



Charged Party(ies)	Robert Kent Ellen Kent	ACBL #	R873023 L237397	Hearing Date	10/5/20
Disciplinary Body	Online Ethical Oversight Committee		Hearing Location	Web-Conference using Zoom	
Charging Party	Joseph Jones	ACBL#	5399696	Complainant	Robb Gordon ACBL# K652927

COMMITTEE MEMBERS WHO HEARD THE CHARGES

Name	ACBL #	Name	ACBL #
Jordan Chodorow, Chair	Q498482		
Adam Parrish	N966329		
Rebecca Rogers	P062508		

INDIVIDUALS THAT PARTICIPATED IN THE HEARING (excluding committee members)

Name	ACBL#	Via	Capacity	Name	ACBL#	Via	Capacity
Ray Yuenger	P913494	web conf.	Advisor	Ellen Kent	L237397	web conf.	Charged Party
Joseph Jones	5399696	web conf.	Charging Party	Roger Lee	K772116	web conf.	Witness
Allan Falk	L401189	web conf.	Adv-Charging P	Michael Kamil	O048854	web conf.	Witness
Robert Kent	R873023	web conf.	Charged Party	continued on page 3		Select One	Select One

EVIDENCE AND ARGUMENTS PRESENTED (Summarize evidence and arguments presented including testimony. If additional space is needed, continue on page 3 of this hearing report.) (Note: provide new documentary evidence introduced during the hearing to the Office of National Recorder)

See attached decision pages 1 through 9

COMMITTEE FINDINGS OF FACT (based on the evidence, state the committee's conclusion as to what happened)

See attached decision pages 9 through 11

DECISION (click on the box next to Not Guilty or Guilty of violating the CDR to add a check mark.)

Not responsible

Responsible

Note: A party may only be found guilty of a violation originally stated in the Charge Letter.

CDR GROUNDS FOR DISCIPLINE Type the section(s) and description(s) found in CDR 3 which led to the discipline).

Both parties - 3.20 Cheating

DISCIPLINE (Unless a discipline begins immediately, which requires you to complete a Notice of Immediate Discipline, all begin dates should start at least five days after you submit this hearing Report to the Office of National Recorder.

Disciplined Party is convicted of premeditated or collusive cheating (or has admitted to such action), CDR 4.1.8 (a) YES NO

If yes, all masterpoints, titles, and status ranks earned while playing as a pair will be forfeited.

	Start Date	End Date	Additional Requirements/Comments
<input type="checkbox"/> REPRIMAND			
<input type="checkbox"/> PROBATION			
<input type="checkbox"/> SUSPENSION			

Is the disciplined party Suspended because of an Ethical Violation (CDR 4.1.8 (b))? YES NO

If yes, the masterpoints and titles won in the event by the disciplined party, partners and teammates in which the offense occurred will be forfeited.

Is the Suspension imposed due to an Ethical Violation more than one year (CDR 4.1.8 (b))? YES NO

If yes, the MPs, titles or other ACBL related award earned by the discipline party within twelve months preceding the date of the offense will be forfeited.

EXPULSION

SUSPENDED SENTENCE (only used in conjunction with an imposed Suspension from above that you have converted to Probation). State the condition of the sentence below

EXCLUSION from Events and Programs (list the exclusions and the dates of the events or activities). CDR 4.1.6

REDUCTION OR FORFEITURE of Masterpoints (MP) or Tournament Rank or Disqualification.

Remove all MPs, titles, and status ranks earned while playing as a pair Remove MPs earned for the entire tournament in which the offense occurred

Reduction of rank in the event in which the offense occurred

Disqualification in the event in which offense occurred

Disqualification in the tournament

The teammates and partners will also receive these penalties in the event in which the offense occurred.

STATE THE OFFENSE(S) FROM APPENDIX B, CHART 1 and/or CHART 2 OF THE CDR

E16

The discipline imposed above is within the recommended guidelines of Appendix B, Chart 1 and/or Chart 2.

If it is OUTSIDE the guidelines, a reason must be stated below.

RESPECTFULLY SUBMITTED (CHAIR)

/s/ Jordan Chodorow

Electronic Signature (type name above)

Date: 10/14/20

Wet Signature (sign above)

CONTINUED INDIVIDUALS THAT PARTICIPATED IN THE HEARING (excluding committee members):

Danny Kleinman, ACBL #R729739 via web-conference as witness.

