

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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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

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RESPONDENT’S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

DATED: January 12, 2026

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Respondent, Frank M. Mora, (“Respondent”), by and through his counsel, O’Connell & Aronowitz P.C., submit these proposed Findings of Fact and Conclusions of Law for the consideration and inclusion in the referee’s decision regarding the hearing that commenced on October 15, 2025.

BACKGROUND

1. Respondent was duly admitted to the practice of law in the State of New York in 1997. He has been a Judge of the Poughkeepsie City Court, Dutchess County, since 2011. Respondent’s current term expires on December 31, 2030.

2. Respondent was served with a Formal Written Complaint dated January 14, 2025. He filed a Verified Answer dated April 11, 2025.

FINDINGS OF FACTS

AS TO CHARGE I

3. On January 29, 2021, Respondent entered the Seeta Eye Center (“Seeta”) for an eye doctor appointment for his son, [REDACTED]. [REDACTED] was wearing a mask, and Respondent was wearing a face shield that fully covered his nose and mouth. Hearing Transcript, page 379, lines 12-13. Exhibit D shows a picture of the face shield.

4. Respondent was told by the receptionist that he had to wear a mask. He explained that he did not medically tolerate a mask. The receptionist had him stand to the side while the manager, Stacey Koch, was called. Hearing Transcript, page 379, lines 13-18.

5. When Ms. Koch came out, Respondent explained to her that he did not medically tolerate a mask. Ms. Koch argued with him that a mask was required. He again stated that he did not medically tolerate a mask. Hearing Transcript, page 379, line 20 to page 379, line 1.

6. Instead of continuing to argue, Respondent suggested that [REDACTED] go in by himself, and Respondent would wait outside. Ms. Koch agreed. Before leaving, Respondent asked Ms. Koch to have something in place for when he returned for either his other minor children or for himself. Hearing Transcript, page 380, lines 2-13.

7. There was testimony from Ms. Koch, and another Seeta employee, that it was not Ms. Koch who was called out, but a Daniele Foster. Hearing Transcript, page 68, line 12; and p168, lines 16-17. This not credible, and is belied by Exhibit E, which is an email sent by Respondent directly to Ms. Koch on March 7, 2022, recounting the December 28, 2021, incident which will be addressed below. Ms. Koch did not dispute or refute the events as recounted in this email.

8. When [REDACTED] was finished with his appointment, he went to check out. [REDACTED] called Respondent and told him he had to come back in to pay. Respondent had [REDACTED] tell them that he was still wearing his face shield. [REDACTED] told Respondent that the Seeta representative said he could come in wearing the face shield. Respondent entered wearing the face shield, paid the co-pay with no issues, and left. Exhibit 33, Transcript page 22, line 16; Hearing Transcript, page 379, line 12 to page 382, line 4.

9. Ms. Koch did not advise Respondent that he would need medical documentation the next time he returned to Seeta, nor did any other employee. Exhibit 33, Transcript, page 44, lines 12-18.

10. On December 28, 2021, Respondent entered the Seeta Eye Center for an appointment for his [REDACTED] minor son, [REDACTED]. [REDACTED] was wearing a mask, and Respondent was wearing the same face shield that he wore on January 29, 2021. Hearing Transcript, page 383, lines 9-15.

11. The receptionist told Respondent that he had to wear a mask. Respondent explained that he did not tolerate a mask, and that he, “just went through this with Stacey in January.” Exhibit 33, Transcript page 31, line 25 to page 32, line 3.

12. The receptionist called Ms. Koch, who came out to speak with Respondent. Exhibit 33, Transcript page 32, lines 7-9.

13. Ms. Koch told Respondent that he had to wear a mask. Respondent explained again that he did not medically tolerate a mask. Hearing Transcript, page 291, line 19 to page 292, line 1.

14. She testified that Seeta’s, “...goal was to follow the State mandate. We didn’t make our own decisions.” Hearing Transcript, page 146, line 24.

15. However, that is not the case, as Governor Hochul’s mask mandate that was in place on December 28, 2021, stated, “Businesses and venues that implement a mask requirement must ensure all patrons past their second birthday and medically able to tolerate a face covering wear a mask at all times while indoors outside of physical eating or drinking.” (emphasis added). Exhibit B.

16. The Department of Health’s Interim Guidance on Executive Orders 202.17 and 202.18 Requiring Face Coverings in Public During the Covid-19 Outbreak (April 17, 2020), specifically states that, “Individuals are required to wear a face covering ... provided that they ... [are] able to medically tolerate a covering. If a face covering would inhibit or otherwise impair an individual’s health ... an individual is not required to wear or use such a covering. Further, essential business operators and enforcement authorities are prohibited from requesting or requiring medical or other documentation from an individual who declines to wear a face covering due to a medical or other health condition that prevents such usage.” (emphasis added.) Exhibit C.

17. Governor Hochul's mask mandate was codified by the Health Department in 10 NYCRR 2.60, which specifically states that, "...any person who is over age two and able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering...." (emphasis added). Exhibit A.

18. Ms. Koch, even after being advised by Respondent that he did not medically tolerate a mask, was in violation of the mask mandate by continuing to require Respondent to wear a mask or leave the premises. Although Ms. Koch claimed to follow the State mandate, she testified that, "To me, he's a person not wearing a mask; we're supposed to be wearing masks." Hearing Transcript, page 170, lines 7-8.

19. Respondent did not leave the premises when Ms. Koch demanded that he leave. Hearing Transcript, page 467, lines 20-24

20. Respondent testified that, "At that point, I was in shock, and I was having a panic attack. I should have. I should have stepped outside." Hearing Transcript, page 468, lines 8-9.

21. Ms. Koch told Respondent that she would call the police if he did not leave, and he responded that, "Dutchess County wasn't enforcing the mask mandate." Hearing Transcript, page 469, lines 3-8.

22. The police were called two separate times. Hearing Transcript, page 35, line 15.

23. The Town of Poughkeepsie Police Dispatcher advised Ms. Koch the very same thing that Respondent advised her, that, "So the police, we don't enforce the mask mandate." Exhibit 3-A, page 3, line 22.

24. Respondent attempted to reason with Ms. Koch, but she would not allow him to speak, stating, "I wish you wouldn't speak if you're not going to wear a mask, okay? Don't talk." Exhibit 3-A, page 2, line 25.

25. As Respondent continued to try to reason with Ms. Koch, she again stated, "... no, don't speak because we don't want your air." Exhibit 3-A, page 3, line 9.

26. While Ms. Koch was on the phone with the police during the second call, Respondent asked her if she would have [REDACTED]'s eyes examined if he provided her a doctor's note; he was begging her. Ms. Koch agreed, gave him her business card, and Respondent left the premises to get the medical documentation. Hearing Transcript, page 180, lines 8-9; page 475, lines 4-8.

27. Although Ms. Koch's requiring medical documentation was in violation of the mandate, Respondent nonetheless provided medical documentation from his doctor, Dr. M [REDACTED], to Ms. Koch. Exhibit 32, page 122.

28. Dr. M [REDACTED] was treating Respondent for physical symptoms that rendered him unable to wear a mask. Hearing Transcript, page 477, lines 11-20.

29. After receiving the doctor's note, Ms. Koch called Dr. M [REDACTED]. Hearing Transcript, page 184, lines 7-8.

30. Dr. M [REDACTED]'s office confirmed that Respondent was a patient of his, and that the medical documentation was authentic. Exhibit 32, page 120.

