

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**AMY A. MCGOWAN** ) **File No. SC99614**  
Missouri Bar No: 35267 )  
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**BRIEF OF RESPONDENT AMY MCGOWAN**

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## **POINTS RELIED ON WITH AUTHORITIES**

### **POINT I**

**The Information Filed By Appellant Originally Contained Three Accusations Of Ethical Misconduct; Appellant Is Not Pursuing Two Of Those Accusations In This Proceeding. However, The Two Accusations Which Are No Longer Being Pursued Were The Product Of The Testimony Of Ricky Kidd’s Attorney, Teresa Anderson, At A Habeas Hearing, And Ms. Anderson’s Testimony At That Hearing, Her Memory Of Contemporaneous Events, And Her Inclination To Testify Favorably For Her Former Client Mr. Kidd Bear On The Remaining Accusation.**

*In Re Madison*, 282 S.W.3d 350 (Mo. banc 2009)

*In re Howard*, 912 S.W.2d 61 (Mo. banc 1995)

### **POINT II**

**This Court Should Not Discipline Respondent Amy McGowan Because Appellant Has Not Sustained Its Burden Of Proving That Ms. McGowan Violated Supreme Court Rules 4.3.8(d) And 4-8.4(d). Appellant Cannot Carry Its Burden Of Proof That There Was Improper Conduct By Ms. McGowan Given The Absence Of Any Meaningful Memory Of The Participants About The Scheduling Of Two Depositions That Were Taken More Than Twenty Years Ago.**

*Lexow v. Boeing Co.*, 643 S.W.3d 501 (Mo. banc 2022)

*Powel v. Chaminade College Preparatory, Inc.*, 197 S.W.3d 576 (Mo. banc 2006)

*Powell v. State Farm Mut. Auto. Ins. Co.*, 173 S.W.3d 685 (Mo. App. 2005)

**POINT III**

**The Court Should Not Discipline Respondent Amy McGowan Because, Although She Does Not Have The Burden Of Proof, It Is More Likely True Than Not True That Ricky Kidd's Attorney Did Have Notice Of The Two Depositions And Received The Transcripts Of Those Depositions.**

**POINT IV**

**This Court Should Not Discipline Ms. McGowan Because, Although She Does Not Carry The Burden Of Proof, It Is More Likely True Than Not True That The Witnesses Whose Depositions Were Taken The Friday Before Trial Were Not Going To Be Called As Witnesses At The Trial Which Would Explain Why Ricky Kidd's Attorney Was Not Present At The Depositions And Was Non-Plussed When The Depositions Were Thereafter Discussed In Her Presence At Trial.**

## STATEMENT OF FACTS

### **I. The Murder Of George Bryant And Oscar Bridges.**

On February 6, 1996, four-year-old Kayla Bryant was at home with her father George Bryant and his friend Oscar Junior Bridges. While Kayla sat in the living room eating and watching television, she noticed a white car pull up in front of the house. When Kayla looked out the window, she saw two men dressed in black getting out of the white car.

The two men and George Bryant went into the kitchen where Oscar Bridges was waiting. After a brief conversation the two men pulled out guns. One man shot George Bryant while the other chased and shot Oscar Bridges who had fled. Mr. Bryant was able to make his way outside the house and yell for help. Mr. Bryant's neighbor, Richard Harris, was walking by the house when he heard Mr. Bryant's calls. He watched while a man came out and dragged Mr. Bryant behind a car and then another man came out and shot Mr. Bryant two times. The shooter was later identified by Mr. Harris as Ricky Kidd. Ricky Kidd and Marcus Merrill were arrested and charged for the murders. (See Exhibit 30, pages 2138 through 2139<sup>1</sup> where these facts have been taken from the Court of Appeals decision arising out of the conviction of Mr. Ricky Kidd.) The murder trial began on March 17, 1997. (App. 486).

### **II. Amy McGowan Disclosed The Addresses Of Gary Goodspeed, Sr. and Gary Goodspeed, Jr. To Mr. Kidd's Counsel, Teresa Anderson; Thereafter, She**

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<sup>1</sup> The record before the Court is sequentially numbered. The page numbers appear in the bottom, right corner of each page. Throughout this Brief, Ms. McGowan will cite to those page numbers.

**Never Communicated Needing Help Finding The Goodspeeds, Or Even An Interest In The Goodspeeds.**

After Mr. Kidd was charged, the State, through Ms. McGowan here, provided discovery to his attorney Teresa Anderson. The discovery included the addresses of individuals named Gary Goodspeed, Sr., and Gary Goodspeed, Jr. (App. 349 and 489). The discovery revealed that the police department in Missouri worked with the police in Georgia to search the Goodspeeds' residence, and confirmed the address of the Goodspeeds with a utility bill. (App. 355) Thereafter, there was never any indication that the addresses were incorrect, and, during the pendency of the criminal charge, Ms. Anderson never told Ms. McGowan that she needed any help finding the Goodspeeds. (App. 349, 353-354 and 498-499).

That Mr. Kidd's attorney did not need help finding the Goodspeeds was not surprising because in addition to their addresses, she had been given their phone numbers and pager numbers. (App. 349). And, Mr. Kidd had a close relationship with the Goodspeeds. (App. 352). He had lived with them for a period of time and considered them to be pseudo-relatives. (Id.).

At the time the criminal case was pending, there was a procedure under a Missouri statute that allowed Ms. Anderson to subpoena out-of-state witnesses like the Goodspeeds. (App. 356). Although she knew where the Goodspeeds lived, Ms. Anderson never utilized the statute to secure the presence of the Goodspeeds. (App. 355-56).

Prior to the trial of Mr. Kidd on March 17, 1997, Teresa Anderson never expressed any interest to Ms. McGowan in having the Goodspeeds as witnesses. (App. 595). Ms.



Anderson did not list the Goodspeeds as witnesses, she did not ask for a continuance because of difficulty finding the Goodspeeds, and she did not request any assistance from the Trial Judge, Judge Shinn, in getting the Goodspeeds as witnesses. (App. 595).

In June of 1996, Ms. McGowan filed and served a discovery request on Defendants Kidd and Merrill which required them to give notice of an intent to utilize an alibi defense within ten days of the request. Neither Ricky Kidd nor Marcus Merrill disclosed any alibi witnesses within ten days of the request. Later, each filed a notice of alibi. Ricky Kidd filed his notice of alibi on March 6, 1997 and Marcus Merrill filed his notice of alibi on March 13, 1997. (App. 500-501). The lateness of the disclosures would have invested the State with the ability to have objected to Defendant's use of the alibi witnesses, but Ms. McGowan did not object to the late disclosure. (App. 502).

Defendant Merrill's counsel listed the Goodspeeds as alibi witnesses for Mr. Merrill; Ms. Anderson did not list the Goodspeeds as alibi witnesses for Mr. Kidd. (App. 361). And when she filed her witness list, Ms. Anderson did not list the Goodspeeds as witnesses. (App. 360 & 595).

### **III. Ms. McGowan Could Not, And Did Not, Schedule The Goodspeed Depositions.**

The week before the criminal trial started, several depositions were taken. The depositions of eye witnesses Richard Harris and Kayla Bryant were taken the Tuesday before trial by Ms. Anderson, and the depositions of the Goodspeeds were taken the Friday before trial. (App. 583-84). No depositions had been taken in the case prior to that time. (App. 486).

Ms. McGowan does not recall the logistics of how the depositions were set up. (App. 587). No formal deposition notices were filed disclosing who scheduled any of the depositions. (App. 585). However, at the time the criminal case was pending, a prosecuting attorney had no authority to take depositions of witnesses. (App. 584). Consequently, Ms. McGowan was not the one who scheduled the depositions. Id.

**IV. Ms. McGowan Would Not Have Gone Forward With The Goodspeeds' Depositions Unless She Knew Ms. Anderson Was Aware Of The Depositions.**

Although Ms. Anderson, Ricky Kidd's lawyer, was at the depositions of the eye-witnesses on the Tuesday before trial, she was not at the depositions three days later of the Goodspeeds: Defendant Merrill's designated alibi witnesses. (App. 588). Ms. McGowan testified that she had a collegial relationship with Kate Ladesh, Mona Spencer and Teresa Anderson, and had no reason to prevent or hinder Teresa Anderson from knowing about and attending the Goodspeed depositions. (App. 600-601). She would not have gone forward with the Goodspeed depositions without knowing that Teresa Anderson knew about the depositions. (App. 588). Ms. McGowan also testified that she does not believe that Kate Ladesh, Mr. Merrill's counsel, would have proceeded with the depositions unless Teresa Anderson knew of the depositions. (App. 588).

Ms. McGowan testified that the procedure back in 1997 was that deposition transcripts would normally be dropped off at the front desk at the Prosecutor's Office. She has no memory of when she would have obtained copies of the transcripts of the Goodspeeds which were taken on March 14, 1997 with the trial being on March 17, 1997. (App. 594-595).

**V. When The Testimony and Depositions Of The Goodspeeds Were Discussed On The Record During The Pre-Trial, Mr. Kidd's Lawyer, Ms. Anderson Did Not Express Any Surprise Or Claim That She Was Unaware Of The Depositions.**

Before the opening statements of the criminal trial in 1997, the Court took up the pretrial motions. During the pretrial hearing, Ms. McGowan openly talked about the Goodspeed, Jr., deposition; Ms. Anderson did not express any surprise or suggest that she was unaware that any such depositions had taken place. (App. 838).

During their depositions, the Goodspeeds discussed how they had changed their names to Rahib Muwwakkil and Abu-Rahman Saad Muwwakkil. Mr. Kidd's co-defendant, Defendant Merrill, filed a Motion in Limine because he did not want his designated alibi witnesses referred to as Gary Goodspeed, Jr., and Gary Goodspeed, Sr. (App. 2104-2106). During the hearing on the motion, in the presence of Ms. Anderson, Ms. McGowan stated:

These are witnesses for the defense. They are not defendants in the case, and they have been endorsed as alibi witnesses. They both testified that they have legally changed their names....

(App. 765). Teresa Anderson was present when this discussion was going on, and participated in and commented upon the discussion and what was going to happen and whether or not to mention the changed names of the Goodspeeds. (App. 593).

The Goodspeeds' deposition testimony was referenced again during an on the record discussion with the Judge about whether there would be mention of other alleged perpetrators being charged or not. (App. 838). This discussion about others not charged was with regard to anticipated testimony of Gary Goodspeed, Jr. As can be seen in the

criminal trial transcript, the Judge asked if Mr. Goodspeed, Jr. had counsel and Ms. McGowan answered as follows:

No, and we did a deposition, and at that time Mona talked to him extensively about his Fifth Amendment rights, and I also did too and we had a detective read him his rights and I told him he could talk to an attorney before the deposition. Maybe that needs to be done again.

(App. 2273-2274).

The Judge offered to call a lawyer named John Quinn to come to Court and advise Goodspeed of his right not to testify. (App. 838). Ms. Anderson was engaged in the conversation and agreed not to mention that Goodspeed, Jr., was uncharged. (App. 838). She did not voice any surprise about the fact that the depositions had occurred; nor did she claim that she was unaware that the depositions had occurred. (App. 593).