Magnus Olafsson, ACBL #L968049 via web-conference as witness.

Suzi Subeck, ACBL #P531753 via web-conference as witness.

Stan Subeck, ACBL #P531745 via web-conference as witness.

Summary of evidence

Following is a summary of the 1,093-page hearing packet¹ and the 6 hour 20 minute disciplinary hearing² held on October 5, 2020 on charges by the ACBL against Robert and Ellen Kent.³ This summary will review the statements of the witnesses in the order they testified.⁴ At the outset of the hearing, the Chair asked the Advocates to not repeat what was in their written evidence disclosures.

The CDR 3.1 and 3.20 charges against the Kents arose out of 90 deals they played on the weekend of May 2 and 3, 2020. Three 18-board sessions (Bridge Base Online (“BBO”) sessions 6644, 6658, and 6848) were side sessions in an online regional. Two 18-board sessions (BBO sessions 8575 and 9422) were played in Support Your Club (“SYC”) games the mornings before the regional sessions.

In prehearing disclosure, Allan Falk also submitted his own analysis of 24 “supplemental” hands (pages 127 through 130 of the hearing packet⁵) in addition to his comments on 39 of the original 90 hands (pages 113 through 120). As noted in ruling **D3** of August 25, these supplemental hands included “18 played in three sessions on May 1,

¹ The hearing packet included requested pre-hearing disclosure by the Parties, including 66 pages submitted by the Charging Party on August 10, 2020, 1,336 pages submitted by the Charged Parties on September 18, and 169 pages of rebuttal disclosure submitted by the Charging Party on September 23. The final packet contains fewer pages than submitted by the Parties because the Compliance Coordinator, Sabrina Goley, and the Panel’s Advisor eliminated duplicate documents from the final packet. The Coordinator was able to compress 347 pages of hands the Charged Parties offered as exculpatory into 57 pages by putting several deal diagrams on the same page. The Advisor has redacted several passages in the remaining packet to conform to a series of rulings issued by the Panel on August 25, 2020 after a prehearing conference held on August 22 to clarify and limit the issues and the evidence. (The August 25 rulings are at pages 80 through 86 of the hearing packet.) Additional reserved rulings were made on September 19. (Pages 106 through 109.) The original hearing packet was distributed to the Parties and the panel on September 28, a week before the disciplinary hearing.

The August 25 rulings scheduled the remaining prehearing disclosure for September 18 and 23. On September 30, the Charging Parties submitted 203 more pages in response to the rebuttal disclosure. Three pages were duplicates. Since the August 25 rulings did not provide for what appeared to be surrebuttal disclosure, by email letter on October 3, the Advisor accepted 34 pages for addition to the hearing packet and rejected the rest. The revised hearing packet was distributed to the Parties and the panel the early morning of October 3.

² Ruling **F** of the August 25 rulings set a timetable for the disciplinary hearing, but the Panel Chair changed that timetable at the outset of the hearing at the request of Advocate Robert Kent with the consent of Advocate Allan Falk. Each side was given two hours for both evidence presentation and questioning of witnesses, instead of discrete periods of 90 minutes for presentation and 30 minutes for questioning. The Advisor had some trouble running two concurrent timers during the hearing (considering some witnesses appeared and interrupted questioning). But a review of the video recordings of the morning and afternoon hearing sessions reveals that Falk used a little under one hour 20 minutes of his two hours, and Robert Kent used about one hour 58 minutes. Each side had a total of 20 minutes for opening and closing statements. Falk used 16 minutes, while Robert Kent used slightly less than 26.

³ To avoid creating ambiguity by using a common surname and not due to familiarity, the Kents will be referred to individually as Robert and Ellen and the Subecks will be referred to as Suzi and Stan.

⁴ With the exception of questions for Falk as a witness, each witness was questioned by the other side immediately after his or her direct testimony.

⁵ Unspecified page references will be to the numbers on the revised hearing packet pages.

2020; one each during sessions played on May 6, 8, 10, 19, 23, and 26.” (Page 83.) Ruling **D3** established limits on the relevance of these supplemental hands, namely to show “knowledge, intent, a plan, or the absence of mistake or an accident.”⁶

A. Roger Lee and Michael Kamil

Lee and Kamil each reviewed 89 of the 90 deals.⁷ Both being members of the Credentials Advisory Team, a group of world class players who have volunteered a lot of time investigating online cheating, they each graded the hands on spreadsheets using the same scale: “C” meaning highly suspicious; “G” meaning a successful borderline decision that could be justified single dummy; “N” meaning no evidence either way; “B” meaning an unsuccessful but reasonable borderline decision; “A” indicating not cheating; and “L” meaning lazy decision-making that might indicate cheating. They further separately graded the actions of each member of the partnership on every deal. In addition to grading the hands, they often offered comments about individual hands on their spreadsheets. Excerpts of their spreadsheets with links to the BBO movies appear in the hearing packet (Lee’s at pages 167 through 172, Kamil’s at pages 175 through 180).