31. Then, in violation of Respondent's HIPAA rights, Ms. Koch demanded a diagnosis from the doctor, which he refused to provide. She admitted she called him for a diagnosis. Hearing Transcript, page 184, line 8. Dr. M [REDACTED] advised her that this was a violation of HIPAA as he did not have a release form signed by Respondent, at which point she hung up on him. Exhibit 32, page 120. Ms. Koch's testimony confirms this: "I'm hanging up. You're not answering any of my questions." Hearing Transcript, page 282, lines 13-15.

32. Ms. Koch did not believe Respondent when he advised her that he could not medically tolerate a mask, and she testified that it was not a reality because she did not have a diagnosis. Hearing Transcript, page 292, line 12.

33. Ms. Koch also did not consider Respondent's Doctor's note medical documentation, stating, "I received a paper from a chiropractor, not medical documentation." Hearing Transcript, page 180, line 25.

34. Ms. Koch admitted that her, "opinion really was: a chiropractor has no basis to give an opinion ... on wearing a mask ... or even having a medical condition." Hearing Transcript, page 283, lines 4-10.

35. Ms. Koch claimed she was not aware that Respondent could not medically tolerate a mask because, "People are making up a lot of stuff then." Hearing Transcript, page 292, line 7.

36. Jessica Feather, a Seeta employee, witnessed the exchange between Ms. Koch and Respondent. Hearing Transcript, page 33, lines 21-22.

37. Ms. Feather testified that Respondent's tone was, "resolute but not defiant." Hearing Transcript, page 36, line 9. Respondent's volume, "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." Hearing Transcript, page 36, line 14. "So they got a little bit more energetic, we'll say, towards the end." Hearing Transcript, page 36, line 24.

38. Ms. Feather testified that Respondent did not yell, stating, "I never - - I never said they were yelling. I said they were matching each other's energies." Hearing Transcript, page 47, line 23. She further stated, "No," when asked if Respondent yelled at Ms. Koch. Hearing Transcript, page 48, line 20, and page 55, line 22.

39. Ms. Feather's testimony that, "If we 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," is not credible, as Respondent advised Seeta eleven months prior on January 29, 2021, that he could not medically tolerate a mask. Hearing Transcript, page 37, line 7.

40. Kristine Monteverdi, another Seeta employee, confirmed that Seeta had notice of Respondent's inability to wear a mask, stating, "He told Ms. Foster that he had a - - a medical exemption from wearing a mask." Hearing Transcript, page 68, line 12.

41. Ms. Monteverdi testified that Respondent advised her again first thing upon checking in on December 28, 2021, that he did not medically tolerate a mask. Hearing Transcript, page 68, line 25.

42. Respondent did not raise his voice to Ms. Monteverdi. Hearing Transcript, page 69, line 15.

43. Respondent's volume, "...started out low, and then it - - his volume started to rise. Not yelling, but it was rising in the waiting room." Hearing Transcript, page 70, line 14.

44. Respondent's volume was rising because Ms. Koch was cutting him off and "trying to talk over him." Hearing Transcript, page 70, line 17. She confirmed on cross examination that Respondent did not yell, his voiced was raised, and he was firm. Hearing Transcript, page 86, lines 11-14.

45. Ms. Monteverdi's recollection of the events is not reliable, as she is confused as to what took place on January 29, 2021, December 28, 2021, and May 20, 2022.

46. There is no dispute that Respondent and his son, [REDACTED], were there for [REDACTED]'s appointment on December 28, 2021, but when asked on direct examination if Respondent was with anybody, she stated, "No. He was alone." Hearing Transcript, page 73, line 10.

47. On cross examination, she again stated, “He wasn’t with his son that day.” Hearing Transcript, page 78, line 1.

48. Again, on cross examination, she stated that Respondent, “...was getting an eye exam.” Hearing Transcript, page 87, line 2.

49. She is mistaken, as Respondent was only alone on May 20, 2022, when he had an appointment for his own eye examination. Hearing Transcript, page 396, line 4.

50. There is no dispute that Respondent and his son, [REDACTED] were there for [REDACTED]’s appointment on January 29, 2021, but when asked how old [REDACTED] was on that date, she stated, “Maybe ten or so.” Hearing Transcript, page 76, line 5. [REDACTED] was nearly [REDACTED] ([REDACTED]) on January 29, 2021.

51. Ms. Koch was asked, “And were there any occasions where a patient was unable to wear a face mask for a medical reason.” Hearing Transcript, page 149, line 22.

52. Ms. Koch’s testimony that, “...we certainly would try our best to make exceptions on how to care for people with advanced warning and advanced notice,” Hearing Transcript, page 149, line 25, is not credible, as Respondent advised Seeta eleven months prior on January 29, 2021, that he could not medically tolerate a mask. Hearing Transcript, page 37, line 7. Ms. Koch’s testimony that she did not know that Respondent required an accommodation because he was medically unable to wear a face mask, Hearing Transcript, page 156, lines 11-13, is also not credible. See also Hearing Transcript, page 167, lines 3-6, lines 16-21, and page 168, lines 6-24 to page 169, line 12.

53. The referee credits the testimony of Respondent that he advised Ms. Koch directly on January 29, 2021, that he could not medically tolerate a mask. Even assuming, arguendo, that it was Ms. Foster who was told, Seeta was put on notice that very day.

54. Ms. Koch admitted that Respondent was, "...maybe ten feet from the reception desk," when she approached him. Hearing Transcript, page 157, line 21.

55. Ms. Koch does not remember what Respondent said to her when she told him to wear a mask, stating, "I can't give you exact verbiage at all..." Hearing Transcript, page 158, line 8.

56. Ms. Koch admitted that she doesn't know when Respondent told him he could not medically tolerate a mask. Hearing Transcript, page 158, line 14.

57. She admitted that, "...he said he would provide [medical documentation], but she did not remember when that happened. Hearing Transcript, page 159, lines 1-3.

58. Ms. Koch admitted that her, "voice was getting higher and higher because I was pretty uptight at this point." Hearing Transcript, page 159, line 23.

59. Ms. Koch stated that if Respondent was at Seeta on a prior occasion and informed them that he could not wear a mask for medical reasons, it should be recorded in the file. Hearing Transcript, page 160, line 21 to page 161, line 1.

60. Ms. Koch stated to the police that, "He's wearing a clear plastic face shield that does not cover his mouth." Hearing Transcript, page 163, lines 14-16. This statement is not true, as shown by Exhibit D, which is a picture of Respondent wearing the face shield, which extends down past his chin.

61. Ms. Koch asked Respondent for medical documentation, and Respondent advised her that he would get it. Hearing Transcript, page 279, lines 2-6.

62. Ms. Koch gave Respondent her business card, and stated, "I got him back in the office with his kid through the back door." Hearing Transcript, page 180, lines 8-10.

63. Ms. Koch's claim that Respondent left, "when the police say they are coming," Hearing Transcript, page 279, line 8, is untenable.

64. Ms. Koch's claim that Respondent did not tell her he had to leave to get the medical documentation is untenable, as he left Seeta and proceeded immediately to get her said documentation. Hearing Transcript, page 279, lines 17-22.

65. Ms. Koch admitted that she was hysterical. Hearing Transcript, page 280, lines 18-19. Her claim that she was hysterical, but not raising her voice, is not credible. Hearing Transcript, page 280, lines 20-21.

66. When asked on direct examination if she discussed her testimony before the Commission with Michael Brown, she stated, "I think he was already gone by then." Hearing Transcript, page 198, lines 10-11. However, on cross examination she stated, "Of course I told Michael Brown." Hearing Transcript, page 285, lines 6-13.