#### **VI. Ms. Anderson Used Facts Disclosed In The Goodspeeds' Depositions In A Motion In Limine And Trial Subpoena.**

At the beginning of the criminal trial, Teresa Anderson, on behalf of Mr. Kidd, filed a Motion in Limine referring to the Muslim name of one of the Goodspeeds. (App. 2102). As discussed above, the fact that the Goodspeeds changed their names was discussed during their depositions. (App. 1937 & 1949).

During the trial, Ms. Anderson had a subpoena prepared for Gary Goodspeed, Jr.. (App. 415-416). Even though Ms. Anderson knew that the Goodspeeds lived in Georgia, she prepared the subpoena to be served at a Missouri address of 6104 Tracy, which was the address of Mr. Goodspeed, Jr.'s mother. Mr. Goodspeed had provided that address as the address of his mother when he gave his deposition on the Friday before trial. (App.

1952). Ms. Anderson testified that she did not know where she got the address. (App. 380-383).

**VII. At The Criminal Trial, A Record Was Made With Co-Defendant Merrill That The Goodspeeds Were Under Subpoena, But He Did Not Want Them To Testify; Ms. Anderson Said Nothing About Wanting To Subpoena The Goodspeeds Or Have Them Testify.**

During the trial, but out of the hearing of the jury, co-defendant Merrill was called to testify. (App. 411). He testified that although the Goodspeeds had been subpoenaed to testify on his behalf, he had decided not to have them testify. (App. 2262). Teresa Anderson, was in Court when Mr. Merrill gave this testimony, but she did not speak up and say anything about wanting the Goodspeeds to testify. (App. 414). Ms. Anderson does not recall whether Mr. Merrill's attorney, Ms. Ladesh, had told her that she had the Goodspeeds under subpoena, but Ms. Anderson was in Court and said nothing about her desire to have the Goodspeeds subpoenaed or to have them testify. (App. 414 and 416).

**VIII. At His First Federal Habeas Hearing In 2009, Mr. Kidd Referenced The Testimony In The Goodspeed Deposition Transcript; And He Did Not Claim That He Or His Counsel Was Unaware Of The Depositions Or Deprived Of The Deposition Transcripts.**

In 2009 there was a Federal habeas hearing in which Ricky Kidd was the petitioner. At the time of the hearing, Mr. Kidd's attorney, Sean O'Brien, had Teresa Anderson's file. (App. 1410). No accusation was made at that hearing that Ms. McGowan withheld any information from Mr. Kidd or his attorney, Ms. Anderson. Nor was there any accusation that Ms. McGowan engaged in any Brady violations. (App. 601-602). Mr. Merrill was called as a witness, and Mr. O'Brien questioned him about having seen the Goodspeeds depositions. (App. 1153-1154). At the hearing, Mr. Kidd was critical of Ms. Anderson,

and in his critique of her, he cited testimony given in the “deposition of Gary Goodspeed, Jr.” (App. 1437). But there was no accusation that the taking of the depositions had occurred without his knowledge.

**IX. The United States District Court For The Western District Of Missouri By And Through Judge Scott O. Wright Denied Ricky Kidd’s Claim For Federal Habeas Corpus Relief And An Appeal Followed.**

Judge Wright ruled against Mr. Kidd at the Federal Trial Court level. That decision was affirmed in *Kidd v. Norman*, 651 F.3d 947 (8th Cir. 2011). (App. 2160). As is summarized in the Eighth Circuit’s Opinion, Mr. Kidd raised eight claims including five claims alleging the ineffectiveness of his trial counsel. (App. 2161). The Eighth Circuit pointed out that Mr. Kidd had procedurally defaulted on bringing the eight claims unless he could make a showing of actual innocence. *Id.* The actual innocence claim was fostered by Mr. Kidd obtaining testimony from co-defendant Merrill in which Mr. Merrill stated that Mr. Kidd was not involved in the murders. In affirming the Trial Court’s rejection of this evidence, the Eighth Circuit pointed out that Mr. Kidd had communicated with Mr. Merrill about becoming a witness and told Mr. Merrill that Mr. Kidd’s attorney, “Sean” would get Mr. Merrill relief off of his life sentence if he testified for Mr. Kidd. (App. 2162).

The Eighth Circuit also pointed out that Mr. Kidd testified at the hearing, and, for the first time, claimed that one of the Goodspeeds had contacted him the day before the murder and there was a discussion about killing George Bryant. Mr. Kidd testified that Mr. Goodspeed, Sr., later admitted his complicity to Mr. Kidd. The Eighth Circuit pointed out that Mr. Kidd acknowledged at the hearing that he did not reveal any of this information

to the police and admitted lying to the police and changing his story after it was discovered he was a suspect. (App. 2162).

**X. The Sole Witness Upon Whom Appellant Relies For Its Accusation Against Ms. McGowan Admits That She Gave False Testimony At The 2019 Habeas Hearing, and Did Nothing To Correct The Record In The Criminal Trial After Her Client Perjured Himself.**

Appellant's sole accusation against Ms. McGowan is that she failed to give notice of the Goodspeed depositions to Teresa Anderson, and failed to provide her with the deposition transcripts. (Appellant's Brief at 28 and 29, fn. 5). Four attorneys were involved in the underlying criminal case. Kate Latesh and Mona Spencer both represented Marcus Merrill. Both testified that the deposition of the Goodspeeds occurred more than 20 years ago, and they do not remember how the depositions of the Goodspeeds got scheduled, nor do they remember when or if they ever received the transcripts of those depositions. (App.143-144 and 174-175). As discussed above, Ms. McGowan similarly testified that she does not remember how the depositions got scheduled but she knows she did not set them up because as a prosecutor, she had no authority to take depositions. (App. 584).

That leaves Teresa Anderson as the sole witness. Ms. Anderson now admits that sworn testimony she gave in the Habeas hearing was false, and that after her client perjured himself in the criminal trial, she did nothing to correct the record. (App. 344-345 & 2330-2331). Ms. McGowan raises these facts not to disparage Ms. Anderson, but because this Court is the fact finder, and these facts are pertinent to the Court's credibility determination.

**A. Ms. Anderson Testified In The Habeas Hearing That Ms. McGowan Failed To Disclose That The State Relocated Eyewitness Richard Harris; After Being**

**Confronted In *This* Disciplinary Proceeding With Documentary Evidence To The Contrary, Ms. Anderson Now Admits That Her Testimony Was False.**

A State Court Habeas proceeding was held on April 23, 2019: ten years after the Federal Habeas proceeding, and more than twenty years after the criminal trial. Attorneys Sean O'Brien and Cynthia Dodge represented the Petitioner, Mr. Ricky Kidd. After meeting with Mr. O'Brien, Ms. Anderson testified at the 2019 Habeas hearing.

Mr. O'Brien, who was in possession of Teresa Anderson's file and had been in possession of it since at least the first habeas hearing in 2009, did not bring the file with him when he met with Ms. Anderson. (App. 336). And Mr. O'Brien did not show Ms. Anderson the deposition of Richard Harris or the Motion in Limine that she had filed attempting to keep the relocation of Richard Harris out of evidence. (App. 338). He did send Ms. Anderson an email with certain documents attached to "refresh her memory." (App. 2409, 2412-2413). But, he did not attach the Motion in Limine she had filed or the Richard Harris deposition, both of which demonstrated that the relocation of Mr. Harris had been disclosed to Ms. Anderson before the criminal trial. (App. 2412-2413).

Consequently, at the Habeas hearing, Ms. Anderson testified that it was unknown to her before the criminal trial that Mr. Harris had been relocated. She further testified that had she known of the relocation, she would have used that information to cross-examine Mr. Harris to show his bias. (App. 338). Ms. Anderson answered Mr. O'Brien's leading questions at the hearing about how she wanted to cross-examine Mr. Harris. She assumed Mr. O'Brien was leading her correctly and consistent with the facts. (App. 339).



When Ms. Anderson was deposed in connection with this disciplinary hearing, she was shown Mr. Harris's deposition, which she had attended, and the Motion in Limine she filed seeking to keep Mr. Harris's relocation out of evidence. (App. 340). After looking at the Motion in Limine and the deposition, she agreed that had she seen those documents before testifying at the 2019 Habeas hearing, she would not have given the testimony that she did. (App. 341).

During her testimony in the disciplinary hearing below, she identified Exhibit 22 which is the Motion in Limine she filed. (App. 342). The Motion in Limine specifically asked that the evidence of Mr. Harris being relocated along with other evidence of threats be kept out of evidence. (App. 343). At the Habeas hearing, Mr. O'Brien framed the issue about Mr. Harris as if it were exculpatory evidence that was withheld, but in fact, according to Ms. Anderson's Motion in Limine, it was prejudicial and incriminating evidence that Ms. Anderson attempted to keep out of evidence. (App. 344).

Ms. Anderson explained that her testimony at the 2019 Habeas hearing was "based upon really more of what Mr. O'Brien was telling me existed in terms of information as opposed to my review of the whole file." (App. 410).

**B. In The 2019 Habeas Hearing, Ms. Anderson Went Along With Leading Questions Suggesting That Ms. McGowan Knew That Ms. Anderson Was Looking For The Goodspeeds And Wanted To Call Them As Witnesses; That Testimony Was False.**

At the 2019 habeas hearing, Mr. O'Brien argued that Ms. McGowan knew that Ms. Anderson wanted to call the Goodspeeds as witnesses and was looking for them, and that Ms. McGowan's failure to tell Ms. Anderson about one or more of the Goodspeeds being

in town was a Brady violation. (App. 1712). In an attempt to support this argument, Mr. O'Brien asked Ms. Anderson:

Q. Did you tell her [Amy McGowan] that you were – that you wanted to call the Goodspeeds?

Ms. Anderson answered:

A. She knew that – I mean, we talked about it, because we did a lot of – and I did depositions and – I mean leading up to a case, you would have multiple conversations with the prosecutor. And – and so I was always wanting to know where the Goodspeeds were.

Continuing, Mr. O'Brien asked:

Q. All right. Did she know [sic] you wanted them to testify in Mr. Kidd's defense?

And Ms. Anderson answered:

A. I'm sure we talked about it.

(App. 1906).

However, at the disciplinary hearing in this matter, Ms. Anderson admitted that at no time in the calendar year 1996 did she ask Ms. McGowan for help in finding the Goodspeeds. (App. 352). And, she admitted that she has no memory of ever asking Ms. McGowan for any help in finding the Goodspeeds during the calendar years of 1996 or 1997. (App. 352-353). Ms. Anderson was told at the disciplinary hearing that counsel for Ms. McGowan wanted to button down her testimony on this fact, and she acknowledged that she has no memory of ever asking Amy McGowan for assistance in finding the Goodspeeds. (App. 354). Additionally, she testified that she could not say under oath that Amy McGowan knew that she was looking for the Goodspeeds. (App. 354).