Lee and Kamil each testified that it is not only the number of “C” hands that supports a conclusion of cheating, but the overall pattern of the ratings. Lee testified that honest world-class players will have more “A” hands than “C” hands, because bridge is a game of mistakes. Lee graded 8 hands by Ellen Kent and 9 by Robert Kent as “C”s, almost 10% of the hands. Moreover, he only assigned an “A” to one hand by each. Kamil similarly assigned an “A” to one hand by each, while classifying as “C” 7 by Ellen and 8 by Robert. As to borderline decisions, each of them was right much more often than wrong. According to Lee, the right/wrong ratio was 8 to 3 for Ellen and 12 to 5 for Robert. The ratios according to Kamil were 11 to 3 for Ellen and 15 to 0 for Robert. Lee and Kamil were each convinced with over 99% certainty that the Kents were cheating. Lee and Kamil each indicated that this was a qualitative, not quantitative, impression. Kamil said it was really 100% for him.

Lee explained that comments about poor declarer play were not intended to be degrading, but it is notable when a pair’s auctions and defense are much more accurate than their individual “soft” declarer play.

Falk asked Lee for his analysis of board 10 from session 6063 (designated hereafter as [6063 10](#)⁸), a supplemental hand played on May 23. Despite Robert’s 1♥ overcall, in defending 3NT Ellen led the ♠J from JT9, and Robert encouraged with the 4 holding AK74. In Lee’s opinion, the duck defied all bridge logic.

⁶ Legal scholars can compare Rule 404 of the Federal Rules of Evidence.

⁷ The BBO record of board 15 from session 9422 was unavailable due to a score adjustment.

⁸ Hyperlinks to BBO movies displayed during the hearing are provided for the reader’s convenience.

Without questioning by Falk, Lee discussed several hands he considered particularly suspicious, including the following hands from the original 90: the bidding on [6644 6](#) and [6644 15](#), the bidding and the ♠ lead on [6644 17](#), Ellen's ♦ play at trick one defending [6848 18](#), and Ellen's ♦ lead defending [9422 9](#) after Robert's 2♣ overcall.⁹

Kamil (who was preparing for imminent surgery) was not asked about particular deals by Falk. Robert asked Kamil about the bidding on [6848 2](#) and whether he claimed they got a good result by not competing. Kamil explained that he does not consider the results of hands, because most people can't determine the best contract in the heat of competitive bidding. Kamil did not consider it exculpatory that the Kents played a 1♦ contract in a 4-2 fit on deal [9422 4](#) when they might have made 4♥s. People do not cheat on every hand because it might be too conspicuous.

Robert disputed virtually all comments about hands written by Lee and Kamil in his declarations and testimony and through questioning them, even their comments on hands they classified as evidence of not cheating.

B. The Subecks

The essence of the rebuttal declarations (pages 1047 through 1052) and testimony by Suzi and Stan Subeck was that sometime during April, during a speakerphone conversation between long-time friends, Ellen told Suzi they were playing in many SYC games while sitting next to each other on a couch. Suzi asked if they could see each other's screens. Ellen said something like, "yes, but that can't be helped." Ellen described a hand where she had told Robert to lead a ♠. He refused to, saying that he couldn't from his holding. Suzi told Ellen they couldn't have that kind of banter and they should be playing in separate rooms behind closed doors.

Suzi ended up mentioning these circumstances to National Recorder Robb Gordon during a Zoom meeting shortly after their conversation. He assured her that he would give her anonymity as long as he could. Suzi believed the Kents had heeded her advice when she got a text from Ellen on May 2, 2020 saying, "Separate rooms" and talking about a high percentage game they had just had in the regional.

When questioned by Robert, Suzi admitted she had never doubted the Kents' integrity when they had played as teammates. She denied saying as a teammate that her memory was getting worse. Robert repeatedly asked Suzi why Ellen would call to report herself as cheating, when Suzi, as a District Director, would be obligated to report it. Suzi characterized the conversation as "girl talk" and not a report of cheating.