67. Michael Brown testified that Respondent was more than six feet away from Ms. Koch. Hearing Transcript, page 308, lines 14-15.

68. He answered "Yes," when asked if they [Ms. Koch and Respondent] "Were the same amount of feet apart the whole time you were there?" Hearing Transcript, page 318, lines 12-13.

69. He testified that Respondent did not raise his voice, did not taunt Ms. Koch, and was not nasty. Hearing Transcript, page 309, lines 20-23.

70. Mr. Brown stated that Respondent, "...was not nasty and rude at all. Absolutely not. ... He was not rude or mean at all." Hearing Transcript, page 315, lines 10-11.

71. When asked, "Based upon what you saw that day, was he nasty, or rude, or taunting to her," his answer was, "Not at all." Hearing Transcript, page 315, lines 22-23.

72. Mr. Brown was so upset about how Respondent was treated by Ms. Koch that he, “apologized to him on behalf [of Seeta] because it was embarrassing. I apologized.” Hearing Transcript, page 312, line 10.

73. Mr. Brown did not know Respondent on December 28, 2021. Hearing Transcript, page 307, lines 20-21. However, Mr. Brown was so offended by how Ms. Koch treated Respondent on that day, and then continued to pursue him to try get him removed from the bench, that he left Seeta for another job. Hearing Transcript, page 313, lines 1-2; and page 314, lines 11-13.

74. Respondent was not able to medically tolerate a mask so his employer, the Unified Court System of New York, Office of Court Administration (OCA), allowed him to wear a face shield at work in lieu of a mask; a face shield that they provided, which is shown in Exhibit D. No medical documentation was required by OCA for this approval. Hearing Transcript, page 363, lines 8-24.

75. Respondent testified that on January 29, 2021, he accompanied his [REDACTED] son, [REDACTED], to Seeta for an eye exam. [REDACTED] was wearing a mask, and Respondent was wearing his face shield. The receptionist told him he had to wear a mask. Respondent explained to the receptionist that he did not medically tolerate a mask. She had him and [REDACTED] stand in a spot and the manager, Stacey Koch, came out. Ms. Koch came out abruptly, got right in his face, within a foot or two, and started yelling at him, “You have to put a mask on.” Respondent said, “Ma’am, I’m sorry, I don’t medically tolerate a mask.” He had to step back because she was right in his face yelling at him. He explained that he was not there to cause a problem and again said, “Ma’am, I just can’t medically tolerate a mask.” She again said he had to wear a mask. When Respondent asked what she does for patients that do not medically tolerate a mask, she said, “We don’t have

anyone.” She then admitted they had one, but that person, “...decided to leave the practice.” Respondent said, “Well, I don’t decide to leave the practice. ... We like the doctors here, especially Dr. G [REDACTED], who my children have been seeing for years.” Respondent said, “Listen, he’s [REDACTED]. He’s going on [REDACTED]. Can he please go in? I’ll wait outside because he’s a big boy.” She said, “Yes,” and respondent 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.” Respondent then waited in his truck. He had never met, nor spoken to, a Daniell Foster, and stated, “I couldn’t pick her out of a lineup.” When [REDACTED] was finished with the exam, he went to check out. He then called Respondent and said, “Dad, you have to come and pay the co-pay.” Respondent said, “Just please tell them I still have just my shield on. And he did.” He said, “Yes, that’s fine. Come in.” Respondent went back in, wearing only his face shield, waited in line to pay, paid the bill, and walked out. Hearing Transcript, page 379, line 12 to page 382, line 4.

76. Respondent testified that on December 28, 2021, he accompanied his [REDACTED] son, [REDACTED], to Seeta for an eye exam. [REDACTED] was wearing a mask and Respondent was wearing his face shield. The receptionist told him he had to wear a mask. Respondent explained, “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.” Hearing Transcript, page 383, lines 17-21.

77. Ms. Koch came out and, “...she never came near me. She walked straight past me and went over to the plexiglass, like, where the reception area.... 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.’ Respondent advised her immediately and three to four times during the incident, that he did not medically tolerate a mask. Hearing Transcript, page 384, line 7 to page 385, line 7.

78. Respondent testified, “She didn’t ask for medical documentation at that time. She was just yelling at me. I was in shock. I ... 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.” Hearing Transcript, page 385, lines 9-15.

79. Respondent testified, “... as you hear the 911, I’m trying to explain 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’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 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.” Hearing Transcript, page 385, line 23 to page 386, line 9.

80. It was approximately three or four minutes from when Respondent entered the premises to when the police were called. Hearing Transcript, page 386, lines 22-23.

81. Respondent did not tell Ms. Koch that the police wouldn’t come. He said, “At some point ... after she’s not accepting my medical - - asking for ... 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. ... I never said they wouldn't come." Hearing Transcript, page 387, lines 6 to 14.

82. Respondent testified that he did not leave the first time when Ms. Koch directed him to leave because, "... at first, I thought she was telling me to leave like I did with [REDACTED]. ... And just leave him [REDACTED] there." Hearing Transcript, page 389, lines 2-3.

83. Regarding the second call to the police, Respondent did not leave before the call because, "... I was still trying to talk to her right before she made the second call. 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, No, not on me. I could try to get you some. ... If I get you medical documentation, will you please see my son today? And she said, 'Yes.' ... And that's when I said, Okay. I'm going to leave. I'm going to see if I can get it." Hearing Transcript, page 389, line 19 to page 390, line 1.

84. Respondent did not leave because he was afraid the police were coming. He thought they were coming after the first call. Hearing Transcript, page 390, lines 11-12. He left after Ms. Koch said she would have [REDACTED]'s eyes examined and gave him her business card so he could provide medical documentation to her. Hearing Transcript, page 180, lines 8-10.

85. Respondent testified that he did not criticize [Ms. Koch], yell at her, badger her, or taunt her. Hearing Transcript, page 390, lines 18-21.

86. Regarding raising his voice, Respondent testified that, "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 was raised, I didn't do it intentionally. I don't believe it did,

but if it did, that would have been the reason.” Hearing Transcript, page 390, line 22 to page 391, line 4.

87. Respondent testified that Ms. Koch raised her voice. Hearing Transcript, page 391, lines 5-6.

88. After Respondent emailed Ms. Koch the medical documentation, he went back with [REDACTED] the same day (December 28, 2021) at 4:30pm for [REDACTED]’s eye exam. Hearing Transcript, page 392, line 10 to page 393, line 14.

89. Michael Brown asked Respondent if there was anything he could do for Respondent because of the complaint Ms. Koch filed, and Respondent asked if he would write a letter, which he did and is Exhibit F. Hearing Transcript, page 394, line 18 to page 395, line 7.

90. Respondent testified that, “There was no thought in my mind of bringing a lawsuit against Ms. Koch up until that call from Mr. Brown.” This call was in September 2022, after Ms. Koch testified before the Commission. Hearing Transcript, page 409, line 10 to page 410, line 24; and page 422, lines 14-16.

91. The first time that Respondent spoke to Michael Sussman about suing Ms. Koch was on November 14, 2022. Hearing Transcript, page 412, lines 5-6.

92. Mr. Sussman confirmed this by testifying, “... it was certainly not a primary subject of discussion until after the Brown matter....” Hearing Transcript, page 242, lines 11-12.

93. Respondent informed Mr. Sussman that Mr. Brown advised Respondent that, “she’s [Koch] trying to get me fired. He had said she’s lying to the Commission. She’s telling them that I threatened her.” Hearing Transcript, page 412, line 24 to page 413, line 1.

