I. 17-DIS-0121 THE WILL CONTEST CASE

The charges arising from this case stem from Ms. Powell's representation of a Will contest originally filed in Crittenden County Circuit Court. The case was then appealed to the Kentucky Court of Appeals and thereafter Ms. Powell filed a Motion for Discretionary Review to the Kentucky Supreme Court.

17-DIS-0121. Alleges four (4) violations of Supreme Court Rules governing attorney misconduct.

COUNT I: SCR 3.10(3.4)(f) "A lawyer shall not … present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain an advantage in any civil or criminal matter?

Having considered all the evidence, including a review of the entire written record, evidence presented at the hearing, and post-hearing briefs of both parties, the undersigned deems the following charge to have been proven by a preponderance of the evidence.

What evidence? All evidence was provided by the Respondent. There was no testimony taken by the KBA on these charges.

Ms. Powell upon losing her case, contacted the governor's office and the FBI. She filed JCC complaints and motions to recuse various judges.

The phrase upon losing the case attempts to ignore and avoid addressing the two Motions to Recuse filed before trial, the KBA Complaints against Brucie Moore filed before trial, and the Judicial Conduct Commission Complaints filed before trial in 2013. "Upon losing her case," attempts misconstrue nature and sequence of events. Ms. Powell thoroughly

explained and offered an abundant amount of evidence that she simply sought the opportunity for her client to have a full and fair trial in front of a neutral fact finder, that was not acting line a Gatekeeping Rainmaker in favor of her lifelong friend and colleague.

> "Much like Judge Williams fraudulently used her gatekeeping power to deny the movant a fair trial to benefit Attorney Moore and shield her from accountability for obstruction of justice." TR p.30, lines 19-22.
>
> This in no way is a simple case of an attorney losing a case, and going all scorch earth. In fact, we have just the opposite scenario.

Even if Ms. Powell felt there had been a conflict or issue at the trial level, her concerns did not stop there. She continued to file complaints at the Court of Appeals, which ultimately led to six (6) of the Court of Appeals Judges recusing.

> "And if you go back and look at my response, I had even set out in my response that I couldn't say that that was all of the Court of Appeals judges. I couldn't even say it was a judge. I said I don't even know any of the judges that signed it, that recused themselves. I don't know if they ever actually received the actual documents that I filed.
> **TRIAL COMMISSIONER**: What prompted them to recuse if you know?"
> **A.** They recused before this. And I don't know. There was one judge that had the box sitting in his office for 2 months and they never even told me he was assigned as a panel person. And he recused before anything.
> **Q.** And was it your testimony that 6 of the Court of Appeals judges recused from –
> **A.** 6 of 14.
> **Q.** Reconsideration?
> **A.** Yes.
> TR 179 lines 7- 25 p. –

> So, the Trial Commissioner asks Ms. Powell why did the Court of Appeal Judges Recuse themselves, to which Ms. Powell replied, "I don't know." But suddenly, the Trial Commissioner had her own answer she included within her Order against the Respondent. At no time was there any testimony which even hinted that the SIX (6) of the FOURTEEN (14) Judges Recused themselves, due to Ms. Powell filing a bunch of complaints. There is no merit or logic to this assertion, especially since Ms. Powell was never sanctioned.

The burden was on the KBA to establish by preponderance of evidence that Ms. Powell violated the charges that she was accused of violating. KBA Attorney Andre Bergeron, did nothing more than, have the Respondent to read various paragraphs, from filings that were submitted by Ms. Powell. The KBA produced no witness, nor have they ever given a sworn complaint. The charges from the KBA are practically verbatim to Steven Downey's Response to Petition for Rehearing, KBA Batestamp 0598 -0584.

The Respondent admitted to filing two Motion to Recuse to the Court of Appeals, and gave the filngs to the Court of Appeals. Objection to Judge Debra Lambert, KBA batestamps 0588 – 0597, filed on September 23, 2016. Response submitted by Attorney Steven Downey, KBA batestamp 0654 – 0657. Second Motion to Recuse was filed post Petition to Reconsider, on September 20, 2017. KBA batestamp 0668-0670. Steven Downey's Response, KBA batestamp 0674 – 0678.

At no time did the KBA focus on any merits of the filings that were submitted. Rather, their primary focus seemed to be, creating a defense for the actual guilty parties.
Despite having nearly a century of case law and ethics opinions that emphatically state that an attorney cannot take money from an estate to defend a will contest which is being challenged upon Undue Influence, Lack of Mental Capacity and Unnatural Disposition. The KBA repeatedly ignored the actions of Steve Downey.

Moreover, if Ms. Powell had contacted the FBI and learned there was an active investigation underway why would Ms. Powell feel the need to mention the investigation? Doing so might hinder the investigation. Yet Ms. Powell had no hesitation to mentioned the investigation, and includes phrases like "avoid possible criminal indictments and/or civil charges" in her Petition for Rehearing. TR p. 180, lines 7-9.

Ms. Powell testified that she learned of an ongoing investigation in Union County, concerning the County intentionally purchasing stolen equipment. Ms Powell did not state that she learned of invstigation concerning these proceedings. In fact. Ms. Powell was very clear in her assertion that she is the one who turned the information into, the Federal Bureau of Investigation.

TRIAL COMMISSIONER JOHNSON: I have a question?
MS. POWELL: Yes, ma'am.
TRIAL COMMISSIONER JOHNSON: It says, there is currently an active FBI investigation concerning these matters which include the previously stricken material. Had you already reported your concerns to the FBI at that point?

MS. POWELL: Yes. At the petition for rehearing?
TRIAL COMMISSIONER JOHNSON: About this case?
MS. POWELL: Yes. Had conversations with –
TRIAL COMMISSIONER JOHNSON: And you also say I, and it says, include in the previously stricken material, i. e., wire fraud. What do you mean by wire fraud?
MS. POWELL: That was actually a word used by the FBI agent.
TRIAL COMMISSIONER JOHNSON: Okay. And –
MS. POWELL: The check transactions is wire fraud.
TRIAL COMMISSIONER JOHNSON: I am sorry?
MS. POWELL: The illegal taking of the funds from the estate, that's wire fraud. A check transaction. TR 184; lines 1-25.

TRIAL COMMISSIONER KNEW THAT the Respondent HAD ALREADY REPORTED TO THE FBI THE INFORMATION ON THE CASE, PRIOR TO THE PETITION FOR REHEARING. SHE ALSO KNEW THE FBI CALLED THE MISSAPPROPRIATION OF FUNDS – WIRE FRAUD…. i.e. corroborating evidence

In fact, it is difficult to envision more threatening language in a Petition for

Rehearing such as:

This Court should first be aware that all filings and recordings of both COA and the lower courts have been turned over to the Governor's Office which prompted a telephone conversation. A DOJ United States Attorney.

Thereafter, Counsel received a call from the Federal Bureau Investigator Special Agent Dustin Deterding. There is currently an active FBI investigation concerning these matters which include the previously stricken material, wire fraud.

TR p. 179, lines 2-12

"Therefore, appellant's petition for rehearing is also being submitted for review in part due to the rules of Kentucky Supreme Court and the following judicial canons."
Remainder of the edited portion above. TR p. 179, lines 12-15.

Q Now, what was the purpose of that statement in your brief?
A The purpose of that statement was I didn't want this. I didn't want to have to actually disclose anything. I didn't want to have to fight. I simply just wanted my client to have a fair trial.
Q Okay. Go ahead and read the second statement if you would?
A These statements are not being asserted as a threat but rather as an opportunity to reexamine the totality of the entire case file. The court's orders completely disregarded arguments made throughout appellant's brief as well as within the filings both before and after submission of the appellant's brief. Thus,

this petition for rehearing should be viewed as an opportunity to reevaluate the entire case and to avoid possible criminal indictments and/or civil charges.
Q Explain for the judge what you meant by those statements in your brief?
A What I meant by an opportunity to reevaluate?
Q Yes?
A The opportunity was simply for them to start from start to finish and realize that my client was denied his due process at all. TR p.179, lines 16-25; TR p.180, lines 1-16.

Ms. Powell used her conclusion in her Petition for Rehearing to once again remind the Court:

> There are far too many misconstrued, inaccurate, and disregard arguments within the Order, to simply be a mistake. The COA Order shows a far greater concern to protect the reputation of a trial judge and defense attorneys rather than the civil rights and liberties afforded to the Appellant. Considering the active FBI investigation, Counsel wishes to encourage the sitting Judges to take another look at the totality of the record.

KBA EX. 24, p. 3255; TR p. 20, lines 12-23.

"The appellant respectfully requests the court to grant the appellant's petition for rehearing." The Trial Commissioner erroneously left off the above sentence from assertion above. TR p. 20, lines 21-23. But during this time of questioning the Mr. Bergeron was simply asking Ms. Powell to read random paragraphs within her petition. Ms. Powell was not given the opportunity to explain her assertion at that time. The above citation was devoid of a response, a more completed train of thought.

"There are far too many misconstrued, inaccurate and disregarded arguments within the order to simply be a mistake. The CoA order shows a far greater concern to protect the reputation of the trial judge rather and defense attorneys rather than the civil rights and liberties afforded to the appellant. Considering the active FBI investigation, counsel wishes to encourage the sitting judges to take another look at the totality of the record.
Q. Okay. What was the purpose of that statement in your conclusion?"
Q. Okay. What was the purpose of that statement in your conclusion? TR p. 181, lines 24-25.
A. My purpose from start to finish was to give my client a fair trial.
Q. Okay. Now let me take you back up to 3.130 (3.4) that I read to you earlier. Did you present criminal or disciplinary charges to obtain an advantage in any civil proceeding?
A. There was no advantage, no.

TR p.182, lines 1-8.

Based upon the totality of the evidence, Ms. Powell made inappropriate statements in pleadings, filed inappropriate actions (JCC, recusals), and testified that her actions were all in an attempt to have the Court re-litigate the case to obtain a obtain a more favorable result, from "start to finish." TR p. 180, line 15.

The Trial Commissioner has taken a single phrase and is using it out of context, with the intent to falsely imply that Ms. Powell admitted to the assertion. The actual complete assertion sited to above is quite different.

"The opportunity was simply for them to start from start to finish and realize that my client was denied his due process at all. I mean striking from the complaint. And if you go back and look at my response, I had even set out in my response that I couldn't say that that was all of the Court of Appeals judges. I couldn't even say it was a judge. I said I don't even know any of the judges that signed it, that recused themselves. I don't know if they ever actually received the actual documents that I filed. TR. p.180, lines 14-24".

Mr. Bergeron nor the Trial Commissioner ever question Ms. Powell as to the content contained within her Motion to Recuse nor her JCC Complaints. However, Ms. Powell did provide ample testimony to the KBA and the hearing Officer.

This ruling falls squarely within the precedent of KBA v. Blum, 404 S.W.3d 841 (Ky. 2013). In Blum, the attorney's actions were parallel to Ms. Powell's. Blum used the threat of disciplinary proceedings to gain an advantage for this client.

Blum's written pleading said in relevant part:

> . . . at the first whiff of something like this occurring, the undersigned will press charges against the hearing officer aimed at securing a lifetime ban on the holding of any judicial position in the United States.

Id., at 851-52.

Only if BLUM was railroaded by the Kentucky Bar Association too.

The Trial Commissioner cannot unilaterally decide Ms. Powell intent, without establishing what advantage Ms. Powell would have obtain for her client. Ms. Powell emphatically asserted at least a dozen of times during her testimony only, and her filings to the KBA, as well as the Petition for Rehearing, in question, that her only goal was to obtain a fair and impartial trial for her client. A trial commissioner is not allowed to presume Ms. Powell intention, with no evidence to support it.

> A Okay. The information provided to the FBI had nothing to do with obtaining an advantage in this case. It was turned over to the FBI long before the court's order was issued. Everything that has been submitted to the FBI has been presented in the interest of justice, not for any advantage. Both myself and Steve wanted nothing more than a full and fair opportunity to litigate his case in front of a non-biased judge. TR p 22; lines 5-13...
>
> The appellant simply wanted his right to a fair trial upon the complete merits of his case. And during that particular time, a genuine matter of right review by the Court of Appeals. The petition was submitted as an opportunity to reevaluate the totality of circumstances in order to afford Steve Chandler a fair and impartial trial to which he has a constitutional right. TR p 23 lines 5-12
>
> Q And so what you are saying here in the answer that the goal of the JCC complaint and alerting the court to the possible FBI investigation and you mentioned some KBA filings, is that you and Steve Chandler wanted, as you said on page 2110, that passage you read earlier, a full and fair opportunity to litigate this case in front of a non-biased judge. Is that correct?
> A Yes. TR p.23 line 25; p.24, lines 1-8
>
> A Much like Judge Williams fraudulently used her gatekeeping power to deny the movant a fair trial to benefit Attorney Moore and shield her from accountability for obstruction of justice. The opinion of the Court of Appeals -- should say appeals -- to be fraudulently using its review power in efforts to protect the reputation and unfounded arbitrary rulings of Judge Williams. All of which comes directly at the expense of the movants' constitutional due process rights to a fair trial and an impartial review from the appellate court. TR 30; lines 19-25; p31 lines 1-5.
>
> Okay. By now, you should know that the CoA's opinion was not the first indication or direct evidence that establishes that the Court of Appeals or someone employed by the Court of Appeals have been working overtime to deny Steve Chandler his constitutional rights to a fair, just and impartial review on its merits. TR 31, lines 17-23

A. No. I was actually just trying to get my client a fair trial.
Q. All right. What actions, if any, did you take in notifying the court -- and I know the record is replete with examples -- but tell us what you did in furtherance of trying to get your clients a fair trial while not threatening or threatening prosecution or threatening a proceeding to gain an unfair advantage?
A. Are you asking initially like throughout?
Q. Initially and throughout. Just start from the beginning?
A. I initially multiple times went to Judge Williams myself. I filed 2 different motions to recuse. This is before trial. I filed a KRE objection 103 of record to the unprecedented strike order. And then she overruled that.
Q. Hold on. Let me stop you there?
A. Okay.

Q. I am not sure that the judge knows what your characterization of the unprecedented strike order is. So would you explain that briefly for her?

A. Yes. I know this can get confusing. But I filed a will contest complaint. I filed it in October of 2011. My client's brother was found dead in his home in June or July of 2011. And they submitted -- these 2 men that worked with Keith Chandler in my opinion to this day took advantage of him. He was mentally slow. They didn't become his friend until one year after his father passed way so he needed the support of a man. So these men found out that he had hundreds of acres of land that he inherited. And one of them decided to become his buddy. And so within a year after the father dying, the man made an appointment. He was a Union County deputy coroner. He made an appointment with Brucie Moore and sent and had a secret will made up. And that was on October 23, 2006. Now the funny thing is is that by that time the mother was still alive. She had not passed away yet. So he had a will made up that left everything to the man's minor child. And he was like 3 at the time. And Keith had no relationship with him. And then the plant closed. Well, there was a little conflict between the brothers after this man started coming around because he was starting to act like he owned the land. In fact, RJP Outdoors you will see through the papers, he was claiming to be the owner of the land. He was giving people permission to hunt on the land. He was acting like it was his all along when really it never would have been. The mom died in 2007.
Okay. Let me back up a second. The father died in December of 2005. The week after the father died, the mother had Keith, the son that lived with her that lived in the same state, take her to Rebecca Johnson's office to get her will made out. But the mother had already planned out everything. She planned her own funeral and everything else when she planned her husband's. And she had already gone into the house and put post-it notes all over everything in the house because it is 200 year old family farm generation combined. Like it was the Newcombs and the Chandlers. They married and combined it. So there was a lot of antique guns and there was a lot of things that just got passed from generation to generation like certain things they knew was going to go to certain people. And she had put post-it notes on everything. And she had -- but because Keith lived in that house, she named him the executor because he was going to be the one that had to be

home when the things were passed out. And her and Steve, my client, they had already spoke of this. Well, the mother, the -- Keith started acting strange more and more that these men came around to the point where he was being mean to his mom. He changed the locks on his mom's house. He wouldn't give her a key even though it was her house. He, for the first time throughout all of their family history, he put big chains and big locks on cattle gates to separate the farm so then Steve, the brother, couldn't get the bull in for the cows. And he had never done any of that before. And we had somebody to testify that it was Randy Fish there that was putting the locks on the gates. And Steve just cut it. So there was conflict between the brothers because this one guy was in the bother's ear. And background information on Keith is he never had any friends, never went on a single date, never had friends in high school. But he did work a job. He worked a full-time factory job, an entry level position, for 18 years. And out of those 18 years, I think it was like 16 of them, he had perfect attendance. He clocked in and out at the exact same time every single day. He needed a -- stability. He had to have a routine. So in December of 2008 -- the will was made in October of 2006. In December of 2000 -- in October of 2006, the plant shut down. Keith no longer had day-to-day contact with the men. And the mom had already passed away and he began living like a hermit. He didn't come out of the house. He didn't have water. He didn't have electricity. He didn't have food. It was my client, Steve, and their great aunt Elwanda kept having to take him food and water. And he wouldn't even open the door half the time. And when he did open the door, he was sitting around with loaded guns. And these men were nowhere in sight. So when they found his body in 2011, the first thing my client did was fall to his knees and the first thing out of the defendant's mouth was, well, he has got a will. And nobody thought that Keith ever would have made a will. So all of this information -- also they -- he inherited, legally inherited by his mother's estate, Mary Katherine's estate, my client did 50 percent of all the personal property in that house. But because of the nature of Keith, Steve was not going to go in that house and upset his brother by saying a spoon for you, a spoon for me. A fork for you, a fork for me. Keith needed his routine and he needed everything where it was. Keith made bad grades in school until he got put in an IEP. And he made an 8 on the ACT with only a 5 in math and a 5 in English. He couldn't function on his own. I filed -- at probate, they presented a copy. I objected to the probate on the grounds of mental competency and undue influence. But I also raised the issue the very first time I was in court in July of 2011 with district court that my client still owned 50 percent of everything in that house. And the reason that it was relevant to raise that issue then is because the night they actually found his body, these men showed up with a tractor and a trailer and started hauling things out of that house. And so I needed to get it on record that, hey, my client still has a legal interest. And we go to court. And Judge Heady tells the 2 men, and Brucie Moore is representing them, tells the 2 men that he names them executor but he places them under an order to not disburse any money and to protect the personal property. But at that particular hearing, Brucie Moore in front everybody tells, threatens my client with an abuse of process claim. And said -- and then comes up to me afterward with him standing right behind me and says, your client has a farm of his own. He has a lot to lose if he continues with filing the complaint. I

thought that was a little unusual. We walked on. I filed the complaint in October of 2011. And in the meantime, this case is like no other for me in all kinds of different ways. But I have had at least 75 or more people calling me personally saying, I know this family. I have always known this family. I want to testify about Keith. I drafted a complaint. I submitted a complaint which also included it was for undue influence, mental competency, and it was also to show that it was an unnatural disposition because these people did not have a long relationship with Keith at all. Very short time. And I filed it.

Also, I presented an equity claim. Because in the state of Kentucky, if 2 people -- if 2 people can have a legal interest, say that the will was upheld, and they said this Payton Fish, who was 6 at the time, has a 50 percent interest in the personal property because of Keith's will, then he would share a 50 percent interest with my client.

And when there is -- that is a divided issue, then according the case ruled Daugherty v. Breeding, which I presented at every single hearing in front of everybody, Daugherty v. Breeding says that when 2 people have 50 percent interest, the court has to actually sell it, and the proceeds divided.

Well, we are talking about things like family pictures, family albums, antiques, things that this boy didn't even know the family. He had no right to have it. So, I presented an equity argument to make sure that that stuff doesn't get sold. It only meant something to my client.

I filed my complaint and we had a hearing on December 8, 2011. At that hearing, Judge Williams was very biased. And I can bring the recording here tomorrow. She looked at my client and she said, well, I am concerned. He had a driver's license, didn't he. And my client was trying to explain that how his brother had to have a routine and stuff.

And she said, well, he had a driver's license and a job. And she already had made up her mind that there couldn't be anything wrong with him.

So, when I filed my complaint, Brucie Moore filed a motion to strike. She didn't answer. She filed a motion to strike, a motion to strike 60 percent of my complaint including the equity argument.

In a million years, I never thought that was going to happen. We go to court and the judge asked us to, after court in December, asked us to brief, both of us brief. I filed a response brief. And then she filed one. But then I filed a reply to hers distinguishing because every case law, one, every case law on will contest has to do with somebody that may have lucid intervals like somebody that has dementia or something of that nature. So, they do have lucid intervals. But this was not that kind of case.

This was most likely an undiagnosed autism. Like his mother and father had him while they are in their 40s. And so I filed a response to that as well.

And included in my response that all case law presented by me and by Brucie Moore only concerned cases after JNOV directed verdict, summary judgment. They are no cases that says you can strike from the complaint before you ever get a chance for discovery.

I mean it was unfathomable to me. The next thing that went through January of 2012. In April, on April 17, 2012, the judge issued an order verbatim giving Brucie

– striking for Brucie, everything that she wanted but -- and also it was very -- you could tell she already had formed an opinion on certain things.
And paragraph 37 has been one of -- an issue. Because she stated in there that I said that Brucie Moore did the will. And she said, well, Keith Chandler can have whoever he wants to do his will. He has his own mind and it appears he did just that.
Later that was completely misrepresented and taken out of context in the Court of Appeals' order. But the point being, in April she struck everything. And the only thing I knew to do was file a KRE 103 objection and that is what I was stating was that I tried to object to preserve those arguments for my client.

Is that what you wanted?
Q Yes? A Sorry. --TR p 79 lines 12- 25 TR 80- pg89 lines 1-20

MS. POWELL: To actually get him a fair trial, yes. --TR pg. 106; lines 1-2

But for clarification purposes -- and I am just now seeing it -- 3036 to 3096 is several attempts that I made to get the JCC and KBA involved so my client could have a fair trial.

TRIAL COMMISSIONER JOHNSON: Okay. Thank you.

