have discovery.
Q. No, no, but I mean, generally speaking. Generally speaking.
A. Yes. Generally speaking, if you survive a motion to dismiss, you have

discovery.

Q. Okay. And Judge Mora -- well, I'm not going to even go into the other Judge. But having said that, I now want to ask you some questions about some emails. Did there come a time when the Commission subpoenaed or talked to you about providing them with emails from Mr. Mora?

A. Yes.

Q. And can you tell me about that?

A. Well, I mean, what I can tell you is that there came a time when it was represented to me that Mr. Mora had waived, as was discussed earlier, his attorney-client privilege, and that I was to provide the Commission with texts, emails, letters, and voice recordings, if any, in all categories betwixt Mr. Mora and myself relating to the Koch matter generally, broadly construed, for a certain period of time, which was enumerated in the subpoena.

Q. And did you provide all the emails that were in your possession?

A. I provided all the emails in my possession to the best of my ability. There are a lot of them, I think, over 600 pages of documents. But I did a search and had printed everything I could then find, yes.

Q. Okay. And that's pretty extensive series of documents, 600 pages. Would you agree with that?

A. Well, I mean, it's what it is, but I thought it was pretty extensive.

Q. Did Mr. Koch -- I apologize, I do apologize.
Did Judge Mora ever tell you not to give certain documents to the Commission?

A. Absolutely not.

Q. Did he ever ask you to hide anything or to --

A. Absolutely not.

Q. Okay. Were some of these emails, if, you know, were any of those redacted? If you remember.

A. My memory is that I did not redact the documents I provided. I could be wrong, but I don't remember doing that. And I think, in fact, there was some admixture between subject matters. Meaning, I think that some of the documents might have discussed both cases. But I don't recall redacting what I supplied.

Q. Now, I want to ask you this. Is it your opinion based upon a reasonable degree of certainty that Mr. Mora had a right to rely upon your opinion?

MS. DIPALO: Objection.

THE WITNESS: Yes. I mean -- what?

MR. BIENSTOCK: I heard it. I'll take it for what it's worth.

MR. COFFEY: Well.

THE WITNESS: All I can say, Mr. Coffey -- and as the Judge says, for whatever it's worth, I treated Mr. Mora like other clients. I send other clients copies of drafts of complaints, I ask them if it's factually accurate since I wasn't there. I do, as I mentioned earlier, rely upon them to ensure the factual accuracy of a complaint. Because a complaint has two parts, as you know: "statements of fact" and "others".

So I felt that from everything I could tell, as he

was relying upon my expertise, not superimposing his own with regard to what was a viable claim, to use the lawful word that we typically use, in responding to the motions to dismiss. That's all I can tell you.

MR. BIENSTOCK: Next question.

BY MR. COFFEY:

Q. Okay. If you had thought at the time that you brought the complaint, that there was any kind of a privilege, would you have brought the complaint?

MS. DIPALO: Objection.

MR. BIENSTOCK: Objection sustained.

BY MR. COFFEY:

Q. Well, did you ever tell Mr. Mora that there was a privilege?

A. Are you asking me before I brought the case?

Q. No, I'm asking -- yes, I'm asking you, in the time that he came to see you.

A. I did not tell him I thought there was a privilege. I did not think there was a privilege.

Q. Okay. One minute, if I can.

Did you ever have any discussions with Judge Mora in 2022 about SLAPP? In other words, prior to bringing the lawsuit?

A. No.

Q. Okay. You know what SLAPP is? You know what the SLAPP statute is, correct?

A. Yes.

Q. And by the way, when you looked at the -- later, when the motion was made to dismiss the complaint, did you look at the website of the

Commission?

MS. DIPALO: Objection.

THE WITNESS: Yes.

MR. BIENSTOCK: Overruled.

I'm sorry. I didn't hear the objection till after I answered.

MR. COFFEY: No, no. That's fine.

BY MR. COFFEY:

Q. Did you find anything on the website that indicated that statements made to the Commission were confidential?

A. The contrary. I found nothing to that effect at that time.

Q. Okay.

A. Just one --

Q. Oh, yeah. I want to ask you one other thing. The $425,000 in the complaint, how was that number arrived at? If you recall --

A. I couldn't hear -- sorry.

Q. Sorry.

A. My phone rang, I'm sorry about that. I couldn't hear your question.

Q. No, I'm sorry.

Apparently, in the complaint, there's a number. The addendum clause was about $425,000 total. Who came up with that number?

A. Me.

Q. Okay. Did Judge Mora ever tell you, in your conversations with him, that his purpose in bringing the lawsuit was to retaliate against Ms. Koch and that he really had no basis for doing so? Did he ever tell you that?

MS. DIPALO: Objection.

THE WITNESS: Not at all.

MR. BIENSTOCK: Overruled.

THE WITNESS: Sorry, I couldn't hear the --

MR. COFFEY: No, that happens. We apologize.

THE WITNESS: I keep doing that. I'm going to pause because I'm speaking over you, and I can't tell whether you're objecting or not. It's just like --

MR. COFFEY: I understand.

THE WITNESS: Is there a ruling?

MR. COFFEY: Yes.

MR. BIENSTOCK: It's overruled. You can answer.

MR. COFFEY: You've answered -- I think he answered it.

Okay. That's all the questions I have at this time, Mr. Sussman.

MR. BIENSTOCK: Ms. DiPalo.

MS. DIPALO : Thank you.

CROSS-EXAMINATION

BY MS. DIPALO:

Q. Good afternoon, Mr. Sussman. How are you?

A. Good day, ma'am. How are you?

Q. Good, thank you.

A. Good.
Q. Mr. Sussman, you advised and counseled Judge Mora regarding certain matters before the Commission, correct?
A. I would say "yes" in a secondary way. He had primary counsel, but he did ask me at one point about a matter before the Commission.
Q. And did your advice and counsel include matters relating to Stacey Koch's complaint?
A. I don't believe so, in the sense that you're asking, "How should I respond to that complaint?" or anything like that. I believe that was being done by another lawyer. And he might have went -- in the Fall, there may have been a conversation relating to that, but I don't remember that being a primary area of my discussions with him at all, honestly.
Q. And you first spoke to Judge Mora about the incident at Seeta involving Stacey Koch in mid- to late-April of 2022, right?
A. I believe that's what I said, but I also think that may be erroneous in looking back over the documents. I mean, my recollection is that we had a conversation, but -- we certainly had a conversation. We certainly had a conversation in late March, early April, that I can tell you. But in reviewing material, which I have then reviewed since, my impression at this point is that the primary conversations about Stacey Koch occurred after the September of 2022. There might have been a mention of the incident, but it was certainly not the focus.
Q. Now, Mr. Sussman, you --
A. Yes.
Q. You just testified that you think the primary conversation occurred in fall

of 2022.

A. Absolutely.

Q. Did you have any conversations with Judge Mora concerning the incident at Seeta in mid- to late-April of 2022?

A. That was my memory when I was deposed, but I've looked back over documents since and I don't know that that's accurate, in all honesty. I think what's accurate is that the -- certainly, the primary conversations were in the fall. Again, he might have mentioned the incident, but as I look back on the correspondence and study it, it appears to me that in or around November 9th and in the period between November 9th and November 13th, were the primary discussion. And then that was followed by his requests of me as to whether I would bring a lawsuit. So that's my memory at this point. Although I know it's somewhat different than I believe that the deposition -- the deposition, I did believe that in April there was a conversation about the incident.

Q. And you testified -- you recall testifying under oath before the Commission --

A. I do. I do.

Q. -- on October 2nd, 2024? And you were asked when you had a conversation with Judge Mora about the incident at Seeta?

A. You're correct, I was asked. I believe I said at that point it was in either mid- or late-April. But I do think in the interest of fairness, that's probably not accurate.

Q. You would look -- may I ask you?

A. Sure, of course you --

Q. When you came and testified October 4 of 2024, you had prepared the emails responsive to the Commission's subpoena at that time, correct?

A. I had. I had the prior month or six weeks, I had, whenever that exactly was, was the prior month, I believe.

Q. And you had gone through those emails prior to sending them to the Commission?

A. I had gone through them the extent that I understood they were primarily related to your request, yes. Doesn't mean I read every line, but I did go through them.

Q. And when -- are you saying there was no conversation in April of 2022?

A. There was a conversation. It may have been the last day of March, or at the very end of March, or in April. And my recollection is, having gone back through the documents, is that that conversation was primarily about another subject. As I said, there might have been a mention of an incident, kind of in passing, but I don't think that was the focus of the conversation in late March, early April. I think the focus was on something else.

Q. Now, Mr. Sussman, I asked you if you recall testifying before the Commission.

A. Yes.

Q. Do you recall testifying -- give me a moment. You were asked, "Now, I believe you testified that Judge Mora first talked to you about the incident with Stacy Koch at Seeta sometime around March of 22." You answered, "My -- I think I said earlier that it was April, and my own memory is that it was a little later in March. I again, I could be wrong about the exact

date. My feeling is it was more in the mid-late April time frame, if I had to guess. But it's really more a guess than an exact memory." Are you testifying now that you did not first talk to Judge Mora about the incident at Seeta in April of 2022?

A. Right. I'm testifying to be clear that my best current recollection is that I had a conversation at the very end of March about a matter which had nothing to do with Ms. Koch or Seeta, and that I conflated -- when I gave that testimony you just referred to, I was unsure to begin with, March-April. But I believe I conflated the conversation that I was thinking of, and that conversation actually happened in or about November of 22. I am saying that. I'm not saying that there was no mention of it, but it was certainly not a primary subject of discussion until after the Brown matter, which I think is what I said in my affirmation or affidavit as well, I think that is accurate.

Q. So you're saying there was some discussion.

A. There was a mention of, I believe, an incident. But at that point I don't believe it had anything to do with the Commission.

Q. But did it have --

A. I didn't have a review of all this -- sorry.

Q. I'm sorry.

A. Going back to review this, I believe the mention had to do with this kind of permeating craziness with which Judge Mora was dealing, and this was an example of that. Not the Commission aspect of it, but what had occurred at the optometrist.

Q. Yes, that's my question for you. Did you have a conversation with Judge

Mora about the incident at the ophthalmologist's office in mid- to late-April of 2022?

A. You're saying a conversation. I'm saying it was in March, late March, number one. I'm saying that I -- he may have mentioned an incident. I don't recall it being a primary subject of discussion until sometime in the fall. That's my testimony.

Q. And isn't it true that during this conversation in -- let's say, you said mid-late March?

A. I said the last day or two, about it.

Q. Last day or two of March, that Judge Mora was very angry about the incident that occurred with Ms. Koch at Seeta Eye Center?

A. Maybe the conversation in which he expressed anger was in November or that time in late March. I don't think it's disputable that he was upset and embarrassed and angry. I think that's fair. The way I remember it.

Q. Mr. Sussman, my question was, during the conversation in the last days of March of 2022, was Judge Mora very angry about the incident that occurred at Seeta with Ms. Koch?

A. And my answer is that I remember that emotion being expressed --

Q. Mr. --

A. -- and I do not believe that was at least explained to me in full until the fall. I think he expressed concern about the incidents -- well, I think he raised it when I first met with him in March, and it recently happened, and I think it was it was something that was of concern. But I don't remember -- I don't remember at that time there was discussion about doing anything about it. I don't remember anything more about it than

that.

Q. Mr. Sussman, again, you testified under oath before the Commission on October 4th, 2024, correct?

MR. COFFEY: I must object. This has been covered ad nauseam.

MR. SUSSMAN: I did.

MS. DIPALO: It's a different area, Mr. Bienstock.

MR. BIENSTOCK: Okay. You can you can answer, Mr. Sussman.

THE WITNESS: Yes, I said I did.

BY MS. DIPALO :

Q. And you were asked, starting on line eight of page 30, and you told him at the time, "Let's put it on hold and deal with the federal lawsuit."

A. Um-hum.

MS. DIPALO: And you know what, I may probably give more context. Would you like me to all read it -- read it all into the record, Mr. Bienstock?

MR. BIENSTOCK: It's up to you.

BY MS. DIPALO :

Q. Okay. I'm going to start at line two, on page 30. I asked now, "I believe you testified that Judge Mora first talked to you about the incident with Stacy Koch at some time around March of 2022."

Your answer was, "My -- I think I said earlier that it was April and my -- my own memory is that it was a little later than March. I again, I could

be wrong about the exact date. My feeling is it was more mid-late April time frame if I had to guess. But it is really -- but it really is more of a guess than an exact memory."

You were then asked a question and you told him at the time to, "Let's put it on hold and deal with the federal lawsuit." Your answer was, "Yeah, and I did say that. And to be fair to your process, he was very angry about this. And you know, I'm not abashed about telling you that. He was very upset about whatever happened there. I wasn't there. I always tell people, 'I don't know what happened.' And I'm now telling you, I don't know.' I never saw a video of what happened. He was very angry about it."

And you were asked about what happened at Seeta. You answered, "That's right," the question continued, "Eye center." And you answered, "And with the -- with Ms. Koch and the fact that he felt she was besmirching him, his reputation. He was very angry about it."

A. And so I tried to explain to you -- I gave that testimony, and as I've indicated, I don't think it's accurate as the time. I think it's accurate, but not as to when that conversation occurred. I think that conversation in the form that I testified happened in November, not in April or March.

Q. So your testimony that you gave under oath was incorrect?

A. It was erroneous.

MR. COFFEY: Judge, we've had this -- this has been answered at least five times.

THE WITNESS: Sir --

MS. DIPALO : Mr. --

THE WITNESS: I think it was erroneous in terms of the time. I wasn't clear on the time, very clear then. And I have gone through this and I believe all of that is accurate as of the period after September. As I said --

MS. DIPALO: Mr. Sussman --

THE WITNESS: -- and I believe that --

MR. BIENSTOCK: I think you made your point.

MS. DIPALO : Yes, yes. And I think he's continuing to answer a question that has -- been answered.

MR. BIENSTOCK: I think you've made your point.

MS. DIPALO : -- been answered.

BY MS. DIPALO :

Q. Mr. Sussman, isn't it true that you had more than one conversation with Judge Mora where he expressly said that he was angry about what occurred at Seeta Eye Center?

A. I think in the time period that we're discussing -- that I'm discussing, which is post-Brown. So for me, after September, the answer is yes, we did.

Q. And isn't it true that during the conversation at Seeta, in March or April of 2022, Judge Mora felt like Ms. Koch deserved to be punished for making false statements about him in her complaint with the Commission?

A. No, that wasn't at that time period, as I said.

Q. When --

MR. COFFEY: Judge, I don't understand. We keep coming back to --

Excuse me. Mr. Sussman. Mr. Sussman, hold on.

We keep coming back to March and April, and he keeps disavowing, in his memory, that that happened in March or April.

MS. DIPALO: I could rephrase the question --

MR. COFFEY: And we keep coming back to it.

MS. DIPALO: I will rephrase the question.

MR. BIENSTOCK: Next question.

MS. DIPALO: Yes.

THE WITNESS: The questions -- I can answer the questions.

MS. DIPALO: I think the objection has been sustained, Mr. Sussman.

MR. BIENSTOCK: We're going to the next question, Mr. Sussman.

MS. DIPALO: Well, I'd like to ask it just a different way. Thank you.

BY MS. DIPALO:

Q. Did Judge Mora ever express to you that he felt like Ms. Koch deserved to be punished for making false statements in her complaint to the Commission about him --

MR. BIENSTOCK: "Ever".

BY MS. DIPALO:

Q. -- ever?

A. "Deserved to be punished" in the sense of bringing a lawsuit which would get damages, yes. In that sense, yes. I don't know punished in any other way, but punished in that way, yes.

Q. And it's fair to say Judge Mora wanted Ms. Koch to pay damages?

A. Absolutely. He wanted to bring a defamation case because he felt, as we've gone over it, that she defamed him and besmirched him. Absolutely.

Q. And Judge Mora wanted to sue Ms. Koch for her statements to the Commission, right?

A. Yeah. Well, the lawsuit is about her statements to the Commission. "Any statements" meaning -- just so we're clear about statements, but not about her testimony to the Commission.

Q. No, her statement.

A. "Her statement" meaning the writing, which he had and I had --

Q. Yes.

A. -- talking about any other -- I mean, just so we're clear, not about any testimony. I don't know about her testimony; I never got it. And that wasn't part of this lawsuit. But certainly the written document we had, yes.

Q. Thank you. And you testified about the advice you gave Judge Mora --

A. Yes.

Q. -- or, you testified that the advice that you give your clients, when they're

bringing a lawsuit, correct?

A. I didn't hear -- I didn't understand your question. I'm sorry.

Q. I'll rephrase it. Mr. Sussman, did you ever warn Judge Mora about the perils of bringing a defamation lawsuit?

A. I remember saying -- I remember saying to Judge Mora what I say to all defamation clients. Which is that when you bring a defamation case, you run the risk of spreading more broadly than was already spread, whatever the allegedly defamatory comment is. So I do remember having that kind of conversation. I think I have that with every defamation -- potential defamation client.

Q. And did you ever tell Judge Mora that it may be best just to move on?

A. I mean, it is possible I said to Mr. Mora -- because again, I say to many clients, not only defamation clients, that litigation is a difficult, time consuming, emotionally draining process. And that any client should consider that in the context of -- and obviously, in this particular instance, it would be artificial to not consider Mr. Mora had another piece of litigation, which I viewed as a major Constitutional and statutory challenge related to his employment.

And if you would ask me, which would -- you know, which was the primary focus for both of us, it had to be that one. But on the other hand, I think he did feel strongly about the defamation he believed Ms. Koch had engaged in. And, you know, I think the emails reflect that in the November time period. And I didn't I didn't view that as problematic or unusual. Many people who are defamed, frankly, feel that way. So I, you know, wasn't anything unusual, honestly.

Q. No --

MR. BIENSTOCK: Can we go to the next question, please?

BY MS. DIPALO:

Q. Now, Mr. Sussman, before Judge Mora initiated his lawsuit against Ms. Koch, did you ever discuss the optics of a Judge suing the person who complained about them with the Commission?

A. Before? I don't believe so.

Q. And would it surprise you to learn that Judge Mora has said that you talked to him about the optics of bringing a lawsuit against a person who complained to the Commission before he filed the lawsuit?

A. It possible -- look, it doesn't surprise me and it's possible that we had such discussions. I know we had such discussions afterwards because Judge Rosa, in our settlement negotiations, was concerned about that issue and raised it. But again, it's an obvious -- it's an obvious type of issue, but I don't remember any sustained discussion about it.

Q. And you testified that Judge Mora reached out to you in, you think it was November, about 2022, about whether he could bring a defamation lawsuit against Stacey Koch?

A. He reached out to me to question whether he could bring a tortious interference lawsuit against Ms. Koch, actually, in November. And then I believe I was the one who felt that it was defamation and told him I didn't think tortious interference could fly, but the defamation could. That's my memory.

Q. And Judge Mora also wanted to add a claim to the lawsuit about

violating -- about Ms. Koch violating his rights under HIPAA?

A. Yes.

Q. And what was --

A. It was discussed.

Q. And did you advise him that he had a claim under HIPAA?

A. No, I advised him that no one has a claim under HIPAA. There's no private right of action under HIPAA.

And I advised him that there was a possibility under a case I had done in the Third Department called *Juric v Bergstraesser,* which was a novel case in the Third Department that he might have a right of action regarding privacy, which that case recognized. But I also was disinclined to do that claim. I thought it was attenuated.

Q. And you filed a defamation lawsuit against Stacey Koch on behalf of Judge Mora, right?

A. Yes, ma'am.

Q. And the pleadings alleged that Ms. Koch made false and damaging statements about him in her complaint to the Commission, right?

A. In her written complaint, yes.

Q. And I believe you testified that Judge Mora gave you the information that was the basis for the pleadings, correct?

A. In part, correct. I mean, obviously, as you just put reference to, there was a writing, which I had had. So that writing gave me the primary basis for what she said, what she wrote. He gave me the understanding of why, from his point of view, it was false. And I think -- so there are two parts of it, but yes.

Q. And --
A. He -- yes?
Q. Judge Mora reviewed the pleadings before they were filed, correct?
A. Yes.
Q. And Judge Mora approved suing Ms. Koch for $425,000 in damages, right?
A. Yes.
Q. And in the pleadings, there was no claim regarding Ms. Koch's statements to Michael Brown that were made in September of 2022, right?
A. Couldn't hear that. You faded out --
Q. Sorry. I'll try to speak into the microphone.
A. Sorry.
Q. In your pleadings --
A. Right.
Q. -- there was no allegation that Ms. Koch defamed Judge Mora by speaking to him about Michael Brown, correct? By speaking to Mike -- let me let me withdraw that.
A. You're saying, "speaking to Michael Brown"?
Q. Let me withdraw that. Yes.
A. Okay, I got it. I got it. Sorry.
Q. That was a --
A. The document does speak for itself, but I don't think that that was a claim made. I think that I viewed that as evidence, but not -- I did not separate that as a separate cause of action, which could have been done, but I

didn't do it.

Q. And after the lawsuit was filed, you advised Judge Mora that withdrawing is a good idea, regardless of the legal merits of the position, right? When he considered withdrawing, did you give him this advice?

A. It has to be more specific as to when. I mean, I don't think I gave him that advice before a decision on the motion, but I can't tell you. I don't remember when that would have occurred.

Q. After --

A. It was a moment in time when he and I discussed how to deal with the Supreme Court Judge's obvious disdain for the lawsuit.

Q. Let me --

A. And to be very clear --

Q. Let me give you a time frame, Mr. Sussman --

A. -- he was facing issues with SLAPP and all that. So there were discussions at that point about how to proceed. I don't know if you're asking me about that point in time or some earlier time.

Q. I'll give you a time frame, Mr. Sussman. So I'm sorry, Mike. After the Commission had intervened and Ms. Koch had filed the motion to dismiss through counsel. Did Judge Mora discuss with you or communicate with you about withdrawing the lawsuit?

A. I can't remember without looking at documents. Honestly, the timing -- the timing of all that. So you're asking about a specific time. I have all the exhibits if you want to just tell me a page --

Q. We can put it up on the screen for you, Mr. Sussman, so you can see it.

A. All right. Thank you.

MS. DIPALO: Mr. Bienstock, may I refresh the witness's recollection?

MR. BIENSTOCK: Yes.

MS. DIPALO: Andy, will you please put on the screen what will be marked Commission Exhibit 30 for identification, please -- oh, 35, my apologies. Commission Exhibit 35 for identification, and it is an email chain between Judge Mora and Mr. Sussman. And the first date of the email is February 13th at 10:10 a.m.

(Commission Exhibit 35 was marked for identification)

MR. BIENSTOCK: Is that in the book?

MS. DIPALO: It is not in the book.

Mr. Fenwick, can you please provide Mr. Bienstock -- would you like a copy, Mr. Coffey?

MR. COFFEY: Thank you.

MS. DIPALO: And Mr. Sussman, we're going to get it up on the screen for you momentarily.

THE WITNESS: Thank you.

If it's too difficult. I have, as I said, all these in hard copy. I could find it --

MS. DIPALO: Can you --

THE WITNESS: -- if you need me to.

MS. DIPALO: Let us know when you can see it, Mr. Sussman. Andy's working on it now.

THE WITNESS: Okay. Not yet.

MS. DIPALO: Not yet.

THE WITNESS: Okay. Screen sharing is coming up now.

MS. DIPALO: Thank you. Now, just to give you some context, Mr. Sussman --

Andy, can you scroll down to the bottom of the page?

BY MS. DIPALO:

Q. And it begins with an email from Judge Mora to Mr. Sussman, dated February 13, 2023 at 8:11 a.m.

A. Okay. Hold on, let me just read it, please.

Q. Sure. Let Andy know when you're ready for him to scroll down.

A. I'm obviously not able to open the link, so I don't know what the link is. But I do see the -- I've read the 8:11 a.m. email, so if you want --

Q. Would you like --

A. -- to go up, that's fine.

Q. Would you like Mr. Fenwick to go down? There's a second page of this email.

A. See, I see -- I can see. Okay, go ahead. So that -- yeah, that. I have to read that.

All right. I've read that.

Q. Okay.

A. I'm taking it from what you showed me, that that's part of the same email in which he talks about being --

Q. Yes.

A. -- in Mass?
Q. Yes. So Mr. Sussman, I'm going to ask Andy to scroll up to --
A. Yeah.
Q. -- the email response, first page.
A. Okay. Okay.
Q. It's dated Monday, February 13, 2023 at 8:14 a.m. And it's from --
MS. DIPALO: Down further. Please, down further, Andy.
THE WITNESS: Okay. Can I make my response to the --
MS. DIPALO:
Q. Yes that's -- yeah, right here, Monday.
A. All right. I think -- thanks for your note. Just let me read that.
Q. Sure.
A. I got it. I've read what I wrote.
Q. Okay. Mr. Sussman, did you tell Judge Mora that, "I do think withdrawing is a good idea, regardless of the legal merits of our position. It's just a bad look for a Judge to sue the person who complains about him, rather than to resolve the issues in the forum intended to resolve the complaint."
A. I did write that on February 13th.
Q. And Mr. Sussman, did Judge Mora withdraw his complaint at that time?
A. He did not. He had asked about an extension, and he wanted an extension to think about what he was going to do, as I recall it. And I see that right there as well. I remember that.

MS. DIPALO: Thank you very much, Mr. Sussman. I have no -- sorry.

And Mr. -- can we take the email off the screen, please? Thank you.

BY MS. DIPALO:

Q. A couple more questions for you -- yes, a couple more questions for you, Mr. Sussman.

A. That's all right.

Q. Thank you.

You testified that you chose not to include, in the defamation complaint, any claims about statements that Ms. Koch allegedly made to Michael Brown, correct?

A. Yes.

Q. And in fact, you chose not to include, in the defamation suit, any allegations about statements that Ms. Koch made to anyone or anybody other than the written statements filed in her complaint to the Commission., correct?

A. Yes.

Q. And did you know that at the time the Commission had yet to bring formal charges against Judge Mora, correct? At that time, when you when you when you filed the lawsuit, you knew that the Commission had not filed formal charges against Judge Mora?

A. About anything or about this?

Q. About Koch's complaint.

A. Okay. My memory is knowing that they had filed formal charges,

number one, and I can't remember sitting here today whether I knew at that time they had or hadn't filed more on Mora, Koch -- or, Mora, Koch's complaint. I can't tell you I remember knowing that, one way or the other.

Q. And I believe you testified, Mr. Sussman, that you didn't see anything on the Commission's website that said complaints are confidential, correct?

A. I did say I looked at the website and saw nothing. That's right.

Q. Did you look -- did you see a tab on the Commission's website that linked to its legal authorities?

A. No. I mean, I don't remember seeing such a tab. I remember looking specifically to see whether there was anything that would identify to the public that you had to either file a sworn complaint or that it was confidential. Those are the things I remember looking for.

Q. And at the time you -- withdrawn.

MS. DIPALO: I have no further questions.

MR. BIENSTOCK: Any redirect?

MS. DIPALO: One more question.

BY MS. DIPALO:

Q. Mr. --

A. Sorry.

Q. Sorry, Mr. Sussman.

Mr. Sussman, how did you come up with the amount of $425,000 in damages?

A. Damage awards in these cases vary tremendously depending on punitive damage assessments. And my impression here was that the individual

who made the statements had a high degree of antipathy toward Mora, which she was prepared to falsely communicate with a very important body. "Body" meaning that a body that could have significant influence and she knew that. So I felt that was a reasonable sum to attribute. Plus, as I think I explained earlier, you explained earlier, my client was really quite emotionally disturbed about what had happened and distressed about what had happened in the presence of one of his children. And you know, he was a known person in the community and felt that her behavior was intended to harm him. So I felt that was a fair sum in light of the awards I know of.

MS. DIPALO: I have no further questions.

THE WITNESS: Thank you.

BY MS. DIPALO:

Q. And you chose not to sue Seeta, correct?

A. Yes.

MR. BIENSTOCK: Could you tell me when you're --

MS. DIPALO: Yes. I have no further questions. Thank you.

MR. COFFEY: Mr. Susman, I just have a few with regard to Brown.

REDIRECT EXAMINATION

BY MR. COFFEY:

Q. If she had repeated what she said to the Commission to Brown, that would constitute a new act of defamation, correct?

A. Yes, sir.
Q. And it would extend the statute of limitations depending upon when she made the statement, correct?
A. Yes, sir.
Q. Now, you indicated -- and I only have very few things with you here. Very one thing, really.
A. Right.
Q. You indicated -- we've gone through the email where you indicated the object about the Judge bringing a case against a person. And you spoke to Judge Mora, and he said he wanted to think about it. Judge Rose's decision came down before he had a chance to act on that; is that correct?
A. Yes, sir.

MR. COFFEY: Okay. That's all I have.

MR. BIENSTOCK: Anything else?

MS. DIPALO: No. Thank you.

MR. BIENSTOCK: Thank you very much.

MR. COFFEY: You'll be unhappy to hear Mr. Sussman -- wait, hold on a second. No.

THE WITNESS: Too good to be true. No. No.

MR. COFFEY: Well, we can keep going if you'd like. We can always find more things to talk about, but we're done. Thank you.

THE WITNESS: I wanted to clarify one answer, but no one's giving me the chance, so I won't, so go ahead, then.

MR. COFFEY: Well, if you'd like to clarify -- yes.

BY MR. COFFEY:

Q. And on behalf of my redirect, I will ask you to clarify your answer.

MS. DIPALO: Mr. Bienstock, objection.

THE WITNESS: Well, the answer was that --

MR. BIENSTOCK: I'm not sure -- hold on. Hold on.

MS. DIPALO: There is no question.

MR. BIENSTOCK: Well, let me do this if I can. Let me do this.

THE WITNESS: All right.

MR. BIENSTOCK: If you have another question --

MR. COFFEY: I do. I have another question.

MR. BIENSTOCK: -- for him --

BY MR. COFFEY:

Q. What is the subject matter in which you want to rephrase your answer?

MS. DIPALO: Objection.

THE WITNESS: I didn't want to rephrase my answer. I just wanted to clarify something that counsel asked me, but if I can't do it, I can't do it. I'll follow whatever the rules are.

BY MR. COFFEY:

Q. Well, let me ask you, in terms of clarifying the answer, what subject

matter was it you wanted to clarify your answer?

A. The email you showed me and Judge Mora and the issue of my comments about withdrawing and the prudence of that. I just didn't want that to be understood as based on the nonviability of the claim. That's not what I was telling him. It was a prudential consideration that I thought I would share with him because I thought he deserved my view of that. But that wasn't the same as saying the case was frivolous or the case didn't have viability. It's a different kind of concern, and I just want to make that clear.

Q. Okay.

A. I don't want it to be construed as that was an advice saying, "You don't have a case, you better stop it." That wasn't what I was telling them. I was saying something else --

MR. BIENSTOCK: I think we understand that.

THE WITNESS: -- of a different nature.

MR. BIENSTOCK: I think we understand that. Thank you.

MR. COFFEY: Thank you for your participation, I appreciate that. Okay.

MS. DIPALO: Thank you, Mr. Sussman.

MR. BIENSTOCK: Is there anything else for Mr. Sussman?

MR. COFFEY: No, no.

MR. BIENSTOCK: Can I get him off this screen?

MS. DIPALO: Here's the guy for that.

MR. BIENSTOCK: That, which I'm sure he doesn't want to be on.

MR. COFFEY: See what he says.

THE WITNESS: All right. Thank you all.

MR. BIENSTOCK: Thank you very much, Mr. Sussman.

MS. DIPALO: Thank you.

THE WITNESS: Thank you, sir.

MR. BIENSTOCK: Okay. The question is, a short lunch break or bring back the witness right now?

UNIDENTIFIED SPEAKER: Well, we could --

MR. FRIEDBERG: Well, we can some of understanding from Mr. Coffey how long his cross is going to be? Then we can sort of figure it out.

MR. COFFEY: I've got two people talking to me here, so. I know we've discussed yesterday doing Brown first and then putting her away.

MS. DIPALO: No, we never agreed to that.

MR. COFFEY: Well, I'll tell you what, we can -- that's okay. I can put her on and then I'll get Brown done. But if we go later, then --

MR. BIENSTOCK: I'm fine.

MR. COFFEY: Okay.

MR. BIENSTOCK: It's fine. I would like to get

some done --

MR. COFFEY: I guess we'll go straight through, but if you want to take a break that's fine.

MR. BIENSTOCK: And I can skip lunch, or we could have 15, 20 minutes for lunch, that's fine.

MR. COFFEY: 20 minutes is fine.

UNIDENTIFIED SPEAKER: Is that okay? Is that okay with the Court reporter?

MR. FRIEDBERG: I mean, she's working physically.

MR. BIENSTOCK: Sorry. I'm sorry, you're right. I haven't asked the most important person in the room.

MS. SELF: I mean, it's fine with me.

MR. BIENSTOCK: Okay. Let's take 20 minutes to lunch and continue with the beginning of the cross-examination of Ms. Koch.

MR. COFFEY: Just as I promised yesterday to complete Ms. Koch, I think we're going to try and complete Mr. Brown today, too.

MR. BIENSTOCK: That would be great. Will he stay as long as --

MR. COFFEY: No, but I'm not -- I'm not talking about 8:00 at night. So here's my anticipation, just -- we're not on the record, right?

MS. DIPALO: We are on the record.

MR. BIENSTOCK: We are on the record.

MR. COFFEY: We are on the record? I'm not going on record.

MR. BIENSTOCK: Do you want to go off the record?

MR. COFFEY: Yeah, because it's a --

MR. BIENSTOCK: Off the record.

(Recess from 1:22 p.m. until 1:55 p.m.)

MR. BIENSTOCK: On the record.

MR. COFFEY: Okay. Good evening, my name is -- good afternoon. My name is Steve Coffey.

MR. BIENSTOCK: Excuse me, Mr. Coffey.

Ms. Koch, I'll remind you that you're still under oath.

THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. COFFEY:

Q. All right. Now, you indicated that your Seeta had a policy that people were to wear face masks, right?

A. Yes.

Q. What do you base your opinion that face shields are not masks? What do you --

A. Because they have an opening at the bottom. They don't -- you're asking me a question, allow me to answer.

Q. Um-hum.
A. Face shields have a lot of air circulating around them. It's kind of like, at least for me, because I work in an OR as well as the regular practice --
Q. I didn't ask you that.
A. We have to wear a mask because it holds all the moisture in the mask. It has a wire that form fits around the face, and a plastic face shield doesn't do any of that.
Q. Are you done with your answer?
A. Yes.
Q. What do you base -- do you have any legal basis to say that a face shield is not a mask? Do you or don't you?

MS. DIPALO: Objection. She's --

MR. BIENSTOCK: Overruled.

BY MR. COFFEY:
Q. Do you have any legal basis to say that?

MS. DIPALO: Objection.

THE WITNESS: I have no legal basis to say anything except for about glasses.

BY MR. COFFEY:
Q. Are you completed with your answer?
A. I am.
Q. So if a person is wearing a face shield --
A. Um-hum.
Q. -- you're not aware of any law or regulation in New York that says a face shield is not a mask, are you?

A. I don't believe so.
Q. Okay. It was a policy of your office that face masks would have a certain description. In other words, your policy apparently was, "face shields are not masks." Is that correct?
A. No.
Q. Well, we're -- I'm sorry, is that amusing?
A. You said it backwards.
Q. Well, were face shields masks?
A. No.
Q. Okay. Your office did not recognize a face shield as a mask; is that correct?
A. Correct.
Q. Okay. Now, let me go back to -- you indicated, I think yesterday, that you document -- I think you said you're very "religious at Seeta in documenting everything", correct?
A. We try hard, yes.
Q. Okay, you understand. The year before, when Judge Mora, Mr. Mora, came in with his son, [redacted] there was a document at that time that he had had a dispute about the masks?
A. I wasn't involved in it, so I'm not sure of the documentation.
Q. You've looked at the record. So tell me about those complete records that you said you document everything -- well, let me put it this way. If --
A. Okay.

MR. BIENSTOCK: Hold on a minute.

THE WITNESS: Why is he being like this?

MR. BIENSTOCK: Excuse me?

THE WITNESS: Why is he being like this?

MR. COFFEY: I'm asking you a question.

MR. BIENSTOCK: Hold on a minute.

I'm going to limit the witness to answering your questions.

MR. COFFEY: Okay.

MR. BIENSTOCK: I'm going to limit you to asking questions.

MR. COFFEY: Okay. All right. Fair enough.

BY MR. COFFEY:

Q. My question is this -- thank you. If Mr. Mora had had a problem in January, whatever the problem was -- wearing masks, something along those lines -- would it have been the policy of the office to have documented that he claimed there was a problem or that a problem had arisen? Do you know?

A. I would have documented it.

Q. Okay. And we understand that you can't document everything, and sometimes things get documented, sometimes they don't.

A. Correct.

Q. Okay. You try and do the best you can.

A. Correct.

Q. All right. So Mr. Mora -- are you aware that he has said that he came in the year before -- not the year before January -- and he had had a dispute about wearing a face shield or a mask at that time and that he assumed

that that had been resolved. Are you aware that that's what he's claimed?
A. I was aware of it after all this happened.
Q. All right.
A. I wasn't aware of it prior because there were multitude of mask issues over the years. So it wouldn't be news-breaking news that a patient was balking about a mask.
Q. Okay. Now, you indicated previously -- you were asked a question by Ms. DiPalo about what was your purpose in sending the letter to the Mayor. Remember that question?
A. Yes.
Q. Your actual purpose was to get him -- to get Judge Mora fired, wasn't it?
A. No. My purpose was to call it to the government's attention that I felt a Judge was abusing his power.
Q. What did you think was going to happen with that complaint?
A. Somebody would tell him to straighten up and act right.
Q. These are your words in this letter that I'm reading.
A. Okay.
Q. "We cannot have Judges abusing their position." Isn't that telling the Mayor that he should not be sitting as a Judge? Isn't that what your purpose was?
A. Yes, I guess so. Yes.
Q. All right. In any event, we'll talk about that a little bit. So let's take the -- and I understand you run the office and you have to be concerned about what's going on in the office, the safety of people, correct?
A. Correct.

Q. And at the end of 2021, that's about almost two years since the start of COVID, I think. About that, right?
A. Um-hum.
Q. Okay. Judge Mora comes in. You weren't there when he comes in at that date, correct? In other words, you weren't -- you didn't see him come in?
A. No.
Q. You were called to come down?
A. Correct.
Q. All right. And when you were called to come down, you then approached him. And what? Said words that are in substance, you know, "What's the problem here?" Or something like that?
A. No way will I remember the exact verbiage --
Q. Sure.
A. -- but just trying to correct a moment.
Q. Okay. And he's got this face shield on, and you apparently told him --
A. "You need to wear a mask."
Q. He'd need to wear a mask. And his was -- did you see his son there with him at that time?
A. I must have, but I really don't have a recollection of it.
Q. All right. So at the time you're talking to him, did you have a mask on?
A. Yes.
Q. Are those those masks that we used to wear? Those paper, plastic -- or not plastic, but --
A. I can't swear to it, but largely, we wore the KN95 black. They were kind of, like, double layered --

Q. That's the big -- that's the big, thick --
A. The thick one.
Q. Okay.
A. Not big, but thick. Same size.
Q. Okay. The other masks -- were people allowed to wear the other masks?
A. Yes.
Q. Okay. And that was supposed to cover their nose as well as their mouth?
A. Correct.
Q. A lot of people don't cover their nose, though, do they?
A. All day I had to walk around the office telling people to pick it up. All day.
Q. All right. So that was an issue as far as -- and you explained why you thought it was an issue for your --
A. It wasn't my thought. It was what I was carrying out. What the rules I was supposed to carry out. Not my thought.
Q. All right. Now, Judge Mora comes in. You have the discussion about putting a face shield on. And the discussion initially, if not cordial, it's not aggressive at that; is that correct?
A. I can't imagine I would start off aggressive.
Q. Can't imagine what?
A. I can't imagine I'd start aggressive. I've been doing service for decades. You don't start off being nasty. You start off being nice, of course.
Q. No, I get that. So. But in any event, the conversation with him and you is not aggressive. In other words --
A. Right.

Q. -- at first, you're having a discussion, and then the discussion starts getting a little more animated.

A. Absolutely.

Q. Is that right? And is it your testimony that he's the one who becomes more distressed, or was it you?

A. I think it was him. But you know, you're talking five, four or five years ago. I couldn't give you a precise answer.

Q. Would you agree that you were becoming, from your perspective, frustrated by his answers?

A. Absolutely.

Q. Okay. And he was becoming frustrated by your insistence that he had to put on a mask?

A. All he had to do was put on a mask or leave. It's so clear.

Q. No, no. I understand.

A. That's all that it was.

MR. BIENSTOCK: Could you please try to answer the question that's asked?

THE WITNESS: I promise I'm trying.

MR. COFFEY: That's okay. I'm not quarreling with that answer. So. But I appreciate that.

THE WITNESS: But yes.

BY MR. COFFEY:

Q. But in any event, so the two of you are beginning to, I don't know, talk at cross-purposes, "But come on, Mr. Mora" -- or whatever you're calling him -- "you've got to put on a mask. We don't allow it." He's saying, at

that time, "I can't wear a mask"?

A. He's not saying that.

Q. He doesn't tell you at all he's not wearing a mask? So it's your testimony --

MR. BIENSTOCK: Hold on one second. You can't shake your head. That doesn't record.

THE WITNESS: Okay.

