IN THE SUPREME COURT

STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS
BEFORE THE STATE DISCIPLINARY REVIEW BOARD

IN THE MATTER OF:	)	
	)	SUPREME COURT DOCKET
	)	NO. S21B0646
NATALIE SPIRES PAINE,	)	
BAR NO. 312524,	)	STATE DISCIPLINARY BOARD
	)	DOCKET NO. 7345
RESPONDENT.	)	
	)	

REQUEST FOR REVIEW AND
EXCEPTIONS TO THE REPORT AND RECOMMENDATION
BY THE STATE BAR OF GEORGIA

This 5th day of April, 2022.

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Pursuant to State Bar Rules 4-214(c) and 2-216(a), the State Bar of Georgia ("State Bar") respectfully requests review of the Report and Recommendation, submitted by Special Master Pat Head on March 6, 2022 ("Report") and takes exception to the findings of fact and conclusions of law therein.

I. STANDARD OF REVIEW

This Board reviews the factual findings of the Special Master under the clearly erroneous or manifestly in error standard. State Bar Rule 4-216(a).

The Board reviews the Special Master's legal conclusions under the *de novo* standard. State Bar Rule 4-216(a).

The Board reviews the Special Master's interpretation of the Georgia Rules of Professional Conduct ("Rules") under the *de novo* standard. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 689, 681 S.E.2d 122, 127 (2009) ("[t]he interpretation of statutes and ordinances is a question of law, which we review *de novo* on appeal").

The Board is authorized to make a recommendation of discipline to the Supreme Court. State Bar Rule 4-215(a).

II. WHAT THIS CASE IS ABOUT

Respondent Natalie S. Paine, former District Attorney of the Augusta Judicial Circuit ("Respondent"), called defense counsel and informed them that their respective clients in a double-murder case were being transported from the

jail to the Sheriff's Office for questioning, with Respondent knowing that all interactions in the interview rooms at the Sheriff's Office were continuously recorded by audio and visual means. (Tr., p. 25, ll. 23-25, p. 26, ll. 1-2, p. 45, ll. 13-18, p. 50, ll. 17-19, p. 54, ll. 13-17, p. 66, ll. 8-10).

Respondent obtained the recordings of counsels' conversations with their clients, copied them, and distributed them to all counsel in the case. (Report, p. 15).

The Trial Court Judge suppressed the recordings on the basis that they were the product of "outrageous abuses of statutory and constitutional law." (Tr., Ex. 6, Ex. B thereto, pp. 8 and 14).

Respondent then lied twice during the disciplinary process when 1) she stated in a grievance response that she had no knowledge of the recordings of privileged conversations, and 2) she stated, through counsel, to the State Disciplinary Board, that she was not involved in the transport of the defendants from the jail to the Sheriff's Office in any manner. (Tr., Exs. 4 and 7).

For the reasons set forth below, the State Bar respectfully asks this Board to 1) SET ASIDE the erroneous and incorrect findings of fact and conclusions of law by the Special Master; 2) RECOMMEND that the Supreme Court find that Respondent violated Rules 3.4(g), 8.1, and 8.4(a)(1); and 3) RECOMMEND that

the Supreme Court impose a sanction of a public reprimand pursuant to State Bar Rule 4-102(b)(3).

III. STATEMENT OF FACTS

A. During Her Tenure As Assistant District Attorney and District Attorney, Respondent Knew That All Conversations That Took Place In Interview Rooms At The Richmond County Sheriff's Office Were Recorded By Audio And Visual Means.

Respondent served as District Attorney of the Augusta Judicial Circuit, after having previously served as an Assistant District Attorney in that circuit. (Tr., p. 22, ll. 24-25, p. 23, l. 1). As District Attorney, Respondent served as legal advisor for the Richmond County Sheriff's Office relating to the investigation and prosecution of criminal offenses. (Tr., p. 23, ll. 2-23).

Respondent visited the Criminal Investigation Division of the Richmond County Sheriff's Office ("CID") multiple times as an Assistant District Attorney. (Tr., p. 24, ll. 22-25, p. 25, ll. 1-2). Respondent visited CID on an almost daily basis as District Attorney. (Tr., p. 25, ll. 3-14).

During her tenure as an Assistant District Attorney and as the District Attorney, Respondent knew that all conversations in the CID interview rooms were recorded by law enforcement by audio and visual means. (Trial Tr. p. 25, ll. 15-19, p. 26, ll. 23-25).

Respondent watched "thousands of hours" of videos of recordings made in the CID interview rooms. (Tr., p. 57, ll. 3-7)

Based upon her experience of viewing the recordings of "thousands of interviews" in the CID interview rooms, Respondent knew that the recording starts before a person enters the room and does not stop until the person has been led out of the room. (Tr., p. 25, ll. 23-25, p. 26, ll. 1-2).

Respondent knew that the recordings of the interview rooms by law enforcement were "common procedure" at CID. (Tr., p. 26, ll. 16-22).

In addition to the recordings she viewed of meetings in the CID interrogation rooms, Respondent watched interrogations of persons in CID interrogation rooms on a live monitor at CID. (Tr., p. 29, ll. 4-8). At least some of the investigators at CID had the ability to watch meetings in the interrogation rooms on a live monitor in his or her respective office as well. (Tr., p. 91, ll. 7-18).

Respondent knew that attorneys met with their clients alone in the CID interrogation rooms. (Tr., p. 50, ll. 14-16).

B. Respondent Knew That The Recordings Of Conversations In The CID Interview Rooms Were Burned To A CD And Retrieved By Respondent.

Respondent knew that the recordings were "always" burned to CDs that she would retrieve from the Sheriff's Office. (Tr., p. 27, ll. 1-2). Respondent would have an investigator from her office go to CID and bring Respondent the CDs of the recordings made in the CID interrogation rooms. (Tr., p. 27, ll. 13-20).

C. Respondent Served As Lead Counsel In A Double-Murder Case.

Respondent served as lead prosecutor in State of Georgia v. Vaughn Verdi, William Krepps, and Emily Stephens ("Verdi/Krepps Case"). (Tr., p. 29, ll. 9-13). The case was indicted in September, 2017. (Tr., p. 29, ll. 14-16).

Investigator Lucas Grant of the Richmond County Sheriff's Office ("Inv. Grant") served as the lead investigator in the Vaughn/Krepps Case. (Tr., p. 33, ll. 1-5).

The Verdi/Krepps Case involved a double murder. (Tr., p. 29, ll. 1-19). The location of the body of one of the victims was missing throughout the investigation and prosecution of the Verdi/Krepps Case. (Tr., p. 30, ll. 23-25, p. 31, ll. 1-6).

D. The Defendants Were Transported From The Jail To A CID Interview Room With Active Recording Devices.

On February 27, 2018, Mr. Krepps and Mr. Verdi were transported from jail to CID by law enforcement in an effort to obtain a statement. (Tr., p. 43, ll. 12-17).

E. After Receiving A Telephone Call From The Respondent, Mr. Krepps's Defense Lawyer Met With Mr. Krepps In A CID Interview Room, And Their Private Conversation Was Recorded.

Prior to the transport, Inv. Grant notified Respondent of the transport. Respondent then notified Mr. Krepps's counsel, Ms. Cawanna McMichael that Mr. Krepps was being moved from the county jail to CID, with Respondent knowing that all meetings at CID were recorded. (Tr., p. 45, ll. 13-18, p. 54, ll. 13-17).

After the telephone call from Respondent, Ms. McMichael traveled to CID and had a private conversation with her client, Mr. Krepps, in a CID interrogation room.[1] That attorney-client conversation was recorded by audio and visual means by law enforcement. (Tr., p. 50, ll. 17-19).

On the day that Ms. McMichael's attorney-client meeting with Mr. Krepps was recorded, Respondent was at CID. (Tr., p. 51, ll. 3-6). Respondent stuck her head in the CID interrogation room during the recorded meeting between Ms. McMichael and Mr. Krepps. (Tr., p. 51, ll. 9-12). Ms. McMichael informed Respondent that Mr. Krepps did not want to make a statement to law enforcement. (Tr., p. 51, ll. 13-16).

On the day that Ms. McMichael's attorney-client meeting with Mr. Krepps was recorded, Respondent knew "that all conversations in the CID interrogation rooms were recorded by law enforcement by audio and visual means." (Trial Tr. p. 25, ll. 15-19, p. 26, ll. 23-25).

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[1] The Special Master takes issue with a statement by counsel for the State Bar that "Respondent invited criminal defense counsel to meet with their clients in a CID interview room." (Report, p. 12). The evidence showed that Respondent called defense counsel and informed them that their clients in a murder case were being taken to CID for questioning by law enforcement. As a result of the calls, Ms. McMichael and Mr. Homlar went to CID and met with their clients in interview rooms that were being recorded. Perhaps "invited" is too meek of a word; Respondent's call all but assured that any responsible criminal defense counsel would respond by going to CID and meeting with their client in an interview room.

On the day that Ms. McMichael's attorney-client meeting with Mr. Krepps was recorded, Respondent knew that it was the "policy of the CID to record all interactions" in the interrogation rooms. (Tr., p. 54, ll. 13-17).

On the day that Ms. McMichael's attorney-client meeting with Mr. Krepps was recorded, Respondent knew that the recordings were "always" burned to CDs. (Tr., p. 27, ll. 1-2).

F. Respondent Obtains The CDs Containing The Recording Of The McMichael-Krepps Attorney-Client Conversation, Copies The CDs, and Distributes The CDs.

Respondent had her investigator retrieve the CDs containing the audio and visual recording of Ms. McMichael's attorney-client meeting with Mr. Krepps and deliver them to Respondent. (p. 58, l. 25, p. 59, ll. 1-7; p. 67, ll. 17-25).

Respondent then personally copied the recordings onto other CDs. (Tr., p. 58, l. 25, p. 59, ll. 1-7). Respondent sent the CDs to all counsel in the Verdi/Krepps case, such that Mr. Verdi's counsel received a copy of the recording of the McMichael-Krepps meeting and Mr. Krepps's counsel received a copy of the Homlar-Verdi meeting. (Tr., p. 59, ll. 5-10).

G. After Receiving A Telephone Call From The Respondent, Mr. Verdi's Defense Lawyer Met With Mr. Verdi In A CID Interview Room, Where Their Private Conversation Was Recorded.

On the same day that Mr. Krepps was transported to the CID interrogation room, Mr. Verdi was also transported from the jail and placed in a CID

interrogation room in an effort to obtain a statement. (Tr., p. 36, ll. 7-12, p. 43, ll. 12-17, p. 44, ll. 16-24).

Respondent called Mr. Homlar and informed him that Mr. Verdi was being transported to CID, with the knowledge that all conversations at CID would be recorded. (Tr., p. 54, ll. 13-17, p. 66, ll. 8-10).

Following the call from Respondent, Mr. Homlar traveled to CID and met privately with his client, Mr. Verdi, in an interview room. (Tr., p. 54, ll. 13-17, p. 66, ll. 15-18).

Mr. Homlar's attorney-client meeting with Mr. Verdi was recorded by audio and visual means. (Tr., p. 67, ll. 13-16).

On the day that Mr. Homlar's attorney-client meeting with Mr. Verdi was recorded, Respondent was at CID, although she was not present at the interview room at the time that Mr. Homlar's conversation with Mr. Verdi was recorded, as she was at the recording of the McMichael-Krepps meeting. (Tr., p. 51, ll. 3-6).

On the day that Mr. Homlar's attorney-client meeting with Mr. Verdi was recorded, Respondent knew "that all conversations in the CID interrogation rooms were recorded by law enforcement by audio and visual means." (Trial Tr. p. 25, ll. 15-19, p. 26, ll. 23-25).

On the day that Mr. Homlar's attorney-client meeting with Mr. Verdi was recorded, Respondent knew that it was the "policy of the CID to record all interactions" in the interrogation rooms. (Tr., p. 54, ll. 13-17).

On the day that Ms. McMichael's attorney-client meeting with Mr. Krepps was recorded, Respondent knew that the recordings were "always" burned to CDs. (Tr., p. 27, ll. 1-2).

H. Respondent Obtains The CDs Containing The Recording Of The Homlar-Verdi Attorney-Client Conversation, Copies The CDs, and Distributes The CDs.