Anderson was questioned during her testimony below about an accusation that Ms. McGowan knew Mr. Goodspeed, Sr. was in town in September of 1996, and that there were some notes taken by the police in following him. (App. 356-358). Ms. Anderson testified that assuming that Mr. Goodspeed, Sr. was in town in September of 1996, Anderson had not communicated to Ms. McGowan that she was looking to serve a subpoena on him. (App. 359-360).

In addition, Ms. Anderson did not intend to call the Goodspeeds to testify at the criminal trial. When Ms. Anderson called Mr. Kidd to testify in the criminal trial, she wanted to focus on his alibi defense, and stay away from anything to do with the Goodspeeds. (App. 398). On cross-examination in the criminal trial, Ms. McGowan asked Mr. Kidd how long it had been since he had seen the Goodspeeds. (App. 596). Mr. Kidd testified that he had not seen Gary Goodspeed, Sr., since 1993 and had not seen Gary Goodspeed, Jr., since the end of 1995 or the beginning of 1996. (App. 597). In his 2009 Federal Habeas hearing, Mr. Kidd testified that he lied about his contacts with the Goodspeeds, and that he had met with Gary Goodspeed the night before George Bryant was killed, and the two of them discussed knocking off George Bryant. (App. 598). Consequently, Mr. Kidd did not want the Goodspeeds to testify at his criminal trial. (App. 1453). Ms. Anderson agreed that if the Goodspeeds had been called as witnesses and started giving testimony about talking with Mr. Kidd about knocking off George Bryant and Mr. Kidd's drug involvement with Mr. Bryant, that such testimony may have been problematic. (App. 397).

Ms. Anderson described how, at the 2019 habeas hearing, Mr. O'Brien asked her leading questions about a subpoena for Mr. Goodspeed, Jr., and how her investigator had been out diligently searching for the Goodspeeds and could not find them. (App. 375-376). Exhibit 61 was marked at the hearing below and admitted into evidence. It was her subpoena. The subpoena shows that it was prepared on March 21, 1997, after the criminal trial had started. (App. 378). She does not recall ever preparing a subpoena for Gary Goodspeed, Sr. (App. 379).

**C. Ms. Anderson Knew Her Client Perjured Himself In The Criminal Trial, But She Did Nothing To Correct The Record.**

Ms. Anderson knew that the testimony Mr. Kidd gave about the last time he had seen the Goodspeeds was false. Mr. Kidd had told Ms. Anderson that he saw Gary Goodspeed the day after the shooting which would have been in 1996, but he gave testimony that he had not seen him in 1996. Ms. Anderson knew that Mr. Kidd lied in order to avoid admitting to having a temporal relationship with the Goodspeeds. (App. 405).

In preparing Ms. Anderson to testify in the 2019 Habeas hearing, Mr. O'Brien told her that Ricky Kidd testified that Ms. Anderson had counseled him to lie on the witness stand. Mr. Kidd testified that his trial strategy was to tell the truth but Teresa Anderson told him no. (App. 1446). Mr. Kidd testified that during his testimony in the criminal trial, he left out the part of his meeting with Gary Goodspeed, Sr., the night before the killing. According to Mr. Kidd, it was Teresa Anderson's idea to hold that information back. (App. 1456). Mr. Kidd described Teresa Anderson's approach to him as giving him the "good

buddy, old pal talk before we went to Court...” And so he followed Teresa Anderson’s advice and lied. (App. 1456-1457). Ms. Anderson denied that she provided such counsel to Mr. Kidd. (App. 385).

**D. Ms. Anderson Does Not Recall The Specifics Of How The Richard Harris Deposition Was Set Up.**

No depositions were taken in the criminal case until the week before trial. (App. 409). The deposition of eye-witness Richard Harris was taken by Teresa Anderson on the Tuesday before trial, and the deposition of the Goodspeeds were taken three days later on the Friday before trial. (App. 1937 & 1949). More than twenty years has passed since the depositions were scheduled and took place. Ms. Anderson does not recall any specifics of how the deposition of Richard Harris got set up. (App. 411).

**XI. The Commission Found All Accusations Against Ms. McGowan Were Unfounded.**

After hearing and observing the testimony of the live witnesses and reviewing all of the documentary evidence, the three person ethics commission unanimously concluded that all of the Disciplinary Counsel’s accusations of unethical misconduct were unfounded. (App. 2461-2464). The Disciplinary Hearing Panel found that Ms. McGowan was not guilty of professional misconduct and engaged in no misconduct that was prejudicial to the administration of justice. The Disciplinary Hearing Panel recommended that the Information be dismissed pursuant to Rule 5.16(a). (Id.)

## POINT I

**The Information Filed By Appellant Originally Contained Three Accusations Of Ethical Misconduct; Appellant Is Not Pursuing Two Of Those Accusations In This Proceeding. However, The Two Accusations Which Are No Longer Being Pursued Were The Product Of The Testimony Of Ricky Kidd’s Attorney, Teresa Anderson, At A Habeas Hearing, And Anderson’s Testimony At That Hearing, Her Memory Of Contemporaneous Events And Her Inclination To Testify Favorably For Her Former Client Mr. Kidd Bear On The Remaining Accusation.**

### **I. Standard of Review.**

In an attorney disciplinary case, the Supreme Court reviews the evidence de novo, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence and draws its own conclusions of law. The Supreme Court is free to reject wholly or in part the recommendation of the disciplinary hearing panel. *In Re Madison*, 282 S.W.3d 350 (Mo. banc 2009). As this Court explained in *In re Griffey*, 873 S.W.2d 600, 601 (Mo. banc 1994), the hearing panel’s “findings, conclusions and recommendations are helpful in determining disposition in a particular case but, ultimately, this Court examines the evidence and makes the necessary factual determinations.”

### **II. Objections to the Appellant’s Brief**

As noted above, the standard of review is de novo. However, this proceeding has been brought pursuant to Missouri Supreme Court Rule 5.15 which states in part, “The rules of evidence for trials in the circuit court shall apply.” Appellant relies heavily upon a Habeas Corpus transcript and the narrative text of a Judgment entry following a hearing

in which Ms. McGowan was not a party. (See Appellant's Brief, pages 10-17 and 44-45). The testimony in that proceeding and the Judgment Entry are hearsay as to Ms. McGowan. See for example, *In re Howard*, 912 S.W.2d 61 (Mo. banc 1995) where the Court in addressing the use of hearsay evidence held that the law of evidence in non-jury civil cases applies to disciplinary proceedings. *Rule 5.21(b)*. In order to introduce the prior testimony into evidence, the Chief Disciplinary Counsel must prove the complainant is unavailable after due diligence to procure her attendance. *Id.* at 62. At the hearing below, Appellant offered Exhibits D and E, the transcript and Opinion in the State Habeas hearing. Ms. McGowan objected to the admission of those documents as being hearsay. (App. 327-328).

Additionally, in the Argument section of the Brief, Appellant sets forth page after page of asserted facts without any citation to the record below. (See Appellant's Brief at 36-38 and 40-42). Ms. McGowan believes that Appellant's Brief violates Missouri Supreme Court Rule 84.04(e).

Ms. McGowan lodges these objections but recognizes the Missouri Supreme Court's role in overseeing attorneys in the state and her responsibility to the public and her responsibility to respond to the remaining accusation and Appellant's Brief. While lodging these objections, Ms. McGowan is going to utilize the entirety of the records filed by Appellant in order to rebut the accusations made by Appellant.

**III. The Information Filed By Appellant Originally Had Three Accusations of Ethical Misconduct. On This Appeal, Two Of Those Accusations Are Not Being Pursued. Only One Accusation Remains.**

Appellant filed an Information against Ms. McGowan on June 26, 2020. The Information essentially made three accusations of professional misconduct against Ms. McGowan. (App. 1-7).

One accusation asserted that Ms. McGowan, a county prosecutor, knew before the murder trial that Ricky Kidd's attorney, Teresa Anderson, wanted to subpoena two witnesses, Gary Goodspeed Sr., and Gary Goodspeed, Jr., and that Ms. McGowan knew that Goodspeed, Sr., was in town in September of 1996 before the trial in March of 1997, and that Ms. McGowan failed to disclose to Mr. Kidd's lawyer, Teresa Anderson, that Goodspeed, Sr., was in town. (App. 5, first and second bullet points).

A second accusation involved the assertion that Richard Harris, an eyewitness to the murder of George Bryant, who identified Ricky Kidd as the murderer, had been put up in a hotel at the State's expense shortly before trial and that this fact was not disclosed to Mr. Kidd's attorney, Teresa Anderson, who would have used this evidence to impeach Mr. Harris at trial. (App. 6, third, fourth and fifth bullet points).

Lastly, Ms. McGowan was and is accused of not informing Mr. Kidd's attorney, Ms. Anderson that the depositions of Mr. Goodspeed Sr., and Mr. Goodspeed Jr., were to be taken on the Friday before trial by the attorneys representing co-defendant Marcus Merrill and/or failing to tell her that the transcripts of these depositions existed. (App. 6, first bullet point).

After hearing and reviewing all of the evidence, the Disciplinary Hearing Panel unanimously found in favor of Ms. McGowan, finding that Ms. McGowan was not guilty of any professional misconduct, and recommended that the Information be dismissed.



(App. 2461-2464). On this Appeal, Appellant has abandoned the pursuit of the first two accusations of unethical conduct referenced above.

**A. The Outright Retraction Of Two Of The Original Accusations By Teresa Anderson, The Involved Attorney and Witness.**

The first two accusations summarized above have been abandoned. Both accusations involved the alleged failure by Ms. McGowan to disclose information to Ricky Kidd's lawyer, Teresa Anderson, which allegedly resulted in prejudice to Ricky Kidd's defense. Teresa Anderson has now given testimony which demonstrates that those two accusations, which directly involved Ms. Anderson herself, were and are accusations without merit.

Specifically, Teresa Anderson has now admitted that the testimony she gave at the Habeas hearing - that she did not know of the relocation of witness Richard Harris - was wrong. (App. 344-345). She had been told during Mr. Harris' deposition by Ms. McGowan and by witness Harris that Mr. Harris had been relocated. (App. 2230). In fact, after the Harris deposition, Ms. Anderson filed a Motion in Limine in the criminal case to keep out evidence of Mr. Harris' relocation. (See Motion in Limine at App. 2102).

With regard to the now abandoned accusation that Ms. McGowan knew that Teresa Anderson was attempting to find the Goodspeeds to serve them with subpoenas. Ms. Anderson testified in the hearing below that she was not relying upon Ms. McGowan to provide her with information concerning the location of the Goodspeeds so that they could be subpoenaed. (App. 354, 359-360).

**B. One Remaining Accusation.**

Despite this record of retraction by Teresa Anderson, including her identifying the actual Motion in Limine she prepared to keep the relocation of Mr. Harris out of evidence, Appellant is only willing to say in a footnote that these two abandoned accusations are not being pursued “at this time.” (Brief 29). Those accusations never should have been made.

Exactly what Appellant has meant to imply by using the phrase “at this time” is not explained; yet, the abandonment of these two accusations leaves only one remaining accusation against Ms. McGowan. As to that accusation, Appellant asserts that Ms. McGowan failed to notify Ricky Kidd’s attorney, Ms. Anderson, that depositions of Gary Goodspeed Sr., and Gary Goodspeed, Jr., were being taken by the co-defendant’s lawyer who had an obligation to give notice to the parties. It is also alleged that Ms. McGowan failed to inform Ricky Kidd’s attorney that the transcripts of those deponents were available.

