

STATE OF MICHIGAN

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ATTORNEY DISCIPLINE BOARD

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## Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,  
Attorney Grievance Commission,

Petitioner,

Case No. 09-46-GA

v

VALERIE COLBERT-OSAMUEDE, P 42506,

Respondent.

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### MISCONDUCT REPORT OF TRI-COUNTY HEARING PANEL #6

**PRESENT:** William J. Sauget, Chairperson  
Stephen L. Kinsley, Member  
Howard T. Linden, Member

**APPEARANCES:** Cynthia C. Bullington, Assistant Deputy Administrator  
for the Attorney Grievance Commission

Donald D. Campbell,  
for the Respondent

### **I. EXHIBITS**

Please see Index of Exhibits in each transcript as follows:

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## II. WITNESSES

Hon. Michael J. Callahan, March 23, 2010  
Anthony Chambers, October 19, 2010  
Valerie Colbert-Osamuede, Respondent, July 22, 2010; October 12, 2010;  
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Wilson A. Copeland, II, March 23, 2010; April 26, 2010  
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Herschel Fink, March 22, 2010  
Ellen Ha, April 30, 2010; June 10, 2010  
Peter R. Jarvis, December 13, 2010  
John Johnson, March 19, 2010  
Kwame Kenyatta, March 22, 2010  
Kenneth L. Lewis, October 19, 2010  
Samuel E. McCargo, April 28, 2010  
Sharon McPhail, October 19, 2010  
Michael Stefani, June 17, 2010; July 19, 2010  
Morley Witus, October 19, 2010

## III. PANEL PROCEEDINGS

This matter was commenced with the filing of a formal complaint on May 19, 2009. After adjudicating the matter, the panel hereby submits its findings of fact and conclusions of law in accordance with MCR 9.115. For the reasons set forth below, the panel unanimously finds by a preponderance of the evidence that misconduct cognizable by the Michigan Rules of Professional Conduct has been established.

### A. Introduction

The allegations contained in the complaint arose out of the respondent's involvement in several lawsuits brought in Wayne County Circuit Court against the City of Detroit. The first set of cases, so-called "Whistle Blower" actions, alleged retaliatory actions had been taken by City of Detroit administrators against employees, and are entitled *Brown v City of Detroit*, Case No. 03-317557-NZ [hereinafter the "*Brown*" matter<sup>1</sup>], and *Harris v City of Detroit*, Case No. 03-337670-NZ [hereinafter the "*Harris*" matter]. Activities in these cases gave rise to a Freedom of Information Act [FOIA] action entitled *Detroit Free Press v City of Detroit*, Case No. 08-100214-CZ [hereinafter the "*FOIA*" matter]. Respondent, who is Chief Assistant Corporation Counsel of the Labor and Employment Division of the City of Detroit's Office of Corporation Counsel, participated in all of these cases.

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<sup>1</sup> The *Brown* matter had been consolidated for trial with another "Whistle Blower" action involving Harold Nelthrope. Accordingly, reference may be made interchangeably to either the *Brown* or *Brown/Nelthrope* matters.

## B. Factual Background

On September 11, 2007, jury verdicts were returned in the *Brown/Nelthrope* matters. (Ex 1, p 51.) On October 17, 2007, counsel for both sides met at the office of a local law firm for the purpose of negotiating the attorney's fees for plaintiffs' counsel through facilitation. At some point during the negotiations, plaintiffs' counsel, Michael Stefani, indicated he had received copies of text messages which indicated the Mayor of the City of Detroit and his Chief of Staff had committed perjury when they testified in the *Brown/Nelthrope* trial. This revelation served as a catalyst for settlement negotiations which ultimately culminated in the settlement of the *Brown/Nelthrope* matter, as well as the *Harris* matter. A draft settlement agreement was prepared at the facilitation meeting, and counsel traveled to Stefani's office where a more formalized agreement was prepared and signed. (Exs 20 and 21.) These agreements included reference to the text messages.

On October 19, 2007, the Detroit Free Press submitted a FOIA request to the City of Detroit seeking information in both the *Brown/Nelthrope* and *Harris* matters, which was to include "documents, attachments, exhibits, notes or other information related to the settlements." (Ex 27.) On October 27, 2007, the Mayor, Kwame Kilpatrick, rejected the settlement agreement of October 17, 2007. (Ex 30.)

