

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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.

REPLY MEMORANDUM BY COUNSEL TO THE COMMISSION

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission Counsel”) in reply to the memorandum of Judge Frank M. Mora (“Respondent”), dated January 12, 2026. For the reasons stated in Commission Counsel’s main brief (“Comm Mem”) and below, the Referee should reject the proposed findings of fact and conclusions of law set forth in Respondent’s memorandum (“Resp Mem”) and find that Respondent violated Sections 100.1, 100.2(A), and 100.4(A)(2) and (3) of the Rules Governing Judicial Conduct (“Rules”).

ARGUMENT

POINT I

AS TO CHARGES I AND III, RESPONDENT’S BRIEF FAILS TO ADDRESS ANY COMMISSION PRECEDENT OR THE RULES.

This is a judicial conduct proceeding. Yet Respondent’s brief does not directly address whether his conduct at Seeta and his failure to fully comply with the Commission’s document request created at least an appearance of impropriety under the Rules. He does not cite a single Commission case. Instead, he repeatedly attempts to shift responsibility for his own actions to others and casts himself as a victim of Stacey Koch, the Commission and his attorneys.

In response to the majority of Respondent’s arguments as to Charges I and III, Commission counsel refers the Referee to the argument, findings of fact and

citations to the record set out in the Commission’s main brief (Comm Mem: 46-55, 69-73, A-1-A16, A-34-A41). Only a few points merit additional comment.

A. With respect to Charge I

While Respondent concedes that he “did not leave the premises when Ms. Koch demanded that he leave” (Resp Mem: ¶19), he proposes two different findings of fact to explain his admitted failure to do so: (1) Ms. Koch yelled at him, causing him to go into “shock” and have “a panic attack” (Resp Mem: ¶¶20, 78); and (2) Respondent misunderstood what Ms. Koch meant when she directed him to leave (Resp Mem: ¶82). Respondent’s inability at this late date to settle on a single plausible explanation as to why he repeatedly refused Ms. Koch’s request that he leave makes clear that neither explanation should be accepted. In truth, he refused to leave because he thought Seeta’s masking policy was unreasonable and he did not wish to comply.

Respondent’s claim that during his visit to Seeta in January of 2021 he asked Ms. Koch to “have something in place for when he returned” (Resp Mem: ¶6) suffers from a glaring factual omission. If Respondent honestly believed that Ms. Koch had agreed to such a request, it is inconceivable that he would not call ahead to let anyone at Seeta know that he planned on coming to the office on December 28th, that he still had an issue wearing a face mask nearly a year after the January visit, and that this time he would not be willing to wait outside in the parking lot as

he did previously. Also, while Respondent testified that he said words to the effect of “we just went through this” when they asked him to put on a mask at the time of the December visit, he made no mention of a prior agreement by Ms. Koch to have something in place for him, an omission in his testimony that renders his claim utterly unbelievable.

Respondent’s belated attempt to litigate the propriety of Seeta’s mask policy, (Resp Mem: ¶¶15-18) is without merit. To begin, the Referee should disregard Respondent’s Exhibits B and C, which Commission counsel stipulated to be admitted into evidence, subject to relevance (Colloquy: 8-9). Respondent made absolutely no attempt at the hearing to establish how these documents were relevant. Not a single witness discussed them, and Respondent has made no claim that he ever brought these documents to Seeta’s attention or that he was even aware of them in December 2021. Moreover, it is telling that, in his Verified Answer, Respondent did not argue that Seeta’s request for medical documentation violated the executive order or Department of Health guidance. To the contrary, he averred that he would have provided medical documentation if it had been requested prior to December 28, 2021 (Ref Ex B: ¶6). Because Respondent made no attempt to connect Exhibits B and C to the issues in this case, Commission counsel had no opportunity – and no obligation – to cross-examine or provide

rebuttal witnesses for context. The Referee should find that Respondent failed to make any showing that Exhibits B and C are relevant and should disregard them.¹

In any event, even if Respondent was correct about Seeta's mask policy, it would not absolve his conduct. Stacey Koch is not a lawyer and, as Respondent admitted, she was just trying to do her job (Respondent: 470). Respondent's repeated refusal to leave the premises after multiple requests was misconduct.