**C. The Two Abandoned Accusations of Alleged Ethical Misconduct Have Relevance To The Remaining Accusation Because They Both Deal With Ms. Anderson’s Testimony That She Was Deprived Of Exculpatory Information. These Claims Have Been Retracted, But Ms. Anderson’s Inaccurate Memory, And Her Inclination To Testify Favorably For Her Former Client Mr. Kidd, Should Be Considered When Evaluating The Remaining Claim.**

Appellant has stated in a footnote that two of the accusations originally brought against Ms. McGowan are not being pursued.<sup>2</sup> The accusation which remains is based on the testimony of Teresa Anderson concerning her memory of whether she was notified

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<sup>2</sup> Despite not pursuing the claims, Appellant presents a one-sided view of those abandoned claims in its Statement of Facts without informing this Court in its Brief about the testimony of Teresa Anderson retracting her testimony which formed the basis of the claims. See Appellant’s Brief at page 19-20.

about the Goodspeeds' depositions. Teresa Anderson's flawed memory of contemporaneous events as well as her inclination to testify favorably toward Mr. Kidd is what brought about the other accusations which Appellant filed and has now abandoned. What happened on those claims can help determine the proper inferences to draw on the remaining accusation.

MAI Instruction 2.01(11) tells a factfinder the following: "In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the case, the **relation** of the witness to any of the parties, the **inclination** of the witness to speak truthfully or untruthfully and the **probability or improbability** of the witness' statements." (emphasis added).

### **1. The Relocation Of Mr. Harris To A Hotel.**

Teresa Anderson testified in the Habeas hearing before Judge Daren L. Adkins which began on April 23, 2019. She was a witness for her former client, Ricky Kidd. Before she testified at that hearing, Ms. Anderson met with Mr. Kidd's then attorney Sean O'Brien. (App. 336). Sean O'Brien had in his possession the deposition transcript of eyewitness Richard Harris given back in March of 1997. Mr. Harris' relocation to a hotel was discussed in that 1997 deposition. (App. 2230). The fact that Mr. O'Brien had the deposition is known because Mr. O'Brien used it to cross-examine Mr. Harris in a previous Federal Court Habeas hearing almost 10 years earlier on August 1, 2009. (App. 1498).

Prior to meeting Teresa Anderson in 2019 to go over her anticipated testimony, Sean O'Brien sent Ms. Anderson certain documents to review. (App. 337-338). At the 2019

Habeas hearing, Ms. Anderson testified that it was unknown to her before trial that Mr. Harris had been relocated by the State to a hotel. She also testified that had she known Mr. Harris had been relocated, she would have used the information to cross-examine him and show his bias. (App. 338). This evidence was presented to the Habeas Court as a Brady violation committed by Ms. McGowan and was found by the Habeas Court to be a Brady violation. (App. 1712).<sup>3</sup>

In the discovery conducted below leading up to the disciplinary hearing, Teresa Anderson was asked by Ms. McGowan's counsel to bring to her deposition all of the materials Sean O'Brien gave her before the Habeas hearing, and she did. (App. 376-377). The email exchange between Mr. O'Brien and Ms. Anderson which took place before she testified at the Habeas hearing includes a list of the materials Mr. O'Brien gave her to review. Mr. O'Brien only sent her certain selected materials. He explained to Ms. Anderson that he "wouldn't bury her with stuff." (App. 2409-2413). The "stuff" he chose not to "bury her with" included the Motion in Limine Ms. Anderson filed and Mr. Harris' deposition, both of which showed that Ms. Anderson knew before trial that Mr. Harris was relocated to a hotel. He directed Ms. Anderson's attention to his pleadings alleging Brady violations and omitted the very documents that disproved his alleged Brady violation, all in the name of not wanting "to bury her with stuff." (App. 2409). (App. 2409-2413 and App. 341).

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<sup>3</sup> Reference is to *Brady v. Maryland*, 373 U.S. 83 (1963).

The 2019 Habeas hearing occurred 22 years after the criminal trial; Teresa Anderson's memory of the events had passed or had been diluted. (App. 339). At the Habeas hearing, Sean O'Brien asked her leading questions suggesting to her that she had not been told about the relocation of Mr. Harris and suggesting that if she had only been told, she would have cross-examined Mr. Harris about it. (App. 339). Ms. Anderson assumed that Sean O'Brien was leading her correctly and consistent with the facts and so answered all the questions affirmatively. (App. 339).

Teresa Anderson was deposed in this Disciplinary action on August 21<sup>st</sup>, 2020. At Ms. Anderson's deposition, Ms. McGowan's counsel showed her the Motion in Limine she filed which refreshed her memory about what had happened. (App. 340). Ms. Anderson testified in her deposition, and at the Disciplinary hearing below that had she remembered Mr. Harris' deposition testimony and the Motion in Limine she filed about the relocation of Mr. Harris, she would not have given the testimony she did at the Habeas hearing. (App. 338-341). However, Sean O'Brien did not show her the Motion in Limine or the deposition testimony in preparing her for testimony at the Habeas hearing. (App. 338).

Ms. Anderson agreed that, at the Habeas hearing, Mr. O'Brien framed the issue about Mr. Harris' relocation in a way that it was exculpatory evidence that Ms. McGowan withheld. But in fact, she knew about the evidence because she filed a Motion in Limine claiming that it would be prejudicial and incriminating. (App. 344 and 2102). With respect to her incorrect or mistaken testimony given at the Habeas hearing concerning the relocation, Ms. Anderson explained that she relied upon Mr. O'Brien to tell her what

existed in terms of information as opposed to reviewing the file herself. (App. 410). The passage of time is what caused her to lack memory about what took place at the Harris deposition. (App. 411). However, as can be seen from her testimony, her inclination was to go along with Mr. O'Brien's leading questions. The inclination of the witness can be considered in giving weight to the testimony. See MAI 2.01(11) supra. Teresa Anderson's inclination was to support Sean O'Brien's presentation of alleged nondisclosures as Brady violations. One can see this in Mr. O'Brien's suggestions, and Ms. Anderson's inclinations contained in their email exchanges and the questions and answers in the Habeas hearing. (App. 2409 & 2412).

Teresa Anderson was asked at the disciplinary hearing below to comment on the following accusation made by Appellant in the Information: "Ms. McGowan (McGowan) knew that the State paid for a hotel for Richard Harris for some time before trial, but that fact was not disclosed to Kidd's counsel." Teresa Anderson testified below that that charge brought by Appellant in this proceeding is not correct. She did know. (App. 344-345).

**2. The Failure Of Ms. McGowan To Tell Ms. Anderson About The Goodspeeds' Being In Town When Ms. McGowan Allegedly Knew Ms. Anderson Was Looking For Them.**

At the hearing below, Ms. Anderson was questioned not only about the alleged Brady violation supposedly arising from the Harris relocation issue but she was also asked about another accusation which Appellant originally brought against Ms. McGowan. Namely, that Ms. McGowan knew that Ms. Anderson was trying to locate the Goodspeeds and that Goodspeed, Sr., was in town in September 1996 after the charges were filed and

so he could have been subpoenaed but Ms. McGowan did not disclose to Ms. Anderson that he was in town. (App. 347-348).

The murders occurred in February of 1996, and Mr. Kidd was charged in May of 1996. The trial of the criminal case was set for March 17, 1997. (App. 348). After charges were filed, Ms. McGowan gave Mr. Kidd's lawyer the State's discovery which included police reports showing the addresses of the Goodspeeds. (App. 349). The police reports showed that the Goodspeeds lived in Georgia, and the reports also had a phone number as well as a pager number for one of the Goodspeeds. Teresa Anderson agreed below that there was no evidence that the addresses of the Goodspeeds given to her were not their correct addresses. (App. 349). The Goodspeeds were not strangers to Mr. Kidd. Ricky Kidd knew the Goodspeeds, and in fact had lived in Georgia with them for a period of time, he referred to the Goodspeeds as pseudo-relatives. (App. 352).

There are procedures under a Missouri statute to subpoena an out-of-state witness if one wants an out-of-state witness to testify in Missouri. §491.420 RSMo. Teresa Anderson was aware of this but never employed the statute to secure the presence of the Goodspeeds in Missouri. (App. 356). (App. 490-492). There is also a statutory procedure where a criminal defendant can send, what amounts to, Interrogatories to a person who lives out-of-state. §545.380 RSMo. Teresa Anderson did not employ that process in order to secure information from the Goodspeeds. (App. 356). (App. 490-492). She most likely did not need to use the statutes because the Goodspeeds were pseudo-relatives of her client. Ms. Anderson was told at the disciplinary hearing below that counsel for Ms. McGowan wanted to button down her testimony on the issue of her relying on Amy McGowan to

contact the Goodspeeds; Ms. Anderson acknowledged that she has no memory of ever asking Amy McGowan for assistance in finding the Goodspeeds. (App. 354). Additionally, she testified that she could not say under oath that Amy McGowan knew that she was looking for the Goodspeeds. (App. 354). Ms. Anderson's inclination at the Habeas hearing was to go along with supporting the theme of the nondisclosure of information by Ms. McGowan that Mr. O'Brien was promoting. (App. 2412). But now, that accusation is not being pursued because when pushed to give a straight forward answer, Teresa Anderson admitted that she was not relying on Ms. McGowan for help with locating the Goodspeeds who never were even listed as potential witnesses. (App. 360-361).

At the Habeas hearing in front of Judge Adkins that resulted in Mr. Kidd's discharge from incarceration, Mr. Kidd and his attorney Sean O'Brien were attempting to frame nondisclosure issues as Brady violations. This is because Brady violations can lead to a new trial. (App. 2409). At the Habeas hearing, Mr. O'Brien was trying to establish that Ms. McGowan knew that Teresa Anderson, Ricky Kidd's lawyer, wanted to call the Goodspeeds as witnesses and was looking for them. (App. 1906). If Mr. O'Brien could establish that Ms. McGowan knew that Teresa Anderson was futilely looking for the witnesses without success, then he could argue that Ms. McGowan not telling Teresa Anderson about one or more of the Goodspeeds being in town was a Brady violation. Mr. O'Brien asked Ms. Anderson at the Habeas hearing:

Q. Did you tell her (Amy McGowan) that you were – that you wanted to call the Goodspeeds?

Ms. Anderson answered:



A. She knew that – I mean, we talked about it, because we did a lot of – and I did depositions and – I mean leading up to a case, you would have multiple conversations with the prosecutor. And – and so I was always wanting to know where the Goodspeeds were.