MR. BIENSTOCK: You have to utter a sound.

MR. COFFEY: Okay. That's --

THE WITNESS: He is not telling me he can't wear a mask.

BY MR. COFFEY:

Q. So according --

A. I did not know that until --

MR. BIENSTOCK: Well, the shake of the head was okay if it was accompanied by a no.

THE WITNESS: Okay.

MR. BIENSTOCK: Because that was the answer.

THE WITNESS: Okay. No.

BY MR. COFFEY:

Q. All right. Okay. Fair enough. Thank you. So it is your testimony that you're telling him he has to wear a mask. And according to your testimony, he's telling you, "I'm not wearing a mask." Is that right?

A. Yes.

Q. And he's not giving you any reason why he can't wear a mask?
A. Correct.
Q. He's not saying to you, "I have a medical condition," or "I can't tolerate masks," or anything; is that right?
A. Correct.
Q. All right. And that discussion -- or at least that part of the discussion, how long does that go on for? Five? Six? Seven? Ten minutes?
A. Probably.
Q. And --
A. I mean, the whole thing was a half hour, 45 minutes. So we're probably in the first third of it. So whatever you want to estimate it to be.
Q. Okay. So now, there comes a point in time when what? You tell him you're going to call the police?
A. Somewhere in there. Well, no. I constantly give him the choice. Wear the mask or leave.
Q. Okay.
A. Those are the only choices. No discussion about whys or whatnot. That comes later.
Q. Okay. Either do it or don't, right?
A. Do it and stay. Don't do it, go.
Q. All right. And so an argument -- I call it an argument. You said he taunted you. Well, how did he taunt you?
A. Well, when he started giving me, in a very negative fashion, why masks were stupid. That our society was behaving one way out and about, another way in the medical practice. And starting to make it personal.

And you know, you're a mature man; by expression, by physical manner, how do you know when somebody is uptight and coming into your face? Different than, "Hi, how are you? I know you're having a lovely day." You can just tell that by life experience. A two-year-old may not be able to tell. A 65-year-old can. Even though you could be wrong.

Q. So he was -- that's the taunt?

A. "You go to restaurants" --

Q. No, my question --

A. -- "masks don't matter."

Q. That's not my question.

A. The question is, you're asking me what he was doing that was making me feel that this was --

Q. No. That is not my question. I asked you if he was taunting you, and what he was -- what was he doing in taunting you? You just told me, correct?

A. Yes, correct.

Q. Now --

A. In front of a room full of people.

Q. Okay. Well, whether there's a room full of people or not, you told us that he was taunting you?

A. Yes, absolutely.

Q. So for about -- a third of 30 would be ten. So for about ten minutes, according to you, you're telling him, "Put on the mask or leave." And he's not saying anything to you about any physical problems he's got, right?

A. Not at that point. I don't think so.
Q. Okay. After that first third of that conversation, do you then tell him you're going to call the police? I don't -- it doesn't have to be the first third.
A. I don't know when it happened, time-wise. I think it's when I reached my level of exasperation that I didn't know what else to do.
Q. Okay. So we have the -- we have the 911 calls.
A. Um-hum.
Q. You called the police. You told them you're having a problem. You claim that he told you, "The police aren't going to come," correct?
A. He did.
Q. All right. Now, do you know what he meant by that?
A. He said, "The police aren't going to come because of a mask."
Q. Okay. And did he yell it out? Did he say anything about that? Or did he say, you know, "Forget it, because they're not coming." Was he sarcastic when he said it?
A. I don't know.
Q. All right. In any event, you clearly remember that statement, that that's what he said?
A. That they're not going to come.
Q. "They're not going to come." In fact, according to you, he said it a number of times; is that right?
A. Um-hum.
Q. And when he kept saying to you --
MR. BIENSTOCK: You have to answer

verbally.

THE WITNESS: Oh, I'm sorry. Yes.

BY MR. COFFEY:

Q. When he kept saying to you, "They're not going to come," you're calling the police and he's standing right next to you, correct?

A. Correct.

Q. Okay. You hang up the phone. You have a further discussion with him, right? At some point in time, he tells you that he's got a medical condition, right?

A. Right.

Q. Well, into the time that he's there, correct?

A. Yes.

Q. And did you say to him in that time, "Why didn't you tell me that?"

A. I would imagine I would have, but I don't recall. I know I did give him my card. Understand I did even call him to come back into the practice and get his son taken care of. So I was never retaliatory in my behavior in any way. I just was trying to run the office in as smooth a way as I could.

Q. That's not my question. My question is: Didn't you tell him, or say to him, "Why didn't you tell me that?" Did you say that to him?

A. I must have said that. I don't recall it, but I must have. It makes common sense.

Q. And what did he say? If you could --

MR. COFFEY: I'll withdraw that.

//

BY MR. COFFEY:

Q. You recall a lot about that day, correct?

A. I do.

Q. But now the question about whether you may have said to him, "Why didn't you tell me before?" you just can't recall what you said then. Is that a fair statement?

A. Yeah. I don't know exactly when.

Q. Okay.

A. You can only imagine how -- you can only imagine how much this was going on. Kind of a circus.

MR. BIENSTOCK: Can you answer the question?

THE WITNESS: I'm trying.

BY MR. COFFEY:

Q. Were you crying at this point?

A. Crying? No.

Q. Okay. And if you were, that's fine. Did you ever start crying?

A. No. Not during the event.

Q. After the event, did you?

A. Privately, yes.

Q. Okay. Did you raise your voice to him at all?

A. As I said earlier, I believe my voice escalated. I don't think I raised it, I think it got higher.

Q. How do you escalate your voice and not raise it?

A. Ask my husband. If I'm upset, my voice tends to get higher. I'm not a

yeller. It just kind of gets higher pitched.

Q. All right. So he then tells you that he's got a medical condition. And do you respond to that?

A. I do. I ask for documentation.

Q. Okay. And he tells you that either he -- that he'll get it?

A. That's right.

Q. All right. And when he says that, he leaves at that point, correct?

A. No. He leaves when the police say they are coming.

Q. Okay. Now --

A. Which I did not see. I was facing the other way. I was on the phone still.

Q. You did not see him leave?

A. No.

Q. Okay. So according to you, he leaves. Not because he's going to get the --

MR. COFFEY: Well, I'll withdraw that.

BY MR. COFFEY:

Q. Didn't he tell you that he had to leave to get the letter for his -- no?

A. No.

Q. He never said that to you?

A. That he had to leave to get the letter?

Q. Yeah.

A. No.

Q. Okay. It is your statement that he left with his son. Did his son leave with him, by the way?

A. I would imagine. I don't really remember the son, in all honesty, as I've

said all along.

Q. Now, you've told us before, the conversations you had with him to the best of your recollection, correct? Am I correct?

A. Of course.

Q. You never told him to step back from you, did you?

A. Of course I did.

Q. Well, you've never told us that today. You've never said in your testimony today that you told him to step back. Did you testify to that earlier?

A. I'm not sure. I've been asked many, many questions.

Q. Okay. You had the ability to move away from him as well, though, correct?

A. I think, at that point, the front desk is kind of behind me. So yes, I could have left the area, or something like that.

Q. Okay.

A. But I just didn't think of it in the hysteria of the time. You know, I can't --

Q. Who was hysterical?

A. Me.

Q. You're hysterical, but you're not raising your voice?

A. No.

Q. Okay.

A. I mean, I'm still a professional, but yes, inside myself. Just like I'll say right now, I feel, like, nervous. You know, you just have a feeling that's not your normal, calm chill.

Q. Well, you're not hysterical now, are you?
A. No.
Q. Okay. In any event, he leaves?
A. Yes.
Q. The police do not come, as it turns out.
A. I told them not to.
Q. And then you call them, and you --
A. Told them not to.
Q. Okay. And then, later, he returns?
A. Yes.
Q. Right?
A. Yes.
Q. And he has a note from a chiropractor.
A. I think he emailed. The chiropractor, I believe, emailed it to me.
Q. Okay. And you talked to the chiropractor?
A. Yes. Briefly.
Q. All right. In any event, whether you accept the chiropractor as a medical person or not --
A. Well, he didn't tell me anything, so --
Q. Well --
A. -- whether he is or isn't is irrelevant because he never told me anything.
Q. Well, actually, the chiropractor's got more medical training than you, correct?

MS. DIPALO: Objection.

THE WITNESS: I am not a medical person.

BY MR. COFFEY:

Q. Well, a chiropractor is; isn't he?

A. I don't know. I don't know exactly where their license falls.

MR. BIENSTOCK: Overruled.

BY MR. COFFEY:

Q. So the chiropractor talks to you and has a conversation with you, correct?

A. I wouldn't call it a conversation.

Q. All right. In any event, he --

A. For some reason, he talked about other things. He didn't answer any of my questions.

Q. All right. In any event, there is a conversation.

A. I wouldn't call it a conversation. Again, he spoke at me, and then I said, "I'm hanging up. You're not answering any of my questions."

Q. Did you hang up?

A. Yes.

Q. Okay.

A. We did not have a conversation.

Q. Okay. He's talking, you're listening. Or he's talking?

A. He's talking.

Q. All right. In any event, isn't it true that you have, in your prior testimony, belittled the chiropractor as being someone who's not capable of giving an opinion. Have you ever said that? In other words, you were very -- you thought this chiropractor really was --

MR. BIENSTOCK: Can we limit it to one question?

MR. COFFEY: I'm sorry. You're right. I apologize.

BY MR. COFFEY:

Q. Your opinion really was: a chiropractor has no basis to give an opinion; isn't that true?

A. On wearing a mask.

Q. Okay. Or even having a medical condition; isn't that true?

MR. COFFEY: Objection.

THE WITNESS: A medical condition, I don't know.

MR. BIENSTOCK: Overruled

BY MR. COFFEY:

Q. All right. Now, after this phone call with the chiropractor, you then --

MR. COFFEY: I'll withdraw that.

BY MR. COFFEY:

Q. Was Judge Mora in the office at that point? Or did he come in later?

A. I think he came in later.

Q. All right. And he came in later with his son?

A. Yes.

Q. Okay. And did he ever tell you exactly the problems that he had wearing a mask? Ever?

A. After the defamation suit and the apology letter.

Q. Okay. And by the way, you were telling a lot of people about your complaint to the Commission; weren't you?

A. No.

Q. Well, you told the Mayor, right?
A. Well, isn't that --
Q. You told the Mayor, didn't you?
A. I sure did.
Q. And you expected the Mayor to act on that, didn't you?
A. I wanted the Mayor to be aware of it.
Q. Did you expect the Mayor to act on your letter? Can you answer that question?
A. I don't know what a mayor does in relation to a Judge, but I think a Judge has something to do with the Mayor. Yes, I think the Mayor should be aware of what a Judge is doing.
Q. Yeah. And you wanted the Mayor to address that, correct?
A. I don't know if he can address it.
Q. I didn't ask if he can. I asked you if you thought he would.
A. I don't know.
Q. So let me see if I understand this. You're sending this letter to the Mayor?
A. Um-hum.
Q. Not having any idea what's going to happen with this letter?
A. I was very upset.
Q. Is that the answer? You had no idea what was going to happen with this letter?
A. I had no idea what would happen.
Q. Yeah. Then why would you possibly send a letter to a mayor?
A. Seemed like a good option.
MS. DIPALO: Objection. This has been asked

and answered, Mr. Bienstock.

MR. BIENSTOCK: Overruled.

THE WITNESS: It seemed appropriate to me.

That's why I did it.

BY MR. COFFEY:

Q. And Mr. Brown -- did you ever tell Mr. Brown at any time about the complaint you made to the Commission? And you were bragging about the fact that Judge Mora was going to be removed?

A. I think bragging is an inappropriate word. Of course I told Michael Brown.

Q. Did you ever tell him that you hoped that he would be removed, Judge Mora?

A. Probably. I don't really think a Judge should act that way.

Q. Did you tell him that? Please, can you answer that question?

A. I don't remember. It was many years ago.

Q. You don't remember that either?

A. Not in an exact sentence. No way.

Q. And the two employees who were there at that time, Ms. Feather --

A. Yes.

Q. -- did you tell her about --

A. That I filed the complaint?

Q. Yeah.

A. Absolutely.

Q. Did you tell her what you said in that complaint?

A. Of course. She was there.

Q. Did you show her the complaint?
A. No.
Q. And who was the other woman? No, who's the other woman that day? I'm sorry.
A. My other receptionist, Kristine.
Q. What's her last name?
A. She has two different -- I don't know which one it is: Delorenzo or Monteverdi?
Q. Call it Monteverdi. Did you tell her the same thing?
A. I'm not sure, actually. But I'm sure I told Jessica; she was my head receptionist.
Q. How many people do you think you told about your --
A. My boss, Dr. Modi. My husband.
Q. Okay. How many other people?
A. Probably about -- my brother.
Q. Your brother? All right. Who else?
A. I don't know.
Q. Okay. There could be others, though?
A. Of course, because it was very upsetting.
Q. Um-hum.
A. So of course I would have talked about it amongst my friends. Absolutely.
Q. And you never told anyone not to tell anyone else, correct?
A. I mean, when I talk to a friend I don't say, "Don't tell anybody anything I'm saying." It's not really like that.

Q. So you fully expected that your complaint before the Commission was going to be public, didn't you?

MS. DIPALO: Objection, Mr. Bienstock.

THE WITNESS: No, of course not.

MS. DIPALO: Objection.

MR. BIENSTOCK: Overruled.

BY MR. COFFEY:

Q. Let me put it another way. When you told these other people about your complaint, you were making it public what your complaint was, right?

A. No. These are private people in my life.

Q. The Mayor?

A. Not the public.

Q. The Mayor's a private person in your life?

A. Well, yeah, you're right. Okay. I guess you could say that.

Q. What's the answer?

A. I don't know. I was trying -- you know what the answer is? I'll tell you what the answer is. I was aghast. I was aghast that a Judge could behave like this in my office.

Q. Yeah.

A. And I would probably tell anybody who would listen that day.

Q. Correct. That's what you were telling everybody else --

A. I couldn't believe it.

Q. -- that you -- I understand that. You're telling --

A. I couldn't believe it.

Q. I understand. We get that. But do we also understand that you're telling

the community that you had made a public -- that you had made a complaint to the Commission, and you were pursuing him through the Commission? Isn't that true?

A. I don't think I really understood what this complaint was --

Q. Really?

A. -- in terms of your system and procedures.

Q. Not my system.

A. Well, it's obviously not my system. At this point, I'm pretty upset with our system, to tell you the truth. Because you're telling me it's wrong.

Q. This is not --

A. No, no, no. You're telling -- now, I'm upset. You're telling --

MR. BIENSTOCK: No, no, no.

THE WITNESS: He's telling me that a Judge --

MR. BIENSTOCK: Excuse me.

THE WITNESS: Complaints about a Judge shouldn't go to a mayor? I'm a citizen. I can't believe it.

MR. BIENSTOCK: Would you like to continue, or would you like to step down? Your call.

THE WITNESS: I'll try to continue.

MR. BIENSTOCK: Okay. And then you --

THE WITNESS: I'll try to answer.

MR. BIENSTOCK: You listen to me.

THE WITNESS: Okay.

MR. BIENSTOCK: Okay?

THE WITNESS: Yes.

MR. BIENSTOCK: Answer his question without the editorial.

THE WITNESS: Okay. That's fair.

Can you rephrase it?

BY MR. COFFEY:

Q. Yes. I understand your feelings. We understand that. That you were upset and, to use your words, "aghast" -- whatever those words were. My point is that you were so upset, from your perspective, you're telling other people, "This is what this Judge did in my office"?

A. Yes.

Q. "And as a matter of fact, I was so angry that I filed a complaint with the Commission on Judicial Conduct because of his behavior."

A. Yes.

Q. Knowing that people would hear that and you told them, "And here's what he said. And here's what he did." Right?

A. Yes.

Q. Okay. Now, he never threatened you; did he?

A. No, I don't think so.

Q. Okay.

A. Oh, no, that's not true. He did threaten me. How can I say that? Oh, my God.

Q. Okay. Well.

A. Of course, he threatened me.

Q. How'd he threaten you?

A. He threatened to sue me for discrimination when I suggested he not return

to our practice because the rapport between us had deteriorated so much.

Q. Okay. That --

A. That's a threat.

Q. Okay.

A. That's a threat.

Q. The day that he was with you, on the 21st, he did not -- or the 29th, he did not threaten you, correct? The 28th.

A. He threatened my authority of running the practice.

Q. Okay.

A. So yes, he did threaten me.

Q. So much so that you were scared?

A. I did feel scared.

Q. Well, what did you think? What were you scared about?

A. I'm not sure. The unknown.

Q. Okay.

A. Because someone who doesn't follow the rules may do anything. And look at all he did. So there you go. I should have been more scared than I was.

MR. BIENSTOCK: Do you understand -- the --

THE WITNESS: No, I guess not.

MR. BIENSTOCK: -- the instruction to answer question?

THE WITNESS: No.

THE WITNESS: I'm sorry.

MR. BIENSTOCK: Do you understand that?

THE WITNESS: I do. It's my worst flaw. I'm sorry.

BY MR. COFFEY:

Q. Now, I think you told us -- if I'm incorrect, my notes may be incorrect. But this is what I think you said: that the first time you heard that Mr. Mora could not wear a mask was on May 4, 2023, through the Commission. Is that a fair statement?

A. It's whenever the apology letter came that we looked at earlier today.

Q. Right.

A. That was the first time that I really was aware that he had this medical diagnosis of anxiety that prevented him from wearing a mask. That was never told to me. The chiropractor just made a vague complaint that he couldn't wear a mask, never stating why. Judge Mora never stated.

MR. BIENSTOCK: I'll disregard after the first sentence.

MR. COFFEY: All right.

BY MR. COFFEY:

Q. Did Mr. -- or did Judge Mora, whatever -- did he tell you in the office that day that he could not wear a mask because he had a medical condition? Did he tell you that?

A. Somewhere in the dispute between us, yes, because that's why he came back with the letter or had the letter emailed to me.

MR. BIENSTOCK: No, no, no. "Did he tell you that?" is the question.

THE WITNESS: I have to say yes.

MR. BIENSTOCK: Good.

Next question.

BY MR. COFFEY:

Q. So your statement that the first time you heard that he could not wear a face mask was later with the apology, is not true; is it?

MS. DIPALO: Objection.

THE WITNESS: It is because that was the diagnosis.

BY MR. COFFEY:

Q. No, I'm not talking about the diagnosis.

A. Well, I am, because that's what makes it a reality.

Q. Well, let me go back to this. Did you say today, under oath, your direct testimony, that the first time you heard that Mr. Mora could not wear a mask was in the letter of apology?

MS. DIPALO: Objection, Mr. Bienstock. That was not the question.

MR. COFFEY: Well, that's my question now.

THE WITNESS: So allow me to answer.

BY MR. COFFEY:

Q. Did you say that?

A. No, because you --

MR. BIENSTOCK: The answer is no. Next question.

//

BY MR. COFFEY:

Q. As a matter of fact, whether he could or he couldn't, you were aware on the 28th of December that he had told you that he could not wear a mask, correct?

A. Not really.

Q. Okay. All right. Fair enough. Okay.

A. People are making up a lot of stuff then.

Q. Okay. So let me have one minute if I can.

Ms. Koch, I only have a few more -- I don't have a lot more with you.

A. That's okay.

Q. When you met with the Commission -- or maybe didn't; I apologize.

Have you ever met with the Commission, Ms. Dipalo, or anybody else?

A. Well, we did the telephone thing --

Q. Okay.

A. -- and we did some kind of --

Q. Zoom?

A. -- interview thing. I don't know what the official titles are, but yes, basically, one other time.

Q. Oh, you met in person with her?

A. Yes.

Q. Okay. There's nothing wrong. I just want to establish you did. Okay.

And prior to your testimony today, have you met with the office members here in the last month or so?

A. Yes.

Q. Okay.

A. Yes.
Q. And where did you meet? Down here or up in?
A. Poughkeepsie.
Q. In Poughkeepsie. Okay. And who did you meet with?
A. I met with Melissa, Andy, and Marissa.
Q. Oh, that's quite a crowd coming up to see you. Okay. So you have three people coming --

MR. BIENSTOCK: Mr. Coffey, can we limit ourselves to questions?

MR. COFFEY: I'm sorry. I apologize.

BY MR. COFFEY:

Q. Anyway, you met with three people. All right. And they went through what your testimony was going to be? Okay. Did they --

MS. DIPALO: Ms. Koch, you have to answer yes.

THE WITNESS: Oh, I'm sorry. Yes.

BY MR. COFFEY:

Q. Okay. How long did that meeting go on?
A. A few hours. A couple hours.
Q. All right. Did they take notes?
A. You know, I really was -- I don't know. I don't know. They must have, but I wasn't paying attention to it.
Q. All right. Were you with anyone?
A. No.
Q. All right.

A. We were in a conference room in my office.
Q. At Seeta?
A. Um-hum.
Q. Okay. Now, did they ever ask you -- this is the Commission -- whether you had ever sent any letters or correspondence with anyone about your complaints?
A. I don't think so.
Q. Okay. Do you know if they were aware of your letter to the Mayor?
A. Yes. After I -- you know, you had sent a request for stuff. So I dug around in my office to whatever I had, and I actually had a lot less than I thought I did.

MR. BIENSTOCK: Could you please answer the question?

MR. COFFEY: She may have misunderstood it.

MR. BIENSTOCK: Repeat the question.

BY MR. COFFEY:

Q. My question is: Do you know if the Commission was aware of that letter to the Mayor?
A. Yes.
Q. And when did they become aware of that?
A. After you asked me for documentation is when I found it. I didn't even remember I sent it.
Q. So that would have been -- you remember when we asked for the documentation? Was that a month ago? A couple of months?
A. A little bit before the Jewish holidays, whenever that was recently. Only

because I participated in that. So I'd say that it was, like, right in that week of all that. So I'd have to look at a calendar to give you dates.

Q. Okay. That's okay. And then you called -- what? The Commission counsel or the Commission people, and said, "By the way, there's a letter to the Mayor that" --

A. I didn't even realize I had, right.

Q. What else, if anything, did you call them and tell them that you had not given them, if anything?

A. A copy of my time card and a printout I think I sent to you of the dates, the time, whatever time stamp of whatever dates you had asked for.

Q. Okay.

A. So I told -- whatever I sent you, that's what I called them to say. Whatever you asked for, I gave you what I had, and I called them to tell them that I gave it to you.

Q. All right. Now, the letter is part of the settlement of the case. Later, you had demanded that Judge Mora send you a letter of apology, correct?

A. That's what they advised. Yes. My attorneys for that whole thing.

Q. Okay. And he sent you a letter of apology, correct?

A. He did.

Q. Okay. Did you -- well, I don't think you did, but I'll ask anyway. You didn't contact him after that letter, correct?

A. No.

Q. Has your practice -- did your practice continue to see his son after that day?

A. I don't know. I didn't look at that. I don't know.

Q. Well, Seeta records would show that, correct?
A. Absolutely.
Q. Okay. In fact --
A. I did look at his record though, because in case maybe I typed notes into that electronic medical record in response to you. And I saw the last time Judge Mora came in was sometime in 2022.
Q. Okay. So he did come back in at that point?
A. Well, that's in 2022.
Q. No, I understand it was about five or six months after.
A. I don't remember the month. I just don't recall.
Q. Okay.
A. But I did see that and I hadn't seen any visits after. But I can't speak for his children because I wouldn't have been looking there.
Q. All right. Okay. All right. Let me have one minute.
I think you told us before -- I'm sorry. I think you told us before that attorneys drafted a series of guidelines for your office; am I correct?
A. We did. There was a -- I wish I could remember her name. It was a female attorney.
Q. I don't care about her name. But anyway, an attorney?
A. But yes, we had some -- we paid some money to have some stuff drafted so that we could have certain kinds of signage at the front desk. There were waivers of some sort the patients had to sign. You know, we designed a book for the staff for temperatures and symptoms and you know, just following all whatever we're supposed to do. I mean, there was no book for it, so we did the best we could.

Q. But I thought my question was: Didn't an attorney recommend certain guidelines? And weren't those put in writing?

A. You know, I wasn't the COVID officer, but I know we had some paper stuff that came from the attorney, I'm sure.

Q. Did the Commission ask for those, a copy of those guidelines?

A. I don't know.

Q. Do you know where they are?

A. Probably somewhere in my office. You know, not my office, but we have a business office. I mean, she was able to dig up my 2021 time card. So I imagine whatever we did, she has.

Q. So --

A. We still have the book. I know we have that.

Q. So all we have as we sit here -- or stand here, sit here, whatever -- today is your recollection of what those guidelines would be, correct?

A. No, because we followed the CDC guidelines. So you can Google that right now, what it was, and that's what we did.

Q. Well, I'm --

A. Nope. The thing we consulted the attorney for was the patient management aspects and our responsibility to both staff and patients on risk of COVID, which is nothing about this. I don't even want to talk about that, but that's what that was all about.

Q. I am asking you directly: The attorney who sent you the guidelines that you've talked about --

A. Yes.

Q. -- do you know where they are?

A. Somewhere in our business office.

Q. So all we have right now, in terms of those guidelines, is your recollection of what those guidelines might have been?

MS. DIPALO: Objection. This is asked and answered.

MR. BIENSTOCK: Overruled.

BY MR. COFFEY:

Q. So whatever those guidelines were, they may be out there, they may not be. You don't know, correct?

A. No. Because we have probably signed stuff by patients.

Q. Where are those guidelines, please?

A. Somewhere in our office.

MS. DIPALO: Objection.

BY MR. COFFEY:

Q. Did the counsel ever -- for the Commission, ever say, "Can you send us those guidelines?" Did they ever do that?

A. No.

Q. Never? Okay. All right.

A. I don't know. Anything that's less than eight years old --

MR. BIENSTOCK: There's no question pending.

THE WITNESS: Okay.

BY MR. COFFEY:

Q. Okay. Do you recall at your deposition -- this is page 10 --

MR. COFFEY: May I approach the witness?

MR. BIENSTOCK: Yes.

BY MR. COFFEY:

Q. Okay. I'm going to show this to you.

A. Okay.

Q. All right. Look over here. The question is -- do you mind if I stand here?

A. No.

Q. Okay.

MR. FRIEDBERG: You're not sitting near a microphone.

MR. COFFEY: All right. I'll raise my voice. I'm not yelling. I'm just trying so you can hear me.

THE WITNESS: Okay. Okay.

BY MR. COFFEY:

Q. Okay. Question: "If at some point after we end here, if you could send me a copy of the sign or a picture of the sign." Answer: "Right.'"

A. Oh, I did send a picture. I sent a picture of the sign.

Q. Okay. "It's on the door. And also a copy of any kind of documents you receive from -- let me write it down -- legal. Answer: "Yes." You recall being asked those questions? Giving those answers?

A. Not really. But if I said I did, I mean, there it is. I'm sure I did. And did I send? I don't know; that was already a while ago.

Q. Okay.

A. But I might have. I'm just saying I might have. Because I try to be compliant.

Q. Well --

A. Do you have them? I don't know.

Q. Well, I could ask the Commission if they have them, so maybe I'll do it that way.

MS. DIPALO: Yes, Mr. Coffey, they were turned over in discovery.

MR. COFFEY: Okay. All right.

MS. DIPALO: If you'd like me to point you to exactly where --

MR. COFFEY: That's okay. We can do it. Okay.

BY MR. COFFEY:

Q. So you --

A. I just don't, you know --

Q. Okay.

A. -- lots of papers every day.

Q. All right. Okay.

A. All right. Yeah.

MR. BIENSTOCK: Of course.

MR. COFFEY: That's all I have.

MS. DIPALO: We don't have any redirect.

MR. BIENSTOCK: You have?

MS. DIPALO: We do not have any redirect. Thank you.

MR. COFFEY: I have recross.

MR. BIENSTOCK: Thank you very much.

You may step down.

MS. DIPALO: Thank you, Ms. Koch.

THE WITNESS: I'm sorry for my excessive answers.

MR. BIENSTOCK: You need not apologize to me.

THE WITNESS: Thank you.

MS. DIPALO: Thank you, Ms. Koch.

THE WITNESS: You're welcome.

MS. DIPALO: Yes. Can we take a brief break?

MR. FRIEDBERG: I just want to see her out.

MR. BIENSTOCK: Yes. If it doesn't jeopardize our finishing today.

MS. DIPALO: No.

MR. BIENSTOCK: I think we're still good. It's only 2:35. We can have one more witness.

MS. DIPALO: I have a quick housekeeping matter I just want to drop into evidence.

MR. BIENSTOCK: Whatever you want to do, okay? All right if we go off the record?

MS. DIPALO: Oh, yes. Can we go off the record?

MR. BIENSTOCK: Yes. Off the record.

(Recess from 2:36 p.m. until 2:46 p.m.)

MR. BIENSTOCK: We are on the record.

You want it on or off?

MS. DIPALO: I want it on.

MR. BIENSTOCK: It's on.

MS. DIPALO: Okay.

Just because of the Commission's case is now closed, I'd like to move into evidence Commission Exhibits 30 to 34, which are admissions made by the Judge and written responses to the Commission during his prior testimony and in his answer. They've been provided to counsel ahead of time, and I'm offering them into evidence as admissions.

(Commission Exhibits 30, 31, 32, 33, 34 were marked for identification)

MR. BIENSTOCK: Mr. Coffey?

MR. COFFEY: I mean --

MS. DIPALO: It's Commission -- it begins Commission Exhibit 30.

MR. COFFEY: No, I got 33.

Let me ask you before you rule on this, I understand this, and I'm not -- they're not waiving it, but I want a chance to look through these. I may not object, but I just -- rather than just say yes now --

MR. BIENSTOCK: That's fine. We'll keep -- we'll keep their record open --

MR. COFFEY: No question.

MR. BIENSTOCK: -- just for this purpose.

MR. COFFEY: Correct. Correct.

MS. DIPALO: Thank you.

MR. BIENSTOCK: Next witness.

Do you swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth.

MR. BROWN: Yes.

MICHAEL BROWN,

having been duly sworn, was examined and testified as follows:

MR. BIENSTOCK: Please state your name for the record.

THE WITNESS: Michael Brown.

MR. BIENSTOCK: You can be seated.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. COFFEY:

Q. I know you've already given your name, but tell us your name.

A. Michael Brown.

Q. Okay. And Mr. Brown, where do you live? Just the city.

A. In Poughkeepsie, New York.

Q. Okay. And are you presently employed?

A. I am on disability.

Q. And would you mind telling the Officer and everybody here what your disability is?

A. [redacted].

Q. [redacted]?

A. [redacted].

Q. So how long have you suffered from this malady?

A. [redacted] about three years ago. And it started then and kept going since.

Q. How old are you?

A. I'm 49.

Q. Okay.

A. Going to be 49.

Q. Right. Now, you've been called to here as a witness. And you know why you're called as a witness, correct?

A. Yes.

Q. All right. Let's go back a little bit, if we can. You used to work for an organization called Seeta?

A. Yes.

Q. Tell us about that. When did you join Seeta?

A. I don't remember approximate dates. I was there maybe two years, a year and a half, somewhere in there.

Q. What did you do for them?

A. I was an ophthalmic technician.

Q. And what does that mean?

A. That means I see the patients, get them ready for a doctor. Almost as if you went to a doctor's office, you'd go see the nurse first. That's essentially what it was for the eye world. You'd see the nurse first before you'd see the doctor.

Q. All right. Did you enjoy that work?

A. I enjoyed it thoroughly, yes.

Q. Okay. Why did you leave? Well, I'll get to that.

So we've heard a Stacey Koch testify here just before you, as a matter of fact. Do you know Ms. Koch?

A. She was the office manager at Seeta Eye at the time.

Q. What does that mean to be the office manager?

A. She was in charge of the overall building, patients, everything.

Q. Okay.

A. She was the boss, essentially.

Q. All right. How many employees worked at Seeta? Do you remember?

A. Between 20 and 30. Somewhere in there.

Q. Pretty good-sized office?

A. Yes, yes.

Q. And who was the lead doctor in the office?

A. It would be -- oh, gee, I'm blanking on his name at the moment. Modi. Modi, it was.

Q. It was a male or female?

A. Male.

Q. All right. So let's go back to December 28, 2021, taking that date. And were you working that day?

A. Yes.
Q. All right. As a tech?
A. Yes.
Q. Did there come a point in time when something happened in -- that you were called down -- or I shouldn't say called down. Where did you work? Are there two floors? Three floors?
A. There are two floors there. I was on the first floor at the time.
Q. Okay. And were you called to this in, or did you hear something?
A. I was with a patient at the time, and someone came and knocked on the door while I was with the patient and said that there was a problem out in the lobby that they wanted me there. I was the only male tech, and I guess they felt secure enough in having me go out. I don't know what the problem was or anything. They just said, "We're having a problem in the lobby."
Q. All right. So what did you do?
A. I obviously went there to see what was going on and diffuse any situation that was there.
Q. All right. Now you see Judge Mora's sitting there?
A. Yeah.
Q. Did you know him at the time?
A. I had no idea who he was at all. He was just a patient. That's all I know.
Q. Okay. And was there any employees of Seeta there when you came?
A. Yeah. Whoever was at the front desk. I don't recall who it was, but it was whoever's at the front desk and whatever surrounding area.
Q. And Ms. Koch, did you see her?

A. Yes.

Q. All right. Now, did you see Ms. Koch in relation to Judge -- I know you didn't know him as Judge Mora.

A. I did not know him. I didn't even know who -- I didn't even have a name. I had no idea.

Q. So now that we know he's Judge Mora, were they -- were they in proximity to one another? He and Koch?

A. No. Stacey Koch was almost by the entrance of the building where you would go in for the patients. Like, the patient door, if you will. And Judge Mora was about halfway out in the waiting room. So that there was quite a distance between the two of them at some point.

Q. So if I were to say there were two feet apart, would that be correct?

A. Yeah, it could even be further than that. But yes, definitely, at least.

Q. Okay. So how many feet would you estimate? More than six feet?

A. Yeah. Yeah.

Q. Okay. So you can Judge -- I mean, I understand distance. So if you take where you're sitting to this part --

A. From about where you are to Judge Mora is -- was approximate distance. And I was basically in the middle. It might have been a little bit closer, but I was in the middle of the two of them.

Q. That's certainly more than two feet.

A. Yes, absolutely.

Q. All right. And what did you observe?

A. I observed Stacey telling him to get out. "You're not wearing a mask" and to leave. And he was saying, "I'm wearing a mask." Because at the time,

he was wearing a face shield, so he had something on. You know, health-wise, he's doing what he's supposed to do, but she wanted him out. She runs the building. And I kind of just stepped in the middle and just asked him to leave, and he left.

Q. Okay. Now, what was her attitude? Well, how many -- how long were you there when the two of them were in your presence?

A. Not even two to five minutes. It wasn't long at all. I mean, it was fairly quick. He gave no issues at all.

Q. All right. Now, let me ask you about the demeanor of the two of them. What was her demeanor?

A. Her demeanor was something I've never seen before. It was, like, a catty-like demeanor. She was very hostile. Because she was, "You've got to wear a mask." She was, like, that firm, "You've got to have a mask. Got to have a mask." And that's the way she treated him, basically. It was very wrong, I would say.

Q. And what was his demeanor at the time?

A. He was defensive. All he wanted -- all he was caring about was his son to be treated and his son was wearing a mask. And that's all he said, is, "I just want my son to be taken care of," and that's it.

Q. Okay. So did he raise his voice? Did he taunt her?

A. Not at all.

Q. Was he nasty with her?

A. No. If it was anything, it would be the other way around.

Q. Okay. Now, Ms. Koch said that she had a good working relationship with you. Would that be a fair statement?

A. Correct. I worked, and I did everything I was supposed to do. I never had any issues at work at all. I was never a problem.

Q. Afterwards, that day, were you asked to write down a statement as to what had happened?

A. Correct. She asked me to write down exactly what happened, what I saw. So that's what I did and I signed my name to it. I felt I didn't really have much of a choice. My employer is asking me for a letter of what I saw, so I've got to give it to them.

Q. Did you mention her behavior in that statement?

A. I mentioned no one's behavior at all. I didn't mention hers or his.

Q. Why?

A. Because that wasn't relevant.

Q. Okay.

A. It wasn't. He wore a mask and I asked him to leave, and he left. That's kind of what that letter exactly states.

Q. Did you walk out with him?

A. No. He went out on his own. I didn't have to walk him out or anything. I didn't have to move from my position from the two of them. So I was still in the middle of them when he was gone. They were nowhere near each other.

Q. Did you hear her call the police?

A. I didn't hear the -- she called twice. The first time, I wasn't present at the time. The second time, when he was going to leave, she made the front desk call the police again. And I don't know the spitter-spatter of what was going on between that. I was just more worried about having him

leave the building to stop whatever was going on, because it was embarrassing.

Q. Okay. What was embarrassing?

A. Being out there in the waiting room with people while they're doing this, and the patients are just looking at you like, "What the hell's going on here?" And you're just, you know.

Q. Okay. This isn't the kind of thing that happens every day?

A. No. Absolutely not.

Q. Okay. Now, if the -- during the time when he left, did you speak to Ms. Koch immediately afterwards?

A. She spoke to me several times after that, really, saying that she's going to go after Judge Mora.

Q. Well, no, let me do this. I apologize.

MR. COFFEY: I'm going to withdraw it.

BY MR. COFFEY:

Q. That day, did you speak to her again?

A. Yes.

Q. And what was your conversation with her?

A. I don't exactly remember because we're talking four years, so I don't exactly remember the exact conversation that was had from that time frame ago.

Q. Now, subsequently, did you ever see Mr. Mora again?

A. Yes.

Q. Where?

A. He did come to my home because a letter was drawn that I signed because

everything was accurate on him. Because I was no longer working at Seeta Eye. And I know for a fact why I wasn't working for Seeta Eye, because she kept talking about this.

Q. Well, before we get to that, did he ever come -- did you ever see him in the office after that?

A. Oh, absolutely. Several times he came back for himself and his other child. He came back at least three or four times.

Q. Okay. Did you have any discussion with him about Ms. Koch, what she was saying about him?

A. I apologized to him on behalf because it was embarrassing. I apologized.

Q. Okay. Did there come a time when he met with you again or he talked to you?

A. Yes.

Q. And tell me about that.

A. Which instance? Because we've spoken several times.

Q. Okay. And did you call him, or did he call you?

A. I don't recall. I don't recall. I just know I spoke with him. I don't recall the amounts.

Q. What did you speak about?

A. About Stacey and that she wants his head, basically.

Q. And how would you describe the words she was using? Her manner?

A. Aggressive.

Q. Was she bragging?

A. Very much so.

Q. In what way?

A. In that she's going to do everything she can to get him removed from the bench. Because he's some kind of -- I don't know what you call people who don't get vaccines or whatever, but that's what she was saying about him, and he's that kind of person and entitled.

Q. And did she tell you what she said to the Commission? That she made a complaint? Did she tell you that?

A. She did say she made a complaint, yes.

Q. And she tell you the words that she -- what the substance was of what she was saying?

A. She just said that he shouldn't be a Judge.

MS. DIPALO: Objection.

MR. BIENSTOCK: You can answer.

THE WITNESS: What was the question again? I'm sorry.

BY MR. COFFEY:

Q. Did she tell you what the concern that he was abusive and that he was nasty to her? Or?

A. Yeah, that he was -- if he could be that --

MR. FRIEDBERG: Objection. That's leading.

MR. COFFEY: Well.

MR. BIENSTOCK: Rephrase it.

MR. COFFEY: Okay.

BY MR. COFFEY:

Q. Are you aware that she made a complaint to the Commission?

A. Yes.

Q. Are you aware of the substance of the complaint?
A. I wasn't at the time, but I am very much aware now.
Q. Okay. Did you become aware during the time you were working there?
A. Correct.
Q. Okay. From whom? From her?
A. From her.
Q. Okay. Now, after you discussed it with her, or after she had this discussion with you, did there come a time when you left Seeta?
A. Yes.
Q. And why?
A. I left because of that. Because if she's going after someone like that -- for what she was doing, I don't want to be a part of a company that does that. That wasn't right at all. As a medical professional, we treat every patient, regardless.
Q. Okay. And what she was saying to you about the substance of her complaint, was that true?
A. Yes.
Q. No, no. My question is this --

MR. FRIEDBERG: Objection. It was asked and answered.

MR. BIENSTOCK: Can you ask it again?

MR. COFFEY: Yeah.

BY MR. COFFEY:

Q. What she said to you, the substance of her complaint -- based upon your knowledge, was her statement true? Do you understand my question?

A. No, I am not understanding this question at all. I'm sorry.
Q. You've indicated to us that you were aware of the substance of her complaint to the Commission, correct?
A. Yes.
Q. That he was nasty, he was rude, and so forth?
A. Correct.
Q. Based upon what you saw, was that true?
A. Yes.
Q. He was nasty?
A. Oh, no. No, he was not nasty and rude at all. No. Absolutely not. I'm sorry. I'm answering that incorrectly. He was not rude or mean at all.
Q. So my question to you is: What she said happened, was that true or not? Which she said to you what happened? Was that true or not?
A. By you mean what she said that happened to me?
Q. Right.
A. What? What did she say?
Q. All right. Let me do this. She told you what she told the Commission, correct?
A. Yeah. That he was on an unfit Judge.
Q. Okay. And told you the circumstances of it?
A. Because of the COVID vaccine and being entitled.
Q. All right. Based upon what you saw that day, was he nasty, or rude, or taunting to her?
A. Not at all.
Q. Okay. And did you say that to Judge Mora?