After an exchange of numerous emails beginning on October 29, 2007, new settlement agreements were drafted and dated on November 1, 2007,<sup>2</sup> which lacked any reference to the text messages. (Ex 55 and 56.) The text messages became the subject of a third document, a confidentiality agreement, which was also signed on November 1, 2007. (Ex 57.)

On November 13, 2007, the Detroit Free Press submitted a second FOIA request to the City of Detroit seeking:

The entire settlement agreements in the two separate Wayne County Circuit Court lawsuits between the above-mentioned parties [the *Brown/Nelthrope* and *Harris* matters]. This request includes but is not limited to all documents, attachments, exhibits, notes, records or other information related to the conclusion of the cases . . . . [Ex 64.]

In its response to the FOIA request dated December 7, 2007, which was granted in part and denied in part, the City provided only the November 1, 2007, settlement agreements. (Ex 68.) Thereafter, on January 3, 2008, the Detroit Free Press filed suit in Wayne County Circuit Court pursuant to Michigan's FOIA statute. In its answer to the complaint dated January 24, 2008, the City averred denials of specific allegations, "[F]or the reason that Defendant provided its record in its possession that are non-exempt from disclosure under the Michigan Freedom of Information Act and which are responsive to Plaintiff's request." (Ex 73, ¶s 10, 11, and 17.) Also on January 24, 2007, the City filed affirmative and special defenses stating:

The City of Detroit and its agents did not execute, participate, negotiate, possess, or was [sic: were] otherwise involved in any

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<sup>2</sup> Although these documents were dated November 1, 2007, according to the respondent they were actually executed on December 5, 2007. (Tr 11/30/10, p 39.)

additional documents related to the settlement of Brown and Nelthrope v City of Detroit, et al. and Harris v City of Detroit, et al. (Ex 74, ¶ 8.)

On January 25, 2008, a hearing was held in the *FOIA* action after the Detroit Free Press filed a motion to expedite discovery. (Ex 78.) At the hearing the following exchange occurred:

THE COURT: Are there some private agreements out there?

MS. COLBERT-OSAMUEDE: I did not participate in the drafting, executing of any private agreement between the Mayor, Mr. Stefani, Christine Beatty, or anyone on their behalf. So, I am unaware of any extra documents that may exist between Mr. Stefani, Mayor Kilpatrick and his private attorney, and Ms. Christine Beatty and her private attorney. The City of Detroit did not participate in any such documents.

THE COURT: Okay.

MR. FINK: The question your Honor, respectfully to her was, does she know of the existence. And she said she didn't participate in the drafting.

THE COURT: And she also said she was unaware.

But let's specifically – do you know of the existence of any confidential agreements involving the Mayor privately, or Christine Beatty?

MS. COLBERT-OSAMUEDE: I am not aware of any confidential agreements. [Ex 78, p 19.]

During his deposition on January 30, 2008, Stefani both acknowledged the existence of and produced copies of the October 17th agreements. (Ex 83A, pp 46-51.)

In a letter dated April 4, 2008, to the Circuit Court Judge, reflecting on statements contained in the City's brief filed with the court in conjunction with the *FOIA* litigation and her statements in open court in response to the Court's questions, respondent stated, "I have discovered the brief and my answers did not fully reflect all of the circumstances." (Ex 92, ¶ 4.) She continued:

The responses to the Court's questions were my best recollection at the time and were truthful. However, I have subsequently been reminded of an October 17, 2007 document, that I, on behalf of the City of Detroit, did sign. I did not recall that document when participating in the drafting of the brief submitted to the Court nor did I recall it when responding to questions by the Court at the January 25th hearing. [*Id.*, ¶ 5.]

#### IV. FACTUAL AND LEGAL CONCLUSIONS

##### A. Count One

Count One of the formal complaint alleges that by virtue of her position as an Assistant Corporation Counsel for the City of Detroit, respondent was required to fully apprise a member of Detroit's Common Council via a settlement memorandum of the existence of certain text messages and other confidential documentation surrounding settlement of the *Brown* and *Harris* cases.

In order to address the issues reflected in this count, a determination regarding the existence of an attorney-client relationship is necessary. It is undisputed the City of Detroit's Law Department is part of the Executive Branch of city government and the City Council is the Legislative Branch. *Charter of the City of Detroit*, §§ 4-401 and 6-401. [hereafter the "Charter"]. This distinction, however, does not dispose of the issue.