Mr. O’Brien then asked:

Q. All right. Did she know [sic] you wanted them to testify in Mr. Kidd’s defense?

A. I’m sure we talked about it. (App. 1906).

Using this testimony, Sean O’Brien advanced the claim that Ms. McGowan knew Ms. Anderson was looking for the Goodspeeds and wanted them to testify. But, at the hearing before the Disciplinary Panel, Ms. Anderson admitted that at no time in the calendar year 1996 had she asked Ms. McGowan to help find the Goodspeeds. (App. 352). Teresa Anderson has no memory of ever asking Amy McGowan for any help in finding the Goodspeeds during the calendar years of 1996 or 1997. (App. 352-354). Teresa Anderson filed a witness list in the criminal case, and that did not include the names of the Goodspeeds. (App. 360-361).

Contrary to what is now being argued in this proceeding about Ms. Anderson wanting the Goodspeeds as witnesses, Ricky Kidd testified at one point at the 2009 Federal Habeas proceeding that he did not want the Goodspeeds to testify on his behalf. (App. 1453 l. 24-25). Consistent with this admission, no effort was made to use them as witnesses. This accusation that Ms. McGowan knew Ms. Anderson was relying on her to find the Goodspeeds, which originally appeared in the Information and was based on Ms. Anderson’s testimony, is not being pursued by Appellant. But, Ms. Anderson’s inclination

to support claims of non-disclosure against Ms. McGowan so as to favor Mr. Kidd is evident. See her email to O'Brien. (App. 2412).

#### **IV. Conclusion To Point I**

Appellant originally brought three accusations of professional misconduct against Ms. McGowan. Two of those have been withdrawn because they were based on the erroneous testimony of Ricky Kidd's attorney, Teresa Anderson. A review of how those two now abandoned charges came about is relevant to the one charge remaining. The two abandoned charges were the product of testimony given by Teresa Anderson in a Habeas hearing. She has essentially retracted the testimony which led to the first two accusations. She has affirmatively acknowledged that she answered leading questions at the Habeas hearing and that she assumed that the questioner, Sean O'Brien, was suggesting the correct facts to support his theory, but she now knows that that did not take place. There is a well-known quote from a literary character which is: "It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts."<sup>4</sup>

What happened with regard to the first two accusations demonstrates both the frailty of Ms. Anderson's memory of these events as well as her inclination to testify in a manner that was adverse to Ms. McGowan and which supported Mr. Kidd's theories before establishing the facts. The frailty of her memory and her inclination should be considered

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<sup>4</sup> A. Conan Doyle, *Adventures of Sherlock Holmes, A Scandal In Bohemia* 3.

in evaluating the remaining charge. Mr. O'Brien advanced a theory of non-disclosure and it appears that facts were twisted to suit that theory instead of accepting the facts and determining if there was a theory based on those facts which would lead to relief.

## POINT II

**This Court Should Not Discipline Respondent Amy McGowan Because Appellant Has Not Sustained Its Burden Of Proving That Ms. McGowan Violated Supreme Court Rules 4.3.8(d) And 4-8.4(d). Appellant Cannot Carry Its Burden Of Proof That There Was Improper Conduct By Ms. McGowan Given The Absence Of Any Meaningful Memory Of The Participants About The Scheduling Of Two Depositions That Were Taken More Than Twenty Years Ago.**

### **I. Burden of Proof**

#### **A. Appellant Cannot Carry Its Burden Of Proof That Ricky Kidd's Attorney Teresa Anderson Was Not Notified Of The Depositions.**

This Court should not find that Ms. McGowan was guilty of an ethical violation of this one and only point regarding the depositions of the Goodspeeds for at least three reasons. The first reason is dealt with under this Point. Appellant has the burden of proof. None of the witnesses who were present at the depositions in 1997 recall how the depositions came about.

The disciplinary hearing below was conducted pursuant to Missouri Supreme Court Rule 5.15. Subsection (d) of that Rule provides in part: "The burden of proof shall be on the informant to establish a violation of Rule 4 by a preponderance of the evidence."

The Informant has the burden of proving Ms. McGowan's alleged ethical violation by a preponderance of the evidence. On page 41 of Appellant's Brief, Appellant makes this telling admission: "Many of the details surrounding the Goodspeeds' deposition are lost to history, because these events took place quite some time ago." This is correct. More

than 20 years have passed. And yet, Appellant, while stating that many of these details are lost to history, is asking this Court to suspend Ms. McGowan's license to practice law.

It is an unfortunate circumstance in this case where so much time has passed, and thus the record must be carefully scrutinized to reconstruct what can be reconstructed, that Appellant, with the burden of proof and while asking for the suspension of Ms. McGowan's license, has submitted page after page of argument without citation to the record as required by Rule 84.04(e). See *Lexow v. Boeing Co.*, 643 S.W.3d 501, 508-509 (Mo. banc 2022). The failure of Appellant to follow the Rule and cite to the transcript handicaps responding, but Ms. McGowan will attempt to do the best that can be done.

The depositions of Gary Goodspeed, Jr., and Gary Goodspeed, Sr., took place the Friday before trial. There had been other depositions taken that week where all counsel were present. (App. 583). At the time, in 1997 when the depositions of the Goodspeeds were taken, the Prosecuting Attorney did not have authority under the rules to take depositions of witnesses. (App. 584). And Missouri Supreme Court Rules required that the party taking a deposition give notice of the deposition to all parties. (App. 584). Formal notice, however, was not always given. Sometimes depositions would be set up by calling other attorneys on the phone. For example, other witnesses were deposed the same week as the Goodspeeds, including eyewitnesses Richard Harris and Kayla Bryant. Those depositions were taken by Teresa Anderson, Mr. Kidd's attorney. There were no formal notices sent for those depositions. (App. 585). All the lawyers for the parties were present.

As will be seen in the discussion below, none of the participants recall how the depositions of the Goodspeeds came about. Appellant seems to assume that Kate Ladesh,

a licensed attorney representing Mr. Merrill failed to follow the Supreme Court Rule and did not give notice. Maybe she did. If she did give notice, and the attorney for Mr. Kidd chose not to attend the deposition, there is no ethical violation by Ms. McGowan. Why Appellant simply assumes such notice was not informally given as it was for the depositions earlier in the week is not explained. Ms. Ladesh was an experienced and, presumably, rule following attorney. Ms. McGowan submits that the opposite should be inferred; namely, that Ms. Ladesh followed the rules and gave notice to the parties.

M.A.I. 2.01(11) reminds that one can consider the probability or improbability of the witnesses' statements. Kate Ladesh was an experienced attorney. She was together with the other attorneys taking depositions on Tuesday. Then, Mona Spencer for Kate Ladesh took depositions on Friday, and it is known that notice was provided to Ms. McGowan because she was there. The probabilities are that Kate Ladesh and/or Mona Spencer notified all of the attorneys. They were together on Tuesday and no explanation is offered as to why they would not have notified Ms. Anderson with the same informality and for the same purpose for which she notified Ms. McGowan. It was a requirement under the rule for Kate Ladesh and/or Mona Spencer to do so. It is probable that they did.

**B. Ms. McGowan Has No Memory Of How The Depositions Got Scheduled.**

The depositions of the Goodspeeds were taken by counsel for co-Defendant Merrill. Mr. Merrill's attorneys had not taken any depositions in the case prior to the Friday before trial. (App. 586). By rule, Mr. Merrill's attorneys were required to give notice to the parties. Ms. McGowan does not remember the logistics of the depositions being set up.

(App. 584). Ms. McGowan had been in depositions with counsel for both Defendants earlier in the week. Even though Ms. McGowan does not recall the logistics of any of these depositions, she has testified that she would not have gone forward with the depositions without being assured that Teresa Anderson knew about them. (App. 588). All the lawyers in the case had convened for other depositions just three days earlier. Those earlier depositions were scheduled by Ms. Anderson on behalf of Mr. Kidd and without the filing of a formal notice. (App. 585). Ms. McGowan had a collegial relationship with Ms. Anderson, and there was no reason why Ms. McGowan would try to prevent or hinder Ms. Anderson or Ricky Kidd from having access to a deposition of the Goodspeeds. Ms. McGowan did not withhold any information from the attorneys during the pendency and prosecution of the case. (App. 601).

Prior to the Disciplinary hearing below, and in an effort to see if this complaint had been raised before, Ms. McGowan read the Eighth Circuit Opinion affirming the denial of relief to Ricky Kidd in his Federal Habeas hearing which happened in 2009, much closer in time to the depositions. In the Federal Court proceeding, Ricky Kidd was represented by Sean O'Brien and there was no accusation in that proceeding of any Brady violations or the withholding of information by Ms. McGowan in her role as a public Prosecutor. (App. 601-602).

**C. Kate Ladesh Testified That She Has No Memory Of These Events.**

The attorney taking a deposition had the responsibility by rule to give notice to the other parties to the case. (App. 143). Ms. Ladesh allowed that sometimes notice is done by written notice and sometimes it is just done by an exercise of collegiality, i.e., calling

the lawyers. (App. 143). She has no recollection of how the depositions of the Goodspeeds were set up in the underlying case. (App. 143-144). She has no memory of how Mona Spencer ended up taking the depositions of the Goodspeeds, and she has no memory of whether or not Teresa Anderson was given notice. (App. 144).

**D. Mona Spencer Has No Memory Of These Events.**

Marcus Merrill's co-counsel, Mona Spencer, was at the depositions of the Goodspeeds. When asked if she set up the depositions, she said she didn't know, but probably not, and that it was probably Kate Ladesh's job to set up depositions. (App. 170-171). Ms. Spencer testified that the depositions of the Goodspeeds would have to have been set into motion by Mr. Merrill's attorney, Kate Ladesh. (App. 171). Mona Spencer has no memory of the underlying case, and she only knows she was involved in the deposition because there is a transcript. (App. 174-175). The court reporter who took the deposition was one of a number of court reporters that Ms. Spencer's office normally used. (App. 174-175).

**E. Teresa Anderson's Memory.**

Both Ricky Kidd and co-defendant Marcus Merrill, faced a potential penalty of life without parole but no depositions had been taken in the case prior to the Tuesday before trial when Richard Harris and Kayla Bryant were deposed. (App. 409). Teresa Anderson testified that depositions are frequently set up by telephone calls without a formal notice. (App. 408). The deposition of Richard Harris was taken the Tuesday before trial and then three days later, on Friday, the depositions of the Goodspeeds were taken. (App. 408). So, on March 11<sup>th</sup>, all of the lawyers were together at a deposition, and Teresa Anderson's best



memory was that the deposition was set up through some exchange of information but she doesn't remember the detail of how the Harris deposition got set up. (App. 409 & 437-438). This was all 20 years in the past.

At the hearing below, Ms. Anderson was asked by counsel for Appellant if the Goodspeeds were a common topic of conversation among counsel leading up to the trial. Ms. Anderson responded by saying that she was not precisely sure that she can recall specific conversations. She doesn't remember what she and Mona Spencer or Kate Ladesh, Mr. Merrill's attorneys, discussed. (App. 249-250). When asked if Kate Ladesh or Mona Spencer gave her notice of the March 14, 1997 depositions, Ms. Anderson said "No, not that I was aware." She was also asked if Ms. McGowan notified her prior to the depositions that they were going to be taken, and her answer was, "No, not that I was aware." (App. 258). Ms. McGowan suggests that Ms. Anderson's answers are framed such that they lack probative value. See Powell v. State Farm Mut. Auto. Ins. Co., 173 S.W.2d 685, 690 (Mo. App. 2005) where the Court stated that generally one's belief, feeling, understanding or thought about a matter does not constitute substantial evidence justifying or permitting a finding to that effect.