⁹ The Advocate apparently did not advise Lee about the restrictions of ruling **D3**, as Lee also provided his analyses of several of Falk's supplemental hands: the bidding on [2004 11](#) (from May 26) and [2954 16](#) (from May 8), and the blind ♠2 lead on [7829 11](#) (from May 10). He also discussed two other deals not included in Falk's supplemental hands, namely 7699 5 from May 14 and 8870 9 from May 19. (Hyperlinks are not provided because the Panel did not rely on these two new deals.)

C. Robb Gordon

Gordon described beginning his investigation as National Recorder by looking at the regional hands after hearing from Suzi. He recalled that there was a Charge Letter issued on or about May 28, 2020, but explained that it wasn't sent because he couldn't provide BBO links due to an archiving problem BBO was having. He was no longer involved with this case after Executive Director Joe Jones replaced him with Falk as the temporary Recorder and as the Charging Party's Advocate.

D. Allan Falk

As his own witness Falk began to discuss one of his 24 supplemental hands, specifically 4322 9 (page 129), but was interrupted.¹⁰ Falk acknowledged that he did not review all 200 of the deals that the Kents had offered as exculpatory hands. (Pages 839 through 900.¹¹) With the Advisor sharing the transcript pages on the video screen, Falk gave reasons why he considered ten of those hands not to be exculpatory but actually evidence of cheating.¹²

Falk was appointed as Temporary Recorder and Advocate by Joe Jones on June 30, 2020.¹³ Falk had assumed that Gordon was replaced due to complaints by the Kents. Falk's Recorder Complaint was submitted on July 12, a day before Robert sent him an email.

In response to panel questions, Falk provided his recollection of the email communications about obtaining the Kents' system notes. His investigation took about five days of work. He stopped when he thought he had enough evidence. It was ongoing on July 10 when Joe Jones notified the Kents of Falk's appointment as his Advocate.

Falk sent Roger Lee the 90 hands he had examined. Falk was not sure why in his 24 supplemental hands he had selected one hand out of 18 from each of five sessions. Lee might have suggested those hands to him. Lee is more sophisticated with BBO records and can focus on slam hands. Falk might not have reviewed all 18 hands in each of those sessions. The deals he cited supported themes he had already developed.

¹⁰ Included in the Charging Party's prehearing disclosure (at pages 133 through 164) were BBO records and links to 990 deals played by the Kents in May 2020. This particular hand was the only one of the supplemental hands where Falk's description did not match the BBO movie link. He described a lead against 6NT in session 4322 which occurred on May 6, but the Kents did not defend 6NT on any of those 18 hands.

¹¹ The Kents' disclosure of these deals, played during time periods from March 21, 2020 through March 28 and from May 24 through May 27, consisted of printouts of deals from 16 separate BBO sessions with typed comments on the hand records from March and spreadsheet comments on the hands from May, but no BBO movie links or session numbers.

¹² Falk discussed hands 3, 10, and 14 played on March 21; 3 and 16 from March 23; 2, 5, and 14 from March 24; and 12 and 15 from March 25.

¹³ While Robert deferred his questioning of Falk until the end of the hearing as noted above, Falk's further testimony is summarized here for continuity.

There are three hands that he considered to be the strongest evidence of cheating. One was the blind ♠2 lead against 6NT on [7829 11](#) (one of the supplemental hands). Another was Robert's duck after the ♠J lead on [6063 10](#) (another of the supplemental hands). The third hand was the slam auction on [9422 13](#), where Falk asserted Robert could have asked for the ♦ Queen.¹⁴

After answering panel questions, Falk brought up one more hand, [6848 3](#). He questioned why Ellen wouldn't show her six ♥s after her takeout double instead of simply jumping to a ♠ game with three-card support, because she couldn't know from the auction that Robert had more than four ♠s, not the six he actually held.