Respondent had her investigator retrieve the CDs containing the audio and visual recording of Mr. Homlar's attorney-client meeting with Mr. Verdi and deliver them to Respondent. (p. 58, l. 25, p. 59, ll. 1-7; p. 67, ll. 17-25).

Respondent then personally copied the recordings onto other CDs. (Tr., p. 58, l. 25, p. 59, ll. 1-7). Respondent sent the CDs to all counsel in the Verdi/Krepps case. (Tr., p. 59, ll. 5-10).

I. The Trial Court Suppresses The Recordings On The Ground That They Were The Product Of Outrageous Abuses Of Statutory And Constitutional Law.

After Mr. Homlar received the copies with the recordings of the attorney-client meetings, he filed a Motion to Dismiss or Other Remedies on behalf of Mr. Verdi ("Verdi Motion"). (Tr., Ex. 8).

In the Verdi Motion, Mr. Homlar asked the trial court to dismiss the indictment or alternatively to suppress the recordings of the attorney-client meetings on the grounds that the recordings had been made in violation of the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and Ga. Const. Art. 1, § 1, ¶ XVI. (Tr., Ex. 8).

Ms. McMichael filed a similar motion on behalf of Mr. Krepps with respect to the recordings of Ms. McMichael's attorney-client meeting with Mr. Krepps. (Tr., Ex. 6, Ex. B thereto).

On November 14, 2018, the trial judge in the Verdi/Krepps case, the Honorable J. Wade Padgett, Superior Court Judge, Augusta Judicial Circuit ("Trial Court Judge") issued an Order on the motions to dismiss filed by Mr. Verdi and Mr. Krepps. (Tr., Ex. 6, Ex. B thereto). Judge Padgett denied the motions to dismiss the indictments and granted the motions to suppress. (Tr., Ex. 6, Ex. B thereto).

Judge Padgett suppressed the recordings of the attorney-client meetings on the grounds that the recordings:

1) violated the Sixth Amendment;

2) violated the attorney-client privilege; and

3) were made in violation of O.C.G.A. § 16-11-62, a felony criminal statute that specifically outlaws the recording of conversations between and a defendant

and his attorney in a jail, correctional facility, or other facility in which persons who are charged with a crime are incarcerated.

(Tr., Ex. 6, Ex. B thereto, pp. 8-11).

Judge Padgett found that the "violations in this case are outrageous abuses of statutory and constitutional law," and that the facts underlying the violations "shock the conscious of anyone who has even a modicum of knowledge of the law." . (Tr., Ex. 6, Ex. B thereto, p. 8).

J. The Special Master Agrees That The Recordings Were The Product Of Outrageous Abuses Of Statutory And Constitutional Law.

In this disciplinary matter, the Special Master agreed with Judge Padgett's view that the violations in this case are "outrageous abuses of statutory and constitutional law." (Report, p. 10).

The Special Master found that the conduct of the Sheriff's Office in making the recordings was "reprehensible, outrageous, and all other adjectives that can define such egregious conduct." (Report, p. 10).

The Special Master found that Respondent personally copied the CDs of the recordings and distributed them to all defense counsel in the case. (Report, p. 8).

The State Bar makes no claim in this appeal that 1) Respondent initiated or ordered the transport of Mr. Verdi and Mr. Krepps from the jail to CID; 2) Respondent ordered or arranged for Mr. Verdi or Mr. Krepps to placed be in

interview rooms at CID; or 3) that Respondent ever viewed the recordings of attorney-client meetings.

IV. EXCEPTIONS

The State Bar agrees with the Special Master that the use of the methods of obtaining evidence in this case are "outrageous abuses of statutory and constitutional law" that "shock the conscious of anyone who has a modicum of knowledge of the law." (Report, p. 10).

The State Bar agrees with the Special Master that the audio and video recording of attorney-client conversations that occurred in this matter was "reprehensible, outrageous, and all other adjectives that can define such egregious conduct." (Report, p. 10).

Although the State Bar does not agree with the Special Master's findings regarding violations of Rule 4.2, the State Bar does not challenge those findings before this Board. (Report, pp. 16-17).

The State Bar respectfully takes exception to the following findings of fact by the Special Master:

1) that Respondent did not know that attorney-client conversations in the CID interview rooms were being recorded. (Report, p. 14).

2) that Respondent did not participate in the recordings of attorney-client conversations in the CID interview rooms (Report, p. 14).

3) that Respondent told the truth in her grievance response when she stated that she had no knowledge of recorded attorney-client conversations in CID interview rooms until the media contacted her on September 28, 2018. (Report, p. 19).

4) that Respondent told the truth in a response to the State Disciplinary Board ("SDB"), in which she stated that she was not involved in the transport of Mr. Verdi and Mr. Krepps to CID interview rooms in any manner. (Report, p. 18).

5) that "at the very least Attorney McMichael and Respondent were aware that the interview rooms were recorded, both audio and video." (Report, p. 11).

The State Bar respectfully takes exception to the following conclusions of law by the Special Master:

1) that the facts found by the Special Master and the evidence admitted at trial do not establish Respondent's knowledge of the recording, copying, and distribution of CDs containing attorney-client conversations.

2) that the facts found by the Special Master and the evidence admitted at trial do not establish Respondent's participation in the recording, copying, and distribution of CDs containing attorney-client conversations.

3) that the facts found by the Special Master and the evidence presented at trial do not establish that Respondent violated Rule 3.4(g).

4) that the facts found by the Special Master and the evidence presented at trial do not establish that Respondent violated Rule 8.4(a)(1) by way of Rule 3.4(g).

5) that Rule 3.4(g) is violated when illegally-obtained evidence is used by a party, and is not violated by the use of the methods of obtaining evidence.

6) that the facts found by the Special Master and the evidence at trial do not establish that Respondent violated Rule 8.1.

V. ARGUMENT AND CITATION OF AUTHORITY

Under the Rules, a lawyer may not "use methods of obtaining evidence that violate the legal rights of the opposing party or counsel." Rule 3.4(g).

Under the Rules, a lawyer may not 1) knowingly attempt to violate the Rules; 2) knowingly assist another in violating the Rules; 3) knowingly induce another to violate the Rules; or 4) knowingly violate the Rules through the acts of another. Rule 8.4(a)(1).

Under the Rules, a prosecutor has the responsibility of a minister of justice and not simply that of an advocate. Rule 3.8, cmt. [1]. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice. *Id.*

Under the Rules, a person holding public office assume responsibilities going beyond those of other citizens, and a lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. Rule 8.4, cmt. [6].

Under Georgia law, a district attorney has the additional responsibility to act as the legal advisor for law enforcement relating to the investigation and prosecution of criminal offense. O.C.G.A. § 15-18-6(7). Respondent acknowledged that responsibility in her testimony. (Tr., p. 23, ll. 2-23).[2]

At the time of the "reprehensible, outrageous," and "egregious conduct" at issue in this case (Report, p. 10), Respondent had voluntarily assumed those responsibilities.

A. The Special Master Erred In Concluding that Respondent Did Not Participate In The Use Of Illegal Methods Of Obtaining Evidence In Violation Of Rules 3.4(g) and 8.1(a)(1).

1. The Trial Judge and Special Master Agree That The Methods Of Obtaining Evidence In The Verdi/Krepps Case Were Unconstitutional And Illegal.

Rule 3.4(g) provides that an attorney shall not "use methods of obtaining evidence that violate the legal rights of the opposing party or counsel." Cmt. [5] to Rule 3.4 provides that the legal rights of the opposing party or counsel "include legal restrictions on methods of obtaining evidence."

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[2] Perhaps not surprisingly, Inv. Grant testified that he was not aware of any person or office from which he could receive legal advice relating to the investigation and prosecution of criminal cases. (Tr., p. 111, ll. 4-11).

Rule 3.4(g) makes it a violation to use methods of obtaining evidence that violate the rights of the opposing party or counsel. Rule 3.4(g) does not mention or implicate the use of the illegally-obtained evidence. Rather, it is the ***method*** of obtaining evidence that violates the Rule, not the ***use*** of the evidence.

In this case, the "methods of obtaining evidence" are the deliberate recordings of the Homlar-Verdi attorney-client meeting and of the McMichael-Krepps attorney client meeting ("Recordings").

The Trial Judge in the Verdi/Krepps matter found that the Recordings were made in violation of:

1) the Sixth Amendment;

2) the attorney client privilege; and

3) O.C.G.A. § 16-11-62, a felony criminal statute that specifically outlaws the recording of conversations between a defendant and his attorney in a jail, correctional facility, or other facility in which persons who are charged with a crime are incarcerated. (Tr., Ex. 6, Ex. B thereto, pp. 8-11).

The Special Master found that the Recordings were "outrageous abuses of statutory and constitutional law." (Report, p. 10).

The Special Master found that "[t]hese facts shock the conscious of anyone who has a modicum of knowledge of the law." (Report, p. 10).

The Special Master also found that the conduct of the Sheriff's Office in making the recordings was "reprehensible, outrageous, and all other adjectives that can define such egregious conduct." (Report, p. 10).

The Recordings thus constituted illegal methods of obtaining evidence that violated the legal rights of Mr. Verdi, Mr. Krepps, Mr. Homlar, and Ms. McMichael ("Illegal Methods"), as prohibited by Rule 3.4(g).

2. The Special Master Found The Respondent Was Aware Of The Use Of The Illegal Methods.

The Special Master found that Respondent knew of the Illegal Methods. (Report, p. 7). The Special Master found that Respondent knew that the recordings were started before "anyone" entered a CID interview room and only stopped when "everyone" left the room. (Report, p. 7). [3]

The Special Master explained at the trial that "[I]f you show me that [lawyer and client] went into an interview room, I am going to say that [Respondent] is saying yes, I know that was being recorded." (Tr., p. 88, ll. 7-13). The Special Master's findings on Respondent's knowledge of the use of the Illegal Methods may be referred to herein as the "Knowledge Findings."

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[3] The Special Master also found that "Respondent was not aware that the audio could not be muted until after the February 2018 incident. (Report, p. 7). Of course there was no evidence that Respondent was affirmatively aware that the audio could be muted, and no evidence that Respondent even had a reason for believing that the audio could be muted or was in fact muted.

The Special Master's Knowledge Findings show that Respondent knew that the Illegal Methods were used every time that a suspect or defendant was placed in an interview room at CID, which necessarily includes Mr. Homlar's interview with Mr. Verdi and Ms. McMichael's interview with Mr. Krepps, in interview rooms at CID, on February 27, 2018. (Report, p. 7).

The Special Master's Knowledge Findings are supported by Respondent's own trial testimony.

At trial, Respondent testified that:

1) during her tenure as an Assistant District Attorney and as the District Attorney, Respondent knew that all conversations in the CID interview rooms were recorded by law enforcement by audio and visual means (Trial Tr. p. 25, ll. 15-19, p. 26, ll. 23-25);

2) based upon her experience of viewing the recordings of "thousands of interviews" in the CID interview rooms, Respondent knew that the recording starts before a person enters the room and does not stop until the person has been led out of the room (Tr., p. 25, ll. 23-25, p. 26, ll. 1-2); and

3) she knew that the recordings of the interview rooms by law enforcement were "common procedure" at CID. (Tr., p. 26, ll. 16-22). (collectively, "Respondent's Knowledge Admissions").

Thus, we know from the Special Master and the Respondent that the methods of obtaining evidence were illegal, and that Respondent knew about the use of the Illegal Methods in the CID interview rooms. (Report, p. 7).

The Special Master expressed a desire to know why the State Bar has not brought disciplinary action against Ms. McMichael, Mr. Homlar, or any other attorney who also knew that the recordings were being done in the CID interview rooms. (Report, p. 12). The Special Master stated in the Report that "at the very least Attorney McMichael and Respondent were aware that the interview rooms were recorded, both audio and video." (Report, p. 11).

That finding directly conflicts with Ms. McMichael's testimony on this issue and is clearly erroneous.

Ms. McMichael actually testified that she had made an assumption that the interview room would be visually monitored during her meeting with her client, but would not be monitored by audio, and that no recordings would be made. (Tr., p. 234, ll. 2-11). The Special Master made no credibility findings to the effect that Ms. McMichael lied about this issue.