Ms. Anderson is the same attorney who testified under oath in the State Habeas hearing, going along with leading questions, swearing that she knew nothing of the relocation of Richard Harris when in fact it was discussed in a deposition on March 11, 1997 which deposition testimony then caused her to draft a Motion in Limine to prevent the relocation evidence from being utilized.

## **II. Conclusion To Point II**

It is Appellant who has the burden of proof, and there is an absence of credible facts about the logistics of the depositions for the Court to conclude that Ms. McGowan committed professional misconduct. Long-ago events are prone to become stale facts. For example, see *Powel v. Chaminade College Preparatory, Inc.*, 197 S.W.3d 576 (Mo. banc 2006) where this Court dealt with a case involving sexual abuse and repressed memory of events that had happened 27 years earlier. In resolving the case, the majority opinion recited the “just purpose of the statute of limitations is to avoid presenting stale claims to a finder of fact.” Even the dissent in *Powel* noted that the claims had occurred 27 years earlier and the evidence is stale and the witnesses are lost. *Id.* at 592-593.

The testimony of the participants and the record below demonstrates that there was collegiality amongst these attorneys even though they were adversaries. They were together on March 11, 1997 for the deposition of Richard Harris which had been set without a formal notice. At that point the trial was less than a week away. Ms. Ladesh and Ms. Spencer, the attorneys who initiated the depositions of the Goodspeeds, would have had an obligation to notify the parties of the depositions. They notified Ms. McGowan because she was present and Ms. McGowan testified that she would have assured herself that Ms. Anderson knew of the depositions. (App. 588). There is no reason to believe that these attorneys would not have notified Ms. Anderson.

This happened more than twenty years ago. Teresa Anderson whose incorrect memory and willingness to go along with the answers suggested by Sean O’Brien resulted in the first two accusations against Ms. McGowan now provides the only testimony which Appellant alleges supports the sole, remaining accusation against Ms. McGowan. Neither

Ms. McGowan nor Kate Ladesh nor Mona Spencer remember how this deposition came about. The details are, in the words of Appellant, lost to history.

Appellant failed to carry its burden of proof, and the hearing panel, after seeing the witnesses, hearing the testimony, and reviewing all of the exhibits, correctly found that Ms. McGowan is not guilty of professional misconduct.

### POINT III

**The Court Should Not Discipline Respondent Amy McGowan Because, Although She Does Not Have The Burden Of Proof, It Is More Likely True Than Not True That Ricky Kidd's Attorney Did Have Notice Of The Two Depositions And Received The Transcripts Of Those Depositions.**

**I. The Credible Evidence Demonstrates That Ms. Anderson Had Notice Of The Goodspeed Depositions.**

There is circumstantial evidence that Teresa Anderson, Ricky Kidd's attorney, in fact knew of the depositions of the Goodspeeds because 1) the depositions were discussed on the record during trial the week after they were taken and there was no outcry by Mr. Kidd or Ms. Anderson of missed depositions or nondisclosure; 2) Ms. Anderson used information which is contained in the Goodspeed, Jr. deposition in a Motion in Limine she filed, and in a subpoena she prepared; 3) neither Mr. Kidd nor his new attorney, Sean O'Brien, made any claim of non-disclosure in the 2009 Habeas hearing; 4) Mr. O'Brien and Mr. Kidd both referenced the depositions at the 2009 hearing.

At least by the time that the Goodspeeds gave their depositions they had changed their names to Muslim names: Rahib Muwwakkil and Abu-Rahman Saad Muwwakkil. The charges against Mr. Merrill and Mr. Kidd had been consolidated for trial and Defendant Merrill filed a Motion in Limine because he didn't want witnesses Rahib Muwwakkil and Abu-Rahman Saad Muwwakkil referred to as Gary Goodspeed, Jr., and Gary Goodspeed, Sr., (their former names), (App. 2104). They were listed as witnesses for the trial by Mr. Merrill and at least as of the time of the pretrial conference were still

thought to be trial witnesses. Teresa Anderson, on behalf of Mr. Kidd, even filed a Motion in Limine using the Muslim name of one of the Goodspeeds. (App. 2102).

During the trial which began on March 17, 1997, pretrial motions were taken up before the presentation of evidence. Attorneys for both of the Defendants were present. At one point, Ms. McGowan responded to the defense Motion in Limine that the State not be allowed to use the prior names of the Muwakkils. In the argument to the Court, Ms. McGowan said the following:

**These are witnesses for the defense.** They are not defendants in the case, and they have been endorsed as alibi witnesses. **They both testified** that they have legally changed their names.... (emphasis added).

(App. 765). This reference to “both testified” was a reference to the Goodspeed depositions during which the name changes were discussed. (See deposition transcripts at 2107 & 2121). Also, there was a discussion on the record with Judge Shinn about whether there would be mention of other alleged perpetrators being charged or not. This discussion about others not charged was with regard to anticipated testimony of Gary Goodspeed, Jr. (App. 2274).

During the pretrial proceedings, Judge Shinn asked if Mr. Goodspeed, Jr., had counsel and Ms. McGowan answered as follows:

“No, and we did a **deposition**, and at that time Mona talked to him extensively about his Fifth Amendment rights, and I also did too and we had a detective read him his rights and I told him he could talk to an attorney before the **deposition**. Maybe that needs to be done again.” (emphasis added).

(App. 2273-2274). The deposition of Goodspeed, Jr. was referenced before opening statement in the presence of Ms. Anderson, and she did not claim, suggest or otherwise

indicate that she had not been notified about the deposition. The fact that the deposition was openly discussed in Court supports the proposition that Ms. Anderson was fully aware of the depositions before trial. Ms. McGowan was openly talking about the depositions and the expected upcoming trial testimony of Mr. Goodspeed as a defense witness. This was a substantive exchange. Judge Shinn even offered to call Kansas City lawyer John Quinn to come to Court and advise Goodspeed of his right not to testify. Ms. Anderson was engaged in the conversation and agreed not to mention that Goodspeed, Jr. was uncharged. (App. 2274. L: 2-3).

Appellant brushes off this discussion about the deposition of the Goodspeeds as though it is meaningless. Appellant characterizes the discussion about the deposition as a passing reference which would not have alerted Ms. Anderson to the fact that depositions had been taken. See p. 42 of Appellant's Brief.

Appellant originally brought three and now one ethical violation accusation against Ms. McGowan with the backdrop that Ricky Kidd's attorney had a great desire to talk to and interview the Goodspeeds. The lawyers discussed on the record that these men had been deposed. (App. 2274). What is inferable from this discussion is that Teresa Anderson, being an experienced lawyer, knew what a "deposition" meant, but did not react to the discussion because she had been told that the depositions were to be taken the Friday before trial and simply did not go. But even if one assumes, as Appellant does, that Ms. Anderson somehow did not hear or understand the discussion about the Goodspeed depositions, the fact that Ms. McGowan and Ms. Ladesh openly discussed the depositions demonstrates that the depositions were not done in secret or without giving notice.

As will be discussed further below, no party was going to actually call the Goodspeeds as witnesses, and Mr. Kidd was trying to distance himself from the Goodspeeds even at the cost of perjury which he admittedly committed.

During the trial of the case, Kate Ladesh called Marcus Merrill to the witness stand out of the hearing of the jury to make a record. She told him that she had subpoenaed the Goodspeeds, and further represented to Mr. Merrill that she had spoken to these witnesses on several occasions at length. (App. 2262). Teresa Anderson was in Court when this testimony was taking place and was in Court when it was disclosed that the Goodspeeds were under subpoena. (App. 413-414 and 2262). Even though Kate Ladesh represented in Court that the Goodspeeds were under subpoena, Teresa Anderson did not speak up and say anything about her desire to have the Goodspeeds testify nor did Mr. Kidd say anything. Mr. Kidd was also present in the courtroom when this testimony was elicited. (App. 414).

Appellant has attempted to make it appear as though Teresa Anderson wanted the Goodspeeds as witnesses but had been unable to secure their presence in Missouri. When Kate Ladesh made the record with Mr. Merrill, she told him that she had subpoenaed the Goodspeeds. A subpoena may be served by a lawyer but it is an instrument that obtains its power from the Court itself. See Rule 26.03 which provides: “Whenever a witness in a criminal proceeding has been once subpoenaed... [the witness] shall attend from time-to-time, until the case is disposed of or he is finally discharged by the Court.” (App. 2298). Had Teresa Anderson wanted the Goodspeeds to appear at trial, she could have invoked the power of the Court to have the Goodspeeds attend because it was disclosed to her that the Goodspeeds were under subpoena. The fact that no such effort was made by Ms.

Anderson once again underscores that Teresa Anderson had no real interest in having the Goodspeeds be present for or testify at the trial of the criminal case.

Appellant alleges in its Statement of Facts that Ms. Anderson did not become aware that the depositions had been taken until lawyers from the Innocence Project made her aware of the depositions, three or four years before her testimony in this Disciplinary case in 2020. (2016-2017 time period). (See Appellant's Brief at page 22). That statement is undercut by other facts.

Mr. Kidd had the deposition transcripts of the Goodspeeds long before 2017. He testified in a Federal Court Habeas proceeding in which he specifically referenced the depositions of the Goodspeeds and that testimony by Mr. Kidd was given in 2009. (App. 1437, L: 8-14). Mr. Kidd's testimony is at least circumstantial evidence that the deposition transcripts were in fact in Teresa Anderson's file because Mr. O'Brien stated on the record in the same 2009 hearing that he had obtained Teresa Anderson's file. (App. 1410). In the 2009 Federal Habeas hearing, Mr. O'Brien questioned Mr. Merrill, who appeared as a witness, about the Goodspeed depositions. (App. 1153-1154). It is inferable from these facts that Ms. Anderson had the transcripts because Mr. O'Brien had Ms. Anderson's file and Mr. Kidd and Mr. O'Brien knew of the contents of the Goodspeed depositions back in 2009.

But there is more. Although Mr. O'Brien and Mr. Kidd had the depositions in 2009, no claim was made in that Federal Habeas case that notice of those depositions had been withheld from Mr. Kidd or his lawyer, or that they did not know of the depositions. (App. 601-602). Mr. O'Brien and Mr. Kidd had unlimited access to Ms. Anderson's file at the



time of the 2009 Federal Habeas hearing. And they demonstrated creativity at that hearing by securing the testimony of Mr. Merrill to admit his involvement so as to advance an actual innocence claim. (App. 2161). This is further evidence that Mr. Kidd and his lawyer knew about the depositions of the Goodspeeds being taken. If Mr. O'Brien and Mr. Kidd thought back in 2009 that there was prosecutorial misconduct regarding the Goodspeed depositions, that potential avenue of relief would not have been left unexplored. If Mr. Kidd and Teresa Anderson had not known about the depositions when they were being taken, Mr. Kidd could have claimed the "lack of notice" Brady violation in 2009. But, he made no such claim.