While it is unnecessary to produce a formal contract to create an attorney-client relationship, the actions of the various participants involved can support an implied finding. *Macomb Co. Taxpayers Ass'n v L'Anse Creuse Pub Schools*, 455 Mich 1 (1997.) Given the actions of all the participants reflected in the record of this case, the panel finds there is sufficient evidence to support such a finding.

When the complaint in the *Brown/Nelthrope* matter was filed, it named several defendants including the City of Detroit and the Mayor. Another attorney in the Corporation Counsel's Office and the respondent shared the responsibility of representing all of the defendants. When the other attorney left City of Detroit employment, respondent accepted this responsibility exclusively. (Tr 7/22/10, pp 11-13.) At some point a decision to hire outside counsel to represent individual interests was made; and in April 2004, Samuel McCargo, Esq., filed an appearance for the Mayor. (*Id.*, p 13.) Although respondent continued in the case, she concedes neither a notice of withdrawal nor a notice of substitution of counsel was filed with the court. (*Id.*, p 64, and Tr 11/30/10, p 9.) Indeed, respondent continued to indicate she represented all defendants in at least one pleading and on several occasions verbally. (Tr 7/22/10, pp 64-65.)

After the return of the verdicts in the *Brown/Nelthrope* matter, the City Council invited respondent and the Corporation Counsel into a closed door session of the Committee of the Whole "to answer questions and concerns that the Council may have regarding this litigation filed against the City and Mayor Kilpatrick." (Ex 15, p 6.) After respondent explained possible courses of post-judgment strategy, the Corporation Counsel stated, "We are – as I indicated, we are your attorneys, and believe it or not, we get as much push back from the Mayor's Office as we do from you on things that we do, that means doing our job." (*Id.*, p 42.) Later he remarked, "But we recognize you as a major client, which you are, that I need to be here and tell you more about what's going on." (*Id.*) The record is void of any comment or objection from the respondent to clarify or refute these statements. The record is equally as silent in further communications respondent had with City Council. (See Ex 23<sup>3</sup> and 24.)

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<sup>3</sup> Exhibit 23 is a letter dated October 18, 2007, which is addressed to the "Honorable City Counsel," seeking authorization to settle the *Brown/Nelthrope* matters. The letter begins, "We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a **confidential attorney-client privileged memorandum** that is being separately hand-delivered to each member of your Honorable Body." (Emphasis added.)

Having determined an implied-in-fact attorney-client relationship between respondent and the City Council, we now turn to the specific allegations of misconduct contained in Count One.

Respondent acknowledges that at the time of the facilitation meeting on October 17, 2007, she knew Stefani claimed to be in possession of the text messages. (Tr 7/22/10, p 94.) Moreover, respondent found the text messages of sufficient importance to advise her supervisor of Stefani's claim in a telephone call to encourage her supervisor, John Johnson, to attend the facilitation. (Tr 3/19/10, pp 166-167.) Respondent also acknowledges she did not read Stefani's supplemental motion for attorney's fees, which purportedly contained quotations from the text messages. (Tr 7/22/10, pp 101-102.)<sup>4</sup>

In her settlement memorandum to the City Council (Ex 24) there is no mention of the text messages or of Stefani's claim of having them. Instead, respondent based her evaluation and recommendation almost entirely on financial concerns.<sup>5</sup> Given the importance respondent attached to the text messages at the time of the facilitation meeting and the conduct reflected by the other counsel in attendance, it is clear to this panel that the text messages were a pivotal issue to settlement of the *Brown* and *Harris* cases. Accordingly, we find her failure to disclose their existence or Stefani's claim of their existence breached her duty to City Council and its Internal Operations Committee to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" under MRPC 1.4(b).<sup>6</sup>

The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests. [MRPC 1.4 (Comments).]

We find, therefore, that the allegations contained in Count One of the formal complaint have been established.

## **B. Count Two**

Count Two alleges that by participating in actions involving concealment of the text messages, respondent engaged in activities involving conflicts of interests between the City of Detroit and its Mayor, as well as the People of the City of Detroit. In this regard the formal complaint alleges respondent's actions violated the provisions of MRPC 1.7(a). (Formal Complaint, p 18.)

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<sup>4</sup> Respondent's lack of familiarity with regard to the contents of the supplemental motion is in marked contrast to the Corporation Counsel's, who admitted to engaging in willful blindness, because he did not want to trigger a FOIA disclosure. (Tr 3/9/10, pp 228-229.)