But in any event, only one lawyer made the calls to defense counsel; only one lawyer had the ability to get evidence obtained by law enforcement; only one lawyer obtained the CDs of the recordings from the Sheriff's Office for possible

use as evidence in a murder case; and only one lawyer made copies of the CDs and distributed them to all counsel in the case. That lawyer is the Respondent.

3. Respondent Participated In The Illegal Methods In Violation Of Rules 3.4(g) and 8.1(a)(1).

The Special Master tries to deflect responsibility for the Illegal Methods away from Respondent and onto the Sheriff's Office. (Report, p. 13).

However, Rule 8.4(a)(1) prohibits attorneys from disclaiming professional misconduct committed by another when the attorney participated in the misconduct in specified ways. This prohibition includes four different kinds of conduct.

As applied to this case, the Rule prohibits Respondent from 1) knowingly attempting to use the Illegal Methods; 2) knowingly assisting another in using the Illegal Methods; 3) knowingly inducing another to use the Illegal Methods; and 4) knowingly doing the Illegal Methods through the acts of another. Rule 8.4(a)(1).

Respondent violated Rule 3.4(g) through Rule 8.4(a)(1) in at least two of the ways prohibited by the Rules—she knowingly assisted Inv. Grant in using the Illegal Acts, and she committed the Illegal Acts through the acts of Inv. Grant.

These violations are shown by the following trial evidence and findings of the Special Master:

First, Respondent had knowledge of the use of the Illegal Methods as shown by the Special Master's Knowledge Findings and Respondent's Knowledge Admissions.

Second, Respondent is the person who caused Mr. Homlar and Ms. McMichael to meet with their respective clients in the CID interview rooms with activated recording devices on February 27, 2022, because she called Mr. Homlar and Ms. McMichael on that morning and told them their clients were being transported from the jail to CID in order to be interviewed by law enforcement, with the knowledge that all meetings at CID would be recorded. (Report, pp. 3 and 6). (Tr., p. 45, ll. 13-18, p. 54, ll. 13-17, p. 66, ll. 8-10).

Third, Respondent was present at CID during Ms. McMichael's interview with Mr. Krepps and even stuck her head in the interview room during the recorded interview. (Report, p. 6). The interview between Mr. Homlar and Mr. Verdi took place on the same day at CID, but there is no evidence that Respondent was physically present at the actual CID interview room during the time that interview actually occurred.

Fourth, Respondent received the CDs of the evidence that was the product of the Illegal Methods, personally made copies of the CDs of the evidence that was the product of the Illegal Methods, and distributed the CDs of the evidence that was the product of the Illegal Methods to all counsel in the case. (Report, p. 8).

These four facts show that Respondent participated in the use of the Illegal Methods in violation of Rules 3.4(g) and 8.4(a)(1) ("Participation Findings").

4. The Attorney-Client Meetings Would Not Have Occurred, Would Not Have Been Recorded, Would Not Have Been Copied, And Would Not Have Been Distributed, But For The Participation Of Respondent In The Illegal Methods.

It is undisputed that the defendants' attorneys traveled to CID and met with their respective clients in a CID interview room because Respondent called them that morning and told them that their clients were going to be transported to CID and interviewed by law enforcement. (Tr., p. 45, ll. 13-18, p. 50, ll. 17-19, p. 54, ll. 13-17, p. 66, ll. 8-10, p. 67, ll. 13-16).

Indeed, the attorney-client meetings would not have occurred, would not have been recorded, and would not have been distributed but for the personal participation of Respondent as shown by the Participation Findings. (Report, pp. 3 and 5).

The Special Master's Knowledge Findings, Respondent's Knowledge Admissions, and the Participation Findings show that Respondent 1) knowingly assisted Inv. Grant in using the Illegal Acts and 2) committed the Illegal Acts through the acts of Inv. Grant. Rules 3.4(g) and 8.4(a)(1).

The Special Master asserts that the State Bar is trying to hold prosecuting attorneys responsible for "mistakes" made by law enforcement. (Report, p. 13). That just isn't true.

First, there were no mistakes made by law enforcement in this case. At trial, Inv. Grant reaffirmed his prior testimony that the recording of the Homlar-Verdi

attorney-client meeting was an intentional act and was not an inadvertent act. (Tr., p. 124, ll. 7-25, p. 125, ll. 1-2).

Second, the State Bar does not seek to hold Respondent for the actions of law enforcement, but rather for her knowing participation in the Illegal Methods and the distribution of the fruits of the Illegal Methods. (Tr., p. 43, ll. 12-17, Ex. 9, ¶ 2, p. 45, ll. 13-18, p. 54, ll. 13-17, p. 66, ll. 8-18).

B. The Special Master Erred In Concluding That Respondent Did Not Have Knowledge Of, Or Participation In, the Illegal Methods, In Violation Of Rules 3.4(g) and 8.4(a)(1).

1. The Special Master Misinterpreted Rule 3.4(g).

The Special Master drew the conclusion that "[t]here was no evidence presented that Respondent ever ***used*** any unlawfully or illegally obtained evidence." (Report, p. 15, bold type, italics, and underlining are all in the original Report). That conclusion is not part of a proper application of Rule 3.4(g). As discussed above, it is the use of the Illegal Methods that causes a violation of the Rule, not the use of the fruits of the Illegal Methods.

The Special Master's interpretation of Rule 3.4(g) is erroneous and should be corrected by this Board under the *de novo* standard of review.

2. The Special Master Drew Conflicting And Erroneous Conclusions From The Special Master's Knowledge Findings, Respondent's Knowledge Admissions, and the Participation Findings.

a. The Special Master Erred In Concluding That Respondent Did Not Know About The Illegal Methods.

Despite the Special Master's Knowledge Findings and the Participation Findings, the Special Master concluded that "[t]here is nothing in the evidence to suggest that Respondent knew attorney-client conversations were being recorded. Her testimony was that she did not know that specific fact, that conversation [sic] between attorney and client were being recorded, until she was served with the motion to dismiss …." (Report, p. 14).

That conclusion is completely at odds with the Special Master's Participation Findings and the Special Master's own observation at trial regarding Respondent's knowledge of the Illegal Methods. (Tr., p. 88, ll. 7-13 (Special Master: "If you show me that [lawyer and client] went into an interview room, I am going to say that she is saying yes, I know that was being recorded,")).

The Special Master's interpretation hinges on a fallacious proposition—that given the Knowledge Findings, the Knowledge Admissions, and the Participation Facts, it is somehow possible for Respondent to know that all meetings in the CID are recorded, and at the same time, for Respondent to lack the knowledge that the

Verdi-Homlar meeting and the Krepps-McMichael meeting in CID interview rooms were recorded.

This is an untenable proposition if you give words their ordinary meaning and apply principles of elementary logic. Logic is a primary tool used by lawyers, judges, and the judicial system. The proper use of logic encourages consistency, objectivity, and public confidence in the legal profession and legal system. In contrast, the misuse of logic by lawyers encourages inconsistency, subjectivity, and the erosion of public confidence in the legal profession and legal system.

Letting a lawyer off the hook for ethical violations based upon such a proposition frustrates a primary function of the disciplinary process—the maintenance of the public's confidence in the legal profession. *In re Blitch*, 288 Ga. 690, 692, 706 S.E.2d 461, 462 (2011).

The question of whether Respondent knew of the use of the Illegal Methods is a mixed question of law and fact. The findings of facts related to Respondent's knowledge are reviewed for clear error. The conclusion that the facts as found do or do not constitute knowledge by the Respondent of the Illegal Methods is a legal conclusion that is reviewed *de novo*.

In light of the Knowledge Findings, Respondent's Knowledge Admissions, and the Participation Findings, the Special Master's conclusion that those facts do not establish Respondent's knowledge of the use of the Illegal Methods is clearly

erroneous and should be reversed by this Board under either that standard or the *de novo* standard. State Bar Rule 4-216(a).

It is possible that the Special Master viewed the fact that Respondent was aware of the recording of the attorney-client meetings as an inference that he declined to make. State Bar Rule 1.0(m) (knowledge may be inferred from circumstances). And while the Special Master is perfectly free to draw inferences from the evidence or not, the fact that Respondent was aware of the recording of the attorney-client meetings is not a mere inference. An "inference" is a conclusion that the factfinder is permitted but not compelled to draw from the facts. *Nelson v. Solem*, 490 F. Supp. 481, 483 (D. S.D. 1980).

In this case, the conclusion that Respondent was aware of the recording of the attorney-client meetings is not just a permissible conclusion, it is a conclusion that is compelled by the evidence and the Special Master's own fact-finding.

b. The Special Master Erred In Concluding That Respondent Did Not Participate In The Illegal Methods.

The Special Master drew the conclusion that "there is no evidence to support the allegation that Respondent participated in the recordings as alleged in paragraph 1 of Count I." (Report, p. 14). That conclusion is at odds with the Special Master's Participation Findings and the evidence at trial.

The Special Master's conclusion is clearly erroneous and should be reversed by this Board under either that standard or the *de novo* standard. State Bar Rule 4-216(a).

C. The Special Master Erred In Concluding That Respondent Did Not Make A False Statement In Violation Of Rule 8.1(a).

Rule 8.1(a) prohibits a lawyer from making a false statement in connection with a disciplinary matter.

Respondent violated Rule 8.1(a) when she stated in a grievance response dated May 20, 2019, that she had no knowledge of the recordings of privileged conversations until the media started calling on September 28, 2018, when in fact Respondent was aware of the recordings prior to September 28, 2018. (Tr., Ex. 4).

Respondent violated Rule 8.1 when she stated, through counsel, in a letter to William Thomas of the State Disciplinary Board, dated November 4, 2019, that Respondent was not involved in any manner with the transport of Mr. Verdi and Mr. Krepps to CID, when in fact, Respondent had prior knowledge of the transport and its purpose. (Tr., Ex. 7).

The Special Master found that Respondent did not lie on either occasion based upon the same fallacious proposition discussed above--that given the Knowledge Findings, the Knowledge Admissions, and the Participation Findings, it is somehow possible for Respondent to know that all meetings in the CID are recorded, and at the same time, for Respondent to lack the knowledge that the

Verdi-Homlar meeting and the Krepps-McMichael meeting in CID interview rooms were recorded.

As for Respondent's claim that she had no prior knowledge of the transport of Mr. Verdi and Mr. Krepps from the jail to CID or the purpose of that transport, the evidence establishes:

1) that Respondent knew that they were being transported to CID for the purpose of law enforcement interrogation. Indeed, Respondent stated in a brief filed in the trial court that Mr. Verdi and Mr. Krepps were transported to CID in an effort to obtain a statement from each of them. (Tr., p. 43, ll. 12-17, Ex. 9, ¶ 2); and

2) that Respondent called both counsel and ensured that they would go to CID to meeting with their clients. (Tr., p. 45, ll. 13-18, p. 54, ll. 13-17, p. 66, ll. 8-18).

The Special Master stated that he was unsure as to how the State Bar draws a conclusion that the mere knowledge of the transport is the same thing as being involved in the transport. (Report, p. 19).

First, Respondent's prior knowledge of the transport and the purpose of the transport, as well as the role that Respondent played in notifying defense counsel of the transport, shows that Respondent lied when she claimed that she had no involvement in any manner with the transport of Mr. Verdi and Mr. Krepps to CID.

Second, the State Bar never drew a conclusion that the "mere knowledge" of the transport is the same thing as being involved in the transport. Respondent had prior knowledge of the transport, as well as the purpose of the transport, and Respondent caused the presence of the defense lawyers at CID with her telephone calls. (Tr., p. 43, ll. 12-17, Ex. 9, ¶ 2, p. 45, ll. 13-18, p. 54, ll. 13-17, p. 66, ll. 8-18).

The Special Master also poses a question—"[e]ven if the statement regarding the transportation of the defendants was false, could that be a violation on the part of Respondent was made by her attorney and not her?" (Report, p. 19).

The answer to the Special Master's question is "yes."

First, Respondent ratified the statement by counsel to the SDB by failing to correct it at the time that she became aware of it and by continuing to maintain the same story at trial. *Merritt v. Marlin Outdoor Adver., Ltd*, 298 Ga. App. 87, 91, 679 S.E.2d 97, 102 (2009) (principal ratifies acts of agent if principal is aware of acts and does not repudiate acts within a reasonable time).