94. Although Respondent could have brought suit against Ms. Koch immediately after April 12, 2022, the date Respondent found out about Ms. Koch's complaint, he did not do so. Hearing Transcript, page 516, lines 14-17.

95. Respondent brought suit based on Ms. Koch's statements to Mr. Brown, "And the other statements, correct. She was going outside of the Commission to the public." Hearing Transcript, page 551, lines 4-8.

96. Respondent asked Mr. Sussman, "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." 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 of the information from this I emailed him on November 9th because he was going to represent me ..., 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." Hearing Transcript, page 413, lines 5-14.

97. Mr. Sussman was the one who raised the possibility of a defamation case. Hearing Transcript, page 412, lines 9-10.

98. Mr. Sussman confirms this by testifying, "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." Hearing Transcript, page 250, lines 20-23.

99. Respondent testified, "I didn't even know how defamation worked." Hearing Transcript, page 413, line 21.

100. Respondent asked Mr. Sussman how long the statute of limitations on defamation was. Mr. Sussman advised, "A year." Respondent asked if it is tolled because of the proceeding

that's going on with the Commission, and Mr. Sussman advised, "No." Respondent said, "Well, that's not fair. You mean the Commission can drag past a year, and then the statute of limitations runs, and then I can't bring a suit?" He said, "Correct." Respondent asked, "I can't wait for the Commission to be done?" He said, "Not if you're going to bring the suit." Hearing Transcript, page 414, lines 3-9.

101. Respondent relied on Mr. Sussman's advice for both the Federal suit and the Koch defamation suit. Respondent relied upon Mr. Sussman, "A hundred percent," as Respondent did not know anything about federal law, federal lawsuits, or defamation. Hearing Transcript, page 415, lines 1-12; and page 235, line 17 to page 236, line 4.

102. A defamation claim has never been brought in front of Respondent in Poughkeepsie City Court the entire time he has been a judge there, and he is not aware if one is even allowed to be brought there. Hearing Transcript, page 560, lines 10-15.

103. Mr. Sussman advised Respondent that he did not have a tortious interference with business case, but he did have a defamation case. Respondent asked if he could bring a HIPPA violation case, and Mr. Sussman advised that he could not. Hearing Transcript, page 416, lines 1-7.

104. Respondent also inquired of Mr. Sussman if he could sue Law360 for, "this blatantly false article that they put out against me? And as soon as I stopped speaking, he said, 'You can't sue them. They're immune, First Amendment.'" Hearing Transcript, page 412, lines 18-22.

105. Respondent testified that Mr. Sussman prepared the defamation complaint, that Respondent did not contribute anything, "legal-wise," only editing for spelling and grammar, and

that Mr. Sussman, “wrote the whole thing.” Respondent did not verify the complaint. Hearing Transcript, page 416, lines 8-24.

106. Prior to filing the defamation suit, Respondent did not know anything about privilege in terms of the Commission, nor did he know anything about the SLAPP statute. Hearing Transcript, page 417, line 16; and page 422, lines 18-21.

107. Mr. Sussman never told Respondent, even to the present day, that Respondent could not bring the lawsuit. Hearing Transcript, page 417, lines 7-11; and page 422, lines 22-25.

108. Mr. Sussman has not retreated from his position that the lawsuit was proper, event to the present day. Hearing Transcript, page 424, lines 15-19.

109. Mr. Sussman testified that, “I did not tell him [Respondent] I thought there was a privilege. I did not think there was a privilege.” There was also no discussion about SLAPP prior to bringing the lawsuit. Hearing Transcript, page 236, lines 15-20.

110. Mr. Sussman testified that he, “found nothing to that effect at the time” on the Commission’s website that indicated that statements made to it were confidential. Hearing Transcript, page 237, lines 9-11.

111. Mr. Sussman testified that he came up with the \$425,000 in the addendum clause of the complaint. Hearing Transcript, page 237, lines 20-22.

112. Mr. Sussman confirmed that Respondent never told him that the purpose in bringing the lawsuit was to retaliate against Ms. Koch and that he really had no basis for doing so. Hearing Transcript, page 237, line 23 to page 238, line 2.

113. Respondent relied upon Mr. Sussman’s advice. Hearing Transcript, page 417, lines 12-14; and page 551, lines 9-12.

114. Respondent relied upon Mr. Sussman's advice and followed that advice 100%. Although Respondent wanted to sue Ms. Koch for tortious interfere with business and for HIPAA violations, he did not do so. The only suit brought was for defamation, based solely on Mr. Sussman's advice. Hearing Transcript, page 500, line 20 to page 501, page 6.

115. Mr. Sussman confirms this by testifying, "No, I advised him that no one has a claim under HIPAA. There's no private right of action under HIPAA." Hearing Transcript, page 251, lines 6-7.

116. Respondent's attorney who was representing him before the Commission, Chad LaVeglia, also advised Respondent that he could go forward with the defamation suit. Hearing Transcript, page 512, lines 2-9.

117. Respondent also followed the advice of Ethic's Opinion 12-96, which was provided to him by Laura Smith, who is the Chief Counsel to the Advisory Committee for Judges, which states, "... the rules governing judicial conduct do not preclude a judge from exercising the same rights as any other citizen when appearing as a litigant." Exhibit G; and Hearing Transcript, page 508, lines 12-20.

118. After receiving the motion to dismiss based upon the SLAPP statute, Mr. Sussman advised Respondent that it was not a SLAPP suit. Hearing Transcript, page 418, line 16 to page 491, line 2.

119. After receiving the decision dismissing the action, Mr. Sussman continued to advise Respondent that it was not a SLAPP suit, and that Respondent should appeal. Respondent did not appeal the decision. Hearing Transcript, page 419, line 10 to page 420, line 1.

120. Respondent did not appeal the decision because after reading it, he thought Mr. Sussman's advice was wrong, and he advised Mr. Susman of that. Hearing Transcript, page 424, lines 4-13.

121. Respondent apologized to Ms. Koch, "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. ... Intentionally, I would not do that, ever." Hearing Transcript, page 423, lines 23-25.

122. Respondent stated further, "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." Hearing Transcript, page 424, lines 2-3.

123. Respondent's apology was based upon how the suit was drafted, the four corners of the suit that was actually brought, and not the one that should have said Michael Brown. Hearing Transcript, page 536, line 14 to page 537, line 5; and page 552, lines 1-2.

124. Mr. Sussman did not advise Respondent to withdraw because it was an improper lawsuit. Hearing Transcript, page 420, lines 22-24.

125. Respondent thought about withdrawing the suit based on a gospel reading he heard at Church, not because he thought it was improper. Hearing Transcript, page 420, line 25 to page 421, line 14.

126. Mr. Sussman confirms that he never told Respondent to withdraw the matter because it was not a viable suit, testifying, "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 ... of a different nature." Hearing Transcript, page 262, lines 2-15.

127. Hearing testimony shows that Respondent had a viable cause of action, if it was pleaded correctly, because Ms. Koch went public with her complaint, and he testified, "Because

we found out yesterday, she [Ms. Koch] had done that the day after she filed with you [the Commission] 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 others when she said, ‘And she would tell anyone who would listen.’ So she made it public the day after she filed it, and I just didn’t know.” Hearing Transcript, page 555, lines 9-14.

128. Even though testimony at the hearing showed that Respondent would have been allowed to go forward with a viable lawsuit, he would not sue Ms. Koch again even though permitted under the law. He testified that, “My faith, thank the Lord, has gotten stronger. I forgive. I have forgiven her.” Hearing Transcript, page 504, lines 15-22. “Now, I would turn the other cheek, and I would just move on.” Hearing Transcript, page 537, line 20.