E. Magnus Olafsson

With their prehearing disclosure, the Kents submitted an unpaginated 15-page document by Olafsson, dated September 8, 2020, reviewing Falk's initial deal analysis at the Kents' request. (Pages 533 through 547.)¹⁵ Olafsson testified that a cheating investigation looks for two fundamental things, one being whether a player makes an optimal decision that is not a logical decision. Almost none of the Kents' hands fulfilled this requirement. The other thing is whether the Kents gained by cheating. One example is [6658 2](#). If they were cheating, Robert would have led his doubleton club, the unbid suit, against a 3NT contract into Ellen's long suit.¹⁶

Olafsson was surprised by the language, tone, and spirit of Falk's analysis and did not consider it impartial. He disagreed with Falk's criticism of the bidding on [6848 12](#). Ellen showed a constructive raise opposite Robert's third-seat opener, and did not need to compete to the three level. On [6658 5](#), Robert eventually competed to the three-level with four-card support for a 1♠ opening. In summary, Olafsson thought Falk's initial report lacked merit and did not justify bringing charges of cheating. At most three boards indicated strange decisions, but there were reasonable explanations for the decision taken.

Responding to panel questions, Olafsson explained that he did not review the analyses of Kamil or Lee or Falk's supplemental hands.

¹⁴ Robert credibly responded that in their auction and system, they had no way to ask for the ♦ Queen.

¹⁵ When the Kents submitted Olafsson's review on September 18, 2020, they advised the Compliance Coordinator that it was not his final report, as his computer was undergoing maintenance. On September 30, the Kents submitted the final report along with offering a number of documents as surrebuttal disclosure. By email letter of October 3, the Advisor declined to replace Olafsson's interim report with the final report because (a) the apparent changes to the report seemed inconsequential and (b) the hearing packet already included Falk's rebuttal to that report (pages 948 through 972) in which Falk had interlineated substantial responses on the existing document. It would be unnecessary work for the panel to compare Olafsson's final and interim reports and ascertain whether the changes affected Falk's comments.

¹⁶ This was a hand that Falk's initial analysis had identified as exculpatory. (Pages 113-114.)

F. Danny Kleinman

Danny Kleinman submitted a report listing his background in investigating bridge cheating and commenting on a number of the 90 hands, including annotating the auctions. (Pages 548 through 609.) Kleinman said he wanted to review the hands without reading Falk's or Robert's analyses. He testified to his overall conclusion that there was inconclusive evidence of collusive cheating. Some bids and opening leads stuck out like sore thumbs, but other actions would have been different had they known their partner's hand. There were no smoking guns. If they were cheating they would have been turning it on and off capriciously.

Kleinman prepared a 66-page response to Falk's rebuttal comments that was not included in the revised hearing packet.¹⁷ He testified about his two most important observations in that document. He disputed Falk's observation that no single hand could be exonerating, saying it created a Catch-22 position. He also considered Falk's rebuttal disclosure comments on deal [6658 15](#) to be exculpatory evidence.¹⁸

In response to a panel question, Kleinman explained that he first learned about the charges against the Kents from a mutual friend. Then he reached out to them.

G. Ellen Kent

Ellen Kent submitted two declarations in addition to her testimony. She denied telling Suzi that they ever played on the living room couch together. There is no Internet service in the living room. Also, the couch had recently been refinished and she did not allow Robert to sit on the couch. Neither one of them played on the couch. They played in separate rooms, with Robert in his office and Ellen either in the kitchen or the master bedroom. The Subecks misunderstood the phone conversation. The Kents only discussed boards after the fact. It was true that Robert had expressed a concern that their good results might result in an inquiry and an accusation of cheating. (Pages 1073, 1075.) It is preposterous that she would admit cheating to a member of the ACBL's Board of Directors. She asked the panel to read all the text messages between her and Suzi (at pages 1068 through 1085).

Her CV (at pages 275 and 276) reflects a PhD in clinical psychology, membership in the American Psychological Association, teaching credentials in California and Massachusetts, and a long history of volunteerism to the ACBL on the Board of

¹⁷ The Kents offered this document for inclusion in the already-distributed hearing packet along with a number of other documents on September 30, 2020. As the August 25 rulings did not allow for this kind of surrebuttal disclosure, the Advisor by email letter on October 3 declined to add this document.

¹⁸ Kleinman's reasoning appeared to be as follows. While Falk did not identify deal 6658 15 as evidence of cheating, Kleinman said it was exonerating because the Kents played in a dubious 3NT while missing a superior 4♣ game on a Moysian fit. Falk's rebuttal was that the hand simply illustrated the Kents' aversion to Moysian fits. (Page 1040.) Kleinman's observation about this comment was that a cheating pair could easily find successful Moysian fits. Kleinman acknowledged that he did not recall them playing any Moysian fits except once at the two-level.

Governors, the Competitions and Conventions Committee, the National Board of Appeals, and other accomplishments. She would never risk her licenses for a few masterpoints.