MR. BERGERON: Your Honor, just logistically Mr. Underwood will probably be here at 3.
TR 175 LINES 7-14

Thereafter, counsel received a call from the Federal Bureau Investigator Special Agent Dustin Deterding. There is currently an active FBI investigation concerning these matters which include the previously stricken material, wire fraud. Therefore, appellant's petition for rehearing is also being submitted for review in part due to the rules of Kentucky Supreme Court and the following judicial canons.
Q. Now, what was the purpose of that statement in your brief?
A. The purpose of that statement was I didn't want this. I didn't want to have to actually disclose anything. I didn't want to have to fight. I simply just wanted my client to have a fair trial.
Q. Okay. Go ahead and read the second statement if you would?
A. These statements are not being asserted as a threat but rather as an opportunity to reexamine the totality of the entire case file. The court's orders completely disregarded arguments made throughout appellant's brief as well as within the filings both before and after submission of the appellant's brief. Thus, this petition for rehearing should be viewed as an opportunity to reevaluate the entire case and to avoid possible criminal indictments and/or civil charges.
Q. Explain for the judge what you meant by those statements in your brief?
A. What I meant by an opportunity to reevaluate?

Q. Yes? A The opportunity was simply for them to start from start to finish and realize that my client was denied his due process at all. I mean striking from the complaint.

And if you go back and look at my response, I had even set out in my response that I couldn't say that that was all of the Court of Appeals judges. I couldn't even say it was a judge. I said I don't even know any of the judges that signed it, that recused themselves. I don't know if they ever actually received the actual documents that I filed.

Q. What prompted them to recuse if you know?

TR 179 lines 7- 25 p. –

TRIAL COMMISSIONER ASKED ME PERSONALLY WHY THEY RECUSED…. BUT SOMEHOW SHE SPONTANEIOUSLY ASSERTS THAT THEY RECUSED BECAUSE I FILED MULTIPLE COMPLAINTS WITH THE COURT OF APPEALS…. YOU CAN'T FILE COMPLAINTS WITH COURT OF APPEALS

A. They recused before this. And I don't know. There was one judge that had the box sitting in his office for 2 months and they never even told me he was assigned as a panel person. And he recused before anything.

Q. And was it your testimony that 6 of the Court of Appeals judges recused from –

A. 6 of 14.

Q. Reconsideration?

A. Yes.

Q. Okay. Look at the bottom of the page. We are still on 239. This is from your conclusion in the petition for rehearing.

A. Right here. There are far too many misconstrued, inaccurate and disregarded arguments within the order to simply be a mistake. The CoA order shows a far greater concern to protect the reputation of the trial judge rather and defense attorneys rather than the civil rights and liberties afforded to the appellant. Considering the active FBI investigation, counsel wishes to encourage the sitting judges to take another look at the totality of the record.

Q. Okay. What was the purpose of that statement in your conclusion?

A. My purpose from start to finish was to give my client a fair trial. Q Okay. Now let me take you back up to 3.130 (3.4) that I read to you earlier. Did you present criminal or disciplinary charges to obtain an advantage in any civil proceeding?

A. There was no advantage, no. TR 179-7-25; 182, lines 1-8

Q. With any of these statements that have been set out here, what was your intention with respect to presenting criminal or disciplinary charges to obtain an advantage in a civil or criminal matter?

A. What was my intention?

Q. Yes. What was your intention?

A. Oh. To get my client a fair trial. To get due process.

Q. Okay.

Q. Okay. Did you participate in presenting any charges?
A. No.
Q. Did you threaten to present any criminal or disciplinary charges?
A. No. I didn't threaten. I actually filed KBA and a JCC complaint. It wasn't threatening and it had nothing to do with trying to get an advantage at all.
Q. Okay. And back to -- we are on page 2039, second paragraph that I had you read. Just if you would, again, and I presume these are your words that they have been quoted, read the first statement?
A. These statements are not being asserted as a threat, but rather as an opportunity to reexamine the totality of the entire case file.
Q. That's good. TR 182 line 25; p.183, lines 1-25.

Q. Okay. Ms. Powell, I want you to look at 3.130(3.5)(d) which says a lawyer shall not engage in conduct intended to disrupt a tribunal?
A. I did not.
Q. Okay. At any point did you do that?
A. No.
Q. What was your intention with respect to the actions that you took?
A. Which actions?
Q. Throughout this case?
A. Again, to get my client a fair trial to help preserve his family legacy that –
Q. And I may have asked you this earlier. But just for clarification purposes, since the -- at any time during any of these probate proceedings, will contest proceedings, or appeals proceeding, discretionary review, at any time in any case involving any of these parties, again, notwithstanding what we are doing here today, have you been sanctioned or censured by any court?
A. No, I have not. And, in fact, when Landrum & Shouse came on, and they come to argue, Leslie Voss of Landrum –
Q. Did they file a Rule 11 against you?
A. No. No. And Leslie Voss came to argue the motion to dismiss. And she was trying to mischaracterize what had taken place in the case. And I was in front of Judge Williams and I said, Your Honor, you were here, too. She doesn't get to rewrite history. It is not something I haven't actually vocalized. The judge knows. TR P 191, LINES 9-25; P 192, LINES 1-14.

Count II: SCR 3.130(8.2)(a) states, "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge...."

Having considered all the evidence, including a review of the entire written record, evidence presented at the hearing, and post-hearing briefs of both parties, the

undersigned deems the following charge to have been proven by a preponderance of the evidence.

Ms. Powell's pleadings in various jurisdictions were not only inappropriate but contained outright accusation of judicial misconduct. Two Such examples are below:

> Unlike all other appeals concerning a will contest which addresses the admissibility of testimony and evidence, this Court's primary purpose seems to have been to protect the rulings and reputation of Judge Rene Williams and the defense attorneys of record.
>
> KBA ex. 24, p. 3246.

> The COA opinion is no exception, and in fact various rulings of the COA has served to facilitate and perpetuate a continuous fraud on the Court throughout, by striking and covering up Respondent's Attorney's false filings, and illegal fraudulent conduct.
>
> KBA Ex. 27, p. 3333.

Kentucky caselaw supports such a result. In Kentucky Bar Association v. Waller, 929 S.W.2d 181 (Ky. 1996), the attorney referred to the Judge as "incompetent asshole."

The Court held that there could never be justification for a lawyer in pleadings or in to make such false or reckless assertions about a judge "because such language would promote disrespect for the law and the judicial system."

During the trial in this case, Ms. Powell and this Trial Commissioner discussed at length Ms. Power's claims that opposing attorneys Steve Downey and Brucie Moore were part of an illegal conspiracy with Judge Rene Williams. This Commissioner noted that such claims were very serous and requested specific proof. TR p. 190, line 1 – TR p. 191, line 1. Later, when Ms. Powell continued to claim Mr. Downey had continued to act illegally, Ms. Powell had to concede it was based solely on her opinion based on her

reading of caselaw and statutes that determined the legality of Mr. Downey's conduct, not the conclusion of an actual law enforcement entity. TR p. 235, line 12 – p. 238, line 4.

> **TRIAL COMMISSIONER JOHNSON**: Well, the reason I am asking is if you look at SCR 3.130(8.2), it is very clear that says a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. What you said talks about lies of the lower court, implying the judge. And that's why I am asking you that question. Because what you said are the lies of the lower court itself goes directly to the integrity of a judge. And that's why am I asking you that question because that's a very serious charge.
>
> **MS. POWELL:** But it's not a false -- I mean I didn't make false statements.
>
> **TRIAL COMMISSIONER JOHNSON**: It says, instead of addressing these lies, the court has chosen to engage in a fraudulent activity and cover-up of the wrongdoings by striking evidence and filings submitted by the appellant. The order is riddled with numerous false and incomplete assertions throughout. And that's very serious. And that's why I am asking you about that. Because what you said about, you know, lies of the lower court goes directly to that SCR rule?
>
> **MS. POWELL**: And, yes, Your Honor. I encourage you to read the brief and look at the exhibits and then read the opinion and you will see it doesn't even seem like it is from the same brief. And this particular filing is verbatim. The allegation is verbatim from Steven Downey's response to the petition for rehearing.
>
> **MR. BERGERON**:
>
> Q. Ms. Powell, I just had like 3 questions here. And this is based on some items brought up from Mr. Denison's discussion with you. You mentioned that Steven Downey, this was the opposing counsel in some of the underlying civil matters, you stated that he had an illegal advancement. And then clarified later that Steven Downey illegally took $35,000 from the estate. But you mentioned initially that there had been no state, local, federal any kind of charges or indictments or any type of law enforcement activity against Mr. Downey, is that correct?
>
> A. Actually, it was $25,000. It was $20,000 on March 27 through a letter sent from him to the executor of the estate in care of Brucie Moore. And then after post trial, he took another $5,000 for his work on the avowal, the proffer, the double-objection. But they were under order by Judge Heady to not disburse any money. And he tried to get an after the court approval on July 30, 2015. So a year and a half later he submitted an affidavit. And the judge actually did not approve those at all until the closing of the case in November of 2018 or maybe 2019. And it was after Landrum & Shouse was –
>
> Q. Okay. So what I am getting at is when you called it illegal, where does that come from? Is that just your opinion?
>
> A. It is case law. It is misappropriation. They were under order not to disburse money. It would be like a bank robber using bank funds to defend themselves.
>
> Q. But you are not a law enforcement agency, right?
>
> A. The law enforcement actually said it was.

Q. Okay. But you have said there has been –

TRIAL COMMISSIONER JOHNSON: I am going to say it again. Again that's hearsay. You can't do that.
MS. POWELL: I am sorry.
Q. And maybe I can rephrase it. I don't know. But the question is by describing something as illegal activity, in the juxtaposition to your earlier statements that there are no law enforcement indictments or charges or convictions or I am not sure then who -- what body has decided that's illegal other than yourself. Do you have an answer to that?
A. Case law and statute.

Ms. Powell: On pages 2420 to 2424, it is an affidavit of Steven Downey produced to the district court for after the fact approval of the funds, estate funds. It is dated the 28th day of July of 2015. So it is a year and a half after he already took the money and I had already raised issues that he illegally paid from the estate and after I filed the civil action. There was a hearing scheduled for the 30th of July.
TRIAL COMMISSIONER JOHNSON: 2014?
MS. POWELL: No, Your Honor. That would be 2015.
TRIAL COMMISSIONER JOHNSON: Okay. Thank you.
Ms. Powell: I am going to back up just a second and say that on May of 2015, there was an order issued by the Court of Appeals that denied every one of my motions to correct the veracity of the record. It was Kelly Thompson, Debra Lambert, and Maze, I believe.
There was a hearing in district court over the accounting. Also I should back up to February of 2015 -- yes, this gets confusing -- February of 2015.
Judge Heady signed the latches ruling cutting off my client's interest to the legal property of the estate, the family homestead. In May, I filed an appeal and that appeal would have gone to the Circuit Court Judge, Judge Williams.

But I also filed a motion to recuse because she was already on appeal with the same property, same subject matter, same people, same issue and she had already denied my client due process in the first one.

So, in July she denied my motion to recuse and affirmed the latches ruling on inapplicable fourth amendment search and seizure case. We had a hearing set in district court because I objected to the accounting of the estate mostly in part because Steven Downey took an illegal advancement. And the hearing was set for the 30th. And you will see the affidavit is for the 28th. But my mom died on the 27th. I am sorry. So the hearing didn't happen and it was rescheduled.

In the meantime, we are still filing or having -- filing the brief. And I had a friend, a colleague of mine, file an emergency extension of time because I had already filed an extension of time on my own. A colleague of mine filed an extension of time on to file the will or file the brief as well as an extension of time to file the -- an appeal on Rene Williams or discretionary review, I am sorry, discretionary review on Rene Williams affirming latches. And also refusal of motion to recuse.

The Court of Appeals issued an order on August 3, 2015, which August 3 was the due date of my brief. They issued an order denying my motion -- I filed a

motion for clarification purposes back in May because they denied all my motions to fix the record.

And then I asked to file a notice of appeal to amend it to include the December 9, 2014 order from the judge that said that the probate case couldn't come in.

So, the law says that if you, subsequent post-judgment, you have to file a notice to amend the notice of appeal to include it. They passed that, the issue of whether the probate case could come in, they passed that to the merits, the panel hearing on the merits.

Well, that kind of left me with, okay, what do I do. Because you have to give them the evidence for them to know what's relevant.

So am I supposed to include it in an appendix? Like I didn't know. So I sought clarification. On August 3, they allegedly met, same 3 judges. They ruled -- they just denied my clarification motion. Nothing said about it. But didn't rule on my motion to appeal or motion for extension of time. That was on August 3. Then they subsequently sent back to my colleague -- they telephoned her. This is part of the record. Have you seen this?

A. So my colleague filed an emergency petition.

TRIAL COMMISSIONER JOHNSON: And what is this document, please?

MS. POWELL: It is where the Court of Appeals sent back to my colleague that filed an emergency motion informing her that they can't accept something that is not part of an attorney of record. But they never made a notation of it in the Court of Appeals docket until I called myself and filed my own. And Samuel Givens and if you will look at the court sheet that Mr. Bergeron has, I filed a motion of my own to include it. And it will reference that they went back and put it back in. But it is the first time I have ever seen the Court of Appeals in the handwritten envelope and a post-it note that says per our conversation, returning these documents.

TRIAL COMMISSIONER JOHNSON: 624 and 626.

MS. POWELL: Yes, I believe there is a page skipped there. Yes, Your Honor.

TRIAL COMMISSIONER JOHNSON: So this is what mine looks like so I am going to make sure I have the right document. Looks like this. Is this what we are all referring to?

MR. BERGERON: Yes, ma'am.

MS. POWELL: Yes, Your Honor.

TRIAL COMMISSIONER JOHNSON: And then the other page is per our conversation, returning these documents. Is that -- all right. And, I am sorry. Okay. So are you saying that this conversation didn't take place. I am not sure what the point is.

MS. POWELL: No. I am saying the conversation took place. I am saying that I filed 3 things. She filed 3 things on my behalf. Discretionary review. She filed the motion for discretionary review extended time and extend the time to file the brief. The day the brief is actually due they send that back in a handwritten envelope and didn't even make notation of it. And -- but they kept the other 2 because they didn't know they were coming. They kept the other 2. They had no problem accepting it from another attorney, the discretionary review or the other one. It was at this time

I was trying to figure out what is going on and looking at what is going on and this is when I found out that Cynthia Downey -- and I have it in the papers -- works for Kelly Thompson, Steven Downey's sister-in-law.
TRIAL COMMISSIONER JOHNSON: So Steven Downey sister –
MS. POWELL: Let me find that employment record. Sister-in-law. And they have joint ownership and property together.
TRIAL COMMISSIONER JOHNSON: She works for who?
MS. POWELL: Kelly Thompson, the person that signed all the orders, the case manager.
TRIAL COMMISSIONER JOHNSON: Okay. I am going to have to ask again. I am sorry. So you are saying that they kept your -- what did they keep? I am sorry.
MS. POWELL: They kept the emergency motion for extension of time to file discretionary review.
TRIAL COMMISSIONER JOHNSON: And you are not saying there is nothing wrong with that?
MS. POWELL: No. Absolutely not.
TRIAL COMMISSIONER JOHNSON: But your complaint is they sent this back to you in a handwritten envelope?
MS. POWELL: Well, my complaint is that would have been the due date and it would have been a quick dismissal.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: And they made no notation of it in the record until I called Samuel Givens myself and he made a notation of it. He went back -- Steven Downey never responded to that one at all.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: But -- and still didn't even respond until when I filed one for extension of time. His response said that he demanded that it, my brief, be filed by the close of business on August 21st or that things should be dismissed entirely. So, I responded with -- I submitted a reply. And for the first time, I had not said anything to any court officials, but for the first time I said it is appellant's counsel's position that he is trying to speed this along and rush it, get it dismissed to avoid facing charges on the $25,000 he illegally took from the estate. And I included the checks and I included the affidavits.
Steven Downey followed up with a motion to strike. The court struck it. And that happened multiple times. And he would, in his filings, would say it is lost in -- it had no place in the paper let alone lost in reality. But any time I would put it in, it would get struck.
TRIAL COMMISSIONER JOHNSON: Thank you for that clarification.

TRIAL COMMISSIONER JOHNSON: I am particularly concerned with the second paragraph says these statements are not being asserted as a threat but rather an opportunity to re-examine the totality of the entire case file.
MR. BERGERON: Sure. And I, with your permission, will flush this out more in a brief.
: Sure. The expression of what is a company which is the earlier statement, given that these are both in the same document, this is not 2

pieces from different pleadings. Given those together in conjunction, the statement that this statement is not a threat does not make it suddenly not a threat. The threat is pretty clear there that this court should be made aware of FBI investigations, disciplinary possibilities of sanctions and so forth. The question is in that 3.4(f) is whether those are made solely for, hey, I am a good citizen. Heads up. This is out there. Or is there an ulterior motive which is a litigant trying to gain an advantage. Obviously that's the crux of what this is. The case law is very abundantly clear that when there is something beyond, even if it is just the statements in the -- in a pleading, as Ms. Powell has stated multiple times on both in front of me and in front of Mr. Denison that there was a purpose to filing. Well, there is 2 paragraphs here in greater context of the petition for rehearing. And that purpose is not as stated today and as stated throughout all of this. I am a good citizen X. Look out, folks. There is information out there. And I am being a good citizen to warn you. This is not just a warning. But it is carried forward with something else. And that something else is what 3.4(f) is all about. And that is, does the person making this statement want something? Is there an advantage sought in litigation? And clearly it was reiterated multiple times today that there was something wanted. There is not just statements made for the sake of making a statement. But it is the desire to effect change in the course of this litigation. In fact, it was a re-litigate, as Ms. Powell said just moments earlier, re-litigate the entirety of this because it was, in her view, bothered with bias from the very beginning. So this is not just a statement of there is a looming possible investigation out there. Heads up. I am letting you know about it. It is, pay attention because I want something else in exchange.

When pressed, the same had to be admitted about Ms. Powell's claims about Judge Williams. No outside corroboration existed to supply any claim made against the Judge. TR. P. 238, line 5 – p. 240, line 5.

Q. Okay. Similarly, you mentioned submissions to the JCC and you mentioned that there was about 80 pages of substantial material. In relation to, this was a discussion topic of fraud between Brucie Moore and Rene Williams that you said had been going on for decades, your presentation of substantial material to the JCC judicial conduct complaint, you mentioned reaching out to the FBI. Again, though, with no corroboration from any kind of law enforcement agency, is this just your hunch or assumption that that is fraud?
A. No. That is statute. Are you asking me if being able to be a plaintiff and a defendant, being able to sue yourself and interchange entity names is fraud? I am sorry. I am confused. Is that what you are asking me?
Q. I guess. Who is determining that that is fraud?

A. Well, KBA for one. You can't be a plaintiff and a defendant in the same -- there is 50 years of precedent that said that the kind of activity that was actually being carried out.
Q. But you said that there were no disciplinary charges or sanctions against Judge Williams or Ms. Moore even despite presenting that information?
A. Unfortunately not. It appears some people are above the law.
Q. So -- okay. So what I am getting at is the crux of this is some corroboration other than your analysis which you have said you are not a law enforcement agency. What corroborates that this is fraud which is a pretty strong accusation?
A. When you are using 2 different names to file a suit so you can sue yourself and you are being double-paid.
Q. So it is your conclusion based on the documents that we were talking about earlier?
A. Yes. But you could also look, thoroughly look at the JCC complaints, because I laid out the duties of a county attorney based on the county attorney's official conduct and how the duties actually completely conflict with what she is doing and also it is called honest service fraud. And that is a part of my complaint that I have filed in there. It is called honest service fraud when she is doing it for one bank and not the others and the one she owns part of.
Q. And that JCC complaint, though, yielded no outcome of sanction or charges, is that correct?
A. No.
Q. Okay. So other than material that you have submitted, do you have anything that corroborates that Judge Williams and Brucie Moore for any of these have perpetuated a fraud?
A. The information that I presented, yes. And I want to correct you a second. You said decades. No, it goes back to 2007. So a decade, not decades. The bank wasn't open until after that.
Q. Okay. 2007?
A. That's when Rene William became a circuit court judge instead of a district court judge. And that other proof I have to offer is Brucie Moore doesn't do that in the other counties.
Can I clarify something?

A . As chaotic as this case is, Steve Chandler's family at the onset approached me about what was I going to do after the hearing that hopefully we will hear tomorrow. And I kind of laughed it off because I said there is a lot of attorneys and judges that are really close. That don't mean a judge is going to step out on the limb for them. I kind of dismissed their concerns absolutely. As time went on, I was thinking, what is going on here and who is -- why would anybody step out on a limb? Why would a well respected judge step out and go this far and deny someone due process? And the same thing goes with why I wondered why Steven Downey's papers kept getting stricken. I knew there had to be an underlying cause or reason why.
Q. And what was the answer?
A. Well, this one, the honest service fraud

TRIAL COMMISSIONER JOHNSON: I am sorry.

MS. POWELL: The honest service fraud.
A. It's what is called it is an FBI terminology. It is actually in the JCC. And that's actually ended up what they charged -- indicted the judge-executive in the same county with.
Q. But along those lines, you are saying that Mr. Chandler's family said what are you going to do after this hearing. And you said why would any judge or person like that step out on a limb like that.

Q. And what was your conclusion?
A. My conclusion didn't come until long after the trial. I played it out the best that I could and tried to protect my client's interest throughout. And you can see the filings. I kept constantly trying to rebut and correct the record for veracity's sake. I played it out as long as I could and I tried to protect my client every step of the way and tried to hedge all of this off. I don't want to be here. I tried to hedge stuff to snow ball. And every step I made was just met with, lack of better words, it's been like I am playing checkers, they have been playing chess.
Q. And I guess that's -- when you say, they, I guess that's the root of it. I don't understand who they are?
A. When I say they, predominantly I mean Brucie Moore's office and Steven Downey. And she may have immunity, a qualified immunity. But Rene Williams is the one that struck everything from the beginning. She's the one that -- Brucie filed the motion but she is the one that put this whole snow ball in play. And no matter how many times I try to stop it, it isn't going anywhere.

TRIAL COMMISSIONER JOHNSON: I am sorry. I am going to have to interrupt, Mr. Bergeron. Is it your contention that Brucie Moore, Steven Downey, and Rene Williams are conspiring against your client or against you?
MS. POWELL: I think that initially it was against my client to help these 2, you know, con artists win.
TRIAL COMMISSIONER JOHNSON: Wait a minute. Stop. The con artists would be the 2 men who helped -- who got the will with Keith?
MS. POWELL: Exactly.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: But then I think it got so far after the motion to strike and limiting me to 2 years surrounding the execution of the will. And then Downey comes in 2 and that half weeks before trial and he files a motion in limine completely entirely based upon the first motion to strike. So I think -- I don't think they are necessarily conspiring against me. I think that they are covering their tracks is the only way to say it.
TRIAL COMMISSIONER JOHNSON: But you believe they are all working together, the 3 of them?