<sup>5</sup> In this regard, see also (Tr 11/30/10, p 64), when asked a question pertaining to whether or not respondent thought she was protecting the City of Detroit's interest at the time she participated in the settlement of the *Brown/Nelthrope* and *Harris* cases, she replied:

I was protecting them. We were no longer subject to a thousand dollars a day interest. We had concluded a very expensive and hard-fought trial and litigation and it was time at that point in time to let the city heal.

<sup>6</sup> We do note, however, that respondent ultimately did inform the City Council of the text messages during a hearing before the Committee of the Whole on April 10, 2008. This of course was well after the *Brown/Nelthrope* and *Harris* cases were settled. (Ex 93, pp 154-155.)

1.7(a) states:

A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

According to the *Comments* associated with this rule "Paragraph (a) prohibits representation of opposing parties in litigation," and "Simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (b)." The panel is unaware of any authority prohibiting the analysis associated with paragraph (a) to situations like the present one involving codefendants.<sup>7</sup>

Despite the *Charter's* language, which places the Office of the Corporation Counsel in the Executive Branch, as reflected above, respondent and others in her office held themselves out as legal counsel to the City Council, the Legislative Branch. Once she learned of Stefani's claim of possessing the text messages, her continued representation of both entities became fraught with peril. She couldn't act on behalf of one interest without affecting the interest of the other.

In this regard, respondent knew or should have known that her continued presence in the litigation would adversely affect her relationship with either the Mayor, the City, or the City Council. It is equally clear no consultation with City Council transpired to secure consent.

The peril associated with the conflict is best illustrated when respondent presented the settlement memorandum to the Internal Operations Committee on October 18, 2007, where she not only failed to disclose Stefani's claim of possessing the text messages, she also failed to inform the Committee that a tentative agreement had been executed for and on behalf of the City of Detroit the previous evening. (Tr 11/30/10, pp 37-38.)

We find, therefore, that the allegations contained in Count Two have been established.

**C. Counts Three and Four**

Due to the similarity of the allegations and the commonality of factors associated with these counts they will be addressed jointly. Count Three focuses on a responsive pleading in the *FOIA* action brought by the Detroit Free Press in which it is alleged the respondent knowingly made a misrepresentation of a material fact to a tribunal – a Wayne County Circuit Court Judge. In like fashion, Count Four focuses on allegedly false statements made by respondent to questions posed to her by the judge during a motion hearing in the *FOIA* matter.

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<sup>7</sup> This position is also supported by MRPC 1.0(c), which states:

The text of each rule is authoritative. The comment that accompanies each rule does not expand or limit the scope of the obligations, prohibitions, and counsel found in the text of the rule.

The verdict in the *Brown/Nelthrope* matter was 6.5 million dollars. (Tr 11/30/10, p 8.) Respondent admits she had the settlement agreement in her possession when she left Stefani's office on the night of October 17, 2007. (*Id.*, p 32.) Subsequent to leaving Stefani's office she "forgot about the existence of the October 17 agreement" and didn't remember it until January, 2008. (*Id.*, p 40.) In other words, for purposes of the *FOIA* litigation, the October 17th agreement was "out of sight and out of mind."<sup>8</sup>

The panel is unwilling to accept respondent's explanation. As an initial observation, given the substantial amount of the verdict, one is hard-pressed to believe an attorney involved in the litigation would misplace, forget or simply lose sight of such an important document. Despite its absence, respondent didn't request another copy of the settlement agreement from any of the other attorneys who attended the facilitation meeting. (Tr 11/30/10, p 38.) Moreover, it is remarkable that in the time period surrounding the facilitation meeting, respondent could recall she was late for the meeting because she had received a call from a rehabilitation facility indicating her mother had injured herself in a fall,<sup>9</sup> that she went out for dinner with a friend at a restaurant she could recall by name,<sup>10</sup> that she was busy preparing a federal trial and preparing witnesses,<sup>11</sup> that she was out of her office on sick leave for a little over a week,<sup>12</sup> and yet she simply forgot about the October 17th settlement agreement for purposes of the *FOIA* litigation or for any another purpose.