129. Respondent attempted to comply with the Commission’s demand to produce all emails regarding the defamation suit. Respondent uses Yahoo, and stated, “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 [his attorney representing him in front of the Commission during that time].” Hearing Transcript, page 426, line 25 to page 427, line 2.

130. Respondent asked Mr. LaVeglia to, “please send these [emails] 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.” Hearing Transcript, page 427, lines 8-10.

131. Mr. Sussman signed an affidavit dated May 2024, attesting to the fact that all emails were there. He affirmed under the penalties of perjury that, “The first email communication between Judge Mora and myself from December 28, 2021, to the date of the Koch suit filing (12/29/22), ... is dated December 8, 2022. I have reviewed that email, and all emails from that period, that are being submitted to the Commission by Mr. LaVeglia (a total of 14), and they are

complete and accurate. Some emails have been redacted as they relate to non-Koch matters.” Exhibit 30, page 4, paragraph 13.

132. Although the emails listed in paragraph 43 (A) of the Formal Written Complaint [November 23, 2022 emails – Hearing Exhibit 20] were not sent to the Commission, Mr. Sussman’s affirmation, and Exhibit H, show that it was unintentional.

133. Respondent did not have access to those emails, and asked Mr. LaVeglia to get them from Mr. Sussman. The emails were never sent from Mr. Sussman to Mr. LaVeglia, so they were unintentionally excluded. Exhibit H; and Hearing Transcript, page 432, line 22 to page 433, line 8.

134. Respondent testified that he, “... would want those sent to the Commission. ... I say they’re exculpatory for me. Why would I leave then [sic] out?” Hearing Transcript, page 437, lines 12-14.

135. Respondent testified that, “The first time I saw them was when the Commission brought this formal charge, Charge 3. ... And I went back again on my computer, and I still couldn’t find them. They’re missing. ... They’re gone.” When asked, “So you did not deliberately refuse to hand them over?”, Respondent stated, “Of course not.” Hearing Transcript, page 437, lines 16-24.

136. Regarding all the other emails that were not sent to the Commission as charged in paragraph 43, they were not turned over due to human error. Respondent testified that there were several hundred pages of emails, and that, “So I printed them out, and ... 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 [Mr. Sussman] was advising me

regarding the Commission. ... So I put - - I put them all together ... 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 from 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 [Exhibit 31, page 5] - - from Mr. Sussman. Everything's complete. It's all there. I said, "Great." I finish it up, put it in 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. ... 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 Mr. Sussman signs an affidavit saying they are all there. I don't know what else I could have done humanly possible." Hearing Transcript, page 440, line 7 to page 441, line 15.

137. The printing and culling of 600 pages to 127 pages, "took me into the nighttime...." Hearing Transcript, page 441, lines 18-21.

138. Mr. Sussman signed another affidavit dated July 9, 2024, attesting to the fact that all emails were there. He affirmed under the penalties of perjury that, "I have reviewed the remaining emails (numbered 1 to 127) being submitted to the Commission between Judge Mora and myself from December 30, 2022, to present, ... and they are complete and accurate. Some emails have been redacted as they relate to non-Koch matters." Exhibit 31, page 5, paragraph 1.

139. Respondent knew that Mr. Sussman was providing emails to the Commission and Respondent did not tell Mr. Sussman to withhold any documents, nor did he tell him to hide anything. Hearing Transcript, page 223, line 23 to page 224, line 2.

140. Mr. Sussman graduated in 1978 with honors from Harvard Law School, working for the United States Department of Justice Civil Rights Division, the NAACP, and has been in private practice since January 1, 1986. Hearing Transcript, page 215, line 17 to page 215, line 6.

141. During this time, Mr. Sussman has been a civil rights lawyer bringing over 800 lawsuits in the federal district court in the Southern District of New York. He has also practiced in defamation, handling 30 to 40 defamation cases from the ground up, including drafting complaints, pleadings, trying cases, and appellate work, up to the present day. Hearing Transcript, page 215, line 25 to page 216, line 24.

142. Mr. Sussman confirmed that Respondent spoke to him within two months of Mr. Brown's communication with Respondent which was in September, 2022. Hearing Transcript, page 222, line 23 to page 216, line 10. He testified further that, "... it appears to me that in or around November 9th and in the period between November 9th and November 13th, were the primary discussion." Hearing Transcript, page 240, lines 9-11.

143. Mr. Sussman advised Respondent that Respondent could not bring a tortious interference suit, but he could bring defamation. Hearing Transcript, page 224, line 23.

144. Mr. Sussman testified that Respondent sought his advice in his professional capacity has an attorney, and he gave the advice that a defamation suit was viable based upon almost 40 years of experience in this field of law. Hearing Transcript, page 227, line 18 to page 228, line 2.

145. Mr. Sussman testified that he never told Respondent that he could not bring the lawsuit. Hearing Transcript, page 228, lines 3-4.

146. Mr. Sussman answered, “Correct,” when asked, “So you don’t need to call a press conference or tell 100 people to have publication, correct?” Hearing Transcript, page 228, lines 18-20.

147. When asked if a person makes a defamatory statement to another individual that is not protected, then that would be actionable, Mr. Sussman testified, “... if someone utters a defamatory statement to a third-party and if no privilege applies, then it is actionable.” Hearing Transcript, page 228, lines 24-25.

148. Mr. Sussman would not have brought the suit if he thought it was frivolous or that there was a privilege. Hearing Transcript, page 232, line 19 to page 233, line 1.

149. Mr. Sussman answered in the affirmative that if Ms. Koch took those remarks and the complaint she made to the Commission and publicized them to Mr. Brown or anybody else, she loses her privilege. Hearing Transcript, page 233, lines 5-14.

150. Ms. Koch, by her own admission, testified that she publicized it to not only Mr. Brown, but to her husband, her brother, Ms. Feather, Ms. Monteverdi, her boss Dr. Modi, her friends, the Mayor of the City of Poughkeepsie, and “anyone else who would listen.” Hearing Transcript, page 284, lines 3-4; page 285, lines 6-10, and 18-25; page 286, lines 9-22; and page 287, line 20.

151. Based upon Ms. Koch’s publicized statements to the above individuals, Respondent had a viable defamation suit. Mr. Sussman testified that, “If she made the same statement [as she made to the Commission] to Johnnie Green (phonetic). You could ... certainly sue and say she defamed Mr. Mora to Johnnie Green.” Hearing Transcript, page 233, lines 19-21.

152. Mr. Sussman admits that he did not include in the defamation lawsuit complaint the statements made by Ms. Koch to Respondent, testifying that, “I did not separate that as a separate cause of action, which could have been done but I didn’t do it.” Hearing Transcript, page 252, line 16 to page 253, line 1.

153. Ms. Sussman confirmed that if Ms. Koch had repeated what she said to the Commission to Brown, that would constitute a new act of defamation. Hearing Transcript, page 259, line 24 to page 260, line 1.

AS TO CHARGE II

I. CHARGE II MUST BE DISMISSED.

The Hearing Officer has inquired whether a retaliatory complaint can be brought in good faith. The short answer is yes, although these are not the facts of this case.

The Commission’s basis for an improper retaliation claim is that Ms. Koch’s complaint with the Commission was absolutely privileged. They are wrong.

It is important to keep in mind the context of this case. It is clear that Ms. Koch, after having lodged her complaint to the Commission, immediately published her claims with various individuals, on several occasions. In fact, within a day she even wrote to the mayor of Poughkeepsie, in a lengthy, wandering diatribe, publicly setting forth her libelous claims. It is irrelevant whether Judge Mora was aware of the letter.