MS. POWELL: To come extent, yes. Do I think Rene is as involved as the other 2? No. But to some extent, yes.

TRIAL COMMISSIONER JOHNSON: Did it ever occur to you -- and this is again my devil -- I ask questions as if I am being the devil's advocate. So please understand I am not accusing. I am just asking this line of questions like this for Andre' too. Did it ever occur to you that maybe you are just wrong, maybe you are just wrong?
MS. POWELL: Well, I thought that a few times and discussed it with other individuals. I –
TRIAL COMMISSIONER JOHNSON: Don't say what they said. You can say you discussed it. MS. POWELL: I am not. I am not.
TRIAL COMMISSIONER JOHNSON: We all do that and we all shop it around as I call it?
MS. POWELL: I have researched countless KBA ethics, I mean and not just Kentucky, I mean everywhere. I have researched case law. I have not found one other single case law in this nation where 60 percent of a complaint has been stricken at the onset to keep from you showing your motive, your theory of your case. This is like no other. I have no idea why. I couldn't even fathom to guess why they even run all this with me other than I was an outsider. I don't know.
TRIAL COMMISSIONER JOHNSON: So you think it may be because you are an outsider, that might be a motive or a reason or something? I am just trying to understand what -- I mean what if you are just wrong? What if your theory is not good? What if you just made the wrong legal argument? I am not saying you did. You know, my job is not to rule on the merits of this. My job is to rule on the charges that are against you.
MS. POWELL: Well, I mean, one of the things they did as I said, they struck the equity claim from the very beginning. And you will see in the order and the opinion and in Steven Downey's filings he keeps saying no claims were stricken. Yeah, they was.

Trial Commissioner turning her questions to Mr. Bergeron:
TRIAL COMMISSIONER JOHNSON: Okay. So in the passages earlier this afternoon that you asked her about, about the questions about the FBI investigation that she placed in her pleadings, what makes you think that those passages had to do with the fact that she was threatening, threatening the courts?
MR. BERGERON: The passages from the petition for rehearing?
TRIAL COMMISSIONER JOHNSON: Under the charges that you filed against her?
MR. BERGERON: Yes.
TRIAL COMMISSIONER JOHNSON: That they weren't just what she said that she just wanted to have the whole case reviewed?
MR. BERGERON: Well, I feel like, just for the record here, we are getting into what would be my legal argument on this matter. But I think the case law regarding what 3.4(f) is very abundantly clear about threats or insinuation of both possible criminal activity and disciplinary activity in order to gain an advantage of something.

During trial, Ms. Powell presented a lengthy theory on a conspiracy about mail fraud. She sought to prove that third parties were attempting to commit mail fraud against her to prevent her from receiving pleadings in a timely manner.

As proof to support her claim, she offered her own testimony about postage, bar codes, zip codes, stamp mechanism, postal routes, and federal mail fraud. Ms. Powell called no witnesses to support her claim. Ms. Powell admitted she had not relevant background to suppose an expertise, or qualification in this specialized area – but made this accusations based on her observation on handling mail "all my life." TR p. 421, lines 9-24.

> At the close of the entire hearing, the Respondent requested to expand on a previous question from the Trial Commission from the day before, concerning the importance of the envelopes. Ms. Powell thoroughly explained to the Trial Commissioner, that once there was an active FBI Investigation in Union County, the attorneys must have become nervous, because they began driving pleadings and even the Response brief to the Respondent's P.O. Box, rather than placing them in the United States Postal Services. The obvious reason for this, is to avoid Federal Jurisdiction attaching through, Mail Fraud. It makes zero sense to assert that the Respondent "sought to prove that third parties were attempting to commit mail fraud against her to prevent her from receiving pleadings in a timely manner."
>
> With respect to a singular envelope that was delayed, to prevent the Respondent from filing a timely Notice of Appeal, (TR. p.130, lines 10-25; p.131) all other discussions about envelopes, were to show that each filing that contained deliberate false assertions, were driven to the Respondent's P.O. Box, including Steven Downey's Response Brief. The Respondent was even able to provide the KBA and Trial Commissioner with an Order form to show where the Stamp on Steven Downey used in his March 2016, filing was purchased.
>
> **MR. DENISON**: The only other thing that I have is a brief discussion regarding the envelopes that we kind of tabled yesterday during Ms. Powell's testimony.
> **TRIAL COMMISSIONER JOHNSON**: And you're referring to the original envelopes that she was discussing during her testimony?
> **MR. BERGERON**: Yes.
> **TRIAL COMMISSIONER JOHNSON:** Okay. Go ahead, Mr. Denison.
> **MR. DENISON**: Those are actually in the record. I do think -- I do think a bit of explanation is necessary for Ms. Powell on those. I'm not going to tender the

originals, but for clarification purposes. And that's the final remaining thing I have here. But I -- she felt it was important. And upon further reflection, I'm not sure that I did a good job with that yesterday in fleshing out what Ms. Powell wanted. So if you will indulge us 10-minutes.

TRIAL COMMISSIONER JOHNSON: Sure. Of course. It's a part of your case and you got your hour and you certainly can use it any way you want so.

MR. DENISON: Not to help you out, but there is a section that starts on page 624 that has -- that's what we were talking about yesterday as far as envelopes?

TRIAL COMMISSIONER JOHNSON: Is it KBA 0624?

MR. BERGERON: Yes. That is page numbers 0624. I think those are envelopes. I don't know if that's the particular –

MR. DENISON: Thank you for the assist.

MS. POWELL: Yes, thank you.

RE-CROSS EXAMINATION BY MR. DENISON:

Q. Ms. Powell, we talked about this a little yesterday, but you've heard our discussions here about it today. Like I said, I'm not sure that I did an adequate job explaining this. So I don't want to spend a tremendous amount of time on it, but I would like for you to flesh out for the trial commissioner what it is that you were attempting to say yesterday now that we have the complaint and the documents in front of you.

MS. POWELL: Here it's 624 through 650.

TRIAL COMMISSIONER JOHNSON: Yeah, I think I have all of them. Go ahead. I'm sorry.

MS. POWELL: I believe Mr. Bergeron has seen these. Mr. Bergeron?

TRIAL COMMISSIONER JOHNSON: You gave him things to look at. Were you giving him the originals, is that what you were doing?

MS. POWELL: Yes, because these are just copies and I just want everybody to actually see the originals.

TRIAL COMMISSIONER JOHNSON: Okay. Sure. Go ahead.

MS. POWELL: And may I approach you, Your Honor?

TRIAL COMMISSIONER JOHNSON: Of course, absolutely.

MS. POWELL: As a follow-up, Your Honor

yesterday you asked if, I believe it was you, that how the federal investigation began.

TRIAL COMMISSIONER JOHNSON: Yes. I'm sure it was me.

MS. POWELL: After making all of the efforts through JCC and the KBA going that way, I started noticing things were being -- would appear to be driven to my mailbox and not actually put in the mail. So everybody is thinking of white collar crime but it's a mail fraud. And I started beginning to notice that filings that came from Brucie Moore or Steven Downey were not actually going through the mail. And Brucie Moore, if you're not aware at that time when this all started happening, Brucie Moore and her husband own WayMoore, LLC with Jack Conway. So I couldn't go to the Attorney General.

TRIAL COMMISSIONER JOHNSON: I know who they are, but go ahead.

MS. POWELL: And then driving things to my mailbox actually gives federal jurisdiction. And I started noticing that would only happen on the envelopes that you're looking at when there was a filing that actually contained fraud. And I

could see, if you look at the ones in front of you, you can see the ones that don't have markings on the back, that don't have markings on the front.
MR. DENISON: Do you want to take her -- do you want to briefly take her through each envelope and point out what the significance is?
TRIAL COMMISSIONER JOHNSON: I think that would help me have a better understanding if you would do that. Because I'm probably like a half a million people I don't pay much attention to the envelope because when it gets to me it's already been opened by my assistant. And usually we staple the envelopes to the back to be honest with you. But I don't really pay much attention to them. So it would help me understand your position better if you would go through the envelopes with me, seriously. I mean, I would appreciate that.
MS. POWELL: Well, the first ones that we introduced yesterday that was from where it was returned. That one actually did go through the mail.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: The following one –
TRIAL COMMISSIONER JOHNSON: What page number are you referring to?
MR. DENISON: Give her the page numbers before you –
MS. POWELL: 624 and 626 are the ones we covered yesterday.
TRIAL COMMISSIONER JOHNSON: Yes, ma'am. I'm looking at page 628. I'm sorry, yeah. Is that the one you're on next?
MS. POWELL: Yes.
TRIAL COMMISSIONER JOHNSON: And it says Kentucky Court of Appeals, Democrat Drive. And then you've written on it what other COA envelopes look like.
MS. POWELL: Oh, I was showing just a comparison to the handwritten one. So that was just there to show that I've never received a handwritten envelope of something returned. 630 is blank. The 632, that should be in front of you.
TRIAL COMMISSIONER JOHNSON: Yes, ma'am.
MS. POWELL: It's on this side. I see it. It's kind of flipped up right there.
TRIAL COMMISSIONER JOHNSON: It says, Moore and Wallace. Okay. Gotcha.
MS. POWELL: Yes. And that one actually correlates the date, correlates with the accounting of the estate where –
TRIAL COMMISSIONER JOHNSON: No, wait. That one says received September -- this is the wrong zip code. Okay. I gotcha. Go ahead.
MS. POWELL: And that correlates with the probate accounting. And there was -- the affidavit of Steven Downey for the funds was inside that envelope as well as the accounting itself which contained false information.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: And if you look on the back, there was no markings.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: But I also saved a million other envelopes that has nothing to do with this case just to show that there's always markings and there's always -- even something that is sent to -- if I send something from my old office to my P. O. Box, it would have automatically been routed to Nashville. That's the way the mail system is set up.

TRIAL COMMISSIONER JOHNSON: Like ours goes, from Lexington goes to Louisville.
MS. POWELL: It's the way it has to set up.
TRIAL COMMISSIONER JOHNSON: I never have understood that. Then it goes back down to Lexington. All right. I'm with you. Okay.
MS. POWELL: And so on the next one, 634, the same way. That one was a weird stamp.
TRIAL COMMISSIONER JOHNSON: Wait. That's the one that says received in September. Let me -- just bear with me. I'm sorry. I have to go slow. Okay. I gotcha. I'm right here in front of you. So that one has nothing on the back, right?
MS. POWELL: Right.
TRIAL COMMISSIONER JOHNSON: Okay. Gotcha.
MS. POWELL: And just the stamps and then like some weird marking. And then the next one is 0636.
TRIAL COMMISSIONER JOHNSON: Yes, ma'am.
MS. POWELL: And I'm just showing a comparison of the exact same time.
TRIAL COMMISSIONER JOHNSON: Okay. Hold on. I want to just -- okay. That one has things at the bottom, though. Nothing on the back?
MS. POWELL: Yes. And that come from Melissa Guill. That came straight from the court. So I'm just showing a comparison.
TRIAL COMMISSIONER JOHNSON: But it also has Moore and Wallace on the back, on the front?
MS. POWELL: Oh, that one -- no, that's not the same one that I'm looking at.
TRIAL COMMISSIONER JOHNSON: Oh, I'm sorry. 636. I'm looking at the wrong one. I apologize. Oh, here you are. Gotcha.
MS. POWELL: Yes. And that was just included because the one on 634, the one you just looked at that had no markings, it appears like someone is trying to say it went through Evansville. But then at the same exact time period you'll see the Evansville marking is not even close.
TRIAL COMMISSIONER JOHNSON: And that one has the markings on the bottom and on the back and this is from the courthouse, we always know that because it always has the weird number on the top.
MS. POWELL: Yes.
TRIAL COMMISSIONER JOHNSON: Yes, ma'am. I'm familiar with those.
MS. POWELL: And then the next one.
TRIAL COMMISSIONER JOHNSON: Is, now we should be on, make sure that I'm clear, we're on KBA 0638, is that correct?
MS. POWELL: That is correct.
TRIAL COMMISSIONER JOHNSON: And that's Moore and Wallace. Wait a minute. Let's see what that one says. Contain periodic, let me see, I'm trying to catch up with your notes. Yes, ma'am. Go ahead.
MS. POWELL: And there's two of them on there. If you notice there is 638. I can't tell --
TRIAL COMMISSIONER JOHNSON: Yes, ma'am. I have both of them. Yes, ma'am. Go ahead.
MS. POWELL: Okay.

TRIAL COMMISSIONER JOHNSON: Now that one has the stuff at the bottom though and it has it on the back.
MS. POWELL: And that's the part that I'm making reference to. Is when something actually was kind of simple and didn't contain any false information, she actually put the right zip code. But then –
TRIAL COMMISSIONER JOHNSON: Oh, I see what you're saying because it's 42241. Yes, ma'am. I see.
MS. POWELL: So the ones that was driven, and I know I have a weird mind that pick up on things that other people don't, but one of them -- when there was something that had false information or fraudulent material, it doesn't appear that it went through the mail.
TRIAL COMMISSIONER JOHNSON: Well, also I notice on these two envelopes they have different addresses on them. The one –
MS. POWELL: But they both would have gone to my P. O. Box.
TRIAL COMMISSIONER JOHNSON: Yes. But one of them is addressed to 511 West Ninth Street, P.O. Box. And one is addressed to the law office of Kayce R. Powell, P.O. Box.
MS. POWELL: I never got mail at the one –
TRIAL COMMISSIONER JOHNSON: The physical office, the physical address of your law office was at 511 West Ninth?
MS. POWELL: Yes, it was.
TRIAL COMMISSIONER JOHNSON: Even though you also got mail at your P.O. Box? Do you see what I'm saying?
MS. POWELL: I never got mail at the 511 West Ninth. Nobody does. That would have been automatically. And that in itself with the 42240 that had been re-routed to Nashville.
TRIAL COMMISSIONER JOHNSON: All right. That answered my question. Go ahead.
MS. POWELL: And then the next page is blank. The other one, this one -- this one I know was driven just because it's stamped December 22nd and I picked it up at my post office.
TRIAL COMMISSIONER JOHNSON: Wait a minute. I'm trying to find that one. Hold on.
MS. POWELL: I'm sorry. It's 642. It's the big one, the big white one. Or it's --
TRIAL COMMISSIONER JOHNSON: It says $1.40 on the postage, though. Oh, here it is. Yes, ma'am. I got it. Okay. Go ahead.
MS. POWELL: As you see there is no markings other than your typical stamp there. It says it was sent from Bowling Green on December 22nd, but I picked it up in my mailbox on December 22nd. There's no other markings. It has the wrong zip code. And the stamp at the bottom says first class. The reason this one's important is this one actually contained the brief, the response brief.
TRIAL COMMISSIONER JOHNSON: Okay. All right.
MS. POWELL: The next one also came from Bowling Green on March 22nd.
TRIAL COMMISSIONER JOHNSON: Wait a minute.
Sample one. I'm sorry. What is document 0646?
MS. POWELL: Do you have 644?
TRIAL COMMISSIONER JOHNSON: Yes, ma'am.

MS. POWELL: Okay. This was March 22nd. Again, it contained -- it matched up with the filings. It contained false information. It has the wrong zip code.
TRIAL COMMISSIONER JOHNSON: Yeah, it has the wrong zip code 42240 versus 410. That's the large one, right?
MS. POWELL: Oh, yes, yes, yes.
TRIAL COMMISSIONER JOHNSON: All right. I'm trying to ask what sample -- you've got 646 and there's some kind of sample one, sample two, sample three.
MS. POWELL: Because that's actually marked Bowling Green. And it would never have been marked Bowling Green. It would have been marked Nashville, Tennessee. And I found online where you can purchase that exact same stamp. So that's what I'm showing you 646 is that stamp. And the next page is the order how you can purchase that exact same stamp to how you want it.
TRIAL COMMISSIONER JOHNSON: Oh, okay.
MS. POWELL: And then, again, the same thing with 650 is just the comparison.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: And so the only way to get FBI jurisdiction is through things such as mail fraud. And I'm probably the only weird person that would notice that stuff. But I kept ample amount of envelopes to show everybody that it seemed to only happen, no markings at all on stuff that contained false information.
TRIAL COMMISSIONER JOHNSON: Okay. Okay. All right. Okay. Go ahead. So then I've got these two left. This is an envelope. Apparently someone in their office does have the right zip code. This is the one you showed me December 23rd?
MS. POWELL: Yes. And that actually was a simple letter to ask about possibly getting someone to re-roof the house. And there was nothing -- there was nothing fraudulent about it. So –
TRIAL COMMISSIONER JOHNSON: And then this other one was from Melissa Guill, is that how you pronounce her name? She's the clerk there, the Crittenden Circuit –
MS. POWELL: I think it's Guill.
TRIAL COMMISSIONER JOHNSON: And this says arrived on June 19th, no postmark and wrong zip code.
MS. POWELL: Okay. And that's the one we compared yesterday to this one that was received from the Court of Appeals. This one was her sending back my -- this was at her -- I even asked them on the video, you'll see. When she puts her mail, she puts it in a basket at the end of the counter. But it didn't go out in the mailbox. This was her, what day does that say?
TRIAL COMMISSIONER JOHNSON: It says June 13, 2014.
MS. POWELL: And I received it on the 16th. This was her returning my notice of appeal. But somehow this order that was the avowal order that they thought I was waiting on to file the appeal because of my due date didn't make it to me until like the –
TRIAL COMMISSIONER JOHNSON: And it still has the wrong zip code on it, right?
MS. POWELL: But this one was re-routed.

TRIAL COMMISSIONER JOHNSON: Oh, I see. Okay.
MS. POWELL: And then this one has the wrongzip code and doesn't show any re-routing, nothing.
TRIAL COMMISSIONER JOHNSON: Yeah. That's down at the bottom. Okay. All right. Thank you. I want to see what this one is. Is this the one we already talked about?
MS. POWELL: That's the one that the brief was in and I picked it up at the post office that very day. And it was Christmas time.
TRIAL COMMISSIONER JOHNSON: Yeah, December 22, 2015.
MS. POWELL: Yeah. And the only thing that was on it was that first class.
TRIAL COMMISSIONER JOHNSON: And it still had the wrong zip code?
MS. POWELL: Uh, huh.
TRIAL COMMISSIONER JOHNSON: Okay. All right. All right. Thank you. I appreciate you showing me all this.
MS. POWELL: I figured it would make more sense.
TRIAL COMMISSIONER JOHNSON: No, it's better to walk through it.
MS. POWELL: If anybody wants to look at all the other envelopes that I saved just to show that it only happened with these.
TRIAL COMMISSIONER JOHNSON: No, I appreciate that. That is something. MS. POWELL: Would you like to see them?
TRIAL COMMISSIONER JOHNSON: I want to look at the ones that show they had the markings on the back.
MS. POWELL: Every one of them do.
TRIAL COMMISSIONER JOHNSON: Sure.
MS. POWELL: And even ones that are sent straight from the same town a block away. I'm glad I'm showing these to somebody finally because then I can throw them away. This one actually came back from the JCC. It had the wrong zip code but it had this correction at the bottom.
TRIAL COMMISSIONER JOHNSON: That is on the back? Yes. Okay.
MS. POWELL: This one has a marking at the bottom.
TRIAL COMMISSIONER JOHNSON: Do you have any envelopes?
MS. POWELL: The bigger ones?
TRIAL COMMISSIONER JOHNSON: Now, see this one doesn't have it on the back. That's weird.
MS. POWELL: But it has the correction so you know it went through.
TRIAL COMMISSIONER JOHNSON: Do you have any big envelopes?
MS. POWELL: That's the one we just talked about.
TRIAL COMMISSIONER JOHNSON: That's the Court of Appeals that has it on there.
MS. POWELL: This one, it did go through. Like Steven Downey, it's clearly a tracking number obviously.
TRIAL COMMISSIONER JOHNSON: Yeah.
MS. POWELL: And these are all like Melissa Guill's.
TRIAL COMMISSIONER JOHNSON: Here is from Mr. Haggard. And he has the right zip code. And it's on both of them.
MS. POWELL: And it still had to be re-routed.

TRIAL COMMISSIONER JOHNSON: But it showed that he put the right zip code and it went through correctly?
MS. POWELL: Oh, yes. And see, again, that's the Evansville stamp. It doesn't look like the one that's in there.
TRIAL COMMISSIONER JOHNSON: Oh, yeah. Okay.
MS. POWELL: But it's on the front.
TRIAL COMMISSIONER JOHNSON: Okay. It's weird like that one doesn't have it on the back either but it has it on the front. I guess they just do it that way.
MS. POWELL: I think it depends on if it re-routes through Evansville or if it re-routes through Nashville.
TRIAL COMMISSIONER JOHNSON: Can I see a couple of the big ones, like the large ones is what I want to see next? Okay.
MS. POWELL: This one is from Steven Downey. But it has –
TRIAL COMMISSIONER JOHNSON: So is this one, but it has a tracking.
MS. POWELL: Right.
TRIAL COMMISSIONER JOHNSON: This one does too. Okay. Thank you. I really appreciate you showing me those.
MS. POWELL: Well, I figured it didn't make any sense unless I actually tell you.
TRIAL COMMISSIONER JOHNSON: No, but it is better to walk me through than just explain it. I would have never -- because you don't pay attention like you should probably. All right. Go ahead. Mr. Denison, anything else?

Q. Ms. Powell, is there anything else that you would like to add to that regarding the envelopes or that you would like the commissioner to know?
A. No. I just wanted to explain why federal jurisdiction would come in.

TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: And there was an ongoing investigation already with Union County.
TRIAL COMMISSIONER JOHNSON: Now, tell me about that again. Because I was trying to take notes on that yesterday but it was the end of the day and I wasn't doing –
MS. POWELL: Union County, their board, the county board, they got caught up in a $1.3 million theft scandal. They were buying stolen equipment. And it was kind of, according to the news break, it was obviously stolen. Because there were serial numbers. They were getting it for, I don't know, something -- a value of.
TR. p.394 -p.410.

The standard as set forth Waller is "what a reasonable attorney, considered in light of all the attorney's professional functions, would do in the same or similar circumstances."

It is clear under the circumstances in this case that Ms. Powell's accusations of misconduct against various members of the Judiciary and her opposing counsel were quite serious, Ms. Powell should never have made any such allegation, or any mention of misconduct absent substantial, specific, fact-based allegations to support such a claim for each such individual. Ms. Powell produced no evidence at the hearing to substantiate any of her claims such as the direct bias against her by Judge Williams. (See Powell Post-Trial brief page 4, last paragraph as one example). Nor did Ms. Powell call any witnesses to substantiate any of the claims.