A. Yes, I believe I did tell Judge Mora when I apologized to him for the behavior that happened out in the waiting room.

Q. Okay. So if she said those things to the Commission or anyone, they would not be -- they would not have been true?

MR. FRIEDBERG: Objection.

THE WITNESS: They would not have been true.

MR. FRIEDBERG: Objection.

MR. BIENSTOCK: Objection is sustained.

BY MR. COFFEY:

Q. Okay. Would those statements have been true or untrue?

MR. FRIEDBERG: Objection.

MR. BIENSTOCK: Phrase it -- phrase it differently, Mr. Coffey.

BY MR. COFFEY:

Q. Well, the statements that she claimed that she told the Commission, in your experience, knowing what was done that day and what she -- what she said and did --

A. It is untrue.

MR. FRIEDBERG: Objection. We don't know what statements.

MR. BIENSTOCK: That's correct.

MR. COFFEY: Well, then okay.

BY MR. COFFEY:

Q. Statements that he was nasty, that he was rude?

A. He was not nasty. He was not rude.
Q. That he was taunting her?
A. He was not taunting her.
Q. That he was raised -- that he yelled at her?
A. He did not yell at all.
Q. That he threatened her?
A. He did not threaten her.
Q. Okay?
A. Not in my presence, at least. None of this was in my presence, was it? I just can answer for myself.
Q. Okay. All right. Okay.

MR. COFFEY: One minute, if I might. That's all I have. Thank you.

CROSS-EXAMINATION

BY MR. FRIEDBERG:

Q. Mr. Brown?
A. Yes.
Q. Hi, I'm Alan Friedberg, Special Counsel to the Commissioner. How are you today?
A. I'm all right. How are you, sir?
Q. What's your educational background?
A. I was a Medical Instructor at one point, so I do have education. It would be associate's degree, essentially.
Q. Where did you get your associate's degree?
A. Union County College in New Jersey.

Q. And what year did you graduate?
A. '95.
Q. And do you have any other degrees?
A. No. Just the medical certifications.
Q. What medical certifications do you have?
A. Certified Medical Assistant and Medical Instructor.
Q. Now, were you subpoenaed to be here today?
A. Yes.
Q. And let me just ask you a few questions about what you testified to. You testified how far apart they were?
A. Yes.
Q. Were they the same amount of feet apart the whole time you were there?
A. Yes.
Q. And obviously, you have no way of knowing how far apart they were before you got there?
A. Correct.
Q. And did you say Ms. Koch runs the building?
A. Yes.
Q. Now, you now work -- you're disabled, but your employment is with the [redacted] Institute [redacted].
A. I did leave there to go to the [redacted] after that, yes.
Q. Now, what was your job at the [redacted] Institute [redacted]?
A. I was a Medical Assistant in the nurse's office.
Q. Now, when did you leave Seeta?
A. I don't recall the exact date. August, September, or somewhere like that.

Somewhere around there.

Q. Did you immediately start the [redacted] Institute?

A. About two weeks later. I would like to have a job first before I leave one. I'm not just going to leave a job and not have another one.

Q. I thought you left because of Stacey Koch?

A. I did, but I also need to have a job to provide for myself.

Q. So you didn't leave until you got a new job?

A. Correct. But the reason why I went out and got a new job was because of the incident.

Q. And when did you leave?

A. August, September.

Q. Nine months after the incident. It offended you so much that nine months -- excuse me, let me ask the question. It offended you so much that you decided to leave nine months later and got a job within two weeks, correct?

A. Correct. I got a new job within two weeks because I knew I was leaving because of what she was doing. I wasn't going to stay there and keep listening to her bash that. No.

Q. When did she first tell you she filed the complaint?

A. The very next day, when she said she was calling her brother, who was an attorney.

Q. Did you leave that day?

A. No. I just let it go because that's what I had to do. But when it keeps persisting like an abusive spouse, I'm going to stop it.

Q. You felt you were an abusive spouse?

A. I felt I was being abused.
Q. You felt you were an abused spouse?
A. That's what it felt like. And it takes time to leave a situation. I couldn't just leave right away.
Q. What was your salary at the [redacted] Institute?
A. I actually took a little bit of a pay cut.
Q. What was your salary there? What was your salary at Seeta?
A. I was making about $19 an hour at the [redacted] I was making about $23 an hour at Seeta, so I took a pay cut.
Q. But you got better health insurance, right?
A. Damn real. I made sure I made better for myself, too.
Q. Oh. So actually, it was a pretty good deal leaving, right?
A. It was, yes. But I would not have looked elsewhere unless that happened.
Q. Now, let's talk about the letter that we've marked Respondent's -- excuse me, Exhibit 29.

MR. FRIEDBERG: May we show the witness this?

BY MR. FRIEDBERG:

Q. You wrote this letter, right?
A. Yes.
Q. And was it truthful?
A. It is. It is truthful.
Q. Is there anything in here that's false?
A. No.
Q. Is there anything in here that's a lie?

A. No.
Q. Is there anyone who told you to leave anything out?
A. What do you mean?
Q. Did Stacey Koch or anyone at Seeta tell you not to give your complete recollection of what happened?
A. No. I gave my recollection right here on this paper, but I did not mention -- I just mentioned what happened. I didn't mention speech, words, actions, tones. I didn't. I just put down what I personally saw and what I personally did at the time, and what he personally did at the time.
Q. Aren't speech and tones what happened?
A. No. Not really. I'm taking the emotions out of the paper. That's what this is. This is an emotionless thing. Because that's what it is. It was an action. That's not an emotion. I took --
Q. So --
A. -- these are actions. I didn't specify what was said between them or who's screaming, who's yelling, is there embarrassments in waiting rooms? I didn't write that in this letter, because it didn't need to be written. Because --
Q. Why didn't it need to be written if you were asked to give a truthful recollection of what occurred?
A. And this is truthful.
Q. Why did you leave things out?
A. I did not think it was going to wind up in front of the judicial committee. Because at the time, once again, I didn't know he was a Judge. I knew nothing about what was going on until after this was written.

Q. So as soon as you found out he was a Judge, you realized, "I should have written some other things, bad things, about Stacey." Correct?

A. No. No, absolutely not, absolutely not. I would tell the truth for any patient, because at the time, once again, he was just a patient. And that's how I treated it. Even if he is a Judge, I can care less.

Q. And did you tell the truth to the Commission when we --

A. Yes.

Q. -- took your testimony previously?

A. Yes, I did.

Q. And the other letter.

MR. FRIEDBERG: Can we please show Respondent's F? Exhibit F.

(Respondent's Exhibit F was marked for identification)

BY MR. FRIEDBERG:

Q. You testified under oath before the Commission?

A. Yes, I did.

Q. And you took the oath seriously, right?

A. Absolutely.

Q. Did you say you wrote this letter when you testified?

A. I said it was written. I did not say --

Q. Did you say you wrote the letter?

A. If my signature is on it, that means I wrote the letter.

Q. Did you say -- okay.

A. If my signature is on here, that means this letter stands behind me, because it is signed by myself.

Q. Let me ask you if you gave these -- if you gave these questions -- if you were asked these questions and gave these answers. And you said that you -- this is page 29, line 18. "MS. DIPALO: And you said that you voluntarily wrote this letter? The WITNESS: Correct." Did you give that testimony?

A. I signed the letter. So that letter is mine. Correct.

Q. This didn't say "sign". You said "wrote". Did you write the letter?

MR. COFFEY: Objection. He's now arguing with him. It's now become more wrangling.

MR. BIENSTOCK: We can keep the volume down a little?

BY MR. FRIEDBERG:

Q. Did you write the letter?

A. The letter is signed by me. It is written by me. I stand behind the letter. That is what I interpreted it by. Did I personally write the letter? Not all of it.

Q. But did you write any of it?

A. Absolutely.

Q. What part?

A. If there was anything wrong in the letter, I fixed anything that was wrong in the letter. And that's why my signature is on it. I stand behind this piece of paper.

Q. But the Judge --

A. I'm not going to read the piece of paper, but my signature's there, so it's mine. I don't know how else I can answer that for you.

JUDGE BIENSTOCK: You've answered it.

THE WITNESS: Thank you.

BY MR. FRIEDBERG:

Q. On page 28, line 3, were you asked this question, and did you give this answer? "BY MS. DIPALO: Okay. And were you asked to write this letter? THE WITNESS: No, I was not asked to write this letter. MS. DIPALO: Okay. So you voluntarily -- voluntarily wrote this letter. THE WITNESS: Correct. Especially knowing that I wasn't going to be at Seeta Eye anymore. I wanted to make sure that the statement was there, because I know she -- I knew she was pressing the matter."

A. Correct.

Q. Did you give that testimony?

A. Correct.

Q. Was it accurate?

A. Yeah, because I wasn't there, and my statement needed to be there in case I wasn't. Because he's being pinned up against the wall for no reason. I mean, this is ridiculous. I know it's an opinion at that moment, but this shouldn't be happening to anybody, period.

Q. So you said you voluntarily wrote the letter; is that true?

A. Yeah. I definitely wrote this. I stand by my letter with my signature voluntarily.

MR. COFFEY: I only object, Judge, because this is like, again, like this morning where this is the fifth time we've been through this. He said that he wrote the letter --

MR. BIENSTOCK: He has a little leeway, but not much more.

BY MR. FRIEDBERG:

Q. You said you voluntarily wrote the letter. Today you say you just signed it; is that correct?

A. It was by me. It has my signature. I stand by it. I really don't want to answer that anymore, because this is me. I'm establishing. I stand behind what's on the piece of paper. That's all we need.

Q. We're not asking if you sit behind it. We're asking if you drafted that letter.

A. Not the original copy. The final copy was me. Does that make a little bit more light for you that this wasn't signed --

MR. BIENSTOCK: Wait, wait, wait, wait, wait, wait.

A. -- until I made sure of it to me.

MR. BIENSTOCK: You're here to answer questions, not ask them.

BY MR. FRIEDBERG:

Q. How many words did you change?

MR. BIENSTOCK: Hold on. Hold on.

MR. FRIEDBERG: I'm sorry.

MR. BIENSTOCK: Hold on. I think you should move on. I think I understand what happened and what was testified to.

//

BY MR. FRIEDBERG:

Q. Now, you felt that Stacey Koch acted inappropriately, correct?

A. Correct.

Q. She's not the owner of the business, correct?

A. Correct.

Q. Who is?

A. Modi.

Q. Did you tell him?

A. I don't speak to Modi much at all. There was no reason to interact about anything. Anything went through Stacey. Even though he was the doctor, he owned the practice, you didn't talk to him about any of that stuff. Anything went through Stacey.

Q. So you chose not to tell Dr. Modi about this?

A. Correct. I was never asked by Dr. Modi either.

MR. BIENSTOCK: The answer is correct.

A. Correct.

BY MR. FRIEDBERG:

Q. How was your relationship with Stacey before this?

A. Perfect. No problems.

Q. Did she ever have problems talking to other patients?

A. There were maybe a patient or two she had issues with. It wasn't the first time I had to go out to a waiting room to stop something. It wasn't the first time. But it was the first time I've had to write letters and all that, but it wasn't the first time.

Q. What do you mean you had to write a letter?

A. I had to because it was the right thing to do. If another patient came to me that was kicked out and the same thing happened, I would have done the same thing. But any other patient that got kicked out never kept going.
Q. But you weren't required to write a letter, were you?
A. Not required, just felt it was extremely necessary by my employer at the time.
Q. Was it really important to your employer at the time, correct?
A. Correct.
Q. But you didn't think to tell the employer that Stacey Koch had behaved inappropriately?
A. I'm not going to tell him that. That's the owner. That's got nothing to do with me.
Q. You thought she was talking badly to a patient. Why not tell the owner?
A. I did not. I don't have a reason why I didn't tell Modi or I was never asked by Dr. Modi, so I didn't press it.
Q. Now, you were leaving the job, so why couldn't you have told the owner?
A. She was no longer Office Manager, so it really didn't matter at that point anymore. She was removed from Office Manager.
Q. Isn't she still Office Manager to this day?
A. When I was there, they put someone else in there, some other female. I don't know what her name was.
Q. She just shared the role, right?
A. Correct. Something along those terms, and that's -- yeah.

Q. Stacey Koch was still one of the Office Managers, correct?
A. I don't know what her exact title was, because it was so long ago. But she was no longer the sole Office Manager. There was someone else involved as well after all of this.
Q. Can you explain your thinking? You needed to tell the Judge, the Respondent here, that you were supporting this position, because you didn't want him to be abused, but you didn't want to tell the owner so that no other patient would ever be abused. Why?
A. I don't have an answer, but if there was something medical, he would have known immediately. If there --
Q. I'm talking about this incident about a patient not being taken proper --
A. I can't answer for something that long ago. I did not tell Modi, period. The end. I didn't. I don't know why. I didn't.
Q. Now, everyone in the office was required to wear masks, right?
A. Yes.
Q. And you know Stacey Koch was particularly concerned about people wearing masks because of her own personal policy?
A. You had to have a mask on, period. That was the rule in there, and everyone wore masks.
Q. Do you know if she was concerned because her husband was a three-time [redacted] and a [redacted]?
A. No, I did not.
Q. Do you know if that's true?
A. I just know that she had to -- you had to wear masks, period. I don't know anything about her family life. I didn't know her that well. Just in

the office.

Q. Are you Facebook friends with her?

A. Yeah, we're Facebook friends.

Q. And do you post on her for Facebook?

A. Hey, smiley face, laugh at stuff, smile at stuff, pictures, photos, but I don't recall anything, [redacted] survivor.

Q. You're sending smiley faces to this woman who abused the Respondent?

A. Because life changes. I mean, she was rude to him, but she's not rude to everyone else. I've seen her nasty side, okay. We don't work together no more. She's not in charge of me anymore. Could be Facebook friends. I could be Facebook friends with a serial killer. It doesn't matter.

Q. You thought Stacey was like a serial killer?

A. No, but I'm just referencing to, it's Facebook. It's not even real life half the time. Who cares about Facebook?

Q. Would you send smiley faces to someone who you felt had been so rude to someone?

A. Yeah. Because you forgive and forget and move on. That's life.

Q. Have you had numerous conversations with Respondent?

A. I have spoken to Judge Mora now a couple different times, yes. I don't recall every single conversation I've ever had. But any conversation I ever had with him, he'd always tell me that: "Tell the truth. That's all I want. Just tell the truth." And that's what I am, telling the truth.

Q. And did you tell the truth in both your letters?

A. Yeah.

Q. Even though they don't seem to be consistent?

A. By consistent you're saying wrote a letter versus drafting the letter. Saying I signed it, and it's me, that's --
Q. I'm saying one letter says Stacey Koch is very rude.
A. She was.
Q. One letter doesn't mention it.
A. Because I'm not -- I didn't write anyone's actions. I didn't write what Judge Mora said. I didn't write what Stacey said. I didn't write what happened between the two of them.
Q. Are you telling the truth today?
A. Absolutely.
Q. And you telling the truth when you wrote each letter?
A. Yeah.
Q. Excuse me. Were you telling the truth when you wrote each of the two letters?
A. Yes. There's nothing that is untrue.
Q. Well, when I say "wrote", one of them was just signed by you, correct?

MR. COFFEY: Okay. So we're going back to this. Mr. Bienstock, we're --

MR. FRIEDBERG: Well, I'll withdraw it. Excuse me.

BY MR. FRIEDBERG:

Q. Now, did you first contact the Judge, or did he contact you?
A. I don't recall. It was a long time ago. I don't recall.
Q. Didn't you look through medical records and get the Judge's contact information and call him?

A. I don't recall how the conversation started, how we spoke first. I don't recall. If I said that, then that's what it is. If it's what's on paper, that's what it is. I don't recall. It's been four years.

Q. Let me ask you if you were asked these questions and gave these answers. By the way, did you read this transcript before you testified today?

A. I did see a transcript, yes.

Q. This transcript.

A. I don't know what this transcript is.

Q. Of your testimony.

A. I've seen my testimony.

Q. Okay. On page 29, line 21, "MS. DIPALO: How do you -- how do you know where to send it to? THE WITNESS: Because at the time, knowing that, now I know it was Judge Mora. I had his phone number, and I contacted him and I told him I have a letter for him. That is, that's it. And I gave him this letter. MS. DIPALO: Rich, can you take the letter down, please? Thank you. Where did you get Judge Mora's telephone number from? THE WITNESS: Right -- right -- right through his account on the medical site, if you will. MS. DIPALO: Okay. Seeta's medical site? THE WITNESS: Correct."

A. Then that is a correct statement.

Q. So you contacted him first before he contacted you?

A. Yeah.

Q. And did you tell him -- what did you tell him when you contacted him?

A. That I wanted to give him some kind of letter to help him or so this didn't

evolve around into this.

Q. And that was your idea, not his.

A. Correct.

Q. And when was this approximately?

A. Right around when I was leaving Seeta Eye. Because once I left Seeta Eye, I didn't even know how he'd get in touch with me after that.

Q. Well, you left in September.

A. Yeah, and I don't recall when we spoke.

Q. Okay. Did you speak? Well, you gave him a cell phone number, right?

A. I believe so. That's the only phone number I have.

Q. That's your personal cell.

A. Yeah. Yeah.

Q. So when you say you don't know how he would have -- he would have contacted you after you left, you had your cell phone. You could always contact him.

A. He couldn't contact me. He never had my phone number, unless I gave it to him.

Q. Didn't you give him your phone number?

A. I obviously had to if we spoke.

Q. And it was your cell phone number, not your Seeta number, correct?

A. I would give him my cell phone number, correct, because it was -- yeah.

Q. So the fact that you were leaving Seeta had nothing to do with his ability to contact you.

A. Yeah, it does, because how would he even know who the heck I am? My name, my address, my phone number? He wouldn't know anything.

Q. Hadn't you talked to him when you called him?
A. I did talk to him, and that's when the letter was done.
Q. Now, did Respondent come home -- come to your house --
A. Correct.
Q. -- to pick up the letter?
A. Yes.
Q. Asked you to drop off the letter, correct?
A. Yes.

MR. FRIEDBERG: Excuse me.

BY MR. FRIEDBERG:

Q. Did Ms. Koch show you the complaint that she wrote to the Commission?
A. I believe so, yes.
Q. Page 29, line 4. Were you asked this question, and did you give this answer? "MS. DIPALO: Did she show you the complaint? THE WITNESS: No, but she said that she was doing it. She was telling me the whole process behind it, and her brother was helping her. And she was on the phone, and she's writing letters, so I knew she was pursuing him."
A. Then that would be what it was.
Q. So you just said --
A. I didn't see it. I didn't, no.
Q. -- you just said it was wrong.
A. No. It was wrong. I'm sorry. Like I said, it was four years ago. If that's what I put down, that's exactly what it is.

Q. Now, do you have video of the Judge coming to your house?
A. Not anymore, because it was so long ago. I'm not going to keep that on my recording. There was no need to because I thought everything was done and over with. I didn't know I'd still be here.
Q. Now, you testified before the Commission in September 2022, correct?
A. If that's the date, then that's what it is.
Q. And at that time, you said you had video of the Judge coming to your house.
A. Yeah. Yeah.
Q. But he had come to your house a few months earlier, or when did he come to your house?
A. The one time he visited my house that I recall. Just the one time.
Q. And what was his purpose in coming to your house?
A. The letter.
Q. He brought you the letter to sign.
A. What do you mean by that?
Q. He brought you the letter that he drafted for you to sign, correct?
A. Drafted. Not finalized, until I looked at whatever and made sure it was correct.
Q. And when you saw it, it was correct, and you signed it, correct?
A. If that's what it was.
Q. You didn't make any changes.
A. I do not recall. But if a change needed to be made, it would have been made. Whatever is on the paper at the end of the day that has my signature is correct.

Q. Do you recall making any changes in the Judge's draft of your letter?
A. I don't recall.
Q. Now, on the day Stacey testified before the Commission, did she tell you she was testifying?
A. I don't recall. I don't. If it's written down that I did, then I did. If it's not, I don't recall.
Q. Didn't you call Respondent to tell him that Stacey "told me she testified before the Commission"?
A. Once again, I don't remember. If it's written down, then that's what it is. If it's not there, I don't remember.
Q. Did you tell him -- the day you testified, did you call the Judge and say, "I testified before the Commission about this matter?"
A. No. Why would I tell the Judge I testified? No, I didn't. I don't recall any of that. I don't. I'm not going to call the Judge on a personal. "Hi, how you doing? I told her" --

MR. BIENSTOCK: There's no question pending. You answered it.

BY MR. FRIEDBERG:

Q. Now, on direct, when you were asked about your statement that you wrote that same day, Exhibit 29, you said, "I wrote exactly what happened". Is that true?
A. Which letter are we referring to? Are we referring --
Q. The handwritten letter.
A. The handwritten.
Q. Yes.

A. That is what happened? But --
Q. That's exactly what happened, correct? Yes or no?
A. Yes.
Q. Thank you.

MR. FRIEDBERG: Give me two minutes, please.

MR. BIENSTOCK: Two minutes.

Let me ask you a question, Mr. Brown. On Exhibit 29, whose handwriting is in the upper half of that page.

THE WITNESS: This one here?

MR. BIENSTOCK: Yes.

THE WITNESS: So this is all my handwriting.

MR. BIENSTOCK: The whole thing from top to bottom is your handwriting?

THE WITNESS: Correct.

MR. BIENSTOCK: Except for the thing on the lower right, right?

THE WITNESS: Yeah. Employee who observed, yeah. My name, address, phone number. It's all there. It's still correct.

MR. BIENSTOCK: And the text and the letter is in your handwriting?

THE WITNESS: That is my handwriting. It is.

MR. BIENSTOCK: Okay. Thank you.

MR. FRIEDBERG: I have nothing further.

MR. BIENSTOCK: Okay.

REDIRECT EXAMINATION

BY MR. COFFEY:

Q. So with regard to whether -- so with regard to whether or not you saw the complaint, I want to ask you if you recall being asked this question and giving this answer before the Commission. Page 29, line 16 -- no 15. Question from Ms. DiPalo. "Did you see a copy of Ms. Koch's complaint?" Answer: THE WITNESS: "Yes, I did from Ms. Koch. She showed me." You recall giving that answer?

A. Then that is exactly what it is, yes.

Q. All right. Okay. That's fine. Thank you.

MR. FRIEDBERG: No questions.

MR. BIENSTOCK: Thanks for coming down, Mr. Brown. I appreciate it.

MR. COFFEY: Thank you, Mr. Brown.

THE WITNESS: Thank you.

MS. DIPALO: Thank you, Mr. Brown.

MR. BIENSTOCK: You may step down.

What's next?

MR. FRIEDBERG: There are no other witnesses today?

MR. BIENSTOCK: Do you want to Respondent -- are you ready for Respondent to take the stand?

MR. COFFEY: We prefer to start in the morning if we can.

MR. BIENSTOCK: Would you save some time by putting the Judge on or would you prefer to wait till tomorrow morning?

MR. COFFEY: I'd prefer to wait till tomorrow morning. I can't imagine that we cannot finish my client tomorrow. So if I bring him in the morning, he's the only client [sic] that I have.

MR. BIENSTOCK: I understand that.

MR. COFFEY: So if I put him on at, you tell me: 9, 10, 9:30. I don't care. There's no question in my mind that he will be done by mid-afternoon at the latest. I can tell you this, I'm not going to be three hours in my direct examination with him. So I don't know how long the --

MR. FRIEDBERG: From 10 to mid-afternoon tomorrow is more than three hours.

MR. COFFEY: No, I know that, but that depends on how much cross-examination he's doing.

MR. BIENSTOCK: We have to come tomorrow morning anyway, so we might as well wait till 10 o'clock tomorrow.

MR. FRIEDBERG: All right.

MS. DIPALO: And Mr. Bienstock, I'm just

going to ask Mr. Coffey.

Can we get -- will you have a chance to look over the admissions?

MR. BIENSTOCK: I will. Yes, I will.

MS. DIPALO: And we can deal with that?

MR. FRIEDBERG: Yeah, and resolve that.

MS. DIPALO: Thank you.

MR. BIENSTOCK: Okay. Let me ask you, generally, though, how does the Commission plan to prove the third count? Is all that -- are all the documents in that would prove the third count?

MS. DIPALO: Well, I need them in.

MR. BIENSTOCK: I --

MS. DIPALO: I would like them in evidence before the Judge testifies. Some of the emails are in as exhibits.

MR. BIENSTOCK: I know.

MS. DIPALO: Others, they're admissions.

MR. FRIEDBERG: Just, Mr. Coffey could tell us in the morning before the Judge testifies about those exhibits. We'd appreciate it.

MR. BIENSTOCK: And it's your view that those exhibits, plus whatever else is in, are sufficient to prove the third count?

MR. FRIEDBERG: Also the Judge's testimony,

Mr. Bienstock.

MR. BIENSTOCK: Okay.

MR. COFFEY: Well, assume the Judge didn't testify, we have to make him -- I'm sorry. I'm eating so I have to apologize. The question is, at the end of their direct proof, whether they have sustained, even whatever comes in, whether they have sustained, for your purposes, a violation.

MR. FRIEDBERG: Right. We have the ability to call Respondent. We've chosen to wait and do it all in cross-examination. You want us to do it out of order?

MR. BIENSTOCK: No, I understand. Okay. I got it.

MR. FRIEDBERG: Okay. I got it.

MR. BIENSTOCK: Okay. I have my answer till tomorrow at 10 o'clock.

MR. FRIEDBERG: All right. Thank you.

MS. DIPALO: Thank you.

MR. BIENSTOCK: Off the record.

(Proceedings concluded at 3:32 PM)

INDEX OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
For the Commission:				
Stacey Koch	142	265		
For the Respondent:				
Michael Sussman	214	238	259	
Michael Brown	304	317	337	

EXHIBITS

COMMISSION

	Description	Ident.	In Evid.
29	Statement of Michael Brown, dated December 28, 2021	187	185
30	Respondent's letter to the Commission May 9, 2024 (UNREDACTED), and unnumbered email attachments		303
31	Respondent's letter to the Commission dated July10, 2024, (UNREDACTED), and email attachments numbered 1 to 127		303
32	Respondent's letter to the Commission dated June 17, 2022 (UNREDACTED), with attachments		303
33	Respondent's Prior Testimony Before the Commission on February 27, 2024 (UNREDACTED), with Commission and Respondent's Exhibits (formerly Ex. 33-A through 33-NN)		303
34	Respondent's Verified Answer dated April 11, 2025 (UNREDACTED)		303

COMMISSION ON JUDICIAL CONDUCT
61 Broadway
Suite 1200
New York, NY, 10006

35	(FOR ID ONLY) Email from Respondent to Michael H. Sussman, Esq., dated February 13, 2023	254

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61 Broadway
Suite 1200
New York, NY, 10006

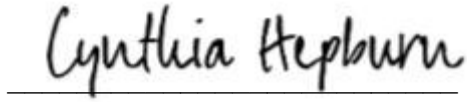
RESPONDENT

	Description	Ident.	In Evid.
D	Picture of a face shield (in evidence, pp 9, Day One)	154	
F	Michael Brown letter dated June 13, 2022 (in evidence, pp 9, Day One)	322	

C E R T I F I C A T I O N

I, Cynthia Hepburn, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: October 24, 2025



Cynthia Hepburn

COMMISSION ON JUDICIAL CONDUCT
61 Broadway
Suite 1200
New York, NY, 10006

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to :

FRANK M. MORA :

a Judge of the Poughkeepsie City Court, :
Dutchess County.

- X

Commission Offices
61 Broadway, Suite 1200
New York, New York 10006

October 17, 2025
10:31 a.m.

B e f o r e:

PETER BIENSTOCK, Esq.
Referee

P r e s e n t:

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ALAN W. FRIEDBERG, Esq.
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A l s o P r e s e n t
HON. FRANK M. MORA
Respondent

ANDY FENWICK
Investigator II

MIGUEL MAISONET
Senior Clerk and FTR Operator

MR. BIENSTOCK: On the record?

THE CLERK: On the record.

MR. BIENSTOCK: Good morning. As I understand it, we have one witness left; is that correct?

MR. COFFEY: Correct.

MS. DIPALO: Yes.

MR. BIENSTOCK: Okay. I propose to start with that witness and finish as quickly as possible. Are there any other housekeeping matters?

MS. DIPALO: Mr. Bienstock, I had put Commission Exhibits 30 through 34 in evidence. And let me just confirm. I had marked it for identification yesterday, and we had put off marking it in evidence.

MR. FRIEDBERG: To see if this went in or not.

MR. BIENSTOCK: Are they in the book?

MS. DIPALO: And to see if Mr. Coffey had any objection.

MR. BIENSTOCK: Are they in the book?

MS. DIPALO: Yes, they are. They were admissions made by --

MR. BIENSTOCK: I understand.

MS. DIPALO: -- Judge Mora.

MR. BIENSTOCK: I know what they are.

MR. COFFEY: Judge --

MR. BIENSTOCK: Mr. Coffey?

MR. COFFEY: Yes.

MR. BIENSTOCK: On 30 to 34?

MR. COFFEY: We do not object except to this extent. We don't believe they should be redacted.

MR. BIENSTOCK: I'm sorry. I can't hear you.

MR. COFFEY: I'm sorry. Because I don't -- I'm sorry.

MR. BIENSTOCK: Hold on one minute. It's a problem on my end. It's my speaker.

Okay. Let's try again.

MR. COFFEY: Okay. Judge, you will note in 30 through 34 --

MR. BIENSTOCK: Yes.

MR. COFFEY: -- there are a series of redactions.

MR. BIENSTOCK: Yes.

MR. COFFEY: We object. We think if they're coming in, they ought -- there's no reason why there should be any redactions. There's no confidentiality. There's no reason why they should be redacted. So we think we should have it all.

MS. DIPALO: Mr. Bienstock, may --

MR. BIENSTOCK: Give me a minute.

MS. DIPALO: Yes.

MR. BIENSTOCK: Why shouldn't we have it all?

MS. DIPALO: Mr. Bienstock, first of all, portions have been redacted of the letters, at the very least, to include matters that are not currently the subject of this formal written complaint. In addition --

MR. BIENSTOCK: You decided that, right?

MS. DIPALO: Yes, because they are matters that were not within the four corners. They were other matters that were under investigation by the Commission and have either been held in abeyance or dismissed.

In addition, Judge Mora is going to testify today, so that obviates the need for him to put his prior testimony in, and Judge Mora is, you know --

MR. BIENSTOCK: Which one is that? Is that 35? Let me see what I --

MS. DIPALO: I'm going to --

MR. BIENSTOCK: 33?

MS. DIPALO: Mike, are you still picking me up if I'm standing?

MR. FRIEDBERG: 33.

MS. DIPALO: Well, 33 is the Judge's prior testimony before the Commission, and I would argue that putting the entire testimony in -- the rest of the testimony is hearsay. They're statements offered for the truth of the

matter. It's hearsay. Only the admissions go in.

MR. BIENSTOCK: It's a prior sworn statement, right?

MS. DIPALO: Yes.

MR. BIENSTOCK: And can you point, with some specificity -- we were talking about 30 to 33, and we just talked about 33, so we're talking about 30 to 32. Can you point to something specific that requires redaction?

MS. DIPALO: The May 9th letter, I don't have any objection to that all going in. I redacted it because it was not an admission. If we want to put an unredacted copy of the entire May 9th letter, I don't have any objection to that.

MR. BIENSTOCK: Number 30 is received.

(Commission Exhibit 30 was admitted into evidence)

MR. BIENSTOCK: An unredacted copy will be delivered to Mr. Coffey at the first break.

MS. DIPALO: As to Exhibit 31, I wouldn't object to the first page being unredacted. Just give me a minute. I have no objection to the first three paragraphs of the second page being redacted.

MR. COFFEY: Being redacted?

MS. DIPALO: Being unredacted. I'm sorry.

MR. COFFEY: Unredacted.

MS. DIPALO: Yes.

MR. BIENSTOCK: I don't understand something.

MS. DIPALO: Yes.

MR. BIENSTOCK: The Judge signed the letter that's 31.

MS. DIPALO: Yes.

MR. BIENSTOCK: So he's seen the whole letter, right?

MS. DIPALO: Yes, he has.

MR. BIENSTOCK: And the purpose of redacting it now?

MS. DIPALO: It just was not an admission.

MR. BIENSTOCK: Okay.

MS. DIPALO: I mean, if we want to put it in for context, I have no objection.

MR. BIENSTOCK: 31 is in?

MS. DIPALO: Oh, no. I have an objection to 31. I have no objection to the first page of 31 --

MR. BIENSTOCK: The letter --

MS. DIPALO: -- being unredacted.

MR. BIENSTOCK: The letter is in.

MS. DIPALO: Excuse me, Mr. Bienstock. May I just be heard? You don't have an unredacted copy of the letter. So on the second page, paragraphs 4, 5, 6, Judge Mora corrects part of the record, and he signed it, so he is

correcting his testimony, and it's a prior statement, so we would like that redacted.

MR. BIENSTOCK: The Judge is right here.

MS. DIPALO: Yes.

MR. BIENSTOCK: He will testify.

MS. DIPALO: But it's --

MR. BIENSTOCK: You may cross-examine him.

MS. DIPALO: But Mr. Bienstock, what it's going to do is it's going to bolster his testimony. I'm happy to show you --

MR. BIENSTOCK: And that's an objection of what sort?

MS. DIPALO: It's hearsay.

MR. BIENSTOCK: It's not hearsay if he's here.

MS. DIPALO: It's a prior statement --

MR. BIENSTOCK: It's prior hearsay --

MS. DIPALO: -- offered for the truth of the matter.

MR. BIENSTOCK: -- and you have him to cross-examine.

MS. DIPALO: Would you like to see a copy of the letter, Mr. Bienstock?

MR. BIENSTOCK: That would be helpful. That --

MS. DIPALO: I have an unredacted copy for you.

MR. BIENSTOCK: That would be helpful.

MS. DIPALO: Would you like an unredacted copy?

MR. COFFEY: Sure. We've got that somewhere. Thank you.

MS. DIPALO: The --

MR. COFFEY: Thank you.

MS. DIPALO: It's just the letter. The attachments are not. Thank you.

MR. BIENSTOCK: The attachments are not redacted?

MS. DIPALO: Yes.

MR. BIENSTOCK: Okay.

MS. DIPALO: Yes, sir.

MR. BIENSTOCK: Do you have anything more to say, Ms. DiPalo?

MS. DIPALO: I would object to the admission of the second half of page 2 and page 3 going into evidence because Judge Mora is here to testify, and --

MR. BIENSTOCK: Your objection is overruled. 31 is in.

(Commission Exhibit 31 was admitted into evidence)

MR. BIENSTOCK: That leaves 32. I suppose

the objection is the same, right?

MS. DIPALO: Just give me a minute.

MR. BIENSTOCK: Sure.

MS. DIPALO: So Mr. Bienstock, this letter was written to Judge Mora concerning -- if you see the file numbers, there were redacted file numbers next to File Number 20, 21, and -1120.

MR. BIENSTOCK: Wait. In 32?

MS. DIPALO: Yes.

MR. BIENSTOCK: I have a letter written by you -- I'm sorry, written to you, right, and it shows he's -- this is written to you by his lawyer and countersigned by him, right? You're on the same one?

MS. DIPALO: Yes.

MR. BIENSTOCK: Dated June 17, 2022?

MS. DIPALO: Yes, sir.

MR. BIENSTOCK: So your argument is that the redacted portion is about something else?

MS. DIPALO: Yes, the majority of it. Yes, sir.

MR. BIENSTOCK: It's about something else that Mr. Mora knew about, right?

MS. DIPALO: Yes. He -- but the --

MR. FRIEDBERG: Not the record.

MS. DIPALO: The record is -- it's not part of the --

MR. BIENSTOCK: I understand.

MS. DIPALO: -- the allegations.

MR. BIENSTOCK: I understand. I'll let you be heard, Mr. Coffey, on 32.

MR. COFFEY: Thank you, Judge -- or Judge. Mr. Bienstock. The letter's coming in, and there's extraneous material. You're a hearing officer. This is not a jury question. You can disregard it if you want. I think, for completeness, they ought to have all -- the whole letter in. It doesn't add or subtract from anything as far as I can see, so rather than go through this procedure, painful, of --

MR. BIENSTOCK: Now, these are -- I'm sorry. I heard you.

Ms. DiPalo --

MS. DIPALO: Yes.

MR. BIENSTOCK: -- these are other actions about which this witness heard and knew about, right?

MS. DIPALO: Yes, sir.

MR. BIENSTOCK: And so if we unredacted it, we're not giving him any information that's confidential from him.

MS. DIPALO: It would -- it could possibly be in the public record. So the fact of the other Commission investigations, one of which has been dismissed and one is -- one of which is currently being held in abeyance,

would be part of the public record. And I would argue, again, it's not relevant to the formal -- the allegations in the formal written complaint.

MR. BIENSTOCK: When would it be made public?

MS. DIPALO: In the event that there is a public discipline, the record -- the entire record becomes public.

MR. BIENSTOCK: Right. Including this information.

MS. DIPALO: Well, yes, the unredacted information if --

MR. BIENSTOCK: And what about the redacted information?

MS. DIPALO: No, the redacted information does not become public because it's redacted. It would be this document that would be made public if it is an exhibit, if it's admitted as an exhibit.

MR. BIENSTOCK: Yeah. I'll overrule the objection. All of 30 and 33 are admitted.

MS. DIPALO: Mr. Bienstock, I would ask, then, if you are going to do that, for context, that we would be permitted to introduce into evidence the Commission's letter dated March 30, 2022, which is referenced and this letter is in response to, and the Commission's letter dated April 12, 2022.

MR. BIENSTOCK: Any objection?

MR. COFFEY: No, because I can't very well argue that they can't redact it and then say redact the letters from the Commission, so if it's in, it's in.

MS. DIPALO: So --

MR. BIENSTOCK: That can be admitted.

(Commission Exhibits 36, 37 were admitted into evidence)

MR. BIENSTOCK: I would need copies of that.

MS. DIPALO: Yes. We would --

MR. BIENSTOCK: We will do that at the break.

MS. DIPALO: Okay. And that would be -- just for clarification of the record, that would be Commission Exhibit 36 in evidence, and that's --

MR. FRIEDBERG: Give the date of that.

MS. DIPALO: I'm going to.

-- in evidence, and that's the Commission's letter to Judge Mora dated March 30, 2022, and Commission Exhibit 37 in evidence would be the Commission's letter to Judge Mora dated April 12, 2022.

MR. BIENSTOCK: Okay.

MS. DIPALO: Thank you.

MR. BIENSTOCK: When you have copies of that, we'll say it again.

MS. DIPALO: We have them now. Would you

like them?

MR. BIENSTOCK: Sure.

MS. DIPALO: Mr. Coffey, do you need a copy of the --

MR. COFFEY: Yeah. I don't need it now. You can give it to me later, Andy. That's fine.

MS. DIPALO: Do you have a copy for him?

MR. COFFEY: Oh, if you do, that's great. Thanks. The first is 36 and 37, and --

MS. DIPALO: 36 is the March 30th letter.

MR. COFFEY: Yes, I got it. Okay.

MS. DIPALO: And 37 Andy is --

MR. COFFEY: Yeah. Okay. Thank you.

MS. DIPALO: -- getting for us now.

MR. COFFEY: Yeah. Okay.

MS. DIPALO: Okay. We will provide the Exhibit 37 --

MR. BIENSTOCK: We'll do it at a break.

MS. DIPALO: Yes.

MR. COFFEY: Yeah, I couldn't --

MR. BIENSTOCK: Is there anything else?

MR. COFFEY: I couldn't find 37, and I said, "Something's missing. I've got to find that".

MS. DIPALO: We don't have it right now.

MR. COFFEY: I'm going to have to -- that's

fine. That's fine.

MR. BIENSTOCK: You'll be allowed to question on it after it's provided.

MS. DIPALO: And before we begin, can we just -- yes, I don't believe you ruled on Exhibit 34. That's the Judge's verified answer. But actually, I do believe this may be moot because we put in the entire --

MR. BIENSTOCK: Yeah, the answer is --

MS. DIPALO: -- answer as Referee's Exhibit C, so we don't --

MR. BIENSTOCK: I don't have a -- oh, wait.

MS. DIPALO: Yeah.

MR. BIENSTOCK: 34 is received without the redactions. I'm not sure why 34 is redacted.

MS. DIPALO: It was simply because it was an admission.

MR. BIENSTOCK: Someone --

MS. DIPALO: It was just more for --

MR. BIENSTOCK: Someone loved the process so much that they continued it.

Okay. 34 is received without the redactions.

(Commission Exhibit 34 was admitted into evidence)

MS. DIPALO: Okay. So just so the record is clear, Mr. Bienstock, for -- Commission Exhibit 30 is going in -- Commission Exhibit 30, which is Judge Mora's letter

dated May 9, 2024, submitted through Counsel, is going into the record in evidence unredacted?

MR. COFFEY: Correct. Correct.

MR. BIENSTOCK: Yes.

MS. DIPALO: Commission Exhibit 31, which is Judge Mora's letter dated July 10, 2024, through Counsel, is also in evidence unredacted?

MR. BIENSTOCK: Yeah.

MR. COFFEY: That's correct.

MS. DIPALO: Commission Exhibit 33, which is Judge Mora's letter to the Commission dated June 17, 2022, through Counsel, a complete copy of that letter is going in unredacted?