In response to panel questions, Ellen explained that Robert is responsible for updating their system notes. When asked about honor leads against NT, she said they play Journalist leads. She had some difficulty explaining them and asked Robert.¹⁹ They added them recently and she gets confused, but a Jack lead denies a higher card. Robert could explain it better. They also play attitude leads.

She did not bid again on [6848 2](#) because she had described her hand with her first takeout double and she had to consider that Robert had responded with a three-card spade suit.

Regarding her text to Suzi (page 1074) about how many masterpoints they were winning online during the regional, she was giddy about their success. She is close to 10,000 points and would like to reach that goal. But she was always willing to sit out in team games, even though that would reduce her masterpoint awards.

Ellen said that she led the ♠2 against 6NT on [7829 11](#) because she was tired and because, when she first learned to play bridge in the 1960s, an older man told her to make a blind ♠ lead against NT when she had no entries in her hand.

In defending 5 ♣s on hand [6848 3](#), Ellen deduced that Robert had a stiff ♣ from the auction, so it wasn't likely he was leading a stiff ♥, so she didn't try to give him a ruff. She interpreted Robert's ♠2 under her K at trick two as showing the J.

H. Robert Kent

Robert submitted seven declarations with his pre-hearing disclosure and a supplemental declaration under penalty of perjury. One of his declarations covered his professional history as an attorney for fifty years. (Pages 278 through 280.) He could not have had the career he did without being trustworthy. He categorically denied engaging in collusive cheating with Ellen. Looking at the hands closely, they had some successes and an equal number of failures. There are a number of decisions to be made every bridge session.

Regarding his July 5, 2020 letter to Joe Jones as Executive Director,²⁰ he was trying to accomplish two things, to initiate settlement negotiations²¹ and to have Gordon

¹⁹ The Kents sat side-by-side throughout the Zoom hearing.

²⁰ The ACBL charged Robert individually with violating CDR 3.7, 3.11, and 3.21 by sending this letter.

²¹ Ruling **D1** stated, "The Panel will hear no evidence pertaining to offers by either Party to engage in a Negotiated Resolution or a Party's failure to negotiate a resolution. Any such references in existing documents, including the Kent letter, will be redacted before they are submitted to the Panel in a hearing packet."

recused from serving as Recorder based on his history with Ellen²² and the tone of his emails asking them to admit guilt without providing the evidence against them.

In response to panel questions, Robert explained the circumstances surrounding the Kents' suspension by BBO. He also reviewed the timeline regarding when the ACBL asked for his system notes and when he offered them to the ACBL. He acknowledged that Joe Jones had invited him to submit system notes in his letter of July 10, but by the time he contacted Falk a few days later, he understood Falk's emails to be saying that he was too late because Falk had already made his recommendation.

Robert explained how he maintained their system notes in MS Word. He had various length versions, 2 pages, 20 pages, 90 pages, and 300 pages. He acknowledged that on BBO system notes aren't furnished, just convention cards.

In response to panel questions, Robert said that they got a bad result on [6848 3](#) by defending 5 ♣s instead of bidding five of a major. Robert's ♠2 at trick two was attitude while defending. Ellen couldn't bid 3 ♥ after doubling because it wouldn't be forcing.

Summary of arguments

For the Charging Party, Falk argued that the Kents had financial incentive to cheat. Ellen describes herself as a professional bridge teacher. But he doesn't claim to know why people cheat. Even if Falk was biased and cherry-picked deals as the Kents claim, the Kents have no defense to the analyses of Lee and Kamil. The July 5, 2020 letter by Robert was intended to avoid the disciplinary process in violation of CDR 3.21 by demanding a dismissal of the charges. Olafsson and Kleinman admitted having no experience detecting online cheating. The Subecks were credible.

For the Charged Parties, Robert Kent argued that they don't play for money like bridge professionals do. As an attorney, he gets professional networking referrals from bridge contacts. The Subecks' recollections were mistaken. Why would they call to confess cheating? They would never say they could see each other's hands sitting next to each other. If they were cheating their percentages would have been higher.

Falk, Kamil, and Lee each had a preordained agenda to find evidence of cheating. Robert's declarations explained how each one was wrong. There were 20 or 30 exculpatory hands out of the 90, not one or two. The Kents had ordinary close decisions that were sometimes right and sometimes wrong. The Charging Party's experts do not agree. Everyone would be facing charges if their play was subjected to this level of scrutiny.