Ms. Powell never testified that Judge Williams was biased against her. In fact, she testified to exactly the opposite.

> "Judge Williams has shown extreme bias in favor of opposing counsel, Union County Attorney Brucie Moore, throughout the entire 6 years of litigation. There is currently an active federal investigation into these matters which directly involves the misappropriation of funds, wire fraud transfers, the checks that were illegally written to defendant attorney Steven Downey from the estate of Harold Keith Chandler. Moreover there is a joint federal investigation into the fraudulent conduct pertaining to the fraud of judicial nature. Upon information and belief, Judge Williams has been signing off on fraud orchestrated and committed by Union County Attorney Brucie Moore for more than a decade. Double-dipping is one accusation among numerous allegations which is easily ascertainable. Would you like me to keep going?
> Q No. Within that same document, though, paragraph 19 which is on page 1839.
> A The conflict of interest in Union County is more than abundantly clear. Despite what would seem obvious to anyone, this court has signed off on Ms. Moore's fraud for more than a decade.
> Q And then finally within the same motion on page 1840, the following page, paragraphs 24 and 25?
> A Okay. But the purpose of this motion is to reconsider, plaintiff sets out the court has shown extreme bias in favor of defendant Brucie Moore throughout the entire 6 years of litigation. Arguably, the decision of this court to overlook, ignore and sign off on fraudulent actions of Ms. Moore shows an extreme bias in favor of Ms. Moore to the point that anyone would question the court's impartiality on this case, and all other cases involving Ms. Moore. TR p. 26, lines p. 27, lines 1 – p.28, line 1.

A Sure. Please take notice that I address the latter paragraph with extreme caution. The commission is either concerned with the statement that the court orders seemed more concerned with protecting the reputation and previous rulings of Judge Rene Williams who has demonstrated prejudicially biased rulings during litigation during the course of trial and even within her unfounded post trial rulings. With all due respect for both assertions, evidence more than speaks for itself even with a cursory review of the in-depth comparison of Steve's actual brief compared to the opinion of the court. And then I refer you to the comparison order. TR p.53, lines 17-25; p. 54, lines 1-6.

"At that hearing, Judge Williams was very biased. And I can bring the recording here tomorrow. She looked at my client and she said, well, I am concerned. He had a driver's license, didn't he. And my client was trying to explain that how his brother had to have a routine and stuff. And she said, well, he had a driver's license and a job. And she already had made up her mind that there couldn't be anything wrong with him."
TR p. 87, lines 16-25

Ms. Powell was unable to produce any objective, competent evidence to support her claims against either members of the Judiciary or against the attorneys for whom she rendered accusations. As a result, her accusations meet the standard of SCR 3.139(8.2(a).

The Respondent produced more than 10,000 pages to support her assertion. The burden is on the KBA, who failed to produced a single document or witness, to dispel, Ms. Powell's assertion, or even state alternative belief. ....

COUNT III: SCR 3.130(3.5)(d) conduct intended to disrupt a tribunal.

The Respondent thoroughly explained to the Court the reasons for the two Motion to Recuse she filed in the Court of Appeals. The Respondent gave both filings to the KBA and Trial Commissioner. Neither the KBA nor the Trial Commissioner wanted much discussion about the KBA Complaints or the JCC Complaints.

The KBA asserts that Ms. Powell violated this Rule in two (2) ways. First by repetitively filing the same pleadings over (7) year time frame, and secondly by filing many improperly procedurally defective pleadings.

Respondent never ever asserted that she filed the exact same pleadings through (7) years. The Respondent specifically asserted, that the Complainants arguments and testimony remained the same throughout. If Ms. Powell had filed the exact same pleadings throughout, she would have been sanctioned. Moreover, the KBA and the Trial Commissioner were in possession of all the filings, yet they can't site to two pleadings that are the same. The Board of Governors took it another step, and not only embellished upon this false assertion, but fraudulently states the Respondent admitted to this violation.

Ms. Powell had admitted she filed repetitive pleadings both in her June 2018 reply to the KBA investigation and throughout these proceedings: KBA Ex. 5, p. 008; TR p. 9, lines 12-14; TR p. 10, lines 8-18.

Regarding the inappropriate filings, many were returned for deficiencies. KBA Ex. 5, pp. 16-17; p. 19; p. 20.

This information was never asserted during the hearing, or within any filing. The KBA failed to offer any testimony of these charges, and the Trial Commissioner is not permitted to fabricate information.

Additionally, Ms. Powell also requested the Court to take unusual or unprecedented steps uncommon in the Court of Appeals. See KBA Ex. 5, Book 1, p. 152.

See above, this is new information to anyone.

The Court of Appeals, while denying Ms. Powell's requests often took time to provide assistance to her offering information to make the pleading conforming.

Really says, who.. No witnesses… see above.

Ms. Powell also sought at both the Circuit and Court of Appeals levels to have several Judges recused. A review of the Circuit Court history from the KBA Ex. 21, pp 3177-3186, and Certified Court of Appeals step sheet from KBA Ex. 26, pp 3307-3323, demonstrates this behavior.

But in order to say that filing motions to recuse disrupts the tribunal, is insufficient unless you discuss the specific Motion to Recuse, and the reasons asserted for the Recusal motions. This alone is not something someone can be ethically disciplined for. A notion that at least one of the Board of Governors, inquired about.

These include efforts to have Crittenden Circuit Judge Williams disqualified and multiple objections to the personal makeup of the Court of Appeals panel. See KBA Ex. 5, Book 1B, pp 588-597; KBA Ex. 5, Book 1B, pp 668-9.

Ms. Powell also filed a civil case against opposing counsels and other parties.

The Respondent did file a civil action that was open from March 2015 until end of November 2019. If the charge that Ms. Powell filed was not supported by law, the sheer number of attorneys that they had, to defend against that case, and the length of the case wouldn't have been necessary.

The pattern of behavior over seven (7) year period had the obvious effect of burdening the Court system with repetitive filings.

There were no repetitive filings, and the Trial Commissioner despite having a copy of all the filings, could not site to even one repetitive filing.

While Ms. Powell most certainly had the right to advocate for client, she did not have the right to repeatedly file the same information under a different title as she has admitted she did.

Complete and total fabrication. If someone is going to place in an Order, that somebody admitted to doing something, the Trial Commissioner, should be able to cite to the location where it happened.

Further, while a good faith error can be made in a filing, having been instructed how to be correct the error, an attorney should be respectful to make sure that the error is corrected in a timely fashion.

WHERE IS SHE GETTING THIS FROM..... nobody ever alleged any of this information.

The totality of circumstances here gives rise to Ms. Powell's violation of SCR 3.130(3.5)(d).

COUNT IV: Failure to respond to a request for information from a disciplinary authority as required by SCR 3.130(8.1)(b).

In May 2018, Ms. Powell was notified regarding concerns about her professional conduct. The letter advised her of Rule 8.1 and the requirement to respond to requests for information. KBA Ex. 1, p.3.

Ms. Powell immediately contacted the OBC and requested additional time to respond by emails on May 22, June 1, June 11, and June 19, 2018. KBA Ex. 2, 3, 4. After receiving the formal Inquiry Commission complaint later that year, Ms. Powell send a letter via US Mail to the OBC requesting more time and expressing an intention to respond with the new and additional information. KBA Ex. 8, pp 2030-2031. The OBC granted the extension. This was mailed to Ms. Powell and to the Inquiry Tribunal, KBA Ex. 9, p. 2035. The IC issued an Order in January 14, 2019, granting an extension until February 8, as requested by Ms. Powell. KBA Ex. 10. Ms. Powell never filed a response. Later a formal charge was filed against Ms. Powell.

THE ABOVE BOXED SECTION IS CITED DIRECTLY TO BY THE BOARD OF GOVENORS ORDER ON PAGE _____.

The Trial Commissioner is attempting to ignore the fact that Ms. Powell had already submitted more than 10,000 pages to the Inquiry Commission back on June 19, 2018. Instead, the Trial Commissioner's Order falsely portrays that Ms. Powell did not submit any documents to the Inquiry Commission. Moreover, the Order ignores the fact that Ms. Powell filed a Motion to Dismiss this Count, as she never received the January 14, 2019, Order, that was allegedly mailed to her P.O. Box. Ms. Powell testified about being back to work for about week, from her medical leave, when her grandmother passed away on January 16, 2019. As such, she had someone else picking up her mail, but she never received the alleged Order.

Thereafter she immediately filed a Motion to Dismiss, wherein she affirmatively stated that she never received the January 14, 2019, alleged Order issued and mailed by the Andre Bergeron. It's hard to see how Ms. Powell can be found guilty of this charge, when she had previously mailed more than 10,000 pages to the exact same charges. Regardless, Ms. Powell did directly submit a response to Sara Coker on February 3, 2019, in which she references this cause of action.

When Ms. Powell answered the charge, she admitted to received the complaint and had planned on responding. KBA Ex. 15, p. 2045. Ms. Powell insists she never received the Order granting the extension of time to answer the extension. KBA Ex. 15, p. 2046. She claimed she assumed the matter had just been dropped as she "didn't think anything of it, I picked up the present charge." KBA Ex. 15, p. 2047.

Considering that Ms. Powell had previously emailed the Office of Bar Counsel to request an extension of time to respond, her belief that the matter had been dropped is completely unreasonable. Given that her license to practice law was at issue, at the very least Ms. Powell should have emailed or called the Office of the Bar Counsel to confirm the status of the request for information.

> **Q**. Okay. Briefly, you received an investigative letter from the KBA. It is marked as respondent's -- it is marked under Tab 1 dated May 14, 2018?
> **A**. Yes, sir.
> **Q.** Do you recognize that?
> **A**. Yes, sir.
> **Q**. Did you receive it?
> **A.** Yes, sir.
> **Q**. All right. Now, subsequently did you file a response to the investigative letter?
> **A.** Yes. I filed a, I believe, a 40 page response. But I included 9 binders with my answer. So -- and pointed to specific exhibits.
> **Q**. All right. Take a look at this right here. It is marked as total Tab 5, June 24, 2018, reply to investigative letter with 9 attached binders that starts on page 8 and looks like it goes through page 1860?
> **A**. That sounds correct.
> **Q**. So your first response had approximately –

TRIAL COMMISSIONER JOHNSON: I am going to interrupt you, Mr. Denison. How many binders did she testify that she filed as a response to that? I apologize. I wasn't writing quickly enough.
MR. DENISON: Judge, she testified that she filed 9 binders.
TRIAL COMMISSIONER JOHNSON: 9 binders? Thank you.
MR. DENISON: But let me, since you have asked that question, if I can just clarify further.
TRIAL COMMISSIONER JOHNSON: Of course.
MR. DENISON: The way it is said, it is all under Tab 5.
TRIAL COMMISSIONER JOHNSON: Yes, sir.
MR. DENISON: But they are marked as 1, 1A, 1B and so on through 7. There is still 9 binders. But the way they are coming into evidence, and it says reply to investigative letter with 9 attached binders. But we have got a 1A and a 1B rather than just a straight 1 through 9.
TRIAL COMMISSIONER JOHNSON: Wait just one second. I want to make sure that I am up to date with you all. So wait a minute. Under -- it is coming in as in my Exhibit 5, hold on, you have got 1A and 1B.
MR. DENISON: You see, are you looking at the legend at the very front of the binder, judge?
TRIAL COMMISSIONER JOHNSON: I am looking at exhibit -- okay -- at the very front of the binder, yes, sir. We have got 1 of 3, 2 of 3, yes, uh, huh.
MR. DENISON: Under binder 1 of 3, number 5. That starts on page 8?
TRIAL COMMISSIONER JOHNSON: Yes, sir.
MR. DENISON: And then it sets out binders 1, 1A, 1B, 2, 3, 4, 5. And then binder 2 will actually contain binder 6 and 7.
TRIAL COMMISSIONER JOHNSON: Yes, sir.
MR. DENISON: Those are the 9. They were just numbered when -- they were numbered differently. But there is no inconsistency.
TRIAL COMMISSIONER JOHNSON: Okay. Because the reason I am asking this is because the original copies of binders were sent to my office. I am not going to use those at all. I am going to use only what is sent to me here. So I am going to just trash the ones at my office and use only what's here. That's why I wanted to make sure we are clear today as to what's coming in.
MR. DENISON: Yes. It is still the same thing.
TRIAL COMMISSIONER JOHNSON: That's what I

Q. So that started on page 8, ended on page 2020. So how many pages roughly is that, 2020 minus 8?
A. It is like 2000 pages.
Q. Is that what you submitted with your response to the initial investigative letter?
A. Yes. And I believe I had to submit 5 books, 5 copies of each book. So I guess 2000 times 5.
Q. Okay? Okay. All right.
A. I killed a lot of trees.
Q. Okay. Now, following that same line of thought, Mr. Bergeron asked you about this, the inquiry commission complaint. And then again this is in 17-121. The

inquiry commission complaint is marked as Tab 8. It is in Book 2. And there was some testimony regarding whether you responded to that or not. Could you clarify that, what happened, just so there is no misunderstanding in the record about your response to the inquiry commission complaint?
A. Well, as I said before, I did not receive the order giving me a date. But I did respond in the February 3 letter. I mentioned it and I also mentioned my previous 10,000 pages.
Q. Okay. So inquiry commission complaint that was filed, that is under Tab 7 in Book 2, you did receive it, is that correct?
A. Yes.
Q. All right?
A. Is that the one dated in November? That was right before I had surgery. Yes, I did.
Q. Okay. And I told you that was dated November 15?
A. Yes.
Q. All right. And then you -- tell the judge exactly when you had surgery and what occurred in that time period. But you did receive the inquiry commission complaint?
A. Yes, I did. The 28th, I had surgery on November 28.
Q. And how long were you out for?
A. It was supposed to be 4 to 4 and a half weeks. But it ended up being like 6 weeks. And then I was out another week when my grandmother passed away.
Q. Okay. Now I want to direct you -- do you remember when that was –
A. My grandmother?
Q. -- the total time, yeah?
A. Well, I came back to the office on January 23. And I know that because that's the day I went and picked up my mail at the post office and I had the other complaint that I had to sign for.
Q. All right. Now I want to direct your attention to the order of the inquiry commission, it is KBA 2036 on the Bates stamps. Did you receive this order?
A. I did not.
Q. Okay. And this is the order where you were given up to and including February 8 to file a response to the complaint?
A. That is correct.
Q. Okay. And then directing your attention to, well, KBA Exhibit Number 11. This is page 2037, okay. And here you have a -- well, do you recognize this document?
A. Yes. I just previously read it into the record. It was my response from February 3, 2019.
Q. Okay. And was this -- what response was this to?
A. Well, I mentioned them both.
Q. Okay. So that was February 3. What date is the -- is it stamped as received?
A. February 5, 2019.
Q. Okay. And your response would be that you -- you did receive the order but your response was subsequently due by when?
A. The thing said February 8.

Q. All right. And then under 12, do you recognize -- and this is KBA 2038.
A. Yes.
Q. Okay. Do you recognize the charge?
A. Yes.
Q. Okay. Now, with respect to the charge, did you file an answer to the charge?
A. I did. I filed a separate answer to charge or count number, and again there is some confusion here because I didn't know that there is 3 different layers honestly. But count 4 is the one that said I didn't file a response. So I filed a separate charge asking the court to dismiss that and explained to them that I never got an order and explained to them that I was away for my grandmother's funeral. And I believe I even had a telephone conversation with Mr. Bergeron.
Q. Okay. Under KBA 15, which is going to put us back in Book 2 also, it is styled as -- it is KBA 2045 -- that is styled as a motion to dismiss?
A. Uh, huh.
Q. And that appears to run through KBA 2072. Okay. Was that the first part of your response to the charge?
A. Yes. Is that one just to count 4?
Q. That's the motion to dismiss count 4?
A. Yes.
Q. And then on, I am sorry, on tab number 17 in binder 2 starting at KBA 2076, do you recognize this document?
A. Yes, sir.
Q. And that seems to run from KBA 2076 to KBA number 3173. Does that -- does that sound right?
A. Yes, sir.
Q. Okay. And how many binders, if at all, did you file with respect to your -- the second part of your answer?
A. There were 4 binders and also 4 flash drives. But I had to have 4 copies of each. So there was a total of 16 binders and 4 flash drives.
Q. But in terms of just the original documents that were filed?
A. There was 4, yes.
Q. All right. So the initial -- well, the original response was from KBA page 2045 through KBA page 2072. How many pages is that if you know?
A. 2045 and 2072? 30, the response is 30 something. This is almost 41 pages. I told you there was the one that was 41. It is that one.
Q. I understand that. But I was asking you about part 1. I am sorry?
A. Oh, I am sorry.
Q. Part 1. In your response to the charge, part 1, styled as a motion to dismiss. It is beginning here under tab 15. How many pages?
A. 100.
Q. Was it that response, it starts at 2045 and

Ms. Powell's belief was not reasonable and therefore the KBA has met their burden that Ms. Powell has violated SCR 3.130(8.1((b).

Whether Ms. Powell's belief was reasonable or not, in no way negates the 10,000 pages which she sent to the KBA in June of 2018, as well as her February 3, 2019, Response.

II. 19-DIS-006 THE DOG BITE CASE

This case arises from Ms. Powell's Representation of Angella Linton's medical claims stemming from a dog bite. Ms. Linton's daughter-in-law (Cindy Linton) was employed as Ms. Powell's paralegal and secretary. TR p 259, lines 5-16. Angella met with Ms. Powell on July 24, 2017, to discuss the case, and signed a retainer agreement the same day. TR p.259, line 2-6; KBA Ex. 34, p. 3797; TR p. 259, line 23; p. 260, line 15.

COUNT I: SCR 3.130(1.3) failing to act with diligence and promptness in the representation of a client.

Ms. Powell filed a lawsuit on behalf of Ms. Linton in the Trigg Circuit Court., KBA Ex. 33. Further, Ms. Powell undertook discovery on behalf of Ms. Linton in early 2018. Due to a lack of response by one of the attorneys, Ms. Powell filed a Motion to Compel with the Trigg Circuit Court and obtained an Order Compelling on March 21, 2018. KBA Ex. 33, p. 3530, 3352; TR p. 328, lines 14-20.

Ms. Powell closed her private practice around that same time, only retaining a few cases. TR p.266, lines 12-16.

Ms. Powell testified she reached out to Steve Underwood to take the case but was unaware he had not formally entered the case until she met with him in November 2018. TR p. 291, lines 13-15.

A. Okay. Sorry about that. Attached please find the proof that I had no clue that Steve hadn't entered an entry of appearance until November 7th. Same day I told Cindy. And that I wanted to talk to her first. I will get you your file and your mom's file back to you. This hassle isn't worth it at all. I have done nothing wrong. My conscious is clear. Do what you have to do.
TR p. 291, lines 12 – 19. (Text Message sent from Ms. Powell to, Mr. Linton.)

Ms. Powell every reason to think that Mr. Underwood was working on the case, as you will see below. Mr. Underwood was having his paralegal to periodically check in with Ms. Powell, just to make sure he was looking at all the medicals and complete information.

Respondent acknowledged that during the time frame she had never received an Entry of Appearance from Mr. Underwood's office. TR p. 283. Ms. Powell testified she was checking CourtNet, but this trial commissioner inquired as to how she could be checking Courtnet and not know Mr. Underwood had not entered his appearance. TR p.355; p.356, line 7.

Q. From May through November, that's a 7 month time frame mentioned here in these texts, did you ever just check CourtNet to see if Steve Underwood had filed an entry of appearance?
A. Yes, I did. Not often, but I did. And then I checked -- actually, I checked to see if -- mostly the other attorney that we couldn't get to respond, Mr. Null, Richard Null. Because previously Mr. Courtney and I both discussed, and this was prior to taking the job, that I did not want to take her deposition or take any depositions until we had discovery responses from Richard Null.
Q. So at any time when you were looking at CourtNet, did it ever show an entry of appearance from Steve Underwood?
A. It did not, no.
TR. p. 293, lines 9-25.
MS. POWELL: I don't know how frequently it was, but I would check it. I probably checked it more after. But I did check it to see about Mr. Null's response. And then I called Mr. Courtney.
TR. p. 356, lines 3-7.

New counsel was finally hired by ANgella Linton herself in early 2019 almost one (1) year after Ms. Powell filed her Motion to Compel Discovery Answers.

Also concerning in this case is that Ms. Powell never sent any communication in writing to Ms. Linton advising her that she was closing her practice. She appears to have relied upon the informality of communicating through her daughter-in-law which is not a best practice. Given the seriousness of the case, using written correspondence to put Ms. Linton on notice that MS. Powell was closing her office was the proper method of communication.

Ms. Powell's testimony succinctly confirms she violated this rule when questioned by the commissioner about working on the file in October of 2019 …

"And that's where the confusion gets. I never handed the case over to just Mr. Underwood. I always intended to continue the case with him.

Trial Commissioner Johnson: But you were working on the case at that point obviously …

Ms. Powell: Nobody was . . .

TR. p. 390, lines 5-23

And that of course is EXACTLY the problem, given that Ms. Powell closed her office in March 2018.

The Trial Commissioner mistakenly cited to page TR p.390, lines 5-23, when the actual cite should be page (TR p. 360, lines 5-23). The Trial Commissioner mistakenly asserts that she was asking the Ms. Powell about not working on the case in October 2019, when it should read October 2018. Regardless, it would seem that the Trial Commissioner intentionally leaves off the latter part of the phrase,

TRIAL COMMISSIONER JOHNSON: But you weren't working on the case at that point obviously because –
MS. POWELL: Nobody was because Mr. Null never answered anything.
TRIAL COMMISSIONER JOHNSON: Well, but you weren't filing anything at that point in October, correct?

MS. POWELL: Correct. Mr. Null never answered anything. And we were still waiting on him.

Q. And then did Mr. Null subsequently comply after that?
A. No. I believe it was even longer than that. And I'm basing this off of after Mr. Haggard got the case. I believe that nothing was done on it for nearly -- you can pull it up on CourtNet -- but it was like another year nothing had been done because no cooperation.
Q. Okay. Did you stall or delay the proceedings in any way?
A. No, I did not. I actually -- a complaint that has -- you file a complaint. You first have them come into your office at the end of July. And then I had already filed the complaint. I had already done interrogatories, propounded them and actually answered them. I had already done research through the case. I had already answered interrogatories, motion to compel. Like I was moving the case right along. I mean, it was from the end of July until I closed my practice in April. I didn't stall at all or delay it. From that point on, it was still waiting on Mr. Null. TR p. 329, lines 2-25.