There is yet another fact which sheds light on these events. In the 2019 State Habeas hearing, Teresa Anderson identified a subpoena which had been prepared for Gary Goodspeed, Jr. This subpoena was heralded at that Habeas hearing as proof of her desire to subpoena the Goodspeeds. (App. 1907). See also the email from Sean O'Brien telling Ms. Anderson before her testimony about the perceived importance of this subpoena. (App. 2412). But the subpoena is dated March 20<sup>th</sup>, 1997 with a March 21<sup>st</sup>, 1997 appearance date for the witness. (App. 2430-2431). The trial started on March 17<sup>th</sup>, 1997 which means that the subpoena was prepared during the trial of the criminal case, not before the trial. (App. 378). During the criminal trial, Teresa Anderson had a subpoena prepared for Gary Goodspeed, Jr., and never had a subpoena prepared for Gary Goodspeed, Sr. (App. 379).

The depositions of the Goodspeeds were taken on Friday, March 14, 1997. The Goodspeeds resided in the state of Georgia but were in Missouri the Friday before the trial

giving depositions. (App. 2107 and 2121). They were in Missouri just after having been named as alibi witnesses for Mr. Merrill. Even though Teresa Anderson knew that the Goodspeeds lived in Georgia, she prepared a subpoena for Gary Goodspeed, Jr. using a Missouri address of 6104 Tracy, which was the address of Mr. Goodspeed, Jr.'s mother. Mr. Goodspeed provided that address when he gave his deposition. (App. 2110). To repeat, the Tracy address referred to on March 14, 1997 in the deposition is the address that shows up on the subpoena which Teresa Anderson prepared on March 20, 1997, six days after the deposition. (App. 2430-2431).

Ms. Anderson testified that she did not know where she got the Missouri, Tracy Street address, (her memory again) but it is certainly inferable that she got it from having possession of the transcript of the deposition of Gary Goodspeed, Jr., and that she further knew that this Georgia resident was in Missouri for the deposition he gave on Friday, March 14, 1997. (App. 380-383).

At the hearing below, Ms. Anderson testified that she doesn't remember if she had been told by Ms. Ladesh that Goodspeed was under subpoena but would not be called as a witness. (App. 414-416). Once again, her memory has been impacted by the passage of 20 years.

## **II. Conclusion To Point III**

The Goodspeed depositions were taken the Friday afternoon before trial, and then the following week, the deposition of Goodspeed, Jr. was discussed during the pretrial. Teresa Anderson, Ricky Kidd's attorney, participated in the discussion and raised no complaint that depositions had been taken without her involvement. It is inferable from

these facts that Teresa Anderson knew about the depositions and made a decision not to participate.

Additionally, there was a Federal Habeas Corpus proceeding pursued by Mr. Kidd in 2009. At that hearing, Mr. Kidd's new attorney, Sean O'Brien, announced to a testifying witness that he had obtained Teresa Anderson's file and thereafter there were references during that hearing to the depositions of the Goodspeeds. Thus, it is inferable that the transcripts were in Teresa Anderson's file because Mr. O'Brien and Ricky Kidd referred to the depositions of the Goodspeeds. What's more, no claim was made at that hearing that Ms. McGowan failed to notify Ms. Anderson of the depositions or otherwise withheld any information from Mr. Kidd or his attorney.

Finally, Anderson prepared a Missouri subpoena for a George resident evidencing her knowledge that Goodspeed was in Missouri. He was in Missouri giving a deposition.

#### **POINT IV**

**This Court Should Not Discipline Ms. McGowan Because, Although She Does Not Carry The Burden Of Proof, It Is More Likely True Than Not True That The Witnesses Whose Depositions Were Taken The Friday Before Trial Were Not Going To Be Called As Witnesses At The Trial Which Would Explain Why Ricky Kidd's Attorney Was Not Present At The Depositions And Was Non-Plussed When The Depositions Were Thereafter Discussed In Her Presence At Trial.**

**I. The Credible Evidence Demonstrates That Ms. Anderson's Absence From The Goodspeed Depositions Was Not Because Of A Lack Of Notice But Because The Goodspeeds Were Not Going To Testify At Trial.**

At the outset, and admittedly repeating a point, none of the participants remember how the deposition got set. However, in attempting to determine how the depositions of the Goodspeeds came to be scheduled and who was and was not at the deposition of the Goodspeeds, one could properly ask the question: why were the depositions of the Goodspeeds even being taken? The answer to this question may shed light on the importance of the depositions to the parties, and the interest of any of the attorneys in attending the depositions on the Friday before trial when there were certainly many other things that needed to be done to prepare for trial.

About four days before trial, the Goodspeeds were suddenly listed as alibi witnesses by co-defendant Merrill. (App. 2268-2269). Then, the Friday before trial, the Goodspeeds depositions were taken having been scheduled by Mr. Merrill's attorneys. (App. 170-171). The lead attorney for Mr. Merrill was Kate Ladesh. Mona Spencer was also a public

defender working with Ms. Ladesh but she was not the lead attorney. Ms. Ladesh was not at the deposition, and neither was Teresa Anderson. (App. 1937-1961).

It is puzzling why Mr. Merrill's attorneys would take the depositions of their own alibi witnesses and expose them to cross-examination if in fact the Goodspeeds were actually intended to be witnesses. If they were really to be alibi witnesses, one would think the lead trial attorney would be present for the depositions, but she was not. It is inferable from all the facts that Mr. Merrill's attorneys had no intention of calling the Goodspeeds but rather were taking the depositions of the Goodspeeds in order to document their file and/or make a record that the attorneys were not ineffective counsel and had done due diligence in investigating a possible defense for Mr. Merrill. If this is so, and it is inferably so, and had that information been communicated to Teresa Anderson, she may have chosen not to attend. The sudden activity by Mr. Merrill's attorneys concerning naming the Goodspeeds as alibi witnesses and deposing them may have been prompted by the fact that Mr. Kidd's attorney filed a notice of alibi witness on March 6, 1997. That notice did not include the Goodspeeds. (App. 2077-2078).

The depositions of the Goodspeeds were taken on March 14, 1997. Five days later, during the trial, a record was made by Mr. Merrill's attorney in which Mr. Merrill was called to the witness stand out of the hearing of the jury in open court. It was represented to him by his attorney, Kate Ladesh, that she had spoken to the Goodspeeds at length on several occasions and determined that they should not be called as witnesses. Mr. Merrill agreed on the record that the witnesses should not be called. (App. 1047-1048).

We now know that Kate Ladesh had most likely never spoken to the Goodspeeds before or at the depositions. She admitted this in her deposition and at the hearing. (App. 131). (App. 2368). Nevertheless, she made a record with Mr. Merrill telling him that she had spoken to the Goodspeeds at length. It is inferable from this that the whole purpose of taking the depositions was to later make a record with Mr. Merrill that it was best that the Goodspeeds not be called. The perfunctory nature of the questioning in the depositions also supports this. (See deposition of Abu-Rahman Saad Muwwakkil (Goodspeed, Sr.) which begins at App. 1937-1948). The factual questioning by Mr. Merrill's counsel covered five and a half pages of the deposition. (Also see the deposition of Rahib Muwwakkil, (Goodspeed, Jr.) App. 1949-1962). The questioning by Mr. Merrill's counsel covered approximately six pages explaining constitutional rights to the witness, and then the factual questioning, like the other deposition, covered approximately five and a half pages of questions.

Respondent McGowan asserts that Mr. Merrill never intended to call the Goodspeeds and that this is a fact to consider in determining why neither Ms. Anderson nor Ms. Ladesh were at the depositions of the Goodspeeds. When questioned below about the use of the Goodspeeds as alibi witnesses, Ms. Ladesh refused to answer questions about her representation of Mr. Merrill based on privilege. And when asked by the hearing officer, Judge Holliger, for Appellant to comment on the assertion of the privilege, counsel for Appellant urged that all participants respect Ms. Ladesh's professional obligations to her client under the Missouri Rules of Professional Conduct. While privileges should be respected, the result here is that direct evidence concerning whether the Goodspeeds would

have actually been witnesses is rendered unavailable. The unavailability of direct evidence impacts the party with the burden of proof, in this case, the Appellant.

At trial, Mr. Merrill's attorney, Kate Ladesh, argued that the Goodspeeds were involved in the killings. (App. 1076). It is difficult to reconcile these facts. On the one hand, Kate Ladesh, on behalf of Mr. Merrill, just days before trial, lists the Goodspeeds as being alibi witnesses, i.e., witnesses who could say that Mr. Merrill was someplace other than at the site of the killing, but at the same time, the defense was that the Goodspeeds were involved in the killing. It makes no sense. How can Ms. Ladesh call the Goodspeeds as witnesses to provide an alibi for Mr. Merrill, i.e., presumably testify that they were with Mr. Merrill, while at the same time, argue that the Goodspeeds were at George Bryant's house killing him.<sup>5</sup> Even Ricky Kidd saw the incongruity of this when giving his testimony in the Federal Habeas hearing. (App. 1438, l. 16 – 1439, l. 1).

A further reason why Teresa Anderson may have chosen not to attend the depositions of the Goodspeeds is that neither Ricky Kidd nor Teresa Anderson could have had any interest in the Goodspeeds as witnesses. To begin with, the Goodspeeds were never listed as witnesses by Mr. Kidd. Never. (App. 360-361). And then consider these facts. In his Federal Habeas hearing in 2009, Mr. Kidd testified that on February 5, 1996, the night before George Bryant was killed, Mr. Kidd met with Gary Goodspeed, Sr. at the Adams Mark Hotel in Kansas City. (App. 1362). At the meeting, Gary Goodspeed, Sr.,

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<sup>5</sup> One could hypothesize that the Goodspeeds would be alibis if they both came to trial admitting to killing the victims but denying that Merrill was with them. An alibi of sorts, but highly unlikely.

asked Mr. Kidd if he wanted to go with him to “knock George off” which meant robbing him. (App. 1365-1367). Mr. Kidd also testified that he had told his trial counsel, Teresa Anderson, everything about this meeting with Gary Goodspeed, Sr. (App. 1409-1410).

Mr. Kidd further testified in Federal Court that he had previously purchased an ounce of cocaine from George Bryant with a street value of \$1,000.00. He gave Mr. Bryant \$500.00 and owed him another \$500.00 for the cocaine. (App. 1404). Mr. Kidd bought drugs from the murder victim and owed him money. Mr. Kidd also testified about discussing with Goodspeed, Sr. his knowledge of George Bryant as a drug dealer. (App. 1365).

Why would Mr. Kidd, with a claimed alibi defense, call the Goodspeeds as witnesses when their testimony could have included a discussion about a meeting with Mr. Kidd to discuss knocking off George Bryant the very night before George Bryant was murdered, and potentially a discussion about the fact that Mr. Kidd was indebted to the victim over a drug purchase. There were good reasons why Mr. Kidd never listed the Goodspeeds as witnesses.