The following facts can be flatly stated. First, Judge Mora only brought this complaint after he was advised that Ms. Koch was publicly spreading lies about him to other people. Second, Judge Mora relied totally upon the advice of his counsel, Mr. Sussman, in going forward. Third, Ms. Koch surrendered any privilege that she may have had (which is arguable)

once she began to announce to others what had occurred at the Eye Center on the day in question.

Without any basis, the Commission has basically argued that she had an absolute privilege in keeping her complaint a secret to the Commission, regardless of what she did, ignoring that Judge Mora was defending his right to sue in a non-administrative context for damages to his reputation, which she caused. Without his complaint, Judge Mora would have been left with no recourse. His name would have been publicly besmirched, his reputation would have been damaged, his self-worth in the community would have been severely dismissed. However, Ms. Koch, by going public with her complaint, chose to make this a public forum. Thus, for Judge Mora to bring a lawsuit against her for her public comments was entirely within his right and appropriate for him to do so.

Unlike most cases, there is no question of fact in this matter regarding what Judge Mora laid out in his discussions with Mr. Sussman. As we know, the Commission can not point to any witness, and certainly not his lawyer, who advised Judge Mora that he had no basis to bring a lawsuit, that Ms. Koch's complaints were privileged, and that his complaint would have been improper as a matter of law because it was retaliatory.

Charge II alleges that Respondent commenced the defamation action against Koch in retaliation for her filing a complaint against him with the Commission. This charge must be dismissed for two reasons. First, Respondent relied in good faith on the advice of counsel in commencing the action. Second, Koch waived any privilege that she might have had by disclosing both the fact that she filed the complaint with the Commission and the contents thereof to numerous individuals well before Respondent commenced the defamation action.

a) Respondent's Commencement of the Defamation Action Was Not Improper Because He Relied In Good Faith On The Advice Of Counsel.

It is well established that good faith reliance on the advice of counsel is a recognized defense (*Gilbert v Burnside*, 13 AD2d 982, 983 [2d Dept 1961], *affd* 11 NY2d 960 [1962] [“Reliance upon advice of counsel is a good defense.”]; *see Blaustein v Pan American Pet. & Transp. Co.*, 293 NY 281, 299-300 [1944]; *Matter of Bank of N.Y. Mellon*, 127 AD3d 120, 126 [1st Dept 2015]). The person relying on the advice of counsel of defense must show that such reliance was reasonable (*Matsushita Elecs. Corp. v Loral Corp.*, 1995 U.S. Dist. LEXIS 12880 [SDNY 1995] [“the advice-of-counsel defense requires the defendant to establish that his reliance on the advice was reasonable”]; *see DSW Lenox, LLC v Rosetree on Lenox Ave., LLC*, 2014 N.Y. Misc. LEXIS 2302 [Sup Ct NY County 2014]; *Macnish-Lenox, LLC v Simpson*, 17 Misc3d 1118(A), 2007 N.Y. Misc. LEXIS 7138 [Sup Ct Kings County 2007]). For example, a party may not rely on the advice of counsel defense where that party is aware of facts demonstrating that his or her conduct was unlawful (*see In re Estate of Rothko*, 43 NY2d 305, 320 [1977]).

Importantly, the fact that counsel's advice turns out to be questionable, or even incorrect, does not mean that the party's reliance on such advice was unreasonable. In *Blaustein v Pan American Pet. & Transp. Co.* (293 NY 281), a shareholder derivative action, the plaintiffs argued that the directors of the corporation breached their fiduciary duty by delaying for two years the opening of an oil production operation in the State of Texas. The directors argued that they made their decision in reliance on the opinion of an attorney that opening an oil production operation in Texas would violate Texas anti-trust laws. It was resolved two years later that doing so would not violate Texas anti-trust laws. The trial court found that the directors had no right to rely on the

attorney's advice and should have gotten a second legal opinion, but the Appellate Division reversed, holding:

[i]n that state of facts and with [attorney] Stephens' opinion concurred in by Pan Am's own general counsel we think the directors exercised their discretion honestly and in good faith and under all the facts and circumstances disclosed were justified in deferring at the time entrance of a Pan Am production company into Texas (263 App Div 97, 118).

The Court of Appeals affirmed the Appellate Division, holding:

[w]e find in the record substantial evidence which supports the findings of the Appellate Division that the defendant directors, in good faith, and in the honest exercise of their discretion, deferred until 1935 the organization of a Pan Am crude oil producing subsidiary to operate in Texas because of their honest belief that, in the circumstances, the Texas anti-trust laws made it unsafe, from a legal standpoint, for such a subsidiary to engage in the business of producing crude oil in Texas (293 NY at 300).

Thus, even though the legal advice relied on by the defendants turned out to be incorrect, the defendants' reliance on that advice was in good faith and was a defense.

A similar result was reached by the Second Circuit in *Spirit v Bechtel* (232 F2d 241 [2d Cir 1956]), a shareholder derivative action that challenged actions of the corporation's directors as a conflict of interest. The directors relied on the advice of counsel that the challenged actions were not a conflict of interest. The court held:

[w]hether a conflict of interests existed was a question of fact, the answer to which turned on a question of law. Counsel's opinion as to the law (even though erroneous) should, in our opinion, protect the officers acting in reliance upon it (*Id.* at 247).

Based on the above-discussed case law, it is apparent that a client's good faith reliance on the advice of counsel as to an issue of law constitutes a defense even if the advice is erroneous.

It is important to keep in mind that the Commissioner has never challenged Judge Mora's recollection of his conversations and understanding with Mr. Sussman, nor Mr. Sussman's opinion of the advice he imparted to Judge Mora.

In the instant case, Respondent, although a lawyer and judge, was not knowledgeable regarding defamation, privilege or SLAPP lawsuits (Tr. pp. 413, 415, 417, 422, 502, 537). Indeed, Respondent testified that he was unaware of SLAPP when he commenced the defamation action and did not become aware of it until the motions to dismiss were filed (Tr. pp. 417-418). He had never handled a defamation case as a judge (Tr. p. 560). Respondent retained Attorney Sussman (Tr. pp. 412-413), who was an expert in civil rights litigation and was very familiar with defamation law, having handled 30 to 40 defamation cases (Tr. pp. 215-216). Respondent retained Attorney Sussman specifically to give him legal advice on whether he had a defamation claim against Koch (Tr. pp. 222-227, 250). Attorney Sussman testified that, based on the facts, he advised Respondent that he had a valid defamation claim against Koch (Tr. p. 224) and that he had no doubt as to Respondent's veracity (Tr. p. 226).

With respect to the issue of privilege, Sussman testified that, in his opinion, Koch did not have an absolute privilege (Tr. p. 236). Respondent also testified that Sussman advised him that he had a viable defamation claim against Koch and that he relied on that advice (Tr. pp. 400, 417, 419-420, 504-505, 513, 551). Respondent further testified that, even after the defamation complaint was dismissed, Attorney Sussman was still of the firm opinion that Respondent had a viable claim (Tr. pp. 422- 424).

It is true that Supreme Court Justice Rosa ultimately dismissed the defamation complaint, holding that Koch had an absolute privilege. Attorney Sussman did not agree with the court's analysis and, even as of the date of his testimony at the hearing, was still of the opinion that Justice

Rosa was wrong (Tr. p. 231). He recommended that Respondent appeal the decision, but Respondent decided to settle instead (Tr. pp. 231-232, 419).