Second, the disciplinary process would not function as intended if *pro se* respondents were required to make only truthful statements to the disciplinary authorities, but represented respondents were free to lie through their lawyers.

The Special Master's conclusion that Respondent did not lie with respect to her two statements to the disciplinary authorities is clearly erroneous and should be

reversed by this Board under either that standard or the *de novo* standard. State Bar Rule 4-216(a).

VI. RECOMMENDATION OF DISCIPLINE

The Special Master did not reach the issue of the applicable sanction.[4] This Board is authorized to make a recommendation of sanction to the Supreme Court. State Bar Rule 4-215(a). As shown below, the State Bar recommends a public reprimand. State Bar Rule 4-102(b)(3). This recommendation takes into account the seriousness of the conduct at issue, the Respondent's lack of prior discipline, the fact that the actions of defense counsel and the Trial Court Judge mitigated the actual injuries to the parties and counsel, and the fact that Respondent never viewed the recordings of the attorney-client meetings.

A. The ABA Standards.

The Supreme Court looks to the ABA Standards for Imposing Lawyer Discipline ("ABA Standards") for guidance in determining the appropriate sanction to impose on a lawyer for a violation of the Georgia Rules of Professional Conduct. *In the Matter of Morse*, 266 Ga. 652, 653, 470 S.E.2d 232 (1996).

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[4] On March 2, 2022, counsel for the State Bar of Georgia asked the Special Master for permission to submit a proposed recommendation of discipline within seven days of the submission of the transcript by the court reporter, and the Special Master replied in the affirmative. The transcript was submitted on March 4, 2022, and the Special Master issued the Report on March 6, 2022. The State Bar was unable to submit a brief during the two days between the issuance of the transcript and the issuance of the Report.

The ABA Standards require 1) identification of the ethical duty violated by the law; 2) identification of the lawyer's mental state; 3) identification of the injuries, potential injuries, interference with a legal proceeding, or potential interference with a legal proceeding; and 4) examination of aggravating and mitigating circumstances. *Morse*, 266 Ga. at 653, 470 S.E.2d at 232. ABA Standards, p. xvii.

In addition to the ABA Standards, this Board should look to similar cases decided by the Supreme Court.

1. The Legal Duty.

The legal duty implicated by Respondent's violations of Rule 3.4(g) is the duty owed by lawyers to the legal system. ABA Standards, § 6.0. The public expects lawyers, as officers of the court, to abide by the substantive and procedural rules and laws. *Id.* Such rules and laws would include constitutional rights, the duties of lawyers, and the criminal law. Lawyers must operate within the bounds of the law and cannot use methods of obtaining evidence that violate the rights of the opposing party or counsel. Rule 3.4(g).

2. The Mental State.

There are three mental states potentially applicable to Respondent. ABA Standards, p. xxi.

"Intent is the conscious objective or purpose to accomplish a particular result." ABA Standards, p. xxi.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. ABA Standards, p. xxi.

"Negligence" is the failure of the lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise.

With respect to the violations of Rule 3.4(g) and 8.4(a)(1), the State Bar does not contend that Respondent made the calls to defense counsel with the intent of obtaining recordings of the privileged conversations. However, the evidence does show that she made the calls to defense counsel knowing that counsels' meetings with their respective clients would be recorded. The evidence shows that when she stuck her in head in the interview room with Ms. McMichael and Mr. Krepps, Respondent knew that the meeting was being recorded.

The evidence did not show that Respondent ever watched any of the recordings, and Respondent affirmatively testified that she did not. However, the evidence certainly shows that when she obtained the CDs of the recordings, Respondent knew that the CDs contained recordings of attorney-client conversations. Likewise, the evidence shows that when Respondent distributed the

CDs to all counsel in the case, she knew that that the CDs contained privileged conversations.

Respondent testified at trial that she did not know that the CDs contained privileged conversations, but that testimony is not credible in light of the Knowledge Findings, the Knowledge Admissions, and the Participation Findings.

Knowingly is the applicable mental state applicable to the Rule 3.4(g) and 8.4(a)(1) violations.

Likewise, with respect to the Rule 8.1 violations, the evidence shows that Respondent made the two false statements *knowing* that they were false.

3. The Injuries And Interference With Legal Proceedings.

The Trial Court Judge and the Special Master both found that the constitutional rights of Mr. Verdi and Mr. Homlar were violated by the Illegal Methods, thus causing injuries to Mr. Verdi and Mr. Krepps.

The rights of the defendants were also violated when Respondent distributed the CDs to all counsel in a multiple-defendant murder case.

The Trial Court Judge also found that the Illegal Methods violated O.C.G.A. § 16-11-62, a felony criminal statute that specifically outlaws the recording of conversations between a defendant and his attorney in a jail, correctional facility, or other facility in which persons who are charged with a crime are incarcerated.

(Tr., Ex. 6, Ex. B thereto, pp. 8-11). That violation constitutes criminal interference with a legal proceeding.

Finally, the use of the Illegal Methods and the distribution of the CDs by Respondent necessitated the filing of motions to suppress and an evidentiary hearing on those motions, which constitutes interference with a legal proceeding.

With respect to her violations of 8.1, Respondent caused an interference or potential interference with this disciplinary matter. The disciplinary process is predicated upon the respondent attorneys refraining from making false statements to the disciplinary authorities. If lies are tolerated, the disciplinary process will not function as intended.

B. Application Of The ABA Standards To This Matter.[5]

1. Presumptive Sanctions for Violations of Rules 3.4(g) and 8.4(a)(1).

a) Pursuant to ABA Standard 6.21, disbarment is generally appropriate when a lawyer knowingly violates a court rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

[5] The State Bar includes a range of presumptive sanctions for the convenience of this Board.

b) Pursuant to ABA Standard 6.22, suspension is generally appropriate when a lawyer knows that she is violating a court rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

c) Pursuant to ABA Standard 6.23, reprimand is generally appropriate when a lawyer negligently fails to comply with a court rule, and causes injury or potential injury to a client or other party.

In light of the evidence of Respondent's knowledge, and the fact that the constitutional rights of defendants in a murder case were violated, suspension is the appropriate, presumptive sanction for Respondent's violations of Rule 3.4(g) and 8.4(a)(1), pursuant to ABA Standard 6.22.

2. Presumptive Sanctions for Violations of Rule 8.1.

a) Pursuant to ABA Standard 6.11, disbarment is generally appropriate when a lawyer, with the intent to deceive a court, makes a false statement that causes serious injury or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal system.

b) Pursuant to ABA Standard 6.12, suspension is generally appropriate when a lawyer knows that false statements are being submitted to a court and causes injury or potential injury to a party, or causes interference or potential interference with a legal proceeding.

c) Pursuant to ABA Standard 6.13, reprimand is generally appropriate when a lawyer is negligent in determining whether statements are false and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

In light of the evidence of Respondent's knowledge, and the fact that the only possible purpose of the false statements was the deception of disciplinary authorities, disbarment is the appropriate, presumptive sanction for Respondent's violations of Rule 8.1, pursuant to ABA Standard 6.11.

C. Aggravating and Mitigating Circumstances.

1. Aggravating Circumstances.

The following is a list of possible aggravating circumstances applicable to Respondent. ABA Standard 9.22, p. 418.

a. Prior disciplinary offenses: This factor does not apply.

b. Dishonest or selfish motive: This factor applies with respect to the Rule 8.1 violations.

c. Pattern of misconduct: This factor does not apply.

d. Multiple offenses: This factor applies.

e. Bad faith obstruction of disciplinary process: This factor applies with respect to the Rule 8.1 violations, as Respondent lied to the State Bar and to SDB in connection with this disciplinary matter.

f. Submission of false evidence during the disciplinary process: This factor applies with respect to the Rule 8.1 violations, as Respondent lied to the State Bar and to SDB in connection with this disciplinary matter.

g. Refusal to acknowledge wrongful nature of conduct: This factor applies.

h. Vulnerability of victim: This factor does not apply.

i. Substantial experience in the practice of law: This factor applies as Respondent has been practicing law since 2009 and served as District Attorney.

k. Indifference to making restitution: This factor does not apply.

l. Illegal conduct: This factor does not apply.

b. Mitigating Circumstances.

The following is a list of possible mitigating circumstances applicable to Respondent. ABA Standard 9.32, p. 418.

1. Absence of prior disciplinary record: This factor applies.

2. Absence of a dishonest or selfish motive: This factor does not apply.

3. Personal or emotional problems: This factor does not apply.

4. Timely good faith effort to make restitution or rectify consequences of conduct: This factor does not apply.

5. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings: This factor does not apply.

6. Inexperience in the practice of law: This factor does not apply.

7. Character and reputation: This factor does not apply.

8. Physical disability: This factor does not apply.

9. Mental disability or substance abuse problem: This factor does not apply.

10. Delay in disciplinary proceedings: This factor does not apply.

11. Imposition of penalties or other sanctions: This factor does not apply.

12. Remorse: This factor does not apply.

13. Remoteness of prior offenses: This factor does not apply.

D. Prior Disciplinary Decisions.

1. Violations Of Rules 3.4(g) and 8.4(a)(1).

With respect to the Rule 3.4(g) violations, there do not appear to be many decisions by the Georgia Supreme Court with respect to the appropriate discipline under circumstances similar to those in this case.

In *Matter of Neary*, 84 N.E.3d 1194 (Ind. 2017), the Supreme Court of Indiana imposed a four-year suspension on a prosecutor who had listened to a live-feed of attorney-client conversations of a criminal defendant and his counsel that took place at a police station, and who had watched DVDs containing recordings of attorney-client meetings at the station. 84 N.E.3d at 119. The court observed

that "[t]here is, quite thankfully, scant precedent in our disciplinary annals for misconduct such as this."

In *Chewning v. Ky. Bar Ass'n*, 605 S.W.3d 332, the Kentucky Supreme Court suspended the respondent lawyer for 30 days as a sanction for the lawyer's participation in eavesdropping conducted by the lawyer's client.

In this case, Respondent testified that she did not view any of the CDs containing the privileged conversations. On the other hand, she made telephone calls to defense counsel that resulted in the privileged conversations taking place in a CID interview room with active recording equipment. Respondent also revealed the privileged conversations to all counsel in a multiple-defendant murder case by distributing the CDs to counsel.

Because the ABA Standard applicable to Respondent's misconduct, Std. 6.22, is concerned with a lawyer's knowing disobedience of a court order or rule, it may be appropriate to look to *In re Smith Fitch*, 298 Ga. 379, 782 S.E.2d 40 (2016) for guidance. In *Smith Fitch*, the Georgia Supreme Court accepted a petition for voluntary discipline of a six-month suspension from a lawyer who had violated a court order that required a reimbursement within a certain time. However, in *Smith Fitch*, there were mitigating circumstances not present in the instant matter. 298 Ga. at 380, 782 S.E.2d at 41 (noting that noncompliance with order was

because of an inability to pay and noting that the lawyer expressed remorse and cooperated with the disciplinary authorities).

2. Violations Of Rule 8.1.

With respect to the violations of Rule 8.1, the making of false statements to the disciplinary authorities is "a very serious matter which typically results in, at least, a significant suspension from the practice of law." *In re O'Brien-Carriman*, 291 Ga. 27, 727 S.E.2d 93 (2012) (citing cases and imposing an 18-month suspension); *In re Wright*, 291 Ga. 841, 732 S.E.2d 275 (2012) (imposing a public reprimand and six-month suspension on lawyer who made false statements to the Court of Appeals).

E. Recommendation Of Discipline.

While a strict application of the ABA Standards may support a more severe penalty, the State Bar recommends a public reprimand in this matter. State Bar Rule 4-102(b)(3). This recommendation takes into account the seriousness of the conduct at issue, Respondent's lack of prior discipline, the fact that the actions of defense counsel and the Trial Court Judge mitigated the actual injuries to the parties and counsel, and the fact that Respondent never viewed the recordings of the attorney-client meetings.