MR. BIENSTOCK: I have 33 as the transcript --

MS. DIPALO: Oh, I'm -- yes, 32. I misspoke. Thank you. Commission Exhibit 32, which is Judge Mora's letter to the Commission dated --

MR. BIENSTOCK: Yeah.

MS. DIPALO: -- June 17th is going in unredacted?

MR. BIENSTOCK: Yes.

(Commission Exhibit 32 was admitted into evidence)

MS. DIPALO: A full copy with exhibits?

MR. BIENSTOCK: Is that a threat?

MS. DIPALO: No, no, no, no. I'm just -- I'm asking.

MR. BIENSTOCK: I'm kidding.

MS. DIPALO: I'm asking.

MR. COFFEY: Sounds like it. No, I'm only kidding. That's -- I'm okay with that, yeah.

MS. DIPALO: With exhibits. Okay. And --

MR. BIENSTOCK: Yes.

MS. DIPALO: -- Commission Exhibit 33, which is Judge Mora's entire IA testimony on February 27th, is in evidence?

MR. BIENSTOCK: That's correct.

(Commission Exhibit 33 was admitted into evidence)

MS. DIPALO: We have that if you'd like a copy of Judge Mora's unredacted --

MR. BIENSTOCK: I can live with it -- I can live without it for opinion.

MS. DIPALO: Commission Exhibit 34, which is Judge Mora's verified answer, is going into the record unredacted.

MR. BIENSTOCK: And I have that.

MS. DIPALO: Commission Exhibit 36 will be the Commission's letter to Judge Mora dated March 30, 2022, is in evidence. And the Commission's letter to Judge Mora dated April 12, 2022, will be Commission Exhibit 37

in evidence.

MR. COFFEY: I agree.

MR. BIENSTOCK: All right.

MS. DIPALO: That ends the housekeeping portion --

MR. BIENSTOCK: Well, not quite.

MS. DIPALO: Okay.

MR. BIENSTOCK: What about 35?

MS. DIPALO: 35 -- yes. 35, I believe, was just admitted for identification.

MR. BIENSTOCK: That's correct.

MS. DIPALO: I'm not seeking to admit it into evidence.

MR. BIENSTOCK: Okay.

MS. DIPALO: May I clarify one thing, also? Commission Exhibit 36, which is the March 30th -- you have it in front of you.

MR. BIENSTOCK: Yeah.

MS. DIPALO: The Commission's exhibits will be attached to that letter as well --

MR. BIENSTOCK: I believe they are.

MS. DIPALO: -- for completeness of the record.

MR. BIENSTOCK: I believe they are. There are a lot of --

MS. DIPALO: I believe that's --

MR. BIENSTOCK: There are a lot of attachments here.

MS. DIPALO: Okay.

MR. BIENSTOCK: Five. At least five.

MS. DIPALO: I just wanted the record to be clear.

MR. BIENSTOCK: Yes.

MS. DIPALO: Thank you.

MR. COFFEY: What is 35 again? I can get that later.

MS. DIPALO: 35, I believe, is --

MR. BIENSTOCK: 35 is an email chain from the Judge to his then-lawyer, Mr. Sussman, back and forth. This is 35.

MR. COFFEY: All right. Let me look at this, if I can.

MS. DIPALO: I have a copy of it, Mr. Coffey.

MR. COFFEY: That's okay. I've got something --

MS. DIPALO: You don't have to get up.

MR. COFFEY: I've got something on the floor anyway, so I'll get it.

MS. DIPALO: Hand it to you.

MR. BIENSTOCK: I need that back. Take Ms.

DiPalo's.

MR. COFFEY: Can I give you my private notes on it?

MR. BIENSTOCK: What? Thank you.

Have we concluded the housekeeping?

MR. COFFEY: Yes, far as I know.

MR. BIENSTOCK: Ms. DiPalo, concluded?

MS. DIPALO: Yes. Yes. Thank you.

MR. BIENSTOCK: You may call your witness, Mr. Coffey.

MR. COFFEY: Thank you. I call Judge Mora.

MR. BIENSTOCK: Do you affirm or swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

JUDGE MORA: I affirm.

MR. BIENSTOCK: Be seated and speak in a loud voice so you can be heard.

FRANK MORA,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q. All right. Judge, you have been present during the entire proceeding; is that correct?

A. Yes.
Q. Let's take a little bit of your background, if we can. How old are you?
A. Fifty-four.
Q. Okay. And where did you grow up?
A. Poughkeepsie, New York.
Q. Okay. Go to school there?
A. Yes, until I went to law school.
Q. Okay. Where did you go to college?
A. Marist College, now Marist University.
Q. Okay. And after your graduation from Marist, what did you do?
A. I took off a year. I worked with my mentor, Sam Brooke, an attorney. He's been an attorney for over 50 years. And then after that, I went to law school.
Q. And where did you go to law school?
A. University of Memphis, Cecil C. Humphreys School of Law.
Q. Okay. And upon your graduation, what did you do?
A. I worked with Sam Brooke, worked for him at the -- at that time, and then him and another gentleman that I grew up with, we started a firm.
Q. Okay. In Poughkeepsie?
A. Yes.
Q. And did you continue to practice until you became a Judge?
A. Yes.
Q. When did you take the bench?
A. January 1 of 2011.
Q. And what is the position that you held at that time?

A. Poughkeepsie City Court Judge.
Q. Is that -- do you still hold that position?
A. Yes.
Q. Okay. Now, what is your religion for the purposes just of context?
A. Catholic.
Q. Okay. And you are a devout Roman Catholic, I assume?
A. I believe I am.
Q. Okay. All right. And during the course of the -- you on the bench, did there come a time when -- we all know we had COVID in 2020. Do you remember that?
A. Yes.
Q. All right. And then there became an issue, is that correct, about your wearing a mask on the bench?
A. Yes.
Q. All right. And just generally speaking, the state was not prepared to allow you to take the bench without a mask, or --
A. No, no, no. No, they specifically allowed me to take the bench and work with a shield.
Q. Face shield?
A. Yes.
Q. Okay.
A. They -- the Administration granted me approval, and they --

MS. DIPALO: Objection. Mr. Bienstock, I'm going to object. This isn't relevant.

MR. BIENSTOCK: Overruled.

MR. COFFEY: All right. We're not going to go into --

BY MR. COFFEY:

Q. But anyway, that was the basis?

A. Yes.

Q. You contested that, what they were doing, apparently, correct?

A. What -- I'm confused.

Q. Well, anyway, you had a dispute with OCA with regard to that; is that correct?

A. Not with regard to the mask. They let me --

Q. Okay.

A. -- wear a shield --

MS. DIPALO: Objection. It's not responsive.

BY MR. COFFEY:

Q. Well, let me do this. What was your --

MR. BIENSTOCK: Hold on. Hold on.

MR. COFFEY: I'm sorry.

MR. BIENSTOCK: Overruled. You can answer that question.

THE WITNESS: Thank you.

A. They let me wear a shield as soon as I asked -- when I said I wasn't able to wear a mask. I had to show no medical documentation. They just allowed me to do it. The Administration up to -- I think it was the second in charge at that time. I think it was Caruso --

MS. DIPALO: Objection.

MR. BIENSTOCK: All right. Can we just answer the question?

THE WITNESS: Sure.

MS. DIPALO: Mr. Bienstock --

MR. BIENSTOCK: Thank you. Next question.

BY MR. COFFEY:

Q. Now, at any -- in any event, there came a time when a federal lawsuit was initiated; is that correct?

A. That's for the vaccinations, for not vaccinating.

Q. Okay.

A. Correct.

Q. So --

A. That I had a problem with.

Q. That you had a problem with. Okay. And so I was going to get to that. In any event, there was a federal lawsuit, correct?

A. Yes. There still is.

Q. Okay. Now, let me ask you this. With regard to the federal lawsuit, when was that lawsuit commenced, if you recall? Just give me a year, if you recall.

A. I believe December 6 of 2022.

Q. Okay. And your argument about the vaccinations was a religious basis; is that correct?

A. Correct.

Q. All right. Who represented you in that proceeding?

A. Michael Sussman.

Q. All right. Now, how do you know Michael Sussman?
A. I first met him when my children were kicked out of school regarding vaccinations because we don't vaccinate due to our religious beliefs, and there was, I guess, a class action lawsuit, and my children were part of that.
Q. Okay. And when did you first retain him, do you remember?
A. Retain him for what?
Q. For the federal lawsuit.
A. My federal lawsuit?
Q. Your federal lawsuit.
A. Yes. It would be before we filed, so I believe it would be November of 2022.
Q. Okay. So November of -- but before November 2022, you knew Mr. Sussman; is that correct?
A. Yes.
Q. And how did you know him?
A. Through that lawsuit for my children.
Q. The class action?
A. Yes.
Q. Okay. Now, there was an attorney named Chad?
A. Chad LaVeglia.
Q. And who is Chad LaVeglia?
A. He's my previous attorney that was representing me for this -- for the Commission issues.
Q. Okay. And so we have a context here, how do you know Chad, or Mr.

LaVeglia?

A. Just through retaining him for this.

Q. Okay. Now, did there come a point in time in 2022, April or so, roughly in April, when you became aware that Ms. Koch had filed a complaint against you with the Commission?

A. On April 12, 2022.

Q. How did you become aware of that?

A. The Commission sent it to me. I believe they emailed it and mailed it, but I'm not totally sure.

Q. Okay. And did they give you any instructions when they sent that to you or any directions?

A. Yes.

Q. What was that?

A. They -- you have to answer lots and lots of questions.

Q. Okay. So they had a form that you had to fill out?

A. No, it's not a form. They ask you questions, then you write a letter or send it to them that way.

Q. Okay. And did you retain Mr. LaVeglia to complete that -- those answers? If you recall.

A. I believe he was with me from the beginning, but I didn't retain him at that point. He was pro bono.

Q. All right. Well, you can still retain somebody and be pro bono. Would you agree with that?

A. Then yes.

Q. All right.

A. I believe so, yes.
Q. So what you filled out to the Commission, you read and you answered to the best of your ability, correct?
A. Yes.
Q. And that complaint that was directed at you, and we had a copy of that, that complaint revolved around an incident that occurred at Seeta Eye Center on, what, December 28, 2021?
A. Yes, but there was three complaints that I had to answer at the same time.
Q. What were those three complaints?
A. The first one was they alleged that I violated the Administration's, I guess you'd call it, rule that you had to get vaccinated.
Q. Um-hum.
A. And then the second one was not wearing a mask in court.
Q. Um-hum.
A. And that one was eventually dismissed. And then the Seeta one.
Q. The first one about the vaccination, what has happened with that?
A. So the complaint?
Q. Yes.
A. It depends on how long you want me to go on. So when --
Q. Well, is it still pending?
A. Yeah. So when I first got the --

MR. BIENSTOCK: So I want you to answer the question.

THE WITNESS: Okay.

MR. BIENSTOCK: That's all.

THE WITNESS: All right.

A. So what's going on with them. When I first got the complaint was March 30 of 2022.

BY MR. COFFEY:

Q. All right.

A. And then I asked for that to be held -- I didn't use the word abeyance, but postponed, held in abeyance until -- because I told the Commission I had a New York State Division of Human Rights -- an EEOC complaint going for religious discrimination and if you could postpone that until that and my civil remedies are done.

Q. What did they tell you?

A. On April 12 of 2022, they said, "No, we are not bound by the" -- I'll say, "the agencies or the Civil Courts. We basically determine on our own". So I had to answer tons of questions.

Q. Okay.

A. When I say tons, it wasn't --

MR. BIENSTOCK: This is on the third complaint?

THE WITNESS: This is on the first complaint, the March 30, 2022.

MR. BIENSTOCK: The first complaint is this one, right?

THE WITNESS: No. The one we're here for?

MR. BIENSTOCK: Yes.

THE WITNESS: No. This is the second

complaint.

MR. BIENSTOCK: Is the one we're here for.

THE WITNESS: Correct. The first one, they told me, no, they would not hold it in abeyance.

MR. BIENSTOCK: Which was the first one? The --

THE WITNESS: That's the one for my religious beliefs that I --

MR. BIENSTOCK: No, no, no, no. Say, as quickly as you can, which are -- we're talking about, one, two, and three.

THE WITNESS: So one is the -- where I didn't get the COVID shots because of my religious beliefs.

MR. COFFEY: That's the vaccination.

THE WITNESS: The vaccination. You want me to call it that?

MR. BIENSTOCK: Okay. Yeah.

THE WITNESS: I'll call it the vaccination.

MR. BIENSTOCK: What happened to that one?

THE WITNESS: All right. So after that, I answered questions for the next --

MR. BIENSTOCK: No, no. What's the status of it today?

THE WITNESS: Today, they're holding it in abeyance --

MR. BIENSTOCK: Okay.

THE WITNESS: -- pending the federal decision that they said they wouldn't do two years ago.

MR. BIENSTOCK: Okay. What about the second one?

THE WITNESS: Second one was dismissed.

MR. BIENSTOCK: Dismissed by whom?

THE WITNESS: By the Commission.

MR. BIENSTOCK: And the third one is this one?

THE WITNESS: Is this one, yes.

MR. BIENSTOCK: Fine.

BY MR. COFFEY:

Q. And the second one -- just in a word, what was the second one?

A. The second one was not wearing a mask in court.

Q. Okay. So we got vaccine -- vaccination, mask in court, complaint of Stacey Koch?

A. Yes.

Q. Okay. Good. Okay. Now, after you received the complaint, I want to talk about this complaint with Ms. Koch. Then, in that year, 2022, did you have any further contact with the Commission, if you recall?

A. Yes.

Q. Okay.

A. They --

Q. What was that? What was that?

A. We had to answer questions, and --
Q. Yeah.
A. -- then they asked more questions. Just -- you're talking about just this one? Because there was a whole --
Q. Yes, I'm just talking about this one.
A. Well, that's hard to --
Q. That's all I care about.
A. That's hard for me to answer because it was all at the same time.
Q. Oh, okay. But anyway, your correspondence or your communication with the Commission continued during 2022; is that right?
A. Correct.
Q. All right. Of whatever the -- one, two, or three, that was all part of it, correct?
A. Correct.
Q. And Mr. LaVeglia, was he representing you at that point?
A. Correct.
Q. All right. Now, at the end of 2022, had formal charges been brought against you?
A. No.
Q. All right. In 2023, starting January, did you have any communication with the Commission in 2023?
A. Yes.
Q. And what was that?
A. Same thing. Asking me many, many questions, answering those questions, objecting to certain things they wanted from me.

Q. All right.
A. I don't know if you want a detailed list of that, but --
Q. No. But you were involved in that, and you were objecting to certain things, and -- is that correct? Through your attorney?
A. Yes.
Q. And you were relying upon Mr. LaVeglia to represent you on that; is that correct?
A. Correct.
Q. I mean, he was dealing with the Commission; is that correct?
A. Oh, yes. I didn't have direct contact with them. It was through him.
Q. And then they would contact him, he'd contact you, and reverse it, you to him and to the Commission; is that right?
A. Correct.
Q. Okay. Did you know anything about the Commission rules or anything?
A. At that point, no.
Q. Okay.

MR. BIENSTOCK: At what point?
THE WITNESS: During this time frame.
MR. COFFEY: 2023?
THE WITNESS: Yes.
MR. BIENSTOCK: Okay.
THE WITNESS: I was relying on my attorney.

BY MR. COFFEY:

Q. Okay. And he would give you advice? In other words, in terms of what you were answering and so forth, you would discuss it with him, correct?

A. Yes.
Q. All right. Now, we go to 2024?
A. Yes.
Q. And in 2024, did you hear from the Commission?
A. I would believe so, yes.
Q. Well, did they file a formal written complaint against you in 2024 or '25?
A. That was '25.
Q. Okay.
A. But in '24, I had to -- I believe it was '24. I had to testify.
Q. All right. You testified --
A. I think it was '24. I don't remember. I'd have to see.
Q. Okay. In any event --
A. But that's when I became familiar with the rules or a little bit more familiar because I printed them --

MR. BIENSTOCK: Hold on one second. When you testified, was that about only this complaint?

THE WITNESS: No. That was about five complaints.

MR. BIENSTOCK: There were two more?

THE WITNESS: There were.

BY MR. COFFEY:

Q. What were the other two?
A. The other two is the not giving them all these emails and redacting them.
Q. Okay.
A. And the other one was they allege that I was not -- that I had a policy of

not ordering 730 exams.

Q. That's your mental health --

A. Mental health, correct. Yes.

Q. Okay. So you had --

MR. BIENSTOCK: What happened to that one?

THE WITNESS: That was dismissed.

MR. BIENSTOCK: Okay. And the fifth one about not providing information is part of this one?

THE WITNESS: Yes, sir.

MR. BIENSTOCK: Okay.

BY MR. COFFEY:

Q. So what we're talking about in this case here today is the formal written complaint, Koch, retaliation emails. That's essentially what we're talking about, correct?

A. That's just before the Commission here with --

Q. Before Mr. Bienstock?

A. With Mr. Bienstock, yes.

Q. Right. Those are the three things we're talking about today --

A. Correct.

Q. -- is that correct? Okay.

MR. BIENSTOCK: And the third one came later?

THE WITNESS: Oh, yes. It came when I received the formal complaint of January of this year.

MR. BIENSTOCK: Okay.

BY MR. COFFEY:

Q. All right. So we got a timeline -- in January of this year, you received a formal written complaint, and at that time, had you retained any -- were you still -- Mr. LaVeglia was still representing you?

A. At that point, yes.

Q. Okay. Let's go back to --

MR. BIENSTOCK: Mr. Coffey, I'm just alerting both of you that I'm going to be a little bit limiting with respect to the other complaints.

MR. COFFEY: Yeah, we're not going into those.

MR. BIENSTOCK: Okay.

MR. COFFEY: All right. Just what we're doing --

MR. BIENSTOCK: And I won't have anything to do. That's why.

MR. COFFEY: No, and I appreciate that, but in the event that this has to go into a further proceeding --

MR. BIENSTOCK: I understand.

MR. COFFEY: -- I want to make sure that we build a record.

MR. BIENSTOCK: I understand.

BY MR. COFFEY:

Q. Now, let's talk about -- you were called to testify before the Commission, correct?

A. Yes.
Q. And was that in the summer of 2023, '24, if you recall? If you recall.
A. I think it was February.
Q. All right. And how long --
A. Might have been February 27th of '24.
Q. Okay. And --

MR. BIENSTOCK: I'm going to note for the record, I think, that the -- now, the entire testimony is admitted into evidence; is that right?

MS. DIPALO: Yes, that's correct.

MR. BIENSTOCK: Okay.

MR. COFFEY: All right.

BY MR. COFFEY:

Q. Judge, just by way of background, you and Mr. LaVeglia appeared. Did you appear in person or by -- virtually?
A. In person.
Q. Down here in your offices here in New York?
A. Yes.
Q. Okay. And that deposition took, what, a couple hours or more?
A. Oh, it took five and a half hours, I believe.
Q. All right. And Mr. LaVeglia was hired by you to represent you; is that correct?
A. Yes.
Q. That's what lawyers do?
A. Yes.

Q. All right. By the way, did you do your own closing on your house or did you have a lawyer represent you?
A. My first house?
Q. I don't care. Any house.
A. Yes, I had my mentor represent me.
Q. Okay. Do you do real estate?
A. Yes.
Q. Okay. In any --
A. Well, I did.
Q. Okay. In any event, let me go back, now, if I can -- we're going to come back, now, to December of 2028.
A. Wait. Oh, December 28th.
Q. 2028. No, 2021.
A. Yes.
Q. I'm throwing those numbers together. I'm sorry. Which brings us here. Were you a patient or your children a patient at Seeta?
A. Yes.
Q. How long had you been a patient at Seeta?
A. Well, like Ms. Koch said, I -- they didn't --
Q. I don't care what she said. How long --

MR. BIENSTOCK: No, no, no, no, no.

A. Oh, I'm sorry.

BY MR. COFFEY:

Q. How long had you --

MR. BIENSTOCK: Just answer the question.

A. Oh, 20 years, I'd say.

BY MR. COFFEY:

Q. Roughly.

A. Because I had my [redacted] done with Dr. Modi.

Q. Okay.

A. I don't think it was Seeta then, but it was Dr. Modi.

Q. Nonetheless, so for approximately 20 years, you've been a patient of that office?

A. I went other places and then came back, but yes.

Q. Judge, I don't care if it's 18 years or 21 --

A. Yes.

Q. -- years. It makes no difference.

A. Yes.

Q. Roughly 21 years. Can we do that?

A. Sure.

Q. Good. Now, in 2021, you were married; is that correct?

A. Yes.

Q. And you had -- do you have any children?

A. Three.

Q. And what were their names?

A. They are [redacted] [redacted] and [redacted]

Q. Okay. And your wife, what is her name?

A. Sheri.

Q. Okay. Let's go to January of 2021. All right? You remember bringing [redacted] in at that time into Seeta?

A. I do.
Q. Okay. And you heard Ms. Koch testify yesterday that she was not present when you came in. Did you hear that testimony?
A. I did.
Q. Was she correct?
A. She was not.
Q. Okay. Tell us about that visit.
A. I walked in --
Q. First of all, how old was [redacted]? We've heard he was ten.
A. No. [redacted], at that point, was [redacted].
Q. Okay. All right. So tell us about that visit.
A. So him and I walked in the front door. I had my face shield on. He had a mask on. Walked right up to the reception, and the receptionist -- I'm not sure the name. I don't know which one -- said, "Sir, you have to wear a mask". And I said, "I don't medically tolerate a mask". And she said, "Okay. Let me have my -- our manager, Stacey Koch, come out. Can you stand over there"? And then she had me stand in a spot, and [redacted] was right next to me.
Q. Okay. Go on.
A. And then Ms. Koch came out, and abrupt, I guess, is the word I would use. She came right into my face, within either a foot or two, and started yelling at me, "You have to put a mask on". And I said, "Ma'am, I'm sorry, I don't medically tolerate a mask". I actually had to step back because she was right in my face yelling at me.

So I'm not there to cause a problem. I said -- I said, "Ma'am, I just

can't medically tolerate a mask". "Well, you -- that's -- you have to wear it". I said, "Well, what do you do for patients that don't medically tolerate a mask"? And she said, "We don't have anyone". I said, "You haven't had one"? And she said, "Well, we had one". I said, "Well, what did you do for that -- for that person"? "Well, she decided to leave the practice".

I said, "Well, I don't decide to leave the practice". I said, "We like the doctors here, especially Dr. G[redacted], who my children have been seeing for years". I said, "Listen, he's [redacted]. He's going on [redacted]". I said, "Can he please go in? I'll wait outside because he's a big boy". I said -- she said, "Yes". I said, "Okay". I said, "Can you just, please -- for the next time I come, either for myself or my other minor children, minor-minor children who are younger than him, can you please just have something in place for when I come back the next time"?

Q. Okay.

A. And I waited in my truck, and then [redacted] went in.

Q. Now, we heard of another woman who may have worked there at the time. Do you recall her name?

A. Only from the testimony today. Danielle Foster, I believe.

Q. You ever met her?

A. No. I couldn't pick her out of a lineup.

Q. Okay. All right. So after that -- when you had that discussion with Ms. Koch, did it end amicably at that time?

A. I thought it did --

Q. Okay.

A. -- because I went and waited in my truck. And then [redacted] called me

from the waiting room -- I mean, excuse me, the exam room and put Dr. G[redacted] on, and he said, "Everything's good with his eyes", da-da-da-da, "see you next time", or whatever he said. I said -- and he put [redacted] back on. I said, "[redacted], go check out now". So he goes to the checkout. Now, the checkout --

MR. BIENSTOCK: Excuse me.

THE WITNESS: Yes.

MR. BIENSTOCK: Do you know that he went to the checkout?

THE WITNESS: I do.

MR. BIENSTOCK: Okay. Go ahead.

THE WITNESS: I'll tell you how right now.

A. He went to the checkout, and I said -- I said, "Come back out". He calls me from the checkout, which is right in the same area. It's a big room. It's probably as big as this room, maybe bigger. And he says, "Dad, you have to come and pay the co-pay". I said, "Okay". I figured they would just bill me. I said, "Just please tell them I still have just my shield on". And he did. He said, "Yes, that's fine. Come in". I hang up. I say to myself, "This is great. They're accommodating me. They're working with me".

MR. BIENSTOCK: Strike what you said to yourself.

A. I walk in. I go through the same area that everybody goes in, that we just went in. I stand in line with him. Maybe there was one or two other people in front of me. I don't remember. I have my shield on. He has his

mask on.

BY MR. COFFEY:

Q. You pay the bill?

A. I pay the bill, and we walked out.

Q. Fine. Now, from January to December of 2021, had you been in that office at all in that period of time?

A. No.

Q. All right. Now, let's go to December 2021. Okay? And in December of 2021, you came to the office that day; is that right?

A. Correct.

Q. And were you with anyone?

A. Yes.

Q. We heard one of the witnesses testify that you were alone; is that true?

A. No, that was a mistake. That was in the -- that was the next year.

Q. Okay. Who were you with that day?

A. [redacted]

Q. Okay. And [redacted] was how old at the time?

A. [redacted].

Q. All right. And what was the reason why he was there? I know to get his eyes examined.

A. Yes. My wife and I have very poor vision, my wife worse than me, and [redacted], unfortunately, inherited that, and [redacted].

Q. Okay.

A. And he needed -- he couldn't see at school. [redacted]

[redacted].

Q. Okay.

A. So that's why we were there that day.

MR. BIENSTOCK: Judge, I understand your interest in being thorough, but the genealogy of your vision problems is not relevant.

THE WITNESS: Thank you.

MR. COFFEY: All right? All right. Good.

BY MR. COFFEY:

Q. So in any event, he was there to be seen. You came in with him; is that right?

A. Yes.

Q. Okay. And when you came in, was he wearing a mask?

A. Yes.

Q. And were you wearing anything?

A. I was wearing my face shield.

Q. Okay. And tell me what happens when you come in.

A. I walked in, walked right up to reception like I did the last time, and the receptionist again said, "Sir, you have to wear a mask". I said, "Oh, no, I already went through this with Ms. Koch 11 months ago. Can you have her come out"? And again, "Please step aside". And I stood in the exact same spot they told me to the last time with [redacted] next to me.

Q. Okay. And did there come a time when Ms. Koch came down or came to your presence?

A. Yeah, she came out almost immediately.

Q. Okay. And you recognized her?

A. Yes.
Q. Okay. Were you calling each other by your first name, or did you even --
A. I don't think we had the occasion to do that.
Q. All right.
A. Probably, though.
Q. All right. In any event, tell me what happened when she came out.
A. So she came out, and she never came near me. She walked straight past me and went over to the plexiglass, like, where the reception area is where the receptionists sit.
Q. Um-hum.
A. And then continue to tell you what --
Q. Yeah.
A. Oh. So I'm about ten feet away, maybe more, and [redacted]'s standing right next to me. The patients are about ten feet away from me, also. The room is huge, and they had very limited chairs in there, maybe 20 chairs. And she starts, like she did in January, berating me. "You have to put a mask on". I said, "Ms. Koch, I don't medically tolerate a mask. We just went through this".
Q. She indicated yesterday that you never said to her, ever, at least in the first -- at least for the first ten minutes, maybe more, that you indicated you had a medical issue with the shield; is that correct?
A. That is not correct. I did it everywhere I went when somebody --
Q. I don't care about other places.
A. Okay.
Q. I care about here.

A. Yes. No, I did it here.
Q. And how many times did you tell her that?
A. During this whole episode?
Q. Yeah. Right.
A. Huh.
Q. No --
A. Had to be at least three, four times.
Q. Okay. So anyway, go on.
A. So she continued. She didn't ask for medical documentation at that time.
Q. All right.
A. She was just yelling at me. I was in shock. I was -- I was -- started to have a panic attack. At one point, she holds up a mask and says, "Put this on". And I wanted so badly to put it on because I needed to get his eyes -- but I couldn't do it. A panic attack set on. That's why I was frozen in my spot.
Q. Have you had panic attacks in the past?
A. From the mask, yes.
Q. Okay. All right.
A. It happened in court at least one time.
Q. Okay.
A. I had to step off the bench, actually.
Q. Okay. Go ahead.
A. So just -- then she -- as you hear the 911, I'm trying to explain it to her. I'm trying to reason with her. And she told me to stop talking, and she said, "We don't want to breathe your air". And that's when I said -- I said,

"I'm going to talk". Because I'm nowhere near anyone. I'm ten feet away. The CDC says six feet. Everyone else has a mask on. I'm trying to advocate for my son.

And I said -- and you can't hear this on the 911, but I said -- because I wasn't talking loud. I said, "What do you mean? Everyone breathes everyone's air. People go to restaurants all the time". I didn't say she went to a restaurant. I said, "People go". And just to say everybody breathes everybody's air. That's all I was trying to say. It didn't make any sense what she was saying to me.

Q. Okay.

A. I wasn't trying to taunt her. I was just saying it doesn't make any sense.

MR. BIENSTOCK: Just what you said and she said. Come on. You know the rules.

BY MR. COFFEY:

Q. All right. So you're going back and forth with her at that point?

A. Yes.

Q. And she calls the -- what does she do? She calls someone?

A. She called the police.

Q. Okay. And when she called the police, how long had you been present in the building at that point, roughly?

A. Oh. Oh, in the -- you mean from when she came out or --

Q. The time you entered to the time the police are called.

A. Maybe three or four minutes.

Q. Okay.

A. She came out right away.

Q. Okay.
A. Maybe.
Q. Well, from the time -- okay. So from the time you entered the building to the time she called the police to come, how long a period of time elapsed?
A. Maybe three or four minutes.
Q. Okay. Now, did you tell her, "The police aren't going to come"?
A. No.
Q. What did you say to her?
A. At some point, I don't remember at what point, I said -- after she's not accepting my medical -- asking for, you know, the medical accommodation, I said, "Dutchess County isn't enforcing it. They're not -- they won't enforce it", is what I said, meaning the police.
Q. All right.
A. I never said they wouldn't come.
Q. All right.
A. Because in our area --

MR. BIENSTOCK: No, no, no. Next question.

BY MR. COFFEY:

Q. Okay. Did you ever say you were a judge?
A. No.
Q. Okay. Now, at the time you brought your son in, let me ask about your personal situation. What was the status of the health of your wife?

MR. BIENSTOCK: You need to take a break?

THE WITNESS: No.

A. [redacted].

BY MR. COFFEY:

Q. Now, what was the medical condition?

A. Do I have to say that?

Q. No. No, you don't. [redacted]. So you became not only -- you became, now, the sole provider; is that correct?

A. Yes.

Q. Okay. And was that affecting your ability -- your personal ability in terms of your daily life?

A. I was very stressed. I was taking care of everything, including my elderly parents.

Q. Okay. Now, let me ask you, she has -- Ms. Koch has testified that on a number of occasions, she directed you to leave. Did she do that?

A. She did.

Q. All right. And when she directed you to leave, she said that she was within a couple feet of you; is that correct?

A. Is it correct that she said it?

Q. No. Well, we know she said it. Is it correct that you were within a couple feet?

A. No, not that day. We never were near each other. We were at least -- well more than six feet. I believe it was at least ten.

Q. And when she directed you to leave, did you leave?

A. Well, eventually I left.

Q. Okay. But at the first time she directed you to leave, did --

A. I did not.

Q. And was that a directive, get out of here or leave or I'm calling the police,

something along those lines?

A. Well, at first, I thought she was telling me to leave like I did with [redacted]. That's what I thought. And just leave him there.

Q. All right.

A. Later, I found out she was just saying, "Either put on a mask or leave".

Q. Okay. So there came a point in time, which we know from the 911 calls, that apparently a second call was put in to the police, correct?

A. Correct.

Q. Why did you not leave at that point?

A. Well, at the first point, once she called the police, I wasn't going to leave. I didn't -- I didn't do anything wrong. And if the police came, I was hoping they would reason with her, especially since they weren't enforcing it.

Q. All right.

MR. BIENSTOCK: You were just asked about the second call.

BY MR. COFFEY:

Q. All right. What about the second call?

A. Oh, so the second call -- I was still trying to talk to her right before she made the second call.

Q. Yeah.

A. So I'm trying to plead with her, "Will you please just see my son"? And then that's when she said -- this is when she said, "Well, do you have any medical documentation"? And I said -- I said, "No, not on me. I could try to get you some". And then I said, "If I get you medical

documentation, will you please see my son today"? And she said, "Yes".

Q. Okay.

A. And that's when I said, "Okay. I'm going to leave. I'm going to see if I can get it".

Q. All right. She's indicated that you left because you were afraid because the police were coming. Is that why you left?

MR. FRIEDBERG: Objection.

MS. DIPALO: Objection.

MR. BIENSTOCK: Sustained.

BY MR. COFFEY:

Q. Well, let me try -- did you leave because you were afraid the police were coming?

A. No, of course not. I thought they were coming the first call.

Q. Okay. So you left?

A. Yes.

Q. Did you leave with your son?

A. Yes.

Q. Okay. Now, during the course of the time you were there, we've heard testimony that you criticized her, yelled at her, badgered her, taunted her. Did you do any of that?

A. I did not.

Q. Okay. Did you ever raise your voice with her?

A. I don't believe I raised my voice. If my voice went louder than normal talking like now, it was only because I'm trying to reason with her and explain the situation. But as you heard on the 911, she kept telling me to

stop talking. She was cutting me off any time I even tried to explain the situation, so I was just trying to get her to hear me. So if my voice raised, I didn't do it intentionally. I don't believe it did, but if it did, that would have been the reason.

Q. Okay. Did she raise her voice at all?

A. Oh, yes.

Q. All right. Now, you know Mr. -- I'll withdraw that. Mr. Brown, you know who he is now, correct?

A. Yes.

Q. Who testified yesterday?

A. Correct.

Q. Did he come out?

A. Yes.

Q. All right. Did you talk to him at that time?

A. No.

Q. All right. Now, you left, and what did you do?

A. I immediately called my doctor and -- to see if --

Q. Who's your doctor?

A. Dr. M[redacted].

Q. What kind of a doctor is he?

A. He's a chiropractor.

Q. Okay. All right. And did you ask him to provide some kind of medical notification to the office?

A. Yes.

Q. Okay. And are you aware that he did that?

A. Well, he sent it to me, so yes.
Q. Okay.
A. And I emailed it to Ms. Koch.
Q. Okay. And then about what time was all this?
A. So the appointment was at three, the original appointment, so that happened for -- it had to be maybe ten minutes there. It wasn't half an hour or 40 minutes as was testified. So I --

MR. BIENSTOCK: No editorials.

THE WITNESS: Oh, sorry.

A. And then I left, went home, called him from there. He stopped what he was doing. He was with a patient. And I don't know if he typed it or if -- his receptionist, secretary, whoever, emailed it right over. I emailed it directly to Ms. Koch. I waited. She didn't call me back, so I called her. I said -- I might have been -- I think I was calling her Stacey then. I said, "Stacey, did you get the -- did you get the email"? "Yes. You can come in". I said, "Thank you". I said, "What time"? "4:30". I said, "Thank you so much". "Just come, park in the -- in the parking lot. Wait in there. Call when you're here". And then she said, "I'll come out and get you".

BY MR. COFFEY:

Q. Okay. Did that happen? Did you pull in the parking lot? Did she come out and get you?
A. She did not.
Q. Someone else did?
A. Yes. Michael Brown.

Q. Okay. And he brought you in, and your son was seen by the doctor?
A. Yes.
Q. Okay. And in the office when he saw -- did you have your face shield on at that time?
A. I did.
Q. And the doctor, was he wearing a mask? Well, was he or wasn't he?
A. Well, not -- it depends on how -- I have to explain it. His mask was underneath his chin.
Q. Okay. Anyway, it wasn't fully covering his face?
A. No.
Q. Okay. In any event, he saw your son?
A. Yes.
Q. And the two of you left?
A. Yes.
Q. All right. Didn't see Ms. Koch again that day?
A. No.
Q. Okay. Later in 2022 -- I'll withdraw that. We've heard this before. In April, you became aware that she had filed a complaint with the Commission; is that correct?
A. Yes.
Q. Okay. Were you aware at that time that she had actually sent a letter to the Mayor of Poughkeepsie setting forth her claims?
A. No.
Q. You've seen -- we've had this introduced into evidence. You've seen this, correct?

A. Yes.
Q. Okay. You've seen it today -- or during the proceeding?
A. During the proceeding.
Q. All right. Now, in May, did you come back to the office?
A. Yes.
Q. All right. Did you have a face shield on at that point?
A. Yes.
Q. All right. Were you allowed in?
A. Yes.
Q. All right. Did you see Ms. Koch at that point?
A. No.
Q. Mr. Brown, did you see him at that point?
A. Yes.
Q. And did you have a conversation with him about what had happened previously in the office?
A. Yes.
Q. And what did he tell you?
A. He couldn't believe it was happening, and he --

MR. BIENSTOCK: No, no, no. What did he tell you?

A. He said, "I can't believe this is happening. What -- I mean, what -- you didn't do anything wrong. You had a" --

MS. DIPALO: Objection. This is hearsay. He's --

MR. COFFEY: Well, Mr. Brown did testify

yesterday to this conversation.

MR. BIENSTOCK: Overruled.

A. And he said, "You -- a complaint and you didn't do anything wrong. You had -- you had a face shield on". I said, "I know". He said, "Oh, I'm so sorry you're going through this. Is there anything I can do for you"? I said, "Oh, I don't know. Maybe would you be willing to write a letter"? He said, "Absolutely".

BY MR. COFFEY:

Q. Was he aware that she had made a complaint to the Commission? If you know.

A. At that point, I didn't think he was.

Q. Okay.

A. But I'm not sure.

MR. BIENSTOCK: Next question.

BY MR. COFFEY:

Q. Okay. Now, after that, the year 2022, did you come back into the office at all, the Seeta office?

MR. BIENSTOCK: I think you mean 2023?

MR. COFFEY: No. No, '22, Judge.

MR. BIENSTOCK: '22?

MR. COFFEY: This was '22. When he came back in in May of '22 when he met Mr. Brown.

MR. BIENSTOCK: Right. You're right.

MR. COFFEY: Okay. I believe he was --

A. Well, I was there prior to that. I was there April 8th with my son.

BY MR. COFFEY:

Q. Which one, [redacted] or [redacted]?

A. [redacted].

Q. Okay. But after you were with Mr. Brown in May of '22, did you come back to the office?

A. In '22?

Q. Correct. If you recall.

A. I don't believe so.

Q. Okay. So you have two visits in '22, one with [redacted], one for yourself?

A. Yes.

Q. Is that right?

A. Correct.

Q. Okay. Let's go to '23.

A. Yes.

Q. Did you come in the office at all in '23?

A. Yes.

Q. Okay. And with each of your sons, both of your sons, neither of your sons?

A. With just one. [redacted].

Q. All right. And followed the same procedure? You came in with [redacted]. Did you have a face shield on at that time, '23? If you recall. And if you don't, it's okay.

A. I don't remember.

Q. All right.

A. If they were required, for masks and all that, I would have had it on.

MR. BIENSTOCK: The answer is, "I don't remember". Everything after that is stricken.

BY MR. COFFEY:

Q. Okay. Now, after that, in '23, did you have any contact with that office, if you recall?

A. No.

Q. All right. And during this period of time, your other action with regard to the state and the federal case, is that proceeding at that point?

A. Yes.

Q. All right. Let's go, now, to '24. And in '23, was Mr. Sussman your lawyer?

A. Yes.

Q. All right. And --

A. For the federal action.

Q. No, I understand.

MR. BIENSTOCK: You said, "Let's go to '24", and then you asked the question about '23.

MR. COFFEY: All right. So I've jumped back.

MR. BIENSTOCK: You may have misspoken.

BY MR. COFFEY:

Q. Up to '24 -- I'm sorry. Mr. Sussman was your lawyer in the federal action?

A. Yes.

Q. And how many times would you estimate you met with him on that matter?

A. Met in person?
Q. Yeah.
A. Okay. So the first time --
Q. No, just tell me how many times.
A. Oh.
MR. BIENSTOCK: No, no, no. How many times?
A. One --
BY MR. COFFEY:
Q. One?
A. -- before it was filed, and then we met again after. I don't remember what that was exactly for.
Q. And did you talk, periodically, with him on the phone or by email?
A. Yes.
Q. Okay. Now, it came 2024. At that period of time, you said that you were called as a witness before the Commission, correct?
A. Yes.
Q. Had a formal complaint been brought against you at that time, if you recall?
A. No.
Q. That was 2025?
A. Correct.
Q. Now, when you came in the Commission in 2024, you were asked a series of questions about this incident; is that correct?
A. Yes.

Q. And you gave your answers to the best of your knowledge, correct?
A. Yes.
Q. Now, at some point in time, the Commission demanded that your attorney turn over emails that you had with him or your attorney and you. Remember that?
A. Yes.
Q. When would that have been?
A. It was after I testified. After I testified.
Q. Okay. You testified when? February -- or do you remember?
A. I think it was February 27th. I think. It was -- I believe it was February of 2024.
Q. Okay. In any event, then the demand was made for the emails. Why was not the lawyer privilege raised, if you know?
A. We did raise it, but --
Q. Oh. To whom?
A. To the Commission.
Q. Okay. And what was the response?
A. The response was I waived the privilege because I -- I'm paraphrasing -- blamed Mr. Sussman.
Q. I'm sorry. What do you mean? You --
A. Well, I relied on his advice.
Q. No, no. Do you know why they told you you had waived the privilege?
A. Yes. Because I said that I listened to Mr. Sussman, and he told me I had a viable claim, and I didn't have to -- you know, didn't have to withdraw it. I'm -- I shouldn't say it that way.