Finally, Respondent's request for a finding that "Dr. M [REDACTED] was treating Respondent for physical symptoms that rendered him unable to wear a mask" has absolutely no support in the record (Resp Mem: ¶28). Respondent did not call Dr. M [REDACTED] to testify. By Respondent's own admission, Dr. M [REDACTED] never diagnosed Respondent with a health condition that made him medically unable to tolerate a mask (Respondent: 478-479).

B. With respect to Charge III

Respondent's explanation for withholding and redacting emails that he now acknowledges he should have turned over strains credulity and should be rejected. The emails that Respondent withheld and redacted show a pattern of conduct of trying to circumvent Commission procedure. In this sense, Charges II and III are

¹ Because Respondent introduced no testimony regarding the effect of the executive orders or Department of Health guidance pertaining to the mask mandate, and made no attempt to establish the relevance of Exhibits B and C, there is no basis for Respondent's proposed findings that Seeta's mask policy violated the State's mask mandate (Resp Mem: ¶¶ 18, 27).

related. Respondent failed to disclose statements that showed his animus toward Ms. Koch and the Commission, knowing when he did so that he was under investigation for retaliating against Ms. Koch (Respondent: 538-540). Indeed, two months before he failed to turn over the requested emails, Respondent appeared and gave sworn testimony before the Commission regarding the investigation of a complaint alleging that he retaliated against Ms. Koch by filing his defamation lawsuit (Comm Exs. 30-31, 33).

Contrary to Respondent's argument (Resp Mem: 42), the Commission was under no obligation to require Respondent to create a "privilege log" and ask for an independent third-party referee to determine if emails had to be unredacted. Respondent had an obligation to cooperate with the Commission, and his "shifting and implausible reasons for his failure" (*Matter of Miller*, 2021 Ann Rep of NY Commn on Jud Conduct at 197, 217, 2020 WL 1032698, at *10) to do so, require a finding that he committed misconduct. *Matter of O'Connor*, 32 NY3d 121, 129 (2018) (a judge's cooperation with an investigation of the Commission "is not only required – it is essential").

POINT II

RESPONDENT’S ATTEMPT TO RE-LITIGATE *MORA v KOCH* IS BARRED BY COLLATERAL ESTOPPEL AND IS, IN ANY EVENT WITHOUT MERIT. HIS FAILURE TO ADDRESS THE APPEARANCE OF IMPROPRIETY MAKES CLEAR HE VIOLATED THE RULES.

As with Charges I and III, Respondent does not cite a single case from the Commission, Court of Appeals or other jurisdiction addressing whether the conduct alleged in Charge II of the Formal Written Complaint violated the Rules. Instead, Respondent seeks to re-litigate whether the New York Supreme Court properly dismissed his ill-conceived defamation suit, without addressing the impropriety or appearance of impropriety inherent in Respondent’s decision to sue a Commission complainant.

Respondent’s extended argument that Judge Rosa improperly dismissed his defamation suit (Resp Mem: 34-42) is barred by collateral estoppel and is, in any event, simply wrong. And as is set forth below and more fully in the Commission’s main brief (Comm Mem: 65-68), his advice-of-counsel defense is unavailing.

A. Respondent is collaterally estopped from challenging Judge Rosa’s decision in this proceeding.

Respondent is collaterally estopped from contesting Judge Rosa’s determination that Stacey Koch’s complaint to the Commission was absolutely privileged and immune from a defamation suit. “Collateral estoppel, or issue

preclusion, ‘precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . . whether or not the tribunals or causes of action are the same.’” Parker v Blauvelt Volunteer Fire Co., 93 NY2d 343, 349 (1999). *See, e.g. Matter of Donziger*, 163 AD3d 123 (1st Dept 2018) (applying collateral estoppel in lawyer disciplinary proceeding); Matter of Mac Truong, 2 AD3d 27 (1st Dept 2003) (same).