VII. CONCLUSION

The State Bar respectfully asks this Board to

1) SET ASIDE the erroneous and incorrect findings of fact and conclusions of law by the Special Master;

2) RECOMMEND that the Supreme Court find that Respondent violated Rules 3.4(g), 8.1, and 8.4(a)(1); and

3) RECOMMEND that the Supreme Court impose a sanction of a public reprimand pursuant to State Bar Rule 4-102(b)(3).

This 5th day of April, 2022.

Respectfully submitted,

s/William Van Hearnburg, Jr.
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IN THE SUPREME COURT

STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS
BEFORE THE STATE DISCIPLINARY REVIEW BOARD

IN THE MATTER OF:	SUPREME COURT DOCKET NO. S21B0646
NATALIE SPIRES PAINE, BAR NO. 312524,	STATE DISCIPLINARY BOARD DOCKET NO. 7345
RESPONDENT.	

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the Request for Review and Exceptions to the Report and Recommendation of the Special Master by the State Bar of Georgia upon the Special Master and counsel for Respondent by mailing a copy via United States First Class mail, in an envelope properly addressed with adequate postage to:

The Honorable Patrick H. Head
759 Tate Overlook
Marietta, GA 30064
cobbda1@gmail.com
Special Master

Brian Steel, Esq.
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Atlanta, GA 30309
thesteellawfirm@msn.com
Counsel for Respondent

This 5th day of April, 2022.

s/William Van Hearnburg, Jr.
Counsel for the State Bar of Georgia

IN THE SUPREME COURT

STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:	)	SUPREME COURT DOCKET NO. S21B0646
NATALIE SPIRES PAINE, State Bar Number 312524,	)	STATE DISCIPLINARY BOARD DOCKET NO. 7345
Respondent.	)	

RESPONDENT'S RESPONSE TO STATE BAR OF GEORGIA'S REQUEST FOR REVIEW AND EXCEPTIONS TO THE REPORT AND RECOMMENDATION

COMES NOW Natalie Spires Paine, Respondent, by and through undersigned counsel, and hereby files this Response to the State Bar of Georgia's Request for Review and Exceptions to the Report and Recommendation. In support thereof, former District Attorney Paine shows as follows:

THE STATE BAR'S COUNSEL'S "WHAT THIS CASE IS ABOUT" IS MISLEADING[1]

In Paragraph One, the State Bar of Georgia's counsel misleads the reader by asserting that former District Attorney Paine knew that all interactions in Sheriff's Office's interrogation rooms were continuously audio/video recorded. The State

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[1] See State Bar's Request for Review and Exceptions to the Report and Recommendation, Part II, pages 2-4.

Bar's counsel omitted uncontroverted, material evidence that former District Attorney Paine was unaware of the Sheriff's policies and rules regarding recordings in these interrogation rooms and, in fact, had no knowledge whether the recording equipment could be paused, stopped or muted as former District Attorney Paine had no knowledge on how the Sheriff's recording software worked. (See Hearing Transcript, hereinafter "T.," pages 26-28, 54-55, 92-95, 99-100, 121-122, 150-151, 154-156, 179, 191-192, 201-203, 219-220). Further, in Paragraph One, the State Bar of Georgia's counsel fails to reveal that former District Attorney Paine telephoned the defense lawyers for the criminally accused on the double Murder case as a courtesy to those lawyers at the request of Richmond County Sheriff's Office lead Homicide Investigator Grant. (T. 156-162, 167-169, 177-182, 205-206, 208-220, 240).

In Paragraph Two, the State Bar's counsel failed to inform the reader that the evidence proved, definitively, that former District Attorney Paine was unaware and had no knowledge that she obtained recordings of these two attorneys and their clients' conversations when same were copied and distributed pursuant to the discovery statute. (T. 40-41, 55-56, 59-60, 67-69, 179-180, 194-200, 200-203).

In Paragraph Three, the State Bar's counsel failed to accurately report that the Trial Court's finding in the double Murder case that there was "outrageous abuses of statutory and constitutional law" was also found by the Special Master

and that both Superior Court Judge Padgett as well as the Special Master in the case at bar, found, as fact, that former District Attorney Paine did not ". . . personally commit any act of misconduct in this case." (See entire Special Master's Report and Recommendation; See November 15, 2018 Order of Judge Padgett, p. 16 of 17; T. 175-176, 224-225, 242-245). Moreover, former District Attorney Paine consented to the Trial Court's Order to suppress these recordings. (T. 40-41). Former District Attorney Paine as well as the entire District Attorney's Office were unaware that they possessed these recordings and never watched/listened to same. (T. 40-41, 59-62, 67-69).

In Paragraph Four, the State Bar's counsel wrongly asserts, without a scintilla of evidence to support same, that former District Attorney Paine lied when she stated that she had no knowledge of recordings of privileged conversations as well as when she declared that she was not involved in the transport of these criminally accused from the Richmond County Jail to the Sheriff's Office. Both of the State Bar's counsel's contentions are wholly refuted by the Record. (T. 59-62, 67-68, 157-159, 169-171, 200-202, 208-220; T. 36-38, 43-49, 113-115, 118-119, 145-147, 156-158, 160-162). The State Bar of Georgia's counsel had no lawful right to bring this meritless case against former District Attorney Paine and has no right to continue to litigate this baseless and frivolous litigation.

STATEMENT OF THE FACTS[2]

At the disciplinary hearing conducted on February 15, 2022, the State Bar of Georgia's counsel first called the Honorable former District Attorney Natalie Paine, Esq. for purposes of cross-examination and former District Attorney Paine testified that she worked as an Assistant District Attorney in the Augusta Judicial Circuit beginning in 2009 and held that position until she was appointed the District Attorney of this Circuit by former Georgia Governor Deal in approximately March, 2017. (T. 22-25). Former District Attorney Paine explained that her position required that she would frequently visit the Sheriff's Office's Criminal Investigation Division building (hereinafter "CID"). (T. 24-25). Former District Attorney Paine was aware that all conversations and meetings that occurred in CID interrogation rooms were audio/video recorded by the Sheriff for safety/security concerns.[3] (T. 25-26, 56-57). As of February 27, 2018, the material

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[2] The Statement of Facts contained in the State Bar's Request for Review and Exceptions to the Report and Recommendation is not an accurate or thorough presentation of the facts borne out at the hearing. The incomplete presentation of facts wholly ignored critical, material testimony, including the entirety of the testimony of Lieutenant Grant and results in a gross misrepresentation of material facts and events.(See State Bar's Request for Review and Exceptions to the Report and Recommendation, Part II, pages 4-13). Former District Attorney Paine's Statement of the Facts, infra are accurate.

[3] Former District Attorney Paine was unaware of the Richmond County Sheriff Office's policy and rules regarding monitoring the CID interrogation rooms. (T. 26-27).

date in the case at hand, former District Attorney Paine had no knowledge, whatsoever, how the CID interrogation room recording software worked or if the recordings could be stopped, paused, muted or the like. (T. 26-28, 54-55, 99-100, 154-156, 179, 191-192, 201-203, 219-220). Former District Attorney Paine did not know what would be recorded if the audio was "muted." (T. 99-100). Specifically, former District Attorney Paine only knew that the Sheriff's investigator would conduct an interview in the CID interrogation room and the District Attorney's Office would receive a property receipt and a CD of the audio/video recordings.[4] (T. 27-28). On and around February 27, 2018, former District Attorney Paine was unaware that there was no ability to silence or "mute" the audio portion of the recording of these CID interrogation rooms. (T. 27-28).

Former District Attorney Paine was the lead prosecutor in the double Murder case of State of Georgia v. Verdi, Krepps et al., which was indicted in September, 2017.[5] (T. 29-30; T. 164–Respondent's Exhibit Number 1). Mr. Verdi was represented by Robert Holmar, Esq. while Mr. Krepps was represented by Cawanna McMichael Brown, Esq. and both Mr. Verdi and Mr. Krepps were held

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[4] Former District Attorney Paine was never involved, in any manner, in "burning" CD's of anything recorded in the CID interrogation rooms. (T. 27-28).

[5] Eventually, Mr. Krepps plead guilty to Murder and showed the police where the missing body was discarded while Mr. Verdi plead guilty to concealing the death of another and received nine (9) years to serve six (6) years in prison. (T. 205-206).

in custody, without bond. (T. 30-32). Lieutenant Grant was the lead homicide investigator on this double Murder case and this case marked the first time that former District Attorney Paine ever worked with Lieutenant Grant on a major case. (T. 33-35). Lieutenant Grant had been assigned to the Richmond County Sheriff's Office's Criminal Investigation Division at the time of the above-referenced Indictment and Lieutenant Grant was the only homicide investigator working for the Richmond County Sheriff's Office. (T. 34-35).

Pursuant to the testimony of Lieutenant Grant at the evidentiary hearing, on February 26, 2018, Mr. Krepps initiated contact with Lieutenant Grant indicating that he wanted to speak with Lieutenant Grant and thus, Lieutenant Grant had Mr. Krepps transported from the jail to CID interrogation room as permitted by law.[6] [7] (T. 125-126). Mr. Krepps told Lieutenant Grant that he was prepared to reveal information concerning this double Murder case but wanted to also speak with his counsel and former District Attorney Paine. (T. 126-127). Thus, Lieutenant Grant terminated this conversation with Mr. Krepps and scheduled same for the next day,

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[6] Attorney Cawanna McMichael Brown corroborated the fact that her client, Mr. Krepps, initiated contact with Lieutenant Grant. (T. 235-238).

[7] Once a represented criminal Defendant initiates contact with police, police can interrogate this represented person without their counsel present and without notifying their counsel. See Lewis v. State, 311 Ga. 650(2), 859 S.E.2d 1 (2021); Montejo v. Louisiana, 556 U.S. 778, 129 S. Ct. 2079, 173 L.Ed.2d 955 (2009); United States v. Gomez, 927 F.2d 1530 III (11th Cir. 1991).

to wit: February 27, 2018. (T. 126-127).

On February 27, 2018, former District Attorney Paine was told by Lieutenant Grant that Mr. Verdi and Mr. Krepps were going to be transferred from the Richmond County Jail to the CID building because they both initiated communication with law enforcement and wanted to make statements to Lieutenant Grant.[8] (T. 36-37). Former District Attorney Paine did not order or request Mr. Verdi or Mr. Krepps to be transferred to the Criminal Investigation Division for interrogation and she understood that both Defendants were being transferred to the CID because both initiated their desire to speak with law enforcement although they were both represented by counsel. (T. 37-38). Similarly, former District Attorney was unaware who specifically ordered Mr. Verdi and Mr. Krepps to be transported from the Richmond County Jail to the CID interrogation room as former District Attorney Paine was only requested to call the lawyers for Mr. Verdi and Mr. Krepps concerning their need to meet with their clients because their clients were going to be at CID making statements to law enforcement at their request. (T. 43-44). After being requested to do so, former District Attorney Paine contacted Mr. Krepps' attorney, to wit: Attorney McMichael Brown, because Mr. Krepps wanted to make a statement in exchange for a lesser plea offer, to wit: Mr. Krepps wanted to make a deal. (T. 44-46). Former District Attorney Paine did not

[8] See Footnote 7, supra.

remember Attorney McMichael Brown stating not to transport Mr. Krepps to CID because Mr. Krepps did not wish to speak with the authorities. (T. 45-49).

At 8:45 A.M. on February 27, 2018, Lieutenant Grant telephoned former District Attorney Paine to request that former District Attorney Paine call the lawyers for Mr. Verdi and Mr. Krepps and former District Attorney Paine honored that request as she focused the rest of her morning on unrelated Grand Jury presentments. (T. 62-63). When calling Attorney Homlar, former District Attorney Paine explained that Mr. Verdi would be transported to CID interrogation room and was later told that Mr. Verdi and Attorney Homlar met in the CID interrogation room. (T. 66-67).

Former District Attorney Paine swore that she has never met with a represented person about their case. (T. 53-54). Former District Attorney Paine denied that Attorney McMichael Brown told her that Mr. Krepps would not make a statement. (T. 100-102). Former District Attorney Paine correctly explained that the law in Georgia and throughout our Country is settled that when a criminally accused is represented by counsel but initiates interaction and communications with law enforcement, law enforcement can speak with the criminally accused. (T. 100-102). (See Footnote 7, supra).