COUNT II: SCR 3.130(1.4)(a) and (b) the duty to promptly inform the client of decisions requiring the client's informed consent as to the status of the ongoing case; promptly comply with requests for information from the client and explain client issues related to representation.

At them time Ms. Linton signed` the retainer agreement, Ms. Linton provided her contact information, her physical address, and telephone number. The same information she had had for many years and which she continues to have in 2022. Ms. Linton's landline had an answering machine. KBA Ex. 41, pp. 3939 and 3940.

Ms. Linton testified she had difficulty communicating with Ms. Powell during Ms. Powell's representation and had to rely upon her daughter-in-law, Cindy, to obtain/relay information. KBA Ex. 41, pp 3966, 3975. TR p. 263, lines 17-21.

The Trial Commissioner falsely asserts that Ms. Linton testified she had difficulty communicating with Ms. Powell during Ms. Powell's … and "had to " rely upon her daughter-in-law, Cindy, to obtain/relay information. What is clear, is that she

is not citing to testimony of Ms. Angela Linton, rather she is only including a partial narrative from testimony given by Ms. Powell.

Q. Up to that point, from roughly July or August 2017, when Ms. Linton came to your office, until the closing of your office April of 2018, how did you most frequently communicate with Ms. Linton?
A. Usually through Cindy. And that was something that I asked the very day that she came in my office if she was okay with Cindy knowing about her case, if she was okay with communicating through Cindy. And she said absolutely. Cindy is actually the one that -- this neat penmanship, that's not mine. That is Cindy's.
Q. So did you ever during that time call Ms. Linton, Angella Linton, not to be confused with Cindy Linton, did you ever call Angella Linton directly during that time?
A. Between what time?
Q. August 2017 through April 2018?
A. Yes. At least on one or two occasions I called concerning -- she said they were suggesting that she got therapy and she didn't want to do it. And so I had to call her and encourage therapy if they were actually suggesting that. And I learned that she wasn't going to do it from Cindy so that's why the call was made.
Q. Did you ever send her a letter or correspondence, written correspondence?
A. I sent them through Cindy because she had to sign the verified complaint. And then she had to sign the interrogatories. Her and Cindy lived right down the street from each other on the same property.
Q. All right. So you're talking about pleadings that she would have to review?
A. Yes.
TR p.263, lines 17-25; p.264

A. Well, short -- well, I -- I just never did have much communication with her.
Q. Okay.
A. I went through my daughter-in-law when she was working with her and I would ask her questions.
Q. Okay. Did -- did -- did you regularly communicate with Cindy regarding what's happening in your case –
A. Well –
Q. -- while she was working for Ms. Powell?

Q. Okay. Did you -- did you have any -- I mean, did Cindy -- did Cindy update you and what was happening when you asked her?
A. Yeah. She would tell me, "We're working on it," and that's about the size of it. "We're working on it," and that's about the size of it.
Deposition of Angella Lintion - TR p.35, lines 16-25; TR p. 36, lines 4-9.

Q. Ms. Linton, the time frame in question when we're talking about you having difficulty contacting Ms. Powell, give or take, is about six months. Is that fair?

A. Well, all through -- after I contacted her to be my lawyer and after my daughter-in-law left the office, and the neighbors and all was wanting to know what was going on, maybe once or twice in that session I tried to call her and got no answer.
Deposition of Angella Lintion TR p.44, lines 19-25, p. 45, lies 1-2.

Q. Okay. Did -- did you ever specifically -- did you ever specifically tell Ms. Powell not to communicate with Cindy regarding your case?
A. No
Deposition of Angella Lintion TR. p.36, lines 10-13.

Ms. Powell testified that when she closed her practice, she did not notify Ms. Linton in writing. TR. p. 269, line 22; p. 270, line 1.

The Trial Commissioner's Order contains a plethora of false and incomplete statements to deceptively portray the version of events that the KBA seeks to use to justify this
Flagrant false prosecution.

Q. Regarding Angella Linton, did you send her any kind of written notice about the change in your law practice?
A. I did not. I telephoned her personally. And I let her know -- would you like me to continue?
Q. Sure.
A. On May, it's in the phone records but I can't remember the exact date, but I telephoned her personally. And I told her that I was in a position that I would have to bring another attorney on board because I just started with the state. So, obviously, I had no available leave time to take off for depositions or for hearings. And she was fine with that and she completely understood that.
TR 269, lines 22-25; p.270, lines 1-11,

Cindy Linton noted that Ms. Powell had planned to transfer the office phone to Powell's personal cell phone to communicate with any lingering clients. KBA Ex. 41, p. 3902.

The Trial Commissioner falsely asserts the information that was testified to, by Cindy Linton and Ms. Powell.

Q. Okay. Do you know if she closed her physical office down?
A. I'm not positive. I know that -- my understanding, she was going to take her office phone in case she had any other clients that needed to speak with her –

Q. Okay.
A. -- to her home.
Q. To her home. So transferring office phone to home phone?
A. Yes, just in case she had any, I guess, lingering type client phone calls
Cindy Linton's Deposition - - TR p. 8, lines 24-25; p. 9, lines 1-10.

Q. And did you have an office phone related to that practice?
A. Yes. But it was tied to my cell phone. It was an extension from my cell phone number. And it would plug into a jack in the wall like a phone jack, but it wasn't set up just for that office and just for that office address location. It was set up with my phone.
Q. So that was a portable number?
A. Yes.

Q. Did you -- you mentioned, I don't remember the type of phone number you said, but it was transportable. Did you maintain that office phone for those clients to be able to contact you?
A. I did not. But all of those clients actually had my cell phone number. And the reason it wasn't maintained is because I took the phone home to plug in, full intention to plug it in at my house. But every one of my jacks in my house had been turned to cable outlets. They are not phone lines anymore.
Q. Did you send any correspondence to Ms. Angella Linton notifying her that your office phone was no longer operable?
A. No. But I did tell her that on the phone. And she had my cell phone. And I do recall telling Cindy that it would not work in my house.
Q. Did you have voice mail or answering service tied to that office phone or your cell phone?
A. My cell phone absolutely, yes.
Q. And are you saying that that office phone never worked after leaving your physical office?
A. Well, I'm sure it worked. But it didn't work at my house because of the jacks were now cable outlets.
Q. Okay. So to rephrase, could anybody reach you on that office phone after you left your physical office?
A. No, they could not.
Q. And you do you remember what that phone number was?
A. (270)498-1709 maybe.
Testimony of Respondent; TR p.270, lines 12-25; p. 271, lines 1-18.

Cindy Linton reviewed a series of text messages during her deposition provided by Ms. Powell in her response to the bar complaint (KBA Ex. 34, p. 3554, 3562-3), and noted the number of times Cindy sent messages to Ms. Powell expressing how upset Angella Linton was because she had no update or communication from Ms. Powell and requesting

that Ms. Powell contact Angella Linton. KBA Ex. 41, p. 3904-3908. The messages cover a timeframe of April – December 2018.

> The Trial Commissioner used the statement above, "the messages cover a timeframe of April – December 2018," to aid in her fabricated assertion listed below. Respondent was simply stating that the text messages that were provided within her Response, began on April 30, and ended in December. There was zero testimony to assert that Ms. Angela Linton began asking for information through Cindy in April of 2018.
>
> **Q**. On page 3554 is it fair to say that the earliest text message there appears to be April 30; is that correct? Would that be April 30, 2018?
> **A.** Yes. It was actually -- yeah. It would be earlier that day. That's correct.
> TR p. 285, lines 9-14.

In her testimony, Cindy Linton noted that Ms. Powell's replies never indicated she ever contacted Angella Linton directly. KBA Ex. 41, p. 3908.

> The Trial Commissioner repeatedly asserts that the indisputable May 21st, 2018, telephone call made by Ms. Powell, directly to her client Angela Linton, on her house phone, is highly doubtful since, the limited text messages between the Respondent and Cindy Linton, does not indicate that she called Angela Linton.
>
> **Q.** All right. So we've gone from May through December. Out of all these text messages you have sent Ms. Powell did you see any that relayed that she has talked to Angella?
> **A.** No.
> **Q.** Okay. And do you remember Angella saying that she had heard from Ms. Powell as in relation to these messages?
> **A.** No, she had not because that's why she would ask me to, please, see what was going on.
> TR p.15, lines 10-19.

At trial, while Ms. Powell acknowledge the number of times Cindy Linton requested Ms. Powell to contact Angella Powell directly, (TR p. 284, line 19; p. 85, line 8; page 285, line 8, p. 287, line 1; p. 316, line 15; p. 325, line 13. Ms. Angela Linton reported Ms. Powell never once reached out to her to directly meet and talk about the case. KBA Ex. 41, p, 3953.

A True representation to the cites listed above by the Trial Commissioner, is as follows:
TR p.284, lines 19-25;

Q. All right. And as part of this submission you have supplied text messages that appear to be between you and Cindy Linton. I think the easiest ones to read are attached right here on this document, Exhibit 34. If you will turn to page 3554? Do these appear to be the text messages you are referring to attached to your response?
A. Yes.
Q. Okay.
A. And this is not all our text messages. Cindy and I actually talked nearly every day multiple times a day. As I explained, all the phone records that show me speaking to Cindy didn't necessarily have anything to do with Ms. Linton's case, but –
TR p. 285, lines 1-8.

The point of making comparisons to the few cites used by the Trial Commissioner, to what was actually asserted, reveals that the Board of Governors in no way was reviewing the Trial Commissioner's Order to see if it was supported by substantial evidence. One can only assume that they rubber stamped it, without even reviewing any material.

Comparison of cites contained in Trial Commissioner's Order.
TR. p. 284, line 19, Begins with a question by the Trial Commissioner. Line 19; "All right. And as part of this submission"
TR. p. 85, line 8, "still owned 50% of everything in that"
TR. p. 285, line 8, "case, but –
TR. p. 287, line 1, "Angella Linton?"
TR p. 316, line 15, "Al right. KBA 3554, this is the first page"
TR. p. 325, line 13, "longer in business"

Q. Okay. Did you ever request an in-person meeting with Ms. Powell?
A. No.
Q. Okay. Did you ask Cindy to tell Ms. Powell that you wanted a meeting with her?
A. I didn't want no meeting. I just wanted to know what was going on with the case. Yes, I told Cindy –

Angella Linton testified that she didn't want a meeting.
Deposition of Angella Lintion TR p.56, lines 7-14

This Trial Commissioner was quite concerned about a lack of direct contact and asked Ms. Powell why she simply did not call Angella Linton directly, when she knew that her client was anxious and distressed. TR p. 358, lines 12-24.

TRIAL COMMISSIONER JOHNSON: If you knew that -- you testified earlier today that, I think your words were that Ms. Linton is, you know, kind of, I'm trying to look for the exact words that you used.
MS. POWELL: Anxious?
TRIAL COMMISSIONER JOHNSON: Huh?
MS. POWELL: Anxious?
TRIAL COMMISSIONER JOHNSON: Anxious. And you knew she was distressed.
MS. POWELL: Cindy says that.
TRIAL COMMISSIONER JOHNSON: Is there a reason that you didn't call her yourself?
MS. POWELL: Because I was given the wrong number. And I thought I had the right number.
TR p.357, lines 12-25; p.358, line 1.

Ms. Powell claimed she was given the wrong number by Cindy Linton in a text exchange in November 2018 KBA Ex. 41, line 3925.

Ms. Powell emphatically proclaimed within her Response, and multiple times during the hearing that Cindy Linton mistakenly gave her the wrong phone number. Ms. Powell testified that she didn't even realize that Cindy Linton had given her the wrong phone number until after the complaint came in, in January 2019. At no time, has anyone asserted that Cindy Linton gave Ms. Powell the wrong number in November. The Trial Commissioner falsey cites to KBA Ex. 41, line 3925, as to where Ms. Powell allegedly stated that she was given the wrong number in November of 2018. The citation is not only false, it's entirely inapplicable since Ex. 41, is the deposition of Cindy Linton.
But to that end, please note that both Cindy Linton and Angella Linton, testified that Cindy Linton invertedly given Ms. Powell the wrong phone number on multiple occasions.

TRIAL COMMISSIONER JOHNSON: Okay. But this was -- now you know that it's August and now you're in October and you still haven't made any personal contact with your client?
MS. POWELL: I didn't realize that was even the wrong number until the complaint came in.
TRIAL COMMISSIONER JOHNSON: Okay. But my point is, you could have asked Cindy for another number to call her, couldn't you? You could have asked for a home number? You could have made a comment to her and said, hey, I've got this number and I can't get ahold of her. You could have asked that, couldn't you?
MS. POWELL: I actually did ask. Not for a home -- I actually thought that was her home number.
TRIAL COMMISSIONER JOHNSON: Or you could have said, hey, Cindy I can't get ahold of her. You didn't say that anywhere in these texts, did you?
MS. POWELL: No. But I know I told that to Cindy.

TR 359, lines 2-23.

"My daughter-in-law text Mrs. Powell to please give me a call in several of these text messages, she did accidently give her my cell phone number but that should not have mattered because Mrs. Powell had both my home phone and my address because that was what I put on my contract with her and she did apparently call me on May 21, 2018, at the correct phone number."
Supplemental Response of Angella Linton, submitted on February 21, 2019.

Which according to the Respondent, was never mailed to her. The KBA was fully aware that Angella Linton acknowledged the May 21st, 2019, phone call on at least two occasions within her supplemental response. The very first sentence reads,

"I am not going to deny that Mrs. Powell apparently did call me on May 21, 2018, since the phone records do indicate that she did. But I will say that I do not remember ever speaking to her on the phone before she called me on December 14, 2018."

Moreover,

Q. Okay. Okay. Now, do you recall -- do you recall giving Ms. Powell the wrong number for your mother-in-law on at least one occasion, if not more? I'm not saying you did anything wrong. I'm just asking you factually if you recall it.
A. Well, there's a -- I seen a little note on one -- apparently -- I didn't give the wrong number, but I give her a cellphone number that she does not answer that often and did not realize that I did not give her the home phone number. That is a cellphone –
Q. Okay.
A. -- that belongs to her. She just doesn't –
Q. Okay
A. She keeps it in her purse and hardly ever answers it because she just has a few minutes on it.
Deposition of Cindy Linton, TR p.27, lines 13-25; p.28, lines 1-2.

But the Trial Commissioner was relentless about Ms. Powell being .....

Angella's landline remained the same as was provided on her retainer agreement.

However, the larger issue is why did Ms. Powell wait until November to contact Ms. Angella Linton when she became aware Angella Linton requested to speak to her as early as April 2018.

This is a direct, and yet another deliberate false assertion made by the Trial Commissioner.
The Trial Commissioner must first falsely assert that, "Ms. Powell claimed she was given the wrong number by Cindy Linton in a text exchange in November 2018." Then the Trial Commissioner has to take information entirely out of context in order to made the deliberately false assertion, "when she became aware Angella Linton requested to speak to her as early as April 2018. The Trial Commissioner seeks to combine the fact that the first text message that was provided was dated April 30, 2018.

The questioning below was by the Trial Commissioner, to the Respondent. So she was fully aware that the text message sequence began on April 30, 2018, but the first time Cindy Linton mentioned Angella Linton, was not until **August 27, 2018.**

Q. On page 3554 is it fair to say that the earliest text message there appears to be April 30; is that correct? Would that be April 30, 2018?
A. Yes. It was actually -- yeah. It would be earlier that day. That's correct.
TR p. 285, lines 9-14.

The attached KBA Batestamp #3554 -3562, clearly reflect that Ms. Powell was given the wrong phone number on the very first time that Cindy Linton, made a request for information on August 27, 2018. "Angie has asked me probably a dozen times about her case over the last few days. Can you give her a call she is getting anxious."
Respondent set out within her Response to the KBA charges, she tried calling the # provided, but it would just ring, and there was never a voicemail option.
So, I text Cindy, on the same afternoon to have her to relay an update to Angella Linton for me. February 3, 2019, Response, page 2, paragraph 5. On the same afternoon, Ms. Powell's text message response to Cindy was, "Let her know that I talked to Dennis Courtney's office last week he is on vacation until the end of the week. He has been in contact with Mr. Underwood and his office is not surprised that we have heard nothing from the other attorney."

Although during Angela Lintons testimony, she emphatically claimed that she doesn't remember Ms. Powell calling her on May 21st, 2018, her Supplemental Response, directly refers to this specific message, which included a reference to Mr. Underwood.
However, in Angella Linton's Supplemental Response, Angella Linton intentionally leaves off the reference to Mr. Underwood. "Let Angie know that I talked to Dennis Courtney's Office last week he's on vacation until the end of this week……" "This was right before the Labor Day Holiday weekend. I have wonder ever since maybe I misunderstood which Holiday, since we have had a lot of Holidays pass since Labor Day….."

Along the same lines, Andre Bergeron intentionally avoided discussing any text messages between the Respondent and Cindy Linton, which directly reference Mr. Underwood, because it would make it rather difficult to keep asserting that you had zero knowledge of the involvement of Mr. Underwood, when clearly the text messages prove otherwise. Why would the Respondent be referencing Mr. Underwood, in text messages to Cindy Linton, for it to be relayed to Angella Linton, if she had never received permission from Angela Linton to bring on another attorney as co-counsel.

Forcing a client to wait some seven (7) months for a simple return phone call is absolutely unreasonable. Relaying messages through Cindy Linton is also unreasonable. Once a client requests direct contact, all third party communication should have ceased, and Ms. Powell should have immediately contacted Angella herself.

The first request was made on August 27, 2018. Respondent testified that she tried calling Ms. Angella Linton, but had the wrong phone number. Regardless, the Respondent relayed what little information that she had on the same afternoon, through Cindy Linton, which was on par with the status quo. Ms. Linton, obviously received the message, since she is referencing it withing her Supplemental Response six months later.

Moreover, it was Cindy Linton requesting that I give Angela a call. There is no evidence or testimony to support the fact that Angella Linton requested direct contact with the Respondent. In fact, she stated "I just wanted to know what was going on."

Below is a list of text messages between Cindy Linton and Ms. Powell, that specifically reference Angela Linton's case. KBA BATESTAMP #3554 – 3562.
Text message on October 1, 2018 from Cindy Linton to Respondent,
"Angie is getting distressed about her case..
"Have you heard anything?" Later on the same day,
"Did you find anything out about Angie's case."
Then on October 9, 2018, "Let me know when you find out something on Angie's case she is getting upset about it."
Then on, October 24, 2018, Have you heard anything on Angie's case?"
November 2, 2018, text message from Respondent to Cindy Linton:
"Please let Angie know that I am meeting with Mr. Underwood next week to get update on the case, Miss you my friend!!!"
November 8, 2018, Message from Cindy to Respondent:
"Have you met with Mr. Underwood?
Respondent to Cindy on same day,
"I did it wasn't good. Just call me on your lunch please."
Cindy to Respondent

"Sorry just now saw your message my iPad and iPhone are not syncing lately and if I send message on iPad and reply will not show on my iPhone, I'll call you tomorrow.
On November 9, Cindy Linton to Respondent.
I'll call today, I'm leaving today at 11:30… I'll call you then! Angie should be called too. Here is her number."

On December 12, 2018, text message from Cindy Linton, was the first and only time that the Respondent, was made aware that Angella Linton was even attempting to contact her directly.
"Hey Kayce could you please call my mother in law about her case she is really wanting to know what's going on about it and has tried to call your office # a couple of times."

MS. POWELL: I did not have her number. But she had my cell phone number. And she kept calling my office, my old office that the phone did not work.
TR p.368, lines 14-17.

Q. Okay. All right. So you testified, I think, to both attorneys' questions that you reached out to Ms. Powell's office by telephone when you say she didn't call you back. Is that right?
A. Right.
Q. Who -- who did -- who did you talk -- did you talk to a live person at Ms. Powell's office to leave a message, or did you leave it on voicemail?
A. I just left a message.
Q. Okay. Did you ever request an in-person meeting with Ms. Powell?
A. No.
Q. Okay. Did you ask Cindy to tell Ms. Powell that you wanted a meeting with her?
A. I didn't want no meeting. I just wanted to know what was going on with the case.
Angela Linton's deposition TR p. 55, lines 23-25; p. 56, lines 1-13.

But Angella Linton stated within her Supplemental Response, dated February 21, 2019, p. 1, second paragraph, "when I would call her office number that was supposed to be still hooked up it never let me leave a voicemail and apparently, she was not checking for missed calls on her office phone."

A. I did not. But all of those clients actually had my cell phone number. And the reason it wasn't maintained is because I took the phone home to plug in, full intention to plug it in at my house. But every one of my jacks in my house had been turned to cable outlets. They are not phone lines anymore.
Q. Did you send any correspondence to Ms. Angella Linton notifying her that your office phone was no longer operable?
A. No. But I did tell her that on the phone. And she had my cell phone. And I do recall telling Cindy that it would not work in my house.

Q, Did you have voice mail or answering service tied to that office phone or your cell phone?
A. My cell phone absolutely, yes.
Q. And are you saying that that office phone never worked after leaving your physical office?
A. Well, I'm sure it worked. But it didn't work at my house because of the jacks were now cable outlets.
Q. Okay. So to rephrase, could anybody reach you on that office phone after you left your physical office?
A. No, they could not.
Testimony of Respondent; TR p.270, lines 12-25; p. 271, lines 1-18.

Angella Linton never testified to ever wanting, let alone telling the Respondent, that she wanted direct communication with the Respondent.

Ms. Powell testified about a fee-splitting arrangement with Steve Underwood, or in the alternative, that she would even work on the case for free. KBA Ex. 34, p. 3538, KBA Ex. 41, p. 3910.

Neither of these arrangement were appropriate without prior consent from the client. Angella Linton testified that she was unaware of any plan to involved co-counsel or that her case had been turned over to another attorney, and that she had never given permission for such a shift in representation or fee structure. KBA Ex. 35, p. 3825; KBA Ex. 41, pp. 3956, 3957, 3988.

As the Respondent and Attorney Steve Underwood testified during the hearing, Mr. Underwood determined that the Complainant's case did not appear to contain enough damages, for him to sign on, with the Respondent as co-counsel. Ms. Powell might have testified that her and Mr. Underwood, had spoken about splitting the 1/3 contingency fee agreement, but the agreement was never ratified. In any event, Ms. Powell emphatically testified and provided ample proof that she did in fact call Angela Linton on May 21, 2018, and obtained her permission to bring on another attorney, specifically Mr. Underwood, due to conflict of schedules with her new employment. The 1/3 contingency fee would have remained the same, and would have had no effect on Angela Linton. In any even SCR 1.15, does not set a time frame for when the written agreement for splitting fees. In fact, it states that it can be filed anytime prior to the receipt of any funds.