Now, twenty-three years later, in an attempt to support its accusation that Ms. McGowan acted unethically, Appellant is attempting to make it appear as though the Goodspeeds were really desired witnesses. They weren't. Ms. Anderson testified below that she put Ricky Kidd on the witness stand in the criminal trial, and his defense was alibi, so she was trying to keep his testimony short, and to stay away from anything to do with the Goodspeeds. (App. 398). Despite her efforts to control the trial testimony, there is always cross-examination. At the murder trial, Ms. McGowan asked Mr. Kidd on cross-



examination how long it had been since he had seen the Goodspeeds. He testified that he hadn't seen Gary Goodspeed, Sr. since 1993 and Gary Goodspeed, Jr. since the end of 1995. (App. 399-400). Ms. Anderson was asked at the hearing below if she was aware during Ricky Kidd's trial that he gave perjured testimony about his meetings with the Goodspeeds. After some back and forth, and after having to refresh her memory from her deposition, Ms. Anderson acknowledged that Mr. Kidd committed perjury on the witness stand. (See App. 401-405).

Ms. Anderson agreed that at the criminal trial that Mr. Kidd, in an effort to distance himself from having recent contact with the Goodspeeds, lied under oath. (App. 405). In her deposition, Teresa Anderson testified that Mr. Kidd lied about his contacts with the Goodspeeds, and she should have corrected this testimony but did not. (App. 2330-2331). Mr. Kidd was willing to commit perjury, and did commit perjury, to distance himself from the Goodspeeds, and his lawyer Teresa Anderson stood quiet. Now, Ms. Anderson, under leading questions posed by Appellant below advances the theory that Mr. Kidd really wanted the Goodspeeds as witnesses.

Ms. Anderson did at least acknowledge that if the Goodspeeds had been called to testify, and if testimony had come out that Mr. Kidd had met with Goodspeed, Sr., the night before to discuss knocking off George Bryant, and had Mr. Kidd discussed his own drug involvement with Mr. Bryant, it might have been problematic testimony for Mr. Kidd. (App. 397). It would be hard not to acknowledge this.

If that is not enough, what would make Mr. Kidd calling the Goodspeeds even more complicated was the fact that Kate Ladesh, who represented co-defendant Marcus Merrill,

was asserting at trial that Mr. Kidd was with the Goodspeeds at the time of the killing. (App. 361-362). So, not only was the prosecutor, Ms. McGowan, arguing that Mr. Kidd and Mr. Merrill were involved in this killing, but the defense lawyer for Mr. Merrill, Kate Ladesh, was also saying that Mr. Kidd was with the Goodspeeds at the time of the killing. (App. 361-362). Not surprisingly, at trial, Teresa Anderson argued that the Goodspeeds were not involved in the murders, in part, because co-defendant Merrill was arguing that Mr. Kidd was with the Goodspeeds. (App. 364).

Counsel for Appellant, while questioning Teresa Anderson, attempted to demonstrate that Ms. Anderson wanted to prove in the criminal trial that the Goodspeeds were involved in the murder. (App. 235). However, a review of the criminal trial transcript shows the exact opposite – Teresa Anderson was trying to show that the Goodspeeds did not commit the crime. When confronted with this fact below, Ms. Anderson acknowledged that she was going along with the questioning from counsel for the Appellant. (App. 371-372). In the 2019 Habeas hearing, Teresa Anderson had demonstrated an inclination to follow the lead of Sean O’Brien to support his theory; and below, once again, in this Disciplinary hearing, she demonstrated an inclination to follow the lead of Appellant’s counsel, agreeing to suggested theories that are contradicted by the record from the criminal trial.

## **II. Conclusion To Point IV**

The Goodspeeds were listed by Mr. Merrill as alibi witnesses the week before trial and then their depositions were taken on the Friday before trial. The depositions were arranged and taken by Mr. Merrill’s attorney. It is puzzling why the Defendant would

take depositions of his witnesses and expose them to cross-examination. It seems likely that the depositions were taken by Mr. Merrill's attorney simply to be able to make a record so as to convince Mr. Merrill not to call the Goodspeeds as witnesses. Mr. Merrill was in fact called to the witness stand during the trial to make that very record, i.e., whether he wanted the Goodspeeds to be witnesses and he said he did not.

If Teresa Anderson was told or surmised that this was the purpose of the depositions, it could explain her non-attendance. Furthermore, Mr. Kidd could not have wanted the Goodspeeds as witnesses. If he had called them as witnesses, they potentially would have exposed the fact that Mr. Kidd met with Mr. Goodspeed, Sr. the night before the killing and discussed robbing the victim. This explains why Mr. Kidd did not take any steps to call them as witnesses.

It is more likely true than not that the Goodspeed depositions were taken simply to make a record for Mr. Merrill's attorneys, and that neither Mr. Merrill nor Mr. Kidd had any plan to call the Goodspeeds as witnesses at trial. Thus, the Friday before trial, Ms. Anderson chose to prepare for trial rather than attend the depositions.

## CONCLUSION

The Disciplinary Hearing Panel below unanimously found that Ms. McGowan should not be disciplined and that the Information should be dismissed. Appellant has not carried the burden of proof to show that Ms. McGowan violated any ethical rule. But that is not surprising because Ms. McGowan did not violate her ethical duties.

The single remaining accusation against Ms. McGowan is that she did not provide notice of a deposition to Ricky Kidd's lawyer which deposition took place on March 14, 1997 which was 22 years before the participants in the deposition were called upon to remember how it came to be noticed.

Mona Spencer who was the attorney present at the deposition for Marcus Merrill has no memory of the deposition even taking place except for the fact that she can see the printed copy. (App. 174-175). Kate Ladesh, the lead attorney for Mr. Merrill has no memory of the deposition or how it came about. Amy McGowan has no memory of the logistics of the deposition, although she has testified that her practice would have been to have assured herself that Teresa Anderson knew about the deposition.

Teresa Anderson claims that she was not notified of the deposition which took place 22 years ago but it has also been demonstrated that she has a somewhat faulty memory about events of that week, including what occurred in a deposition that took place three days earlier on March 11<sup>th</sup>, 1997. In that deposition, she was told about the relocation of Richard Harris to a hotel but she would later swear under oath that she did not know anything about the relocation of witness Richard Harris and would have cross-examined

him about it had she known. In fact, she did know about it and moved to prevent it from being mentioned.

Mining the transcripts and the pleadings from 1996 to the present suggests there is evidence that it is more likely true than not true that Teresa Anderson did know about the depositions of the Goodspeeds.

- The deposition of Gary Goodspeed, Jr. was openly discussed in the pretrial proceedings that occurred in the days following the depositions of the Goodspeeds and Ms. Anderson showed no surprise.
- Teresa Anderson prepared a subpoena to be served on Gary Goodspeed, Jr. The subpoena was prepared on March 20<sup>th</sup>, 1997 and it showed a Missouri address for Mr. Goodspeed who was a Georgia resident. This shows that Teresa Anderson knew that Gary Goodspeed, Jr. was in Missouri.
- The subpoena prepared by Ms. Anderson utilized a Missouri address and the Muslim name of Goodspeed, Jr., and both the address and the Muslim name were referenced in the deposition of Mr. Goodspeed which took place on March 14, 1997.
- Ms. Ladesh and/or Ms. Spencer had to have provided notice to Amy McGowan because she was present at the Goodspeeds' depositions. Thus, we know that these two lawyers representing Mr. Merrill underwent the thought process of providing notice, and they were in a deposition with Ms. Anderson 3 days before.

- The depositions of the Goodspeeds taken by Mona Spencer were perfunctory and were not taken by Ms. Ladesh, the lead attorney. The depositions seemed to have been taken to make a record with Mr. Merrill so as to solicit his agreement that the Goodspeeds should not be called as witnesses. The record with Mr. Merrill was in fact made days after the depositions of the Goodspeeds.
- Ricky Kidd would have had no interest in having the Goodspeeds as witnesses because, as Kidd later disclosed, he had met with Goodspeed, Sr. and had a discussion about robbing George Bryant the night before George Bryant was robbed and killed. And he had an alleged alibi that did not involve the Goodspeeds. There would be no reason for Mr. Kidd to call the Goodspeeds as witnesses.
- The accumulated probabilities of these facts all tending in the same direction make it more probable than not that Teresa Anderson was informed of the depositions but just as with the Harris deposition taken days earlier, her memory has failed her.

In urging the suspension of Ms. McGowan's license, the Appellant says that an aggravating factor is that Ms. McGowan has not acknowledged her wrongdoing. As the hearing panel unanimously found, she did nothing wrong. There is no wrongdoing to acknowledge. Was Ms. McGowan to acknowledge wrongdoing on the first two accusations? These accusations have been retracted and never should have been brought despite the ominous footnote that those two charges are not being pursued "at this time."

Ms. McGowan was a career Prosecutor. She was ethical in her representation of the State of Missouri in the case against Ricky Kidd. Defense alibi witnesses were untimely disclosed four days before trial by Mr. Merrill and Ms. McGowan did not seek to strike the witnesses. (App. 2268). A review of the criminal trial transcript shows that Ms. McGowan was collegial and did not contest most of the Motions in Limine filed by defense counsel. The transcript also shows that counsel openly discussed the Goodspeed depositions. (See for example App. 765). Also, there was a discussion amongst counsel on the record concerning potential threats and security concerns, and Ms. McGowan participated in a joint discussion about trying to minimize the appearance of this security issue to the jury. (App. 765).

It appears from the record and now disclosed emails that twenty-two years later, Sean O'Brien, a lawyer representing Ricky Kidd, would disclose partial file material to Ricky Kidd's trial lawyer, Teresa Anderson. Thereafter, Teresa Anderson, without seeing her complete file, took the witness stand and shrugged along answering leading questions which made it look like Ms. McGowan was withholding information so that Brady violations could be established.

Before the Habeas hearing, Mr. O'Brien emailed his soon to be witness, Teresa Anderson, telling her that "we are optimistic that the Brady claim is a winner. It has all the elements of a great story." (App. 2411). All of that has now been shown to be a distortion. It may be a great story for Ricky Kidd but the unwitting Anderson testimony in that Habeas hearing has led to Amy McGowan, a career public prosecutor, being labeled as the unethical cause of the incarceration of Mr. Kidd when she most assuredly was not.

The Disciplinary Hearing Panel below heard three days of evidence, saw the witnesses including Teresa Anderson and Amy McGowan, reviewed all of the Exhibits, and unanimously found that Ms. McGowan was not guilty of any professional misconduct and recommended that the Information be dismissed. Ms. McGowan respectfully urges this Court to likewise find that she is not guilty of any professional misconduct and that the Information brought against her should be dismissed.

TURNER, SWEENEY & SEATON

*/s/ John E. Turner*

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**CERTIFICATE OF COMPLIANCE AND SERVICE**

Pursuant to Supreme Court Rule 84.06(c), the undersigned hereby certifies that: (1) on this 19<sup>th</sup> day of August, 2022 the foregoing brief was filed with the Court’s electronic filing system, which will provide service of an electronic copy to all counsel of record, and (2) this brief complies with the limitations contained in Rule 84.06(b) in that this brief contains 16,358 words as calculated by the Microsoft Word software used to prepare this brief.

*/S/ John E. Turner*

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