Richmond County Sheriff's Office Lieutenant Lucas Grant testified that in 2017 he was the only homicide investigator for Richmond County and he was the

lead investigator for the double Murder case involving State of Georgia v. Verdi et al., supra. (T. 102-104). Lieutenant Grant explained that neither former District Attorney Paine nor her office provided Lieutenant Grant legal advice on cases/investigations. (T. 111-112).

Lieutenant Grant explained that former District Attorney Paine, District Attorney of the Circuit and her office were completely separate entities from the Sheriff's Office of Richmond County and that former District Attorney Paine was not the boss/supervisor of any personnel at the Richmond County Sheriff's Office. (T. 201-202). The Sheriff of Richmond County has its own, independent legal counsel and same is not former District Attorney Paine. (T. 203). The Sheriff insisted that upon entry to the CID interrogation room, everything in the room was monitored for valid security reasons, including when attorneys met with their clients, but that these attorney-client communications in the CID interrogation rooms would be redacted by the Sheriff's employees and not disseminated by any Sheriff employee. (T. 202-203).

Lieutenant Grant arranged for the transport of Mr. Verdi and Mr. Krepps to CID on February 26, 2018 and February 27, 2018. (T. 113-115). Lieutenant Grant was aware that Mr. Verdi and Mr. Krepps met with their counsel in the CID interrogation room and that these meetings were recorded. (T. 113-114). It was standard procedure at the Sheriff's CID interrogation room to record the events in

the interrogation room when people entered the room and have that recording continue until all persons left the interrogation room, including on the rare occasion when attorneys met with their clients. (T. 114-115). All CID investigators with the Richmond County Sheriff's Office could watch, hear and see the interrogation from their computer screens. (T. 114-115). Lieutenant Grant was unaware of whether any portion of the CID recordings were redacted by the Sheriff's Office. (T. 115-116). In order to have the Sheriff's Office's work and documents shared with the District Attorney's Office, an investigator with the District Attorney's Office would travel to CID and "burn" DVD-R's or CD's and then take these copies to the District Attorney's Office. (T. 116-117).

On February 27, 2018 at 8:20 A.M., Lieutenant Grant requested that Mr. Verdi be transferred from the Richmond County Jail to the CID interrogation room because Mr. Verdi was found with contraband in his cell which constituted a new crime for which Mr. Verdi was not represented by counsel and Lieutenant Grant could lawfully interrogate Mr. Verdi without any counsel present.[9] (T. 117-118). Later, Lieutenant Grant called former District Attorney Paine and asked her to

[9] The criminally accused's Sixth Amendment right to counsel is offense specific, meaning that even if the right to counsel has attached to one (1) offense for which the accused was charged, it does not attach to even a factually-related separate offense for which the accused was not yet charged. Chenoweth v. State, 281 Ga. 7, 9, 635 S.E.2d 730 (2006); Lewis v. State, 311 Ga. 650(fn. 9), 859 S.E.2d 1 (2021).

contact Mr. Verdi's counsel, Attorney Homlar, and advise Attorney Homlar that Lieutenant Grant was transporting Mr. Verdi to CID for questioning. (T. 118-119). Lieutenant Grant could not recall whether he advised former District Attorney Paine that maps/contraband was found in Mr. Verdi's cell. (T. 119-120). The CID building is not a secured building and therefore, people in custody must be held and watched in the CID interrogation room for the benefit and safety of all. (T. 152-154).

Attorneys Homlar and McMichael Brown both told Lieutenant Grant that they were aware that the CID interrogation rooms where they spoke with their clients, to wit: Mr. Verdi and Mr. Krepps, respectively, were being recorded. (T. 150-151). Before Mr. Verdi was placed in the CID interrogation room, Lieutenant Grant started the recording process. (T. 119-120). Lieutenant Grant had no idea what Attorney Homlar and Mr. Verdi discussed in the CID interrogation room, if anything. (T. 120). Lieutenant Grant does not have any information that anyone with the Sheriff's Office or otherwise, listened to the communications between Attorney Homlar and Mr. Verdi at any time. (T. 121). Lieutenant Grant explained that the reason that the CID interrogation rooms are monitored is to ensure that no contraband is shared with the in-custody person and that no violence occurs to the

in-custody person and/or their counsel.[10] (T. 121). Attorney Homlar did not ask Lieutenant Grant to have any recording device turned off while he met with his client. (T. 121-122).

On February 27, 2018, Mr. Krepps was transported to the CID interrogation room at 12:00 P.M. and former District Attorney Paine arrived at the CID at 12:04 P.M. (T. 130). Attorney McMichael Brown arrived at the CID at 12:50 P.M., met with Mr. Krepps in the CID interrogation room while that room was being recorded. (T. 131-132).

In the case of State of Georgia v. Verdi et al., former District Attorney Paine received one hundred seven (107) CD's that were provided by Sheriff's Office personnel. (T. 67-68). Former District Attorney Paine was unaware that any recorded attorney-client communications even existed until after the Motion to Dismiss was filed in the criminal case by Attorney Homlar.[11] (T. 55-56). Former District Attorney Paine never reviewed the contents of these CD's and had no knowledge that there were any privileged communications contained thereon. (T. 59-62). Former District Attorney Paine had no knowledge that recordings of

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[10] A pen could be contraband as same could be sharpened and used as a weapon, to wit: a knife.

[11] District Attorney Paine conceded, early on, that any recordings of supposed attorney-client privileged information must be suppressed in a criminal case. (T. 40-41; Exhibit 10).

Attorney Homlar's and Mr. Verdi's meetings from the CID interrogation rooms were contained on the discs. (T. 67-68). Oblivious to the existence of the attorney-client privileged communications, but with a goal of complying with discovery, former District Attorney Paine "burned" all discovery on a CD tower and distributed same to all attorneys as an "open file policy." (T. 59-62, 68-69).

Former District Attorney Paine explained that to her knowledge, no one at the Sheriff's Office as well as the District Attorney's Office ever watched/listened to any recordings of attorney-client privileged communications. (T. 40-41). Former District Attorney Paine was unaware until approximately September 25, 2018, that Attorney Homlar met with Mr. Verdi in the CID interrogation room and that their communication was recorded. (T. 40-41). Much after the fact, former District Attorney Paine was made aware that Attorney McMichael Brown met with Mr. Krepps privately in the CID interrogation room and that meeting was audio/video recorded and preserved. (T. 50-51).

Lieutenant Grant realized that there was tension between the Sheriff's policy regarding recording of all visual/audio that occurred in the CID interrogation rooms between attorneys and clients and the need to preserve the attorney-client privilege. (T. 131-132). Lieutenant Grant did not know any method not to record the attorney-client meeting in the CID interrogation room (while monitoring it based on security concerns) but he never viewed or listened to any recordings of

attorney-client privileged communications. (T. 132-133). Lieutenant Grant did not discuss with Attorney McMichael Brown whether her meeting with Mr. Krepps would be recorded. (T. 133). Attorney McMichael Brown told Lieutenant Grant that Mr. Krepps would not be making any statement to law enforcement so with Attorney McMichael Brown's permission, Lieutenant Grant and Attorney McMichael Brown entered the CID interrogation room and Lieutenant Grant requested that Mr. Krepps, himself, state that he no longer wished to speak with law enforcement. (T. 134-135).

Lieutenant Grant explained that to his knowledge, no one listened to any attorney-client privileged communications that were recorded in the CID interrogation room. (T. 140-141). In fact, during the attorney-client meetings between Mr. Krepps and Mr. Verdi and their counsel that occurred in the CID interrogation rooms, Richmond County Sheriff's Office Major Pat Young commanded that all audio on the monitors be placed on "mute" so that no one could listen to any attorney-client conversations but still ensure, visually, the safety of the attorney and that no contraband was taken by the client. (T. 141-142).

In February, 2018, Lieutenant Grant had no training on how to use any of the Sheriff's Office's recording equipment and believed that other personnel with the Sheriff's Office of Richmond County were charged with the duty to cleanse any attorney-client communications so that same would never be disseminated

and/or heard by others and the attorney-client privilege would be protected. (T. 154-156, 201-203). Lieutenant Grant did not know that voices would be captured on a recording system of the attorney-client meetings in the CID interrogation room since Major Young ordered the volume be "muted." (T. 155).

Lieutenant Grant emphatically stated that on February 27, 2018, former District Attorney Paine had no involvement, whatsoever, with the idea, plan or design of placing any attorney and their client in the CID interrogation room. (T. 156-158). Lieutenant Grant had no evidence that former District Attorney Paine ever watched/listened to any attorney-client privileged communications. (T. 157-158). Lieutenant Grant knows former District Attorney Paine to be an ethical person. (T. 158-159). Lieutenant Grant has no evidence that former District Attorney Paine knew that attorney-client privileged communications were contained on any of the CD's provided by the Sheriff's Office to the District Attorney's Office in this case. (T. 158-159). When it was discovered that the Sheriff's Office's recording equipment captured attorney-client privileged communications, former District Attorney Paine was livid and she begged and demanded change of the Sheriff's Office's policy and gave the Sheriff's Office forty thousand ($40,000.00) dollars from her own District Attorney's Office's budget to ensure that the attorney-client privileged communications would never be recorded and that the privilege of confidentiality between attorney and client

would be respected, protected and honored. (T. 159-160).

Regarding Mr. Verdi, Lieutenant Grant explained that he, alone, decided to have Mr. Verdi transported to CID from the Richmond County Jail and that former District Attorney Paine had no involvement, whatsoever, in the decision to bring Mr. Verdi to the CID for questioning. (T. 160-162). Former District Attorney Paine did not even know that Lieutenant Grant, alone, ordered Mr. Verdi to be transported to the CID interrogation room at 8:20 A.M. on February 27, 2018. (T. 161-162). Lieutenant Grant bought Mr. Verdi to the CID interrogation room from the jail because Mr. Verdi may have committed a new crime and therefore, he was not represented by counsel on this new offense of contraband in the jail/tampering with evidence and therefore, unless Mr. Verdi invoked his right to counsel and/or his right to remain silent, he could be lawfully interrogated without counsel.[12] (T. 163-168). Although not required by law, as a professional courtesy, Lieutenant Grant asked former District Attorney Paine to notify Mr. Verdi's lawyer on the Murder Indictment that Mr. Verdi was going to be interrogated. (T. 167-168). Although not constrained by law, Lieutenant Grant did not interrogate Mr. Verdi until Mr. Verdi's trial counsel, Attorney Homlar, arrived at CID and met with Mr. Verdi on February 27, 2018. (T. 168-169). Although not required by law, former District Attorney Paine ensured that Attorney Homlar was notified of a potential

[12] See Footnote 9, supra.

interrogation of Mr. Verdi to give counsel the opportunity to consult with his client. (T. 168-169). Lieutenant Grant stated, without contradiction, that former District Attorney Paine had no involvement with and was not even in the building to know that Attorney Homlar and his client met in the CID interrogation room while same was being recorded. (T. 169-170). Lieutenant Grant made it clear that former District Attorney Paine was not ever present at the CID building when Mr. Verdi was present on this critical date. (T. 169-170). Lieutenant Grant had no knowledge, from any source, that former District Attorney Paine was aware that Mr. Verdi and Attorney Homlar spoke in the CID interrogation room while a recording was in progress. (T. 170-171).

Lieutenant Grant knew that Mr. Krepps' attorney was aware that Mr. Krepps initiated contact with Lieutenant Grant on February 26, 2018, in order to discuss a potential plea deal in exchange for truthful information on the pending double Murder case. (T. 171-172). Although Mr. Krepps had counsel on the double Murder case, Mr. Krepps initiated communication with Lieutenant Grant and therefore, Lieutenant Grant was on firm legal footing that he did not have to contact Mr. Krepps' attorney in order to speak with Mr. Krepps about the indicted case.[13] (T. 172-173). Again, Lieutenant Grant was unequivocal in his sworn testimony that former District Attorney Paine had no knowledge, no involvement,

[13] See Footnote 7, supra.

no participation and no dealings with Lieutenant Grant's contact with Mr. Krepps on February 26, 2018. (T. 173-174). On February 26, 2018, Mr. Krepps conditioned his desire to speak with Lieutenant Grant on also having Attorney McMichael Brown and former District Attorney Paine present when Mr. Krepps provided important information on the double Murder case in the hope for a lesser sentence.[14] (T. 174-175). Former District Attorney Paine was not present with Lieutenant Grant on February 26, 2018, when Lieutenant Grant met with Mr. Krepps and former District Attorney Paine was not even aware that Lieutenant Grant met with Mr. Krepps on February 26, 2018. (T. 174-176). Former District Attorney Paine never asked, at any time, Lieutenant Grant to trample any person's Constitutional rights in any manner. (T. 175-176).