Ms. Powell admitted she had not discussed the prospect of Steve Underwood's representation by mail, or direct phone call to her client, instead indicating she simply called Cindy Linton about this important matter. TR p.283, lines 11-24.

The Trial Commissioner is taking testimony, from an entirely separate topic, to assert a deliberate false representation. The citation above was in reference to the August 27, 2018, text messages, and follow up conversation with Attorney Dennis Courtney's Office.

Q. At this time did you send Ms. Linton any correspondence formally withdrawing from the case or indicating that Steve Underwood had entered his appearance?
A. Again, I had no intention to formally withdraw. So, no, I did not send her any correspondence. I did, if you'll see, attached to that as soon as I talked to Mr. Courtney's office I telephoned Cindy immediately after.
Q. Did you telephone Angella Linton, your client?
A. I telephoned the number that Cindy had given me previously. But Cindy was giving me her cell phone number that does not have a voice mail.
TR p. 283, lines 11-24.

Ms. Powell has never altered her testimony and position that she in fact not only sought permission from Angella Linton on May 21, 2018, to bring on Mr. Underwood, she gave Ms. Linton the option to seek other counsel, if she chose to do so.

Q. Regarding Angella Linton, did you send her any kind of written notice about the change in your law practice?
A. I did not. I telephoned her personally. And I let her know -- would you like me to continue?
Q. Sure.
A. On May, it's in the phone records but I can't remember the exact date, but I telephoned her personally. And I told her that I was in a position that I would have to bring another attorney on board because I just started with the state. So, obviously, I had no available leave time to take off for depositions or for hearings. And she was fine with that and she completely understood that.
TR p. 269, lines 22-25; p.270, lines 1-11.

Q. Take a look at May 21st.

A. Okay.
Q. 1:40 p.m.
A. Uh, huh.

Q. It's highlighted. Is that the same number for Angella Linton that she listed on the complaint?
A. Yes, it is.
Q. And would you recount for us what you recall discussing with Ms. Linton that day -- well, would you recount for us what you recall discussing with Ms. Linton that day on May 21st during this 1:40 call? Looks like it originated in Hopkinsville, which you testified that's where you were?
A. That's where I was when I called.
Q. Went to Cadiz, Kentucky? A Uh, huh.
Q. And it was 17-minutes long? A Yes.
Q. What, if you recall, did you all talk about during that conversation?
A. I told her that I had taken a job with the state. That I had closed my practice. And that because of that, I wasn't going to be able to do depositions and stuff, that I'd have to bring on additional of counsel to assist in those because I had no leave time built up.
Q. Okay. As a result of that conversation, were you -- what was your impression regarding your permission to do that?
A. My impression was she was fine.
TR p. 303, lines 1-25; p. 304, lines 1-5.

Q. All right. And then you have said that in the May 21, 2018 call we looked at on the phone records, that was to Angella Linton?
A. Yes, sir.
Q. That you explained that Mr. Underwood would be coming onto the case or that you had been talking to him about the case?
A. Yes, I did. Because, as I explained before, I had no leave time at all built up.
Q. Okay.
A. And obviously there was going to have to be court dates and depositions. And they take place during the day.
Q. And would you say that Ms. Linton, Angella Linton, was she sophisticated when it comes to legal representation? Did she know anything about legal representation? Is she a trained lawyer, anything like that?
A. No, she's not a trained lawyer. No.
Q. And so you're saying that in 17-minutes on May 21st, you explained to her that you have a new job, you have hours that conflict with representation, you are going to work at odd times later, that there's another attorney, Steve Underwood, who is coming in, nuts and bolts of confidentiality, you sharing the case file, that he may be representing on the case, all of this explained in a way that made sense to Angella Linton in 17-minutes?
A. With all due respect, you just said it in a minute. So, yes, she did know. And she's actually -- I don't know why she didn't remember me calling her. But if I'm her age and get around as good as she does, I'm going to be very, very thrilled. And she is usually very honest actually, very sweet and sincere.
TR p. 346, lines 15-25; p. 347, lines 1-25.

Any decision relative to a change in the counsel of the case MUST be discussed and approved by the client directly before any action is taken on such change.

> Again, Ms. Powell testified and provided telephone documentation of the phone call that she made to Angella Linton on May 21, 2018. Just three days before she approached Mr. Underwood, at the Courthouse, on May 24, 2018. Which is also supported by the text messages that Ms. Powell provided at the onset.

At no time in this case was Cindy Linton the guardian, power of attorney, or agent for Angela Linton. Cindy Linton had no authority to make any decision on behalf of Angella. Yet that is routinely how Ms. Powell treated Cindy throughout this case. Any decision regarding any issue in the case required Angela's direct communication and her direct approval.

> At no time during these proceedings has anyone ever alleged that Cindy Linton was making or had made any decision on behalf of Angella Linton. There is no testimony by Angella Linton or Cindy Linton to support this preposterous notion. Cindy Linton just relayed information and updates, if there were any. But as the Respondent testified to, there was no updates, since attorney Null, had still failed to answer discovery request.

Ms. Powell also failed to communicate with Angella Linton regarding fees. While Ms. Powell did have a written retainer agreement, she did not provide Ms. Linton with a monthly or periodic accounting of how fees were disbursed. TR. p. 352, line 1; p. 354, line 5.

> Again, intentional misrepresentation by the Trial Commissioner.

> TR. p. 352, line 1, "over that, you must pay what is owed. Okay."
> TR. p.354, line 5, "That is correct."
> The Trial Commissioner falsely places into record the phrase, "over that, you must pay what is owed. Okay." Then she cites to an unrelated statement from the hearing, two pages later, where Respondent answered, "that is correct."

> **TRIAL COMMISSIONER JOHNSON**: And if you go over that, you must pay what is owed. Okay. Now, nowhere on your agreement, if I understand correctly, does it say how often she is to be billed; is that correct?

MS. POWELL: She wasn't to be billed after this.
TRIAL COMMISSIONER JOHNSON: No. No.
TR. p.351 line 25; p.352, lines 1-7.

TRIAL COMMISSIONER JOHNSON: All right. If I understand correctly your testimony Ms. Powell, she paid you a retainer fee of $1,500. And that was your retainer? But you also, on top of that you charged her $100 an hour, is that correct or not correct? I may not have understood how this was set up and that's why I'm just trying to –
MS. POWELL: No. The retainer was -- the $1,500 was to cover like the initial expenses and cover the initial time. It was a $1,500 retainer fee and it was billed out at $100 an hour rate.
TRIAL COMMISSIONER JOHNSON: Okay. All right. Got it. And it says it's non-refundable, correct?
MS. POWELL: Yes.
TR. p. 351, lines 10-24.

The Trial Commissioner was fully aware that it was a Non-refundable retainer agreement, which was to cover the initial expenses and initial filing, in accordance with KBA Ethics opinion, E-380.

An issue arose regarding Court filing fees of $400.00 paid from the original retainer amount, though the retainer agreement did not give Ms. Powell permission to do so. TR p. 265, line 10; p. 266, line 4.

TR p. 265, line 10, "I filed the case online. So it was 400"
Complete testimony, "I filed the case online. So it was 400 something, however much it was. And I sent her a copy of the receipt when it was filed"
TR p.266, line 4, "No"
Complete testimony,
Q. Does it say who is going to be responsible for fees or expenses?
A. That was something we had in our conversation that that is -- 1,500 was to cover first initial expenses. It doesn't spell out that this is covering the expenses?
Q. Yeah, that's my question.
A. No.

When in fact, the only time any issue arose concerning the $400 filing fee, was when Angella Linton was being combative upon cross examination.

Q. Ms. Linton, were you aware that the filing fee for the lawsuit was four hundred dollars?
A. No, I was not.
Q. Okay. If I told you that was -- if I told you that that was the cost of the filing and that that fee was actually paid, would you have any reason to disbelieve that?
A. I don't know who paid it.
Q. Well, I -- I understand that. But what I'm saying to you, is obviously the suit was filed, and whether Ms. Powell or Cindy paid it, it was actually paid on your behalf, was it not?
A. This is the first I knew anything about it so I really can't answer that question. I didn't know anything about it.
Q. Okay. All right. Well, with respect to when you hired Mr. Haggard, there was already a case -- there was already a case in existence at that time, was there not?
A. I really don't know. Like I said, I don't know anything about that four hundred dollars.
Angela Linton's deposition. TR p. 37, lines 19-25; p.38, lines 1-14.

The Trial Commissioner and the KBA has to allege damages. But it is clear that there was no damages in either action to anyone, other than the Respondent. The KBA does not get to use the testimony of a confused elderly woman, to create another issue, more than four years after the Complainant filed her complaint.

The only proof Ms. Powell offered to bolster her property communication with Ms. Linton is a 17-minute call shown on phone records made on May 21, 2018. Ms. Powell testified that in that call she told Angela Linton she was closing her office and transferring her file to Steve Underwood.

See above reference, Ms. Powell testified that she called Angela Linton and gave her, her options and received informed consent to communicate and work with Attorney Steve Underwood.

This is difficult to believe given the plethora of other evidence offered in the case-including all the test messages between Cindy Linton and Ms. Powell which occurred between April and December 2018.

Ms. Powell's February 3, 2019, Response to the Bar Complaint, specifically set out that, "I am attaching a few text messages between Cindy Linton and myself." The only evidence in this case was provided by the Respondent. The actual evidence in this case fully supports the Respondent's Response and testimony given throughout the hearing. The Trial Commissioner's Order is devoid of direct citation to the Complainant, other than the few attempts to make it appear as though she was vulnerable victim. But even those statements were taken out of context, with intent to increase sanctions against the Respondent.

This commissioner also notes that the phone call in question occurred some one (1) month after she closed her office.

KBA v. Hatcher, 929 S.W.2d 193 (Ky. 1996) supports this result. Hatcher held that an attorney who failed to return telephone calls to clients and fully and reasonably explain matters to clients so they could make informed decisions warranted a sanction for violating the rules of professional conduct as it relates to communication.

Hatcher is directly on point to the facts of this case.

Therefore, based on circumstances, testimony and evidence, Ms. Powell has violated SCR 3.130(1.4)(a)and (b).

COUNT III: SCR 3.130(1.6) without the informed consent, an attorney shared information about her client's representation.

This clearly occurred at the very moment Ms. Powell took Angella Linton's filed to attorney Steve Underwood before she had Angella Linton's expressed permission to do so.

Q. And it was 17-minutes long?
A. Yes.
Q. What, if you recall, did you all talk about during that conversation?
A. I told her that I had taken a job with the state. That I had closed my practice. And that because of that, I wasn't going to be able to do depositions and stuff, that I'd have to bring on additional of counsel to assist in those because I had no leave time built up.

Q. Okay. As a result of that conversation, were you -- what was your impression regarding your permission to do that?
A. My impression was she was fine.
Q. Okay
TR. p.

Q. And so you're saying that in 17-minutes on May 21st, you explained to her that you have a new job, you have hours that conflict with representation, you are going to work at odd times later, that there's another attorney, Steve Underwood, who is coming in, nuts and bolts of confidentiality, you sharing the case file, that he may be representing on the case, all of this explained in a way that made sense to Angella Linton in 17-minutes?
A. With all due respect, you just said it in a minute. So, yes, she did know. And she's actually -- I don't know why she didn't remember me calling her. But if I'm her age and get around as good as she does, I'm going to be very, very thrilled. And she is usually very honest actually, very sweet and sincere.
TR p. 347, lines 9-25

Angella Linton testified that Ms. Powell share her case file without her permission. KBA Ex. 32, p. 3522; KBA Ex. 35, p. 3825; KBA Ex. 41, p. 3953. Further, the first time she was made fully aware that Ms. Powell had done so was when Ms. Powell called her on December 14, 2018. KBA Ex. 41, pp. 3956-7.

The Respondent consistently referenced Attorney Steve Underwood, in her responses to Cindy Linton, and requested that Cindy relay the information to Angella Linton. If Ms. Linton had not given permission to do so, why would Ms. Powell be referring to him, in her messages for Angella Linton. It can not be lost on anyone, that this only became an issue, when Attorney Underwood decided that he didn't want to work on a contingency basis.

Ms. Linton acknowledged to the Trial Commissioner she had never signed or received any paperwork authorizing Ms. Powell to reveal her information to someone else. KBA Ex. 41, p. 3988.

Informed consent is all that is required. Ms. Powell testified to meeting all the elements of informed consent. Moreover, her phone records, testimony and text messages establishes such.

Ms. Powell admitted she took Ms. Linton's entire file to Court with her in the summer of 2018 and simply handed it to attorney Steve Underwood. TR p. 280, lines 7-9. Ms. Powell also admitted she had nothing in writing from her client to either speak to another attorney or transfer the case to another attorney. TR. p. 355, lines 6-16; p. 279, lines 3-20.

> **Q**. Had Ms. Linton, to that point, signed any updated paperwork authorizing you to give the client file to Mr. Underwood?
> **A**. She was aware that I had to seek of counsel and I was letting him review the file.
> **Q.** And how do you say that she was aware of that?
> **A.** Through our telephone conversation.
>
> **TRIAL COMMISSIONER JOHNSON**: I'm sorry. To be clear, you are talking about the telephone conversation from May?
> **MS. POWELL**: Uh, huh.
> **Q**. All right. In this same response on page 3537, this states -- I guess I'll just have you read it. It's a, the 4th paragraph down says, on Thursday July 26. If you'll just read that sentence?
> **A**. The same page? I'm sorry, which page?
> **Q**. The prior page. It's 3537.
> **A**. On Thursday July 26, 2018 I took the entire case file with me to court and handed it directly to Mr. Underwood. On August 21, 2018, after picking up a letter at my P.O. Box from Attorney Dennis Courtney inquiring if I had any luck reaching Attorney Richard Null concerning the already discovery responses. I called Mr. Courtney's office and let him know that I had taken a position with the state and that Mr. Underwood was going to be of co-counsel with me on the case. On the same day I contacted Cindy Linton just to let her know of the events that had transpired. And then I cite to the telephone records.
> **Q**. So it's your position there that on July 26, 2018, you took the file to Mr. Underwood?
> **A**. Yes. It was during DNA court. And we had DNA court every third Thursday.

TR p. 279, lines 13-25; p.280, lines 1-24.

Even if one believes that Ms. Linton gave some sort of consent in the alleged May 17 phone call (which is not supported by Ms. Powell's own text message stream with Cindy Linton from April – December 2018) an earlier breach of confidentiality had already

occurred, Ms. Powell admitted to talking to Mr. Underwood about Angella's case as early as February 2018. TR p. 345, line 23; p. 346, line 14.

> It's the definition of lunacy, to argue that a phone record, that is concrete in nature, didn't occur, because it was not mentioned within the few text messages provided to the KBA. Ms. Powell's Response specifically states that, "I am attaching a few text messages," not all text messages. In addition to the fact that this completely disregards the hours of phone contact between Cindy Linton and the Respondent. Not to mention the weekly lunch outings between Cindy Linton and the Respondent. The Trial Commissioner was extremely vocal about not giving much weight to the telephone records between Cindy Linton and the Respondent, because they were not directly to Angela Linton. Making it all the more puzzling that she has repeatedly asserted she doubts that the May 21, 2018 conversation took place, because it wasn't mentioned within text messages to Cindy.
> TR. p. 307, lines 9-25; p.308, lines 1-25; p. 309, lines 1-25; p. 310, lines 1-18.

> **A**. The respondent violated this rule when she handed over the complainant's case file to another attorney in hopes that the new attorney would litigate the case. Complainant was not given an opportunity to authorize this sharing of confidential information.
> **Q.** Is that accurate?
> **A**. No, it is not accurate at all. And if you look back, in May, I spoke with her in May. And it was the week before I was -- the text message that shows that I was asking -- talking to Mr. Underwood about the case.
> TR p. 332, line 1, p. 333, lines 1-11.

> Both the Respondent and Attorney Steven Underwood, testified under oath that no confidential information was exchanged during the initial discussions. The Trial Commissioner was not present, and most certainly not a part of the conversation, so how is it, that she gets to determine that confidentiality was breached.
> SHE DOESN'T!

> **Q**. So would you say, then, that initially it was just conversationally chatting. Is that how you were saying that?
> **A.** Yes, sir. As I recall, I think Kayce asked if I had been involved in or maybe she had heard I had been involved in a dog bite case. She had some questions. There was no confidentiality in that particular case. She asked general questions about whether or not we had been able to get it resolved.
> Testimony of Attorney Steve Underwood: TR p.200, lines 3-12.

The Trial Commissioner asked Attorney Underwood if he had a release from Angella to look at the file and the responded that he did not. TR p. 221, lines 21-25.

TRIAL COMMISSIONER JOHNSON: Okay. And did you have a release from Ms. Linton to look at the file from Ms. Powell's office?
MR. UNDERWOOD: No, ma'am. I didn't ask for it. That's on me.
Testimony of Attorney Steve Underwood: TR p.221, lines 21-25.

Q. Did you ever see from Ms. Powell a consent form from the client to authorize showing the client file to you?
A. No, sir. And I didn't ask for one.
Testimony of Attorney Steve Underwood: TR p.203, lines 8-11.

The Commissioner noted at Footnote 48 in Ms. Powell's brief in discussing Mr. Underwood's above response that Ms. Powell commented, "this is the collegiality nature of small-town practice." (Underline by Ms. Powell) (p 35 of brief). This comment demonstrates Ms. Powell's complete lack of understanding as to her duty to obtain the written permission from her client, Ms. Linton, before she shared confidentiality information with another attorney. The matter has nothing to do with collegiality or small-town practice.

Confidentiality is a core concept within the practice of law. Ms. Powell's blatant disregard for her client's confidentiality is more than troubling. A phone call and a simply written authorization to permit her to discuss the case would all it would have taken to cure this issue.

Informed Consent does not require written authorization. It requires communication and consent. The Respondent testified that she obtained informed consent during the May 21, 2018, telephone call with Angela Linton. Which occurred three days before she spoke with Mr. Underwood, on May 24, 2018, which is established by the text messages that she provided.
Without the telephone record and text messages, this would ultimately be a, he said she said matter. However, the Trial Commissioner and apparently the Board of Governors have chosen to ignore the actual evidence presented in the case, and unilaterally ignore any and all actual evidence, and take the word of an elderly woman, whose story wasn't even consistent enough, for anyone to site to.

Indeed, Comment 2 to this Rule is quite clear about how sacred the principle of confidentially really is: "A fundamental principle in the client -lawyer relationship is that,

in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation."

As it relates this Rules, SCR 3.130(1.0)(e) defines informed consent as:

> Agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonable available alternative to the proposed course of conduct.

Ms. Powell, by her own admission, violated confidentiality at least from February 2018 until May 17, 2018 (the date of the alleged phone call to Angella) when Ms. Powell claims Angella gave consent. However, based on Ms. Powell's own text stream between Cindy Linton(April-December 2018) and Angella's testimony, it appears clear Angella did not consent until December 2018.

> "The "date of the "ALLEGED" phone call." The only tangible evidence was provided by the Respondent. Angella Linton's complaint was contradictor, in of itself. But then her Supplemental Response, filed February 23, 2019, eliminates every cause of action that the KBA charged the Respondent with, in May of 2019. The Supplemental Response specially acknowledge that Angella Linton was unable to leave a voicemail, on the Respondent's prior office line. Despite this acknowledgment, Attorney Andre Bergeron suborn perjury during her deposition.
>
> See the above statements. This is just more illogical reasoning in attempt to justify what the Respondent is adamant that this entire ordeal is, a Kill the Messenger scheme.

COUNT IV: SCR 3.130(1.116)(d) by effectively withdrawing form actively representing her client in clear manner that did not protect the client's interests, nor give reasonable notice to the client to find other counsel, nor did Ms. Powell appropriately return items to the client, including refunding unearned fees.

Ms. Powell read at trial a text sent to a member of the Linton family, “Both Cindy and your mom knows I outsourced our file with Steve Underwood. I gave him the file in May and had been under the impression that he had filed an entry of appearance.” TR p.290, lines 18-25.

Q. So when you say that both Cindy and your mom know I outsourced your file to Steve Underwood?
A. Outsourced was probably the wrong word to use. It was always meant of counsel.

Q. Did you have contact with Ms. Powell during this time while you are evaluating the case to discuss some of those concerns you mentioned?
A. Yes, sir. Periodically. But oftentimes my -- I would leave a list for my paralegal to reach out to Kayce and Kayce's office to say, you know, is this the sum total of the medical treatment. Making I sure was looking at.

Q. Okay. So in this roughly 8 month period from August of '18, I am sorry, from April of '18 until December of 2018, how many times in your estimation did you speak with Ms. Powell regarding this case?
A. I did keep a log and I really don't know. It would just be a pure guess. There weren't 8 months of radio silence, Mr. Denison. So -- but my recollection was as I -- most of the contact that I would recall my paralegal would have originated was looking for additional meds and giving Kayce time to go back and make sure that everything that she had been given was still current and that was it. And I was looking for something that was injury-related that maybe she had had treatment for and surfaced later on or something that you could causally connect. And so giving Kayce time to do that and then giving us time to take a look at it. And then you just had to make that turn left/turn right decision. That's where I got to.
TR p.212, lines 11-25; p. 213, lines 1-6

Q. Just evaluated, you didn't much like it? Those are my words. I am not saying –
A. Well, no, sir. I mean working with Kayce would have been fine.
Q. No, I didn't mean that. I mean you didn't much -- you didn't have the highest opinion of the quality of the case given what you –
A. I thought there were issues of liability. But the determining factor for me was damages, just not enough compensable damages to create an unrealistic expectation in someone. And I find that. And I do just some civil practice, plaintiff work. But people watch ads on television and they get unrealistic expectations in my opinion when they walk in the front door in terms of what

might be the value of something. Not every injury is a lottery ticket to fame and fortune. It doesn't happen.
TR. p.213, lines 7-24,

However, the CourtNet summary sheet reveals that after the March 2018, Order to Compel Ms. Powell took no further action in the case until her formal to withdraw was filed on February 2019. KBA Ex. 33, pp. 3530-3532.

The Respondent testified, that no further action could be taken on the count of Attorney Null, having never responding to the discovery request propounded upon him, nor the Order for the Motion to Compel.