Q. Let me do this.
A. He said I had a viable claim.
Q. Are we talking about this claim, the Koch claim?
A. Oh, wait. No.
Q. Let me go back.
A. Oh, yes, the defamation --
Q. No, no, no -- no, no, we're too confused.
A. Okay.
Q. When they demanded your emails, they demanded emails between you and your two attorneys; is that correct?
A. No.
Q. Who did they demand emails from?
A. From me and Mr. Sussman regarding the defamation case.
Q. Okay. And their position was that you had waived the privilege why?
A. Because I testified about Mr. Sussman --
Q. All right.
A. -- and his advice regarding the viability of the claims.
Q. Okay. Fair enough.

MR. BIENSTOCK: Were you represented at the depositions?

THE WITNESS: Yes.

MR. BIENSTOCK: By whom?

THE WITNESS: Chad LaVeglia.

MR. BIENSTOCK: Got it. Next question.

//

BY MR. COFFEY:

Q. Okay. So in any event, it was determined between -- it was determined that the privilege was waived, apparently, correct?

A. Just for that point, yeah.

Q. I understand, but the privilege was waived, correct?

A. Yes.

Q. And did Mr. Sussman advise you that he thought the privilege was waived? Or you don't remember?

A. I don't even know if I talked to him about it.

Q. All right. You determined that you were going to turn over emails anyway, correct?

A. With Mr. LaVeglia.

Q. With Mr. LaVeglia. All right. So it goes from you to LaVeglia to Sussman?

A. Yes.

Q. All right. Now, Sussman -- I don't mean to use the last name, but just for purposes of this, Mr. Sussman did not represent you before the Commission; is that correct?

A. He represented me pro bono. He didn't put a notice of appearance or anything like that, but he was representing me pro bono.

Q. I thought Mr. LaVeglia was representing you before the Commission?

A. He was, also. I had Mr. Sussman helping out, also.

Q. Okay. Did Mr. Sussman ever appear with you before the Commission?

A. No.

Q. Okay. So in any event, there comes a point in time when a formal written

complaint is brought against you in 2025, correct?

A. Correct.

Q. Charging the three areas that we've talked about, the Koch, the emails, and the retaliation --

A. Yes.

Q. -- is that right? All right. At that point, did you speak to Mr. Sussman in the spring about the Koch complaint?

A. Spring of --

Q. 2025.

A. I don't think so.

Q. Okay. Now, let me go back to this, and I'm going to come back to 2021. In 2022, you've indicated you had this conversation with Mr. Brown when you were a patient, correct?

A. Correct.

Q. Did you have another conversation with Mr. Brown in 2020 [sic], around August or September?

A. Oh, yes.

Q. Okay.

MR. FRIEDBERG: You said 2020. Did you mean that?

MR. COFFEY: I meant '22. I'm sorry. I misspoke.

BY MR. COFFEY:

Q. 2022, you had another conversation with him, correct?

A. Yes.

Q. Now, before you had the second conversation -- I understand there was one in May and another at the end of summer; is that correct?
A. In June, yes.
Q. Okay. You had a conversation in June?
A. Yes.
Q. And what was that conversation?
A. It was regarding the letter that --
Q. What letter?
A. The letter that he signed and I -- we submitted to the Commission. June 13 of 2022 was the date of the letter.
Q. And that's already been put into evidence?
A. Yes.
Q. Who wrote that?
A. I drafted it.
Q. You drafted it?
A. Yes.
Q. Did he sign it?
A. Yes.
Q. And what instructions, if any, did you give him?
A. So when he said he would write a letter, I called him. I said -- and I said, "Would you like me to draft it"? He said, "Sure". So I drafted what I thought, you know, happened, and when I -- when we finally reached each other to go over it, I said, "Okay. The first thing, you only tell the truth". I said, "I'm going to go through this letter that I drafted, but this is going to be your letter, so if there's any changes, you just let me know".

And I read line by line, and I'm sure he made a change or two here. I didn't keep track of it. We went through it all. Once it was complete, I read it to him. He says, "That's good". I said, "Okay". And then we met later -- I think it was later that day, on June 13th, at his house, in the back of his house, and he signed it, and --

Q. Okay.

A. -- that was it.

Q. Now, you knew at that time that you were --

MR. BIENSTOCK: Excuse me. Who wrote the body of the letter?

THE WITNESS: I drafted the body of the letter, and then --

MR. BIENSTOCK: No, no. The letter that's in evidence --

THE WITNESS: I drafted it.

MR. BIENSTOCK: I'm not talking about drafting. I'm talking about physically writing.

THE WITNESS: There was no physical writing. It was just his signature. It's a typed letter. You're -- you may be confused with the December 28th one, the handwritten one.

MR. BIENSTOCK: I am.

THE WITNESS: No, that's not the one we're talking about.

MR. COFFEY: Sorry.

THE WITNESS: We're talking about the June 13th.

MR. BIENSTOCK: Can someone --

MS. DIPALO: Yes.

MR. BIENSTOCK: -- guide me as to which exhibit --

MS. DIPALO: It is.

MR. BIENSTOCK: -- the letter we're talking about now?

MS. DIPALO: I have it. It is Respondent's -- it's Respondent's Exhibit --

MR. FRIEDBERG: F.

MS. DIPALO: -- F. Thank you.

MR. COFFEY: What is it?

MR. FRIEDBERG: And Referee's 29. 29 and F.

MS. DIPALO: Respondent's Exhibit F.

MR. BIENSTOCK: F?

MS. DIPALO: F, as in Frank. Do you have a copy, Mr. Bienstock?

MR. BIENSTOCK: I don't think I do. I have to get --

MS. DIPALO: We have a copy here.

MR. BIENSTOCK: No, I don't --

MS. DIPALO: It should be in the binder, but I'll

pull this out and just give you -- oh, it's actually -- do you have your copy? No?

MR. BIENSTOCK: I don't have any lettered exhibits.

MS. DIPALO: Any Respondent's exhibits, yeah. I'm not sure -- I don't think --

MR. FRIEDBERG: I'll give him my copy.

MS. DIPALO: Andy --

MR. FRIEDBERG: I'll just hand him F.

MR. BIENSTOCK: I can't see any lettered exhibits.

(Counsel confer)

MR. BIENSTOCK: Here we go. There are lettered exhibits, but only A, B, C.

(Counsel confer)

MR. BIENSTOCK: Has this been marked for identification?

MS. DIPALO: It's in evidence, Mr. Bienstock.

MR. BIENSTOCK: Okay. You mean by the stipulation?

MR. COFFEY: Yes.

MR. FRIEDBERG: Melissa, he asked you if it went in by stipulation.

MS. DIPALO: Yes, it went in by stipulation, Mr. Bienstock.

MR. COFFEY: Yes.

MR. BIENSTOCK: Okay. The Bench Book does not have the lettered exhibits past C.

MS. DIPALO: May I approach and take a look? I did not prepare the Bench Books.

THE WITNESS: Can I use the restroom while we're doing this?

MR. BIENSTOCK: Yes. Let's take five minutes.

THE WITNESS: Thank you.

MR. BIENSTOCK: Sure.

(Recess from 11:11 a.m. until 11:19 a.m.)

MR. COFFEY: So this exhibit -- so what is this exhibit?

MS. DIPALO: That is Respondent's Exhibit F.

MR. COFFEY: F.

THE CLERK: We are on the record.

MR. COFFEY: All right. All right.

MR. BIENSTOCK: And Respondent's F is stipulated in evidence?

MS. DIPALO: Yes. Correct.

MR. BIENSTOCK: Okay.

CONTINUED DIRECT EXAMINATION

BY MR. COFFEY:

Q. I'm going to show you F as a follow-up to questions by Mr. Bienstock.

That is a letter dated June 13, 2022, signed by Michael Brown -- well, was it signed by Michael Brown?

A. Yes.

Q. Who typed it?

A. I did.

Q. Okay. And is that the letter you're talking about that you went through line by line with him?

A. Yes.

Q. Now, the handwritten letter that Mr. Brown testified to, what was that letter?

A. That's that December 28, '21, that he wrote there.

Q. Okay. So with regard to this letter, Respondent's F, this information came from you to him or from Brown to you?

A. Originally -- I mean, I drafted it, so it came from me to him, and then he made whatever changes he wanted while we were on the phone.

Q. Are these his words or your words?

A. These are his words.

Q. Okay.

A. I drafted it, but he made whatever changes he wanted.

Q. All right. No, I understand that. Now, at that time in July -- or June, rather, I apologize, you were aware that you were under investigation by the Commission, correct?

A. Correct.

Q. Which was what precipitated this meeting with Mr. Brown; is that correct?

A. Correct.
Q. You just didn't show up at his house one day and -- correct?
A. No. No, I didn't just show up.
Q. Okay. All right. After June, in 2022, did you have another opportunity to meet with Mr. Brown or to talk to him?
A. Talk to him.
Q. And where was that?
A. On the phone.
Q. Okay. And tell me about that conversation.
A. He called me. I believe it was right after Ms. Koch testified in the Commission. And he told me --

MS. DIPALO: Objection. This is hearsay.

MR. BIENSTOCK: Yeah. Strike that last sentence.

BY MR. COFFEY:

Q. Well, did he tell you that she had testified?
A. Yes.
Q. Well, what did he say to you?

MS. DIPALO: Object -- yeah, sorry. Withdrawn.

MR. BIENSTOCK: Overruled.

MS. DIPALO: Withdrawn.

BY MR. COFFEY:

Q. Go ahead. You can testify to that.
A. I said, "Hey, Mike, how you doing"? He says, "Good". And I said,

"What's up"? He said, "I just want to let you know Stacey Koch testified before the Commission". I said, "Okay". "And you know, I quit my job". I said, "Excuse me"? I said, "Why did you quit your job"? He said, "Because I can't take her lies anymore, and she's trying to destroy you".

MS. DIPALO: Objection, Mr. Bienstock. This is all hearsay.

MR. BIENSTOCK: It would be if Mr. Brown hadn't been here to testify, but I think this is a bit much. Let's move on.

BY MR. COFFEY:

Q. All right. So he described the problems that he had with Ms. Koch, correct?

A. Yes.

Q. In terms of moving on, then, I'm not going to go into those conversations, but you -- he talked to you about what she had said to him; is that correct?

A. Correct.

Q. Now, up to that period of time, had you determined to bring a lawsuit against Ms. Kroc (phonetic) -- Koch, rather -- I apologize. Had you determined to bring a lawsuit against Ms. Koch?

A. There was no thought in my mind of bringing a lawsuit against Ms. Koch up until that call from Mr. Brown.

Q. Okay. This was in September, you said?

A. Yes.

Q. Now, in September, after that phone call, did you contact Mr. Sussman?

A. Yes.
Q. And when did you contact Mr. Sussman?
A. Well, remember, he's representing me on my -- well, hold on. No, he wasn't representing me on the federal case yet. So the first time I talked to Mr. Sussman was October -- well, hold on. March 28, 2022, I spoke to Mr. Sussman.
Q. All right. But let me go -- after Mr. Brown.
A. Okay. The -- so the next time from March 28th, I didn't talk to Mr. Sussman until October 21st.
Q. Okay. And tell me about that conversation.
A. So that conversation was specifically and only for what the Office of Court Administration was still doing to me by banning me from going to work.
Q. All right. Anyway, that was the other lawsuit?
A. Well, it wasn't a lawsuit yet --
Q. Okay. But that was --
A. -- but yes.

MR. BIENSTOCK: Let's move on.

BY MR. COFFEY:

Q. That was the other matter?
A. Correct.
Q. Okay. After that, did you talk to him about a possible defamation case? Or did you talk to him about that in the same time -- in October?
A. No.
Q. All right. When did you talk to him first about the defamation case?

A. I don't know how to answer that question. I didn't talk to him originally about a defamation case.
Q. I'm not asking about originally.
A. Okay.
Q. When is the first time you spoke to Mr. Sussman about defamation?
A. Oh, okay. November 14th.
Q. Okay. And where did you have that conversation with him?
A. On the telephone.
Q. Okay. And who raised the possibility of the defamation case?
A. He raised the possibility of defamation.
Q. What did he say to you?
A. So I called him -- no. We were talking about the federal case, and then I said -- when we were, like, done towards that -- because this was a 31-minute conversation.
Q. Just tell me what -- all right.
A. Yes. And when we were done talking about the federal, I said, "Hey, since you're doing this, I want to ask you, can you maybe represent me in maybe two other things? One, I want to sue Law360 for this blatantly false article that they put out against me".
Q. Okay.
A. And as soon as I stopped speaking, he said, "You can't sue them. They're immune, First Amendment". I said, "Well, that" -- excuse my French here -- "Well, that sucks, but okay". And then I said, "Well, what about" -- and I told him about the call from Michael Brown, and I said, "She -- you know, she's trying to get me fired. He had said she's lying to

the Commission. She's telling them that I threatened her".

Q. Did you identify who "she" was?

A. Oh, yes. Ms. Koch. Stacey Koch. I'm sorry. Yes.

Q. Okay.

A. And I said, "Is there anything I can do regarding this? Is there any action I can take? Like, I don't know, maybe tortious interference of business".

Q. Okay. What did he say?

A. And he said, "Well, I'm not sure about that. I'll have to research that. But you possibly have a defamation case". Because he had all the information from this I emailed him on November 9th because he was going to be representing me the -- no, he met with me November 8th, so November 9th, I emailed him everything, all the documents regarding the Commission and everything that's going on with OCA kicking me out of my courthouse, discriminating against me for my religious beliefs.

Q. All right. Let's move on from that.

A. Yes.

Q. Okay. Go ahead.

A. So he had all that, so he knew what was going on with that, so he's the one that said defamation.

Q. Okay.

A. I didn't -- I didn't even know how defamation worked.

Q. Well, all right. So anyway, so in November, you had another conversation about the defamation case; is that correct? In November, did you have another conversation about the defamation case possibly?

A. Yeah, we -- yeah. Well, it was that same conversation. So when he said,

"Possibly defamation" --

Q. Okay.

A. -- I said, "All right. Well, how long is the statute of limitations on defamation"? He said, "A year". I said, "Okay". I said, "Is it tolled because of the proceeding that's going on with the Commission"? And he said, "No". And I said, "Well, that's not fair. You mean the Commission can drag past a year, and then the statute of limitation runs, and then I can't bring a suit"? He said, "Correct". I said, "I can't wait for the Commission to be done"? He said, "Not if you're going to bring the suit".

Q. Okay.

A. I said, "Okay".

Q. Okay. So what happened after that?

A. So -- regarding this -- the defamation?

Q. Yes, that's all I care about.

A. So --

Q. But let me ask you this in a general sense. He was your lawyer in the other case as well, correct?

A. The federal case?

Q. Right.

A. I hadn't specifically retained him yet because he was -- he just got all the documents --

Q. All right.

A. -- but yes, I did retain him on that. He was going to be representing me. He just had to finish looking over the papers, draft the retainer, and then go from there.

Q. So in December, was he representing you on that?
A. Oh, yes.
Q. Okay. And were you relying upon his advice?
A. A hundred percent.
Q. Okay. Do you know anything about federal law, federal lawsuits?
A. No.
Q. All right. Did you know any more about federal lawsuits than you knew about defamation?
A. No.
Q. Did you know any more about defamation than you knew about federal lawsuits?
A. No.
Q. So let's go to December. Was a determination made to bring a defamation case against Ms. Koch?
A. Yes.
Q. Okay. And was that your decision?
A. No. He said --
Q. Well, you decided to do it, though? You --
A. Oh, yes. I decided to do it, yes.
Q. Okay. Okay. And tell me about the conversations with him with regard to the complaint.
A. Conversations or emails or both?
Q. Whatever.
A. Oh. The communication --
Q. Communication.

A. So when he said, "Yes, you don't have a tortious interference with business case because you don't meet all of the elements. You do have defamation". And in the email response, I said, "Well, what about a HIPAA violation"? And that's when he told me, "You don't have a private right", but we could build that in with some case he cited. I don't know. So he told me I couldn't go forward on tortious interference or HIPAA, so I didn't.

Q. Okay. And sometime in December, did he prepare a defamation complaint?

A. Yes.

Q. Okay. Did you have anything to do with the preparation of that complaint?

A. Well, I read it, and then I edited for, like, spelling or grammar.

Q. Right.

A. But legal-wise, no.

Q. All right. So he wrote it up?

A. Oh, yes, he wrote the whole thing.

Q. And he presented it to you and asked you if that was essentially what happened, and you said, "Yes"; is that correct?

A. Yes.

Q. And he filed the lawsuit?

A. Correct.

MR. BIENSTOCK: Did you verify it?

THE WITNESS: No.

//

BY MR. COFFEY:

Q. All right. At the time the suit was filed, did you know anything about privilege in terms of the Commission?

A. No.

Q. Did you know anything about the SLAPP statute?

A. I never heard of SLAPP until I received the motion to dismiss.

Q. Okay. And did Mr. Sussman ever tell you that you could not bring this lawsuit?

A. Never.

Q. Okay.

A. Not until even this day.

Q. All right. So as far as you're concerned, in December, when that lawsuit was filed, you were relying upon his advice, correct?

A. Yes.

Q. And were you also relying upon what you believed to be the truth of the allegations in that complaint?

A. Yes.

Q. Okay. So the complaint is filed. Then subsequently, I guess, in 2022 or --

A. '23?

Q. -- '23, rather. I'm sorry.

MR. BIENSTOCK: Excuse me, Mr. Coffey. Can I ask one question?

You knew, did you not, that you were responsible for the allegations in that complaint?

THE WITNESS: Well, it was my lawsuit, so --

MR. BIENSTOCK: And that you were -- and that the allegations in the lawsuit are if you had said them and signed them?

THE WITNESS: Yes.

MR. BIENSTOCK: Next question.

BY MR. COFFEY:

Q. Yeah. Put another way, you're not disavowing what's in the complaint because you didn't know it was in there?

A. Oh, no.

Q. You authorized it, correct?

A. Yes.

Q. Okay. So whether you signed it or not, that is your complaint through Mr. Sussman?

A. Correct.

Q. Okay. Now, 2023, there came a time when a motion was made to dismiss the complaint; is that correct?

A. Yes.

Q. All right.

A. Two motions.

Q. Two motions. And when you got those papers, did Mr. Sussman provide the papers to you in the motion?

A. Yes.

Q. Okay. And did you learn, for the first time, about the SLAPP statute?

A. Yes.

Q. And what was your conversation with him at that point?
A. That it's not SLAPP. He said, "You didn't file a SLAPP suit".
Q. Okay.
A. I said, "Okay".
Q. All right. Were you -- there came a point in time where Judge Rosa, however, dismissed your complaint, correct?
A. Yes.
Q. All right. On the basis that it was a SLAPP lawsuit, correct?
A. Yes.
Q. Now, when that happened, did Mr. Sussman advise you to take an appeal?
A. Yes.
Q. And did you take an appeal?
A. No.
Q. Why not?
A. Because after I got the decision -- actually, it was the day of the decision. I remember exactly where I was. I was at the Italian Center, and he emailed it to me, and I saw it, and I went outside, and I -- my phone is very small, so I basically skimmed it, and I saw the SLAPP and all that.

I called him up. I said, "Michael", I said, "this says I violated a SLAPP". He goes, "You didn't". I said, "Have you dealt with SLAPP in the past"? He goes, "Of course. I litigated for several years". I said, "Well, what do you mean it's not a SLAPP"? He goes, "It's not a SLAPP". I said, "Well, you could have fooled the Judge". He says, "She's wrong. We're going to appeal". And I said, "All right. I'll talk to

you about this later".

MR. BIENSTOCK: Can I ask another question?

MR. COFFEY: Yes.

MR. BIENSTOCK: Prior to the decision, you learned about SLAPP, right?

THE WITNESS: Well, when you say "learned", yes, I've read what they wrote.

MR. BIENSTOCK: And you read what he wrote, Mr. Sussman --

THE WITNESS: Yes.

MR. BIENSTOCK: -- in response?

THE WITNESS: Yes.

MR. BIENSTOCK: So you knew both sides of the argument with respect to SLAPP before the decision came down?

THE WITNESS: When you say "knew", yes, I read what both sides were saying --

MR. BIENSTOCK: Okay.

THE WITNESS: -- and I trusted his advice.

MR. BIENSTOCK: That's fine.

BY MR. COFFEY:

Q. Okay. Did he tell you when they got the motion, you should withdraw because you improperly brought the lawsuit? Did he tell you that?

A. No.

Q. Did you make a determination that you were going to withdraw the

lawsuit anyway?

A. Yes.

Q. And tell us about that.

Q. So I was a lector -- I was lector at church. That's where you do the readings. And that gospel that day, it hit my heart, and it said, you know, settle with your opponent before you go to court -- and I'm paraphrasing -- because if you don't, the Judge will throw you in prison. And I know that doesn't apply, but I said to myself -- you know, this hit me, so I'm thinking about withdrawing it.

Q. Okay.

A. Not because I didn't think I had a claim.

Q. Right.

A. It's just because I thought, "I was there at that church that day reading that reading, and let me maybe take heed to it".

Q. Was that after all the papers were filed?

A. No.

Q. That was before they were filed?

A. Yes.

Q. That is, the motion papers?

A. Well, there was the motion.

Q. Correct.

A. And we didn't put in our papers yet.

Q. Okay. So it was your determination you were going to tell him -- by the way, did he put in papers, Mr. Sussman?

A. Yes.

Q. Okay. Had you determined at that time that you knew you were wrong, but you were going forward anyway?

A. Oh, no. At that point, I thought I had a meritorious, viable case.

Q. Based on Mr. Sussman's advice to you?

A. Correct.

Q. Okay. Had Mr. Sussman told you, at any time from December on, that he was wrong, that this was a SLAPP lawsuit, what would you have done?

A. If he said he was wrong and that it shouldn't have been brought?

MS. DIPALO: Objection.

MR. BIENSTOCK: Sustained. Next question.

BY MR. COFFEY:

Q. Well, were you acting on his advice?

A. Yes.

Q. Prior to the time that you had the conversation with Ms. Brown -- Mr. Brown, I'm sorry, had you made the determination to sue Ms. Koch?

A. No.

Q. Were you aware or do you know whether you even have a right -- I'll withdraw that. Do you know anything about absolute privileges?

A. Now or then?

Q. Then.

A. No.

Q. Okay. So during the time that you were with Mr. Sussman, did he ever tell you that he advised against bringing the lawsuit as a matter of law, meaning you couldn't?

A. No.

Q. In fact, I think he said that on two cases, he told you you could not bring a lawsuit?

A. Correct.

MS. DIPALO: Objection.

MR. BIENSTOCK: Next question.

BY MR. COFFEY:

Q. All right. Now, after that was done, you wrote an -- you settled, and you wrote an apology letter, correct?

A. Yes.

Q. Okay. And that was to Ms. Koch, correct?

A. Correct.

Q. All right. And in that letter, which is in evidence, you told her that you did not wear a mask because, "I suffer from severe anxiety which manifests as object phobia"; is that right?

A. Correct.

Q. Now, the letter that you sent her, why did you write that letter of apology?

A. Because in order to settle, they wanted a letter of apology.

Q. All right. But you made some detail in this letter. Why? Did you think you should do that for her?

A. I did.

Q. All right.

A. Because once the Judge said I wasn't allowed to bring this case, I'm not going to bring something that you're not allowed to bring. Well, I shouldn't say that. Intentionally, I would not do that, ever.

Q. All right.
A. So if I'm not allowed to go forward, I'm going to apologize to the person that I wasn't allowed to go forward against.
Q. Okay. Now, with regard to that, did you tell Michael Sussman, after the decision -- or after the decision -- before the decision -- I withdraw that. -- after the decision of Judge Rosa that he was wrong? Did you tell him you thought he was wrong?
A. Yes.
Q. And he said?
A. He said, "I'm not wrong" --

MS. DIPALO: Objection.

MR. BIENSTOCK: Overruled.

A. He said, "I'm not wrong, and we should appeal".

BY MR. COFFEY:

Q. Okay. And are you aware that Mr. Sussman has, in any way, retreated from that position to the present day?
A. No.
Q. He has not?
A. He has not.
Q. All right. Now, let me talk about the third element of the -- or the third charge, and that is the emails. Okay? Let me see here.

MR. COFFEY: Let me -- before I do this, Judge, if you'll look through your --

MR. FRIEDBERG: Don't talk between mics.

MR. COFFEY: I'm sorry. Look and see if you

find the formal complaint there in that packet of materials.

MS. DIPALO: It's in the front of the Bench Book, the formal written complaint.

MR. COFFEY: No, I know, but I just --

MS. DIPALO: Here. There should be -- listen, we have two copies here. Steve, let me give you a copy so you don't have to have the Judge --

MR. COFFEY: All right. I've got -- there are so many copies that it doesn't come out to be --

MS. DIPALO: -- go through the records. Yeah.

MR. COFFEY: All right. Thank you.

MS. DIPALO: You want a copy of the formal written complaint?

MR. COFFEY: Yeah. Thank you.

MR. FRIEDBERG: We chopped down a lot of trees for it.

MS. DIPALO: There you go.

MR. COFFEY: Thank you.

BY MR. COFFEY:

Q. All right. Now, in the formal written complaint, let's go to -- on the email questions, okay, the Commission has charged that you deliberately deleted or withheld emails. Do you recall that being that charge?

A. Yes.

Q. All right. Let me go back to the history of this. So on May 21, 2024, the Commission sent you a letter stating -- well, I'll withdraw that. They told

your Counsel that they wanted all emails, what, between you and Mr. Sussman?

A. Yes.

Q. Okay. And Mr. LaVeglia, did they want those emails, too?

A. No.

Q. Okay. When you received that demand by the Commission, forgetting the lawyer-client issue, that they required those emails, what did you do?

A. So we sent the Commission a first batch, if you want to call it that --

Q. You say "we". Tell me how that process worked.

A. All right. So I looked through my -- all my emails and found -- I think it was 14 emails, I think, 14 pages or something like that, from the date they wanted it from to the date that we filed the defamation case.

Q. All right.

A. They wanted it past that, but since they were saying I brought this in retaliation, my attorney, Mr. LaVeglia, and I said, "Well, we're going to give them up to that date", because once you're past that date, you can't go back --

Q. All right.

A. -- for retaliation purposes. So we printed that -- I printed it. Or not printed it. I sent it to them in an email.

Q. And how many email -- how many --

A. I think it was 14 pages.

Q. Fourteen pages. And to do that -- how did you have to do that?

A. I had to look through each one because I have Yahoo. I don't use Outlook for my personal email. And it's very difficult to find emails in

Yahoo. At least for me, it is. So I found what I thought was all of them during that time period. I sent them to Mr. LaVeglia.

Q. How long did that take you to do that process?

A. Well, for those 14, for that time period, that one probably took me an hour or two --

Q. Okay.

A. -- just for those. So I sent them to Mr. LaVeglia, and I said, "Chad", that's his first name, "please send these to Mr. Sussman. Make sure they're all there. Make sure he says they're all there, and then have him give us an affidavit saying they're all there".

Q. All right.

A. So he did. Sent them back --

Q. Who's "he" sent them back?

A. I'm sorry. So Mr. Sussman signed an affidavit saying there's 14 of them, I think it's 14, they're all there, sent it back to Mr. LaVeglia, who sent it to me. I put it together, you know, because PDF, and put everything in one thing, signed it, sent it to Mr. LaVeglia to send back to him.

Q. Back to -- who is "him"? You --

A. I'm sorry. To send back to Mr. LaVeglia so he can sign -- countersign and send it to the Commission.

Q. Okay.

A. And that was May 9th. And I saw an email from Mr. Sussman and Mr. LaVeglia where Mr. Sussman says, "I" --

MS. DIPALO: Objection.

MR. BIENSTOCK: Is that email in evidence?

THE WITNESS: We want it to go in, so --

MR. COFFEY: Yeah. Okay. Let me --

THE WITNESS: It's very important.

MR. COFFEY: Okay. Hold on. I think I saw --

BY MR. COFFEY:

Q. That was an email from Sussman to LaVeglia?

A. To Mr. LaVeglia and then to me where he says, "I signed the affidavit" --

MR. BIENSTOCK: Don't say what he says.

THE WITNESS: Okay.

A. And there's two missing from November.

MS. DIPALO: Objection.

MR. BIENSTOCK: Sustained. Stricken.

THE WITNESS: It's the highlighted email.

MR. COFFEY: Sorry. Hold on a second here.

THE WITNESS: Yeah, that's the one.

MR. COFFEY: I'm not sure if I --

THE WITNESS: This is exactly it. There's a second copy in there for them.

MR. COFFEY: Okay.

THE WITNESS: You want me to find it?

MS. DIPALO: Can you tell us the date of the email?

MR. COFFEY: Yes, I can.

MS. DIPALO: I may have it.

MR. COFFEY: It's May 9, 2024.

MS. DIPALO: I don't have it.

MR. COFFEY: Okay.

THE WITNESS: No, you don't have this one.

MS. DIPALO: Yeah.

MR. COFFEY: All right.

THE WITNESS: Right here. There's yours back.

MS. DIPALO: Thank you.

MR. COFFEY: All right.

THE WITNESS: And here's our copy.

MR. COFFEY: All right.

THE WITNESS: And the other copy is for Mr. Bienstock.

MR. COFFEY: Okay.

MR. BIENSTOCK: Thank you.

MR. COFFEY: I'd like to call this H. This will be Respondent's H. I'm offering it, Judge.

MR. BIENSTOCK: This is H?

MR. COFFEY: Yes.

MR. BIENSTOCK: And it's never been marked?

MR. COFFEY: No. I'm marking it now.

MR. BIENSTOCK: Okay. Who has the stickers?

MS. DIPALO: That would be Mr. Fenwick.

MR. COFFEY: Okay. Let me --

MS. DIPALO: We can give him our copy.

MR. COFFEY: Okay. All right.

MS. DIPALO: Oh, do you want to give it to Mr. Bienstock? There we go.

MR. COFFEY: Okay. And then we'll switch. Okay.

Mr. Bienstock, let me take yours.

MR. BIENSTOCK: Excuse the scribble.

BY MR. COFFEY:

Q. All right. Now, so the emails go to Sussman. Sussman sends them back to LaVeglia, and then they're sent to the Commission. Is that your understanding?

A. No. LaVeglia sent it to me --

Q. Okay.

A. -- along with that email I got.

Q. This is H?

A. Yes.

Q. Okay.

A. Is it just identification, or is it in evidence?

Q. It's in evidence. Okay.

MR. BIENSTOCK: Wait a second.

MR. COFFEY: Well, I'm sorry. I thought I offered it. I'm going to offer Respondent's H.

MR. BIENSTOCK: Okay.

MR. COFFEY: I'm sorry.

THE WITNESS: Is it in evidence?

MR. COFFEY: No. Hold on.

MR. BIENSTOCK: No, it is not.

MR. COFFEY: Slow down. Not yet. I'm offering it.

MR. BIENSTOCK: Objection?

MS. DIPALO: We have no objection.

MR. COFFEY: Okay.

MR. BIENSTOCK: In evidence.

(Respondent's Exhibit H was admitted into evidence)

BY MR. COFFEY:

Q. So now it's in evidence. So tell me -- explain to me these emails.

A. Sure. So as it states, Mr. Sussman says -- where is it -- "I have edited and signed the affirmation. There are a few earlier emails from Frank to me", meaning the first one that I thought we had was December 8th. "I will send them to you", he says to Mr. LaVeglia.

MR. BIENSTOCK: Hold on a minute. Oh, I see. Starts at --

A. "But" --

MR. BIENSTOCK: Wait. Your reading starts at --

THE WITNESS: At the bottom.

MR. BIENSTOCK: -- at the bottom?

THE WITNESS: Yes.

MR. BIENSTOCK: Okay.

A. "But none before September that I know of". So then I say, as you see the next one up in the middle there, "he needs to date it" -- whatever.

MS. DIPALO: Wait. Mr. Bienstock, can we stop? Because this is not the copy -- unless I'm missing it. Can you tell us where --

(Counsel confer)

MS. DIPALO: Okay. We don't have the attachments. I apologize for interrupting. We do not have the attachments.

THE WITNESS: No.

MS. DIPALO: Okay.

THE WITNESS: Yeah. No.

MS. DIPALO: Thank you.

MR. FRIEDBERG: Is this still in without attachments?

THE WITNESS: Yes.

MS. DIPALO: I'm sorry to interrupt.

MR. COFFEY: That's all right. That's all right.

MS. DIPALO: I wasn't following.

MR. COFFEY: That's all right.

A. So if you go to the third paragraph of what I said to Chad, to Mr. LaVeglia, the second sentence, "Also, we need to see those emails that he mentioned in his below email because I could not find any prior to December 8th", and that was at three p.m. Now, our response was due to

the Commission that day. I don't know if we had an extension because they gave us, graciously, extensions on other things. I'm not sure.

So then at 3:50 p.m., I say -- it says, "This I haven't received". I should have said, "As I haven't received anything back, I used the undated affirmation with notary stamp, and attached are both letters". Mr. Sussman -- or Chad never sent me these two missing emails, which are, I believe, Exhibit 8. If I had them, I would have sent them to the Commission because I consider them exculpatory to myself.

BY MR. COFFEY:

Q. All right.

A. I wouldn't leave them out.

Q. The Exhibit 8, which we've already had in evidence?

A. 8 is in evidence.

Q. Right.

A. We haven't talked about it yet.

Q. Right. Right. Okay.

MR. BIENSTOCK: Exhibit what?

THE WITNESS: 8. Of -- I'm sorry. Yes, Exhibit 8 of the formal complaint.

MS. DIPALO: Oh, it's -- for our purposes, you're referring to the November 23rd email exchange, and that, for the purposes of the hearing, is Commission Exhibit 20 attached to the formal written complaint, which is Referee's Exhibit A. It's Commission Exhibit 8.

MR. BIENSTOCK: The pages are numbered by

hand. Do you know which page it is?

MS. DIPALO: I'm sorry, Mr. Bienstock. I didn't hear you.

MR. BIENSTOCK: The attachments to the formal complaint are --

MS. DIPALO: Yes, they're --

MR. BIENSTOCK: They're numbered in the lower right-hand corner by hand.

MS. DIPALO: Yeah.

MR. BIENSTOCK: In the bottom --

THE WITNESS: No. If I may, I could clarify this.

MS. DIPALO: It's up to your attorney.

MR. COFFEY: Well, yeah, can you?

THE WITNESS: Yes. He's -- you're confusing my hand-numbered emails.

MR. BIENSTOCK: I understand.

THE WITNESS: Okay.

MR. BIENSTOCK: Let me talk to Ms. DiPalo.

MS. DIPALO: Yes.

MR. BIENSTOCK: You said that these emails are attachments to the complaint?

MS. DIPALO: No.

MR. BIENSTOCK: Okay.

MS. DIPALO: Oh, it's attached to the formal

written complaint.

MR. BIENSTOCK: Yeah.

MS. DIPALO: That's Referee's -- yes. Okay. Yes, sir. Yes.

MR. BIENSTOCK: My attachments to the formal written complaint are numbered consecutively.

MS. DIPALO: Yes.

MR. BIENSTOCK: Okay. So which page is it?

MS. DIPALO: If you go past that, it's not included in those emails because the allegation in the complaint is that Judge Mora --

THE WITNESS: You just had it.

MS. DIPALO: Yes. So the reason that you're not seeing it in those -- in the attachment to the Commission exhibit is because the allegation is that Judge Mora withheld or failed to disclose that email, so it won't be with the formal written complaint. But it is in evidence as Commission Exhibit 28.

MR. BIENSTOCK: 20?

MS. DIPALO: Oh, 20. Thank you.

MR. BIENSTOCK: 20?

MS. DIPALO: 20. Two-zero.

(Counsel confer)

MR. BIENSTOCK: These are the emails that the Judge has testified were missing and that he would have

done something if he knew that they were missing?

MS. DIPALO: I believe at least -- and I don't want to put words in the Judge's mouth --

MR. BIENSTOCK: No, no, no, no.

MS. DIPALO: -- Exhibit 20 --

MR. BIENSTOCK: Yeah.

MS. DIPALO: -- is what he's testifying to.

MR. BIENSTOCK: Okay.

MR. COFFEY: All right. I'm honestly not sure where I am, but nonetheless, so in any event --

MR. BIENSTOCK: You and me both, Mr. Coffey.

BY MR. COFFEY:

Q. In any event, you get a notice back that there's two emails missing; is that right?

A. In that batch, correct.

Q. In that batch. That is the 14. Look at your --

A. Yes. Yes.

Q. Fourteen. And there are two emails that are missing -- that Sussman identified are missing, or what --

A. Well, that weren't in my batch.

Q. You say your batch. What do you mean by your batch?

A. The batch I sent to Mr. LaVeglia to send to him.

Q. Then -- okay. And your --

A. And they were never sent to me.

Q. What is "they"?
A. The -- those two -- that -- it's one page, but it's two emails.
Q. All right.
A. It's one email. A thread, I guess you'd say --
Q. Okay.
A. -- of November 23rd.
Q. Okay.
A. It was never sent to me by either of those attorneys.
Q. Okay.
A. So I thought maybe he was mistaken.
Q. All right.
A. Because I would want those sent to the Commission.
Q. Right.
A. I say they're exculpatory for me. Why would I leave then out?
Q. Correct.
A. Okay. The first time I saw them was when the Commission brought this formal charge, Charge 3.
Q. Okay.
A. And I went back again on my computer, and I still couldn't find them. They're missing.
Q. All right.
A. They're gone.
Q. Okay. So you did not deliberately refuse to hand them over?
A. Of course not.
Q. As far as you know, they're not in existence?

A. Well, they are in existence. Not on -- they weren't on my computer.
Q. Okay. All right.
A. Otherwise, I would have turned them over.
Q. As far as --
A. Just like all the missing ones, I would have turned over.
Q. Right. As far as you knew, you turned over everything in your possession?
A. Correct.
Q. Okay. Now, there became a --

MR. COFFEY: Sorry.

MR. BIENSTOCK: Are we -- there's a claim here for an advice of counsel defense. That I understand.

MR. COFFEY: Correct.

MR. BIENSTOCK: And now, we're talking about counsel committing malpractice?

MR. COFFEY: No. What --

MR. BIENSTOCK: We're talking about mistake of counsel?

MR. COFFEY: Correct.

MR. BIENSTOCK: Okay.

MR. COFFEY: What we're saying, to summarize, if you don't mind, is that he never withheld anything. We'll testify to that.

MR. BIENSTOCK: The lawyers withheld it.

MR. COFFEY: Or it got lost or he didn't realize

that.

MR. BIENSTOCK: Okay.

MR. COFFEY: And you'll see the train -- what happened is when Sussman then turns over his emails, the Commission then compares that with stuff sent by LaVeglia, and there's stuff missing. And they go -- well, they didn't go -- I don't mean to be too generic, but the Judge --

MR. BIENSTOCK: Then they charged him with that?

MR. COFFEY: They charged -- said, "It was missing. That's your fault. You deliberately withheld them".

MR. BIENSTOCK: Okay.

BY MR. COFFEY:

Q. Is that essentially --

A. Yes.

Q. Okay. There becomes a second batch of emails, correct?

A. Correct.

Q. And that's dated from when to when?

A. The date of the defamation suit, so it would be December 29 of 2022 --

Q. Okay.

A. -- through whatever date that was -- the present. So whatever -- their letter asking me for them.

Q. And how many emails were in that package?

A. There was several hundred pages of emails. Maybe 600 pages of emails.
Q. Okay.
A. So --
Q. In your computer?
A. Yeah.
Q. Okay.
A. So I printed them all out, and I said -- and I look at them, and I said, "This is a lot of information". As you know, with email threads, they go several pages. So I tried my best -- I tried to cull it for the Commission to make it easy for them to follow them. I tried to put them all in date order. So I thought I had all of the emails, and I did that, and I redacted parts of them because I did not waive my privilege regarding the federal suit or what he was advising me regarding the Commission.
Q. And part of the allegation of the Commission is that your redaction was an intentional failure to respond; is that correct?
A. I guess you could say that.
Q. Okay. Go ahead.
A. So I put -- I put them all together, so -- and then I -- and this took me several hours to do. I don't have an assistant. I had to go through each email and print them out, and then I started culling them, and I had papers all over my desk. And when I put them all together, I hand-numbered them myself 1 to 127.

I thought I had all the emails in there. I sent them to Mr. LaVeglia with the same instruction, "Please, send these to Mr. Sussman and do the same thing. Do the affidavit. Have him make sure everything is there

and send it back to me". We get the affidavit -- that's in evidence -- from Mr. Sussman. Everything's complete. It's all there. I said, "Great". I finish it up, put it in the PDF, sign it, send it to Mr. LaVeglia, who forwards it to the Commission, and then I get the formal complaint, and I see all these are missing.

Q. Okay.

A. And I couldn't believe it. I went back to my paperwork, and I found them. I found them in a pile that I -- I'll call it the discard pile because it was -- as I tried to cull it, I got the papers all mixed up. I made a mistake. I did. The redaction part is different. The missing ones I would have never left out. Never. If I was going to redact something from them, that would have been done, but they -- I made a mistake. I -- and then Mr. Sussman signs an affidavit saying they're all there.