On February 27, 2018, there was no interrogation of Mr. Krepps by Lieutenant Grant as Mr. Krepps was first given an opportunity to meet with his counsel on the double Murder case. (T. 177-178). Lieutenant Grant asked former District Attorney Paine to contact Attorney McMichael Brown so that she could speak with Mr. Krepps as Mr. Krepps requested. (T. 177-178). Former District Attorney Paine had no involvement with the recording of Mr. Krepps and his counsel, Attorney McMichael Brown, in the CID interrogation room. (T. 179-180).

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[14] Only former District Attorney Paine was empowered to possibly offer a lesser sentence to Mr. Krepps, not Lieutenant Grant. (T. 174-176).

Lieutenant Grant had no evidence that former District Attorney Paine knew that attorney-client communications would not be deleted/sanitized/redacted if privileged communications were even captured by the Sheriff's Office's recording system in the CID interrogation room. (T. 179). Former District Attorney Paine was not present during a conversation with Attorney McMichael Brown regarding whether the interrogation room would be recorded and former District Attorney Paine never misguided or misled anyone to believe that these CID interrogation rooms would not be recorded. (T. 179). Lieutenant Grant explained, without contradiction, that it was not former District Attorney Paine's idea, plan or desire to transport Mr. Krepps to CID interrogation room and Lieutenant Grant explained that even if former District Attorney Paine would have told Lieutenant Grant not to transport Mr. Krepps from the jail to the CID interrogation room for interrogation, Lieutenant Grant would have ignored former District Attorney Paine's advice/direction and would have transported Mr. Krepps to the CID interrogation room because former District Attorney Paine was not his boss and Mr. Krepps initiated this communication with Lieutenant Grant.[15] (T. 179-181).

Lieutenant Grant swore that once an in custody and represented criminally accused initiates communication, Lieutenant Grant can speak with that person

[15] Lieutenant Grant was unequivocal that former District Attorney Paine had no authority over him and that the Sheriff of Richmond County is the commanding figure over all Sheriff's Office personnel. (T. 145-147).

without the accused's attorney because Lieutenant Grant is not governed by the lawyers' ethical code and the law permits Lieutenant Grant to speak with any represented person who initiates communication with him.[16] (T. 181-182). Once a criminally accused represented party initiates contact with Lieutenant Grant, and the attorney for the accused states that the client does not wish to speak with Lieutenant Grant, Lieutenant Grant seeks to hear that change of plans directly from the criminally accused in order to prevent the criminally accused from later stating at trial that the criminally accused wanted to share information with Lieutenant Grant but Lieutenant Grant refused to meet with the criminally accused. (T. 182-183). Further, Lieutenant Grant would only speak with the criminally accused after the accused's lawyer stated that her client no longer desired to speak with Lieutenant Grant with the permission, knowledge and consent of the criminally accused's lawyer. (T. 183-184).

After District Attorney Paine became aware that attorney-client privileged meetings had been recorded by the Sheriff's Office in the CID interrogation rooms, former District Attorney Paine demanded to know if any other potentially privileged communications were recorded and District Attorney Paine was told, for the first time, that Mr. Leon Tripp may have been affected by the

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[16] See Footnote 7, supra.

monitoring/recording in CID rooms.[17] (T. 77-78). Former District Attorney Paine then told Mr. Tripp's counsel of this possible issue and therefore, "quarantined" this recording to protect confidentiality of the attorney-client privilege. (T. 77-78). Former District Attorney Paine had no idea whether any conversation of Mr. Tripp and his counsel was actually recorded as former District Attorney Paine never viewed/heard same. (T. 79-80, 84-86). To date, former District Attorney Paine does not know whether any attorney-client privileged communications were recorded between Mr. Tripp and his counsel. (T. 81-82).

Because former District Attorney Paine knew that Mr. Tripp initiated the request to meet with Lieutenant Grant in order to attempt to obtain a favorable plea agreement, former District Attorney Paine contacted Mr. Tripp's attorney. Former District Attorney Paine only assumed that the attorneys and the clients already knew that they would be recorded if they spoke in the CID interrogation room and that they do not discuss privileged matters in that room. (T. 92-95). Once again, former District Attorney Paine made it clear that she became aware of attorney-client privileged recorded conversations and then "begged," "pleaded" and "demanded" the Sheriff's Office to follow suggestions and never to record privileged communications in the future. (T. 95-97).

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[17] The Formal Complaint does not allege any misconduct regarding Mr. Tripp's case as a count or Bar violation. Nonetheless, Bar counsel engaged in substantial inquiry with witnesses concerning same.

On another occasion, attorney-client meetings were recorded at CID interrogation room, dealing with criminally charged individuals, specifically Mr. Laron Mickens, who was in custody. (T. 136-137). Since the revelation of recorded attorney-client privileged communications, the Richmond County Sheriff's Office changed their procedures. (T. 138-139). Now, if an attorney and their client need to meet in the CID in a non-recorded area, the attorney and their client must sign a waiver explaining that there would be no cameras being used for security and once they complete their meeting, the person in custody is removed and secured. (T. 138-139).

Lieutenant Grant explained that Mr. Laron Mickens, who was charged with Murder, initiated contact in 2017 with Lieutenant Grant so he had Mr. Mickens transported from the Richmond County Jail to CID interrogation room.[18] Lieutenant Grant permitted Mr. Mickens' mother to be in this interrogation room and invited counsel to first meet with Mr. Mickens and his mother to ensure that it was best for Mr. Mickens to speak with Lieutenant Grant even though Mr. Mickens had no attorney at that time and initiated communications with Lieutenant Grant. (T. 184-186). The public defender was requested to consult with Mr. Mickens and his mother and therefore, since the mother was present for this

[18] The Formal Complaint does not allege any misconduct regarding Mr. Mickens' case as a count or Bar violation. Nonetheless, Bar counsel engaged in substantial inquiry with witnesses concerning same.

meeting with Mr. Mickens and counsel that had just met him, this was not a privileged communication.[19] (T. 186-192).

After Attorney McMichael Brown consulted with Mr. Mickens, counsel indicated that Mr. Mickens would not speak with Lieutenant Grant. Thereafter, Lieutenant Grant, with Attorney McMichael's Brown knowledge and permission, spoke directly with Mr. Mickens and verified that he no longer wished to speak with Lieutenant Grant as he previously stated. (T. 186-192). Critically, Lieutenant Grant swore that former District Attorney Paine had no involvement, whatsoever, with Mr. Mickens' recorded attorney-client "privileged" (really non-privileged) communication, at all. (T. 189-190).

Lieutenant Grant explained, without contradiction and unequivocally, that former District Attorney Paine had no role in encouraging, helping, assisting or directing any conversation with Mr. Mickens and had no knowledge that any meeting with Attorney McMichael Brown, whether privileged or not, was recorded in the CID interrogation room. (T. 192-194). Mr. Mickens' case went to trial after former District Attorney Paine left the Office of the District Attorney. No one in the District Attorney's Office realized that there was a recording of Mr. Mickens and Attorney McMichael Brown, that this even was ever recorded, that same even occurred or was in the District Attorney's Office's possession. (T. 193-194).

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[19] See Rogers v. State, 290 Ga. 18(2), 717 S.E.2d 629 (2011).

Lieutenant Grant unequivocally reiterated that former District Attorney Paine had no involvement, whatsoever, with recording communications between Mr. Mickens, his counsel and his mother; had no role or involvement in encouraging, planning or assisting with any recording of Mr. Tripp and his counsel; and had no involvement, no knowledge of any interrogation of Mr. Verdi when he was first arrested on June 12, 2017. (T. 194-200).

With regards to Mr. Laron Mickens, Attorney McMichael Brown explained that Mr. Mickens initiated contact with the Sheriff's Office because he wanted to speak with them concerning his criminal charges.[20] When Attorney McMichael Brown spoke with Mr. Mickens and his mother, same was not a privileged communication since the privilege was broken by the presence of the mother. (T. 243-245). Attorney McMichael Brown never claimed that former District Attorney Paine committed any wrongdoing, at all, concerning Mr. Mickens' situation/recording (or any situation/recordings). (T. 244-245). In summary, Attorney McMichael Brown testified that she had no information, from any source, that former District Attorney Paine ever contacted a represented party in violation of any Bar rule. (T. 245).

Lieutenant Grant explained that it was the Sheriff's Office of Richmond County, not former District Attorney Paine, that captured attorney-client privileged

[20] See Footnote 7, supra.

communications and wrongly disseminated same and that Lieutenant Grant believed that these recordings were being redacted/sanitized/deleted by a Sheriff's Office official before these CD's were "burned" and turned over to the District Attorney's Office. (T. 200-201). Lieutenant Grant swore, on his oath, that former District Attorney Paine had nothing at all to do with the recording of any attorney-client communications or the failure to redact/delete/sanitize these recordings before the CD's were "burned" and disseminated. (T. 200-202). In fact, once former District Attorney Paine was on notice of the recordings of the attorneys with their clients, former District Attorney Paine took swift action to ensure that same would never occur in the future and helped the Sheriff to remedy/rectify this problem. (T. 201-202).

Despite the transport of Mr. Verdi and Mr. Krepps to CID and the meetings between client and counsel, neither Mr. Verdi nor Mr. Krepps were ever interrogated on February 27, 2018 and former District Attorney Paine never spoke with Mr. Verdi or Mr. Krepps outside of their counsel's knowledge and/or with their counsel's permission or presence. (T. 204-205). Lieutenant Grant lawfully brought Mr. Verdi to the CID on these potential new crimes as Mr. Verdi had no counsel for these potential new offenses. (T. 228-230). Attorney Homlar was told that since Mr. Krepps sought a deal in exchange for his potential cooperation, Attorney Homlar had the option of meeting with Mr. Verdi since Mr. Verdi was

the less culpable criminal in order to possibly work a deal with Attorney Homlar's client rather than Mr. Krepps. (T. 205-206). Thus, Attorney Homlar was asked to come to the CID interrogation room solely as a professional courtesy by Lieutenant Grant to Mr. Verdi and his counsel, Attorney Homlar. (T. 205-206).

At the evidentiary hearing, Lieutenant Grant made it clear that it was the Sheriff's Office, not former District Attorney Paine, that failed to properly protect the attorney-client privilege and failed to properly handle the recordings of the attorney-client communications. (T. 208-220). Lieutenant Grant involved former District Attorney Paine on February 27, 2018 solely because Lieutenant Grant requested former District Attorney Paine to contact Attorney Homlar and Attorney McMichael Brown because Lieutenant Grant did not have those lawyers' contact information. (T. 218-219). Lieutenant Grant's supervisors were supposed to ensure that any attorney-client privileged conversations that were recorded in the CID interrogation room would be removed/deleted/sanitized by the Sheriff's Office and the Sheriff's Office, not former District Attorney Paine, "dropped the ball." (T. 219-220). Lieutenant Grant had no evidence to present, in any fashion, that former District Attorney Paine did anything wrong at all to violate any ethical or legal rules as alleged by the counsel for the State Bar of Georgia. (T. 224-225). As found by the Special Master, it was made clear that the Sheriff's Office, not former District Attorney Paine, was responsible for the recording and the dissemination of

attorney-client communications. (T. 227-228).