In December of 2018, when Angella finally received a call from Ms. Powell, Angela was instructed to call Mr. Underwood herself. KBA Ex. 41, p. 3857.

This statement is disputed not only by Ms. Powell's own testimony listed below, it is further disputed by the text message that was sent on December, 2018.

A. Mr. Underwood wants to meet with her when I'm up for it. I had a good couple of days last week and I have slept all week -- all this week. Mr. Underwood says that the contingent fee is not sufficient for him to get involved since only 9,000 in medical. But if Angella understands that it's not a huge payoff and she is willing to pay a retainer fee to him, he will start work on the case. I just want to be well enough to go with her to see him.
TR. p.321, lines 8-17. Text Message Ms. Powell to Cindy Linton.

A. She's never been worried about the money. She wants George out of the neighborhood.
TR p. 321, lines 21-22. Cindy Linton to Ms. Powell

Q. And then you responded to that?
A. Cindy, I know that and I tried to explain that to him. But he needs to hear all of that from her and in the right context, too. I want you to come with us to meet Mr.Underwood. He had the mentality of most attorneys. I was just worried about telling you and Angella that Mr. Underwood wanted to work as an attorney on retainer.
TR. p. 322, lines 1-6.

Ms. Powell Response to the Complaint, submitted on February 3, 2018, "Despite what I would deem, completely uncalled for, messages from Mr. Linton, I still told Angella Linton that I would go with her to speak with Mr. Underwood, and also do work after hours for free to save her from quickly using up her retainer fee with

Mr. Underwood. The telephone conversation actually ended on a somewhat positive note.
Respondents February 3, 2019, Response to Inquiry Commission.

It was unclear at Trial exactly what transpired when Ms. Powell and Angella finally talked by phone in December 2018.

Q. Okay. Do you recall the substance of this conversation that you had with Ms. Linton?
A. Yes. We were actually talking about the text message. And I had explained to her that I had just had surgery and that I –
Q. Let me stop you there, if I can. Just for clarification purposes, when did you have surgery?
A. November 28th.
Q. Okay. And what type of surgery, if you don't mind me asking?
A. I had a complete internal organ pelvic prolapse.
Q. And you referred to that in the -- in your response?
A. Yes.
Q. Okay. And how long were you down from that?
A. Five and a half weeks. A long time.
Q. Okay. All right. What did you do -- do you recall any more of the conversation? 36 minutes is a pretty lengthy telephone call in some circles. What, if anything else, do you recall from that conversation with Ms. Linton?
A. I'll give you my impression. She was actually very sweet and very kind and told me to take care of myself.
Q. Were your services terminated that day?
A. No.
Q. Okay.
A. No. And I told her that I would continue working on her case. And I again explained to her that I definitely would not have any days that I could take off. And I even told her that I told Mr. Underwood that I would work on the case for free. I just didn't have the available leave to continue on the case by myself. And then I told her that I would help her find another contingency fee attorney and –
Q. Okay.
A. -- told her I would help her.
TR p.315, lines 3-25; p. 316, lines 1-14.

Ms. Powell denies her services were terminated during that call. However, she aloe testified, "I definitely would not have any days I could take off. And I even told her that, I

told Mr. Underwood that I would work on the case for free. I just didn't have the available leave to continue on the case by myself." This is another confusing signal to the client – she is not withdrawing yet has no time to work no the case. TR p. 316, lines 4-12.

> The Trial Commissioner and the KBA both seem to want to ignore the reason as to why the Respondent would have no available leave time. The Respondent set out from the beginning that she had a serious complicated surgery, which caused her to be off her feet for 6 weeks.
>
> **A.** Yes. We had talked about I would do all the work but I just couldn't attend any depositions or things of that nature because I had no available time. And then when I did actually go in and meet with him in November, I had already scheduled a surgery that was going to put me off my feet for 5 to 6 weeks. And believe it or not, state employees can be really sweet sometimes and people donated leave time. So I didn't even have enough leave time to have surgery. And there was no way I could continue on with these kind of cases when I had no leave time myself.
> TR p.292, lines 22-25; p.293, lines 1-8.

As to the issues of fees. Ms. Linton's fees were never itemized at any point during the representation, nor at the closing of Ms. Powell's office. KBA Ex. 41, pp 3960-1; KBA Ex. 41, p. 3990.

> It was not necessary. It was a non-refundable retainer agreement, which was more than reasonable. The retainer agreement was to cover initial expenses and the filing of the complaint. The Respondent testified to this.
>
> **Q.** There is also a contingency portion further down? But what did you take that first part to mean that is tied to an hourly rate?
> **A.** The initial filing and filing of the contract and the complaint and interrogatories. This is typically not a case that I would have taken myself but I did it as a favor for Cindy as we were good friends at the time.
> TR. p. 260, lines 16-23.
>
> **Q.** Ms. Powell, did Ms. Linton pay a retainer agreement at that time?
> **A.** Yes, she did.
> **Q.** And how much was that?
> **A.** It was for 1,500.
> **Q.** And at that time did you have an agreement to perform legal work for her at an hourly rate?
> **A.** Yes.

Q. And what was that hourly rate? A It was $100. It was $50 cheaper than I normally charge anybody because it was Cindy's mother-in-law.
TR. p. 261, lines 10-21.

Any unearned fee should have been returned to Ms. Linton as required by the Rule. This alone constitutes a violation of the Rule.

The Trial Commissioner received the same 200 plus, page response, that Ms. Powell had submitted to everyone. No reasonable person would believe that there Were any fees that would be left over, from a $1500.00 retainer. Not to mention that it was a "non-refundable" retainer agreement, since by the Angella Linton, and Ms. Powell.
Q. Did you have contact with Ms. Powell during this time while you are evaluating the case to discuss some of those concerns you mentioned?
A. Yes, sir. Periodically. But oftentimes my -- I would leave a list for my paralegal to reach out to Kayce and Kayce's office to say, you know, is this the sum total of the medical treatment. Making I sure was looking at. **Oh, it was a thick file. Kayce had done a lot of work on it.** And I was mainly, once I kind of got grasp of it, I was more focused, you know, on the meds, medicals, and what were the compensable damages. And came to the conclusion that you -- running the risk of ending up -- I mean it was not an hourly case. It was not going to be an hourly case. You are going to end up with somebody spend a lot of money likely to be very unhappy.
TR. p. 206, lines 2-15, Testimony of Attorney Steve Underwood.

Q. What kind -- you said the file was pretty good sized because she had done quite a bit of work on it?
A. Yes, sir.
Q. Okay?
A. I was surprised. I wasn't surprised that it was Kayce. I wasn't surprise that Kayce brought a thick file. I was surprised that in a dog bite case that it had as much depth and research and all of that that was in it. Okay? I was expecting some pleadings which were early on. And I was expecting some medical records early on. And along with that was the research that she had done, yes, sir. And I looked at it. She had done a lot of work on it.
TR. p. 219, lines 1-11, Testimony of Attorney Steve Underwood.

However, under the clear evidence admitted during the trial of Ms. Powell's failure to communicate with Ms. Linton and keep her informed about her cased and substantial changes taking place in her case over the 7-8 month period, the failure to take responsibility steps to keep Ms. Linton so informed and the failure to protect Ms. Linton's

confidential information it is clear by a preponderance of evidence that Ms. Powell violated SCR 3.130(1.16)(d) by failing to protect Ms. Linton's interest upon termination of representation. Simple steps such as filing a motion, communication to the client by letter and phone call would have cured these issues. Additionally, providing a monthly accounting of the client's funds and the closing out of the client's billing account and mailing out a check to the client when Ms. Powell closed her office were simple routine standard procedures.

> There were no changes made to her case. The Trial Commissioner has falsely taken information out of context in order to support, her false assertion that Ms. Powell sought permission from Cindy Linton to bring Attorney Steve Underwood on board. Apparently, the Board of Governors failed to see through the false statement.

NO MS. POWELL, DID NOT!!!!! ..... this is cut copied and pasted from above, just so you can see what the Trial Commissioner did..... I NEVER EVER SAID, that I got permission from CINDY to bring on Mr. Underwood.

Ms. Powell admitted she had not discussed the prospect of Steve Underwood's representation by mail, or direct phone call to her client, instead indicating she simply called Cindy Linton about this important matter. TR p.283, lines 11-24.

> The Trial Commissioner is taking testimony, from an entirely separate topic, to assert a deliberate false representation. The citation above was in reference to the August 27, 2018, text messages, and follow up conversation with Attorney Dennis Courtney's Office.
>
> **Q.** At this time did you send Ms. Linton any correspondence formally withdrawing from the case or indicating that Steve Underwood had entered his appearance?
> **A.** Again, I had no intention to formally withdraw. So, no, I did not send her any correspondence. I did, if you'll see, attached to that as soon as I talked to Mr. Courtney's office I telephoned Cindy immediately after.
> **Q.** Did you telephone Angella Linton, your client?

A. I telephoned the number that Cindy had given me previously. But Cindy was giving me her cell phone number that does not have a voice mail.
TR p. 283, lines 11-24.

SANCTIONS

In this case, the record established by a preponderance of the evidence that Ms. Powell violated each of the eight (8) charges stemming from both the 19-DIS-0006 and 17-DIS-0121.

As discussed in detail in this Commissioner's Report, the charges cover a broad range of topics, from failure to communicate, failure to protect client's best interest, violation of client confidentiality, and failure to provide a timely accounting of client fees and returning of client's fees.

In evaluating whether sanctions are appropriate, the Kentucky Supreme Court, through Anderson v. Kentucky Bar Association, 262 S.W.3d 636 (Ky. 2008) looks to the ABA Standards violated, the lawyers mental state, the actual or potential injury to the client, and the existence or mitigating factors.

The factors as they appl in this matter are:

A. Duties Violated:

1. Duties owed to client – Related to 19-DIS-0006: Respondent failed to act diligently on behalf of her client, Ms. Linton, failed to respond to repeated attempts to communicate with her, shared Ms. Linton's confidential information, essentially abandoned the case in hopes another

attorney would handle it, and filed to account for the fees earned or return any unearned fees.

December 12, 2018, is the first and only message from Cindy Linton, that directly asserted that Angela Linton had been tried calling the Respondent's old office number, which no longer worked. The Respondent testified that she gave Angela Linton her cell phone # during their May 21, 2018, phone call, and told her that her old office number was no longer operational.
Angela Linton testified that she only called once or twice during this time period. Moreover, most of the text messages from Cindy Linton, simply asked for an update. It was Cindy Linton who requested that the Respondent call Angella Linton, but then mistakenly gave her the wrong phone number three times. Angela Linton, Cindy Linton, and the Respondent all acknowledged that Cindy mistakenly gave her, Angela Linton's cell phone number, which does not contain a voicemail option. Yet somehow, the Trial Commissioner has wholly taken it upon herself to assert, Ms. Powell CLAIMS, that she was given the wrong phone number in November. She makes this statement in order to support her false assertion that Ms. Powell knew as early as April that Angela Linton was trying to get in contact with her, but she waited until November, 2018.

The undisputable evidence shows that Ms. Powell contacted Angella Linton, personally on May 21, 2018. Moreover, the first text message from Cindy, asking about Angella Linton's case did not occur until August 27, 2018. This text message exchange specifically mentions both, Angela Linton, and Attorney Steve Underwood. Angella Linton herself mentions this particular message within her February 23, 2019, Supplemental Response that according to Ms. Powell was never sent to her.

Ms. Powell's assertion that the Supplemental Response was never sent to her has much credit, considering that four page response, wholly negates all four charges from -19-DIS-0006, which was filed the first wee of May, 2019.

In any event, Ms. Powell testified that she did receive complete and full consent by Angela Linton, on May 21, 2018, to speak to Mr. Underwood about her case, share her case file with Mr. Underwood, and bring him on, of-counsel. What should be abundantly apparent even through simple text messages alone, is that none of this was even an issue until, Mr. Underwood declined to get involved in the case, due to minimal damages. Ms. Powell had to have an unexpected surgery which ultimately used up all of her available leave time.
Ms. Powell didn't even learn that her services had been terminated, until she picked up the Complaint from the post-office on January 23, 2019. Wherein, she immediately obtain a copy of the case file, so she could

response to the complaint, as well as, fulfill her duties to return the case file to her client.

Q. Okay. Well, have you seen the Complaint that she filed for you?
A. No, not really, because, like I said, when Haggard took over the case I didn't pay no attention what she sent me, a bunch of papers.
TR. p. 40, lines 4-8.

A. Only papers I got was after Steve Underwood handed these copies over. Then she sent me all of these copies (indicating), and, like I said, I didn't pay no attention to them, either, because I don't like reading. I don't like paperwork.
TR. p.55, lines 18-22.

A. -- she sent me this -- all of this stack of papers at the end.
TR. p. 56, lines 23-24.
Even after the case was taken on by another attorney, nothing was done on it for another year, due to the failure of Attorney Null to response to the discovery request propounded by the Respondent. Then two and half years later, and another Order to Compel against Attorney Null, Attorney Ken Haggard came to the exact same conclusion as Mr. Underwood. There were not enough damages to continue the case.

At all times herein, Ms. Linton had unreasonable expectations for the outcome of the case.
Q. Ms. Linton, do you recall -- do you recall telling Ms. Powell that the only thing that you wanted out of the case was to get those people off of your property or out of your neighborhood?
A. Yeah, I'd like to get them out of the neighborhood, but all the neighbors would because they have destroyed our neighborhood really.
Q. Okay. All right.
TR. p.50, lines 9-16.

The Complainant was NOT out any personal funds for medical expenses.
Q. Ms. Linton, did you, also, have insurance or did insurance pay a significant amount for the dog bite?
A. Yes, my in -- yes. I've got good insurance, thank goodness, and I didn't really want them to have to pay for something somebody else created. But they were going to go ahead and start charging me late charges and I had to go ahead and let my insurance pay for it.
Q. Okay. Did you, also, want to recover to offset your insurance?
A. Yeah. That's what Haggard told me. If we got anything out of the case I would have to pay the insurance company, United Health, back.
Q. Okay. So part of your original reason –
A. That was the rea -- that was the original reason why I filed, was to get them to pay for something that they did deliberately.
TR. p.51, lines 1-15.

2. Duties owed as a professional – Related to 17-DIS-0121: Respondent failed to maintain the integrity of the profession when she recklessly and repeatedly questioned the integrity of multiple Kentucky judges and either used or threatened the use of disciplinary and criminal proceedings to get an advantage in a pending matter. Additionally, her seven year "war of attrition" placed a burden on courts and opposing counsel and disrupted the normal workings of the court.

B. Mental State: Knowing

C. Actual or potential injury to the client caused by lawyer's misconduct: (See Section 1 below regarding the vulnerability of the victim).

D. Existence of aggravating or mitigating factors: (See Section 1 below)

Section 4 of the ABA Standards addresses sanctions for violations of duties owed to clients. In particular, Section 4.4 deals with lack of diligence, and Section 4.2 provides:

"Suspension is generally appropriate when: (a) a lawyer knowingly fails to provide services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

Once again, there was no injury to the client. The delay was not due to actions or inactions of the Respondent. There wasn't even a potential injury to be had, under the circumstances. The Trial Commissioner had to invent an issue regarding the $400, filing fee. The Trial Commissioner believes that suspending the Respondent's license to practice law for a year, is appropriate based off, an alleged damages, that she created. Majority of attorneys charge nearly that much an hour.

Section 4.2 deals with failure to preserve the client's confidence, and Section 4.22 provides: Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client no otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client."

Section 7.0 discusses sanctions for violations of other duties owed as a professional. Section 7.2 provides: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is in violation of the duty owned as a professional, and causes injury to potential injury to a client, the public, or the legal system."

Aggravating Factors

Section 9.2 of the ABA Standards and Kentucky case law recognizes that the existence of aggravating facts "may justify an increase in the degree of discipline to be imposed." Kentucky Bar Association v. Bierbauer, 282 S.W.3d 318 (Ky. 2009). The aggravating factors as they apply to this case are:

a. Multiple offenses:

Respondent violated multiple rules of profession conduct in each file.

b. Dishonest or selfish motive:

In the 17-DIS-0121 disciplinary case, Respondent appear to have pursued seven years of litigation through District and Circuit Court, the Kentucky Court of Appeals, and even to the Kentucky Supreme Court for a reason other than dedication to her client. There is a very little known of the original scope of representation agreed to between Respondent and her client Steve Chandler.

Q. Now for this hearing, you were served with a subpoena duces tecum. Did you bring any of the documents requested in that subpoena duces tecum?
A. I have the contract but not the signed ones. I have them on my computer. The contracts were signed back in 2011 and 2014. But I have asked Becky, Steve's ex-girlfriend, to scan those to me. So hopefully I will have them tomorrow, scan me the signed ones.
Q. And in lieu of the physical documents, can you explain what your representation agreement or fee agreement was with Mr. Chandler?
A. Well, initially it started out as he was paying me by hour. He was paying me $100 an hour. And that began in July of 2011 right after they found his brother. And after the first hearing in December, I knew we had to switch to a contingent agreement because I knew it was going to be a battle. So we had to switch to a contingent agreement. And I offered to take the case on for 15 percent. And he scratched it out and said, no, 20 percent. So he upped that. Then post-trial with appellate work and everything continuing, then we went to 33 percent. But the 33 percent was conclusive of all of it. So that includes like every probate, since they were all so inner-connected, anything they were doing in probate case, it included that same 33 percent. I wasn't going to charge him 33 percent of each one of those cases.
Q. So then would it be correct to say that you have several different versions of the retainer agreement with Mr. Chandler as you adjusted that fee agreement?
A. There would be 3. The last one actually kind of, when we discovered that they were taking it in different places, it kind of included it all, yes.
Q. All right. And you were served with a subpoena duces tecum back in mid February, is that correct?
A. I believe that attempted service. But they ended up having to serve my old office and they sent it to me in the mail. So I got it on the first week of March, you are correct.
Q. You weren't served by a sheriff on that?
A. A sheriff tried to serve it at my old office.
Q. Okay.
A. And they took it and put it in the mail to me.
Q. But you don't have any of those documents today physically with you?
A. I do not.
Q. All right. So to just, because we don't have those to review, let me see if I have captured this correctly. You initially started with an hourly rate of $100?
A. Yes.
Q. That was adjusted at some point to a contingent fee agreement with Mr. Chandler?
A. Yes.
Q. And that was then adjusted a third time I guess in lieu of appellate proceedings to a higher contingent fee proportion going to you, is that correct?
A. Not just the appellate. It was also the probate cases that was filings and stuff that was taking place in the probate cases.
Q. So did you file the -- to open the probate cases after you had already commenced the will contest?
A. I am sorry?

Q. Did you file to open those probate matters after you had already commenced the will contest?
A. The will contest in Court of Appeals or the will contest –
Q. The circuit court Crittenden County?
A. No, sir. I -- the day that originally the defendants in the case submitted a copy of the will and not the original one. So he got a hold of me. And we were going to protest that and as well as mental competency and undue influence of the will. And so I filed -- and also in that same court in front of Judge Heady, I filed a motion to argue my client's interest in his mother's estate, he was legally vested interest in –
Q. So this is back in –
A. 2011.
Q. -- 2011. And that's in probate court in Crittenden District Court, is that correct?
A. Yes.
TR p. 11, lines 24-25; TR. p. 12 -p.15, lines 1-11.

TRIAL COMMISSIONER JOHNSON: If I may, I am going to ask a question before we go further because I don't want to get down the line. Unfortunately for you all, you have a commissioner that asks lots of questions. And I apologize for that but I need to clarify. Ms. Powell, when you produced the documents that apparently had been subpoenaed by bar counsel as to the employment agreements that you had with your client, Mr. Chandler, how many fee agreements will be produced?
MS. POWELL: 3.
TRIAL COMMISSIONER JOHNSON: So you are telling us that you are going to have one that has the hourly rate of $100, correct?
MS. POWELL: Yes.
TRIAL COMMISSIONER JOHNSON: And then you will have a second fee agreement that will show that there was a contingency fee agreement that first said 15 percent and then client had scratched that out and gave you 20 percent, is that correct?
MS. POWELL: Yes, Your Honor.
TRIAL COMMISSIONER JOHNSON: And then your third one will show that there was an appellate probate work contingency fee for up to 33 percent?
MS. POWELL: Yes, Your Honor.
TRIAL COMMISSIONER JOHNSON: And those all will have been signed by you and your client?
MS. POWELL: I am hoping. I have Becky, she is looking for them.
TRIAL COMMISSIONER JOHNSON: Okay. Okay. Okay. I just wanted to make sure you are going to be able to produce 3 of those, is that correct?
MS. POWELL: I should, yes.
TR. p.17, lines 13-25; p. 18, lines 1-18.

This case allegedly came on the radar of the OBC back in 2017. Yet, they only decided to subpoena contract agreements two weeks before trial in March of

2022. As Ms. Powell testified, the three contracts that were subpoena, were from 2011 and 2014. There is no law, or even ethical rule that required Ms. Powell to maintain the sign copies for 10 plus years. Ms. Powell testified that she was hoping that Becky, Steve's ex-girlfriend could locate them for, her but there was no guarantee. Moreover, the contracts with Steve Chandler was never an issues, the Trial Commissioner is improperly using this as a means to tarnish Ms. Powell's reputation. Which is all the more apparent considering the heading this information is placed under.

Despite being required by a Subpoena Duces tecum to being this very material to trial, and despite promising the Trial Commissioner that she would, Respondent never provided such. TR p. 11 line 24- p.12, line 7; TR p. 17, line 19-22. Respondent did acknowledge contingent fee of some kind during the trial.

She has also, however in discussing the representation, made the following comment about her former client: "Steve Chandler turned out to be the biggest piece of shit asshole, who probably got what was coming to him. He knows how much money and time this case cost me personally." KBA Ex. 40, p. 3891.

This is wholly inappropriate and beyond defamatory in nature. The Trial Commissioner is trying to misrepresent the information and allude to the premise that Ms. Powell testified to this during trial, "in discussing the representation." This is an incomplete sentence from a private facebook message that Ms. Powell sent to her former friend and colleague Cindy Linton in January 2022. Ms. Powell was not even questioned about this portion of the private facebook message. However, a complete review of the message, tells a more complete story of the falling out between Steve Chandler and the Respondent. This is a blatant attempt to assassinate Ms. Powell's character and the reasons that she fought for justice for her client, for so many years. Counsel herein, objected to the relevancy of a private unrelated facebook message being placed in the record in the first place. But then for the Trial Commissioner to intentionally take a single sentence out of context is entirely defamatory and should be stricken.