Judge Rosa clearly decided that Ms. Koch’s complaint to the Commission was absolutely privileged and thus rendered her immune from a defamation suit. Both the Commission and Respondent were parties to the suit, and all parties had a full and fair opportunity to be heard. Although Respondent could have raised the waiver argument he makes for the first time in this proceeding, he did not do so. Notably, Respondent’s counsel conceded at the hearing that Respondent knew in the Fall of 2022 that Ms. Koch shared her actual Commission complaint with Michael Brown (Colloquy: 21-22). In fact, Respondent put that fact in the statement he prepared for Brown to sign (Resp Ex F; Resp: 408, 491-493). Having chosen not to make his waiver argument before Judge Rosa, Respondent cannot make it here. And since Respondent chose not to appeal, Judge Rosa’s decision is final and binding. Respondent is precluded from contesting Judge Rosa’s ruling that Stacey Koch’s Commission complaint is absolutely privileged.

In any event, Respondent’s muddled argument that Koch waived her absolute privilege by sharing information in the complaint with individuals outside the Commission (Resp Mem: 36-42) misapprehends the relevant legal principles. The cases cited by Respondent all involve an evidentiary privilege, personal to the individual, that shields one from having to disclose attorney-client communications or other confidential information in discovery. That kind of privilege can be waived if the individual chooses to disclose the same information to third parties.

That is not the kind of privilege recognized in Wiener v Weintraub, 22 NY2d 330 (1968). As Judge Rosa explained, “[i]n the context of a defamation action, ‘[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable.’” (Comm Ex 15 at 4, citing Park Knoll Assoc v Schmidt, 59 NY2d 205, 208 [1983]). It is not a privilege against disclosure of a communication, it is a privilege against being sued for defamation as a result of the communication. And unlike the evidentiary privileges available in civil discovery, the *Weintraub* definition of privilege makes clear that the privilege against a defamation suit confers immunity that serves “overriding public interests” (Comm Ex 15 at 4) – protecting not only the speaker, but the public at large. As the *Weintraub* court held,

Assuredly, it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct ... to impart that knowledge to ... some ... designated body for investigation. If a complainant were to be subject to a libel action by the accused ...,

the effect in many instances might well be to deter the filing of legitimate charges.

...

[T]he necessity of maintaining the high standards ... -- indeed, the proper administration of justice -- requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

Weintraub, 22 NY2d 330, 332 (1968).

In what appears to be the only reported case deciding the issue Respondent raises here, the court found that the absolute privilege afforded statements made to an attorney grievance committee could not be waived. In Sinrod v Stone, 33 Misc 3d 1230(A) (Sup Ct, Nassau Co 2004) *aff'd* 20 AD3d 560 (2d Dept 2005), an attorney brought a defamation suit against a former law partner for statements made to the grievance committee. Recognizing that the *Weintraub* absolute immunity applied, the plaintiff argued that the defendant had waived the absolute privilege by violating the confidentiality provisions of Judiciary Law § 90. The court rejected that claim, “given the strong policy considerations which give greater weight to the public interest than to any individual attorney’s reputation.” Sinrod v Stone, 33 Misc 3d at *2. See also Mintz & Gold LLP v Zimmerman, 17 Misc 3d 972, 978 (Sup Ct, New York Co 2007) *aff'd* 56 AD3d 358 (1st Dept 2008) (holding absolute privilege was not waived for corporate

counsel because that ruling “would result in a chilling effect on attorney’s speech”).