There can be no serious argument that Respondent did not rely in good faith on the legal advice of Attorney Sussman in bringing the defamation lawsuit. The mere fact that Respondent is an attorney and judge does not change the analysis. No attorney, indeed, no doctor or engineer, is an expert on all areas of law, and it is undisputed that Respondent was not an expert in defamation, privilege or SLAPP lawsuits. Attorney Sussman was quite familiar with these areas of law, and understandably that is why Respondent hired him. Just like any non-lawyer client, Respondent was entitled to rely on the advice of an attorney knowledgeable in the field of law at issue. He did not lose the right to rely on Attorney Sussman's advice simply because he happens to be an attorney.

As held in the above-discussed cases, the mere fact that Justice Rosa dismissed the defamation complaint, even if this means that Attorney Sussman's advice was wrong, does not mean that Respondent was not entitled to rely on Attorney Sussman's advice. The Commission offered nothing to show that Respondent did not act in good faith in reliance on Attorney Sussman's advice or that his reliance on such advice was some sort of pretext for conduct that he knew was wrong.

In any event, it cannot even be said that Attorney Sussman's advice was wrong. It is not necessary to relitigate the defamation lawsuit, but it must be pointed out that Attorney Sussman likely had more familiarity with defamation and SLAPP law than Justice Rosa, and he was still of the opinion at the time of the hearing that her decision was wrong (and which, as it turns out, she was wrong).

Importantly, one of the primary factual bases of Justice Rosa’s decision is her statement that Koch had not published her statements to anyone other than the Commission and that, “until [Respondent] filed this lawsuit, [Koch’s] statements and the Commission’s proceedings with respect thereto were confidential and non-public” (Comm. Ex. 15 at p. 4). It later became clear that these statements were manifestly incorrect. As the proof at the hearing established, it is undisputed that Koch published the fact that she filed the complaint with the Commission and the sum and substance of the complaint to a large number of parties long before Respondent commenced the defamation action.

For example, Koch admitted that, within a day or two after she filed her complaint with the Commission, she mailed a copy of the complaint to the Mayor of the City of Poughkeepsie (Tr. pp. 190-191, 284-287). She further conceded that, in so doing, she made the complaint public (Tr. p. 287).

In addition, Michael Brown, who was then a co-worker of Koch and who witnessed the incident, testified that, the day after she filed her complaint with the Commission, Koch told him that she had filed the complaint as well as the substance of the complaint (Tr. pp. 313-315, 319, 337). Koch freely admitted that she told Brown that she had filed the complaint and that she “probably” also told him that she hoped that Respondent would be removed (Tr. p. 285).

Jessica Feather, another co-worker of Koch, testified that Koch told her that she filed the complaint and the substance of the complaint (Tr. pp. 41-42). Feather testified that Koch initiated the conversation and that it was not a confidential conversation (Tr. pp. 42-44). Koch admitted that she “absolutely” told Feather that she had filed the complaint and that “of course” she told Feather what she had stated in the complaint (Tr. p. 285).

Karen Monteverdi, another co-worker of Koch, testified that Koch told her that she filed the complaint and the substance of the complaint (Tr. pp. 80-81) and that Koch did not tell her not to tell anyone else about the conversation (Tr. p. 81). Koch testified that she was not sure whether she told Monteverdi (Tr. p. 286).

Koch also admitted that she told her boss, Dr. Modi, her husband and her brother about the complaint and that she may have told others (Tr. pp. 286, 289). In response to questions whether she told any additional people about the complaint, Koch replied “[o]f course, because it was very upsetting” and “of course I would have talked about it amongst my friends. Absolutely” (Tr. p. 286). Koch testified that “I would probably tell anyone who would listen that day” (Tr. p. 287). She also testified that she did not tell the people she told not to tell anyone else (Tr. p. 286-287).

The above testimony establishes that one of the factual bases for Justice Rosa’s decision is completely wrong—it is undisputed that, long before Respondent commenced the defamation lawsuit, the complaint Koch filed with the Commission was not confidential because Koch told numerous people that she filed the complaint and the contents thereof.

Based on the above, it is apparent that Respondent relied in good faith on Attorney Sussman’s advice in bringing the defamation lawsuit, and the mere fact that Justice Rosa dismissed the lawsuit, whether she was correct or not, does not vitiate that defense.

b) Koch Waived Whatever Privilege She May Have Had By Disclosing the Fact that she Filed the Complaint and The Contents Thereof to Numerous Individuals Long Before the Defamation Action was Commenced.

The question is not whether Ms. Koch published her complaint to others. The more valid question, rather, is who she did not tell.

The Commission argues that Koch’s complaint to the Commission was entitled an absolute privilege based on the analysis of *Weiner v Weintraub* (22 NY2d 330 [1968]). Even assuming that the Commission is correct, Koch waived any such privilege.

It is well established that a party waives a privilege by disclosing the privileged information to a third party (*see Ambac Assur. Corp. v Countrywide Home Loans*, 27 NY3d 616 [2016] [“a client waives the privilege if a communication is made in confidence but subsequently revealed to a third party”]; *Delta Fin. Corp. v Morrison*, 13 Misc 3d 441, 444-445 [Sup Ct Nassau Co. 2006] [“disclosure of attorney-client communication to a third party or communications with an attorney in the presence of a third party, not an agent or employee of counsel, vitiates the confidentiality required for asserting the privilege”]). Notably, these cases concern the attorney-client privilege which is an absolute privilege (*see Spectrum Sys. Int’l. Corp. v Chem. Bank*, 78 NY2d 371, 376-377 [1991]), like the privilege claimed by the Commission in the instant case.

In *Ambac Assur. Corp.*, the Court of Appeals explained why disclosure of the privileged information to a third party waives the privilege:

[t]he rationale for these rules is to ensure that the privilege is “strictly confined within the narrowest possible limits consistent with the logic of its principle” (8 John Henry Wigmore, *Evidence* § 2291 at 554 [McNaughton rev 1961]). A lack of confidentiality and subsequent disclosure also destroy the privilege as a matter of fairness: “when [the privilege holder’s] conduct touches a certain point of disclosure, fairness requires that the privilege shall cease whether he intended that result or not” (*id.* § 2327 at 636) (*Ambac Assur. Corp. v Countrywide Home Loans*, 27 NY3d at 624).

Importantly, the burden of proof on the issue of whether a privilege was waived by disclosure to a third party is on the party asserting the privilege (*Oakwood Realty Corp. v HRH Constr. Corp.*, 51 AD3d 747, 749 [2d Dept 2008]; *John Blair Comm. v Reliance Capital Group*,

182 AD2d 578, 579 [1st Dept 1992]). Thus, the burden is on the Commission to prove that Koch did not waive the claimed privilege.

It is undisputed that, soon after filing her complaint with the Commission on December 29, 2021 (Comm. Ex. 6), and long before Respondent commenced the defamation action on December 29, 2022 (Comm. Ex. 8), Koch disclosed the fact that she had filed the complaint and the contents thereof to numerous third parties. Koch admitted that within a day or two, she mailed a copy of the complaint to the Mayor of the City of Poughkeepsie (Tr. pp. 190-191, 284-287). She conceded that, in so doing, she made the complaint public (Tr. p. 287).

Michael Brown, then a co-worker of Koch who witnessed the incident, testified that, the day after Koch filed her complaint with the Commission, she told him that she that she had filed the complaint as well as the substance of the complaint (Tr. pp. 313-315, 319, 337). Brown testified that Koch told him that she was going to “go after Respondent” (Tr. P. 311) and that Koch “bragged” 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 (Tr. pp. 312-313).

Koch admitted that she told Brown that she had filed the complaint and that she “probably” also told him that she hoped that Respondent would be removed (Tr. p. 285).