During the hearing, testimony was taken from Ellen Ha. Ha indicated she was a supervising attorney in the City's Law Department and the City's designated *FOIA* coordinator. (Tr 4/30/2010, p 7.) Ha stated she provided respondent with copies of each of the *FOIA* requests "as it relates to the settlement of the *Brown/Nelthrope* and *Harris* matters." (Tr 6/10/10, p 81.) One of the documents filed in the *FOIA* litigation was Exhibit 75, an emergency motion filed by the Detroit Free Press to expedite discovery. On January 24, 2008, notwithstanding the presence of the October 17th agreement, the City of Detroit, through Ha and respondent, filed a response stating:

The City of Detroit and its agents did not execute, participate, negotiate, possess, or was [sic: were] otherwise involved in any

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<sup>8</sup> Throughout the numerous hearing dates in this case respondent has suggested and argued that the October 17th agreement was something other than a contract. See e.g., Tr 11/30/10, p. 84, where the respondent described the document as a "tentative settlement agreement." Apparently the inference she is attempting to raise is that the document is not subject to *FOIA*. A contract whose enforcement is conditioned on the happening of a future event, which in this case was the approval by the Mayor, is, nonetheless, a contract. Unlike an illegal contract, which is void *ab initio*, the October 17th agreement, which was signed by all the parties at the facilitation meeting, was voidable. Respondent herself recognized this distinction when she testified before the panel in the *John Johnson* matter (ADB Case No. 09-49-GA) – portions of the transcript of which have been admitted into evidence in this matter. [See Ex 96, pp 388-395.]

<sup>9</sup> Tr 07/22/10, p 87.

<sup>10</sup> Tr 07/22/10, p 122.

<sup>11</sup> Tr 10/12/10, p 19 and Tr 07/22/10, p 12.

<sup>12</sup> Tr 10/12/10, p 52.

additional documents related to the settlement of *Brown and Nelthrope v City of Detroit*, et al. and *Harris v City of Detroit*, et al. [Ex 76, p 3.]<sup>13</sup>

Ha testified that prior to filing the document, it was read to the respondent who offered no corrections and commented, "Sounds good to me." (Tr 4/30/10, pp 59-61.) Having had the opportunity to observe the manner and demeanor of each of the witnesses, the panel finds Ha's testimony most credible. By her action, respondent knowingly caused a false statement of material fact to be made to a tribunal.

The day after the filing of the City of Detroit's response in the FOIA action a hearing was conducted before the Hon. Robert Colombo regarding the Detroit Free Press's motion to expedite discovery. As reflected in the Factual Background of this opinion, during this hearing, in responses to questions posed by the judge, respondent denied participating in drafting or executing any private agreements. (Ex 78, p.19.) Respondent replied further to the court that she was "not aware of any confidential agreements." (*Id.*) We find the respondent's statements made in response to the court's questions on January 25, 2008, were false statements of a material fact; to-wit: the existence of the October 17th agreement.

We do not find that respondent's letter to Judge Colombo of April 4, 2008, absolved her of liability for either the false statement contained in the FOIA pleadings nor in the statements made to the court in response to its questions during the motion hearing. This letter was dispatched nearly ten weeks after the statements were made and nearly ten weeks after the October 17th agreement was produced at Stefani's deposition. The ameliorative effect of this letter will be considered in the disciplinary portion of this proceeding.

Accordingly, we find that the allegations contained in Counts Three and Four of the formal complaint have been established.

#### **D. Count Five**

Count Five alleges that on or about March 21, 2008, respondent provided a material false statement in a sworn statement to the Attorney Grievance Commission. Specifically, it is alleged that when asked whether respondent ever had a discussion with Samuel McCargo, the Mayor's attorney in the *Brown/Nelthrope* matter about the FOIA request, she replied, "No." According to the formal complaint, the falsity of the statement lies in the fact that in late October 2008 [sic. 2007], respondent stated to Ha that "Sam wants to know if drafts are FOIA-able."

During the hearing, testimony pertaining to this count was provided primarily by respondent, Ha, and McCargo.<sup>14</sup> Ha testified on direct examination that on the 24th of October she

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<sup>13</sup> This language is identical to language contained in Exhibit 74, the City of Detroit's Affirmative and Special Defenses filed in the FOIA action.

<sup>14</sup> Testimony regarding respondent's concern as to whether or not drafts were FOIA-able during the relevant time period was also received from John Johnson. *Cf.* (Tr 3/19/10, p. 106), where Johnson testified that he spoke with respondent after the first FOIA request from the Detroit Free Press was received and respondent asked him a similar question.

went to respondent's office at which time Ha provided respondent with a copy of the FOIA request from the Free Press. Ha explained, "I can't recall the exact words or at what the sequence was, but I remember her saying Sam wants to know if drafts are FOIA-able. . . ." (Tr 4/30/10, p 13.)