²² Ruling **D6** was reserved pending receipt of the Kents' prehearing disclosure. In light of that disclosure, ruling **D6** was filed on September 19, 2020 "excluding any evidence about the past relationships of Ellen Kent and Robb Gordon, Ellen Kent and Linda Gordon, Linda and Robb Gordon, and Ellen Kent and Allan Siebert. Whatever attenuated probative value evidence of past marriages and divorces may have is outweighed by the likelihood of consuming unnecessary time and confusing the issues." (Page 107.) Because Robert's letter of July 5, 2020 (at pages 196 through 205) was the subject of several charges, it was the one document that avoided **D6** redaction.

Their bridge lives and their reputations are at stake. Robert has an impeccable reputation as a lawyer and was one of the top art dealers in the United States. He could not have had those relationships without being trustworthy.

More detail about the Kents' arguments appears in the hearing packet, in the 37-page "OPENING SUMMARY AND OPPOSITION TO CHARGES" document (pages 217 through 253), in Robert's six-page declaration "RE LACK OF MOTIVE TO CHEAT" (pages 291 through 296), and in other declarations.

Factual findings, conclusions, and observations

This OEOC Panel recognizes the seriousness of the charges. Considering the evidence and testimony summarized above in light of the Panel's prehearing conference evidentiary rulings of August 25, 2020 (pages 80 through 86) and September 19, 2020 (pages 106 through 109), the Panel unanimously concludes that Ellen and Robert collusively cheated by transmitting Unauthorized Information. Finding the evidence overwhelming, it is more than enough for the Panel to be comfortably satisfied with finding a violation of CDR 3.20 as charged.²³ We therefore find Robert and Ellen Kent guilty of an E16 violation²⁴ and impose the recommended discipline of expulsion from the ACBL. We further determine they have forfeited all masterpoints, titles, and status ranks earned as a pair. Our conclusions are based on the following factual findings.

The evidence provided by Roger Lee and Michael Kamil, two unimpeached experts²⁵ with significant experience investigating online cheating allegations as members of the Credentials Advisory Team, was particularly compelling. The Panel's own analysis of the questioned deals confirmed the findings of the Charging Party's witnesses: too many of the Kents' actions cannot be explained without knowledge of partner's hand. The BBO movies of the bidding and play of deals are incriminating. The Kents' explanations of these questioned actions were unconvincing and self-serving, often relying on double-dummy analysis to distract from the issue of knowledge of partner's hand. The evidence about the deals was sufficient to convince the Panel of the Kents' guilt even without the credible testimony provided by Suzi and Stan Subeck. Their troubling account of telephone and text conversations with the Charged Parties simply corroborates an already clear case.

²³ In light of finding a violation of CDR 3.20, the Panel reaches no conclusion about the lesser included charge of violating 3.1.

²⁴ Former E16 applicable here prohibited "Prearranged partnership collusion by means of signaling to exchange information." "Signaling" was not defined in the applicable CDR. Some may wonder if, for example, it would be "signaling" to verbally ask partner to lead a suit. The Panel believes that "signaling" in the disciplinary chart had a broader meaning that included any form of illicit communication of UI. We note that current section 301(A)(1), which is not applicable here per CDR 906, supports our interpretation. It defines "collusive signaling" as "an agreement, whether implicit or explicit, . . . to exchange or pass information in any manner not expressly permitted by Law 73." "Signaling" appears to have been a term of art in the applicable CDR.

²⁵ It is notable that the Kents did not ask their expert witnesses to review the findings of Lee and Kamil.

Three alleged CDR violations were predicated on a July 5, 2020 letter Robert Kent sent to Executive Director Joe Jones that in part complained about Robb Gordon's actions as the National Recorder. The Panel is not comfortably satisfied that the letter violated 3.21 as an attempt to influence a Disciplinary Body's decision on a Charge Letter that was not issued until 17 days later. The Panel also does not find by a preponderance of the evidence that this letter amounted to either an "unbecoming" action in violation of 3.7 or "improper" conduct toward the National Recorder in the performance of his duties in violation of 3.11. On the latter charges, the Panel concludes that this letter came just shy of violating the CDR. However, Mr. Kent's threats and mud-slinging disparagements were uncalled for and inappropriate, an apparent overreaction to the existing circumstances.