Q. Okay.

A. I don't know what else I could have done humanly possible.

Q. So in the second batch, there were 127 emails?

A. From me, correct.

Q. That you culled from 600 pages?

A. Yes.

Q. Taking hours to do this?

A. It took me into the nighttime, yes.

Q. Okay. Now, they indicated the emails that were withdrawn or was not --

A. Withheld.

Q. Withheld, right. Were you questioned about those at the -- at your deposition?

A. No. They didn't have them then.

Q. Okay. All right.

MR. BIENSTOCK: I'm sorry. I didn't hear you.

THE WITNESS: So did you -- you heard the question?

MR. BIENSTOCK: The question, yes.

THE WITNESS: They didn't have them then.

MR. BIENSTOCK: I see. Okay.

MR. COFFEY: Okay. May I approach for a minute?

MR. BIENSTOCK: Sure.

BY MR. COFFEY:

Q. I'm going to -- this is part of the formal written complaint. It claims, "Respondent withheld emails that he sent to Mr. Sussman dated February 8, 2023, in which he stated that the Commission would not turn over transcripts of testimony taken from Ms. Koch or Michael Brown".

A. Can I see the email itself?

Q. Yeah.

MR. COFFEY: Let me do this. I've got to -- maybe we could take a short break so I can put them together because I --

MR. BIENSTOCK: Yeah. Five minutes.

THE WITNESS: I have them all stapled together.

MR. COFFEY: All right. Do you have them?

THE WITNESS: Yeah. In fact, it's probably in your packet. You want me to look?

MR. COFFEY: Yeah.

THE WITNESS: Am I --

MR. FRIEDBERG: Are we off? Are we off?

MR. BIENSTOCK: Off the record.

(Recess from 12:00 p.m. until 12:00 p.m.)

MR. BIENSTOCK: Back on.

THE CLERK: On the record.

MR. COFFEY: I don't have Exhibit 3 here, though. Exhibit 3, Exhibit 4.

May I --

MR. BIENSTOCK: Yeah.

BY MR. COFFEY:

Q. Judge, I'm showing you -- I don't see Exhibits 3 and 4 there, and --

A. What -- hold on. What's Exhibit 3 and 4?

Q. Those are emails. One is December -- let me see.

A. The missing ones start in -- missing and redacted start at Exhibit 8 --

Q. Okay. All right.

A. -- which is in my hand.

Q. Okay. All right. Let me do this, then. All right. So missing and redacted -- let me ask you this. There is a claim that you redacted Exhibit 8, which is part of the attachment, Exhibit 8.

A. Well, I'm not sure. I'd have to look because --

Q. No, but it is. It's -- Exhibit 8 -- I think it's the -- attachment Number 8 to

the complaint.

MS. DIPALO: No -- yes. Could you just clarify it's Exhibit 8 to the formal written complaint?

MR. COFFEY: Right, right, right.

MR. BIENSTOCK: Yeah.

BY MR. COFFEY:

Q. Which says that you redacted the email of 11/23/22 from you to Sussman and understood, when looking at it --

A. No, not redacted. That one was missing. That's the one I just testified to.

Q. All right. All right. Let me do this. Missing?

A. Yes. That one we just talked about.

Q. Right.

A. So the next one.

Q. The next one. Okay. This is Exhibit 9, Thursday, 2/2/23, to Sussman. This is deleted -- or not furnished -- not furnished. "Did you file the police calls yet since she knew almost a year before the confrontation that" --

MR. BIENSTOCK: I'm sorry. What exhibit are we?

MR. COFFEY: 9.

MS. DIPALO: We are Exhibit 21 in the book. He's shown Exhibit 21.

THE WITNESS: Am I allowed to have a copy of these in front of me?

MR. FRIEDBERG: It's also Exhibit 8 to the

formal complaint.

MS. DIPALO: It's going to be --

THE WITNESS: I have a copy. Can I just get -- may I get my copy --

MR. COFFEY: Yes.

THE WITNESS: -- Your Honor?

MR. COFFEY: Yes.

MR. BIENSTOCK: Yes.

THE WITNESS: Thank you. There they are.

MR. COFFEY: All right. Thank you.

THE WITNESS: Okay.

MR. COFFEY: All right. We all set?

THE WITNESS: I am.

MR. COFFEY: All right.

MR. BIENSTOCK: Can I see what you have?

THE WITNESS: Yes. Do you need it found in your book?

MR. BIENSTOCK: Can you tell me which is the exhibit in the book? Give me one second.

MS. DIPALO: I'll approach.

THE WITNESS: Well, she'll find it in the book. She doesn't need mine.

MR. COFFEY: Right. Right. Judge -- Judge --

THE WITNESS: I'm sorry.

MS. DIPALO: Would you like me to go

through each one with you?

MR. BIENSTOCK: No. I would like you to tell me where it is in the book.

MS. DIPALO: Okay. So Commission Exhibit -- the November 23rd email --

MR. BIENSTOCK: Yeah.

MS. DIPALO: -- is Commission Exhibit -- may I touch the book?

MR. BIENSTOCK: Yeah.

MS. DIPALO: Commission Exhibit 20. I believe the Judge has testified that already. Do you mind that I'm flipping, Judge?

MR. BIENSTOCK: Does it have Exhibit 9 on top?

MS. DIPALO: No, because that's attached to the formal written complaint. These are exhibits that we stipulated to prior to the hearing.

MR. BIENSTOCK: Okay.

MS. DIPALO: So I don't -- I'm not sure --

MR. BIENSTOCK: Well, I would like to follow along.

MS. DIPALO: Yes. They're in the Bench Book. We agreed to it ahead of the hearing.

MR. BIENSTOCK: I can look in the Bench Book.

MR. COFFEY: I can make copies here. Do we want to make copies of this, and he can follow along with this by --

MS. DIPALO: But we stipulated to this in evidence, so it's part of --

MR. BIENSTOCK: Okay. I have the Bench Book. Tell me --

MS. DIPALO: Yes.

MR. BIENSTOCK: -- where it is in the Bench Book.

MS. DIPALO: Exhibit -- the one that Mr. Coffey is questioning Judge Mora about right now --

MR. BIENSTOCK: Yes.

MS. DIPALO: -- should be Commission Exhibit 21 in the Bench Book.

THE WITNESS: I'm sorry. If I may, he's not asking that. He's asking to the ones that are attached to the complaint, that he can see the top exhibit's numbers.

MS. DIPALO: I don't -- I provided Mr. Coffey with my formal written complaint.

MR. COFFEY: I'm sorry. I'm sorry. Let me give it back to you.

MS. DIPALO: It's okay. I just -- I'm uncertain --

MR. BIENSTOCK: I understand.

MS. DIPALO: -- why we're --

MR. FRIEDBERG: It's at the end.

MS. DIPALO: Is it at the end?

MR. FRIEDBERG: Yeah.

MS. DIPALO: Okay. So would you like me to help you --

MR. BIENSTOCK: On each one, as he goes through it, you are going to have to provide me with the Bench Book number. Is that the easiest way to do this?

MR. FRIEDBERG: It's in the Bench Book in two places. That's the thing.

MS. DIPALO: I think the easiest way to do it, respectfully, would be to use the stipulated -- the Commission exhibits that were stipulated ahead of time before the hearing because they're all in evidence.

MR. BIENSTOCK: And where are those?

MS. DIPALO: That is Commission Exhibits 20 to 28 in the book.

MR. COFFEY: Okay.

MR. BIENSTOCK: Okay.

MS. DIPALO: We agreed to it ahead of time.

MR. COFFEY: That's fine.

MS. DIPALO: I'm happy to make --

MR. BIENSTOCK: That's fine.

MS. DIPALO: I don't know if it's going to --

MR. BIENSTOCK: No, no, I got it.

MS. DIPALO: I can make copies --

MR. BIENSTOCK: No, no.

MS. DIPALO: -- ahead of time, too.

MR. BIENSTOCK: It's fine. It's fine.

MS. DIPALO: We could step out. I just think, for the clarity of the record, it may be easier to use the evidence that was agreed to.

MR. BIENSTOCK: So I'm at 21 now.

MR. COFFEY: We're at 21.

MS. DIPALO: No, Judge --

MR. COFFEY: Correct.

MR. BIENSTOCK: Okay.

BY MR. COFFEY:

Q. Just so you can follow with me, Judge Mora, 21 is Exhibit 9.

A. Thank you.

Q. All right? And the date we're talking about is -- let me see here. Sorry. Okay. Is the 2nd of February, 2023. Do you see that?

A. I do.

Q. Okay. That language there, if I'm -- now --

A. Well, I -- but I have to clarify. That's why I'm looking at it. The Commission alleges that I redacted this email.

Q. Okay.

A. I believe they are incorrect.

Q. All right.

A. I believe it was missed.
Q. Okay.
A. I don't think it's even in there. So their allegation is incorrect.
Q. Okay.
A. I do admit it was missed.
Q. Okay. Would there be any reason for you to have deleted this?
A. No. I consider it, again, exculpatory.
Q. Okay. Now, let's take the next -- 22. This is actually -- Ms. DiPalo actually did us all a favor by doing it this way. It's easy to follow. Thank you. So this is the Happy Tuesday email. Do you see that?
A. Yes.
Q. Okay. This is dated 2/27/23?
A. Correct.
Q. They've also claimed that this was deleted?
A. Missed, yeah. Or withheld, yes.
Q. Withheld. Nonetheless, does this have anything to do with this matter here? "This matter" meaning the --
A. The defamation. 100 percent. I would never --
Q. No, that is not my question.
A. Okay.
Q. Does this email --

MR. BIENSTOCK: No.

BY MR. COFFEY:

Q. -- in any way pertain to the Koch complaint?
A. Yes.

Q. And where does that do that?
A. In the attachment --
Q. Okay.
A. -- which was missed.
Q. Okay. So the attachments --
A. Just the one attachment. The other attachment -- one had been turned over --
Q. Okay.
A. -- because that's attorney-client privilege still.
Q. Okay.
A. That's part of the Commission case that he was helping me with.
Q. Okay. All right.
A. So I completely missed this. And I would never leave this out --
Q. Okay.
A. -- because when you read this attachment, it is, in my opinion, 100 percent exculpatory for me.
Q. Now, this attachment you're talking about is on January 29, 2021?
A. That's what it starts at, yes.
Q. That's where it starts, right?
A. Correct.
Q. So with regard to that, this is your email to Mr. Sussman regarding, I guess, your language and some strategy regarding this complaint, correct?
A. My thoughts.
Q. Right.
A. Yes.

Q. Was there anything about this attachment that you found to be a problem for you?

A. No. Like I said, this -- I would have given this to him ten times over. It basically tells that -- it's exculpatory. It talks about --

Q. That's in your opinion?

A. In my opinion.

Q. Okay. Fine.

A. Yes, my -- in my opinion.

Q. So that was not intentionally withheld?

A. No.

Q. Okay. Now, let's go to the next one, which is 26, I believe.

MR. FRIEDBERG: 23.

MS. DIPALO: 23.

MR. COFFEY: Is it 25?

MR. FRIEDBERG: 22.

MS. DIPALO: 23.

MR. FRIEDBERG: 23. You just said 22.

MR. COFFEY: Oh, I did say 22. I'm sorry. 23 I'm missing. Okay. Okay.

BY MR. COFFEY:

Q. Exhibit 23. That's an email, 2/8/23, to Mr. Sussman, correct?

A. Yes.

Q. Okay. And it says, "The corruption doesn't end". "They are plainly working in concert with each other". Is that what it says?

A. Yes.

Q. And what did he mean by that?
A. Well, he said, "They are plainly working in concert with each other", because, apparently, Ms. Koch's attorney is a former Commissioner of this Commission.
Q. That was the context of that?
A. Yes.
Q. Okay. And then, "The corruption doesn't end", whose --
A. I wrote that.
Q. Okay. Now, was there any reason for you to have withheld this?
A. No.
Q. Okay.
A. Not at all. It has nothing to do with the retaliation suit.
Q. Okay.
A. It has to do with my thoughts to my attorney, a private conversation, that I think there's corruption going on.
Q. Okay. Okay. That was your belief?
A. Yes.
Q. Okay.
A. It still is.
Q. I understand. Okay. And these emails at the time are sent to Mr. Sussman as part of your lawyer-client relationship, correct?
A. Correct.
Q. They're not being emailed all over the place. It's just you and Sussman?
A. Correct.
Q. Okay. Let's go to 24. This is dated 2/8/2023. Do you see that?

A. I do.
Q. Okay. And what is that about?
A. This is about --
Q. This is a follow-up to the last email?
A. It is. Because Mr. Sussman, as you see right there, says, "It's interesting because the Commission process is supposed to be confidential, no? It is one thing for you to reveal what you have. It is another thing for the Commission itself to do so". I also note on its website, "No pledge of confidentiality". So I bring up Judge DiFiore, how there was a Commission investigation against her.
Q. All right. So that's what that context is?
A. Yes.
Q. Any reason for you to have withheld that?
A. No. And I'm saying that -- so how are they getting into --
Q. I understand what you're saying, but there's no reason --
A. But I'm talking -- that's fine. Go ahead.
Q. No, go ahead.
A. No, there's absolutely no reason for me to withhold this.
Q. All right. So DiFiore, was that -- the investigation, was that announced, do you know?
A. Yes --
Q. Okay.
A. -- I believe it was made public.
Q. But in any event, this is a communication you were having with Sussman --

A. Yes.

Q. -- in that email, correct?

A. Correct.

Q. All right. And let's take 25.

MR. BIENSTOCK: I understand your testimony about no reason for you to withhold it. Was this within the category of documents that were requested? That is, all emails between you and Sussman?

THE WITNESS: Well, it wasn't -- it was all emails regarding the Koch defamation case. I do admit --

MR. BIENSTOCK: Okay.

THE WITNESS: -- this should have been turned over. I missed it. I do admit that.

MR. BIENSTOCK: Okay.

THE WITNESS: Sure. I would have turned this over --

MR. BIENSTOCK: Okay.

THE WITNESS: -- if I had seen it.

BY MR. COFFEY:

Q. Okay. Let's take 25. All right? I guess -- 24. No, I guess, 25, right? 25, no? All right. Now, that's May -- this was all in February going on. February 13, 2023. You see that?

A. Yes.

Q. Okay. And you indicate at the very bottom -- you talked before about it being in mass, correct?

A. Well, yeah, but this is the redacted part --
Q. Okay.
A. -- at the top.
Q. Okay. The redacted part is from, "Your draft reply is excellent" -- well, tell me what's redacted.
A. The next sentence down.
Q. Okay.
A. "If I thought the process was going to be fair, I would not have brought the suit", and then, "Even though I am stipulating to take medicine, medical procedures, they still want 12 years of my medical records".
Q. All right. That part was all redacted?
A. Yes, because this had nothing to do with Koch.
Q. Okay. Let's talk about the first part, "Your draft reply is excellent". Draft reply, what, to the motion?
A. Yes.
Q. Okay. What does that mean, "If I thought the process was going to be fair, I would not have brought the suit"?
A. So this is shorthand because I'm not going to keep repeating what I said to him in the attachment. You have to go back to the attachment now.
Q. Right. Okay. Yeah.
A. So --
Q. You don't have to go back.
A. No, I have to read it.
Q. Okay. Go ahead.
A. It says, "I would gladly have waited until the Commission was through to

bring suit against Koch. However, the one-year statute of limitation prevented that". And that further goes back to my conversation when I talked about bringing the suit, how the process isn't fair, that they can drag it past the one year, and then I would not bring suit.

Q. All right. That was your state of mind?

A. That's it, yes. That's all that that referred to.

Q. Was that your state of mind?

A. Yes.

Q. Okay. And would there have been any reason for you to have withheld this?

A. So --

Q. Well, you redacted it?

A. I redacted it upon advice of Counsel LaVeglia.

Q. Okay.

A. Because he said this whole section has nothing to do with Koch.

Q. Okay. So that part, you listened to Mr. LaVeglia and you redacted it?

A. I did.

Q. Okay. And when you redacted it -- okay. I'll withdraw that. All right. Let's go to 26. This is May 12, 2023.

A. No.

Q. No?

A. Well, which one are you on? Should be March 6. No? Am I looking at the wrong one?

MS. DIPALO: No.

A. The next one should be March 6.

BY MR. COFFEY:

Q. Not that I have.

A. Exhibit --

MR. FRIEDBERG: 26. Says, "Agreement with Koch".

THE WITNESS: Oh.

BY MR. COFFEY:

Q. Yeah, that's May 12th.

A. What about Exhibit -- in this one, it's 14.

Q. Well, let's go to -- we'll go to --

A. All right. That's fine.

Q. All right. That's fine with me.

A. Which one is it?

MR. FRIEDBERG: You're looking at exhibits to the formal complaint. We're looking at Respondent's exhibits. So they're two different things.

A. Oh, May 12th? Okay.

BY MR. COFFEY:

Q. Yeah. I'll stay with that. Okay?

A. Go ahead. May 12th.

Q. That's why it's helpful to do it this way.

A. Sure.

Q. That's from you to Sussman again, correct?

A. Yes.

Q. Okay. And that is your statement to him regarding what?

A. So I -- the first part I didn't redact because it has to do with Koch. The second part where I redacted, "It is readily apparent that the Commission is trying to remove me as a Judge due to my religious beliefs. Since they seem" --

MR. BIENSTOCK: Hold on a minute.

THE WITNESS: Yes.

MR. BIENSTOCK: Okay. I'm with you. Go ahead.

A. "Since they seem to have hit a brick wall, they are trying to figure out how to get me out based on my inability to mask". Now, this had nothing to do with Koch. This had to do with the complaint that was ultimately dismissed about not wearing a mask in the courthouse.

BY MR. COFFEY:

Q. All right. Now --

MR. BIENSTOCK: Had it been dismissed by May 12, 2023?

THE WITNESS: No.

MR. BIENSTOCK: Okay.

THE WITNESS: No.

A. So it was redacted because it had nothing to do with Koch.

BY MR. COFFEY:

Q. Okay. Fair enough. You said, "Thank you for sending the letter to Judge Rosa last night. You are correct. I am" what?

A. I don't know where you are now.

Q. "Thank you for sending the letter to Judge Rosa last night".

A. Oh, yes.
Q. "You are correct. I am" what?
A. Worried.
Q. Okay. "That the SLAPP decision makes me look like a complete idiot".
A. Yes.
Q. Okay. All right.

MR. BIENSTOCK: And the sentence, "It is readily apparent", was redacted?

THE WITNESS: Correct. The two --

MR. BIENSTOCK: All right. And the next sentence, "Since they seem to have hit a brick wall", was redacted?

THE WITNESS: Yes.

MR. BIENSTOCK: And your testimony is that it had nothing to do with Koch?

THE WITNESS: Correct. It had to do with the complaint that they said I wasn't wearing a mask in the courthouse.

BY MR. COFFEY:

Q. Okay. Let's go to 27. This is May -- or I'm sorry, April 3, 2023. See that?
A. Yes.
Q. Was that redacted or was that --
A. No, this one was missed, and this is another one I would never intentionally leave out.

Q. And why is that?
A. Because I say it shows the corruption.
Q. Okay.
A. Part of the corruption.
Q. In your opinion?
A. In my opinion, yes.
Q. Okay.
A. Yes. Yes.
Q. All right. But you don't apologize for that?
A. I do not.
Q. Okay. All right. Now, let's go to Number 29.

MR. FRIEDBERG: 28?

BY MR. COFFEY:

Q. 28. I keep -- you know, I'm sorry. 28. This is May 12, 2023.
A. Hold on.

MS. DIPALO: Oh.

A. No, we just did that one.

MS. DIPALO: Yeah, there is a mistake.

MR. COFFEY: Okay. So --

MR. BIENSTOCK: It's the same thing.

MR. FRIEDBERG: Shouldn't it say, "Agreement with Koch"?

MS. DIPALO: Yeah. 26 is wrong in the bench books. That is what the problem is.

MR. COFFEY: Okay. I think we finished -- did

we finish all these?

MS. DIPALO: Yes, but I don't know if Judge Mora wants to testify there is a mistake in the Bench Books.

MR. COFFEY: Okay.

THE WITNESS: I don't know. I don't have it in front of me.

MR. COFFEY: All right.

MS. DIPALO: Yeah -- no, no, I -- maybe we should go off the record.

BY MR. COFFEY:

Q. Let me ask you this, if I can. Is it your belief that we have gone through all the emails that they claim were improperly withheld or redacted?

A. Yes.

Q. Okay. There is none other -- now, you may be cross-examined on something, but -- so I don't want to be faced later with, "Well, Judge Mora deliberately" --

A. I believe these are all of them

Q. Okay.

A. If I see something later, I'll address it.

Q. Okay. All right. Are there any emails that you deleted or redacted that you did to try -- well, redacted is different. That you deleted or you withheld because you wanted to hide anything?

A. No. And just to be clear, I didn't --

MR. BIENSTOCK: No, no.

THE WITNESS: No, I didn't delete --

MR. BIENSTOCK: The answer to the question is no.

THE WITNESS: Well, the question -- well, he said deleted.

MR. BIENSTOCK: The answer to the question --

MR. COFFEY: I'll withdraw that.

MR. BIENSTOCK: You can ask another question. Okay?

MR. COFFEY: Yeah, I will.

A. The answer is no.

BY MR. COFFEY:

Q. All right. I misspoke. I apologize. Forget deleted. Did you delete any -- I know you redacted. Did you deliberately sit there and delete any emails?

A. No.

Q. Did you deliberately withhold any emails from being presented to the Commission?

A. No.

Q. Okay. When you had a question in your mind, am I correct, as to whether or not they had a right to the information, you redacted it; is that correct?

A. Upon the advice of counsel, yes.

Q. Okay. So the redactions that you took, were they all on the advice of

counsel or did you do it on your own?

A. No, we -- advice of counsel. We reviewed these together.

MR. COFFEY: Okay. All right. Mr. Bienstock, I think I'm done, but if I -- I mean, maybe we're just ready for lunch or a short lunch break?

THE WITNESS: I definitely need a restroom.

MR. BIENSTOCK: I'm focusing on the word think in that sentence.

MR. COFFEY: No, let me do it this way.

MR. BIENSTOCK: Are you done?

MR. COFFEY: I am -- I need maybe five more minutes. I just want to check my notes. I will not be long after the break.

MR. BIENSTOCK: Let's take the lunch break. One o'clock.

MR. COFFEY: Okay. I can come back sooner, if you'd like.

MR. BIENSTOCK: One o'clock.

MR. COFFEY: Okay. Thank you.

MR. BIENSTOCK: Off the record.

(Recess from 12:22 p.m. until 1:09 p.m.)

MR. COFFEY: Judge, I have nothing else. That's it.

MR. BIENSTOCK: All right.

//

CROSS-EXAMINATION

BY MS. DIPALO:

Q. Good morning, Judge Mora.

A. Good afternoon.

Q. Oh, yes. Judge, you testified that the Commission determined that you waived attorney-client privilege, correct?

A. Yes.

Q. And isn't it a fact that you executed a waiver of attorney-client privilege on July 10, 2024?

A. I did.

Q. You were the one who chose to waive attorney-client privilege?

A. Right. Because I didn't want to be brought up on charges that I'm not cooperating with the Commission.

Q. And Judge, you knew that face masks were required to enter Seeta on December 28, 2021. True?

A. Incorrect.

Q. You did not know?

A. If you can medically tolerate or if you were over two years old.

Q. The question is whether you knew that face masks were required, not what the exceptions were. Did you know face masks were required on December 28, 2021?

A. Yes.

Q. You saw the sign on the front door of Seeta?

A. Well, as I testified, I might not have seen it. I didn't dispute it was there. Because my son went in first, I may have been on my phone. I don't

know. I do not dispute the sign was there.

Q. And your son was wearing a face mask?

A. Absolutely.

Q. Because face masks were required, correct?

A. Unless you couldn't wear them, yes.

Q. And you never called Stacey Koch of Seeta Eye Center before your appointment on December 28, 2021, to see if you could wear a face shield to Seeta, right?

A. No.

Q. Okay.

A. Because I --

Q. And you never called --

A. Because we were going to be there in January.

Q. But you didn't call ahead of your appointment and ask if you could wear a face shield?

A. Correct.

Q. And you never called Seeta before the appointment to tell the office that you planned on accompanying your son, [redacted], to the appointment on December 28, 2021, right?

A. Correct.

Q. And when you entered Seeta on December 28, 2021, the waiting room was full of people. True?

A. Full or close to full.

Q. And you would agree that in December of 2021, the COVID pandemic was still ongoing?

A. Yes.
Q. And everybody in the waiting room of Seeta on December 28, 2021, was wearing a face mask with the exception of you?
A. Oh, I don't know. I didn't -- I didn't look at everybody.
Q. You would assume that they were wearing a face mask because face masks were required at Seeta?
A. I don't assume anything.
Q. And is it fair to say that in December of 2021, there may have been people who were in that waiting room who were afraid of contracting COVID?
A. I would think so.
Q. And when you walked up to the reception desk, a receptionist asked you to put on a face mask, correct?
A. Yes.
Q. And then Stacey Koch came to the waiting area, and she asked you to put on a face mask, right?
A. Yes.
Q. And you would not put on a face mask. True?
A. True.
Q. And Ms. Koch eventually told you that if you didn't put on a face mask, you'd have to leave, right?
A. Yes.
Q. But you stayed in the waiting room, correct, and you didn't leave?
A. Yes. I mean, eventually I left.
Q. But at the time Stacey Koch told you that you had to put on a face mask

or leave, you didn't leave?

A. No.

Q. You didn't care if anybody in the waiting room was uncomfortable that you were wearing the face mask?

A. I did care. I care what people think. I don't want anyone to be uncomfortable or feel not at ease with me.

Q. You didn't want to step outside until the matter could be resolved?

A. At that point, I was in shock, and I was having a panic attack. I should have. I should have stepped outside.

Q. And at any point when you were having a conversation with Ms. Koch or an exchange, did you tell her that you were experiencing a panic attack?

A. I did not.

Q. And you were at Seeta for a routine eye emergency for your son -- let me withdraw that. You were at Seeta for a routine eye examination for your son, correct?

A. It was an urgent one, but it was an eye examination. [redacted].

Q. It wasn't an emergency, though, correct?

A. Depends on how you define emergency. Emergency, I would think -- a pencil stuck in my eye, that's an emergency. It was urgent.

Q. You could have left and rescheduled, right?

A. Yes.

Q. And you could have -- I believe you testified you could have stepped outside with Ms. Koch and tried to resolve the situation, right?

A. Yes, and I should have.

Q. You didn't do any of those things on December 28th?
A. I did not.
Q. And I believe you testified that Ms. Koch told you that if you didn't leave, she would call the police, right?
A. Correct.
Q. And you told her that Dutchess County wasn't enforcing the mask mandate?
A. Correct.
Q. And you knew that Dutchess County wasn't enforcing the mandate, correct?
A. Yes.
Q. And you knew that if they weren't enforcing the mask -- let me -- you knew that if Dutchess County wasn't enforcing the mask mandate that the police were not enforcing the mask mandate, correct?
A. I would think that.
Q. And what would be your basis for believing that?
A. Because they're a part of -- they're in Dutchess County.
Q. And when you told Ms. Koch that Dutchess County wasn't enforcing the mask mandate, you were letting her know that the police wouldn't come and remove you for not wearing a mask, right?
A. No.
Q. What were you letting her know?
A. I was letting her know the police -- well, they're not enforcing it. They're not, like, making -- putting -- put people -- putting on -- that they were -- they were going to -- they were going to come, though.

Q. Yes.
A. Yeah.
Q. But they weren't going to remove you from Seeta for not wearing a face mask, correct?
A. I don't know what they were going to do.
Q. They weren't going to come to Seeta and tell you to put the face mask on, were they?
A. I don't believe so based on not enforcing it.
Q. And you knew Ms. Koch was an Office Manager at Seeta, correct?
A. Yes.
Q. And is it fair to say she was just doing her job and enforcing Seeta's mask policy on December 28th?
A. Yes.
Q. And it's her office's mask policy, right?
A. Yeah, it's Seeta Eye Center.
Q. It's not Stacey Koch's mask policy; is that true?
A. I don't know. I don't know if she created it. I don't know.
Q. And Ms. Koch told you more than once that the police weren't enforcing the mask -- told you more -- you told Ms. Koch more than once that Dutchess County wasn't enforcing the mask mandate?
A. That I don't remember.
Q. Now, you listened to an audio recording of -- yesterday, you listened to an audio recording of Ms. Koch's call with the Town of Poughkeepsie Police Department, correct?
A. Yes.

Q. And you spoke to Ms. Koch while she was on the phone with the Dutchess County Police Department, right?
A. Yes.
Q. We can agree you weren't silent in the background during that call?
A. No.
Q. And while she was on the phone with the Dutchess County Police, Ms. Koch told you that you couldn't be in the practice without a mask, right?
A. Yes.
Q. And you told her, "Well, I'm allowed to be here", right?
A. I --
Q. Or words to that effect?
A. Yes.
Q. And you were challenging Ms. Koch on whether or not she can make you leave for wearing a face shield and not wearing a mask; is that fair to say?
A. No. I was just trying to get my son's eyes seen.
Q. Well, what did you mean when you said, "Well, I'm allowed to be here"?
A. Because if you can't medically tolerate a mask, you're not -- you were allowed to be there. Just like if you were under two, you did not have to wear a mask. So a 23-month-old baby, no one could make that child put on a mask. That's what the mandate said.
Q. And Ms. Koch told you, "I wish you wouldn't speak if you weren't going to wear a mask", and she told you, "Don't talk", right?
A. Yes.
Q. And you told her, "I'm going to talk", or words to that effect?
A. Yes.

Q. You came back after she said that, and you said you were going to talk?
A. Yes.
Q. And Ms. Koch told you that -- you told Ms. Koch that, "People go to restaurants. No one's wearing a mask. Everyone's breathing in each other's air", right, or words to that effect?
A. To that effect after she said, "We don't want to breathe your air".
Q. And Ms. Koch told you she didn't go to restaurants because she lives with someone who's had [redacted] three times?
A. She did tell me that.
Q. And fair to say she told you she didn't want your germs on her, right?
A. She did say that, yes.
Q. And that didn't cause you to think about if what you were doing was appropriate by refusing to leave?
A. No. I was not breathing -- I mean, I was not spreading my germs on anyone. I was at least ten feet away from her, well over more than six feet away from everyone else in there because it is -- it was spaced out like, again, a room this size with only -- I think they said 20 chairs, if that, and there was so much room. And I stood where they told me to stand, and no one was near me.

And the CDC -- I knew what the regulation was. Well, at that point, I think it was still six feet because then they reduced it to three feet. So I'm six feet away, so I'm saying there's -- I'm not spreading my germs on anyone. I'm not spreading anything. Even if I did have COVID -- which I didn't. I had it three or four -- I think four months before, so I was completely cured of that. I was completely healthy that day. But I

was spreading germs on no one according to the CDC guidelines. I should have left. I do admit that. I do admit that. If I can go back, I would have.

Q. And you didn't walk out of Seeta after Ms. Koch called the police the first time? That's fair to say, right?

A. Correct.

Q. And Ms. Koch called the police a second time?

A. Correct.

Q. And at this time, you learned that the police may be coming because of your refusal to leave Seeta, right?

A. No, I did not. I didn't hear anything the police were saying.

Q. Did you hear what Ms. Koch was saying?

A. Yes. I heard the first time that the police were coming.

Q. Okay.

A. The first time, she said the police were coming.

Q. And when she called back the second -- when she picked up the phone to call the second time, you knew the police were coming, correct?

A. Well, I didn't know because --

Q. You had not assumed. You believed, based on Ms. Koch's con -- statements made during her conversation with the police, that the police would be coming?

A. Did you say calm statements?

Q. No.

A. I'm sorry. I --

Q. I didn't say -- no, I didn't say calm statements. Let me rephrase that. you

heard Ms. Koch on the telephone with the police. You heard her side of the conversation?

A. Yes.

Q. And you heard Ms. Koch say, "How long until somebody is going to be able to respond", correct?

A. Correct.

Q. And based on that statement, it would be a fair -- it was fair to believe that the police would be responding to Seeta?

A. I believe the police were responding to the first call.

Q. That's -- I'm referencing the first call.

A. Oh. I thought you said the second call.

Q. No, the first call.

A. Yes, the first call, I thought they were coming, correct.

Q. Okay. And then you didn't leave?

A. Correct.

Q. And she picked up the phone to call again, the police?

A. Correct.

Q. And you left at that point?

A. No, I left before that.

Q. Okay. In between the two calls?

A. Correct.

Q. But after you knew that the police were responding to Ms. Koch's call?

A. No. I knew they were responding to the first call.

Q. Yes. You knew -- based on the first phone call --

A. Right.

Q. -- you knew that the police were responding --
A. Right.
Q. -- and you left?
A. No, I did not leave when I thought they were coming with the first call. I left -- it was almost as she was making the call after I asked her, "If I get you medical documentation" -- I was begging her. And before that, you can't hear it because there was no -- there was no phone calls at the time. I said, "Please, he needs to be seen".
Q. Judge, my question was --
A. Yes.
Q. -- did you leave after she made the first call to police and before the second call to police?
A. Well, it was as the call was being made.
Q. Okay. Thank you.
A. Yes.
Q. Now, I believe you testified that after you left Seeta, you went home, and you called your chiropractor?
A. Yes.
Q. And your chiropractor is G[redacted] M[redacted]?
A. Yes.
Q. Okay. And you've known Dr. M[redacted] for a long time, correct?
A. Yes.
Q. Since your childhood?
A. Yes.
Q. You went to school together?

A. Yes.
Q. Grew up together?
A. Yes.
Q. Graduated high school together?
A. Yes.
Q. You'd consider him a friend, right?
A. Yes.
Q. And you told Dr. M[redacted] that you needed a doctor's note for your son to be seen at Seeta, right?
A. In sum and substance, yes.
Q. Yeah. And Dr. M[redacted] wrote you a letter or a note that stated, "Due to his current health condition, he", meaning you, "is unable to wear a mask", correct?
A. Yes.
Q. It's fair to say that Dr. M[redacted] didn't specify in the letter what your health condition was, right?
A. Correct.
Q. And he did not state in the letter why it rendered you unable to wear a mask, right?
A. Correct.
Q. And Dr. M[redacted]'s treatment of you included performing adjustments on your spine?
A. Neck, spine, whatever else they adjust, yes.
Q. He was not treating you for any health condition that made you unable to wear a mask, correct?

A. Well, I don't know how to answer that. The health condition caused the physical symptoms of headaches, neck pain, and he was --

Q. I can break it down for you. What was the health condition that caused you to be unable to wear a mask, medically tolerate a mask?

A. What I was eventually diagnosed with?

MR. COFFEY: Excuse me. I'm sorry. I'm sorry. I thought it was off. Apologize.

BY MS. DIPALO:

Q. Would you like me to ask the question again?

A. Please.

Q. What was the health condition that rendered you unable to medically tolerate wearing a mask?

A. The one that I was eventually diagnosed with?

Q. Yes.

A. Anxiety, object phobia, something like that. I don't know exactly --

Q. And --

A. -- what the term is.

Q. -- in December of 2021, Dr. M[redacted] was not treating you for anxiety or object phobia, correct?

A. No, he was treating me for the physical symptoms.

Q. But he was not treating you for the condition that made you unable to wear a mask, which was anxiety or object phobia?

A. I don't know how to answer that. I don't know how to answer that because he was treating me.

Q. He was treating you for the symptoms --

A. Right.
Q. -- of anxiety --
A. Sure.
Q. -- but he was not treating you for the health condition that was causing those symptoms?
A. I don't know how to answer that.
Q. And Dr. M[redacted] emailed you a doctor's note?
A. Yes.
Q. And you emailed it to Ms. Koch?
A. Yes.
Q. And Ms. Koch arranged for your son to be seen for a doctor -- before a doctor for an eye exam, correct?
A. Yes.
Q. Now, going back, you testified earlier that when Ms. Koch told you you had to put on a mask or leave, you didn't understand if she wanted you to leave your son in Seeta and go wait in the parking lot or if she wanted you both to leave, correct?
A. At first.
Q. Okay. You agree you never asked Ms. Koch, "Should I leave my son here and go wait in the parking lot"?
A. Correct.
Q. And you testified that you could not put on a face mask because you could not medically tolerate a face mask, correct?
A. Correct.
Q. And at the time of the incident at Seeta, you hadn't been diagnosed with a

condition that made you medically unable to tolerate a mask, correct?
A. Correct.
Q. You weren't diagnosed with anxiety on December 28, 2021?
A. Correct.
Q. You hadn't been evaluated by a medical professional or a mental health professional for your inability to wear a mask, correct?
A. Because of that condition?
Q. Yes.
A. Correct.
Q. And you didn't seek an evaluation for your inability to wear a mask from a mental health professional until late April 2022, right?
A. Correct.
Q. And would you agree that you only sought treatment after the Commission sent you a letter dated April 12, 2022, inquiring about the incident at Seeta and your failure to wear a mask in the courthouse?
A. It was precipitated by that, yes.
Q. Now, you testified earlier that the only people who were required to -- let me withdraw that. You testified that you did not have to wear a face mask because you were unable to medically tolerate a face covering, correct?
A. Yes.
Q. And that the mandate made exceptions for people who were under two or medically unable to tolerate a face covering?
A. Yes.
Q. And your position is that Ms. Koch was in violation of the mask mandate

by requiring you to wear a mask?
A. Yes.
Q. It's fair to say that the mask mandate was directed at protecting the public's health, right?
A. Yes.
Q. And would you agree that a threat to the public health outweighs the health concerns of a private individual? So that the public health is greater than a private person's health?
A. No.
Q. You would not agree that the health of the general public -- or a requirement that is for the health of the general public is more important than the health of a single individual?
A. I don't even understand the question. Like, are you saying can --
MR. BIENSTOCK: No, no. That's not --
A. I don't understand the question.
BY MS. DIPALO:
Q. Okay. So the mask mandates were created to protect the health of the public?
A. Correct.
Q. And my question is, the health of the public is more important than the health of one private person who maybe cannot medically tolerate a mask?
A. I don't believe that's true, and I don't believe that's what the mandate says. If that was the case, they wouldn't have had that in there. If someone could not medically tolerate, you didn't have to wear a mask. So they

took full consideration of everything and put that in the mandate.

Q. At the time you entered the waiting room, did you consider that Ms. Koch had to consider the health and welfare of the other patients in the waiting room?

A. Yes. Well, did I consider it?

Q. Did you consider it?

A. No, not at that time.

Q. And --

A. I didn't even think about it.

Q. Judge, at any point during your confrontation with Ms. Koch at Seeta, did you ever put yourself in Ms. Koch's shoes?

A. At that point?

Q. Yes.

A. No. I was too much in shock and having a panic attack. I couldn't put myself in anybody else's position.

Q. And let's say even assuming that Ms. Koch misunderstood the mask mandate or she was unfamiliar with it, whatever you want to say, you realize now that it was inappropriate for you to refuse to leave Seeta when she told you to leave, correct?

A. I said that a few times, and I will continue to say, yes, I should have left.

Q. And Judge, you --

MR. BIENSTOCK: Excuse me. The answer is yes?

THE WITNESS: Yes.

//

BY MS. DIPALO:

Q. You agree that as a Judge, you're obligated to act, at all times, even off the bench, with dignity and integrity, correct?

A. Yes.

Q. And do you believe that you acted with dignity and integrity when you were asked to leave Seeta and you did not comply with Ms. Koch's directives?

A. I still do because I was not in violation of the mandate, but looking back, I would have left.

Q. And now, I want to turn to March of 2022. This is after the incident at Seeta on December of 2021. You called to schedule an eye exam for one of your children at Seeta, correct?

A. Yes.

Q. And despite everything that happened with Ms. Koch on December 28th, you didn't consider switching to another ophthalmology practice?

A. No. We were sticking with Dr. G[redacted].

Q. You also testified earlier that you've been a patient of Seeta for 20 years, right?

A. Yes.

Q. And I believe you testified that you went other places and came back?

A. Yes.

Q. You didn't think this would be a good opportunity to go to another place for a little while?

A. No. It had nothing to do with me. I was doing it for my children, who've been with them -- I don't even know how many years because my wife

handled it most of the time [redacted].

Q. But I'm saying after this incident at Seeta, you didn't think that maybe we should just try someplace for a little while, someplace else?

A. No, because --

Q. Okay.

A. -- I'm not going to penalize my children because of an interaction that happened with their father.

Q. And you went back to Seeta for eye exams, also, after the incident on December 28, 2021?

A. An eye exam, yes.

Q. Yeah. But you --

A. You said "exams".

Q. Oh. Thank you. Now, you called Stacey Koch in March of 2020 [sic] to schedule an eye exam for your son -- or you called Seeta to schedule an eye exam for your son?

A. It's a compound question, but no to both.

Q. You did not call Seeta?

A. I -- no. I called Ms. Koch directly, and it was not March. I think it was February 28th, I believe.

Q. Thank you. And you spoke to Ms. Koch?

A. Not that day. She called me back.

Q. And that was in March of 2022?

A. Yes.

Q. So you spoke to Ms. Koch in March 2022?

A. Yes. I called her directly so we wouldn't have any problems.
Q. After the -- you called her directly after you had had what you -- after what you had described as -- after she berated you on December 28th?
A. Correct.
Q. And you called her after she yelled at you on December 28th?
A. Yes.
Q. And you called her after she had called the police on you on December 28th?
A. Yes.
Q. You decided to call her directly to schedule this appointment?
A. Of course. Because I don't want any other problems, and since they let me in right after --

MR. BIENSTOCK: Next question.