Instead of dedication to a client or adherence to a defined scope of representation, a different motivation –a much more selfish and emotion reason – for Respondent's

seven-year quest arises upon examining the exhibits and her trial testimony. As early as a July 2012 email to presiding Judge Rene Williams, Respondent complains of the "snotty banter" that she has been subjected to by opposing counsel, and concludes it is because she was a new attorney in the area. KBA Ex. 5, Book 1, p. 406; TR p. 90, lines 3-13.

> Again this is a misrepresentation of actual events, which were never discussed during the hearing. Ms. Powell sent an email to Judge Williams and Brucie Moore, due to filings of Brucie Moore. Brucie Moore first threatened Steve Chandlers half of the farm at the initial probate proceeding. Wherein she directly instructed the Respondent to warn her client that he has a farm of his own and a lot to lose, if he filed a will contest. Moreover, she asserted on record that she would personally consider it an abuse of process for him to file a will contest. After the Judge struct 60% of the complaint, including Mr. Chandler's Equity claim. Brucie Moore filed an Answer to the few remaining paragraphs, and included a counterclaim for Abuse of Process.
> To support her abuse of process claim she asserted actions taken by the Respondent in filing a lengthy complaint, which ultimately had to be stricken, was an element of abuse of process. Along with several other allegations she deemed opposing counsel, to have wrongfully committed. Ms. Powell sent an email in attempt to place the Judge on notice, that although she is not going to engage tit-for-tat, with Ms. Moore and her snotty banter, Ms. Moore's filing was an actual Abuse of Process.

At trial, she also complained of being an "outsider" TR. p. 245, lines 2-19. Respondent also relayed concerns that Judge Williams had called her names at a judicial conference. TR p. 96, lines 8-12.

> **TRIAL COMMISSIONER JOHNSON**: Is it your contention that Brucie Moore, Steven Downey, and Rene Williams are conspiring against your client or against you?
> **MS. POWELL**: I think that initially it was against my client to help these 2, you know, con artists win.
> **TRIAL COMMISSIONER JOHNSON**: Wait a minute. Stop. The con artists would be the 2 men who helped -- who got the will with Keith?
> **MS. POWELL**: Exactly.
> **TRIAL COMMISSIONER JOHNSON**: Okay.
> **MS. POWELL**: But then I think it got so far after the motion to strike and limiting me to 2 years surrounding the execution of the will. And then Downey comes in 2 and that half weeks before trial and he files a motion in limine completely entirely based upon the first motion to strike. So I think -- I don't

think they are necessarily conspiring against me. I think that they are covering their tracks is the only way to say it.
TRIAL COMMISSIONER JOHNSON: But you believe they are all working together, the 3 of them?
MS. POWELL: To come extent, yes. Do I think Rene is as involved as the other two? No. But to some extent, yes.
TRIAL COMMISSIONER JOHNSON: Did it ever occur to you -- and this is again my devil -- I ask questions as if I am being the devil's advocate. So please understand I am not accusing. I am just asking this line of questions like this for Andre' too. Did it ever occur to you that maybe you are just wrong, maybe you are just wrong?
MS. POWELL: Well, I thought that a few times and discussed it with other individuals. I –
TRIAL COMMISSIONER JOHNSON: Don't say what they said. You can say you discussed it. MS. POWELL: I am not. I am not.
TRIAL COMMISSIONER JOHNSON: We all do that and we all shop it around as I call it?
MS. POWELL: I have researched countless KBA ethics, I mean and not just Kentucky, I mean everywhere. I have researched case law. I have not found one other single case law in this nation where 60 percent of a complaint has been stricken at the onset to keep from you showing your motive, your theory of your case. This is like no other. I have no idea why. I couldn't even fathom to guess why they even run all this with me other than I was an outsider. I don't know.

"I couldn't even fathom to guess why they even run all this with me other than I was an outsider. I don't know" Which isn't exactly, the Respondent complaining about being a "outsider."
TR. p.244, lines 4-25, p. 245, lines 1-4.

Similarly, the Trial Commissioner misconstrues and inaccurately depicts the following:

A. In August of 2012, the 2 orders came out. But also something different happened in September of 2012. I had just filed a federal 1983 action against Brucie Moore on another case that she did. It is in federal court. You can look it up. But the week after I had filed and she was served in a federal 1938 action, Rene Williams was at a judicial conference and had gone out of her way to talk -- to find my local circuit court judge and to talk about me and tell him that I was strange and peculiar, he needed to watch out for me. And –
MR. BERGERON: I object to the hearsay here.
TRIAL COMMISSIONER JOHNSON: I am going to sustain that.
TR. p. 96, lines 2-16.

But if the Trial Commissioner Sustains an Objection, does it make any sense for the Trial Commissioner to assert the information within her Order, to paint the Respondent is a negative light.

Throughout numerous submissions during the disciplinary care, Respondent took great pains to point out how aggrieved she felt from her treatment by opposing counsels Brucie Moore and Steve Downey, and from Judge Williams. In a striking number of instances in her submissions, Respondent complained that she was "demeaned', make to be a "clown", made to look bad, wasn't given respect, was "belittled", "chastised", treated "like a child", and called a "sore loser" by the judiciary and opposing counsel. KBA Ex. 17, p 2107; KBA Ex. 17, p 211; KBA Ex. 5, p 13; KBA Ex. 5, Book 3, pp 116-7; KBA Ex. 5, Book 7, p 1936; KBA Ex. 17, p 2083; KBA Ex. 17, p 2084; KBA Ex. 17, p 2086.

> The above is an inaccurate and intentionally false representation. But I wonder, when someone attempts to point out that a person, or group of individuals, have ignored and refused to address legitimate aspects of a parties argument, by diverting to the use of ad hominin attacks, but the individual that you are speaking to, takes it upon themselves to double down on the ad hominin attacks, wouldn't that just be gaslighting?

Respondent's extensive mentions of perceived emotion grievance are only exceeded by the number of times she laments about opposing counsel Steve Downey's tendency to defeat her in the underlying proceedings, specifically grumbling that he always seemed to get the "last word". Respondent repeated that exact phrase a staggering number of times in the following instances: KBA Ex. 5, Book 3, p. 1146; KBA Ex.5, Book3, p. 1161; KBA Ex. 5, Book 3, p 1239; KBA Ex. 5, Book 3, p 1334; KBA Ex.17, p 2087; KBA Ex. 17, p 2102; KBA Ex. 17, p 2103, footnote 12; KBA Ex. 17, p 2114; KBA Ex.17, p 2115; KBA Ex. 23, p 3223.

> The Trial Commissioner obviously was not paying attention during testimony. Ms. Powell emphatically asserted that Steven Downey, always got the last word during the Court of Appeals.

The day the brief is actually due they send that back in a handwritten envelope and didn't even make notation of it. And -- but they kept the other 2 because they didn't know they were coming. They kept the other 2. They had no problem accepting it from another attorney, the discretionary review or the other one. It was at this time I was trying to figure out what is going on and looking at what is going on and this is when I found out that Cynthia Downey -- and I have it in the papers -- works for Kelly Thompson, Steven Downey's sister-in-law.

TRIAL COMMISSIONER JOHNSON: So Steven Downey sister –
MS. POWELL: Let me find that employment record. Sister-in-law. And they have joint ownership and property together.
TRIAL COMMISSIONER JOHNSON: She works for who?
MS. POWELL: Kelly Thompson, the person that signed all the orders, the case manager.
TRIAL COMMISSIONER JOHNSON: Okay. I am going to have to ask again. I am sorry. So you are saying that they kept your -- what did they keep? I am sorry.
MS. POWELL: They kept the emergency motion for extension of time to file discretionary review.
TRIAL COMMISSIONER JOHNSON: And you are not saying there is nothing wrong with that?
MS. POWELL: No. Absolutely not.
TRIAL COMMISSIONER JOHNSON: But your complaint is they sent this back to you in a handwritten envelope?
MS. POWELL: Well, my complaint is that would have been the due date and it would have been a quick dismissal.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: And they made no notation of it in the record until I called Samuel Givens myself and he made a notation of it. He went back -- Steven Downey never responded to that one at all.
TRIAL COMMISSIONER JOHNSON: Okay.
MS. POWELL: But -- and still didn't even respond until when I filed one for extension of time. His response said that he demanded that it, my brief, be filed by the close of business on August 21 or that things should be dismissed entirely. So, I responded with -- I submitted a reply. And for the first time, I had not said anything to any court officials, but for the first time I said it is appellant's counsel's position that he is trying to speed this along and rush it, get it dismissed to avoid facing charges on the $25,000 he illegally took from the estate. And I included the checks and I included the affidavits. Steven Downey followed up with a motion to strike. The court struck it. And that happened multiple times. And he would, in his filings, would say it is lost in -- it had no place in the paper let alone lost in reality. But any time I would put it in, it would get struck.
TRIAL COMMISSIONER JOHNSON: Thank you for that clarification.
MS. POWELL: Sorry about that.
TRIAL COMMISSIONER JOHNSON: That's okay.
TR. p. 154, lines 8-25; p. 155 – p. 156, lines 1-23.

Every one of his filings contained obvious blatant lies, forcing Ms. Powell to seek permission to file a Reply, for veracity sake. Each request to submit a Reply was denied by the Court of Appeals leaving Steven Downey with the last word, regardless of the veracity. This is when Ms. Powell discovered that the Court of Appeals had assigned the case to Kelly Thompson who then employed Cynthia Downey as a case manager. Steven Downey is Cynthia Downey's brother -in-law. Steven Downey's law firm was not incorporated. Steven Downey and Cynthia Downey own joint property together. Therefore, the Court of Appeals assigned as case manager who had a vested interest in helping to cut off Steve Chandler's legal interest to continue the civil action against him for misappropriation of funds.

Steven Downey even got Steve Chandler's entire Reply and Exhibits that directly contradicted Steven Downey's endless false assertions contained within his Response brief that was driven the Respondent's P.O. Box, stricken under false pretenses. The Responded more than peppered with KBA and Trial Commissioner with information to support this assertion. See KBA BATESTAMPS #0258 through #0320. #Batestamps 1242- 1245. Batestamps 0452 – 0455. Batestamps 0472 – 0474, Batestamps # 0462 – 0464. Batestamps 1248 – 1254. Batestamps #1326 – 1327, Batestamps 1338 – 1349. The list is endless.

The violations that developed into the disciplinary case 17-DIS-0121 were not generated by Respondent's zeal for her client. Instead, her disregard for other lawyers and the judiciary appears to have been motivated by a selfish desire to be the one finally getting "the last word", to achieve vindication, and to prevail over people she felt had demeaned and belittled her.

There is no evidence in the world to support this deliberate and false defamatory assertion. The Trial Commissioner had to use and mischaracterize an unrelated private facebook message, sent to Cindy Linton, of all people, but falsely take a single sentence out of context and then defamatorily portray it as if, it was spoken during these proceedings. The Respondent's private message in question should not even be a part of these proceedings, but if it is going to be used. The entire messages is self-explanatory, and does not reflect the picture that the Trial Commissioner is seeking desperately to portray.

<u>Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency:</u>

Respondent knowingly failed to file a Response to the IC Complaint in 17-DIS-0121.

The Respondent had sent tens of thousands of pages during the inquiry investigation. The Respondent testified that she was unaware and confused that there was three stages. The Respondent also testified that she never received the Order that was allegedly mailed to her on January 14, 2019, as she was out of town for her grandmother's funeral. Respondent did mention this case, within her Response on February 5, 2019. Therefore, for all intensive purposes, the Respondent more than complied with all requests made by the Kentucky Bar Association.

Refusal to acknowledge wrongful nature of conduct:

Respondent repeatedly characterized the disciplinary process in terms of a conspiracy. She believed that she had done no wrong – especially related to the 17-DIS-0121 case – and instead that forces were trying to silence her. She believed that she as being subjected to a "kill the messenger" process and was worried about the "high connections" of the parties involved. KBA Ex. 5, p. 009; TR p. 52, line 25; KBA Ex. 17, p. 2774; TR p. 56, line 24 – p. 57, line 1; KBA Ex. 5, p 24; TR p. 54, lines 18-20.

Respondent can show through testimony and evidence submitted during the proceedings alone, that all statements have been intentionally misconstrued and taken out of context, and a great deal of them are flat out fabrications. Respondent whole heartedly believes that this is part of the "kill the messenger" scheme. The KBA could not produce a single individual willing to testify about the alleged perceived wrongs, of Ms. Powell for the 17-DIS-0121 case. Six (6) out of Fourteen (14) Court of Appeal Judges Recused themselves from the Will Contest appeal. To this day, Respondent has not been presented with a single case law which allows, a judge to strike 60% of a Plaintiff's Complaint at the onset, including an Equity claim. To this day the Respondent has not seen a single case, that supports and give authority to Steven Downey's Claim that he had case law to establish that, he was permitted to take an advancement from the estate, to defend the defendants in a will contest. He was not defending the estate; he was defending the defendants who were being sued for undue influence.

The KBA, the Trial Commissioner and Board of Governors have all chosen to ignore the indisputable May 21, 2018, telephone call. The KBA knew that Angella Linton, admitted to receiving the call, based off the phone records, but states that she doesn't remember talking to the Respondent. She further stated that she was unable to leave a voicemail on

the Respondent's old office phone number. Therefore, the only time, the Respondent was told that Angela Linton was trying to get ahold of her was on December 12, 2018.

All four of those charges, fall apart completely, based off her Supplemental Response filed in February, 2019. More than three months before the KBA brought these charges. And in order to attempt to make anything stick, the Trial Commissioner has ignore direct evidence, fabricate and misconstrue the testimony and it still fails to support the charges. The Trial Commissioner had to falsely state that an issue arose over the $400 filing fee. There has never been any damage, except to the Respondent. The Trial Commissioner doesn't think this is a "Kill the Messenger" scheme, when she is recommending attorney suspension for one year. It's in fact Overkill the messenger.

"That forces are trying to silence her," WHO SAID THAT?

Moreover, Respondent felt that the KBA was "really pressing hard and trying to bully me into saying that I was wrong for questioning the integrity of Rene Williams and the Court of Appeals". KBA Ex. 40, p. 3887; TR p. 57, lines 19-22. Reading from a Facebook message to a friend, Respondent also expressed, "These assholes have been trying to pin something on me forever"...."I heard through the grapevine that Rene is retiring in 2022 and that they plan on appointing Brucie Moore as judge. So they want me to say I was wrong so nobody can use that against her or prevent her appointment". KBA Ex. 40, p.3887; TR p. 61, lines 9-10; KBA Ex. 40, p. 3887; TR p. 62, lines 5-7; KBA Ex. 40, p. 3893; TR p. 62, lines 13-17.

When asked at trial if she still believed she was being subjected to a "kill the messenger" attempt to protect the court and cover fraud, Respondent replied, "Absolutely". TR p. 62, lines 18-24; p. 63, lines 21-22. Later, the Trial Commissioner offered Respondent another opening to explore these notions and asked, "I am just trying to understand what – I mean what if you are just wrong" What if your theory was not good? What if you just made the wrong legal argument?" TR p. 245, lines 7-10. Respondent's reply simply circled back to a repetition of grievances on the part of the

presiding judge. Respondent was not able – even in a hypothetical sense – to consider that she might be wrong.

> Yet another deliberate false assertion. The Respondent testified that she did Nationwide research on whether a Judge can strike 60% of a Complaint at the onset, including an Equity claim, before she even makes defense counsel answer. Respondent also attempted to relay to the Trial Commissioner the other judged and attorneys that she had spoken with over the years but was shut down for hearsay. The Respondent absolutely took into account years ago, that she could just be wrong.
>
> In any event the Trial Commissioner, the KBA and the Board of Governors have completely disregarded the fact that the opposing attorneys went through the two probate cases, while the case was on appeal, to cut off Steve Chandler Legal interest to continue is civil action and obtain his legal vested interests in the family memorabilia. The decision of the Probate Court, upon a conveniently Order provided by Attorney Moore's office, was later affirmed by Judge Williams. i.e. cut off his legal interest to hold them accountable. On a similar note, nobody wants to discuss the decade long, bank fraud, carried out by Attorney Moore with the aid of Judge Williams.
>
> Instead without any support the Trial Commissioner's Order deemed the JCC and KBA filing in appropriate. The Board of Governors, apparently recognizes that the Trial Commissioner's Orders fails to supports it's ruling by any evidence, and instead chose to falsely assert that the Respondent admitted to using them as a strategy.
>
> **TRIAL COMMISSIONER JOHNSON**: So you think it may be because you are an outsider, that might be a motive or a reason or something? I am just trying to understand what -- I mean what if you are just wrong? What if your theory is not good? What if you just made the wrong legal argument? I am not saying you did. You know, my job is not to rule on the merits of this. My job is to rule on the charges that are against you.
> **MS. POWELL**: Well, I mean, one of the things they did as I said, they struck the equity claim from the very beginning. And you will see in the order and the opinion and in Steven Downey's filings he keeps saying no claims were stricken. Yeah, they was.
> **TRIAL COMMISSIONER JOHNSON**: Okay. And let me clarify this. Steven Downey is in the same office with Brucie Moore?
> **MS. POWELL**: No. He lives in Bowling Green.
> **TRIAL COMMISSIONER JOHNSON**: Okay. So he is a whole separate entity?
> **TRIAL COMMISSIONER JOHNSON**: Well, the reason I am asking is if you look at SCR 3.130(8.2), it is very clear that says a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. What you said

talks about lies of the lower court, implying the judge. And that's why I am asking you that question. Because what you said are the lies of the lower court itself goes directly to the integrity of a judge. And that's why am I asking you that question because that's a very serious charge.
MS. POWELL: But it's not a false -- I mean I didn't make false statements.
TRIAL COMMISSIONER JOHNSON: It says, instead of addressing these lies, the court has chosen to engage in a fraudulent activity and cover-up of the wrongdoings by striking evidence and filings submitted by the appellant. The order is riddled with numerous false and incomplete assertions throughout. And that's very serious. And that's why I am asking you about that. Because what you said about, you know, lies of the lower court goes directly to that SCR rule?
MS. POWELL: And, yes, Your Honor. I encourage you to read the brief and look at the exhibits and then read the opinion and you will see it doesn't even seem like it is from the same brief. And this particular filing is verbatim. The allegation is verbatim from Steven Downey's response to the petition for rehearing.

Q. Okay. Ms. Powell, I want you to look at 3.130(3.5)(d) which says a lawyer shall not engage in conduct intended to disrupt a tribunal?
A. I did not.
Q. Okay. At any point did you do that?
A. No.
Q. What was your intention with respect to the actions that you took?
A. Which actions?
Q. Throughout this case?
A. Again, to get my client a fair trial to help preserve his family legacy that –
Q. And I may have asked you this earlier. But just for clarification purposes, since the -- at any time during any of these probate proceedings, will contest proceedings, or appeals proceeding, discretionary review, at any time in any case involving any of these parties, again, notwithstanding what we are doing here today, have you been sanctioned or censured by any court?
A. No, I have not. And, in fact, when Landrum & Shouse came on, and they come to argue, Leslie Voss of Landrum –
Q. Did they file a Rule 11 against you?
A. No. No. And Leslie Voss came to argue the motion to dismiss. And she was trying to mischaracterize what had taken place in the case. And I was in front of Judge Williams and I said, Your Honor, you were here, too. She doesn't get to rewrite history. It is not something I haven't actually vocalized. The judge knows.
TR. p. 190, lines 16-25; p. 191 -192, lines 1-14.

<u>Vulnerability of victims:</u>

In 17-DIS-0121, there is not much known about Respondent's responsibility to her client, Steve Chandler, as Respondent failed to abide by the Subpoena Duces Tecum requiring her to bring in documents relating to his representation argument.

SEE ABOVE ARGUMENTS PERTAINING TO SUBPOENAs

However, more is know about Ms. Angella Linton, the client in the 19-DIS-0006 matter. Respondent noted that Ms. Linton "was very sweet and very kind", and she had always believed the Linton's "to be forthcoming and genuinely honest individuals". TR p.315, line 24; KBA Ex. 34, p 3540. Ms. Linton revealed that she was in her mid-80's. She also noted that she had minimal finances, and when asked if she had gotten a refund from Respondent, explained, "I'm on a fixed income so fifteen hundred dollars means a lot to me". KBA Ex. 41, p. 3958. Ms. Linton also noted that she was unfamiliar with legal concepts, remarking. "I don't know what a lawyer does. I don't have much dealing with lawyers. I lead a pretty normal life". KBA Ex. 41, p. 3978. She also revealed her vulnerability when explaining she had put complete trust in Respondent to handle her case appropriately, saying, "Like I said, I'm not into all this stuff. . . I just took it that she knew what she was doing, and I went along with it". KBA Ex. 41, p. 3985.

The Complainants statements were in response to direct legal questions. Perhaps if she was asked, if she ever requested an accounting, or did she file anything against your insurance. The Trial Commissioner is intentionally ignoring the fact, that at all times, Angella Linton, had ulterior motives for filing a lawsuit. She was adamant about that, in her testimony throughout. Cindy Linton's text message to Ms. Powell after her meeting with Mr. Underwood, was that Angella has never been worried about the money.

Q. Okay. All right. Did you ever request an itemization of the work done by Ms. Powell?
A. Well, like I said, I -- I have no idea what a lawyer does. I don't have much dealings with lawyers. I lead a pretty normal life.

Q. Do you know what action Ms. Powell took for you in pursuing your homeowners and renters?
A. No.
Q. What did that mean to you?
A. Like I said, I'm not in to all this law stuff, so it didn't mean too much to me at all. I just took it that she knew what she was doing and I just went along with whatever.

The Trial Commissioner cannot ignore the fact that she was not damaged in any way, by the Respondent. If an attorney could be suspended from the practice of law, because they heard through a third party a couple times that their client is anxious, there would be no attorneys left. If an attorney could be suspended because they have an elderly client who, doesn't remember anything, anymore. Attorneys would stop taking cases of people over a certain age.

CONCLUSION

For the reasons stated in this Report, the undersigned believes sanctions are appropriate. After careful consideration, the undersigned recommends as follows:

1. That Ms. Powell be suspended from the practice of law for a period of one (1) year: and

2. She provide a detailed accounting of all hourly fees expended on behalf of Ms. Angella Linton and refund any unearned fees to Ms. Linton immediately. Since the $400 filing fee was not permitted to be deducted per the retainer agreement, the fee may not be deducted from the retainer paid by Ms. Linton.