In this case, the fact that Stacey Koch disclosed the substance of her Commission complaint to Michael Brown and others did nothing to undermine the public policy goals that the *Weintraub* privilege is intended to protect. At the time Respondent filed suit, Koch had not yet given testimony before the Referee in this proceeding. Permitting Respondent to sue Koch for her Commission complaint would certainly impact her willingness to testify fully and would create “a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility” (Comm Ex 15 at 6). As a result, disclosure of a Commission complaint to third parties cannot be a waiver as a matter of public policy. [*Sinrod*](#), 33 Misc 3d 1230(A).

B. Respondent’s advice-of-counsel defense is unavailing.

Commission counsel refers the Referee to its main brief (Comm Mem: 65-68) for the Commission’s principal arguments that advice of counsel is no defense to Charge II. One additional argument needs to be made.

Respondent’s framing of his advice-of-counsel defense (Resp Mem: 30-36) entirely misses the point. It does not matter if Respondent relied on Sussman’s

advice that he had a viable defamation action under civil law. Even if it were true that Koch's Commission complaint was not absolutely privileged and Respondent could lawfully sue her for damages, his decision to do so after she complained to the Commission would still be misconduct. Such a lawsuit, predicated on Respondent's admitted desire to "make her pay," would create the unmistakable appearance that he was retaliating against Koch for her complaint. That appearance of retaliation is serious misconduct. As the Commission held in Matter of Tripp, 2011 Ann Rep Commn on Jud Conduct at 151, 2010 WL 2017808, at *4, "[r]etaliating against an individual who has complained about a judge's conduct is especially improper and threatens the integrity of the judicial disciplinary system." See also Matter of Tavormina, 1990 Ann Rep Commn on Jud Conduct at 164, 1989 WL 549919, at *3 (judge committed misconduct by directing anger and verbal abuse at an attorney in retaliation for filing a complaint against him with the Commission).

Remarkably, the words "appearance of impropriety" do not appear in Respondent's brief. They do appear, however, in multiple Commission determinations finding misconduct where a judge created the appearance that she was improperly retaliating against a litigant or complainant. See, e.g., Matter of Ruhlmann, 2010 Ann Rep Commn on Jud Conduct at 213, 220, 2009 WL 819909, at *7 (firing employee who complained about doing personal tasks for judge

created “at least the appearance that her discharge was retaliatory”); Matter of Hart, 2009 Ann Rep Commn on Jud Conduct at 97, 102, 2008 WL 4415133, at *5 (judge’s delay of eviction “‘created the impression that he was using his judicial office to retaliate’ and thereby conveyed an appearance of impropriety”); Matter of Esposito, 2004 Ann Rep Commn on Jud Conduct at 100, 102, 2003 WL 22701130, at *3 (conduct “created the appearance that [the judge] was retaliating against the individual, who had previously made a complaint about [him] to the Commission”); Matter of Lindell-Cloud, 1996 Ann Rep Commn on Jud Conduct at 91, 92, 1995 WL 848920, at *2 (“[e]ven creating the appearance of using judicial office for retaliation is serious misconduct”), Matter of Schiff, 1994 Ann Rep Commn on Jud Conduct at 97, 99, 1993 WL 832128, at *3, *aff’d* 83 NY2d 689, 694 (1994) (judge “created the impression that he used his judicial office to retaliate against” another judge).

As set forth in the Commission’s main brief (Comm Mem: 55-68), there is ample support in the record – including Respondent’s grudging admission – that Respondent brought his defamation suit in actual retaliation for Koch’s complaint to the Commission. But it is beyond argument – indeed, Respondent was unable to make any contrary argument – that his conduct created the appearance that he was retaliating against Koch in violation of the Rules. Charge II must be sustained.

CONCLUSION

Commission Counsel respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to Commission Counsel's main brief and find that Charges I, II, and III of the Formal Written Complaint are sustained.

Dated: February 9, 2026
Albany, New York

Respectfully submitted,

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