BY MS. DIPALO:

Q. And when you spoke to Ms. Koch, she told you that you and your family were not a good fit for Seeta, right, or words to that effect?
A. Yes.
Q. And she suggested that maybe you should find another ophthalmology practice, right?
A. She did.
Q. You couldn't have been surprised that Ms. Koch suggested that you find another practice after she had to call the police on you on December 28, 2021, could you have been?
A. Yes.
Q. You were surprised?

A. Yes.
Q. You felt entitled to continue to use the services of Seeta instead of switching to another practice, right?
A. No, I would not use the word entitled.
Q. What word would you use?
A. I would use the -- my children are allowed to go to the doctor that they're comfortable with, and I was making an appointment for them.
Q. And would it be fair to say that Ms. Koch's statements to you that maybe you and your family were not a good fit at Seeta, they upset you?
A. It did upset me because she was kicking me out because I couldn't wear a mask.
Q. Well, she didn't kick you out, did she?
A. Excuse me. Attempted to kick me out.
Q. She --
A. My family.
Q. She suggested?
A. No, it was more than a suggestion. It was, "You're not coming back here", is what she basically said. I'm paraphrasing --
Q. You're paraphrasing.
A. -- but that's what she said, yes.
Q. It made you angry that she said that, right?
A. I was upset.
Q. You were angry?
A. No, I wouldn't say angry. No.
Q. And you wrote Ms. Koch an email after your conversation in early March

of 2022, right?

A. I did.

Q. And that email was on March 7, 2022?

A. Correct.

Q. And you sent Ms. Koch this email?

A. Yes.

Q. And in that email, you gave your account of the incidents that occurred at Seeta on December 28, 2021?

A. Correct.

Q. And you were still angry with Ms. Koch about what had happened at Seeta on December 28, 2021, at the time you sent this email, right?

A. I was upset.

MS. DIPALO: At this time, Mr. Bienstock, I'd like to show Judge Mora what has been marked as Respondent's Exhibit E in evidence.

MR. COFFEY: No objection. Well, it's already in evidence, I think.

(Counsel confer)

MS. DIPALO: Mr. Fenwick is showing Respondent's Exhibit E to Judge Mora.

BY MS. DIPALO:

Q. Judge Mora, can you turn your attention to page 1, paragraph 2?

A. Yes.

Q. And it's lines 4 to 7. You state, "Not only did you not have a procedure in place when I came with my son, [redacted], on December 28, 2021, you

came out and went berserk. Although I was at least ten feet away from you and at least 15 feet away from anyone else, you asked me to leave. This time, I would not". And you were acknowledging in that letter that Ms. Koch asked you to leave, and you refused, correct?

A. Yes. I never denied that.

Q. And you were still angry about the incident at Seeta three months later?

A. I was upset.

Q. And if you could turn to page 1, paragraph 2, four lines from the bottom, you wrote, "You then asked the police -- you then called the police back and told them it was an emergency as I did not have a mask on and would not stop talking and spreading germs. Do you realize how illogical, nonsensical, and ridiculous that is"? Judge, would you agree that calling someone's conduct illogical, nonsensical, and ridiculous is denigrating?

A. No.

Q. You would not?

A. I would not.

Q. Would you say you were complimenting her in this letter?

A. No.

Q. No? Why add that sentence, "Do you realize how illogical, nonsensical, and ridiculous that is"?

A. Because when you're following the CDC guidelines, as she said she did, as she testified to, over and over, and those guidelines say, "You need to be six feet away or wear a mask", it's or -- and I'm well more than six feet away, not only did I have a face shield on, which some argue that works even better than a cloth mask, she had her own face mask on. I think she

testified it was an N95. So that's -- where are we? So it is illogical that you're going to -- that I'm going to spread germs on anyone since I'm not near anyone. It's nonsensical, meaning it doesn't make sense, and it's ridiculous.

Q. Why is it ridiculous?

A. Because if you're following the CDC guidelines, I can't harm anyone, even if I was sick, which I was not. That's why I put that in there.

Q. Could Ms. Koch have known you were sick on December 28, 2021?

A. Could she have known? Yeah, she had to --

Q. Did you tell her you weren't sick?

A. I did not.

Q. And did you tell any of the other patients in the room that you weren't sick?

A. No.

Q. Now, if you could turn to page 1, paragraph 3, lines 1 to 3. You wrote, "As you wanted a doctor's note for my medical intolerance, I sent that over to you. Was that good enough? No. You had the audacity to call my doctor and question him as to my condition and why I could not wear a mask. What gives you the right to ask about my medical condition"? You were outraged that Ms. Koch called your chiropractor and asked about your medical condition, weren't you?

A. Absolutely. Absolutely. I was outraged because she's violating not only HIPAA, but my personal, private medical information, who I didn't want anybody to know what my condition was.

Q. Judge Mora, have you ever practiced HIPAA law?

A. No.
Q. And have you ever worked in a doctor's office?
A. No.
Q. Have you ever had a doctor -- have you ever given permission for your doctor to provide medical information to another doctor?
A. Of course. I would sign a HIPAA release.
Q. Yes.
A. Right.
Q. Okay. Let's turn to page 2, lines --

MS. DIPALO: I'm sorry. Give me one moment.

MR. FRIEDBERG: Want mine?

MS. DIPALO: Yes, please.

MR. FRIEDBERG: Take the whole book.

MS. DIPALO: Thank you.

BY MS. DIPALO:

Q. Okay. Sorry. It's the last -- it's page 2. It's the first line -- beginning on the first line, lines 1 to 4. "You said we should wait until July and maybe the masks won't be around anymore. From what I can tell of your irrationality, you will require masks even when they are no longer required". You knew that Ms. Koch was the Office Manager at Seeta when you sent this --
A. Yes.
Q. -- letter? And you weren't employed at Seeta at any time?
A. No.

Q. You didn't know who was involved in devising Seeta's mask policy, did you?
A. No.
Q. Okay. In fact, you didn't even know if Ms. Koch was involved in devising Seeta's mask requirement policy. That's fair to say?
A. Yes.
Q. And if you could turn to page 1 -- back to page 1, paragraph 4, the second to last line. You wrote, "Instead of dealing with someone who cannot wear a mask, you attempt to get rid of my family. This is blatant and outright discrimination, and I will not stand for it. This is a direct violation of the Americans with Disabilities Act, and I advised you so". You never filed a discrimination lawsuit against Seeta, did you?
A. I did not.
Q. Now, Judge Mora --

MS. DIPALO: Andy, can you take that exhibit back from the Judge?

BY MS. DIPALO:

Q. Judge Mora, your son, [redacted], was seen for an eye examination at Seeta sometime after you sent this email, correct?
A. Yes. April 8th.
Q. And I believe you testified you were seeking for an eye exam after you sent this email to Ms. Koch?
A. May 20th.
Q. And when you went to your appointment on May 20, 2022, Michael Brown was in the exam room with you, right?

A. Yes.
Q. Okay. And you told Michael Brown that Stacey Koch had filed a complaint against you with the Commission, right?
A. I believe so.
Q. And Michael Brown was surprised that Koch had filed a complaint against you?
A. At that point, I believe so.
Q. And he asked you what she had filed a complaint about, right?
A. I think so.
Q. Would you like me to refresh your recollection?
A. No. That's what I think --
Q. You believe he was -- he asked you what the complaint was about?
A. I believe so.
Q. And you told Michael Brown that Stacey Koch complained that you didn't wear a mask, and you wouldn't leave, right?
A. In sum and substance, yes.
Q. And I believe you testified that Brown asked if there was anything he could do for you?
A. Correct.
Q. And you testified that Brown -- you asked if he'd be willing to write a letter for you?
A. Correct.
Q. And you testified that you drafted the letter, correct, for Michael Brown?
A. Correct.
Q. And that's the letter that's in evidence as Respondent's Exhibit F, and it's

dated June 13, 2022?

A. Yes.

Q. Okay. And you testified you typed up the letter, correct?

A. Correct.

Q. Mr. Brown didn't dictate the contents of the letter to you, did he?

A. Well, it depends on how you define dictate. When we were on the phone, he made changes to it, so yes. I guess the answer is yes. Parts of it.

Q. Let me ask you a couple --

A. Okay.

Q. -- more questions.

MS. DIPALO: Mr. Bienstock, may I show the witness Respondent's Exhibit F?

MR. BIENSTOCK: You may.

MS. DIPALO: Thank you. Mr. Fenwick is showing Judge Mora the exhibit. Give me one moment. I apologize.

(Counsel confer)

BY MS. DIPALO:

Q. Judge Mora, can you turn your attention to the first paragraph, line 4?

A. Yes.

Q. "I found it hard to believe that she filed a complaint. After reading the complaint, I was even more dismayed. I am writing this letter because I feel Judge Mora did not do anything to warrant the police being called on him or a complaint being filed against him". Are those your words?

A. No.

Q. Michael Brown told you those words, and you typed them into the computer?

A. I believe so. I mean, I don't remember exactly which ones I started with, and then he said, "Add this or change this". So I believe those are.

Q. Judge Mora --

MS. DIPALO: If I may, I'd like to show Judge Mora -- let me hold off.

BY MS. DIPALO:

Q. You testified that he only made a couple changes, right?

A. If I said, "A couple", that would have been a mistake. A few. I don't know how many. I can't remember how many.

MS. DIPALO: Mr. Bienstock, may I show Judge Mora a copy of his testimony before the Commission on February 27, 2024?

MR. BIENSTOCK: Yes.

MS. DIPALO: Andy, you have a copy of it? Yes. Thank you. Mr. Fenwick is showing Judge Mora a copy of his testimony.

BY MS. DIPALO:

Q. Judge Mora, if you could look at -- starting at line 16 -- let me ask you, first, you recall testifying before the Commission on February 27, 2024?

A. Yes.

Q. And you gave this testimony under affirmation because you do not swear oaths, correct?

A. Correct.

Q. You were asked --
A. What page are we on?
Q. Oh, I'm -- page 75.
A. Oh, thank you.
Q. I gave you the line and didn't --
A. Yes.
Q. -- give you the page. My apologies. Page 75, line 16. Okay. You were asked, "So -- okay. So you -- did you call him on his cell phone or did you text him"? You answered, "Probably both". You were asked, "Okay. And how did you get him a draft of the letter"? You testified, "So I called him up, and I said, 'I have something drafted.' I said, 'Let me read it to you.' I said, 'We'll go line by line.' And I said, 'The only thing you need to do is tell the truth. Anybody I ask for anything, a letter or whatever, I always say, 'Just tell the truth.' So I read each line, and I don't know if he made a change or two. I don't remember. So I went line by line. I said, 'Is this true? Yes. Let me keep going.' I read every line. I said, 'Okay. Is that good?' If you turn to page 76, "Yes". "All right. Do you want any changes"? "No". I said, "All right. I'll print it out, and I'll meet you to sign it". Did you give that testimony, Judge Mora?
A. I did.
Q. So Michael Brown didn't make a few changes, correct?
A. I don't remember how many he made. When I said, "One or two", I wasn't saying he made exactly one or two. It was just in general, what I was trying to say. That was inartfully worded. I don't know how many changes he made. He definitely made changes, and he definitely added to

it. So I was mistaken when I said that.

Q. Okay. And you wrote the letter, correct, Judge?

A. I drafted it, yes, and then we went over it, and like I said, I went line by line. I did not keep track of what changes were made, what he added, what he took out. I didn't do any of that. I would have never even thought to do something like that.

Q. Let me just --

MR. BIENSTOCK: Next question.

MS. DIPALO: Yes.

BY MS. DIPALO:

Q. And Michael Brown called you --

MS. DIPALO: Oh, Andy, could you take the exhibit from Judge Mora? Thank you.

MR. FENWICK: You're welcome.

BY MS. DIPALO:

Q. Now, Michael Brown called you after you met him to sign the letter that you drafted, correct?

A. You mean at some point after?

Q. Yes --

A. Yes.

Q. -- at some point after. And that was in September of 2022?

A. Yes.

Q. And Mr. Brown told you that Stacey Koch had testified before the Commission?

A. Yes.

Q. And you called Ms. Sussman, correct? After receiving Michael Brown's call.
A. At some point after?
Q. At some point after.
A. Yes.
Q. And Michael Brown called you after he testified before the Commission, right?
A. I believe so. He -- because he told me he was going to testify. He said approximately when. So I didn't know what exact day, so I'm not sure if I called him before he testified, and he said, "Oh, it's not yet". We communicated. I don't know who called who. I just don't.
Q. Did you communicate with Mr. Brown after he testified before the Commission?
A. Yes.
Q. And did you communicate with Mr. Brown concerning what happened when he testified at the Commission?
A. Yes. He told me certain things that were said.
Q. And did Mr. Brown tell you that the Commission asked him whether he was coerced to write the letter we talked about?
A. Yes.
Q. And you didn't know Michael Brown before December 28, 2021, right?
A. No.
Q. Never met him?
A. No.
Q. You had no relationship with Michael Brown?

A. No.
Q. And your relationship as of September of 2022 was limited to Mr. Brown agreeing to provide a letter on your behalf and a couple of phone calls about testimony before the Commission --
A. Correct.
Q. -- is that fair to say?
A. Yes.
Q. And you didn't speak regularly with Michael Brown?
A. No.
Q. You didn't socialize with him?
A. No.
Q. You didn't associate with the same people. Is that fair to say?
A. I don't think so.
Q. And you didn't know anything about Michael Brown's background when he wrote the letter for you in June 2022?
A. No.
Q. And you didn't know anything about the background -- his background when he called you in September of 2022 and told you that Stacey Koch was bragging that she was going to get you fired?
A. When you say "background" --
Q. Did you know where he was born?
A. Oh, no.
Q. Did you know if he was married?
A. No.
Q. Did you know if -- you know, what his hobbies were?

A. No.
Q. And you took his word that Stacey Koch was bragging about getting you fired as truth, correct?
A. Yes.
Q. And it's fair to say that you only decided to sue -- or let me withdraw that. It's fair to say that you only contacted Mr. Sussman about suing -- about bringing a suit against Stacey Koch after Michael Brown had called you and told you that Stacey Koch was bragging she was going to get you fired?
A. And the other things that he said she was saying, that I said -- that I threatened her. Yes, whatever he said. Yes. Correct.
Q. And this was all -- Ms. Koch was -- these were Ms. Koch's statements when she testified at the Commission, correct? Let me try again. Michael Brown told you that Stacey Koch testified before the Commission, right?
A. Yes.
Q. And Mr. Brown told you that Stacey Koch was bragging to him that she was going to get you fired, correct?
A. Yes.
Q. And Mr. Brown told you that Stacey Koch testified at the Commission that she felt threatened by you or you were threatening her or words to that effect, correct?
A. I don't know if he said it about her testifying or that she said it prior to that. I don't remember. Because you said he told me she was -- he didn't just say it -- she was saying this regularly to him.

Q. And you took Michael Brown's word as the truth, right?

A. Yes. And we found out it was the truth.

MS. DIPALO: Can we have that last part stricken?

THE WITNESS: Ms. Koch testified yesterday to it.

MR. COFFEY: Well --

MS. DIPALO: Mr. Bienstock?

MR. BIENSTOCK: I'll let it stand.

MS. DIPALO: Okay.

THE COURT REPORTER: I'm sorry. I'm having trouble with my mic. Can we take a second off the record?

MR. BIENSTOCK: Sure.

MS. DIPALO: Yes.

(Recess from 1:56 p.m. until 1:57 p.m.)

THE CLERK: On the record.

CONTINUED CROSS-EXAMINATION

BY MS. DIPALO:

Q. Judge Mora, you testified that you asked Mr. Sussman to represent you in a lawsuit against Stacey Koch in November of 2022?

A. Yeah. November 14th, I asked him if I had any recourse, correct.

Q. Okay. And in November 2022, you told Mr. Sussman that you only wanted to sue Stacey Koch, right?

A. Yes, with the -- in my email. Correct.

Q. Yes.
A. If I could.
Q. And you wanted to sue Stacey Koch for statements she made in her complaint to the Commission, correct? The statements in her complaint.
A. It was statements that were made, yes, not filing the complaint. Correct.
Q. No, the statements that she made and filed with the Commission?
A. Right, but not for filing it. Correct.
Q. Yes. And you didn't want to sue Ms. Koch's employer, Seeta Eye Center?
A. No. She didn't -- I mean, they didn't do anything.
Q. She was an employee of Seeta at the time, correct?
A. Correct.
Q. And the incident occurred at Seeta Eye Center?
A. Correct.
Q. And you didn't want to sue Ms. Koch for the statements she made to Michael Brown about you, right?
A. I did.
Q. And you didn't sue her for that, though, correct?
A. Apparently, I did not. I don't know why Mr. Sussman didn't put it in.
Q. And you wanted to add a claim to defamation for tortious interference with a business contract, right?
A. When you say "wanted to add a claim", that's the only claim I could think of that maybe possibly would fit what she was doing, so when he came back with, "You have defamation", I did -- I emailed him, "What about tortious interference"? Yes. Correct.

Q. And you also wanted to sue her for violating your privacy rights under HIPAA?
A. If I could, sure.
Q. And you wanted these two claims in addition to the defamation claim, if possible?
A. Yes.
Q. And judges are public officials, right?
A. Yes.
Q. And it's fair to say there's -- that the conduct of judges is a matter of public interest?
A. Yes.
Q. And you'd also agree that it's important for the public to have confidence in the judiciary who serve them?
A. Absolutely.
Q. And would you agree that a member of the public has the right to file a complaint against -- of misconduct against a judge?
A. Yes.
Q. And that the Commission is the proper forum for examining those complaints?
A. Yes. I mean, it's created through the Constitution, so yes.
Q. And it's fair to say that a person can lodge a complaint with the Commission regardless of its truth or falsity, right?
A. Apparently, that's the law through what I found out. It's called -- I think it's *Wiener v Weintraub*, I believe.
Q. And you didn't know that was the law at the time?

A. At the time it was filed?
Q. At the time you filed your lawsuit.
A. No.
Q. Did you consider that the Commission receives many complaints?
A. Did I consider it?
Q. At the time you filed your lawsuit, were you aware that the Commission receives complaints against judges throughout New York State?
A. Yes.
Q. And that the complaints are filed by members of the public?
A. Yes.
Q. And do you think that every complaint the Commission receives is accurate?
A. No.
Q. And do you think that every complaint the Commission receives is truthful?
A. No.
Q. And you'd agree that the Commission is responsible for reviewing and evaluating the veracity of the allegations in the complaints that are received, right?
A. Yes.
Q. Ms. Koch had the right to file a complaint against you with the Commission, right?
A. Yes.
Q. And she had the right to report what she perceived as judicial misconduct. True?

A. Yes.
Q. She was permitted to make statements in her complaint about what she perceived was judicial misconduct, right?
A. Yes.
Q. And that's regardless of whether they were true or false, correct?
A. Apparently, that's the law.
Q. Well, the answer is yes or no.
A. Yes.
Q. Now, you sued Ms. Koch for the statements she made about you in her complaint to the Commission, right?
A. Yes, that's what the complaint says.
Q. And you allege that they were false statements that she made in her complaint?
A. Yes.
Q. Now, before you brought your lawsuit, Mr. Sussman advised you, "It doesn't look good for a judge to sue the person who complained about him", right?
A. Yes.
Q. And you didn't follow Mr. Sussman's advice, correct?
A. Well, when you say follow his advice, what -- that --
Q. You brought the lawsuit?
A. I did bring a lawsuit, yes.
Q. Okay. And you didn't follow Mr. Sussman's advice that it doesn't look good for a judge to sue the person who complained about him, right?
A. That's not telling me not to bring a lawsuit. That's telling me -- he went

through a whole diatribe, if you will, and he talked about this *Levy* case v. some sheriff, and they're difficult, and optics -- I said, "Listen, I'm a judge. Judges don't rule -- don't base their decisions on" -- I didn't -- the word optics is sum and substance. We base our decisions on law and facts, and that's how I make all my decisions.

So optics for a judge -- we don't even look at optics because one side is going to like the optics. The other side is going to not like them because both sides can't win, especially when I rule in landlord-tenant matters. If the landlord wins, the landlord's happy. If the tenant wins, the tenant's happy. The optics on the opposite side are, "Judge, you're no good". So I don't rule based on that.

He told me I had a viable claim, and that's why I went forward. So I thought differently than what he was saying. I thought, "No, once a jury hears everything that's going on, they would rule for me". And to this day, I still think I would win if I could get to a jury, and now -- I think I would be allowed to now I know that she filed -- publicized this with the Mayor and I think, six other people and anyone else that would listen to her.

Q. Are you saying that you'd sue Ms. Koch again if you were permitted to under law, Judge Mora?

A. I would not. I have come a long way since that. My faith, thank the Lord, has gotten stronger. I forgive. I have forgiven her. I've forgiven everyone that has harmed me, and I hope everyone forgives me. And when I wrote that apology, I was truly -- I was true. I hope she did forgive me because I wasn't allowed to bring it because that's what the

SLAPP is and absolute privilege.

But knowing now that, I believe, I have a legitimate claim that would not have been privileged at all, no privilege for what she did to the -- with the Mayor and the several others and knowing there would be no SLAPP because it isn't public participation because she's not protected with it, knowing that I could go forward, I would not go forward because in my heart, I have forgiven, and I'm moving on.

Q. Judge, you were talking about optics as a judge, correct? You just --

A. You --

A. -- were talking about Mr. Sussman, and you were talking about -- you testified about that optics -- judges aren't really concerned with optics. There are facts, right?

A. Law and fact.

Q. Law and facts --

A. Yes.

Q. -- correct? You've been a judge for almost 15 years, right?

A. Correct.

Q. And you're familiar with the rules governing judicial conduct, right?

A. Well, as much as I can be, yes.

Q. And those are the rules that apply to judges, correct?

A. They apply and the law applies. Of course.

Q. Yes. And you've attended trainings, correct --

A. Correct.

Q. -- as a judge? And have they talked about the Commission on Judicial Conduct and the rules governing judicial conduct?

A. Oh, yes.
Q. Okay. And you're aware that judges are required to avoid even the appearance of impropriety, correct --
A. Yes.
Q. -- in their conduct?
A. Yes.
Q. Isn't that about optics? The optics of bringing a lawsuit against the person who filed a complaint against you with the Commission?

MR. COFFEY: I only object for this reason. He's not charged with violating optics. He's charged because he retaliated.

MR. BIENSTOCK: He can answer --

MS. DIPALO: Excuse me.

MR. BIENSTOCK: Overruled. He can answer.

A. I'm not sure how to answer that. So I don't understand the question.
BY MS. DIPALO:
Q. You're a judge?
A. Yes.
Q. You're bound by the rules governing judicial conduct? They apply to you?
A. Correct.
Q. You're obligated to follow them?
A. Correct.
Q. And one of the rules is a judge must avoid even the appearance of impropriety in their conduct?

A. Correct.
Q. Would you say that when you filed a defamation lawsuit against a person who filed a complaint against you with the Commission, that you avoided the appearance of impropriety?
A. That I avoided it?
Q. Or that you -- would you say that it was improper?
A. I can't answer yes or no.
Q. Did it create the appearance of impropriety?
A. Well, based on I was found to have violated a SLAPP lawsuit -- or a SLAPP suit or anti-SLAPP or whatever you say, I would say yes. I don't -- I don't know how to answer it. I just don't know how to answer your question.
Q. I'm not talking about the law. I'm talking about the rules. Do you believe that you, as a judge, created an improper appearance -- that it was improper for you to file a defamation lawsuit against a person who filed a complaint against you with the Commission on Judicial Conduct?
A. You mean that -- because it wasn't allowed?
Q. I'm asking as a judge who is obligated to file the rules governing judicial conduct, do you believe your conduct was proper, was appropriate in filing the defamation lawsuit against Stacey Koch?
A. Yes, based on Opinion 12 -- I think it's 12-96.
Q. And what is Opinion 12-96, Judge?
A. If I have the right number, it says -- I'll paraphrase. "A judge" --
Q. I believe it's in evidence --
A. Oh.

Q. -- if that helps.

A. That would help.

Q. It is in evidence as -- I believe it's -- give me a moment. Respondent's Exhibit G.

MS. DIPALO: Mr. Bienstock, may I show Judge Mora what's in evidence -- admitted in evidence as Respondent's Exhibit G?

MR. BIENSTOCK: Yes.

MS. DIPALO: That's -- thank you.

THE WITNESS: Thank you.

BY MS. DIPALO:

Q. Judge Mora, can you tell us, in substance, what Advisory Opinion 12-96 states?

A. Yes. "However, the rules governing judicial conduct do not preclude a judge from exercising the same rights as any other citizen when appearing as a litigant".

Q. And Judge Mora, how did you learn of this opinion?

A. Laura Smith.

Q. And did you -- who is Laura Smith?

A. She's the Chief Counsel to the Advisory Committee for judges.

Q. And did you speak to Laura Smith before you filed your lawsuit?

A. Yes.

Q. And did Ms. Smith point you to this advisory opinion?

A. Yes.

Q. And when you spoke to Ms. Smith, did you tell her -- did you disclose to

her all the relevant facts about the lawsuit you were planning to bring?

A. Which lawsuit?

Q. The defamation lawsuit.

A. No. I spoke to her regarding the federal lawsuit when this came up. That was September 26 of 2022.

Q. You didn't speak to Ms. Smith about filing -- whether it would be appropriate or ethical to file your defamation lawsuit?

A. Not after speaking to her about the other case where she said that, like I said, judges, like any other individual, are allowed to bring suits, and she asked me, "Are you going to have an attorney"? This was for the federal suit at the time. I said, "Yes, of course". She said, "Yeah, and it's Opinion 12-96". And she asked me, "Would you like me to send you the opinion"? And I almost have -- I'll call it the Batphone with her because I'm on the phone very often with her. So I brought up this opinion as we're speaking, because that's what I do. I said, "No, I have it. Thank you so much".

Q. Judge, that opinion doesn't say anything about bringing a lawsuit against a person who filed a complaint with the Commission on Judicial Conduct, does it?

A. No.

Q. What does that -- what are the facts of that advisory opinion?

A. Oh, I'm not sure what the -- I mean, I can read it, but --

Q. It's about whether a judge can commence a vehicle in traffic or defend a vehicle in traffic?

A. Yeah, but that's not what this is referring to. This is referring to judges,

in general, being litigants. That has nothing to do with the facts of this per se. It has to do -- it's very clear. "However, the rules governing judicial conduct do not preclude a judge from exercising the same rights as any other citizen when appearing as a litigant".

Any other citizen has the right to bring a federal claim for religious discrimination. They have a right to bring a defamation claim and any other lawful claims that you're allowed. So this almost is -- I'm not going to say incorrect. It's misleading. This is so misleading. It should say except if -- you're precluded because it's -- it can't say that, so that doesn't even make any sense, what I was about to say.

Q. I just want to be clear.

A. Yeah.

Q. The question that was posed to the Advisory Committee in this opinion is, "A part-time judge who has been charged with the violation of a vehicle in traffic law as to whether he/she may, either personally or through an attorney, negotiate with the Prosecutor for a reduction of -- or a dismissal of the traffic ticket", correct?

A. Correct.

Q. This opinion doesn't say anything about filing a defamation suit against a person who filed a complaint against the judge?

A. No.

Q. And you never called Ms. Smith, who's on the Batphone, right --

A. Right.

Q. -- and asked her, "I'm thinking about bringing a defamation lawsuit against a complainant who filed a complaint against me with the

Commission", did you?

A. No.

Q. Okay.

A. I would have never have thought to based on this opinion.

Q. Now, Judge --

MS. DIPALO: Can you take that? Thanks, Andy.

BY MS. DIPALO:

Q. Judge Mora, before you brought your lawsuit -- let me withdraw that. You had an attorney representing you before the Commission in connection with Ms. Koch's complaint at the time you brought the lawsuit, right?

A. Yes.

Q. And that was Mr. LaVeglia?

A. Yes.

Q. And Mr. LaVeglia was representing you in connection with all of your matters before the Commission, correct? The other four complaints, I should say.

A. Yes.

Q. And you didn't seek Mr. LaVeglia's advice about whether it might be a violation of the rules governing judicial conduct to bring this lawsuit, did you?

A. Did I -- well, I don't know how to answer that. Are you asking did I ask him about bringing this lawsuit?

Q. No.

A. Hmm.
Q. I'm asking you whether you asked Mr. LaVeglia, who was your attorney in the Commission proceedings, whether you might be violating some kind of a rule on judicial conduct, which you are bound by, by bringing this lawsuit.
A. Not in so many words. I did ask him about bringing this suit, and actually, I asked him if he would bring it, and he said, "I don't have time to bring it, but yeah, you know, you've been -- you should" -- I'm not going to say should. "Yeah, you can go forward. I don't have time".
Q. But you never asked your attorney who was representing you before the Commission -- in connection with the Commission proceedings whether it might be misconduct --
A. Oh, no.
Q. -- for you to bring the lawsuit from there?
A. No. If I had any questions about misconduct, I would have called Laura Smith.
Q. And you didn't do that, either?
A. Of course not.
Q. Okay.
A. Not based on that opinion.
Q. Now, you received a letter from the Commission asking you about the allegations in Ms. Koch's complaint, correct?
A. Yes.
Q. And you received a copy of Ms. Koch's complaint with that letter, right?
A. You're talking about the original back in April --

Q. Back in April.
A. Yes.
Q. The April 12, 2022, letter.
A. Yes.
Q. And it's fair to say you were given an opportunity to respond and defend against Ms. Koch's allegations, right?
A. In front of the Commission, yes.
Q. Yes. And you filed a written response through counsel refuting Ms. Koch's allegations, right?
A. Yes.
Q. And you were also given notice of the other complaints that were pending against you, correct?
A. Correct.
Q. And you were given an opportunity to respond to those complaints through counsel?
A. Yes.
Q. And you'd agree that you were afforded due process at the Commission, right? You were given notice and an opportunity to be heard?
A. Yes.
Q. Now, at the time you decided to sue Ms. Koch, you believed that the Commission process was unfair, right?
A. Well, part of the process. The process where you can drag it -- that's when I thought you could bring the suit -- that you can bring a defamation suit, because Mr. Sussman said I could. The only process I thought was unfair regarding that is getting -- going past the statute of

limitations where I could not, then, sue. That's the only process I was talking about.

Q. Did you ever raise that in any of your letters to the Commission?

A. No.

Q. Okay. And you are saying that the process was unfair because the Commission did not dispose of Ms. Koch's complaint within a one-year period?

A. I'm saying it's -- when you say "the process", I don't mean, like, what you're doing in there. I'm saying you get to go past a year, and then I'm not allowed to sue.

Q. That's the statute of limitations, correct?

A. Right. But I have to bring -- I wanted to wait until the Commission was over -- the Commission case was over, but Mr. Sussman advised, "You can't. You have to -- you have to do it within the year". I was -- I was more than willing to wait until it was over, but the statute of limitations stopped me.

Q. And you didn't decide, "Maybe I shouldn't bring the lawsuit and let the Commission make a determination on the merits of Ms. Koch's complaint"?

A. Well, no, because then I couldn't bring this -- the case. After --

Q. That's not my question.

A. Okay.

Q. My question is, you wanted to sue Ms. Koch, correct?

A. Of course. That's why I contacted Mr. Sussman.

Q. You were going to sue her for filing the complaints whether or not there

was a statute of limitations?

A. No.

Q. So you weren't -- if there was no statute of limitations, you would not have sued Ms. Koch?

A. No, you said I was going to sue her for filing the complaint.

Q. No.

A. Oh, you didn't? I'm sorry.

Q. Let me withdraw that.

A. Maybe I misheard you.

Q. I just want to make sure I understand this. You thought the process was unfair?

A. Only the length of it that would put you past the statute of limitations. That's the only process I'm talking about.

Q. So it wasn't the Commission's process, then?

A. Well, it is the Commission's process because that's what's putting it past the year, so I don't know how else to answer that.

MR. BIENSTOCK: Can I ask a question?

THE WITNESS: Sure.

MR. BIENSTOCK: Was there any bar to you bringing the defamation case within one year before the Commission was concluded?

THE WITNESS: The absolute privilege of the SLAPP. Maybe I don't understand your question.

MR. BIENSTOCK: You said you wanted to wait until the Commission's process was finished?

THE WITNESS: Correct.

MR. BIENSTOCK: Did you have to do that?

THE WITNESS: Did I have to bring it before they were finished?

MR. BIENSTOCK: Could you have brought it before they were finished?

THE WITNESS: I did. I did bring it before they were finished.

MR. BIENSTOCK: Right.

THE WITNESS: Correct.

MR. BIENSTOCK: So you could have brought it before you actually brought it, right?

THE WITNESS: Oh, yes. I'm sorry. Now, I think I understand. I could have brought it -- I received the Commission information, the complaint on April 12th. I technically could have brought it, if this is a business day, April 13th. Correct. Absolutely.

BY MS. DIPALO:

Q. Judge, you decided to bring the lawsuit against Stacey Koch for the statements she made in her complaint to the Commission?

A. And to Michael Brown. Yes, that --

Q. You did not allege in the defamation lawsuit, correct, that she made statements to Michael Brown?

A. No, Mr. Sussman did not.

Q. And that was not a claim in the defamation lawsuit?

A. It was not.

Q. Okay.

A. Still don't know why.

Q. And so you decided to bring the lawsuit against --

MR. BIENSTOCK: Wait a minute.

MS. DIPALO: Yeah.

MR. BIENSTOCK: Are we -- I don't understand something. Mr. Coffey, you are asserting as a defense that the Judge relied on the advice of counsel to bring the lawsuit?

MR. COFFEY: Correct. It's --

MR. BIENSTOCK: And now, what he's testifying to is that he disagreed with the advice of counsel?

MR. COFFEY: No. No, no --

THE WITNESS: No.

MR. COFFEY: -- I do not -- no, no. I will answer that. What we're saying is -- you remember his testimony?

MR. BIENSTOCK: Yes.

MR. COFFEY: He went to see Sussman. He told him about Sussman -- he talked about Brown. Sussman drew the complaint. Sussman did not put in the complaint anything about Brown. He's told you that he didn't know why, that he thinks that was a mistake not to put it in because he thought it would have gone in. But in

any event, he's not repudiating what he said. He relied upon Sussman.

MR. BIENSTOCK: Okay.

MR. COFFEY: He absolutely relied upon Sussman.

THE WITNESS: Correct.

MR. BIENSTOCK: Rightly or wrongly.

MR. COFFEY: Right. He relied upon his lawyer, whether rightfully or wrongfully. Correct.

MR. BIENSTOCK: Okay.

BY MS. DIPALO:

Q. My question for you, I guess, Judge Mora, is you decided to sue Stacey Koch for filing a -- for the statements she made in her complaint to the Commission, right?

A. No, not solely. I -- the answer --

Q. Okay.

A. -- has to be no.

Q. That's one of the reasons you decided to sue. And you sued Stacey Koch for the statements that she made in her complaint to the Commission?

A. One of the reason -- yes.

Q. You had another forum for addressing these complaints, correct? The Commission.

A. When you say "addressing", to get recourse for them? No. No.

Q. The complaint would be dismissed, correct, if there was no merit to it?

A. That's not getting recourse. I can't sleep at night. My whole family is in

disarray. I'm spending tens of thousands of dollars defending myself. No, that is not recourse. To say to a judge, "Hey, don't worry about it. You got to go to the Commission. You spent three, four years, ehh, we dismiss it now", no, no, that's not recourse.

Q. You wanted to make her pay, right?

A. For the damages that --

Q. For filing, for the statements she made in her complaint to the Commission, right?

A. I'll say no again. And to publicizing it with Michael Brown and others.

Q. Okay.

A. I didn't know the others at that point.

Q. So let me -- you wanted to make her pay for filing, for the statements she made in the complaint she made to the Commission, for her statements to Michael Brown, and for any other statements she made about the incident at Seeta to others. You wanted to make her pay, right?

A. Yes.

Q. You wanted recourse?

A. Yes.

Q. And Judge, you commenced a defamation lawsuit against Ms. Koch, right?

A. I did.

Q. And you reviewed the contents of the summons and complaint before it was filed, right?

A. Yes.

Q. And you approved the pleadings before they were filed, right?

A. Yes.
Q. And you sued Ms. Koch for $425,000 in damages, correct?
A. Yes.
Q. You sought 250,000 in compensatory damages from Ms. Koch?
A. Yes.
Q. And you sought 175,000 in punitive damages from Ms. Koch?
A. Yes.
Q. And who came up with those numbers?
A. Mr. Sussman.
Q. And you never questioned why you were seeking $425,000 in damages, right?
A. Not for a moment.
Q. Okay. And you were satisfied with the amount that Mr. Sussman chose, correct?
A. Well, yes. Based on his experience, if he came up with that number, I was satisfied.
Q. But that's because you wanted to make Ms. Koch pay for the statements she made in her complaint to the Commission, for her statements to Michael Brown, and for the statements that she made to anybody else about you, right?
A. The -- what I consider the false statements, yes.
Q. Yeah, the $425,000 reflected that amount, right?
A. According to Mr. Sussman it did, yes.
Q. You agreed, though, correct?
A. Well, based on his advice, yes.

Q. But you agreed, and you approved that?
A. I did.
Q. Okay. And it's fair to say that $425,000 is a lot of money, right, Judge?
A. Well, that's a relative question. If you're talking about Elon Musk, I would say, wholeheartedly, no.
Q. Let me -- when you sued Ms. Koch for $425,000, you knew she worked as an Office Manager at Seeta Eye Center for more than 20 years, right?
A. Yes.
Q. So you knew that $425,000 was likely to be a lot of money for her, right?
A. No.
Q. You didn't?
A. No. I know nothing about her other than she worked there. How do I know she's not a multimillionaire or even a billionaire?
Q. Judge, you've been an attorney for 28 years, right?
A. Since 1997.
Q. Okay. And you've been a judge for almost 15 years?
A. Yes.
Q. And you were aware that Ms. Koch would have to defend your lawsuit, right?
A. Yes.
Q. And you were aware that Ms. Koch would have to hire an attorney to defend your lawsuit, right?
A. No.
Q. You were not aware?
A. She doesn't have to hire an attorney.

Q. It's a lawsuit in the Supreme Court of Dutchess County, correct?
A. Correct.
Q. Okay. You agree that it costs a lot of money to defend a lawsuit, right?
A. It depends.
Q. Okay. Ms. Koch could have been subjected to the cost of motion practice?
A. It's possible.
Q. She could have been subjected to the cost of discovery?
A. It's possible.
Q. Could have been subjected to the cost of trial?
A. It's possible.
Q. And you -- let me withdraw that. And you filed your lawsuit against Ms. Koch on December 29, 2022, right?
A. Yes.
Q. And you asked Mr. Sussman in an email, "Has the lawsuit been served yet", right?
A. Yes.
Q. And Mr. Sussman told you that it was going to be served on Tuesday, right?
A. I don't remember that.
Q. Well, okay. Let me refresh your recollection.

MS. DIPALO: Mr. Bienstock, may I show Judge Mora what has -- an email from Mr. Sussman -- an email thread between him and Mr. Sussman dated December 31, 2022?

MR. BIENSTOCK: What's the number?

MS. DIPALO: It's just to -- we'll make it Commission Exhibit --

(Counsel confer)

MS. DIPALO: Commission Exhibit 38 for identification.

MR. BIENSTOCK: I don't have it.

MS. DIPALO: I'm going to provide it to everybody. It hasn't been premarked.

(Counsel confer)

BY MS. DIPALO:

Q. Judge Mora, can you take a look at the bottom of page 1, which is an email from you dated Saturday, December 31, 2022, at 10:38 to Michael Sussman?

A. Okay.

Q. And if you turn to the next page, it reads, "Happy New Year. Thanks for the update. Was Koch served"?

MR. BIENSTOCK: Wait one second. You can continue.

BY MS. DIPALO:

Q. And if you could go to the bottom, also, of page 1. It's right above -- it says, on Saturday, December 31, 2022, at 10:48 a.m., Michael Susman wrote to you, "She will, likely, be served on Tuesday. I am working on a federal case". So do you recall Mr. Sussman --

MR. BIENSTOCK: Hold on.

MS. DIPALO: Oh, my apologies.

MR. BIENSTOCK: Okay. I'm with you.

BY MS. DIPALO:

Q. Do you recall asking Mr. Sussman whether Koch had been served on December 31st?

A. I do remember my email, yes.

Q. Okay. And do you remember -- do you recall Mr. Sussman telling you, on December 31, 2022, that Ms. Koch would, likely, be served on Tuesday?

A. I do not. I think I missed it because it's so small, and I didn't respond to him. Normally, I would respond right back and say, "Thanks, thank you", or something to that effect. So I think I completely missed that. This is the first that I'm seeing it.

MS. DIPALO: Andy, can you take the exhibit from Judge Mora, please?

BY MS. DIPALO:

Q. Now, you practiced, then, as an attorney, correct?

A. Yes.

Q. And you've been a judge for, we're saying, 15 years?

A. Now, yes.

Q. Now, yes. So you are aware that --

MR. BIENSTOCK: Excuse me. Excuse me. Wait a minute.

MS. DIPALO: Yes.

MR. BIENSTOCK: You did respond to this.