For the benefit of future disciplinary proceedings, the Panel considers it appropriate to make some observations about the way this case was conducted by the ACBL's Recorders and Advocates. The ACBL's administration of this case merits introspection about how the League treats those accused of wrongdoing.

On May 28, 2020, Gordon notified the Kents by email that the Executive Director had approved a Charge Letter. (Page 630.) He warned them they were facing expulsion with no possibility of readmission if they insisted on having a disciplinary hearing. On May 29, Gordon emailed the Kents saying that he would have a package for them "next week." (Page 642.) On June 12, Gordon corrected himself in an email, explaining that readmission was possible after expulsion. (Page 644.) Meanwhile, the Kents were sent neither Charge Letter nor package. Up until the July 5, 2020 letter, many weeks passed without sufficient communication, leaving the Kents in limbo, knowing a charge was coming but not receiving any concrete information. In retrospect, we know there were extenuating circumstances that created these delays: time was needed as the OEOC was created and new procedures were decided upon; the Recorder assigned to the case was replaced, necessitating a new investigation. The Kents simply needed to be informed of these developments and given sufficient time to prepare their defense.²⁶

The Panel hopes such circumstances will not recur. We are aware that on July 17, 2020, the Appeals and Charges Committee adopted a standing order requiring prompt delivery of a Charging Instrument to the Charged Parties. This standing order appears to fill a gap in the CDR.²⁷ The Panel believes the CDR should be revised consistently with the standing order.

²⁶ The Kents, after receiving the Charges on July 22 or 23, were eventually granted more than an additional month to prepare their defense. By a letter dated July 29, 2020, a former Chair of this Panel (who since recused himself) scheduled the disciplinary hearing for September 2. (Pages 8-9.) The Kents requested time extensions in order to prepare their defense. (Pages 22 through 25 and 27 through 34.) After the pre-hearing conference on August 22, on August 25 the Panel granted their requests and continued their prehearing disclosure and scheduled the hearing for October 5. (Pages 84-85.)

²⁷ New section 502(B), like former 5.2.2, requires bringing a Charge "expeditiously" without specifying that this involves prompt notification of the Charged Party.

Mr. Falk wore several hats in these proceedings, as an investigator, as a Temporary Recorder, and as the Charging Party's Advocate. The Panel was troubled by his behavior in each of these roles. As an investigator, far from providing a neutral presentation of the facts and letting the deals speak for themselves, the tone of Mr. Falk's analyses was too often condescending and vitriolic. His facts were occasionally wrong, and his fixation on unrelated minutiae – particularly alerts – was a distraction that fueled the perception that he was a partisan actor out to get the accused.

The Panel notes that on August 17, 2020, after providing his initial hand analysis and his analysis of 24 supplemental hands in prehearing disclosure on August 10, Falk asked BBO to provide him with the Kents' BBO convention cards from the time period in question (page 1045) and BBO provided him with links to a number of cards the same day (page 1040). The Panel believes that ACBL investigators of suspected cheating should obtain the suspect's convention cards as a matter of routine along with the BBO movies of the deals under investigation. Also in this case, Mr. Falk based his initial analysis on system notes that were not representative of the system the Kents were playing in the events in question, both because the notes were out of date and because they were from an event using a different form of scoring (IMPs instead of matchpoints). We believe Mr. Falk had a responsibility to acquire the appropriate notes and use them as necessary to amend his analyses.²⁸

Regarding Mr. Falk's advocacy, the Panel recognizes that "[t]he Advocate is not neutral or unbiased. The Advocate is free to aggressively prosecute or defend the Charges." (CDR Appendix A, GUIDELINES FOR CONDUCTING DISCIPLINARY PROCEEDINGS, part I.C.) But an Advocate for the ACBL's Executive Director is a representative of the ACBL and should strive to exhibit conduct becoming that position. Even if the opponent is an attorney who adopts a "scorched earth" defense of attacking the character of every ACBL officer and agent involved in a disciplinary case and threatening to file charges, an ACBL Advocate should maintain some dignity instead of reflexively fighting fire with fire. "Intemperate" is a mild description of someone who repeatedly calls another Advocate a liar in an email (page 778), particularly by a person who proclaims himself "pachydermatous." (Page 709.) A disciplinary panel deserves more light than heat. The 1,093-page hearing packet in this case would have been substantially shorter if each Advocate could have restrained himself from trying to have the last word in their endless bickering.

²⁸ We note that Falk did amend his July analysis of one hand prior to submitting it in prehearing disclosure on August 10. (Page 117.)