Again, on cross examination, Ha testified, "And I can't remember if she mentioned Sam's full name before that or after that. But at some point, it came out, Sam wants to know if drafts are FOIA-able." (Tr 6/10/10, p 83.)

McCargo testified his prior legal experience working with Highland Park Schools provided him with familiarity of FOIA matters. He did concede a lack of awareness of "the exact case law." (Tr 4/28/10, pp 60-61.)<sup>15</sup> On cross examination McCargo denied ever asking respondent whether or not drafts were FOIA-able. He further stated, "I had 10, 12 years of experience with FOIA. . . I didn't need anyone else's description of when a draft is FOIA-able or not FOIA-able." (*Id.*, p 107.)

Respondent testified on direct examination that she did have a conversation with Ha on or about October 24, 2007, where she asked Ha if drafts were FOIA-able. (Tr 10/12/10, p 22.) She further testified that she learned of the FOIA request on October 22<sup>nd</sup>. (*Id.*, p 26.) Between October 22<sup>nd</sup> and November 1<sup>st</sup>, respondent stated she had no conversations with McCargo relating to the FOIA request. (*Id.*, p 27.) And that McCargo did not ask respondent any questions during that time frame relating to FOIA. (*Id.*)

In evaluating the allegations contained in this count, the panel notes the absence of any evidence, testimonial or otherwise, which indicates McCargo directed respondent to make a FOIA-related inquiry of Ha. Our analysis is not concluded by this finding. We are also mindful of McCargo's testimony regarding the "transformation" of a FOIA exempt document into a FOIA-eligible document when the document has been used by a body for an extended period of time. Given the form of the October 17th document purporting to settle the *Brown/Nelthrope* matter, which set forth an amount certain and various other specific conditions that was executed by all of the parties to the litigation, it is entirely possible that McCargo had some question whether the document was subject to FOIA. Additionally, the parties' efforts to implement the provisions of the document by securing a safety deposit box, drafting confidentiality agreements, and obtaining Council approval for the settlement amount in the days immediately following October 17, 2007, could have triggered thoughts that the FOIA "transformation" had occurred.<sup>16</sup> Taking these factors into consideration, it is entirely possible McCargo may have mentioned something to the respondent regarding FOIA in the form of a rhetorical question or an aside, which respondent construed as a directive.

The panel is satisfied that Ha's testimony regarding the FOIA conversation on October 24, 2007, is credible. As an initial observation we note that Ha has no stake in the outcome of this disciplinary hearing. An appellate tribunal reviewing the transcript of this case will not appreciate

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<sup>15</sup> McCargo further stated, "And usually when drafts become FOIA-able is when they have been used by a body for so long and used in their totality, that the drafts have, in effect, become a final document." (*Id.*, p. 61.)

<sup>16</sup> In this regard, McCargo testified that in his estimation the earliest date the October 17th agreement became FOIA-able was December 11<sup>th</sup>. (Tr 4/28/10, p 60.) This response clearly indicates some consideration had been given to the document's FOIA status.

the depth of emotion Ms. Ha displayed as she went about the unpleasant task of testifying about the actions of her colleague.<sup>17</sup> Nor will the cold record reflect that the disciplinary hearing had to be stopped briefly to allow Ms. Ha time to compose herself as she wept when she described her shock to the production of the October 17th document during Stefani's deposition in January, 2008.<sup>18</sup>

The manner in which Ha testified was consistent with her role in the City's Law Department as FOIA coordinator. It was clear she is not a litigator, who could have had some insight regarding the later significance of statements made to her.

For these reasons, we find respondent did make the statements to Ha regarding McCargo's interest in the FOIA matter, and we also find the statement respondent made in her sworn statement to the Attorney Grievance Commission on February 19, 2009, reflected in Count Five of the formal complaint, was materially false.

Accordingly, we find that the allegations contained in Count Five of the formal complaint have been established.

Pursuant to these findings, a hearing shall be scheduled for the sanction phase of this matter.

**ATTORNEY DISCIPLINE BOARD**  
Tri-County Hearing Panel #6

By:

  
William J. Sauget, Chairperson

Dated: September 7, 2011

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<sup>17</sup> See for example (Tr 04/30/10, p 15) “. . . I realize that my testimony can have severe consequences on my colleague, and, yes, that does make me quite nervous.”

<sup>18</sup> Tr 04/30/10, p 70.