Jessica Feather, another co-worker of Koch, testified that Koch told her that she filed the complaint and the substance of the complaint (Tr. pp. 41-42). Feather testified that Koch initiated the conversation and that it was not a confidential conversation (Tr. pp. 42-44). Koch admitted that she “absolutely” told Feather that she had filed the complaint and that “of course” she told Feather what she had stated in the complaint (Tr. p. 285).

Karen Monteverdi, another co-worker of Koch, testified that Koch told her that she filed the complaint and the substance of the complaint (Tr. pp. 80-81) and that Koch did not tell her not to tell anyone else about the conversation (Tr. p. 81). Koch testified that she was not sure whether she told Monteverdi (Tr. p. 286).

Koch also admitted that she told her boss, Dr. Modi, her husband and her brother about the complaint (Tr. p. 286). In response to questions whether she told any additional people about the complaint, Koch replied “[o]f course, because it was very upsetting” and “of course I would have talked about it amongst my friends. Absolutely” (Tr. p. 286). Koch testified that “I would probably tell anyone who would listen that day” (Tr. p. 287). She also testified that she did not tell the people she told not to tell anyone else (Tr. p. 286-287).

It is apparent from the undisputed facts that Koch waived whatever privilege she may have had arising from her filing of the complaint with the Commission by disclosing the fact that she filed the complaint and the contents thereof to numerous third parties long before Respondent commenced the defamation action. Indeed, she waived the privilege within a day or two after she filed the complaint when she sent a copy of it to the Mayor of Poughkeepsie. Any confidentiality was destroyed at that point.

Notably, much of the case law regarding waiver of privilege by disclosure concerns situations where a document was disclosed inadvertently during discovery. There can be no question that the disclosure by Koch was not inadvertent because she made it clear in her testimony that she felt she had the right to tell anyone she chose about her complaint and the contents thereof and she admitted that she would have told anyone who would listen (Tr. pp. 286-287).

Importantly, as stressed by the Commission at the hearing, proceedings before the Commission are confidential (Judiciary Law § 45[1]). That confidentiality protects both the

complainant and the judge regarding whom the complaint is made. Indeed, in *Wiener v Weintraub* (22 NY2d 330), the case relied on by the Commission for its position that Koch is entitled to an absolute privilege, the court observed that the confidentiality requirement for complaints against attorneys protects the attorney with respect to unwarranted complaints:

[a] lawyer against whom an unwarranted complaint has been lodged will surely not suffer injury to his reputation among the members of the Grievance Committee since it is their function to determine whether or not the charges are supportable. Any other risk of prejudice is eliminated by the provision of the Judiciary Law (§ 90, subd. 10) which declares that “all papers * * * upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney * * * shall * * * be deemed private and confidential” (*Id.* at 332).

Here, not only did Koch waive the privilege protecting her when she disclosed the complaint to third parties long before the defamation action was commenced, she also violated the confidentiality that Respondent was entitled to rely on.

The Commission suggested at the hearing that the fact that Koch sent the complaint to the Mayor of Poughkeepsie before Respondent commenced the defamation action was irrelevant because Respondent was not aware of that fact when he commenced the action. There is no merit to the Commission’s suggestion for two reasons.

First, a privilege “is waived upon disclosure to a third party where there is a likelihood that the material will be revealed to an adversary, under conditions that are inconsistent with a desire to maintain confidentiality” (*People v Kozlowski*, 11 NY3d 223, 246 [2008], *cert denied* 556 US 1282 [2009], quoting *Bluebird Partners v First Fid. Bank, N.J.*, 248 AD2d 219, 225 [1st Dept 1998]). Koch admitted that, when she sent the letter to the Mayor of Poughkeepsie, the matter became public (Tr. p. 287) and that she wanted to make the mayor “aware of what [Respondent]

is doing” (Tr. p. 284). Thus, there certainly was a likelihood that the communication would be revealed to Respondent and, further, that the conditions under which Koch sent the letter to the mayor were inconsistent with a desire to maintain confidentiality. The alleged absolute privilege that the Commission claims Koch had was waived by her when she intentionally disclosed the complaint and the contents of thereof to numerous people long before the defamation action was commenced. Whether Respondent was aware of all of the disclosures by Koch has no bearing on the fact that Koch intentionally chose to waive any privilege.

Second, it is undisputed that Respondent was aware that Koch had revealed the contents of the complaint to Michael Brown prior to the commencement of the defamation action. Indeed, it was the fact that he learned of Koch’s disclosure to Brown that caused Respondent to bring the defamation action (Tr. p. 498). Thus, it is undisputed that Respondent was aware that Koch had disclosed the complaint and the contents thereof to at least one third party before he commenced the defamation action.

It is apparent from the undisputed proof that whatever privilege Koch may have had by reason of her filing the complaint with the Commission was waived by her when she intentionally and knowingly disclosed the complaint and the contents thereof to numerous individuals. These disclosures occurred long before Respondent commenced the defamation action. Further, it is clear that Koch intentionally and knowingly violated the confidentiality provisions of Judiciary Law § 45(1) by making the above-described disclosures.

As a final matter, it is relevant that Koch admitted on cross examination that she advised Commission staff, including its attorney, Ms. DiPalo, prior to the hearing that she had disclosed her complaint to the Mayor of Poughkeepsie (Tr. pp. 294-296). Thus, the Commission was well

aware, prior to the hearing, that Koch had not only waived any privilege that it claims protected her but had also violated the confidentiality provision of Judiciary Law § 45(1).

However, in her opening statement, the Commission's attorney stated that Respondent violated the confidentiality provision by commencing the defamation proceeding: "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" (Tr. p. 14). Unfortunately, that statement was inaccurate since the Commission knew Koch had abandoned the confidentiality long before the filing of the lawsuit by intentionally disclosing the information to the Mayor of Poughkeepsie. Similarly, the Commission's attorney questioned Respondent during the hearing suggesting that he violated the confidentiality of the Commission's proceedings by filing the complaint (Tr. pp. 553-555) when she was well aware that Koch had vitiated the confidentiality of these proceedings long before Respondent commenced the lawsuit.

AS TO CHARGE III

Referee finds that the missing emails were not intentionally withheld by Respondent but were not turned over due to human error.

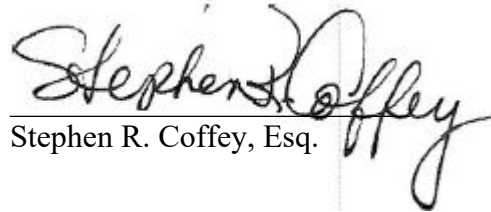
Referee finds that the redacted emails are part of a discovery dispute. Respondent's counsel advised Respondent to redact them. The prosecution was aware that Respondent redacted certain emails because they were advised so by the Respondent in both the May 9th and July 10th submissions. Exhibits 30 and 31. They were advised at two different times. The prosecution could have objected and required Respondent to create a privilege log and ask for an independent 3rd party referee be appointed to determine if the emails had to be unredacted. They did not do this. Instead, the prosecution chose to ambush Respondent by bringing Charge 3 against him.

CONCLUSIONS OF LAW

Respondent left Seeta, not because the police were coming, but because Koch told him she would see [REDACTED] if he provided medical documentation, which he did immediately after leaving. He then brought his son back for an eye examination within approximately one hour after leaving Seeta.

Referee finds that Koch was advised on January 29, 2021, but she did not believe him, so it was not documented, and no accommodation was given the next time he came in on December 28, 2021.

Dated: January 12, 2026


Stephen R. Coffey, Esq.