The State Bar of Georgia's counsel called Cawanna McMichael Brown, Esq. as a witness. She testified that from 2015 until 2018 she was employed by the Augusta Public Defender's Office and on February 27, 2018, she received a telephone call from former District Attorney Paine alerting her that her client, Mr. Krepps, was being transferred from the Richmond County Jail to the CID interrogation room for interrogation. (T. 230-232). Attorney McMichael Brown then traveled to the CID to ensure that her client did not make a statement to the authorities. (T. 232-234). Upon arrival at CID, Attorney McMichael Brown spoke with Lieutenant Grant about whether her communications with Mr. Krepps would be recorded and Attorney McMichael Brown was assured that she and Mr. Krepps would be watched but that their conversation would not be listened to. (T. 232-234).[21] While Attorney McMichael Brown was in this CID interrogation room with Mr. Krepps, former District Attorney Paine knocked on the door, asked for permission to enter the interrogation room and asked Attorney McMichael Brown whether Mr. Krepps would be making a statement and Attorney McMichael Brown then asked former District Attorney Paine, in Mr. Krepps' presence, whether there

[21] This is actually a true statement as the evidence proved that although the audio portion of the recording was "muted," the Sheriff's Office could satisfy security concerns by visually monitoring the meeting in the CID interrogation room.

was any offer forthcoming and former District Attorney Paine stated "no, other than life [in prison]." (T. 234-235). Attorney McMichael Brown stated that Mr. Krepps wanted a plea deal and therefore, it was Mr. Krepps who initiated, himself, communication with the Sheriff's Office. (T. 235-236). Attorney McMichael Brown later found out that her communications in the CID interrogation room with Mr. Krepps and Mr. Laron Mickens were video and audio recorded. (T. 235-236).

Attorney McMichael Brown made it clear that on or about February 27, 2018, her client, Mr. Krepps, initiated on his own communication with the Sheriff's Office as he wanted to make a statement to Lieutenant Grant. (T. 236-237). Attorney Homlar contacted Attorney McMichael Brown's office and explained that Mr. Krepps was going to be transported to CID interrogation room from the jail. (T. 236-237). Therefore, Attorney McMichael Brown visited Mr. Krepps at approximately 10:20 A.M. on February 27, 2018 at the Richmond County Jail and then learned that Mr. Krepps did, in fact, initiate contact with the Sheriff to speak with Lieutenant Grant. (T. 237-238). Former District Attorney Paine called Attorney McMichael Brown at 10:45 A.M. on February 27, 2018 but Attorney McMichael Brown missed said call and returned the telephone call to former District Attorney Paine at 10:46 A.M. and that call lasted one (1) minute. (T. 238-239). Attorney McMichael Brown testified that former District Attorney Paine gave her a "heads up" to please come to CID in order to protect her client.

(T. 240).[22] Attorney McMichael Brown arrived at the CID building at 12:50 P.M. on February 27, 2018, pursuant to a text message from former District Attorney Paine that Mr. Krepps was transferred to CID interrogation room and wanted to speak. (T. 239-240). Attorney McMichael Brown never had any conversation with former District Attorney Paine that her meeting with Mr. Krepps would not be recorded. (T. 241). Attorney McMichael Brown had no objection to former District Attorney Paine entering the CID interrogation room to ask whether Mr. Krepps would be making a statement to law enforcement. (T. 241-242). The conversation regarding any plea offer between Attorney McMichael Brown and former District Attorney Paine occurred in front of Mr. Krepps and was initiated by Attorney McMichael Brown with her permission, knowledge and consent. (T. 242). Attorney McMichael Brown testified, under oath, that she had no evidence, whatsoever, that former District Attorney Paine ever spoke with Mr. Krepps or any represented person without her knowledge, presence and consent. (T. 242-243). Attorney McMichael Brown testified, under oath, that she had no evidence, whatsoever, that former District Attorney Paine violated any ethical rules involving Mr. Krepps as alleged in this baseless pleading by the State Bar of Georgia through

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[22] This is the most ethical thing that a lawyer/prosecutor could do. It is outrageous that the State Bar of Georgia's counsel continues to threaten former District Attorney Paine's Bar license on these baseless charges with absolutely no facts to support same. (See Entire Trial Transcript).

its counsel. (T. 243-244).

After eliciting absolutely no inculpatory testimony or evidence that former District Attorney Paine violated any Bar Rule, the State Bar of Georgia counsel forfeited their opportunity to call any further witnesses, including Attorney Homlar, and rested its case. (T. 246-247). Since the State Bar of Georgia utterly failed to prove any allegations in its Petition, former District Attorney Paine found it unnecessary to call any witnesses. (T. 246-247). The Special Master's Report and Recommendation filed on March 6, 2022, which clears former District Attorney Paine of any and all allegations and wrongdoing, is correct under any standard of review, especially the clearly erroneous standard for factual matters.

ARGUMENT AND CITATION OF AUTHORITY

I. THE HONORABLE SPECIAL MASTER'S FACTUAL FINDINGS THAT FORMER DISTRICT ATTORNEY PAINE DID NOT VIOLATE RULE 3.4 WERE NOT CLEARLY ERRONEOUS.

The State Bar of Georgia's counsel wrongly charged former District Attorney Paine with violating Rule 3.4, to wit: a lawyer shall not use methods of obtaining evidence that violate the legal rights of the opposing party or counsel. The State Bar specifically, erroneously and meritlessly charged former District Attorney Paine with violating Rule 3.4(g) alleging that she participated in a recording of meetings between Attorney Homlar and his client, Mr. Verdi, as well as Attorney McMichael Brown and her client, Mr. Krepps, thereby obtaining evidence in violation of the law and then distributing the recordings of these attorney-client meetings to others, and then using this evidence against Mr. Verdi and Mr. Krepps. As correctly found by the Special Master there is absolutely ". . . no evidence to support the allegation that Respondent participated in the recordings as alleged. . .." (See Special Master's Report and Recommendation, page 14). The Record conclusively establishes that former District Attorney Paine in no way was involved with, encouraged, participated, planned, designed, or was a co-conspirator or party to the conduct of participating in any recording between the lawyer and the

client. (See Entire Hearing Transcript; See Statement of the Facts, supra). The Special Master's findings that there is absolutely no evidence to support the allegation that former District Attorney Paine had any direction or assistance in these recordings was correct. (See Special Master's Report and Recommendation, pages 10-16; See Entire Hearing Transcript; See Statement of the Facts, supra).

"In Georgia, it is well-settled that the "clearly erroneous" standard for reviewing findings of fact is equivalent to the highly deferential "any evidence" test." See Patel v. Patel, 285 Ga. 391, 392 (1)(a), 677 S.E.2d 114 (2009); Delbello v. Bilyeu, 274 Ga. 776, 777(1), 560 S.E.2d 3 (2002); Turpin v. Todd, 271 Ga. 386, 390, 519 S.E.2d 678 (1999); Hall v. Ault, 240 Ga. 585, 242 S.E.2d 101(1978); Brenntag Mid South, Inc. v. Smart, 308 Ga. App. 899, 902(2), 710 S.E.2d 569 (2011); Shook v. State, 221 Ga. App. 151, 152, 470 S.E.2d 535 (1996); Jones v. State, 146 Ga. App. 88, 90, 245 S.E.2d 449 (1978)(the phrase "clearly erroneous" "should not be given varying meanings depending on the type case in which" it appears); Reed v. State, 291 Ga. 10, 13, 727 S.E.2d 112 (2012). As the Special Master found that there was "no evidence" to support the Bar's allegations, then the Bar fails in meeting its burden to satisfy the clearly erroneous standard of review.[23]

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[23] Persisting in an appeal of a ruling when the finder of fact conclusively holds that there is "no evidence" of the claim borders on such conduct being frivolous and a violation of Georgia Bar Rule 3.1. A fair reading of the Special

II. THE HONORABLE SPECIAL MASTER WAS NOT CLEARLY ERRONEOUS AND WAS, IN FACT, LEGALLY AND FACTUALLY CORRECT WHEN IT FOUND THAT THE STATE BAR'S COUNSEL FAILED TO PROVE THAT THE HONORABLE FORMER DISTRICT ATTORNEY PAINE VIOLATED RULE 4.2.[24]

Rule 4.2(a) states, in relevant part, that "a lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has consent of the other lawyer or is authorized to do so by law or court order." The Special Master's conclusion was not clearly erroneous and was, in fact, totally accurate when he found "[n]o evidence; none; zero; not even one scintilla of evidence was presented to support this allegation." (See Special Master's Report and Recommendation, page 16). Based on a complete absence of evidence as supported by the Record, the claims of the State Bar's counsel failed and the Special Master's findings cannot be found to be clearly erroneous. (See Special

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Master's Report and Recommendation leads to the inescapable conclusion that State Bar's counsel wholly failed in presenting any evidence to support their claims.

[24] Again, the factual findings by the Special Master are reviewed under the clearly erroneous standard which is applicable to right for any reason. See Patel v. Patel, supra.

Master's Report and Recommendation, pages 16-17; See Entire Hearing Transcript; See Statement of the Facts, supra).

Based upon the above, this baseless appeal by the State Bar's counsel must be rejected.

III. THE HONORABLE SPECIAL MASTER WAS NOT CLEARLY ERRONEOUS WHEN HE FOUND THAT THE HONORABLE FORMER DISTRICT ATTORNEY PAINE DID NOT VIOLATE RULE 8.1.[25]

Rule 8.1(a) states, in relevant part, that ". . . a lawyer. . . in connection with a disciplinary matter shall not. . . knowingly make a false statement of material fact." The Special Master's findings of fact and credibility determinations were accurate and not clearly erroneous when it concluded that the State Bar has failed to present any evidence to refute former District Attorney Paine's credible statement that she had no knowledge of the attorney-client conversations being recorded until September, 2018. (See Special Master's Report and Recommendation, pages 17-19). The Special Master correctly concluded, and was not clearly erroneous, that the credible evidence (and all of the evidence) supported the fact that former District Attorney Paine had no involvement in violating Rule 8.1(a). Again, the State Bar of Georgia's counsel's assertions in the Formal Complaint and in its Request for Review and Exceptions to the Report and Recommendation by the State Bar of Georgia must fail as there is no evidence to support this baseless

[25] Again, the factual findings by the Special Master are reviewed under the clearly erroneous standard which is applicable to right for any reason. See Patel v. Patel, supra.

allegation. (See Entire Hearing Transcript; See Statement of the Facts, supra).

Hence, the State Bar's counsel's appeal must fail.

IV. THE HONORABLE SPECIAL MASTER'S FINDING THAT THE HONORABLE FORMER DISTRICT ATTORNEY PAINE DID NOT VIOLATE RULE 8.4(a) IS NOT CLEARLY ERRONEOUS AND MUST STAND.[26]

Rule 8.4(a) instructs that "[i]t shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to . . . (1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct; knowingly assist or induce another to do so, or do so through the acts of another." As found by the Special Master, former District Attorney Paine did not directly violate, attempt to violate or assist another in violating any Bar Rule. (See Special Master's Report and Recommendation, pages 19-21). The Record contains ample factual support that former District Attorney Paine handled herself in the most professional manner by contacting lawyers even when she did not have to do so since the clients either possibly committed a new crime and/or initiated communications with law enforcement. See Lewis v. State, supra; See Footnote 7, supra and Footnote 9, supra. (See Entire Hearing Transcript; See Statement of the Facts, supra). As correctly found by the Special Master, Lieutenant Grant, a non-lawyer who is not

[26] The factual findings by the Special Master are reviewed under the clearly erroneous standard which is applicable to the any evidence test. See Patel v. Patel, supra.

governed by the Georgia Rules of Professional Conduct for lawyers, had the legal right to interrogate and interview both Mr. Verdi and Mr. Krepps because they potentially committed new offenses for which they did not have counsel and/or after they initiated contact with Lieutenant Grant. See Lewis v. State, supra; See Footnote 7, supra and Footnote 9, supra. (See Entire Hearing Transcript; See Statement of the Facts, supra). The Special Master correctly found that the Record established that former District Attorney Paine did not direct, encourage, induce or otherwise be involved with any type of improper conduct, legally or ethically. (See Special Master Report and Recommendation, pages 19-21).

Hence, again, the State Bar of Georgia's Request for Review and Exceptions to the Report and Recommendations is wholly specious.

CONCLUSION

Based upon the above, the State Bar's counsel's request must be denied and the Special Master's Report and Recommendation adopted.

This 4th day of May, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **RESPONSE TO STATE BAR OF GEORGIA'S REQUEST FOR REVIEW AND EXCEPTIONS TO THE REPORT AND RECOMMENDATION** has been served to the opposing counsel by electronically transmitting same:

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This 4th day of May, 2022.

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