THE WITNESS: No. I said, "I normally respond right away" --

MR. BIENSTOCK: Oh, I see.

THE WITNESS: -- meaning, like, the same day or --

MR. BIENSTOCK: I see.

THE WITNESS: Yes. I responded a couple days later asking something totally different.

MR. BIENSTOCK: But not on New Year's Eve.

THE WITNESS: No. And not on the 1st or the 2nd. And then my response there has nothing to do with that, so I think I completely missed it because I would have said --

MR. BIENSTOCK: Okay. Okay.

THE WITNESS: -- "Oh, thank you regarding that", and then I would have went on.

MR. BIENSTOCK: I'm with you.

THE WITNESS: Thank you.

BY MS. DIPALO:

Q. Now, you'd agree that when somebody's served with a lawsuit, it typically happens fairly soon after the lawsuit's filed, correct?

A. No, I wouldn't say that.

Q. Okay.

A. You have I don't know how long. Maybe -- I don't even know. For

Supreme Court, I don't know if it's six months. I'm not sure.

Q. Well, you were aware that Ms. Koch would be served with the summons and complaint at some point, right?

A. Oh, correct.

Q. And Mr. Sussman told you it could possibly be Tuesday, right?

A. Well, I'm looking at it, and that's what it says, but I didn't see it then, so I did not know.

Q. Well, when you responded on Tuesday, January 3, 2023, you didn't notice Mr. Sussman's email then?

A. No. I didn't even acknowledge it. So no, I did not see it. I completely missed that email.

Q. Well --

A. I would have responded. Because that's what I do. I respond to people when they send me stuff. I say, "Thanks, thank you", or something to that effect. I did not do it. I completely missed that email.

MR. COFFEY: I'm going to object to the relevance of this. I don't understand what the relevance of this is.

MS. DIPALO: I'm getting there.

MR. BIENSTOCK: I'll let it stand. Next question.

BY MS. DIPALO:

Q. Now, Judge Mora, you sent an email to Mr. Sussman on January 3rd and asked if you could schedule an exam for your son, [redacted], and bring him to Seeta, right?

A. Correct.
Q. And that's January 3, 2023?
A. Yes.
Q. Okay. Your son needed a routine eye exam?
A. You use the word routine.
Q. Okay.
A. [redacted]. I hope they're not anymore. So it is nothing routine about it, in my -- in my opinion, but --
Q. Your son needed an eye exam?
A. He did.
Q. And it was --
A. And he -- and he got a prescription change again.
Q. And when you emailed Mr. Sussman, you were seeking legal advice about whether you were allowed -- legally allowed to go to Seeta for this eye exam after you had filed the lawsuit?
A. Correct.
Q. And Mr. Sussman advised you that, yes, you could legally go to Seeta and have your son's eyes examined?
A. Well, he didn't say that. He said, "Yes".
Q. Okay. He said, "Yes, you could go"?
A. Yes.
Q. And you brought your son to Seeta on January 10, 2023?
A. Yes.
Q. And by January 10, 2023, did you believe that Ms. Koch had been served with her defamation lawsuit?

A. No.
Q. You did not know?
A. I didn't know.
Q. And you -- but you had sued Ms. Koch at that point, correct?
A. The lawsuit was filed.
Q. Okay. And it had been made public, right, in the newspaper?
A. Yes.
Q. Okay. So Ms. Koch knew by January 10th that you had filed a lawsuit against her, it's fair to say?
A. Well, I know now. I didn't know then.
Q. You didn't know about the newspaper article that was published on --
A. No. No. You said that I knew that she knew. I didn't know.
Q. I'll rephrase that. It's fair to say, based on the publicity that the lawsuit received, that Ms. Koch knew that she was the Defendant in a lawsuit filed by you, correct?
A. No. I have no idea -- no. I don't know what she looks at, what media. There was only one -- as far as I remember, only one article. I think it was Mid Hudson News. I think. I don't even know. I don't remember. I think it was Mid Hudson News.
Q. So you alleged in your lawsuit that Ms. Koch had caused you emotional distress, right?
A. Correct.
Q. And you alleged in your lawsuit that she caused you humiliation, shame, and embarrassment?
A. Correct.

Q. And you were seeking almost a half a million dollars in damages from Ms. Koch?

MR. COFFEY: Judge, we've been through this. I mean, in fact, it's exactly 425. We've been through this.

MS. DIPALO: I'll rephrase it. I'll withdraw that.

BY MS. DIPALO:

Q. You were seeking $425,000 from Ms. Koch in damages?

A. Yes.

Q. And that was for the emotional distress she had caused you?

A. For whatever it said in the complaint that you're allowed to get it for because I don't practice in this area.

Q. But it was for the humiliation, the shame --

A. Yes.

Q. -- the embarrassment?

A. It was very embarrassing that day being treated -- I would say almost like worse than a dog.

Q. Judge Mora, your lawsuit wasn't for the incident at Seeta, though, right?

A. That was what it was all about.

Q. But your lawsuit alleged that Ms. Koch made false statements about you concerning the incident at Seeta and filed it with the Commission, right?

A. And spoke to Michael Brown, yes.

Q. Yes. Now, despite all this, you returned to Seeta on January 10, 2023, right?

A. I did.

Q. When you returned to Seeta, were you trying to intimidate Ms. Koch?
A. Not at all. I didn't see her the past two times, so I didn't think I'd be seeing her this time.
Q. But you had seen her the two times prior, right?
A. Before this issue was resolved, yes, but the issue had been resolved not a year but almost a year before that.
Q. And when you went into Seeta on January 10, 2023, were you wearing a face shield?
A. I don't remember. If it was required or the masking -- whatever you want to call it, the mandate and everything, then yes, I would have been. And my son would have been wearing a mask if it was still required.
Q. Now, Judge, we had talked a little bit about optics before, right? Would you agree that by returning to Seeta after you had sued Ms. Koch for $425,000 that that could appear intimidating to Ms. Koch?
A. It could.
Q. Now, I want to draw your attention back to the summons and complaint of your lawsuit. You read the complaint before it was filed, right?
A. Yes.
Q. And I think we've been over this, but the complaint makes no allegations against Ms. Koch for saying anything defamatory about you to Michael Brown, right?
A. Correct.
Q. The claim only alleges that Ms. Koch wrote false and libelous statements on a complaint form provided to the New York State Commission on Judicial Conduct?

A. Correct.
Q. So the allegations in your complaint revolve solely around the complaint that she made about you to the Commission, right?
A. That's what it says.
Q. And you allege that Ms. Koch made false and defamatory statements about you to the Commission and intentionally sought to imperil and jeopardize your ability to practice your profession, right?
A. Correct.
Q. You were familiar with Commission proceedings at the time you filed the lawsuit, right?
A. Some of them, yes.
Q. And you knew that some Commission complaints are dismissed?
A. Yes.
Q. Others are investigated. How did Ms. Koch jeopardize your ability to practice your profession with her confidential complaint to the Commission?
A. Because trying -- she's trying to get me fired.
Q. But you just agreed that the Commission sometimes dismisses complaints, right?
A. Sure.
Q. Now, you allege that -- in your complaint that, "Defendant's conduct has caused Plaintiff emotional distress, humiliation, shame, and embarrassment and required him to answer her false claims before a state Commission designed and empowered to investigate judicial misconduct". At the time you filed your lawsuit, Judge, you were aware

that you're not the only judge who's been the subject of a Commission investigation before, right?

A. Yes.

Q. Okay. And you're not the only judge who's been asked to respond to allegations of judicial misconduct that are made in a complaint, right?

A. Yes.

Q. Now, Judge, I believe you testified that after you were serving as a lector and you read a gospel --

A. No, no, no.

Q. It wasn't a gospel?

A. Only the priest can read the --

Q. Okay.

A. -- and deacons can read the gospel.

Q. What did you read?

A. The readings.

Q. The readings. Thank you.

A. Yes.

Q. I lost that. You read a reading, and that caused you to consider whether -- about withdrawing your lawsuit against --

A. Correct. Correct.

Q. -- Ms. Koch? And you said as much in an email to Mr. Sussman, correct?

A. I did.

Q. And at that time, Mr. Sussman told you, "It is just a bad look for a judge to sue the person who complains about them rather than to resolve the

issues in the forum intended to resolve the complaint". Did you agree with Mr. Sussman's statement?

A. No.

Q. And why is that?

A. Because I thought -- I thought then, I've continued to think, and I still think that a jury would think otherwise. The merits of my case, I still feel I would succeed on them.

Q. So you think if there hadn't been a motion to dismiss --

A. Yes. If I was allowed to go forward and got to a jury, I still, to this day, believe I would win. Yes. Correct.

Q. And your defamation lawsuit was -- against Stacey Koch was dismissed, correct?

A. Yes.

Q. And you were ordered to pay Ms. Koch attorneys' fees and costs, correct?

A. Correct.

Q. Or Ms. Koch's attorneys' fees and costs. And you entered into a settlement agreement with Ms. Koch and her attorneys or your attorneys entered into a settlement agreement regarding attorneys' fees and costs, right?

A. Yes.

Q. And that agreement required you to pay Ms. Koch's counsel $20,000?

A. Correct.

Q. And the agreement required that you have no contact with Ms. Koch or Seeta, right?

A. Correct.

Q. And --
A. Just me.
Q. Just you, yes, not your family. And why did you agree to the no-contact provision?
A. For myself?
Q. Yes.
A. Because the judge dismissed my case, and I thought the advice I had gotten was wrong, so I'm going to agree to this because that's what they wanted in there to resolve the issue and to still be able to have my children go to the doctor that they're comfortable with. So I will be uncomfortable myself and have to go somewhere else for my children. That's -- that was my only concern was --
Q. That was your --
A. -- my children, yes.
Q. And did you consider Stacy Koch at all when you agreed to this no-contact provision?
A. I did because since I wasn't allowed to bring the suit, I said, "I shouldn't go there anymore". Even though I probably wouldn't see her, I still shouldn't go there.
Q. And the settlement agreement also required you to send an apology letter to Ms. Koch, correct?
A. Correct.
Q. Did you agree that you owed Ms. Koch an apology at that time?
A. For filing a suit that you shouldn't have brought, that I got improper advice on, yes.

Q. Did you feel like you needed to apologize for your conduct at Seeta on December 28, 2021?
A. At that point?
Q. Yes.
A. No.
Q. Now, you wrote Ms. Koch a letter, correct?
A. Well, let me go back. So we did write an apology for the incident, and Mr. Sussman drafted that one. And I don't know if I made any changes. I may have. And then he submitted that. Because that's what we -- both him and I thought the apology was for. When they said, "We want an apology", we thought it was for the incident. Turned out it wasn't for the incident. It was for the SLAPP suit.
Q. And you wrote the apology for -- that was part of the settlement agreement?
A. Yes. For the SLAPP suit, yes.
Q. For the SLAPP suit. And that was -- you wrote the letter on your own?
A. Correct.
Q. Mr. Sussman did not draft that letter?
A. He did not.

MS. DIPALO: Mr. Bienstock, may I please show Judge Mora what is marked -- it's his apology letter. It's marked into evidence as Commission Exhibit 17, please.

MR. BIENSTOCK: Yes.

MS. DIPALO: Thank you.

(Counsel confer)

MS. DIPALO: Mr. Fenwick is showing Judge Mora what's been marked as Commission Exhibit 17.

BY MS. DIPALO:

Q. Judge Mora, I'd like to turn your attention to paragraph 4 of the letter. You write, "I now know that this suit should not -- should have never been brought in the first instance, and I apologize for doing so".

MR. BIENSTOCK: I don't think the word never --

A. Yeah, I was just going to say, should not have been brought.

BY MS. DIPALO:

Q. Oh, I'm sorry. Should not have -- I misread it.

A. Yes.

Q. At the time you wrote this letter, you truly believed that the suit should not have been brought, correct?

A. You're talking about the suit -- the four corners of the suit that was actually brought, correct?

Q. The defamation lawsuit entitled *Frank Koch v Stacey Mora* [sic], yes.

MR. FRIEDBERG: You got the name of it wrong.

MR. BIENSTOCK: Probably *Frank Mora v Stacey Koch*.

MS. DIPALO: Oh, yes. Thank you.

MR. COFFEY: Close enough.

MS. DIPALO: What did I say? *Frank Koch v*

Stacey Mora?

MR. FRIEDBERG: Yes, that's what you said.

MS. DIPALO: My apologies.

A. So at this time, yes, that suit that was actually brought and not the one that should have said Michael Brown. Yes, that one, correct.

BY MS. DIPALO:

Q. Okay. And do you stand by this statement today?

A. Based on the -- what I think, now, the law is -- and I still don't know it. I still don't understand defamation. I still don't understand SLAPP -- then yes.

Q. I'm not asking about whether the legal decision, the law is correct. I'm asking about whether you personally, you know, in your heart, believe that the suit should never have been brought or should not have been brought in the first instance.

A. That's -- I can't answer the question the way you're asking it.

Q. Okay.

A. There's two different things. There's the legal, and what my faith now tells me. So which one are you asking?

Q. I'm asking about what your faith now tells you.

A. Yes, now, I say I would turn the other cheek, and I would just move on.

Q. And turning to the last paragraph, you said, "Please forgive me for any angst that I caused you".

A. Yes.

Q. You were referring to the angst that the lawsuit caused, correct?

A. Correct.

Q. And you were not referring to the angst that the incident at Seeta may have caused her?
A. At this point?
Q. Yes.
A. Correct.
Q. Thank you.

MS. DIPALO: Andy, can you take the exhibit? I'm going to move on, now, to the third charge which concerns the redaction and the alleged withholding of emails. I don't know if anybody wants a break before I get there or if I should just keep --

MR. BIENSTOCK: How long do you have?

MS. DIPALO: I probably have about ten, 15 minutes.

MR. BIENSTOCK: Let's try to finish.

MS. DIPALO: Okay.

MR. COFFEY: That's 15. Ten to 15.

MR. BIENSTOCK: I heard it.

MR. COFFEY: Not 16.

MR. BIENSTOCK: I think you've both performed admirably.

(Counsel confer)

BY MS. DIPALO:

Q. Now, Judge, you were -- you received the letter directing you to appear and give testimony at the Commission, correct?

A. Yes.
Q. That was in November of 2023?
A. Yes.
Q. Okay. And you were advised, in that letter, that the Commission was investigating a complaint alleging that you brought a defamation suit against Stacey Koch in retaliation for Ms. Koch filing a complaint against you, right?
A. Yes.
Q. And you received a copy of the complaint -- the Administrator's complaint --
A. Yes.
Q. -- with that letter? Now, you subsequently received a letter from the Commission in April of 2024 asking you to provide emails between you and Michael Sussman from December 28, 2021, to the present, right?
A. Yes.
Q. And the emails you were asked to provide pertain to five subjects. I could show you a copy of the letter if you -- Stacey Koch, any statements allegedly made by Stacey Koch, *Frank Mora v Stacey Koch*, the incident at Seeta Eye Center on December 28, 2021, and any discussion of defamation or tortious interference, right?
A. Yes.
Q. And you responded to that letter on May 9, 2024, through counsel?
A. Yes.
Q. And then I believe you testified you provided 14 emails to the exhibit -- to the Commission?

A. To the best of my recollection.
Q. And you represented that you were providing all Koch emails -- all Koch-related emails from December 28, 2021, through the date of the filing of the Koch lawsuit, which was December 29, 2021, correct?
A. I believe so.
Q. And I believe you testified that you had a discussion with your attorney, and that was Mr. LaVeglia, and that is what -- you decided to provide emails up to the date of the commencement of the lawsuit, correct?
A. Correct.
Q. And after you sent the 14 pages of email, you received another letter from the Commission on May 21, 2024, asking you to provide all emails between you and Mr. Sussman from December 28, 2021, to the present relating to those five subject matters, and you read the context of that letter, correct?
A. Yes.
Q. And you responded to that letter through counsel on July 10, 2024, correct?
A. Yes.
Q. And you provided 128 pages of emails, right?
A. No.
Q. No? How many?
A. 127.
Q. Thank you. And you represented --

MR. COFFEY: Give or take. Sorry.

//

BY MS. DIPALO:

Q. You represented that they were redacted as they related to non-Koch matters, correct?

A. Yes.

Q. And you were asked to provide emails relating to Stacey Koch, correct?

A. Yes.

Q. And I believe you testified already that you did not provide two emails that you sent to Mr. Sussman on November 23, 2022?

A. Correct.

Q. And you testified that -- I believe it's Respondent's Exhibit H was an email between you and Mr. LaVeglia concerning emails that Mr. Sussman was supposed to provide?

A. And he was on there, too.

Q. Yes, he was on there, too.

A. Yes.

Q. And you never received those emails from Mr. Sussman when you first responded to the Commission's letter on --

A. I never received them from Mr. Sussman.

Q. You never received them from Mr. Sussman. Now, you first responded to the Commission's letter -- I believe it was on -- give me a minute. When you filed your first response to the Commission's letter on --

A. May 9th.

Q. -- May 9th, thank you, you didn't have the emails in your possession at that time, correct?

A. On November 23rd?

Q. Yes.
A. Correct.
Q. Okay. And then when you filed your response on -- I believe it's July 10th, correct, 2024, you still did not have the November 23rd emails in your possession, correct?
A. Correct.
Q. At any point, did you ask Mr. Sussman to provide the missing emails?
A. No. From the date you said you wanted all these emails, I stopped all communication with him regarding Koch. Actually, any communications because our federal suit is out in limbo.
Q. I'd like to show you what's been marked as Commission Exhibit 21. It's in evidence.

MS. DIPALO: Yes. Thank you. Mr. Fenwick is handing Exhibit 21 to Judge Mora.

BY MS. DIPALO:
Q. Judge Mora, you sent this email to Mr. Sussman?
A. Yes.
Q. And in that email on February 2, 2023, you stated, "Since she knew almost a year before the confrontation that I did not medically tolerate a mask, I believe she had this all planned". Who is the "she" that you're referring to?
A. Ms. Koch.
Q. And it's fair to say this email pertained to Stacey Koch, correct?
A. Correct.
Q. You did not disclose this email to the Commission, correct?

A. No. I missed it.
Q. And you were under investigation for retaliating against Ms. Koch at the time these emails were requested?
A. Yes.
MS. DIPALO: Andy, can you take it back? And can you show --
Mr. Bienstock, may I show Judge Mora Commission Exhibit 22?
MR. BIENSTOCK: You may show Judge Mora anything that's in the record.
MS. DIPALO: Thank you. Mr. Fenwick --
MR. BIENSTOCK: Is this marked Exhibit 10?
MS. DIPALO: Yeah. There is an error in the book.
MR. BIENSTOCK: Okay. I have it.
BY MS. DIPALO:
Q. Judge Mora, you sent this email to Mr. Sussman?
A. Yes.
Q. And the email -- you sent this email to Mr. Sussman on February 7, 2023, at 8:55 a.m.?
A. Yes.
Q. And the first sentence states, "Attached are some of my thoughts thus far. I hope they are in the right direction".
A. Yes.
Q. And there was an attachment to the email, correct?

A. There's two attachments.
Q. And one of the attachments --
A. It's here.
Q. Thank you. And in response to the Commission's request, you provided a copy of your February 7, 2023, email to Mr. Sussman, correct?
A. Yes. The email.
Q. Yes. You did not provide the attachments?
A. Correct. It was missed. When you say "attachments" --
Q. The attachments.
A. I didn't -- I didn't provide either attachment.
Q. Okay.
A. The one that I should have provided was missed. The second one, I say attorney-client privilege because it was non-Koch.
Q. And the attachment that you missed, it's fair to say that it pertained to the incident at Seeta?
A. Yes. It pertained to --
Q. The lawsuit?
A. Correct. It was -- since I thought we had a viable suit, I'm telling him, "Hey, these are my thoughts, what -- my strategy, our strategy, what do you think", and all that, correct.
Q. And you agree that it should have been turned over to the Commission, correct?
A. Absolutely.

MS. DIPALO: Andy, will you please take the exhibit? Thank you.

I'd like to show Judge Mora Commission Exhibit 23.

MR. BIENSTOCK: Ms. DiPalo, so far, I'm not hearing anything more than I heard on direct. Is there anything more?

MS. DIPALO: This one I'd actually like to just get into a little bit, but I see your point, Mr. Bienstock.

MR. BIENSTOCK: Well, you have another five minutes --

MS. DIPALO: Okay.

MR. BIENSTOCK: -- left of your promise.

MS. DIPALO: Okay.

BY MS. DIPALO:

Q. Judge Mora, you sent -- if you look at the bottom of Commission Exhibit 23, you sent an email to Mr. Sussman dated February 28 -- excuse me, February 8, 2023, at 8:49 a.m., correct, at the bottom?

A. Yes.

Q. And you said, "The Judicial Commission will not turn over transcripts from Koch or Brown"?

A. Yes.

Q. And on February 8 -- I'm sorry. Let me withdraw that. I'm going to withdraw my question on this exhibit.

MR. BIENSTOCK: You don't have to give me credit on the record. It's okay.

MS. DIPALO: Oh, you know what? I do have

a question on this. I need my eyes checked. I apologize.

MR. FRIEDBERG: There goes the credit.

MS. DIPALO: I know. There goes the credit. I do -- I think I need an eye exam, though.

BY MS. DIPALO:

Q. Judge Mora, and then on February -- so you sent -- the first email at the bottom where you said, "The Judicial Commission will not turn over transcripts from Koch or Brown", you sent it at 8:49 a.m., correct?

A. Yes.

Q. At 8:20 p.m. on the same day, Mr. Sussman wrote, "They are plainly working in concert with each other", correct?

A. Yes.

Q. And then 9:34 the same day, you replied, "The corruption doesn't end"?

A. Yes.

Q. You would agree that your first email at 8:49 a.m. pertained to transcripts -- Commission transcripts that you were seeking in connection with the defamation lawsuit against Ms. Koch?

A. Yes. Oh, you mean for the defamation?

Q. Yes, for the defamation.

A. Yes.

Q. And you'd agree that these emails are critical of the Commission, right?

A. Yes. And OCA and others, yes. Correct. It doesn't say that, but that's what I was referring to.

Q. And you didn't disclose these emails to the Commission, correct?

A. When you say "these emails", it's all one page, so --

Q. Yes, the one page -- the three emails on this one --
A. No. I missed it. I --
Q. -- page or any of these emails.
A. I missed this email. There's no way I would miss -- want to withhold this email because I have no problem having people see what's going on. I have no problem with that.
Q. What do you mean, "see what's going on"?
A. Well, like, when the rules say that the Commission has to keep this secret, you know, proceedings that are against a judge, and a Commission member goes into open court, Mr. Linder, and in oral argument on page 34 of the transcript, tells Judge Rosa, "Judge, I can say to you that Judge Mora is not only under" -- I'm paraphrasing. It's the sum and substance -- "that Judge Mora is not only under investigation for this", meaning the Stacey Koch thing, the Seeta Eye thing, "but he has other complaints and issues that we are dealing with", from what I found out after reviewing the rules, that's a complete violation from a staff member not being able to talk about what isn't public yet. Complete violation. So here we have -- you're supposed to keep everything secret, and in open court, you're telling them I have other -- you're poisoning the judge, telling the judge I have other investigations going on. That's part one.

Part two of the corruption. When I asked this Commission, who, I've been told by several attorneys, routinely holds things in abeyance when you have other things going on, such as a Division of Human Rights case or an EEOC case or a federal lawsuit, will hold that in abeyance, and not only do you not hold it in abeyance, this

Commission -- when I say "Commission", I'll say the Prosecution because I don't know if the Commission members know what's going on. When you don't hold it in abeyance and for over two years -- maybe -- I think it's three years now, maybe longer -- you ask me personally invasive questions, trying to get my medical records, all of my medical records -- not just what have to deal with vaccinations but all of my medical records for 12 years, trying to invade my personal privacy.

What's even worse than that, trying to get my children's medical records -- all of their medical records for 12 years because their father has a religious belief that does not allow vaccinations. Not asking for my vaccination records, but all of their medical records. And then on top of that, trying to get all of their school records for, I think -- I don't know how long, and then all -- when they found out they are homeschooled, all of their homeschooled records, which, thank the Lord, we didn't have to turn over because we fought back on that. When you try to do that and all the while, not holding this case in abeyance, meaning the case regarding the religious discrimination, and trying to not understand my religious beliefs, but to try to disprove my religious beliefs -- that's what you're trying to do, to try to -- this is what I believe you were trying to do to disprove them.

And we've come to this point where my federal suit has been pending for over two years, and then, instead of dismissing that claim, this Commission says, "Oh, by the way, we're going to hold this in abeyance now pending your federal suit". There is no change of circumstances. Nothing has changed. I had a judicial -- I had a New

York State Division Rights [sic] case going, but you didn't hold anything in abeyance. So that's when I'm talking about the corruption. That is absolutely corrupt. The --

MR. BIENSTOCK: Next question.

THE WITNESS: Well, I can't finish?

MR. BIENSTOCK: You're finished.

THE WITNESS: Thank you.

BY MS. DIPALO:

Q. Judge Mora, just a couple of quick questions about the topics we've touched on. When you first sought the abeyance from the Commission to hold the complaint or the investigation into your failure to comply with an Office of Court Administration mandate requiring your vaccination due to your religious reasons, you first asked for the Commission to hold it in abeyance, and that was in April of 2022?

A. That was April 7 of 2022 --

Q. Okay.

A. -- about a week after I was served with it.

Q. Okay. And the Commission had written to you, correct?

A. On April 12, 2022, saying, "No thanks".

Q. Well, the Commission had sent you a letter on March 30, 2022, inquiring about a complaint we received from the Chief Administrative Judge, Larry Marks, referring you for failing to comply with OCA's mask mandate, correct?

A. Correct.

Q. And you would agree that the Commission has an obligation, the

Commission staff and the Commission who authorizes the investigations, to investigate and ask judges to respond to allegations, correct?

A. I would disagree with that in the sense that I believe I am the only judge and nonjudicial employee that has had to answer all of these questions. No one else, every single one that was approved, and there's a few hundred for religious reasons --

MR. BIENSTOCK: Let me ask -- Ms. DiPalo --

MS. DIPALO: Yes.

MR. BIENSTOCK: -- I'm going to ask you to move on to another subject.

MS. DIPALO: Okay. I would just like to ask the Judge if he -- move on to a new subject? Okay. Understood.

BY MS. DIPALO:

Q. Well, I was going to ask, are you -- would it surprise you to know that there are a few other judges who were the subject of --

MR. BIENSTOCK: Objection sustained.

BY MS. DIPALO:

Q. -- Commission investigation?

MR. BIENSTOCK: Objection sustained. You don't have to answer.

MS. DIPALO: Okay.

MR. BIENSTOCK: You can if you want to.

BY MS. DIPALO:

Q. Judge Mora, you testified that you believed Stacey -- let me withdraw

that. You believe that Stacey Koch didn't handle the confrontation at Seeta on December 28, 2021, appropriately, correct?

A. Correct. And neither did I.

Q. And you testified that you brought the lawsuit against Stacey Koch because Michael Brown told you that Ms. Koch was bragging that she was going to get you fired, right?

A. And the other statements, correct. She was going outside of the Commission to the public.

Q. And you testified that you brought the lawsuit against Ms. Koch because you relied on Mr. Sussman's legal advice that you had viable claim for defamation, right?

A. Absolutely.

Q. Do you take any responsibility for your conduct that brought us here today?

MR. COFFEY: I object to -- that's a very broad statement, conduct --

MS. DIPALO: Okay. I can --

MR. BIENSTOCK: Sustained. Next.

BY MS. DIPALO:

Q. Do you take any responsibility for the incident at Seeta?

A. Yes.

Q. And do you take any responsibility for commencing the lawsuit against Ms. Koch?

A. Of course.

Q. You believe it should not have been brought?

A. The way it was drafted, that is not allowed -- it should not have been brought. I think he gave me improper advice.

MS. DIPALO: May I take a three-minute break, Mr. Bienstock, just to confer with my counsel?

MR. BIENSTOCK: I think you can take a three-minute -- you can take a ten-minute break.

MS. DIPALO: Okay.

THE WITNESS: So it might be the end?

MS. DIPALO: Yeah, I don't -- I believe --

MR. BIENSTOCK: And then you can ask whatever questions you have -- Mr. Coffey can ask whatever questions he has, and then we can do the scheduling, which I'm eagerly looking forward to.

MS. DIPALO: Thank you.

(Recess from 3:12 p.m. until 3:21 p.m.)

THE CLERK: On the record.

(Counsel confer)

MR. BIENSTOCK: Everyone ready to go back on? Ready?

MS. DIPALO: Yes.

MR. BIENSTOCK: Back on, please.

THE CLERK: On the record.

MS. DIPALO: I just have a few more questions to clarify the record.

//

CONTINUED CROSS-EXAMINATION

BY MS. DIPALO:

Q. Judge Mora, when you -- on December 28, 2021, when you returned to Seeta with the note from your chiropractor, would you agree that Ms. Koch put special arrangements in place so you and your child could be escorted through a back door and your child could be examined?

A. When you say "special", you mean in accordance with the mandate?

Q. I'm saying special in accordance with Seeta's policy.

A. I guess.

Q. You entered through the front door, typically, when you walked into Seeta, correct?

A. Correct.

Q. And Ms. Koch put arrangements in place for you and your child to enter through the side door and be escorted to Dr. G[redacted]'s office, correct?

A. Correct.

Q. And Judge, in December 2022 when your lawsuit was filed, were you -- had you been served with the formal written complaint charging you with misconduct for what had transpired at Seeta on December 28, 2021?

A. The -- for what we're here for now?

Q. The formal written complaint, yes.

A. No.

Q. And at that point in time, you would agree that the Commission was still in the process of investigating Ms. Koch's allegations against you, correct?

A. It was in the investigatory stage.

Q. You hadn't come in and testified before the Commission at that point?
A. Correct.
Q. And Judge, when you filed your lawsuit against Ms. Koch, there was no request to file it under seal or to otherwise keep it confidential, correct?
A. Request by who?
Q. By you.
A. No. I didn't even know you could do that.
Q. Or Mr. Sussman?
A. Did he request it?
Q. Yes.
A. To the judge?
Q. Or to the Court when it was filed --
A. I don't --
Q. -- to your knowledge?
A. I don't know. I don't -- like I said, I don't even -- I didn't even know you could do that. This --
Q. Well, your lawsuit was public, correct? It was publicly filed?
A. Sure.
Q. Okay.
A. I didn't know you could make it secretive.
Q. But it wasn't sealed --
A. Not -- no.
Q. -- from members of the public?
A. No.
Q. And the complaint that you filed or the pleadings, the summons and

complaint in your lawsuit attached a copy of Ms. Koch's complaint to the Commission, correct?

A. I -- yes, I believe it was attached. Ms. Sussman attached it, yes.

Q. And it's fair to say that when you publicly filed your lawsuit against Ms. Koch and attached a copy of her complaint to that lawsuit, you made her complaint against you public?

A. No.

Q. And why is that? Why is your answer no?

A. Because as we found out yesterday, she had done that the day after she filed with you by sending it to Mayor Rolison and then, over the next several months, speaking to at least six identifiable people and who knows how many other when she said, "And she would tell anyone who would listen". So she had made it public the day after she filed it, and I just didn't know.

Q. So at the time you filed your lawsuit, you would agree you made Ms. Koch's lawsuit public -- let me withdraw that. When you filed your lawsuit against Ms. Koch, you were not aware that she had sent a letter concerning the incident at Seeta or her complaint to the Commission to the Mayor of Poughkeepsie, correct?

A. Correct.

Q. And at the time you filed your lawsuit, you were only aware that she had shown Mr. Brown your complaint, correct?

A. Correct.

Q. To your knowledge, at the time you filed your lawsuit, Ms. Koch had only spoken to Michael Brown about your complaint. True?

A. To my knowledge, yes.
Q. To your knowledge. So at the time you filed your lawsuit, would you agree that you made Ms. Koch's complaint public by attaching a copy of her complaint to the lawsuit?
A. No.
Q. Would you agree you made it public to everybody apart from Mr. Brown?
A. No.
Q. Judge Mora, the complaint was part of the court file, correct?
A. Correct.
Q. And that was public? It was available to the public, correct?
A. Correct.

MR. BIENSTOCK: You've made your point, Ms. DiPalo.

MS. DIPALO: Yes. Thank you. I have one housekeeping -- not housekeeping. One question. If I may, I'd like to show Judge Mora a copy of Commission Exhibit 26, which is an email dated March 6, 2023.

BY MS. DIPALO:

Q. Judge Mora, did you send this email --
A. Yes.
Q. -- to Mr. Sussman?
A. Yes.
Q. And you wrote, "Maybe you can use Tembeckjian's own words against him at oral argument when I asked him for them to postpone the matter

because I had a Human Rights case pending. They denied me saying their jurisdiction is independent from the Division of Human Rights and Civil Court. See attached letter". Judge Mora, when you were referring to using Mr. Tembeckjian's own words against him at oral argument, you were referring to the oral argument scheduled in your defamation suit, correct?

A. Yes.

Q. Okay. And you did not disclose this email to the Commission, correct?

A. No. This was missed.

Q. Yes.

MS. DIPALO: Thank you. I have no further questions at this time. Thank you, Judge.

MR. COFFEY: Just a few.

REDIRECT EXAMINATION

BY MR. COFFEY:

Q. Judge Mora, when you spoke to Mr. Brown or he spoke with you, was it your reasonable belief at that time that Koch was making these statements publicly?

A. Oh, yes. I thought she told many more people than Mr. Brown, but I just didn't know who.

Q. I don't -- I'm going to ask you if --

A. Yes. Yes.

Q. Okay. Now, my next question is this. Did you feel that you would be -- your public persona, your public career might be in jeopardy as a judge based upon her allegations?

A. Yes, and my reputation.
Q. And it was -- was it humiliating for you?
A. Of course.
Q. Now, we're not going to go back through this, but just to wrap this part up, the complaint that was drawn and written and filed and the accompanying complaint was done by Mr. Sussman; is that correct?
A. A hundred percent.
Q. Okay. Lastly, let me talk about the optics. Do you believe that when you become a judge, you have no right to sue people if you've been wronged?
A. No.
Q. So if someone were to come in and say, assault you or rob you, do you think you'd have a right to sue that person, or the optics would prevent you from doing that?
A. I absolutely think I would be able to.
Q. The defamation case that she brought -- or that you brought, I'm sorry, based upon her comments, does that trouble you tremendously, those comments?
A. Of course. Yes.
Q. Okay. And I know you talked -- I'm not going to go into this advisory opinion. Essentially, in talking to Mr. Sussman, who told you about, say, the optics, if that was a question about if you want to go forward, just be aware that there could be some downside to that possibly, right?
A. Yes. It was how I --
Q. Is that correct?
A. Yes.

Q. Okay. So you were prepared to accept that based upon what you thought she had done to you?

A. In front of a jury, yes.

MR. COFFEY: Okay. All right. That's all I have.

MR. BIENSTOCK: I have one short period of questioning.

You've been a City Court judge -- is that -- did I get the terminology right?

THE WITNESS: Yes.

MR. BIENSTOCK: -- City Court judge for 14 or 15 years?

THE WITNESS: At the end of this year, it'll be 15 years.

MR. BIENSTOCK: And I think I learned in law school that that is a court of limited jurisdiction; is that fair?

THE WITNESS: Correct.

MR. BIENSTOCK: And can you describe to me the limits? What is your jurisdiction and what is not your jurisdiction?

THE WITNESS: So what type of cases we handle, you mean?

MR. BIENSTOCK: Yes.

THE WITNESS: Okay. So we --

MR. BIENSTOCK: And if it's applicable, the

monetary --

THE WITNESS: Dollar amounts, yes.

MR. BIENSTOCK: -- the monetary amounts.

THE WITNESS: We handle parking tickets and traffic. We handle small claims, which is up to 5,000. Commercial claims, which is just for, like, a corporation or an LLC up to 5,000. We handle landlord-tenant, so summary proceedings. And we handle civil claims, which is up to $15,000.

MR. BIENSTOCK: So theoretically, a civil claim, a $10,000 defamation claim, I know they're -- those are few and far between, would fall under your jurisdiction?

THE WITNESS: I'm not sure. I have never had one, and I don't know if you're allowed to bring that type of case in City Court. I don't know.

MR. BIENSTOCK: Okay. I have nothing further.

MS. DIPALO: If I may, can I just make a motion to conform the formal written complaint to the pleadings?

MR. COFFEY: Yes, I don't object to the proof.

MS. DIPALO: To the proof. Thank you. To the proof.

MR. BIENSTOCK: That's fine.

MS. DIPALO: Would you like -- I'm just going

to put it on the record real quickly. I would like to conform the formal written complaint to the evidence. Charge 3, paragraph 43(b) alleged in an email that Respondent sent to Mr. Sussman dated February 2, 2023, that Respondent redacted the following text: "Since she knew for a year before the confrontation that I did not medically tolerate the mask, I believe she had this all planned". We would like to amend paragraph 43(b) to change the word "redacted" to "withheld".

MR. COFFEY: No objection.

MR. BIENSTOCK: Done.

MS. DIPALO: Thank you.

MR. BIENSTOCK: Anything else?

You may step down, Judge.

THE WITNESS: Thank you.

MR. BIENSTOCK: You want to do scheduling on or off?

MS. DIPALO: I think we can do it off.

MR. FRIEDBERG: We can do it off, and then go back on to put it on.

MS. DIPALO: Yeah. Yeah.

MR. BIENSTOCK: Okay. You make it hard for me. Off the record, please.

(Recess from 3:34 p.m. until 3:39 p.m.)

MR. BIENSTOCK: After a conference with

Counsel off the record, we've agreed that initial --

THE CLERK: We're on the record.

MR. BIENSTOCK: -- submissions --

MR. FRIEDBERG: Yes.

THE CLERK: We are now on the record.

MR. BIENSTOCK: Sorry. After brief conversation off the record, we've agreed that the first round of findings of fact, conclusions of law, proposed -- which are proposed, and legal argument in the form of post-trial brief will be submitted simultaneously by both parties on or before December 15th and that any replies will be submitted on or before January 9, 2026.

With respect to subject matter, I'm interested in a few questions from each side. With respect to the Respondent, I'm curious to know whether an act can be both on advice of counsel and retaliatory.

And with respect to the Commission, I understand all the law about we wear our judicial robes everywhere. I understand that. It seems to me, though, that there must be a line somewhere. We have a dry cleaners down the block from us, and if I go into the dry cleaners or if my better half goes into the dry cleaners and is very unhappy with the service -- with the product that they produced, and she expresses her unhappiness, and she gets into a verbal argument with the proprietor, she's not brought

to this room. If she happens to be a judge, however, she may be brought to this room. And the question is, is there a line for a judge to be treated like a non-judge with respect to this subject?

I know the -- I had one more question, but I know the answer based on something that happened today. Thank you.

That's all I have. Anyone else?

MS. BUCKLEY: Sorry. If I could just clarify, those two questions, you want a response from both parties, right?

MR. BIENSTOCK: Yes.

MS. BUCKLEY: Absolutely. Thank you. I just wanted to clarify.

MR. BIENSTOCK: It's on my mind. You can deal with it --

MS. BUCKLEY: Yes.

MR. BIENSTOCK: -- any way you want.

MS. BUCKLEY: Okay. That's great. Thank you.

MR. FRIEDBERG: Right. Because you said one question for each side, but you want us to both -- answer both questions?

MR. BIENSTOCK: Oh, absolutely. Yeah.

MR. FRIEDBERG: Thank you.

MR. BIENSTOCK: I wanted to show how fair I was. Off the record.

(Proceedings concluded at 3:43 p.m.)

INDEX OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
For the Respondent:				
Frank M. Mora	360	465	557	

COMMISSION ON JUDICIAL CONDUCT
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Suite 1200
New York, NY, 10006

EXHIBITS

COMMISSION

	Description	Ident.	In Evid.
30	5/9/24 Letter		346
31	Respondent's letter to the Commission dated July 10, 2024, (UNREDACTED), and email attachments numbered 1 to 127		349
32	Respondent's letter to the Commission dated June 17, 2022 (UNREDACTED), with Attachments		356
33	Respondent's Prior Testimony Before the Commission on February 27, 2024 (UNREDACTED), with Commission and Respondent's Exhibits (formerly Ex. 33-A through 33-NN)		357
34	Respondent's Verified Answer dated April 11, 2025 (UNREDACTED)		355
36	Letter from Commission to Respondent dated March 30, 2022, with attachments		353
37	Letter from Commission to Respondent dated April 12 2022, with attachments		353

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38 (FOR ID ONLY) Email thread between Respondent and Michael H. Sussman, Esq., dated January 3, 2023 [Commission Exhibit 38, introduced, BUT NOT IN EVIDENCE, pp 523]

EXHIBITS

RESPONDENT

	Description	Ident.	In Evid.
H	Emails thread between Respondent and Chad LaVeglia, Esq., dated May 9, 2024		431

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EXHIBITS

REFEREE

	Description	Ident.	In Evid.
A	Formal Written Complaint dated January 14, 2025 [In evidence, pp 9, Day One]		
B	Respondent's Verified Answer dated April 11, 2025 [In evidence, pp 9, Day One]		
C	(FOR ID ONLY) Memorandum of Hon. Joseph Zayas dated March 6, 2024 [In evidence, pp 135, Day One]		

v.

COMMISSION ON JUDICIAL CONDUCT
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CERTIFICATION

I, Donna Gould, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: October 25, 2025

Donna Gould

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